ARTIO
Australian Road Transport Industrial Organisation

Australian Government
Fair Work OMBUDSMAN

ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010

(LDO AWARD)

MODERN AWARD HANDBOOK

ROAD TRANSPORT AND LONG DISTANCE OPERATIONS AWARD 2010 (LDO AWARD)

Modern award handbook

A primary objective of the Fair Work Ombudsman (FWO) is to educate employees and employers about their respective workplace rights and obligations. **Fair Work Ombudsman, Nicholas Wilson** explains how his Agency helps businesses to understand and comply with the law.

With the overhaul of the workplace relations system and the national protections, there have been a lot of changes that business needs to be aware of.

The reality is that our 500-odd inspectors (based at 53 metropolitan and regional centres around the country) are very much focused on ensuring we deliver useful and practical educational resources to assist you to understand and comply with your lawful obligations.

Last financial year, Fair Work inspectors finalised 21,070 investigations into complaints from employees – the overwhelming majority with co-operation from employers who voluntarily rectified any breaches without the need for further action. Indeed only some 53 matters were put in the hands of the courts.

Most working days, our Infoline answers around 4,000 calls and we would say about a third are from employers and about 80 per cent of these indicate they have less than 15 employees.

In 2009-10, our Infoline fielded 1.1 million calls, the Fair Work websites recorded more than 3.6 million hits and practical resources we have developed such as fact sheets, self-audit checklists, templates and the like were downloaded more than 1.2 million times.

We have also made some 20,000 visits, mainly to small businesses, in NSW, Queensland, South Australia and Tasmania to provide information to employers who have moved from the state to the federal workplace relations system.

Further information www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 between 8am and 6pm weekdays. A free interpreter service is available on 13 14 50.

About the Shared Industry Assistance Project (SIAP)

The FWO has offered grants to a number of peak bodies to assist and educate employers, particularly those running small businesses, about changes to modern awards.

Fair Work Ombudsman, Nicholas Wilson, says the program aims to better inform employers about the changes to modern awards applicable to their industries.

Materials produced, including this Handbook, will be available for free over the coming months via the Australian Road Transport Industrial Organisation (ARTIO) website at www.artio.org.au

This Handbook has been specifically designed to assist in the understanding and application of the **Road Transport (Long Distance Operations) Award 2010** (LDO Award) in conjunction with the **National Employment Standards** (NES) under the new workplace relations system.

The Handbook will assist users of the Award to become familiar with its structure and content, which is important in giving effect to the terms of the Award and achieving a high rate of compliance with the obligations and entitlements set out in the Award.

A separate Handbook has been prepared for the **Road Transport and Distribution Award 2010** (RTD Award). Where appropriate, references to the LDO Award are noted in the following pages, but users of both awards should consult both Handbooks.

Australian Road Transport Industrial Organisation (ARTIO)

The Australian Road Transport Industrial Organisation (ARTIO) is an Industrial Organisation of Employers registered under the Fair Work (Registered Organisations) Act 2009. It represents employers and prime contractors in the transport and logistics industry, particularly those engaged in road transport. ARTIO has over 400 members across the country and has been registered under the applicable legislation since 1984.

ARTIO operates as a federation with Branches in all States except South Australia. ARTIO and its Branches operate independently and each has participated directly in the relevant state industrial system prior to the creation of a more uniform national industrial relations framework, as enhanced by the Fair Work Act 2009.

ARTIO and its staff, particularly Paul Ryan and Travis Degen, both of whom are legally qualified, will be available to answer questions arising from the RTD Award and this Handbook.

These services are not restricted to ARTIO members and are available to all employers in the road transport industry during the period of the Shared Industry Assistance Project which expires on 29 April 2011. After this date you need to contact the Fair Work Info Line on 13 13 94.

Staff can be contacted via ARTIO's website which can be found at www.artio.org.au or through its Branch network at the following contact points:-

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Disclaimer

The Fair Work Ombudsman is committed to providing useful, reliable information to help you understand your rights and obligations under workplace laws. The information contained in this publication is:

- general in nature and may not deal with all aspects of the law that are relevant to your specific situation; and
- not legal advice.

Therefore, you may wish to seek independent professional advice to ensure all the factors relevant to your circumstances have been properly considered. This information was published on 2 March 2011. The Fair Work Ombudsman does not accept legal liability arising from or connected to the accuracy, reliability, currency or completeness of this information.

ABBREVIATIONS

CPK – cents per kilometre
FW Act – Fair Work Act 2009 (Cwlth)

FWA – Fair Work Australia (the independent industrial tribunal established under the FW Act)
FWO – Fair Work Ombudsman (the Commonwealth Public Service Agency responsible for securing compliance and observance of awards and the NES)
GCM – gross combination mass

GVM – gross vehicle mass

IFA – Individual Flexibility Arrangement

LDO Award – Road Transport (Long Distance Operations) Award 2010

NAPSA – National Agreement Preserving a State Award

NES – National Employment Standards

RDO – rostered day off

RTD Award – Road Transport and Distribution Award 2010

FEEDBACK

For any questions or other feedback on this handbook please contact any of the ARTIO branches listed above.

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BACKGROUND

Throughout the greater part of the 20th century the Australian industrial relations system had developed a complex web of industrial awards that were the primary source (and the pace setter) for determining the wages and conditions of employees. The terms of such awards were largely drafted by the parties in settlement of an interstate industrial dispute and contained substantial ambiguities consistent with the nature of compromises made in the settlement of disputes.

During the 1990s *enterprise agreements* developed a prominence as the preferred form of industrial instrument, so that awards had reverted to the status of providing a safety net for minimum wages and conditions in particular industries (and subsets of industries) and for an array of occupations or vocations. By 2005 there were over 2,000 federal and state industrial awards in the industrial relations system covering the minimum wages and conditions for employees in the private sector in Australia.

On 13 February 2008[1] the (then) Minister for Education, Employment and Workplace Relations, Ms Julia Gillard, formally announced the award modernisation program. This task was to be undertaken by the Australian Industrial Relations Commission (now known as **Fair Work Australia**) under specific directions and consultative mechanisms, with a deadline for completion by 31 December 2009.

On 1 January 2010, around 2,000 old federal and state awards were effectively conflated into 122 modern federal awards, to apply across Australia, regardless of State or Territory boundaries. From that date, State private sector awards were effectively made redundant so that their coverage (as well as old federal award coverage) has been absorbed into one or more of these **122 modern awards.**

Road transport businesses involved in long distance operations

For road transport businesses the new modern awards, known as the **Road Transport and Distribution Award 2010** (RTD Award) and the **Road Transport (Long Distance Operations) Award 2010** (LDO Award), have been framed to cover respectively, the industry of the employers, i.e. the industry of road transport and distribution, and the industry of private road transport that is engaged in long-distance operations.

The **LDO Award** replaces six separate awards under the old system. Because the (old) Transport Workers (Long-distance drivers) Award 2000 was regarded to have the most influence and penetration for the long-distance road transport industry generally, that award was used as the primary template for creating the **LDO Award**.

A list of the old awards that have been replaced in whole or in part by the **LDO Award** is at **Appendix A** of this Handbook.

[1] *Second Reading Speech, Workplace Relations Amendment (Transition To Forward With Fairness) Bill 2008*

Road transport companies (regardless of the location of yards, depots, garages or head office) that operate exclusively in long-distance operations will apply the **LDO Award** for ascertaining the minimum wages and conditions of its employee drivers. Ancillary employees, such as general hands, yardpersons, greasers and cleaners, and radio operators come under the **RTD Award**.

Road transport companies (regardless of the location of yards, depots, garages or head office) will largely need to refer only to the **RTD Award** and/or the **LDO Award** for ascertaining the minimum wages and conditions of its operational employees. For clerical and administrative employees the relevant award is the **Clerks Private Sector Award 2010**.

MODERN AWARDS

What are modern awards?

Modern awards have a number of aims. One of the main aims was to rationalise the old confusing and complex (federal and state) award system so that employers in Australia do not have to juggle with multiple numbers of complex awards for calculating the pay and conditions of their employees. Conversely, employees should be better placed to know their proper pay and entitlements.

The second aim is that the terms of modern awards have been made ***less ambiguous*** so that there is less room for disagreement and dispute over the meaning of particular clauses. That is not to say that all ambiguity has gone, but it has been reduced substantially.

Modern awards are the industrial instruments that set out the ***minimum*** wage rates for employees. Together with the **NES**, they also cover the ***minimum employment standards***. This way, modern awards and the NES form the safety net of wages and conditions of employment, which apply to all **national system employers and employees**.

