

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA05/322

TITLE: FSL Costa Transport and Transport Workers Union of New South Wales Enterprise Agreement 2005-2007

I.R.C. NO: IRC5/5457

DATE APPROVED/COMMENCEMENT: 30 November 2005 / 1 January 2005

TERM: 24

**NEW AGREEMENT OR
VARIATION:** New

GAZETTAL REFERENCE: 23 December 2005

DATE TERMINATED:

NUMBER OF PAGES: 14

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by FSL Costa Transport Pty Ltd, who fall within the coverage of the Transport Industry (State) Award.

PARTIES: FSL Costa Transport Pty Ltd -&- the Transport Workers' Union of New South Wales

**F.S.L. Costa Transport
&
Transport Workers Union of New South Wales
Enterprise Agreement 2005 - 2007**

1. Title

This Agreement shall be known as the F.S.L. Costa Transport & Transport Workers Union of New South Wales Enterprise Agreement 2005 – 2007.

2. Arrangement

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3. Parties Bound

This Agreement shall be binding on:

F.S.L. Costa Transport Pty Ltd. (referred to as "the company"); and,

- (a) The Transport Workers Union of New South Wales (the "TWU")

4. Duration

This agreement shall operate from 1 January 2005 and shall come into force on or after the first pay period commencing after the date it is approved by the Industrial Relations Commission of New South Wales (the "Commission") and shall remain in force until 31 December 2007.

5. Relationship with Previous Agreements or Award

This Agreement shall be read in conjunction with the Transport Industry (State) Award and shall prevail to the extent of any inconsistencies with the Award.

6. Objects

The objects of the Agreement are to:

- (a) enhance the productivity and efficiency of the Company's operations;
- promote job security for transport workers and provide them with access to more varied, fulfilling and better paid jobs; and,;
 - provide transport workers with a just measure of income and entitlements protection;

7. Site Specific Enterprise Agreements and Local Matters

Notwithstanding this Agreement, further agreements may be negotiated about local matters. Such agreement must be consistent with the matters dealt with in this Agreement.

8. Wage Increases

- (a) The following increase of 5% to rates of pay for employees shall apply on a compounding basis, on the first full pay period on or after January 1 in each year, for all purposes of the award based on ordinary hours of 38 hours per week:

2005 Rate per week	2006 Rate per week	2007 Rate per week
Grade1 \$599.94	Grade1 \$629.93	Grade1 \$661.42
Grade2 \$618.75	Grade2 \$649.68	Grade2 \$682.16
Grade3 \$631.84	Grade3 \$663.43	Grade3 \$696.60
Grade4 \$643.28	Grade4 \$675.44	Grade4 \$709.21
Grade5 \$672.65	Grade5 \$706.28	Grade5 \$741.59
Grade6 \$680.02	Grade6 \$714.02	Grade6 \$749.72
Grade7 \$702.35	Grade7 \$737.36	Grade7 \$762.07
Grade8 \$748.00	Grade8 \$785.40	Grade8 \$824.67

- (b) The parties have agreed that should the movements in CPI (as measured by the All Capital Cities) exceed 5% in both the June and September quarters of 2006, the TWU may request the company consider varying the increase payable as 1 January 2007 in this Agreement.
- (c) The wage increases referred to in this clause will absorb any increases:
- (i) awarded by the Commission in relation to any award increase or future State Wage Case movements; or
 - (ii) contained in an agreement whether registered or otherwise, which have been paid or are to be paid prior to 31 December 2007, and which increase are in excess of the increase contained in clause 8 of this Agreement.

