

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA06/53

TITLE: Westgate Logistics (NSW) Enterprise Agreement 2004

I.R.C. NO: IRC5/5220

DATE APPROVED/COMMENCEMENT: 31 October 2005 / 1 December 2004

TERM: 24

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 24 February 2006

DATE TERMINATED:

NUMBER OF PAGES: 31

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Westgate Logistics Pty Ltd, located at Level 4, 650 Lorimer Street, Port Melbourne VIC 3207, and to all of the transport and/or distribution operations of the Company located in the state of New South Wales, who fall within the coverage of the following awards: the Transport Industry (State) Award, Transport Industry - Redundancy (State) Award and the Transport Industry (State) Superannuation Award (No.2)

PARTIES: Westgate Logistics Pty Ltd -&- the Transport Workers' Union of New South Wales

WESTGATE LOGISTICS PTY LTD (NSW OPERATIONS) ENTERPRISE AGREEMENT 2004

Clause 1 Title

This agreement shall be known as the Westgate Logistics (NSW) Enterprise Agreement 2004, it will supersede all previous enterprise agreements.

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Clause 3 Length of Agreement

- (i) This Agreement comes into effect on 1 December 2004 and shall remain in force until 1 December 2006. Any Agreement currently in place between the company and the TWU shall remain in force until 1 December 2006.

- (ii) By 1 September 2006 the Company shall enter into negotiations with the TWU for the renewal of this Enterprise Agreement with an agreement in place prior to 1 December 2006.

Clause 4 Parties Bound

- (i) The Parties to this agreement shall be:
- Westgate Logistics Pty Ltd (“the company”)
- And
- The TWU, as defined, (“TWU”)

Clause 5 Operation

- (i) This agreement shall apply to all of the transport and/or distribution operations of the Company and all its employees located in the State of New South Wales.
- (ii) The basic terms and conditions of employment as detailed in the *Transport Industry (State) Award, 2000* as varied from time to time or any award replacing or rescinding that award, shall continue to apply unless amended by this agreement. Should there be any inconsistency between the Award and this Agreement, this Agreement shall prevail.

Clause 6 Definitions

- (i) In this agreement, unless the context otherwise requires:

"Award", in relation to:

- Wages and Monetary Rates, means the rates set out in Part B of the *Transport Industry (State) Award, 2000* as varied from time to time or any award replacing or rescinding that award; and
- The terms and conditions of employment other than Monetary Rates, means Part A of the *Transport Industry (State) Award, 2000* as it reads at the date of the making of this Agreement, provided that any clause that is inserted into the said award relating to the protection of employee entitlements, or chain of responsibility after the date of the making of this Agreement shall also apply to the parties covered by this Agreement.

"Blue Card" 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 compels employees to familiarise themselves with, and follow, occupational health and safety procedures. Blue Card is conducted by a registered training provider that is licensed to deliver Blue Card.

“Company” means Westgate Logistics Pty Ltd

“contract carrier” means any person performing a “contract of carriage” as defined by Section 309 of the *Industrial Relations Act, 1996*

“Defence Force Reserves” - for the purpose of this Agreement only the following definitions apply:

- **“Defence Service”** means:

- (a) Service overseas by a member in peacekeeping, peace enforcement, or humanitarian relief operations as declared by the Minister in which the Defence Force is participating; or
- (b) Any voluntary service not covered by the call out provisions of the Commonwealth *Defence Reserve (Protection) Act 2001*, or
- (c) Any official Reserve Forces Induction or Training.

- **“The Reserve Forces”** means the Australian Army Reserve, the Australian Navy Reserve and the Australian Air Force Reserve.

“employee” means an employee covered by the classifications referred to in Clause 1 of the *Transport Industry (State) Award* and, in addition, any other employee engaged in or in connection with transport or distribution.

"Transport Industry - Training, Education and Industrial Rights Council" means an organisation established for the purpose of promoting vocational training, occupational health and safety training, safer work practices, knowledge of this Heads of Agreement, the award and other industrial instruments, and the furtherance of industrial rights compliance in the transport industry. The ordinary members of the Council are constituted by an equal representation of employees and employers, and the Council is chaired by the Secretary of the TWU, or his nominee. By agreeing to clause 29 of this agreement the company may nominate a representative to the board of the Council, provided that if the company is a member of a registered organisation of employers it may be represented on the council by that organisation.

“transport worker” includes, except as otherwise specified, employees and contract carriers.

"TWU" means the Transport Workers' Union of New South Wales.

(ii) In this agreement:

- Words importing the singular shall include the plural; and
- Words importing the masculine gender shall include the female gender.

Clause 7 Obligations of the Company

The company shall ensure the following:

- (i) Maximisation of the full-time proportion of its workforce, including utilisation of full-time employees and contract carriers to their full capacity before casual, part-time or Labour Hire employees or contract carriers are engaged or work is contracted out to other companies or businesses;
- (ii) Strong company recommendations that all of its employees join the TWU, including positive promotion of TWU membership at the point of recruitment;
- (iii) That it shall consent to the making, approval or certification (as the case may be) of one or more of the following industrial instruments as may be necessary to give enforceable effect to this Agreement under the *Industrial Relations Act 1996, (NSW)* in respect of the company's NSW operations:
 - (a) an award or enterprise agreement under the *Industrial Relations Act, 1996 (NSW)*;
- (iv) That any yard agreement or other unregistered arrangement in force at the time that this Agreement is executed shall continue to apply unless the parties to this Agreement specifically agree to other arrangements to apply in lieu thereof.
- (v) That all road transport or distribution companies, employment & labour hire providers and other contractors engaged by the company abide by the Chain of Responsibility Clause contained herein, including the Safe Driving Plan which is Annexure "B" and which forms part of this agreement. In ensuring this, the company acknowledges that the link between, on the one hand, low rates of pay and other inappropriate industrial practices (such as penalty/reward and other performance/time related systems), and on the other hand, safety concerns such as: pressure to work excessive hours; pressure to exceed legal speed limits; and pressure to drive through break and sleep times, (to name only a few) is now well established by reports such as *Beyond the Midnight Oil*: a report commissioned by the Federal Government in 1999 and the *Quinlan Inquiry Report* of 2001.

