



NATIONAL ROAD TRANSPORT ASSOCIATION

IN THE FAIR WORK COMMISSION

AM2016/8

4 yearly review of modern awards - Payment of wages

Submissions of the National Road Transport Association (NatRoad)

Background

1. These submissions are filed on behalf of the National Road Transport Association (**NatRoad**).
2. NatRoad is a not-for-profit industry association. It represents the interests of more than 1100 contract carriers, (including employing contractors and owner drivers, working within the road transport industry throughout Australia). Most of NatRoad's members are small business owners and operators.
3. This submission is lodged in response to the Directions set out in Attachment A to the Full Bench's Statement and Directions dated 19 September 2017¹. Submissions are sought on:
 - i) *The provisional 'payment of wages and other amounts' model term set out at paragraph [34] of the Full Bench decision dated 1 December 2016 ([2016] FWCFB 8463)² (**the December Decision**);*
 - ii) *The provisional 'payment on termination of employment' model term at paragraph [117] of the December Decision; and*
 - iii) *The issue related to the accrual of payments referred to at paragraphs [19] to [22] of the Statement of the Full Bench issued on 19 May 2017.³*
4. NatRoad has lodged previous submissions in this matter on which we continue to rely.
5. NatRoad filed a submission dated 17 October 2016 in these proceedings (**the First Submission**) which responded to a Statement of the Full Bench dated 14 October 2016.⁴ NatRoad also filed a submission dated 22 December 2016⁵ (**the Second**

¹ [2017] FWCFB 4817 <https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb4817.htm>

² <https://www.fwc.gov.au/documents/decisionssigned/html/2016fwcfb8463.htm>

³ <https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb2729.htm>

⁴ <https://www.fwc.gov.au/documents/decisionssigned/html/2016fwcfb7455.htm>

⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20168-sub-natroad-221216.pdf>

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Submission) in response to some of the matters raised by the Full Bench in the December Decision. There was a further submission dated 2 May 2017⁶ (**the Third Submission**) which was lodged in response to some of the matters raised by the Full Bench in its Statement dated 26 April 2017⁷.

Model Clause

6. As expressed in the Second Submission, NatRoad is supportive of the introduction of a model clause which would be applied to the transport sector awards.⁸ That support derives from the additional flexibility associated with the model clause put forward provisionally by the Full Bench and the related enhancement of the modern award objective, as expressed in paragraph 8 of the Second Submission.
7. As indicated in the NatRoad email communication dated 23 January 2017,⁹ NatRoad's support for the model clause was not intended to derogate from the position of other employer associations. We stand by our support for the model provision. However, that position is modified in that we support the position put by AiG in its 9 February 2017 reply submission¹⁰ relating to the matters set out in clause X.1(d) of the model clause as follows:

- *The model clause should not require that a pay day or pay period be set (or, proceed on the basis that a pay day or pay period will necessarily be set);*
- *If the Commission nonetheless determines that such a requirement will be introduced:*
 - *the model clause should permit greater flexibility to an employer seeking to vary the pay day or pay period;*
 - *the model clause should not require agreement between an employer and its employees to alter the pay day or pay period; and*
 - *the model clause should not require consultation by an employer with its employees to alter the pay day or pay period.*¹¹

Payment on Termination of Employment

8. We note that this subject is dealt with in paragraphs 12-16 of the Second Submission and paragraphs 6-8 of the Third Submission. The reference to long service leave in the proposed wording that would modify payment on termination provisions should be deleted from the proposed draft wording in the Third Submission. The proscription in section 155 *Fair Work Act, 2009 (Cth)* (FW Act) would, of course, apply to nullify that proposed provision so far as it relates to long service leave.

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20168-sub-natroad-020517.pdf>

⁷ [2017] FWCFB 2290

⁸ Principally the *Road Transport and Distribution Award 2010* and the *Road Transport (Long Distance Operations) Award 2010*

⁹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20168-sub-natroad-230117.pdf>

¹⁰ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20168-rep-sub-aig-130217.pdf>: support derives from the arguments made in this submission and other employer group submissions eg section 4 of the ABI submission in reply dated 2 February 2017

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am20168-rep-sub-abinsw-020217.pdf>

¹¹ Id at paragraph 40

9. NatRoad also contributed to a number of conferences in relation to these proceedings. We refer in particular to the Conference held before the President on 4 May 2017. At that conference NatRoad commended to the Commission a “solution” to the accruals issue that we believe to be simple¹² taken up below. We remain of the view expressed during that conference. We reiterate that the issue of accruals, in a practical sense, largely arises on termination of employment.

Accrual of Wages

10. We note that the nub of this issue is as expressed at paragraph 21 of the Statement of the Full Bench issued on 19 May 2017¹³ as follows:

Following the December 2016 decision a submission was received by Irving and Stewart proposing the insertion of a new default term into all modern awards dealing with the accrual of wages ‘on a day to day basis’ unless industry circumstances required modification of the default wording, for example, where the circumstances of particular awards mean that wages accrue hourly rather than day to day. Irving and Stewart also proposed the following changes to the model clause:

Clause x.1(a)(i) (at para [34]) be amended to read: ‘the employee’s wages for accrued during the pay period’

Clause (a)(i) (at para [117]) be amended to read: ‘the employee’s accrued wages for any complete or incomplete pay period.’

11. We agree that these two changes should be made. The manner in which the wages accrue could then be tailored to particular awards. This proposition was illustrated having regard to the *Road Transport (Long Distance Operations) Award 2010* at paragraphs 9-12 of the Third Submission. In other words, in the application of the model clause to particular awards the various ways in which payments made under those awards accrue should be recognized and the model clause tailored to the specific provisions of the relevant award.

National Road Transport Association

Richard Calver

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¹² Transcript https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/140517_am20168.htm especially at PN245

¹³ <https://www.fwc.gov.au/documents/decisionssigned/html/2017fwcfb2729.htm>