9. Commitment of the company

9.1 Commitment

The company commits to:

- (a) the full-time engagement of its transport workers wherever possible;
- (b) subject to the company's commercial considerations and operational requirements, wherever possible, utilise full-time employees and contract carriers to their full capacity

- before casual or part-time employees or contract carriers are engaged or work is contracted out to other companies or business;
- (c) increasing the labour component of all contract carriers, engaged by the company, by the percentage increase as set out in clause 8.
 - (d) ensure that wages and conditions of labour hire personnel are no less than those of the company,
 - (e) requiring, in co-operation with the TWU, that fleet operators and contract carriers and labour hire agencies, abide by all legal obligations including, but not limited to, compliance with any applicable industrial instrument, compliance with driving hours and compliance with Occupational Health and Safety laws. The company will, having regard to section 127 of the Industrial Relations Act 1996, implement appropriate contract and invoicing requirements;
 - (f) the training of its transport workers in occupational health and safety (including Blue Card) and other professional training as agreed from time to time and the promotion of vocational training and Occupational Health and Safety training; and,
 - (g) not offering AWA's or non-union agreements and only enter into collective agreements with its employees and the TWU for the term of this Agreement
 - (h) ensuring that where a Contract Carrier takes leave and, with the prior approval of the company, employs a relief driver to undertake the work that the Contract Carrier would otherwise perform, the Contract Carrier's employee shall be paid the rates applicable at the relevant business unit or site whilst performing that work. During such period, the Contract Carrier shall receive no more than the amount that the Contract Carrier would otherwise be paid for performing the work themselves.

10. Casual Employees Conversion to Permanent

- (a) Where a casual employee has been directly employed by the company or engaged through a labour hire company on regular basis for more than 12 months, the company shall provide the employee with the option of becoming a permanent employee of the company.

11. Probationary Period

- i. All employees who are offered permanent employment after this agreement comes in to force shall be on a three (3) month probationary period. The company shall decide, prior to the expiration of the probationary period, whether the employee shall be offered permanent employment.
- ii. This clause shall not apply where the employee has been employed directly by the company as a casual for a period of no less than three (3) months.
- iii. During the probationary period the company or the employee may terminate the engagement by the giving of one (1) weeks notice.

12. Income and Entitlement Protection

- (a) The company agrees to participate in negotiations between the TWU and other major companies with the aim of establishing an industry based Redundancy, Annual Leave and Long Service Leave Fund.

- (b) All employees covered by this Agreement may elect to direct part of the wage increase, to fund contributions in order to be covered by an approved Sickness and Accident Income Protection Plan.
- (c) Where an employee no longer wishes to direct part of their wage to fund contributions, the employee will make such a request to the relevant supervisor, in writing, and provide all details necessary and authority for the company to cease such contributions. That part of the employees wage which will no longer fund such contributions shall be added to the employees normal hourly rate.

13. Settlement of Disputes

- (a) The parties have agreed that the following settlement of disputes procedure shall apply:
 - (i) The matter should first be discussed at the workplace level between the employee or employees and their immediate supervisor;
 - (ii) If the matter is not settled, the employee or employees may request that the TWU delegate be involved in further discussions with the immediate supervisor;
 - (iii) If the matter is not settled discussions shall occur between the appropriate TWU official or officials and the Branch/Contract Manager
 - (iv) If the matter is still not settled discussions shall occur between a senior TWU official or officials and the State Manager or the next senior manager; it shall be submitted to the NSW Industrial Relations Commission which shall conciliate the matter;
 - (v) If the matter is not settled discussions shall occur between the senior TWU official or officials and the relevant General Manager.
 - (vi) If the matter is still not settled, it shall be submitted to the Commission which shall conciliate and/or arbitrate the matter.
- (b) Until the matter is determined all existing work practices shall continue without disruption, except in circumstances where employees have genuine concerns for their health and safety and in these circumstances the provisions of the NSW Occupational Health and Safety Act will apply.
- (c) The parties must co-operate to ensure that these procedures are carried out expeditiously. The parties undertake to resolve such concerns in a timely manner in accordance with the above procedure.
- (d) This settlement of disputes procedures 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 employees.

14. Superannuation

It is agreed that all compulsory superannuation contributions made under an award and or the *Superannuation Guarantee (Administration) Act* (1992), in respect of employees covered by this Agreement, will be contributed by FSL Costa Transport Pty Ltd. to the TWU Superannuation Fund ("Fund").