- (vi) The training of its employees in occupational health and safety and other professional training as provided by a licensed Blue Card Provider; and
- (vii) Adherence to the principle of collective bargaining with the TWU including compliance with the following:
 - (a) The only industrial instrument(s) regulating terms and conditions of engagement of its employees will be the relevant award, this Agreement or a registered Union enterprise agreement (whichever is applicable); and
 - (b) The company will not enter into individual contracts or agreements (including Australian Workplace Agreements), or non-union agreements, with its employees.

Clause 8 Conditions of Engagement

- (i) In relation to any matter in respect of which this agreement does not make provision, the terms of the Award shall apply to all employees.
- (ii) The wage rates specified in this agreement are to apply for the purposes of calculating all employee entitlements including (but not limited to) overtime, any form of leave, redundancy and superannuation.
- (iii) Subject to mutual agreement between the employee and the Company, employees may be transferred within and between the Company's sites in NSW.
- (iv) The notional hours of work will be 40 per week (8 per day). 2 hours per week will accrue towards a Rostered Day Off (RDO). RDO's may be taken by mutual agreement at the instigation of either the company or the employee. However, no RDO's will be available in the months of November and December and within 3 weeks prior to the Easter break, unless by mutual agreement. RDO's may be accrued but only to a maximum of 12 days at any one time and can only be paid out in any combination of full single days.

Clause 9 Rates of Remuneration for Employees

- (i) The company shall pay its employees the rates set out in the Schedule of Rates to this Agreement at Annexure A.
- (ii) The wage rates in sub-clause 9 (i) do not include allowances. Subject to clause 12, Meal Allowance and clause 13, Dangerous Goods Allowance, allowances as prescribed by the Award shall be paid to employees.

Clause 10 Superannuation

- (i) The company shall make the following monthly superannuation contributions on behalf of each of its employees into the TWU Superannuation Fund (“the Fund”):
 - (a) an amount calculated in accordance with the *Transport Industry – Superannuation (State) (No. 2) Award*.
- (ii) For the purposes of determining ordinary time earnings the following shall be applied: Bonuses, incentive payments, over award or agreement payments, shift loadings and the like, as per the Australian Tax Office Superannuation Guarantee Ruling SGR 94/4.
- (iii) The company shall provide its transport workers with written advice, on a monthly basis, which includes all relevant details of the contributions made to the Fund in accordance with this clause.

Clause 11 Income Protection

- (i) Both parties have agreed that income protection insurance will be continued as part of this agreement. Although Westgate Logistics Pty Ltd will remit the premium to the insurer, the actual cost will be met by each individual. This cost, including GST, will be deducted from the gross amount of weekly earnings, inclusive of overtime and allowances.
- (ii) If the income protection insurance scheme as stated in (i) is discontinued the 1.5% shall form part of the weekly wage of its transport workers.

Clause 12 Meal Allowance

- (i) An employee required to work overtime for two or more hours shall be paid a meal allowance in accordance with the *Transport Industry (State) Award*. This will apply as a sum total of hours worked which was either performed before or after the completion of a shift.
- (ii) An employee required to commence work two or more hours prior to the normal starting time shall be paid a meal allowance in accordance with the *Transport Industry (State) Award*.
- (iii) An employee shall not be required to work for longer than five hours without a break for a meal in accordance with the *Transport Industry (State) Award*.

Clause 13 Dangerous Goods Allowance

- (i) The Dangerous Goods Allowance will only be paid to warehouse employees working in a licensed Dangerous Goods facility as recognised by Westgate Logistics Pty Ltd. This allowance shall be paid for all hours worked.
- (ii) Warehouse employees working in a licensed Dangerous Goods facility will change to existing rates plus allowance where applicable on commencement of this Agreement.

(iii) The rates during the life of this Agreement will be as follows:

Classification	Dangerous Goods Allowance
Grade One	1.3055
Grade Two	1.3055
Grade Three	1.3055
Grade Four	1.8152
Grade Five	1.8152
Grade Six	1.8152
Grade Seven	1.8152
Grade Eight	1.8152

Clause 14 Protection of Entitlements

(i) Leave is reserved for both parties throughout the life of this agreement to negotiate arrangements regarding this clause.

Clause 15 Measures to increase efficiency

(i) The parties have agreed that in order to develop a more efficient and productive enterprise it is necessary to create a co-operative work environment and appropriate consultative mechanisms involving the company, the TWU and transport workers.

(ii) It is a term of this agreement that the company shall allow delegates, employees and representatives of management to attend (with no loss of pay) a one-day training course run by the Company in conjunction with the TWU in relation to the implementation of :

- This agreement; and
- Subsequent enterprise agreements as are entered, from time to time as between the parties.

Clause 16 Union Recognition

- (i) The company recognises the TWU as being the sole Union that shall represent employees. This representation will extend to all terms and conditions of engagement of employees engaged by the company, whether those terms and conditions are subject to this agreement or not.

- (ii) It is the policy of the company that it shall recommend that all of its employees shall join the TWU. This includes positively promoting union membership at the point of recruitment and strongly recommending that all employees who are members of the TWU remain members of the TWU.

- (iii) The company will not take any actions or make any statements that will directly or indirectly state or imply opposition by the company to employees electing to join or remain members of the TWU.

- (iv) The company agrees not to discriminate, discharge, lay-off or discipline any employee for reason (or for reasons that include the reason) that the employee joined, proposed to join or is a member of the TWU, signed an authorisation card or engaged in Union activity.

Clause 17 Union Induction

- (i) A nominee or nominees of the Union shall be given an unfettered, uninterrupted opportunity to induct into the Union all new employees as required. The induction will be used to outline the value of Union membership and to encourage the employees to join the Union. To this end the company agrees to ensure the following:
 - (a) That it provides to the State Secretary of the TWU (or the Secretary's nominee) on the first day of each quarter a list of all of its employees. The list will state the following:
 - the name of each employee;
 - the contact address and email address of each employee (this will only be provided after prior consent has been given by the said employee);
 - the classification of each employee;
 - the department/section/yard/group in which the employee is engaged; and
 - the date of any new employee that commenced engagement with the company.

