



Australian Road Transport  
Industrial Organisation

ABN: 63 734 697 902

# AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

*Respect, Respond and Represent*

23 November 2016

Award Modernisation Unit  
Fair Work Commission  
11 Exhibition St  
Melbourne Vic 3000

By email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear Sir/Madam,

**Re: AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANIZATION (ARTIO) –  
COMMENTS ON AWARD EXPOSURE DRAFTS**

Please find attached ARTIO's comments on the recently issued exposure drafts for the following awards.

1. Attachment A contains ARTIO's comments on the Road Transport (Long Distance Operations) Award 2015.
2. Attachment B contains ARTIO's comments on the Road Transport & Distribution Award 2015.

Should you require any clarification concerning the comments in the Attachments please contact the undersigned on 0415331031.

Yours faithfully,

Paul Ryan

National Industrial Advisor

**ARTIO National**

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## ATTACHMENT A – LDO Award

### Road Transport (Long Distance Operations) Award 2010 (LDO Award) – 2 November 2016 Exposure Draft – Comments by the Australian Road Transport Industrial Organisation

1. This Award is a unique Award. It cannot be compared with any other Modern Award. It contains a 'built-in' overtime component of 20% (or 2 hours in 10) as well as a 'disability allowance' both of which are aggregated into hourly or cents per kilometre driving rates.
  - a. Additionally, we are dealing with the operation of heavy vehicles and it is impossible for a 'young worker' to be properly licenced to drive same.
2. **Definitions** - It is noted that the definition of 'long distance operation' at clause 3.2 is also included in Schedule F – Definitions. It might be better described under a coverage clause.
3. **Clause 4** - Given the nature of the LDO Award, it is questionable as to whether Clause 4 adds any meaningful value.
  - a. Further, it is not possible for a person under 18 to possess the necessary licence qualification to drive a heavy vehicle.
4. **Classification** - The classification structure contained in Clause 7 on page 9 is incorrect when compared to the current structure.
5. **Rates** - The rates in clause 11 – Minimum Wages – do not reflect the current rates for the respective classifications – also see the note on the top of page 15 where it specifies that the classification structure, and therefor rates, are different between the LDO Award and the Road Transport & Distribution Award 2010 (RTD Award).
  - a. This is obviously an issue with Schedule A as well.
  - b. Also, the 'standard rate' contained in the definitions section could also be incorrect.
  - c. Sub-clause 11.5 (c) refers to the 'agreed driving hours' for a Grade 4, it is now unclear whether or not this has been changed to a Grade 6 in light of the comments above.
6. **Schedule B2** – 'Living Away from Home Allowance' should read 'Travelling Allowance' in accordance with sub-clause 12.3 (c).

Road Transport and Distribution Award 2010 (RTD Award) – 7  
November 2016 Exposure Draft – Comments by the Australian Road  
Transport Industrial Organisation

1. In Clause 11.2 (e), the word ‘continuous’ needs to be inserted to ensure consistency with Clause 13.5(f) (i), it should read:
  - a. An employee required to work overtime for two or more hours continuously, will be entitled to a meal allowance in accordance with clause 13.5(f) (i).
2. **Casual Loading** - The casual loading of 25% is ‘in addition to’ any other penalty payment. It should therefore be calculated as a dollar allowance and then added to the penalty payment.
3. **Casual Loading – Overtime** – It is crystal clear that any ‘overtime payments’ for a casual should be calculated on a 10% loading ‘in addition to’ the prescribed penalty rates and not 25% - it is noted that Schedule C 4 does not contain any ‘overtime rates’ for casuals.
4. **Public Holidays** – The NES provides in Section 116:

“If, in accordance with this Division, an employee is absent from his or her employment on a day or part-day that is a public holiday, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or part-day.”

This means that all full and part-time employees will be paid for the public holiday, if it is a day upon which they would normally work. If they work then under the current system they are entitled to be paid at 150%/200% for ‘normal hours’, dependent on the particular day and 250%/300% for ‘overtime hours. Yet sub-clauses 16.2(a) and (b) of the Exposure Draft increases those rates and it will lead to confusion and cause employees to be overpaid and the subsequent problems that flow from an employer trying to recover monies.

5. **Payments for Leave** - There is a Note in sub-clause 18.4(a) concerning over-award payments and annual leave. This is based around Section 90 of the NES and concerns the definition of ‘base rates of pay’. It is noted

that Section 99 of the NES is in the same terms and refers to Personal Leave Payment. It would be in the best interests to include the same note otherwise it is likely that employees could be paid different rates between annual and personal leave.

6. **Schedule B** – This Schedule is titled Classification Structure and Minimum Rates of Pay. It is noted that there are no rates contained in this Schedule.
7. **Schedule C** – It is noted that when calculating the hourly rate of pay for oil distribution workers that a divisor of 35 hours is used for all calculations, including for part-time employees. This is specifically mentioned in para 174 of [2016] FWCFB 7254 as being a disputed item to be considered by the Road Transport Awards Full Bench.