National system employers and employees are:

- Trading, financial and foreign corporations and their employees (constitutional corporations);
- Employed in Victoria, the Northern Territory or the Australian Capital Territory;
- Employees of the Commonwealth and Territory Governments including its authorities;
- Waterside, maritime and flight crew employed in connection with interstate and overseas trade;
- Save for certain State Government employees, all other employees in all other States (other than Western Australia) (these are known as Division 2B employers)

Division 2B employers

With the exception of some State Government employees, from 1 January 2010, sole traders, partnerships, other unincorporated entities and non-trading corporations in New South Wales, Queensland, South Australia and Tasmania joined the above types of employers in the national system, and are no longer covered by separate state systems. These employers became known as Division 2B Employers and remained on their state award until 1 January 2011. Transitional provisions for Division 2B Employers have been included in Schedule A of the Modern Award.

Any employer, or employee, requiring specific detail on Division 2B Transitional provisions should contact ARTIO on 03 96468590 or via email or web – details are below:

Staff can be contacted via ARTIO's website which can be found at www.artio.org.au or through its Branch network at the following locations:

Victoria:	reception@vta.com.au	T: 0396468590
NSW:	hughmc@artionsw.com.au	T: 0412880861
Queensland:	travis.degen@qta.com.au	T: 0733944388
WA:	reception@transportforumwa.com.au	T: 0893553022
Tasmania:	ed@tta.org.au	T: 0409274482

Who is excluded from modern awards?

Modern awards do not apply to those employees earning a guaranteed annual salary/wage exceeding $113,800* per year nor do they apply to employees of an enterprise or business that has an enterprise agreement in place. (Sections 47 (2) and 329 of the FW Act)

** Amount from 1 July 2010: the amount is indexed annually.*

SAFETY NET PROVISIONS

Fair Work Act

The Fair Work Act 2009 replaced the Workplace Relations Act 1996. It is the law of the federal parliament that establishes the overriding provisions for modern awards and the National Employment Standards, plus all of the discrete modules that comprise the national workplace relations system.

The legislation also includes the Fair Work (Transitional Provisions and Consequential Arrangements) Act 2009, and the Fair Work (Registered Organisations) Act 2009, but the latter statute is not generally relevant to this award handbook.

National Employment Standards (sections 59 to 131 of Fair Work Act)

Most of the NES deals with the minimum conditions of various types of leave. The NES also covers some issues on termination of employment, plus the approach to be adopted for requiring overtime to be worked, and the approach to be applied if parents of school aged children request flexible working hours.

From 1 January 2010 all modern awards (and enterprise agreements) must be read in conjunction with the NES as they combine to provide the minimum conditions of employment for employees in a particular industry or occupation.

Note that while a modern award can supplement an NES provision, the modern award cannot undercut an NES provision. The NES is not restated in the body of the modern award. This means that readers of the Award will have to refer to the relevant NES in a separate document.

THE NES COVERS THE FOLLOWING MATTERS:

1 – maximum ordinary weekly hours and determining what are reasonable additional hours
2 – requests by employees for flexible working arrangements
3 – parental leave and related entitlements
4 – annual leave entitlements
5 – personal leave, carer's leave and compassionate leave entitlements and related matters
6 – community services leave and related matters
7 – long service leave
8 – public holidays
9 – notice of termination of employment and redundancy pay
10 – Fair Work Information Statement

Note that not all of the NES provisions apply to casual employees. Where applicable the relevant NES provisions are identified where they interact with the provisions from the RTD Award. Those that stand alone are contained in Appendix E.

Key Dates

- 1 January 2010 – LDO Award takes effect.
- 1 July 2010 – FWA reviewed all minimum wage rates for all award classifications in the new system, which led to wage increases.

Modern Award Structure

There is no set way to master your knowledge of an award, but one way is to see it in four parts:

A – coverage: these are all the clauses that build the picture that decides to whom the award applies and to whom it does not. In addition to the obviously titled clause headed "coverage", the "definitions" clause, the "classifications" clause and "Schedules B and C" (the classification descriptors) are relevant in determining the LDO Award coverage.

B – wages and conditions: these are the nuts and bolts of the modern award – types of employment, hiring and firing, pay rates, , allowances, hours of work, RDO's, loadings, penalty rates, overtime, leave, redundancy pay

C – transitional provisions: phasing in and phasing out the differences in moving from an old award to the modern award

D – process clauses: award flexibility, consultation, dispute resolution

Fundamentals of the LDO Award

The LDO Award has a **standard rate of pay** which is defined in the definitions clause (clause 3) as:

"***standard rate*** means *the minimum* weekly rate for ***Grade 4*** in clause 13.1"

The relevant parts of **clause 13** and relevant classification descriptor is set out in the following table -

	FULL-TIME IF PAID BY HOUR		FULL-TIME IF PAID BY CPK	
TRANSPORT WORKER GRADE	**MINIMUM WEEKLY RATE ($)**	**HOURLY DRIVING RATE**	**CENTS PER KLM RATE (CENTS)**	
1	626.60	24.44	32.58	Driver of rigid vehicle and heavy combination with GCM over 22.4 but > 42.5 tonnes or of articulated vehicle with GCM over 22.4 tonnes or of low loader with less than 43 tonnes - Capacity up to 24 tonnes
2	638.10	24.89	33.18	
3	645.70	25.18	33.58	
4	653.40	25.48	33.98	
5	663.10	25.86	34.48	
6	682.10	26.60	35.47	
7	693.60	27.05	36.07	

Note: the above minimum wages were effective from the first pay period to commence on or after 1 July 2010, and are expected to be increased in July 2011.

LDO AWARD COVERAGE

"*Award coverage*" is the term that describes the category or class of employer and employee that the award applies to. In a legal and structural sense it is the most important part of each modern award. An employer in particular, should have a clear understanding as to what modern award/s apply to its respective employees. Applying the wrong award can be costly.

Award coverage is determined by an examination of all of the clauses of a modern award that relate to the coverage.

In the LDO Award, as well as the obvious clause headed **'coverage'** (clause 4), you need to refer to a number of other clauses which directly or indirectly relate to the coverage clause, being

- the relevant terms in the definitions and interpretations clause 3;
- the classifications clause 13 and
- Schedule A (the detailed classification descriptors).

Accordingly there is a package or suite of clauses to be read together, to understand the proper application of the "coverage" of the LDO Award.

> the **coverage** clause 4
> the relevant terms in the **definitions and interpretations** clause 3,
> the **classifications** clause 13, and
> **Schedule A** (the classification descriptors).

Coverage clause

Sub-clause 4.1 of the LDO Award states:

"This industry award covers employers throughout Australia in the private transport industry engaged in long distance operations and their employees in the classifications listed in Schedule A ... to the exclusion of any other modern award."

LDO Industry

Three significant definitions in clause 3 expand on and define the coverage clause:

1. **'private transport industry'** means the transportation by road of all materials whether in raw or manufactured state, or of livestock, throughout Australia.

2. **'long distance operation'** means any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a principal point of destination. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.

3. **'interstate operation'** will be an operation involving a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement in one State or Territory to a principal point of destination in another State or Territory. Provided that to be an interstate operation the distance involved must exceed 200 kilometres for any single journey. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.

Therefore, the essential elements that constitute a long distance operation are either:

- a point to point return journey exceeding 500 kilometres or
- an interstate operation that must exceed 200 kilometres for any single point to point journey.

In other words, if a road transport journey does not involve one of the above elements, then it will not be a long distance operation as defined, in which case the RTD Award will in all probability apply.

LDO Award classifications

The business of the employer however, is not enough by itself to establish the LDO Award coverage. It is also necessary to identify the relevant classifications and classification descriptors in order to identify properly the award coverage of the employees of such road transport long distance operators.

Clause 13, which covers *Grades 1 to 8*, draws upon the expanded classification descriptors set out in Schedule A (Classification Structure) of the LDO Award.

Note that the Classifications in Schedule A are confined to **drivers**. This means that staff employed to perform ancillary functions of the long distance operations will be covered by another modern award, typically the **RTD Award, as will drivers engaged as a local driver.**

The full classification descriptors according to the respective classification Grade of the LDO Award is at **Appendix B** of this Handbook. For convenience, the classification descriptors of the RTD Award are included at **Appendix C** of this Handbook.

Despite the clear identification of the industry and the relevant classification it may still be the case that there is a notional coverage overlap in respect of another modern award.

Award overlap principles

The modern award system, while substantially reducing the degree of award overlap, necessarily recognises circumstances where an employer and its employees (or some of them) are notionally covered by more than one modern award. It deals with such a situation by reference to further provisions in the coverage clause by:

(a) ranking 'closely competing' modern awards (i.e. exclusion provisions); and

(b) including a "most appropriate environment" provision.

Most appropriate environment clause

Sub clause 4.7 of the LDO Award provides:-

"Where an employer is covered by more than one award, an employee of that employer is <u>covered by the award classification which is most appropriate to the work performed by the employee</u> and <u>to the environment in which the employee normally performs the work.</u>

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage."