 - (b) That the induction will take place on the site at which the work is to be performed;

- (c) That a room dedicated to the induction and appropriate for such use (such as a training room) is provided;
 - (d) That at least 30 clear minutes be allowed for the induction to take place;
 - (e) That employees receive no less than their usual or (where they have not yet commenced work) proposed rate of pay for the duration of the induction; and
 - (f) That prior to the induction there shall, at the request of the union, be posted in a prominent position accessible to all employees in the workplace, a Union generated notice as to the purpose of, and any other relevant information about, the induction.
- (ii) At the commencement of this Agreement, the company shall allow a one-off induction of the type and in the manner specified in Clause 17 of all existing employees, to be held in conjunction with the EBA Training specified in this agreement.
 - (iii) The company will notify the Union of all upcoming site inductions of new employees as soon as is practicable but no later than 72 hours before the site induction is to take place. If that is not practicable a follow up induction shall be conducted by the Union.

Clause 18 Delegates' Rights

- (i) The company shall ensure that TWU Delegates (and Co-Delegates) have the following rights:
 - The right to be treated fairly and to perform their role as Union Delegate or workplace Representative without any discrimination in their engagement.
 - The right to formal recognition by the company that endorsed Union Representatives speak on behalf of Union members in the workplace.
 - The right to bargain collectively on behalf of those they represent.
 - The right to consultation, and access to information about the workplace and the business.
 - The right to paid time to represent the interests of members to the company and to attend industrial tribunals.
 - The right to paid time during normal working hours to consult with Union members.

- The right to paid time off to participate in the operation of the union.
- The right to paid time off to attend accredited Union education and training.
- The right to address new employees about the benefits of Union membership at the time that they commence work with the company.
- The right to discuss Union and workplace matters with all employees at the workplace.
- The right to 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.
- The right to place Union information on a notice board in a prominent location in the workplace.
- The right to up to two (2) weeks paid time off per year to work with the Union. Leave is reserved for both parties throughout the life of this agreement to negotiate alternative arrangements regarding this dot point.

(ii) The company acknowledges, and will in no way hinder, the following functions of TWU delegates:

- To provide awareness and understanding of the Union's aims and achievements whenever possible.
- To know the profile of Union members in the workplace.
- To recruit and involve employees in the workplace in the Union and its activities.
- To be approachable and helpful to Union members in the workplace.
- To seek out and encourage other Union members to take on roles and responsibilities.
- To provide up to date and relevant Union information to Union members in the workplace
- To regularly undergo Union education and training.
- To represent the views of the members.

- To represent Union members fairly and accurately in negotiations and in relation to individual grievances.
- To keep in regular contact with the Union Organiser and other Union Representatives in the workplace.

Clause 19 Payroll Deductions – Union Membership Fees

- (i) The company shall deduct Union membership fees (not including fines or levies) from the pay of any employee, provided that:
 - (a) the employee has authorised the company to make such deductions in accordance with subclause (ii) herein;
 - (b) the Union shall advise the company of the amount to be deducted for each pay period applying at the company's workplace and any changes to that amount; and
 - (c) the deduction of union membership fees shall only occur in each pay period in which payment has or is to be made to an employee.
- (ii) The employee's authorisation shall be in writing and shall 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 the company to deduct. Where the employee passes any such written authorisation to the Union, the Union shall not pass the written authorisation on to the company without first obtaining the employee's consent to do so. Such consent may form part of the written authorisation.
- (iii) Monies so deducted from employees' pay shall be remitted to the Union on either a weekly, fortnightly, monthly or quarterly basis at the company's election, 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.
- (iv) Where an employee has already authorised the deduction of Union membership fees in writing from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to commence or continue.
- (v) The Union shall advise the company 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 shall 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 shall give the company a minimum of two months' notice of any such change.

(vi) An employee may at any time revoke in writing an authorisation to the company to make payroll deductions of Union membership fees.

(vii) Where an employee who is a member of the Union and who has authorised the company to make payroll deductions of Union membership fees resigns his or her membership of the Union in accordance with the rules of the Union, the Union shall inform the employee in writing of the need to revoke the authorisation to the company in order for payroll deductions of union membership fees to cease.

(viii) The above provisions shall take effect:

(a) In the case of companies which currently deduct union membership fees, or whose payroll facilities are carried out by way of an outsourcing arrangement, or whose payroll calculations are made through the use of computerised means, from the beginning of the first pay period to commence on or after signing of the agreement.

(b) In the case of companies who do not fall within subparagraph (a) above, but who currently make deductions, other than union membership fee deductions or mandatory deductions (such as for taxation instalments or superannuation contributions) from employees' pay, or have in place facilities to make such deductions, from the beginning of the first pay period to commence on or after one month after signing of the agreement.

(c) For all other companies, from the beginning of the first pay period to commence on or after two months after signing of the agreement.

Clause 20 Payroll Deductions – Other Deductions

(i) All non statutory, agreed and subsequently authorised deductions from an employee's pay shall be applied to the purpose of the deduction:

- within thirty days of the deduction occurring; or
- 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 thirty days.

(ii) The company shall generate and maintain records of the following transactions:

- Deductions. Such deductions shall appear on the transport worker's next pay advice; and
- Payments to recipient institutions. The company shall provide the transport worker with evidence that such a payment has been made upon the request of the transport worker.

Clause 21 Union Picnic Day

The benefits of clause 28 - Union Picnic Day - of the *Transport Industry (State) Award*, shall apply to all employees engaged by the company who are financial members of the Union (this includes, but is not limited to casual employees provided they have worked at the Company for a period in excess of four months). Payment pursuant to this clause shall be calculated by reference to the applicable rates specified in clause 9, Rates of Remuneration.