It is agreed that company must contribute;

- (a) any additional employer contributions; and or
- (b) any contributions which the employee has instructed company to deduct from the employee's salary or wages; to the Fund.

15. Transport Industry Education

The company agrees to support Industry agreed principles aimed at promoting vocational training, occupational health and safety training, safer work practices, knowledge of award and other entitlements, and other services for the benefit of workers in the transport industry. Accordingly, the company will contribute a one off payment of \$3000.00 over the term of this Agreement (i.e. 3 years) to the Transport Industry - Training and Industrial Rights Council.

The TWU commits to using its best endeavours to ensuring that all other transport operators comply with all their legal obligations including, but not limited to, compliance with relevant industrial instruments and driving hours legislation. The TWU will keep the company regularly informed of what initiatives and compliance campaigns it undertakes.

16. Volunteer Emergency Services and Bush Firefighters Leave

The company shall allow employees who are members of a volunteer emergency service or a bush fire brigade to attend an emergency during a period that the employee would ordinarily be working for the company. An employee who attends such an emergency shall receive his ordinary time rate of pay for each attendance up to a maximum of 4 weeks per calendar year for the life of this Agreement only.

Further, any employee who is a member of a volunteer emergency service or a bush fire brigade shall be entitled to take leave of absence if they are required to attend an emergency during a period they would ordinarily be working for the company. Such entitlement to leave shall operate in the same manner as Personal/Carer's Leave operates in the Award.

Existing local arrangements are not to be diminished as a result of this clause.

17. Meal Allowance

- (a) An employee who is required to work two (2) or more hours overtime either prior to the commencement of their normal shift or after the conclusion of their normal shift or is required to work more than a ten (10) hour shift shall be paid a meal allowance of \$12.50. This clause shall not be construed so as to require the payment of more than one (1) meal allowance per shift.
- (b) This clause shall not diminish any existing site practices or entitlements.
- (c) The quantum as described above in this clause 17(a) shall be indexed as follows:
 - (i) 5% on the first full pay period on or after 1 January 2006; and,
 - (ii) 5% on the first full pay period on or after 1 January 2007.

- (d) No employee shall be required to work more than five (5) hours without a rest period.

18. Employee Deductions

- (a) Where an employee has authorised the company, in writing, to make a deduction from the employee's pay and the company has agreed to make such deduction, it shall be made :
- (i) Within thirty days of the end of the financial month, 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 thirty days.
- (b) Such deductions shall appear on the employee's pay advice in the week in which the deduction occurs. Where requested to do so, the company shall provide the employee with evidence that such payment has been made.
- (c) Where an employee has authorised, in writing, the company to make union fee deductions such deductions shall be made in accordance with this clause 18(a) (i) and (ii).

19. Union Picnic Day

The benefits of clause 28 - Union Picnic day- of the Award, will apply to all permanent employees , provided they are financial members of the TWU as defined in clause 28.4 of the Award, who are covered by this Agreement.. This clause will also apply to casuals provided however that such casuals work no less that 38 ordinary hours per week and are financial members of the TWU as defined in clause 28.4 of the Award. Providing further that such employees have worked full time for a period of no less than three months in the period immediately leading up to the date of the Picnic day.

Notwithstanding the above, the Picnic day will not apply to employees who are receiving an alternative benefit in lieu of the Picnic day.

20. Training and Delegates Meetings

The company will promote vocational training, occupational health and safety training, safer work practices, knowledge of the award and other industrial entitlements, and other services for the benefit of its employees.

The company recognises its responsibilities to provide a safe and healthy workplace for its employees and all other persons attending its sites. Accordingly, the company agrees to train all its employees covered by this Agreement.