The first part of sub clause 4.8 looks to the most appropriate award classification of the work performed and to the environment in which the employee normally works, as a circuit breaker where there are notionally competing awards.

Applicable occupational based modern awards

The second part of sub-clause 4.8 is a reminder that occupationally based modern awards prevail over industry awards.

For long distance road transport businesses, the **Clerks Private Sector Award 2010** (for clerical administrative employees) and the **Manufacturing and Associated Industries and Occupations Award 2010** (for employees falling within the *Engineering Tradesperson Mechanical* classification stream of that award) may be other relevant awards applicable to certain employees of such businesses.

Interaction with Road Transport and Distribution Award

The coverage clause of the LDO Award does not defer to, or exclude, any other modern award. This is to be contrasted with the RTD Award (at clause 4.2 of that award) that expressly excludes *the "LDO Award whilst undertaking long distance operations"*.

By reading together and comparing the respective coverage clauses of the LDO and the RTD awards, it is clear that the LDO Award prevails over the RTD Award for long distance operations.

As its name implies, the LDO Award defines a long distance operation, the essential elements of a long distance operation involve either:

- a point to point return journey exceeding 500 kilometres, or
- an interstate operation that must exceed 200 kilometres for any single point to point journey.

In other words, if a road transport journey does not involve one of the above elements, then it will not be a long distance operation as defined, in which case the RTD Award will most likely apply.

Given the nature of the industry, there can be some overlap between these two awards. In fact, sub-clause 14.1(c)(i) of the LDO Award specifically acknowledges this and allows an employee to move from the RTD Award to the LDO Award by the payment of an allowance on each occasion that such employee changes from 'local' to long distance work.

When engaged on a long distance operation, drivers can be paid on a trip basis as specified in sub-clauses 13.4 and 13.5 of the LDO Award. These trip payments which can either be cents per kilometre "CPK" or hourly based payments at the employer's discretion only apply to the journeys specified in those sub-clauses. Any other journeys must be paid on an hourly basis for the actual time driven.

Further, a long distance driver must be paid for any 'loading/unloading' work, if performed, at the mandated rates specified in sub-clause 13.6 of the LDO Award.

Other types of employees not covered by the LDO Award

The coverage clause (at sub clauses 4.2, 4.3 and 4.4) also identifies those categories of employees not covered by a modern award.

Modern awards do not apply to employees who are already covered by an enterprise agreement or an enterprise (i.e. "company") award, or to employees who are high income employees (sections 47 and 329 of the FW Act).

A "high income employee" is an employee who has a guarantee of annual earnings with the employer of a rate that exceeds the high income threshold (section 329).

On 1 July 2010 the high income threshold was set at $113,800 per annum. This rate is adjusted on 1 July every year.

Other definitions

The following terms are also defined in the **definitions** clause 3:

articulated vehicle
double-articulated vehicle
driving time
furniture
gross combination mass
gross vehicle mass
home base
livestock
loading and unloading
low loader articulated vehicle
maker's capacity
ordinary weekly rate
road-train vehicle
weekly employee

The above definitions (as fully explained in clause 3) are important in understanding the classification descriptors in Schedule A of the LDO Award and/or in relation to certain allowances.

HIRING AND EMPLOYING STAFF UNDER LDO AWARD

Types of employment

Clause 10 explains two types of employment – full-time or casual.

Full-time – an employee engaged to perform long-distance operations for an average of 38 ordinary hours per week over a four-week period.

Casual – an employee engaged as such and paid by the hour/trip.

A casual employee receives loadings to compensate them for other conditions which full-time employees receive. A casual employee receives the following benefits:

- whilst driving, an additional 15% on the CPK rates (per sub-clause 13.4) or the hourly driving rates (per sub-clause 13.5)
- when engaged in loading or unloading duties, the relevant loading and unloading rate for their classification plus a loading of 25%
- when paid by CPK rates, a minimum payment per engagement of 500km
- when paid by the hourly driving rate, the minimum engagement must be eight hours.

Letters of engagement

While the LDO Award requires all employees to be informed of the terms of their engagement status (sub-clause 10.1), it is recommended that such employees be informed in writing.

Template letters of engagement, covering full-time and casual employment are contained on the FWO website (www.fairwork.gov.au/resources/templates/pages/employing-staff.aspx).

Fair Work Information Statement

As soon as possible after commencement of employment all new employees must be provided with a copy of the Fair Work Information Statement, which can be obtained from the following website: www.fairwork.gov.au/FWISdocs/Fair-Work-Information-Statement.pdf .

WAGE RATES

A unique feature of the LDO Award is the structure and basis of minimum wage rates. The award provides two options for payment based around a trip structure:

- paid on the basis of distance travelled – called the CPK rate; or
- paid by the hour (in common with most modern awards) - (clause 13)

At the commencement of employment the employer must nominate whether the employee is to be paid under the CPK method or the hourly rate method. The method may be changed from one to the other by four weeks' written notice to the employee. Where no method has been nominated the CPK method will apply (sub-clause 13.3(b)).

Moreover, having regard to the nature and charactristics of long distance driving, and in order to add certainty to the pay rates and to minimise disputes over distances travelled and/or time taken, and consistent with safety considerations, the award includes tables setting out agreed distances and agreed journey times for commonly used routes and destinations.

Another feature of the LDO Award (by comparison to most other modern awards) is the absence of specific clauses dealing with overtime rates and shiftwork provisions. This is because additional amounts for overtime and shiftwork, including weekend work, have been factored into the CPK and hourly rates. This is discussed later in this Handbook.

The LDO Award contains separate Tables setting out the minimum rates for wages based on whatever respective method of pay is applicable. For convenience, Table A as follows, represents a consolidation of the **CPK** minimum rates (at sub-clause 13.4(a)) and the ***Hourly*** minimum rates (at sub-clause 13.5(b)).

Table A - Table of minimum rates expressed under the CPK rate and hourly rate

Grade	cents per km rate	min hourly rate
1	32.58 cents	$ 24.44
2	33.18 cents	$ 24.89
3	33.58 cents	$ 25.18
4	33.98 cents	$ 25.48
5	34.48 cents	$ 25.86
6	35.47 cents	$ 26.60
7	36.07 cents	$ 27.05
8	36.96 cents	$ 27.72

*These rates apply from the first pay period to commence on or after 1 July 2010 and will likely be varied from July 2011.

The LDO Award also contains separate Tables setting out the Agreed Distances (at sub-clause 13.4(b)) for calculating CPK rates, and agreed **Driving Hours** (at sub-clause 13.5(c) for calculating hourly rates, listed against 30 common routes. For convenience, Table B as follows represents a consolidation of extracts from the Agreed Distances and Agreed Driving Hours.

Table B - Table of Agreed Distances and Times

(extract only of sub clauses 13.4(b) and 5(c) –see full Tables in LDO Award)

Point to point	Route	Kilometres	Times in hours	Time in Hours
Sydney/Brisbane	New England Hwy	950	11.6	11.6
Sydney/Melbourne	Hume Hwy	858	10.5	10.5
Sydney/Adelaide	Bathurst/Sturt Hwy	1367	16.7	16.7
Sydney/Perth	Broken Hill	4044	47.6	47.6
Sydney/Darwin	Charleville/Dubbo	3987	46.8	46.8
Melbourne/ Brisbane*	Newell Hwy	1682	18.5	18.5
Melbourne/ Adelaide	Dukes/Western Hwy	731	8.9	8.9
Melbourne/Perth	Western/Eyre Hwy	3407	40.0	40.0
Melbourne/Darwin	Stuart/Western Hwy	3749	44.1	44.1
Adelaide/Brisbane	Broken Hill/Newell Hwy	2015	24.6	24.6
Adelaide/Perth	Eyre Hwy	2677	31.5	31.5
Adelaide/Darwin	Stuart Hwy	3019	35.5	35.5
Brisbane/ Melbourne*	Pacific/Hume Hwy	1790	21.8	21.8
Brisbane/Perth	New England/ Newell/Barrier	4314	50.7	50.7
Brisbane/Darwin	Roma	3417	40.2	40.2
Perth/Darwin	Nth West Coastal	4027	47.4	47.4

*Note that the Melbourne to Brisbane route (Newell Hwy) is different from reverse journey being the Brisbane to Melbourne route(Pacific/Hume Hwy) therefore distances and times differ.
Otherwise, each of the reverse point to point routes are identical in distance and time.

CPK rates

For an employee paid under the CPK system, the basic calculation is to multiply the number of kilometres travelled by the CPK rate for the relevant vehicle as determined within the classification structure (sub-clause 13.4(a)).

The CPK rate set out in the award incorporates both the industry disability allowance (30% of the ordinary rate) and the overtime allowance (20% of the ordinary rate). In other words, those 2 allowance components have been factored into the specific CPK rates listed in the award.