Clause 22 Fair Share Contribution

The parties agree to enter into a consent industrial instrument containing the following provision:

(i) The parties to this agreement recognise that:

- (a) the interests of employees in the negotiation of this agreement have been solely represented by the TWU;
- (b) this agreement provides for rates of remuneration and other benefits which are significantly more advantageous for employees than those under the applicable award/contract determination;
- (c) the TWU will have a continuing role, as the representative of employees, in the implementation and enforcement of this agreement and in the resolution of any disputes which may arise with respect to the agreement; and

(d) the TWU has expended and will continue to expend significant resources in representing the interests of employees covered by this agreement.

(ii) In consideration for the above services provided by the TWU to the benefit of all employees covered by this agreement, it is agreed that all such employees shall, while this agreement remains in force, make a “fair share” contribution to the cost of those services.

(iii) The “fair share” contribution to be paid by each employee to the TWU, inclusive of GST, shall be as follows for each week in which the agreement applies:

2004	\$6.56 per week
2005	\$7.73 per week (from 1 January)
2006	\$8.92 per week (from 1 January)

(iv) The “fair share” contribution shall be paid to the TWU in weekly installments, by payroll deductions. The company shall establish and maintain a payroll deduction facility for that purpose and shall deduct and remit to the TWU on a monthly basis all “fair share” contributions. When remitting the contributions the company shall provide all necessary information (including the names and addresses of each and every person making the contribution) to enable the reconciliation and crediting of the contribution to each employee making the contribution so as to ensure compliance with the clause and in order that the TWU is able to independently identify and approach such persons to explain and deliver benefits associated with this agreement including the training and education specified in the Retraining, Training and Industrial Rights clause of this Agreement.

(v) Financial members of the TWU who already and continue to contribute to the cost of TWU services by way of their union membership fees shall be permitted to set-off the union

membership fees paid by them in any calendar year against their “fair share” contribution for that year.

- (vi) The company shall on a regular basis advise each employee in writing of his or her obligations under this clause and advise them that a person who is found by an industrial court to have breached an industrial instrument may be ordered to pay a civil penalty of up to \$10,000. Such advice shall also be provided to each new employee upon the commencement of their engagement.

Clause 23 Settlement of Disputes

- (i) The parties have agreed that the following procedure shall apply for the settlement of disputes involving employees:
 - (a) The matter should first be discussed at the workplace level between employees and relevant management. If an employee so requests the TWU delegate will be involved in such discussions;
 - (b) If the matter is not settled discussions shall occur between the appropriate TWU official and management;
 - (c) If the matter is still not settled it shall be discussed between the Branch Secretary (or nominee) of the TWU and the company;
 - (d) If the matter is still not settled it shall be submitted to the Industrial Relations Commission of New South Wales, in the case of sites located in New South Wales, or, in the case of sites located in the ACT, to the Australian Industrial Relations Commission, which shall conciliate the matter;
 - (e) Where the matter cannot be settled by conciliation, the Industrial Relations Commission of New South Wales or the Australian Industrial Relations Commission, as the case may be, may determine the dispute by arbitration, and no party to the dispute will raise any jurisdictional objections to the relevant Commission’s capacity to do so.
- (ii) Whilst the above procedure is being followed the conditions existing between the parties immediately before the occurrence of the events giving rise to the industrial dispute shall remain in place or, where such conditions have changed, be restored, and work shall continue

normally, except in circumstances where employees have genuine concerns for their health and safety.

- (iii) This settlement of disputes procedure will apply to any dispute or claim (whether it arises out of the operation of this Agreement or not) as to the wages or conditions of engagement of employees.
- (iv) For the purposes of this clause “employee” means an employee employed by the company and, in addition, any other employees engaged by any other entities who perform in or in connection with transport and distribution at or in connection with any workplace of the company.

Clause 24 Reasonable Work Hours

- (i) Subject to sub-clause (ii) the company may require an employee to work reasonable overtime at overtime rates.
- (ii) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:
 - (a) any risk to employee health and safety;
 - (b) the employee's personal circumstances, including any family responsibilities;
 - (c) the needs of the workplace or enterprise;
 - (d) the notice (if any) given by the company of the overtime and by the employee of his or her intention to refuse it, and any other relevant matter.

Clause 25 Supplementary Labour and Contracting Out

- (1) **Labour Hire Companies**
 - (a) Westgate Logistics Pty Ltd agrees that when necessary to meet short term peak work requirements additional labour will be sourced from Labour Hire Companies who have a registered enterprise agreement with the Transport Workers Union.

- (b) Westgate Logistics Pty Ltd will ensure that the employees of labour hire companies engaged by Westgate Logistics Pty Ltd are paid no less than the rate fixed by this Agreement for any work performed by them for or on behalf of Westgate Logistics Pty Ltd.

(2)

Local Outside Hire

- (a) Westgate Logistics Pty Ltd agrees that when necessary to meet short term peak work requirements additional labour will be sourced from outside hire companies who have a registered enterprise agreement (and if applicable a registered agreement for contract carriers) with the Transport Workers Union which is to be registered with the Industrial Relations Commission of NSW.
- (b) Westgate Logistics Pty Ltd will ensure that by 1 July 2005, it will achieve compliance with clause 25 (2). Parties will ensure that a review take place on 1 July 2005 to ensure compliance with this clause.
- (c) Westgate Logistics Pty Ltd will ensure that work that it contracts out to outside hire companies is not further subcontracted, assigned or transferred by such companies.
- (d) Westgate Logistics Pty Ltd will ensure that by 1 July 2005 outside hire companies pay no less than the rate fixed by this Agreement for any work performed by them or their employees for or on behalf of Westgate Logistics Pty Ltd.
- (e) If Westgate Logistics Pty Ltd experiences problems with the implementation of clause 25 (2), owing to a genuine emergency (as defined in clause 25 (5) (b)), Westgate Logistics Pty Ltd will discuss alternative arrangements with the Branch Secretary (or nominee) of the Transport Workers' Union to ensure that the business needs of Westgate Logistics Pty Ltd are met.