20.1 Ongoing Training

The company agrees:

- (a) to comply with all Transport Industry Codes of Practice (including the principles of "Trucksafe"), 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 *Occupational Health and Safety Act 2000* (NSW);

- (b) to authorise all its employees elected to OH&S Committees to attend a committee training course as required by the *Occupational Health and Safety Act 2000 (NSW)*, as soon as practicable within 3 months of being elected to such a position. Further, the company will establish and train an OH&S Committee in all workplaces with less than 20 employees if no such Committee is currently in place;
- (c) to enrol and provide existing employees with the opportunity and time to attend a two hour safety course conducted on site or other agreed place at an agreed time. Such training will be conducted within 3 months of signing this Agreement.
- (d) to enrol and provide existing employees with the opportunity and time to attend Driver Fatigue Management programs including allocation staff and fleet controllers.

20.2 Delegates Training

The TWU NSW Branch will provide the company with a list of Delegates per site throughout Sydney.

The Union has undertaken to give reasonable notice, i.e. at least 7 days, of impending training requirements. It is agreed that delegate training will be organised in a manner that does not effect site operating efficiency. Attendance at such training will not be unreasonably withheld by the company.

20.3 Training to be paid for by company

The company shall pay at ordinary time rates for the training courses referred to in this clause 20 and all other reasonable expenses which would otherwise be incurred by attendees of the course. Where training occurs outside normal hours the appropriate rate of pay will apply.

20.4 Delegates Meetings

Delegates meetings will be conducted, as far as practicable, on or about the end of a normal working shift. It is further agreed that all delegates attending such meetings should not be disadvantaged in terms of earnings.

It is further agreed that in respect of meetings generally which are called by the TWU, the number of delegates attending at such meetings shall be restricted to no more than two (2) delegates from each business unit or contract. The Union will undertake to give the company no less than seven (7) days notice of its intention to call such meetings.

21. Chain of Responsibility

- (i) The company will 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 and a description of the work to be performed.
- (ii) Copies of the records to be kept by the company are to be given to the person actually performing the work.

- (iii) Work must only be contracted out in accordance with clause 21 & 23 of this Agreement.
- (iv) Subject to compliance with Privacy Act 2001 and other statutory requirements, records referred to (i) above shall be available for inspection by a person duly authorized as if it was a record permitted to be inspected and copied under Part 7 of chapter 5 of the *Industrial Relations Act 1996* (NSW).

22. Work Safety - Driving Hours

22.1 Driving Hours

- (a) The company recognises the importance of adherence to driving hours and to that extent it will continue to require that all its employees comply with the requirements of a Safe Driving Plan ("**SDP**").
- (b) With respect to employees, the SFD shall only be used where such employees are required to perform which is regulated by the *National Driving Regulations 1998* ("The Regulations").
- (c) The company shall determine the appropriate form of the SDP in consultation with the employees and the TWU. Attachment "**A**" to this Agreement is a sample SDP.

23. Fleet Operators

- (a) The company shall advise the TWU at least 7 days prior to the engagement of any new Fleet Operator commencing within the business. In circumstances where this is not practicable, the company shall notify the TWU at the first available opportunity.
- (b) Prior to any Fleet Operator commencing on site, each employee of the Fleet Operator must participate in a site induction and during which induction the relevant site delegate shall be given an opportunity to address the Fleet Operator's employees for a maximum of 30 minutes.
- (c) Where the company engages a Fleet Operator, the company shall require, that the Fleet Operator pay its employees, the same rates of pay which would otherwise apply to the company's employees engaged at the relevant yard where the Fleet Operator is performing the work.
- (d) Each new Fleet Operator shall be required to be Blue Card accredited and develop and implement a SDP.
- (e) Each Fleet Operator shall have a current Enterprise Agreement with the TWU to cover all transport workers.

24. Union Recognition and Delegates Rights

- (a) The company recognises the TWU as being the Union that shall represent transport workers covered by this Agreement.

- (b) Union delegates shall be allowed such reasonable time during working hours, as may be agreed between the company and the delegates, to:
- (i) discuss with the union members at the workplace at which they are union delegates, matters relative to working conditions and other matters, with a view to avoiding industrial disputation;
 - (ii) discuss with union officials matters raised above; and,
 - (iii) discuss with the company matters raised by members affecting their employment at the workplace.
- (c) In exercising the above, union delegates shall be allowed:
- (i) to perform their roles as delegates free from discrimination;
 - (ii) to bargain collectively and to recruit new members to the union;
 - (iii) To consult and access information about the workplace and the business which FSL Costa Transport Pty Ltd determines not be sensitive or confidential; and,
 - (iv) to the reasonable access of office equipment, such as a telephone to carry out their delegate's duties.