Note the additional 15% loading for casuals at sub-clause 10.3(b).

Hourly rates

For an employee paid on the hourly driving time system, the method is to multiply the hours driven by the applicable rate as for the relevant vehicle as determined within the classification structure. (sub-clause 13.5(a)).

As with the CPK rates, hourly rates similarly incorporate the industry disability allowance and the overtime allowances. That is, those allowances have been factored into the specific hourly rates listed in the award. The basic calculation is derived by dividing the minimum weekly rate prescribed by sub-clause 13.1 by 40, and multiplying by 1.3 (industry disability allowance) and 1.2 (overtime allowance) (clause 13.5(b)). Expressed mathematically, for the standard rate Grade 4 this is (x 1.3) x 1.2 = $25.48 per hour. That calculation is readily produced in the Schedule appearing in the award immediately after sub-clause 13.5(b). Such allowances should not be double counted.

Note also the additional 15% loading for casuals at sub-clause 10.3(b).

In accordance with sub-clause 13.5(a), the hourly driving rate may only be applied as follows:

- where the journey to be performed by the driver is listed in the schedule in clause 13.5(c) the number of driving hours for that journey is deemed to be no fewer than the number indicated in the schedule for that journey; or
- where the journey to be completed is not listed in sub-clause 13.5(c) **payment must be for actual hours worked** and must not be pursuant to a trip rate which provides for a fixed amount per trip; or
- where the employer has an accredited **Fatigue Management Plan (FMP)** in place, the hourly rate may be used to calculate a trip rate for any journey by multiplying the hourly rate by the number of driving hours specified in the FMP for that journey. For the purposes of this clause accredited FMP means any program which is approved under an Act of a Commonwealth, State or Territory parliament for the purposes of managing driver fatigue.

Guaranteed minimum payments

Note the concept of guaranteed minimum payments (sub-clauses 13.1 and 2).

Sub-clause 13.1 of the award expresses the guaranteed minimum wage rates as a weekly amount as follows:

Classification Transport worker grade	**guaranteed minimum weekly wage rates**
Grade 1	626.60
Grade 2	638.10
Grade 3	645.70
Grade 4	653.40
Grade 5	663.10
Grade 6	682.10
Grade 7	693.60
Grade 8	710.70

*These rates apply from 1 July 2010 and will likely be varied with effect from July 2011. If you are a NSW employer please refer to Appendix C of this Handbook. Please note casual loadings may be subject to transitional provisions.

The rates in sub-clause 13.1 are defined in clause 3 [Definitions] as the **ordinary weekly rate**.

The guaranteed minimum wage is explained more fully at sub-clause 13.2:

Full-time employees whether on CPK or hourly rates, are entitled to a guaranteed minimum payment fortnightly (minimum weekly rate x 2) – but an employee must be ready, willing and able to work as directed. If "on-call" then an employee is entitled to hourly rates for the prescribed classification while on-call plus the guaranteed minimum (sub-clauses 13.2(a) and (c)).

A Casual employee is guaranteed a minimum payment per an engagement equivalent to 500 kilometres (employees engaged under the CPK method) or eight hours (employees engaged under the hourly rate method) as per sub-clauses 10.3(d) and 13.2(b).

If an employee (full-time or casual) accompanys a vehicle whilst being transported by sea or rail then an additional payment is provided (sub-clause 13.2(d)).

These rates apply either as a base figure for calculating a 'premium' rate for working on a public holiday (see sub-clauses 26.3 and 26.4) or being called back to work (sub-clause 20.7) and when an employee driver is not earning by driving as such, being

- on annual leave (sub-clause 23.2) or other leave, or
- on an RDO (sub-clause 20.5(d) or payment for RDOs
- delayed by breakdown or impassable highway (clause 22).

PAYMENT OF WAGES

All earnings must be paid in the employer's time on a day fixed by the employer, but not later than Thursday of each week. Other specifications relating to the employer's obligation on the manner of payment of wages are set in clause 18.

SUPERANNUATION

An employer must comply with the Superannuation Guarantee legislation and make a contribution of 9% of the employee's ordinary time earnings to a nominated complying super fund. If an employee does not nominate a fund then the following funds must be used:

- TWUSUPER
- Any other fund to which the employer was making contributions for the benefit of its employees before 12 September 2008

An employee can authorise in writing the employer to deduct additional voluntary contributions from post-taxation earnings and remit same to a complying superannuation fund. This money must be remitted no later than 28 days after the

deductions are made (sub-clause 19.3).

Superannuation contributions must be made whilst an employee is on annual leave or receiving workers compensation payments.

ALLOWANCES

Background to allowances

The following is an explanation of the origin and characteristics of allowances generally. In industrial awards, the origin of allowances falls into three broad categories as follows:

1. The **first category [reimbursement for expenses]** are allowances based on the notion of a reimbursement to the employee for expenses they outlay in performing their work (eg. meals, travel). These allowances are expressed in dollar amounts and are adjusted annually, according to movements in the Consumer Price Index published by the Australian Bureau of Statistics. Payment of expense related allowances are calculated on a per incidence basis.

2. The **second category [disability allowances]** are those derived as a form of compensation for working in difficult or onerous conditions (eg. furniture, livestock, sanitary, offensive or dirty material etc). Award rate disability allowances rates are expressed as a percentage of the standard rate of pay therefore such rates automatically adjust according to the annual movements in the standard rate of pay.
    a. Payment of disability based allowances can be calculated on a per hour, per day, per week or per incidence basis.

3. The **third category [reward for skills or responsibilities]** are those designed as a reward for specific skills or responsibilities (eg. leading hand, use of specific qualifications). Reward based allowances are adjusted in the same way as disability allowances - by reference to movements in the standard rate of pay.

Expense related allowances

These allowances apply from the first pay period to commence on or after 1 July 2010 and will likely be varied from July 2011.

Living away from home allowance – where unable to return home at night - $33.23 per occasion and the employer does not provide suitable accommodation away from the vehicle (sub-clause 14.2(c)).

Meal allowance (not applicable under the LDO Award)

Disability Allowance

Industry disability allowance – (1.3 times the ordinary rate or 30%, sub-clause 14.1(a)) – this is included in the specified CPK rates and the specified hourly rates

to compensate for the disabilities of being a long distance driver which are:

- shiftwork and related conditions
- weekend work,
- lack of normal depot facilities,
- absence of normal resting facilities,
- necessity to eat at roadside fast food outlets
- hazards with driving long distances at night and alone,
- handling dirty material,
- handling money
- extra responsibility associated with arranging loads etc
- irregular starting and finishing times
- work in the rain

Skill or responsibility based allowances

These are detailed in sub-clauses 13.3(d), 13.6, and 14.1 and summarised below.

Loading or unloading duties

Where engaged in loading or unloading duties – driver are paid at an hourly rate by dividing weekly award rate under sub-clause 13.1 by 40 and multiplying by 1.3 (industry disability allowance). A minimum of one-hour loading and one-hour unloading per trip must be made where loading/unloading duties are required (sub-clause 13.6(a)).

The alternative is a written agreement between the employer and employee for a fixed allowance based on the hourly rate in clause 13.6(a) to cover loading/unloading (sub-clause 13.6(b)).

A casual employee attending to the loading or unloading of the vehicles must be paid a loading of 25% in addition to the rates prescribed (sub-clause 13.6(c)).

Overtime allowance – (1.2 times the ordinary rate or 20%) – included in the specified CPK rates and the specified hourly rates to take account of notional overtime factor of two hours in ten hours at double time (sub-clause 14.1(b)).

Local driver temporarily transferred to long distance – when engaged as a local driver under RTD Award and required by the employer to temporarily transfer to long distance operations under LDO Award, then an allowance of 1.24% of the standard rate of the LDO Award is to be paid on each occasion (sub-clause 14.1(c)(i)).

Other responsibilities allowances

- driving a vehicle of excess length - 0.44% of the standard rate per **day or part thereof.**
- driving a vehicle with excess width or load of excess width of 3.5 metres – 0.44% of the standard rate per day or part thereof.
- furniture carting - 2.42% of the standard rate per **week**
- livestock carting - 2.42% of the standard rate per **week**
- transport of bulk dangerous goods or explosives - 2.27% of standard rate per **day**

- transport of packaged dangerous goods requiring placarding - 0.95% of standard rate per day

Direct reimbursements of expenses

Upon production of the necessary paperwork, an employer must reimburse the costs outlayed by an employee in certain circumstances concerning:

- Cost of Work Diary (sub-clause 14.2(a)).
- Articles of clothing – uniforms, protective clothing (sub-clause 14.2(b)).
- Housing (sub-clause 14.2(d))

Any employee required by the employer to live at a depot, yard or garage must be paid an allowance equal to the amount of the rental charged by the employer for the accommodation at the depot, yard or garage.