(3)

Line Haul

- (a) Westgate Logistics Pty Ltd agrees that when necessary to meet short term peak work requirements, line haul companies engaged by it are covered by a registered enterprise agreement (and if applicable a registered agreement for contract carriers) with the Transport Workers Union which is to be registered with the Industrial Relations Commission of NSW. Westgate Logistics Pty Ltd will ensure that this is implemented by no later than 1 July 2005. Parties will also ensure that a review takes place on 1 July 2005 to ensure compliance with this clause.

- (b) Westgate Logistics Pty Ltd will ensure that by 1 July 2005 all single line haul owner operators engaged by the company are covered by a registered agreement for contract carriers signed between Westgate Logistics Pty Ltd and the Transport Workers Union which is to be registered with the Industrial Relations Commission of NSW. Parties will also ensure that a review take place on 1 July 2005 to ensure compliance with this clause.
- (c) Westgate Logistics Pty Ltd will ensure that work that it contracts out to line haul companies is not further subcontracted, assigned or transferred by such companies.
- (d) Westgate Logistics Pty Ltd shall provide to the Transport Workers' Union a list of companies it regularly contracts with for the purpose of contracting out work within two weeks of the signing of this agreement. Furthermore, Westgate Logistics Pty Ltd shall update said list and provide a copy of that updated list to the Transport Workers Union at the written request of the Branch Secretary (or his nominee) and its delegates.

(4) **Consultation on Major Changes**

- (a) Westgate Logistics Pty Ltd commits to consultation with the Transport Workers Union in relation to any major changes to its operations which will have a significant impact on its employees.
- (b) It is not Westgate Logistics Pty Ltd's intention to contract out any significant part of its workforce or its work nor make any substantial change in the current overall balance of employee/contractor resources. Contractors will not be used as a means of pursuing a reduction in wages and conditions of Westgate Logistics Pty Ltd employees or altering Westgate Logistics Pty Ltd commitment to providing opportunities for its transport workers. Where Westgate Logistics Pty Ltd proposes to contract out work currently performed by its employees, Westgate Logistics Pty Ltd shall hold discussions with all of its employees who might be affected and the Transport Workers Union.
- (c) Such discussions shall take place as soon as is practicable and in any event not less than six weeks before the proposed contracting out of work is intended to commence. The discussions shall cover all relevant matters, including:
 - (i) The reasons for the proposed contracting out of work;
 - (ii) Any available alternatives to the contracting out of work;
 - (iii) Measures to avoid or minimise the effects of the contracting out of work;

- (iv) Measures to mitigate any adverse effects of the contracting out of work, particularly with respect to persons whose positions are displaced as a result; and
 - (v) The availability of reasonable alternative employment with Westgate Logistics Pty Ltd for those whose positions are displaced.

- (d) For the purposes of such discussions, Westgate Logistics Pty Ltd shall, as soon as practicable, provide in writing to the affected employees and the Transport Workers Union all relevant information about the proposed contracting out of work, including:
 - (i) The number and categories of employees likely to be affected;
 - (ii) The number of employees normally engaged; and
 - (iii) The name and address of the contracting business(s) which the employer intends contracting work out to.

- (e) Whilst such discussions are occurring, or whilst the disputes settlement procedure in this Agreement is being followed with respect to any matter arising out of such discussions, Westgate Logistics Pty Ltd shall not proceed to enter into any contract with a contract business with respect to the contracting out of the work which is the subject of the discussions.

- (f) Westgate Logistics Pty Ltd must not decide to contract out work which is currently performed by persons directly engaged by Westgate Logistics Pty Ltd for any of the following reasons, or for reasons which include any of the following reasons:
 - (i) To avoid having to pay a benefit to which such persons are entitled under:
 - (A) This or any other applicable award or other industrial instrument;
 - (B) Their contracts of employment;
 - (C) Applicable Industrial Relations legislation; or
 - (D) Any order of a court or industrial tribunal.
 - (ii) To avoid any other lawful obligation of the employer including any obligation arising under occupational health and safety legislation; or
 - (iii) To remove or weaken the Transport Workers Union presence in the workplace.

- (g) Nothing in this clause affects any obligation upon the employer to provide notice or to pay severance or redundancy pay arising under this or any other enterprise agreement or award or order of the Commission pursuant to the *Employment Protection Act 1982*.

(5) **Definitions**

- (a) For the purposes of this clause “Local Outside Hire” and “Outside Hire Companies” includes courier, taxi truck, local tow operators, prime mover and/or trailer or full rig combinations engaged to provide pick up and delivery services.
- (b) For the purpose of this clause “Genuine Emergency” means short term peaks, high demands or unavailability of regular suppliers which Westgate Logistics Pty Ltd may experience from time to time during the life of this agreement.
- (c) For the purpose of this clause “company” includes employer, person or entity.
- (d) For the purpose of this clause “line haul” means work exceeding 500 kilometres on a round trip from a distribution centre.

Clause 26 Chain of Responsibility

- (i) The chain of responsibility clause covers all work contracted out by Westgate Logistics Pty Ltd.
- (ii) Westgate Logistics Pty Ltd shall keep records containing details of the work it has contracted out including the name and address of the employer, person or entity to whom the work has been contracted, the date the work was contracted, a description of the work to be performed and the names and addresses of the employees who perform the work that has been contracted. The addresses of the employees, who perform the work that has been contracted, can only be provided by Westgate Logistics Pty Ltd to the Transport Workers’ Union if consent has been given by that employee.
- (iii) The chain of responsibility clause will establish a two way ‘tracking’ system, whereby work that has been contracted out can be tracked both ways along the transport and distribution chain. Work must only be contracted out in accordance with the terms and conditions of this agreement, including the terms and conditions of this clause, and applicable legislation including:
 - (a) *NSW Transport Industry (State) Award;*
 - (b) *Transport Industry General Carriers Contract Determination; and*