25. Incentive and Other Piece Rates Including Kilometre Rates

The company commits to review all incentive and other piece rates, which may be being paid by a business unit or site, in accordance with the terms of this agreement. This will be undertaken in each business unit or at each site, as applicable, by the relevant delegate and the manager. The review process will focus on determining how, and to what extent, the increase to the labour component of such rates will be passed on. The company and the TWU agree to complete this process no later than 1 month after this Agreement is approved by the Commission.

26. Dangerous Goods Allowance

- (a) A driver, who falls within the jurisdiction of the Award, engaged in the transport of bulk dangerous goods or carting explosives in conformity with the Australian explosives code by public road shall receive an allowance of \$12.00 per day. Bulk Dangerous Goods are those goods defined as such in the Australian Dangerous Goods Code as amended from time to time.
- (b) A driver, who falls within the jurisdiction of the Award, engaged in the transport of packaged dangerous goods which require placarding by public road shall receive an allowance of \$5.00 per day. Packaged goods which require placarding are those goods defined as such in the Australian Dangerous Goods Code as amended from time to time.

27. No Further Claims

- (a) The TWU commits that there shall be no further claim, by it or any of its members covered by this Agreement, of any description, including rates of pay, subject to clause 9(b) of this Agreement, and/or allowances during the term of this Agreement.
- (b) Any award allowances not covered by this Agreement and which would otherwise be payable shall be adjusted in accordance with any corresponding movements to allowance in the Award.

28. Protection of Entitlements

The company will allow a bi-annual audit of accounts, the effect of which is to allow the TWU to be satisfied that accrued employee entitlements (including but not limited to annual leave, long service leave, rostered days off, unpaid superannuation contributions, redundancy entitlements and unpaid wages) are secure.

The reasonable costs of such an audit will be met by the company.

29. 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 transport workers 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 transport workers than those under the applicable award/contract determination;
 - (c) the TWU will have a continuing role, as the representative of transport workers, 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 transport workers covered by this agreement.
- (ii) In consideration for the above services provided by the TWU to the benefit of all transport workers covered by this agreement, it is agreed that all such transport workers 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 transport worker 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)
2007	\$8.92 per week (from 1 January)

(iv) The “fair share” contribution shall be paid to the TWU in weekly instalments, 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 transport worker 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 clause 24, Retraining, Training and Industrial Rights.

(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 transport worker 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 transport worker upon the commencement of their engagement.

30. Anti-Discrimination Clause

(a) 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 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 which, by its terms or operation, has a direct or indirect discriminatory effect.

(c) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

(d) Nothing in this clause is to be taken to affect:

(i) any conduct or act which is specifically exempted from anti-discrimination legislation;

(ii) offering or providing junior rates of pay to persons under 21 years of age;

- (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this 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.

31. Savings Clause

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 registered enterprise agreement/contract agreement, the parties agree to treat the agreement and all of its provisions as subsisting independent of any legislative framework.

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.

In the event that legislative change (including legislative change enacted by the commonwealth parliament) affects the capacity of an employee or the Union to exercise the rights it possesses under Part 6 of Chapter 2 of the *Industrial Relations Act NSW 1996*, the parties agree that the following provision will be deemed to be part of this agreement (and incorporated as provisions of this agreement) from the moment that capacity is affected.

Termination of an employee's employment shall not be harsh, unreasonable or unjust. The parties commit to using the dispute settlement procedure to resolve any disputes over termination of employment, including disputes where it is alleged by a former employee that termination was harsh, unreasonable or unjust.

31. Execution

SIGNED as an agreement.

Signed for and on behalf of **The Company** in the presence of:

Signature

Signature of Witness

Name of Witness in full

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

Signature

Signature of Witness

Name of Witness in full