If an employer provides housing accommodation for an employee and the employee's family, and requires the employee to live there and charges rent, the employer must pay the employee an allowance of $2.76 less than the amount of rent charged by the employer for the accommodation. This would mean that the net rental cost would be $2.76 per rental period.

- Training - sub-clause 14.2(e) provides that in after consultation and in specified circumstances the employer may be required to reimburse an employee for training costs including:
  - o Paid training leave, fees and books and travel costs exceeding those normally incurred in getting to work

Higher duties

Where an employee is required by the employer to perform two or more grades of work on any one day the employee is to be paid **the minimum wage for the highest grade for the whole day** – (clause 17).

Accident Pay

An employee is entitled to accident pay in accordance with the terms of any NAPSA applying immediately prior to 1 January 2010 or an award made under the Workplace Relations Act 1996 that would have applied immediately prior to 27 March 2006 (clause 16).

Accident pay is limited to the amount which exceeds the employee's entitlement to accident pay, if any, under any other instrument. In practice, you should seek advice on the application of this clause, which expires on 31 December 2014.

District allowances

While district allowances for employees in Northern Territory and Western Australia are retained at pre-modern award rates (i.e. prior to 1 January 2010) such allowances are being phased out over five years so that they cease to operate on 31 December 2014 (sub-clause 15.3). This is because modern

awards cannot, after the end of 2014, provide for State/Territory based differences.

HOURS OF WORK

Start times

The scheduling of start times is at the discretion of the employer. A roster must be set up and displayed in such a manner that an employee, so far as it is practicable, will know the hours of duty the employee is required to perform (sub-clause 20.1).

Hours of work

Hours of work will be in accordance with Commonwealth, State or Territory Acts, as varied from time to time (including any subordinate regulations controlling driving and working hours of heavy vehicle operators) (sub-clause 20.2). The web-site of the National Transport Commission will direct you to specific State legislation on this topic. It can be found at

www.ntc.gov.au/viewpage.aspx?AreaId=35&DocumentId=1409

Except where driving hours have been delayed because of accidents or in circumstances over which the employer has no control, the employee must not work and the employer must not require the employee to work:

- more than a total of 120 hours in any fortnight exclusive of any unpaid intervals for meals or
- in any one day more than 12 hours, with a break of 30 minutes after each five and a half hours worked; provided that every employee must have ten hours off duty immediately after the working period is completed.

The roster of work must provide for no more than 120 hours to be worked in any fortnight.

An employer can require an employee to work reasonable hours of work. An employee may refuse hours of work which are unreasonable, having regard to:

- any risk to employee health and safety
- the employee's personal circumstances (including any family responsibilities)
- the needs of the workplace or enterprise including any requirement to finish the immediate journey and return the vehicle to the depot;
- the amount of notice (if any) of the requirement to work extended hours that the employer has given the employee and the notice given by the employee of their intention to refuse such extended hours of work and
- any other relevant matter.

Time is computed from the time the employee is rostered on or registers for duty, whichever is the latter, until the employee has been effectively released from duty.

Rostered Days Off

An employee is entitled to a rostered day off (RDO) on the basis of 1 day for

each month of employment, subject to suspension of the entitlement during any period of any authorised leave (sub-clause 20.5).

RDOs must be taken by employees in accordance with the roster but in order to meet the requirements of work, they may be accumulated and taken consecutively.

If RDO's are so accumulated, an employee is entitled to one RDO for each month of employment on and after two months' employment - provided the maximum accumulation of RDO's will be ten over a period of ten months' employment, exclusive of periods of leave. RDOs are often paid out at the time of taking annual leave.

Employees must be paid for an RDO at the rate prescribed by sub-clause 13.1, Minimum Weekly Rates of Pay.

An RDO may be changed by agreement between employer and employee or, in the absence of such agreement, by the employer giving 48 hours' notice of such change to the employee.

An employee entitled to an RDO falling on pay day must be paid the wages due on the next ordinary working day following the RDO.

An employee can be directed to take an RDO in certain circumstances (eg. annual close down, industrial action, machinery or plant break down, see sub-clause 20.5(g)).

Absence from duty

Where an employee is absent from duty without authorisation, the employee will lose pay (as per clause 20.6 of the LDO Award) calculated as follows

- for each day absent, a day's pay - calculated by dividing the average weekly wage by 5;
- for part of a day absent, pay for each hour calculated by dividing the average weekly wage rate by 38 (sub-clause 20.6).

An employee absent from duty without authorisation, and one or more scheduled RDOs occur, the employee must take the day or days off as rostered but must be paid for that week the wage as provided, less an amount calculated according to the following formula:

NO. OF DAYS ABSENT DURING PERIOD X 0.39 HOURS	X	AVERAGE FORTNIGHTLY PAY (76 HOURS)

Note: an absence of less than 0.5 of a day will not be counted.

Call-back

On every occasion on which the employer calls back an employee, after leaving the depot or home base, such employee must be entitled to payment for a minimum of

four hours at the rate prescribed by clause 13.1 (sub-clause 20.7).

BREAKS

Meal breaks

No employee will be required to work for less than three hours or more than five and a half hours without a meal break. Such meal break must not be less than 30 minutes or more than one hour (clause 21).

The provisions of this clause do not apply where meal breaks are taken in accordance with Commonwealth, State or Territory Acts as varied from time to time.

The maximum work without a break is five and a half hours.

Ten consecutive hours rest period

Hours of work should be rostered and designed so that employees must have ten hours off duty immediately after the working period is completed (sub-clause 20.2(b) (ii)).

Breakdown or impassable highway

An employee must be paid for all time up to a maximum of eight hours in any period of 24 hours at the rate prescribed by sub-clause 13.1 where a long-distance operation is delayed because of breakdowns or impassable highways, provided the employee has taken all reasonable steps to minimise the period of delay (clause 22).

PUBLIC HOLIDAYS

Public holidays are covered by the NES (at section 114 to section 116 of the FW Act) and under clause 26 of the LDO Award.

Generally stated, full-time employees are entitled to have paid time off from work (at the base rate of pay) on public holidays, if the employee is rostered to work on that particular day. If a business is closed on a public holiday, or if full-time employees are not required to work, then an employer must pay them at their base rate of pay for that day. The base rate of pay does not include incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates.

Exceptions to the general rule - Employees who would not normally work on the day which coincides with the public holiday are not entitled to paid time off.

Specific public holidays as set out in the NES (at section 115) are:

- 1 January (New Year's Day);
- 26 January (Australia Day);
- Good Friday;
- Easter Monday;
- 25 April (Anzac Day);
- the Queen's birthday holiday

- 25 December (Christmas Day);
- 26 December (Boxing Day); and
- any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

Sub-clause 26.2 provides that by agreement between the employer and the majority of affected employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as a public holiday instead of any of days prescribed in the NES. Such agreement must be recorded in writing and be available to every affected employee.

Penalty rates for work on public holiday

As a general rule, employees who are required to work on a public holiday are entitled to be paid an additional rate to compensate for working unsociable hours or for family dislocation.

Sub-clause 26.4 provides that for all time worked by a full-time or casual employee on a public holiday, payment must be made at the following rates:

- On Good Friday and the Christmas Day holiday – 30% of the applicable minimum weekly rate specified in sub-clause 13.1 plus payment for the work performed in accordance with the designated method of payment specified in clause 13.
- On any other holiday – 20% of the applicable minimum weekly rate specified in sub-clause 13.1 plus payment for the work performed in accordance with the designated method of payment specified in clause 13 (sub-clause 26.4 and sub clause 5).

A full-time employee must be paid for a minimum of four hours' work on a public holiday and a casual employee must receive payment based on a minimum of 500 kilometres or eight hours under sub-clause 10.3(d).

LEAVE

Annual leave

Annual leave is largely covered by Division 5 of the NES and clause 23. Annual leave does not apply to casual employees.

Amount of annual leave - For each year of service with his or her employer an employee is entitled to four weeks paid annual leave.

Accrual of annual leave – annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and it accumulates from year to year. If an employee's employment ends before what would otherwise be a year of service, the employee accrues paid annual leave up to when the employment ends. The following website will assist with any annual leave

calculations: www.fairwork.gov.au/leave/annual-leave/pages/calculating-annual-leave.aspx

Taking paid annual leave

Annual leave shall be taken as agreed between the employer and employee. Payment shall be made to the employee prior to going on annual leave at the minimum weekly rate determined in sub-clause 13.1, in proportion to the amount of leave being taken; for example one day will be 20% of the minimum rate, two days 40%, three days 60% and so on.

The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

The employer can direct an employee to take a two week or more accrued annual leave (sub-clause 23.3).

Annual close down can involve an employee or employees taking a portion of annual leave (sub-clause 23.5) provided that the required notice of at least one month is given.