(c) *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999 (NSW)*

- (iv) Westgate Logistics Pty Ltd will take all necessary steps to ensure that for each and every freight delivery task a Safe Driving Plan is completed, which is Annexure B to this agreement and which forms part of this agreement. Copies of Safe Driving Plans will be kept by the Company and a copy will be given to the worker(s) actually performing the work. Westgate Logistics Pty Ltd will ensure that it complies with clause 21 (iv) by no later than 1 July 2005. Parties will ensure that a review takes place on 1 July 2005 to ensure compliance with this clause.
- (v) The records referred to in (ii) and (iv) above, shall be available for inspection and copying by a person duly authorised as if it were a record permitted to be inspected and copied under Part 7 of Chapter 5 of the *Industrial Relations Act (NSW) 1996*, *Occupational Health and Safety Act (NSW) 2000* and the *Occupational Health and Safety Regulation (NSW) 2001*.
- (vi) Westgate Logistics Pty Ltd will ensure that work that is to be performed by a subcontractor (whether they be an employer, person or entity) is not further subcontracted, assigned or transferred by the said subcontractor to another contractor. This clause will only apply to work upon which Westgate Logistics Pty Ltd makes a direct payment to the subcontractor (whether they be an employer, person or entity).
- (vii) Westgate Logistics Pty Ltd will ensure that any contract or arrangement pursuant to clause (vi), made after the signing of this agreement, that it enters into resulting in work being performed by transport workers, other than those directly engaged by the company, contains a term, breach of which is to be expressed as fundamental, prohibiting any further contracting out by the employer, entity or person to whom the work has been contracted.
- (viii) Westgate Logistics Pty Ltd will provide all of its line hauliers with a copy of this clause and relevant additional information as part of its effort to ensure that such line hauliers engaged by it are capable of participating in the Safe Driving Plan outlined in Annexure B.
- (ix) Westgate Logistics Pty Ltd will insist that all of its line hauliers implement a Driver Fatigue Management Program, which must be completed by 1 July 2005. Westgate Logistics Pty Ltd and the Transport Workers Union will ensure that a review takes place at that time to ensure compliance with this clause.
- (x) Westgate Logistics Pty Ltd commits to ongoing communication with the Transport Workers' Union in respect of all Chain of Responsibility issues and processes with a view to ensuring

that Westgate Logistics Pty Ltd utilises its position in the contract chain to promote safe and legal performance of its work by the employer, person or entity that it subcontracts work out to.

Clause 27 Agreement Rates and Conditions to Apply to all Employees On-Site

- (i) The company shall take all necessary steps to ensure that all employees performing work at or in connection with a company site or sites, whether directly engaged by the company or not, receive the same rates and conditions as provided in this agreement. Such steps shall include but not be limited to the following:
 - (a) ensuring, subject to this Agreement, that no work is so performed by employees, other than employees directly engaged by the company, unless the employer/principal contractor of such employees has a registered agreement with the TWU applying to such employees; and
 - (b) ensuring, consistent with this Agreement, that any contract it enters into resulting in work being so performed by employees, other than those directly engaged by the company, contains a term, breach of which is to be expressed as fundamental, requiring that such work be performed:
 - (1) only in accordance with a registered agreement between the employer/principal contractor of such employees and the TWU applying to such employees; and
 - (2) on terms and conditions no less favourable than those provided for in this agreement.
- (ii) During the term of this agreement, the TWU commits that it will not pursue any extra claims (except for matters where leave is granted) relating to wages or changes to conditions of employment/engagement or any matters related to the employment/engagement of the employees, dealt with in this agreement.

Clause 28 Blue Card, EBA and On-Going Training

- (i) The company will promote vocational training, occupational health and safety training, safer work practices, knowledge of this agreement and other industrial entitlements, and other services for the benefit of the workers in the transport and distribution industry.
- (ii) The company recognises its responsibilities to provide a safe and healthy workplace for its employees and all other persons attending its sites and accordingly agrees to train employees in accordance with this Clause.

(iii) Prior to an employee commencing to work with or on behalf of the company the employee shall be trained in:

- occupational health and safety
- vocational skills;
- other professional training; and
- industrial rights

This will be achieved by providing each employee with Blue Card Training as specified in subclause (iv) of this clause and by facilitating Union inductions and supporting industrial rights education as specified in this Agreement.

(iv) Blue Card Training

(a) Each new employee shall undertake a Blue Card Program, conducted by a licensed Blue Card training provider, in conjunction with the company and the TWU delegate.

Note: The Blue Card course is competency based. Therefore although the duration of the training course would usually be of no less than four (4) hours duration, it may be of greater or lesser duration, depending upon the actual time required by each inductee to be trained.

(b) In addition to the requirements contained in paragraph (a) above, the company shall arrange for a safety assessment in relation to the workplace of the company and any other site that an employee may visit in the course of that employee's employment/engagement. This safety assessment shall be carried out by an appropriately qualified person. The company shall ensure that each employee who works at or in connection with the workplace of the company receives appropriate training relating to the safety assessment.

(v) The following additional training will also be provided as follows:

(a) EBA Training

At the commencement of this Agreement the company shall train all of its employees in its terms. This training shall be conducted by the Company, in conjunction with the TWU delegate.

(b) Ongoing Training.

The company shall:

- A. Comply with all current Codes of Practices, Regulations, Worksafe Australia documentation and approved and recognised industry standards as a minimum requirement, so as to meet and comply with the company's obligations under the NSW Occupational Health and Safety Act 2001;
- B. Authorise all employees elected to OH & S Committees and/or as OH & S Representatives to attend a committee training course (as per the NSW Occupational Health and Safety Act, 2001) as soon as practicable within 3 months of being elected to such a position. Further, the Company will establish an OH & S Committee in all workplaces with less than 20 employees;
- C. Train all TWU delegates and co-delegates to "Certificate 4 in Workplace Training and Assessing" trainer standard within three months of either the commencement of this agreement or the delegate or co-delegate assuming the position of delegate or co-delegate;
- D. Train all existing employees in the Blue Card Induction Program. Such training is to occur within three months of the commencement of the agreement, and shall be conducted by a licensed Blue Card training provider, in conjunction with the company and the TWU delegate; and
- E. Enrol and provide all employees that perform driving duties, together with allocation staff and fleet controllers with the opportunity and time to attend Driver Fatigue Management programs.

