

IN THE FAIR WORK COMMISSION

AM2014/211

Exposure draft – *Road Transport (Long Distance Operations) Award 2015 (the Draft)*

Submissions of the National Road Transport Association (NatRoad)

Background

1. These submissions are filed on behalf of the National Road Transport Association (**NatRoad**) in response to the release of the Exposure Draft of the *Road Transport (Long Distance Operations) Award 2015 (the Draft)* on 2 November 2016.¹ We respond to the publication of the Draft by making detailed comments on its individual clauses.
2. We note that we will be participating in the proceedings relating to this matter.
3. NatRoad is a not-for-profit industry association. It represents the interests of more than 1000 contract carriers, employing contractors, and owner-drivers, working within the road transport industry throughout Australia. Most of NatRoad's members are small business owners and operators.

Response to Specific Clauses in the Draft

4. **Clause 3.2** replicates the definition of “long distance operation” as set out in Schedule F. This has not occurred with other definitions where they appear in the text. For consistency, a reference to the definition appearing in Schedule F should be made, or the clause should be deleted.
5. **Clause 5.2**, the first reference in the table, is a misreference. This matter is taken up under the discussion of clause 8.5 of the Draft in paragraph 8 of this submission.
6. **Clause 6.3** has been changed in accordance with Attachment A of the report to the Full Bench by Senior Deputy President Hamberger dated 30 November 2015 (**the First Report**) and as referenced at paragraph 162 of [2016] FWCFB 7254. However, the potential alteration of clause 6 by way of inclusion of part-time provisions as mentioned at paragraph 159 of [2016] FWCFB 7254 is not shown in the exposure draft.
7. **Clause 7** contains the redrafted classification grades amended so as to be consistent with the *Road Transport and Distribution Award 2010*. Accordingly, instead of a description for grades 1 and 2 there appears the abbreviation “N/A.” It would assist those unfamiliar with the connection between the grades in the two awards if a note indicating that linkage appeared at the end of the table in clause 7.

¹ <https://www.fwc.gov.au/awards-and-agreements/modern-award-reviews/4-yearly-review/award-stage/award-review-documents/MA000039?m=AM2014/211>

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8. **Clause 8.5** has a second substantive paragraph that is not numbered. Its terms are currently reflected in clause 20.5(b) of the *Road Transport (Long Distance Operations) Award 2010*. It should be re-numbered 8.5(b) with consequent re-numbering of subsequent sub-clauses. This will require some further cross-referencing including placing a reference to the requirement in current clause 8.5(c) as being subject to the agreement permitted by the agreement provision in the unnumbered clause. In turn the reference in clause 8.6(c) to 8.5(d) will only be accurate if the re-numbering takes place.
9. **Clause 11.1:** we suggest deleting the note at the end of this provision and placing a similar note at the end of clause 7 as proposed above at paragraph 6.
10. **Clause 11.2(a)** contains a new provision. This provision was added as a result of the recorded agreement of the parties in the First Report about the need to clarify how the “fortnightly period is derived.” In a report to the Full Bench dated 19 February 2016 Senior Deputy President Hamberger (**the Second Report**) indicates² that the parties agreed to the particular sentence which is as follows: “*The fortnightly payment must be calculated by reference to continuous consecutive fortnightly payment.*” NatRoad did not attend the conference from which the Second Report was derived. However, we submit that the proposed provision does not do as the parties and the Commission appear to intend. In our view, the provision has no work to do. The intention to set out how the “fortnightly period is derived” is not necessary as the provision relates to a simple calculation of a payment (twice the prescribed weekly rate) and does not require the calculation of a “period.” We would ask the Commission and the parties to reconsider the addition of the relevant sentence as it confounds rather than clarifies. It is unnecessary and should be deleted.
11. **Clause 11.5(a)** insert the word “of” before the phrase “the vehicle” in the third line. In addition, the note after 11.5(a) (ii) should refer to 11.5(a)(iii) not 11.5(a)(ii): see dot point 2 of paragraph 162 of [2016] FWCFB 7254.
12. **Clause 11.5(c)** in the first line, the reference to Grade 4 should be to Grade 6. This is in line with changes to clause 7 discussed in paragraph 6 of this submission.
13. **Clause 11.7(a), the note:** The reference to AM2016/6 relates to the *Real Estate Industry Award 2010*. From an examination of the materials for those proceedings, it appears that there has been a misreference. We submit that the reference should be to AM2016/8: see for example the transcript for those proceedings 21 October 2016 at PN465.
14. **Clause 12.3(b):** with the deletion of the two provisos as they appear in clause 14.2(b) of the current modern award, it is necessary to qualify clause 12.3(b)(iii). It should express that Clauses 12.3(b)(i) and (ii) do not apply in the relevant circumstances as clause 12.3(b)(iv) would remain relevant.
15. **Clause 12.3(c):** delete the word “means” in the second line. This word, which is otiose, does not appear in the current clause 14.2(c)(i).
16. **Clause 12. 3(d)(ii):** the amount of \$3.20 should be \$3.30 per current clause 14.2(d)(ii).
17. **Clause 14.2(b):** the word “in” is in the wrong place in the first line.

² At paragraph 16 of the Second Report

18. **Clause 14.7(b):** in the note the reference should be to Schedule G, not Schedule A.
19. **Clause 14.10, note 3:** the reference in the note should be to Schedule H not Schedule A.

National Road Transport Association

29 November 2016