Payment for annual leave loading

Before going on annual leave, an employee must be paid wages calculated for the period of leave the employee will take, being a proportion of the applicable minimum weekly rate under clause 13.1 which corresponds to the amount of leave taken, and an additional loading of 30%.

Note that leave loading is not payable on proportionate leave paid out on termination (sub-clause 23.2(b) (ii)). Please note that the current view of the Fair Work Ombudsman is that annual leave loading is payable on termination.

Cashing out annual leave

The LDO Award makes no provision for the cashing out of annual leave, therefore it is not allowed unless specifically covered in an enterprise agreement.

An employee is not taken to be on paid annual leave on a public holiday or other period of leave if the period during which an employee takes paid annual leave includes a public holiday or includes a period of any other leave (other than unpaid parental leave), or a period of absence from employment covered by community service leave, the employee is taken not to be on paid annual leave for the period of that public holiday or other leave or absence.

Personal/carer's leave

Personal/carer's leave and compassionate leave are provided for in the NES, sections 95 to 107 of the FW Act. Generally, casual employees are not entitled to paid personal or carer's leave, although a casual employee may be entitled to unpaid carer's leave in specified circumstances.

Amount of leave

For each year of service with his or her employer, an employee is entitled to ten days of paid personal/carer's leave at his/her minimum (base) rate of pay

determined from sub-clause 13.1.

Paid personal carer's leave can be taken in the following situations:

1. If an employee is not fit for work because of personal illness or injury
2. To provide care or support to a members of the employee's immediate family, or a member of the employee's household who requires care or support because of:
   a. a personal illness or injury
   b. an unexpected emergency

Up to two days unpaid carer's leave per permissible occasion is available to casual employees and those full time employees who have exhausted their entitlement to paid personal/carer's leave.

An employee must give notice, as soon as practicable, to their employer of the nature of the leave taken and must also advise the employer of the expected period of leave.

The employer is entitled to request evidence that would satisfy a reasonable person that such leave has been properly taken.

Accrual of leave

An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's notional ordinary hours of work, and accumulates from year to year. The following website will assist with personal/carer's leave calculations:
www.fairwork.gov.au/leave/personal-carers-and-compassionate-leave/pages/calculating-leave.aspx

Cashing out of personal/carer's leave

The LDO Award makes no provision for the cashing out of personal carer's leave, therefore it is not allowed unless specifically covered in an enterprise agreement.

Compassionate leave

Employees (other than casual employees) are entitled to two days paid compassionate leave each 'permissible occasion'. Casual employees are entitled to two days unpaid leave.

The entitlement arises when the employee's immediate family or household:

- contracts or develops a personal illness or sustains an injury that poses a serious threat to his or her life; or
- dies

'Immediate family' means spouse, de facto partner (including same sex couples), child, parent, grandparent, grandchild, or sibling of the employee. It also includes a child, parent, grandparent or sibling of the employee's spouse or de facto partner.

The entitlement is paid at the employee's minimum (base) rate of pay from sub-clause 13.1 and is not accrued based on service but available per every permissible

occasion. Compassionate leave is a separate entitlement to personal/carers leave and is not deducted from personal/carers leave balances.

The employee must notify the employer of the expected period of absence as soon as practicable and advise the employer of the period, or expected period of the leave. The days may be taken as a two day absence or in single days agreed between employer and employee.

The employer may require the employee to provide evidence that would satisfy a 'reasonable person' which may not necessarily include a medical or death certificate.

Community service leave

Community service leave is unpaid leave and is provided for in the NES. Each of the following is an eligible community service activity and provides an entitlement to community service leave:

- jury service (including attendance for jury selection) that is required by or under a law of the commonwealth, a state or a territory
- a voluntary emergency management activity, or
- an activity prescribed in regulations.

Except for non-casual employees engaged in jury service, community service leave is unpaid. The payment for leave for jury service is made at the employee's base rate of pay for ordinary hours of work in the period, capped at ten days. Any days served on a jury after the ten days may be leave without pay or paid from annual leave accrual upon application by the employee. The employer may make payment conditional upon the employee taking all necessary steps to obtain jury service pay from the relevant authorities and to provide the employer with evidence of this fact. The employer is entitled to reduce the pay made to the employee for jury service leave by the amount of jury service pay received from the authorities.

Voluntary emergency management activity is a voluntary activity that involves dealing with an emergency or natural disaster. The employee must be a member of a recognised emergency management body such as, for example, a fire fighting, civil defence or rescue body. That body must request the employee to engage in the activity or if circumstances do not permit the making of such request it would have been reasonable to expect that absent those circumstances a request would have been likely. Though the activity is voluntary the employee is not precluded from taking community service leave because they may receive an honorarium or gratuity.

The employee must notify the employer of the expected period of absence as soon as practicable and the employer may require the employee to provide reasonable evidence that the absence from work is because the employee is engaging in an eligible community service activity.

The NES does not operate to the exclusion of state and territory legislation that might have otherwise applied. For example the FW Act would not apply to the exclusion of a state or territory law where it provided for a casual employee to receive payment for jury service. For specific detail on jury service you should

contact your relevant Justice Department in each state or territory.

Long service leave

At this time, the NES does not contain a nationally consistent long service leave standard. The aim of the Australian government is to formulate such a standard in consultation with the State and Territory governments that currently have vastly different entitlements in place.

Generally, employees continue to derive long service leave from pre-modernised awards and State or Territory legislation however, should an enterprise agreement contain provisions that exclude long service leave, specific advice should be sought from one ARTIO or one of the Branches listed on page 5 of this Handbook.

Depending on the relevant State or Territory law an employee may be entitled to long service leave after seven to 15 years continuous service and may be paid out on termination depending on the circumstances and the relevant legislation.

The relevant legislation that should be referred to is as follows;

- Australian Capital Territory: Long Service Leave Act 1976
- New South Wales: Long Service Leave Act 1955
- Northern Territory: Long Service Leave Act 1981
- Queensland: Industrial Relations Act 1999
- South Australia: Long Service Leave Act 1987
- Tasmania: Long Service Leave Act 1976
- Victoria: Long Service Leave Act 1992
- Western Australia: Long Service Leave Act 1958

For further information please contact the FWO or consult the relevant state/territory government website or telephone information line.

Australian Capital Territory
Office of Regulatory Services – WorkCover
http://www.ors.act.gov.au/workcover/WebPages/WorkComp/labour.htm
(02) 6207 3000

New South Wales
NSW Industrial Relations
http://www.industrialrelations.nsw.gov.au/Employers/Staff_leave/Long_service_leave.html
131 628

Northern Territory
Office of the Commissioner for Public Employment
http://www.ocpe.nt.gov.au/
(08) 8999 5511

Queensland

Fair Work Ombudsman
http://www.fairwork.gov.au/contact-us/call-us/pages/default.aspx
13 13 94

South Australia
Helpline - Workplace Standards Tasmania
SafeWork SA
http://www.safework.sa.gov.au/show_page.jsp?id=2477
1300 365 255

Tasmania
Helpline - Workplace Standards Tasmania
http://www.wst.tas.gov.au/employment_info/lsl
1300 366 322

Victoria
Business Victoria - Workforce
http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50533.html
1800 287 287

Western Australia
WageLine
http://www.commerce.wa.gov.au/labourrelations/Content/Wages%20and%20Leave/Leave%20entitlements/long_service.html
1300 655 266

Dispute resolution training leave
The LDO Award makes no provision for dispute resolution training leave.

TERMINATION OF EMPLOYMENT

Where an employer seeks to terminate the services of an employee, written notice must be given before the termination takes effect no later than the last day of work. The notice can be given personally, left at the employee's last known address or sent to the employee's last known address by pre-paid post.

The employer must provide an employee the required period of notice or pay equivalent to the notice period 'at the full rate of pay'. The period is based on the employee's years of service – see table below.

Payment in lieu of notice should be at the 'full rate of pay' for all hours the employee would have worked during the notice period. 'Full rate of pay' is defined in the FW Act to include overtime, allowances, penalty rates and loadings etc.

Employee's period of continuous service with the employer at the end of the day the notice is given	Period
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NB: An employee is entitled to 1 additional week of notice if the Employee is over 45 years of age at the time of the giving of notice and has completed at least two years' continuous service with the Employer.

Exceptions to the general rule on notice of termination

The following types of employees are not entitled to notice of termination:

1. casual employees,
2. an employee dismissed for serious misconduct,
3. an employee under a training arrangement, or
4. an employee under a fixed term contract whose contract expires with the effluxion of time,

Job search entitlement

Sub-clause 11.3 of the LDO Award provides that where the employer has given notice of termination, the employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment.

Employee resignation

Notice of termination by an employee

Where an employee resigns, the notice to be given to the employer is the same period (i.e between one and four weeks) as that required by an employer (except for the extra week if over 45 years of age).