(vi) Training to be paid for by the Company

The company shall pay for the training courses and programs referred to in this Agreement and all other reasonable expenses, which would otherwise be incurred by attendees of the course, shall be borne by the company. Further, attendees shall receive no less than their usual pay whilst attending such courses.

Clause 29 Retraining, Training, Education and Industrial Rights

In addition to any other entitlement of employees covered by this agreement parties shall enter into a separate agreement regarding the Transport Industry - Training, Education and Industrial Rights Council.

Clause 30 Parental Leave

- (i) For the purposes of this clause parental leave will apply in accordance with the provisions as set out in the *Transport Industry (State) Award*. Employees may elect to take any accrued leave entitlements including RDOs for the purposes of this clause.
- (ii) Leave is reserved for both parties throughout the life of this agreement to negotiate alternative arrangements regarding this clause.

Clause 31 Blood Donor Leave

- (i) The Company will ensure that at the request of employees it will contact the Mobile Blood Bank for the purpose of said employees to donate blood. Sufficient time will be provided by the Company for such a service to occur.
- (ii) The Company will ensure that all employees who have participated in the donation of their blood be paid their normal rates or amount as agreed to in this Agreement for the time taken to perform such a service.
- (iii) Leave is reserved for both parties throughout the life of this agreement to negotiate alternative arrangements regarding this clause.

Clause 32 Volunteer Emergency Services and Bush Fire Fighters Leave

- (i) Any employee who is a member of a volunteer emergency service or a bush fire brigade shall be entitled to take an unpaid leave of absence if they are required to attend an emergency during a period they would ordinarily be working for the company. Such leave may be accessed in a manner reflecting access to Personal/Carer's Leave in the *Transport Industry (State) Award* in that the employee shall be entitled to use any current or accrued sick leave entitlement for absences to provide such emergency service.
- (ii) Each employee must provide proof to the Company of any such activity prior to leave being granted. Leave is reserved for both parties throughout the life of this agreement to negotiate alternative arrangements regarding this clause.

Clause 33 Defence Forces Leave

- (i) The company shall not hinder or prevent employees from volunteering for Defence Service in the Reserve Forces.

- (ii) The company shall not penalise employees or refuse to engage employees, or prejudice them in their engagement, whether by reduction of remuneration, dismissal, termination, or in any other way, for the reason that they are rendering or are liable to render Defence Service in the Reserve Forces.
- (iii) Where the company is required to allow annual or periodical holidays or leave to a employee, the company shall not, except at the request of the employee, allow the holidays or leave at times comprised within any period of absence on Defence Service of the employee, but nothing in this subclause deprives such an employee of any right to any holidays or leave to which the employee would otherwise have been entitled.
- (iv) Where an employee has given the company reasonable notice, the company shall, upon application by the employee, allow the unpaid period or periods of leave necessary for the employee to attend induction or ongoing training in the Reserve Forces.
- (v) The company will ensure that no employee who is absent by reason of Defence Service or attending induction or ongoing training suffers as a result of that absence a reduction in their usual pay upon return to work/engagement with the Company.
- (vi) Each employee must provide proof to the Company of such activity as described in (ii) (a) above prior to leave being granted.
- (vii) Leave is reserved for both parties throughout the life of this agreement to negotiate alternative arrangements regarding this clause.

Clause 34 Sick Leave

- (i) The sick leave provision of the *Transport Industry (State) Award, 2000* as varied from time to time or any award replacing or rescinding that award shall apply.
- (ii) Both parties restate the belief that sick leave is an entitlement not to be abused. An annual bonus of \$500.00 gross shall be paid to each employee who has not used any sick leave in the calendar year ending on 31 October.
- (iii) A bonus of \$250.00 shall be paid to any employee who has not used more than 3 days of sick leave in that calendar year ending 31 October. The bonus as stated in (ii) and (iii) in this clause shall be paid in the first week of December in each year.
- (iv) Sick leave will not be paid out on termination.

Clause 35 Savings Clause

- (i) In the event that legislative change enacted after the making of this agreement (including legislative change enacted by the commonwealth parliament) renders inoperative or invalid any or all of the provisions of this Agreement, the parties agree to treat the agreement and all of its provisions as subsisting independent of any legislative framework.
- (ii) In the event that legislative change enacted after the making of this agreement (including legislative change enacted by the commonwealth parliament) affects the operation or validity of state award/contract determination provisions, with the result of eliminating or reducing award/contract determination entitlements of persons covered by this agreement the parties agree that such state award/contract determination provisions will be deemed to be part of this agreement (and incorporated as provisions of this agreement) from the moment they cease to be operative or valid, except where they are inconsistent with an express provision of this agreement.

Clause 36 Redundancy

- (i) The Company’s redundancy policy is part of this agreement as attached in Annexure C. Should it become necessary to reduce staff, the Company will attempt to find alternative employment for any affected employees. If that is unsuccessful, then retrenchment shall occur on a *last on first off (LOFO) basis by classification and location. Under no circumstances can an employee receive a retrenchment payment and a job either with Westgate Logistics Pty Ltd or another company where continuity of employment is maintained.

Clause 37 Signatories

Signed for and on behalf of the company:

.....
(Signature)

.....
(Witness)

.....
(Name)

.....
(Date)

Signed for and on behalf of the TWU

.....
(Signature)

.....
(Witness)

.....

.....

(Name - Official)

(Date)

.....
(Signature)

.....
(Witness)

.....
(Name - Delegate)

.....
(Date)

Annexure A - Schedule of Rates

A. New South Wales Employees

The company shall pay all of its employee transport workers the sum of the following remuneration:

- (i) The Monetary Rates of pay specified in Tables 1 to 6 and Table 10 of Part B of the *Transport Industry (State) Award, 1996* as the base rate of pay;

PLUS
- (ii) An additional 5% + 5%, as part of the Union's 1997 wage campaign;

PLUS
- (iii) An additional 3.5% + 3.5% + 3.5%, as part of the Union's 1999 wage campaign;

PLUS
- (iv) An additional 5% + 5%, as part of the Union's 2002 wage campaign;

PLUS
- (v) An additional 3% + 2% + 3% + 2%. The first 3% increase shall be paid on and from 1 January 2005, the second, compounding, 2% increase shall be paid on and from 1 June 2005, the third, compounding, 3% increase shall be paid on and from 1 December 2005 and the fourth, compounding, 2% increase shall be paid on and from 1 June 2006.