If the employee fails to give the required notice on resignation, the employer:

- may withhold from any monies due on termination an amount of money equivalent to the shortfall in required notice; but
- such amount withheld cannot exceed the amount the employee would have been paid in respect of the period of notice required

REDUNDANCY/SEVERANCE PAY

Before any definite decision is made regarding redundancy within an organisation, the employer must consider the Consultation and Dispute Resolution – clauses 8 and 9 - provisions of the LDO Award.

If a dismissal is a genuine redundancy it will not be an unfair dismissal. Under Commonwealth workplace laws, a person's dismissal is a 'genuine redundancy' if:

- the employer no longer needs the person's job to be done by anyone because of changes in the operational requirements of the business, and
- tthe employer followed any consultation requirements in the modern award, enterprise agreement or other industrial instrument that applies.

In addition to the requisite period of notice (or pay in lieu) of an employer instigated termination of employment, the NES (at sections 119 to 123 of the FW Act) stipulates that where the decision to terminate is because –

- the employer no longer requires the subject employee's job to be done by anyone, or
- because of the insolvency or bankruptcy of the employer, an amount of

redundancy pay is also to be paid to an employee. The amount of redundancy pay is established on a scale according to the period of continuous service of the employee, as shown in the table(s) below:

Employee's period of continuous service with the employer on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

Redundancy pay is paid at the employees 'base rate of pay' for ordinary hours of work which does not include:

- loadings
- overtime or penalty rates
- allowances;
- bonuses or incentive based payments.

Severance Payments in NSW

Until 31 December 2014, any employee retrenched in NSW will have an increased severance entitlement when compared to the remainder of the country. The effect of sub-clause 12.5 of the LDO Award is that NSW employees made redundant are entitled to the following severance payments:

Years of Service	**Under** 45 Years of Age Entitlement	**Over** 45 Years of Age Entitlement
Less than 1 year	Nil	Nil
1 year and less than 2 years	4 weeks pay*	5 weeks pay*
2 years and less than 3 years	7 weeks pay*	8.75 weeks pay*
3 years and less than 4 years	10 weeks pay*	12.5 weeks pay*
4 years and less than 5 years	12 weeks pay*	15 weeks pay*
5 years and less than 6 years	14 weeks pay*	17.5 weeks pay*
6 years and over	16 weeks pay*	20 weeks pay*

*"Weeks pay" means the all purpose rate for the employee concerned at the date of termination, and shall include, in addition to the ordinary rate of pay:

- over award payments,
- shift penalties and allowances paid in accordance with the relevant clauses of the awards

This means that both the amount of severance payment and the method of calculation, that is, the definition of 'week's pay', is more generous in NSW than elsewhere. This arrangement will cease on 31 December 2014.

Exceptions to the general rule on redundancy pay

Small business employers are excluded from the requirement to pay redundancy (section 121(1)(b) of the FW Act). Small business employers are those with less than 15 employees, which from 1 January 2011 is simply a headcount of employees working for that employer or related business undertakings. If the business is an associated entity of another business, the employees of all the associated entities are counted. The retrenched employee is also counted. Casuals who are regular and work on a systematic basis are counted. Irregular casuals are not included in the headcount.

As with the exclusion for notice of termination, the following employees are not entitled to any redundancy payments:

1. casual employees
2. an employee dismissed for serious misconduct
3. an employee under a training arrangement, or
4. an employee under a fixed term contract whose contract expires with the effluxion of time.

Employees with less than 12 months continuous service are not entitled to redundancy/severance pay.(section 121(1)(a) of the FW Act).
These exceptions apply to employees Australia-wide, including NSW.

Job search entitlement

Sub-clause 12.4 of the LDO Award provides that where the employer has given notice of termination in circumstances of redundancy, the employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. If the employee has been allowed more than one day off as paid leave for job searching, the employee must, upon request, produce proof of attendance at an interview for the extra paid leave.

Reasonable alternative employment

Generally speaking, where an employer finds 'reasonable alternative employment' in a redundancy situation or as a result of transfer of business and where:

- the employee's previous service is recognised by the new employer, or
- the employee rejects an offer of employment on substantially similar terms and conditions,

then such employee may not be entitled to redundancy payments. In this situation, the assistance of Fair Work Australia should be sought – section 22 of the FW Act.

TRANSITIONAL PROVISIONS

The transitional provisions in the LDO Award are limited to redundancy payments for NSW employees, previously covered by the NSW Transport Industry - Redundancy (State) Award.

PROCESS CLAUSES

Access to Award and National Employment Standards

The employer must make available copies of the modern award and the NES, either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible to employees. (Clause 5)

Award flexibility

The award flexibility clause is a standard clause developed by FWA for every modern award. Agreements made under this clause are widely referred to as **Individual Flexibility Arrangements or IFA's** – in order to avoid confusion with other kinds of "Agreements" such as Enterprise Agreements, or Workplace Agreements. (Clause 7)

The terms of the award that an employer and its individual employee may agree to modify are those clauses concerning:

- arrangements for when work is performed
- overtime rates
- penalty rates
- allowances, and
- leave loading.

Any modified arrangements on the above matters must result in the employee being better off overall than the employee would have been if no individual flexibility arrangement had been agreed to.

The IFA must:

- be in writing,
- name the parties to the agreement, and
- be signed by the employer and the individual employee, and
- be signed by the employee's parent or guardian, if the employee is under 18 years of age,

The employer must give the employee a copy of the IFA and keep the IFA as a time and wages record.

Termination of IFA

The IFA may be terminated:

- by the employer or the individual employee giving four weeks', in writing, to the other party. The IFA ceases to operate at the end of the notice period, or

- at any time, by written agreement between the employer and the individual employee.

Consultation regarding major workplace change

Every modern award has a standard clause setting out obligations on the employer to consult with its employees where the employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on such employees. Significant effects include termination of employment, major changes in composition, operation and size of the employer's workforce or skills required the transfer of employees to other work locations and the restructuring of jobs. The full list of major changes is at sub-clause 8.1(b).

The consultation clause requires specific discussions and written notifications to employees and their representatives (if any) at certain points in time when definite decisions have been made by management, with the aim of averting or mitigating adverse affects that may flow from major change. The specific set of obligations on employers for discussion and notification are set out in sub-clause 8.2.

Dispute resolution procedure

Every modern award contains a standard clause concerning the procedure to be followed where a dispute arises about a matter under the award or under the NES (clause 9).

The dispute resolution procedure involves a staged progression for disputes to be resolved, first by discussion between the employees concerned and the relevant supervisor, then if necessary with senior management, then if necessary and as a last resort, by one of the parties referring the matter to be dealt with by Fair Work Australia (utilising as necessary by consent of the parties) mediation, conciliation and consent arbitration. At any point in the process the employer and the employees may appoint respective representatives.

The clause provides that while the dispute resolution procedure is being conducted, work must continue, subject to health and safety provisions.

APPENDICES

Appendix A - Table of the old federal and state awards subsumed in whole or in part by the LDO Award.

Appendix B - Table of employee Classification Descriptors under Schedules A of the LDO Award.

Appendix C - Table of employee Classification Descriptors under Schedules B and C of the RTD Award

Appendix D - LDO Award Wages and Allowances Ready Reckoner

Appendix E - National Employment Standards

APPENDIX A - LIST OF OLD FEDERAL AND STATE AWARDS SUBSUMED IN WHOLE OR IN PART BY LDO AWARD

Broken Hill Commerce and Industry Agreement Consent Award 2001 (NSW Napsa)
Liquefied Petroleum Gas Industry Award 1998
Transport Industry (State) Award (NSW Napsa)
Transport Workers (Long Distance Drivers) Award 2000
Transport Workers' (Superannuation) Consolidated Award 2004
Transport Workers Intrastate Long Distance Transport (Western Australia) Award 2001

APPENDIX B - CLASSIFICATION STRUCTURE (SCHEDULE A) OF THE LDO AWARD

Grade	Description
1	Driver of two axle rigid vehicle up to 13.9 tonnes GVM. Capacity up to eight tonnes.
2	Driver of three axle rigid vehicle over 13.9 tonnes GVM. Capacity over eight and up to 12 tonnes.
3	Driver of four axle rigid vehicle over 13.9 tonnes GVM. Driver of rigid vehicle and heavy trailer combination with GCM of 22.4 tonnes or less. Driver of articulated vehicle with GCM of 22.4 tonnes or less. Capacity over 12 tonnes.
4	Driver of rigid vehicle and heavy trailer combination with GCM over 22.4 tonnes but not more than 42.5 tonnes. Driver of articulated vehicle with GCM over 22.4 tonnes. Driver of low loader (as defined) with GCM of 43 tonnes or less. Capacity up to 24 tonnes.
5	Driver of double articulated vehicle with GCM 53.4 tonnes or less (includes B doubles). Driver of low loader (as defined) with GCM over 43 tonnes.
6	Driver of rigid vehicle and trailer(s) or double articulated vehicle with GCM over 53.4 tonnes (includes B-doubles). Multi-axle trailing equipment up to 70 tonnes capacity.
7	Driver of road train or triple articulated vehicle exceeding 94 tonnes GCM.
8	Multi-axle trailing equipment.