Note: For Employees Grades 1 to 8 the following rates are payable on and from the first pay period after the dates specified in the following table:

Classification	1 Jan 2005	1 June 2005	1 Dec 2005	1 June 2006
Grade One	620.7134	633.1277	652.1215	665.164
Grade Two	642.2639	655.1092	674.7625	688.2577
Grade Three	657.2624	670.4076	690.5198	704.3302
Grade Four	670.3351	683.7418	704.2541	718.3392
Grade Five	704.0855	718.1673	739.7123	754.5065
Grade Six	712.5554	726.8066	748.6107	763.583
Grade Seven	738.2587	753.0239	775.6146	791.1269
Grade Eight	790.6358	806.4485	830.642	847.2548

Annexure B – Safe Driving Plan

For each and every freight delivery task a Safe Driving Plan must be completed. Each Safe Driving Plan must be multiple copy (at least triplicate) and self-carbonating. A Safe Driving Plan must be in the form annexed to this agreement and clearly record the following information:

- Drivers details and operating license number;
- Name and contact details of owner of vehicle including operating license plus principal contractor details where the task has been further contracted;
- Name and contact details of customer including industry operating license;
- Insurance details;
- Speedometer reading on truck prior to departure and upon arrival;
- Details of trip, specifying departure point and time, destination, route to be used and time for journey (expressed as range of a minimum number of hours with allowances for variations);
- Details (totals and time periods) of time driver spent in 24 hours immediately prior to departure driving (including local deliveries), other work activities such as loading, and significant rest breaks (i.e. six hours or more);
- Details sufficient to identify the most recent Safe Driving Plan relating to the driver prior to the current trip;
- An undertaking by the operator that the truck has no defects/maintenance problems and the load has been properly restrained;
- An undertaking by both the operator and the client that the truck has not been overloaded;
- Whether or not hazardous/dangerous freight is being carried and where it is being carried, details of that freight;
- RTA records of the driver (which can be provided with the prior consent of the driver).

When a driver collects a load the driver and the consignor/freight forwarder/client will complete the relevant details on the Safe Driving Plan. A copy of the completed form will stay with the consignor/freight forwarder/client. Two copies of the form will go with driver together with one copy of the Safe Driving Plan for the trip completed by that driver immediately prior to the current trip. At arrival at the delivery point the driver and the recipient will complete the details relating to the speedometer reading at the time of arrival, the actual arrival time, the total time taken for rest breaks and any other trips or side trips. The Safe Driving Plan is then to be signed by the recipient who is to retain a copy. The Company must ensure that where a load requires more than one leg or more than one driver, it must ensure that the Safe Driving Plan is completed for each leg or each driver associated with that load.

Westgate Logistics Pty Ltd will ensure the following:

- No transport worker will work more than six days in any seven day period;
- No transport worker will work more than twelve hours in any given shift;
- All transport workers will have a minimum of ten hours break prior to starting a new shift; and
- All Safe Driving Plans will be monitored to ensure that it meets both the Company's policies and relevant State and Federal legislation.

Safe Driving Plan/Safe Driving Method Statement

DRIVER / OPERATOR DETAILS		RATES TO BE PAID		INSURANCE DETAILS	
Name of Driver and address of driver	Provide details of rates paid	Agreed Rate to be paid within 14 days \$ amount	Provide insurance details of vehicle (include name of insurer, amount insured, policy number and policy expiration date	Amount Insured	Details of local Trips completed in the last 24 hours (less than 100kms) including loading and unloading times
Drivers licence number and class	Demurrage Rate applies after waiting one hour after arrival	Paid by the hour	Policy number	Policy expiry date	
Operators licence details	Name and Contact details of Owner of vehicle including operator licence	Name and Contact details of Customer including operator licence details	DETAILS OF TRIP		
Trip From:	Kms on Speedo at time of arrival	Actual arrival time	Trip From:		
Trip To:	Total Time taken for rest breaks	Receiver to sign	Trip To:		
Route to be taken	Details of Trips completed over 100kms in the last 24 hours	Has the Driver had 2 rest breaks in the last 12 hours including one 30minute break outside the vehicle?	Route to be taken		
Kms on Speedo at start of trip	Has the driver had a 6 hours continuous break in the last 24 hours? .....	.....	Kms on Speedo at start of trip		
Departure time .....	.....	.....	Departure time		
Estimated Arrival time .....	.....	.....	Estimated Arrival time		
Sender to sign .....	.....	.....	Sender to sign		

Annexure C – Redundancy Policy

Preamble

Westgate is committed to providing continuing employment for all of its staff. However, there may occur circumstances where this is not possible. Should Westgate lose a contract or otherwise need to reduce staff, its first course of action will be to attempt to locate continued employment for those affected employees, either within Westgate or at another transport company where continuity of employment is maintained.

If appropriate employment cannot be found then, and only then, will the Redundancy Payment apply.

Redundancy Payment

In any bona fide redundancy situation the following formula shall apply:

1. One (1) weeks notice or payment in lieu thereof.
2. Four (4) weeks severance pay for each completed year of service up to a maximum of 52 weeks payment. A minimum payment of four (4) weeks shall apply.
3. Payment shall only be made at ordinary time rates. No penalties nor allowances will be included.

Other matters

Should any redundancies occur then selection for a redundancy will be on the basis of 'last-on first off' (LOFO). This shall apply in all circumstances.

As a matter of course, any other entitlements e.g. accrued annual leave, long service leave and accrued RDOs will be paid out in addition to any redundancy payment.

A statement of service and separation of employment certificate shall be provided.

Any redundancy or associated payments shall be treated in accordance with the existing tax laws.