Please note that these gradings are different to those contained in the RDT Award, specifically Grade 4 in this Award is equivalent to Grade 6 in the RDT Award.

APPENDIX C - TABLE OF EMPLOYEE CLASSIFICATION DESCRIPTORS UNDER SCHEDULES B AND C OF THE RTD AWARD

Classification Transport worker grade	Schedule C classification descriptors and Distribution facility employee equivalent as per Schedule B
Grade 1	general hand; greaser and cleaner; yardperson; vehicle washer and detailer; motor driver's assistant/furniture remover's assistant; loader (other than freight forwarder); courier (foot or bicycle):
Grade 2	loader (freight forwarder); tow motor driver; Driver of:- rigid vehicle (incl motor cycle) not exceeding 4.5 tonnes GVM:
Grade 3	Driver of :- • two-axle rigid vehicle on any other rigid vehicle exceeding 4.5 tonnes but not exceeding 13.9 tonnes GVM unless by special permit or registration such vehicle may be up to 15 tonnes GVM; • fork-lift up to and incl 5 tonnes lifting capacity; • concrete mixer up to and incl 2 cubic metre bowl: Distribution facility employee level 1 (see Item B.1.1. of Sch B for full skills/ duties descriptors) ⇨ *operating small company delivery vehicle is included in the list of optional competencies.*
Grade 4	*crane chaser/dogger; radio operator; weighbridge attendant;* *Driver of :-* • *three-axle vehicle exceeding 13.9 tonnes GVM;* • *oil tractor;* • *fork-lift with lifting capacity in excess of 5 tonnes and up to and incl 10 tonnes;* • *straddle truck;* • *concrete mixer over 2 cubic metre bowl up to 4.9 metre bowl:* *Distribution facility employee level 2 (see Item B.2.1. of Sch B for full skills/ duties descriptors)* ⇨ *operating 3 to 6 tonne truck included is included in the list of optional competencies.*
Grade 5	Driver of :- • rigid vehicle with 4 or more axles and GVM exceeding 13.9 tonnes; • rigid vehicle and heavy trailer combination with 3 axles and GCM of 22.4 tonnes or less; • articulated vehicle with 3 axles and GCM of 22.4 tonnes or less; • fork-lift with lifting capacity in excess of 10 tonnes and up to 34 tonnes; • concrete mixer with 5 cubic metre bowl and over:
Grade 6	transport rigger; Driver of :- • rigid vehicle and heavy trailer combination with more than 3 axles and GCM greater than 22.4 tonnes; • mobile crane lifting up to and incl 25 tonnes; • articulated vehicle with more than 3 axles and GCM greater than 22.4 tonnes; • low loader with GCM up to and incl 43 tonnes; • fork-lift with lifting capacity over 34 tonnes:
Grade 7	Driver of:- • double articulated vehicle up to and incl 53.4 tonnes GCM including B Doubles; • low loader with GCM exceeding 43 tonnes: Distribution facility employee level 3 (see Item B.3.1. of Sch B for full skills/ duties descriptors) ⇨ *operating truck with capacity in excess of 6 tonnes up to and incl 13.9 tonnes GMV is included in the list of optional competencies.*

APPENDIX C - TABLE OF EMPLOYEE CLASSIFICATION DESCRIPTORS UNDER SCHEDULES B AND C OF THE RTD AWARD CONTINUED...

Classification Transport worker grade	Schedule C classification descriptors and Distribution facility employee equivalent as per Schedule B
Grade 8	Driver of:- • mobile crane with lifting capacity in excess of 25 tonnes and up to 50 tonnes; • rigid vehicle and trailer(s) or double articulated vehicle exceeding 53.4 tonnes GCM incl B Doubles; • multi-axle platform trailing equipment with carrying capacity up to and incl 70 tonnes capacity:
Grade 9	Aerodrome attendant Driver of:- • mobile crane with lifting capacity in excess of 50 tonnes • gantry crane • rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonnes GCM: *Distribution facility employee level 4 (see Item B.3.1. of Sch B for full skills/duties descriptors).*
Grade 10	Driver of multi-axle platform trailing equipment with carrying capacity in excess of 70 tonnes and up to and incl 100 tonnes..

Appendix D - LDO Award Wages and Allowances Ready Reckoner -

This 'ready reckoner' provides the actual rates and allowances for the LDO Award with effect from 1 July 2010. It is expected that these rates will be increased by Fair Work Australia from July 2011.

Classification Transport worker grade		
Grade 1	(Range of capacity up to 8 tonne) Driver of two axle rigid vehicle up to 13.9 tonne GVM	$626.60
Grade 2	(Range of capacity over 8 tonne not exceeding 12 tonne) Driver of 3 axle rigid vehicle exceeding 13.9 tonne GVM	$638.10
Grade 3	(Range of capacity exceeding 12 tonne) Driver of 4 axle rigid vehicle exceeding 13.9 tonne GVM Driver of rigid vehicle and heavy trailer combinations with a GCM of 22.4 tonne or less Driver of articulated vehicle with a GCM of 22.4 tonne or less	$645.70
Grade 4	(Range of capacity up to 24 tonne) Driver of rigid vehicle and heavy combination with a GCM greater than 22.4 tonne but not exceeding 42.5 tonne Driver of articulated vehicle with a GCM greater than 22.4 tonne Driver of a low loader (as defined) with a GCM up to and including 43 tonne	$653.40
Grade 5	Driver of double articulated vehicle up to and including 53.4 tonne GCM (includes B-Doubles) Driver of a low loader (as defined) with a GCM exceeding 43 tonne	$663.10
Grade 6	Driver of a rigid vehicle and trailer(s) or double articulated vehicle with GCM over 53.4 tonne (including B-Doubles) Multi-axle trailing equipment up to 70 tonne capacity	$682.10
Grade 7	Driver of road train or triple articulated vehicle exceeding 94 tonne GCM	$693.60
Grade 8	Multi-axle trailing equipment	$710.70

WAGE RATES

An employee engaged in a long distance operation shall be paid for all driving time:

- either by an **hourly rate** or **cents per kilometre (CPK)** rate
- the employer can nominate the method of payment at the commencement of employment
- the method of payment can be changed with four weeks notice
- where no method is nominated the cents per kilometer rate shall apply

A. Cents per kilometre – Distances are contained in sub-clause 13.4 (b).

Where CPK is the nominated payment method, an employee is paid

- An amount calculated by multiplying the number of kilometers travelled by the wage rate per kilometer as detailed in the schedule of agreed distances
- the rate or allowance for any loading and unloading duties
- the living away from home allowance, if relevant

B. Hourly rate – Designated driving hours are contained in sub-clause 13.5 (c)

Where the hourly rate is the nominated payment method, an employee is paid an amount calculated by multiplying the hourly rate by:-

- the designated number of hours for each trip in sub-clause 13.5(c) or
- if the trip is not designated in in sub-clause 13.5(c), then payment must be for actual hours worked or
- the hours listed for each trip in an Accredited Fatigue Management Plan (FMP)\

In addition a long distance driver must be paid:

- the rate or allowances for any loading or unloading duties
- the living away from home allowance, if relevant

The minimum wage rates from the first pay period on or after 1 July 2010 shall be:-

Classification Transport worker grade	Hourly	CPK
Grade 1	$22.44	32.58
Grade 2	$24.89	33.18
Grade 3	$25.18	33.58
Grade 4	$25.48	33.98
Grade 5	$25.86	34.48
Grade 6	$26.60	35.47
Grade 7	$27.05	36.07
Grade 8	$27.72	36.96

INDUSTRY DISABILITY ALLOWANCE

The rates prescribed above by this Award are inclusive of a 30% loading on the ordinary rate, which includes an industry disability allowance to compensate for the following:

- shift work and related conditions
- necessity to work during weekends
- lack of normal depot facilities, e.g. lunch room, wash rooms, toilets, tea making facilities
- necessity to eat at roadside fast food outlets
- absence of normal resting facilities and normal bed at night
- additional hazards arising from driving long distances at night and alone
- handling of dirty material
- handling money
- extra responsibility associated with arranging loads, purchasing spare parts, tyres etc
- irregular starting and finishing times
- work in rain

LOADING & UNLOADING

Where an employee is engaged in loading and unloading duties, that employee shall be paid for such duties at an hourly rate calculated by dividing the weekly award rate prescribed by Clause 13 by 40 and multiplying by 1.3 (Industry Disability Allowance), provided that a minimum payment of one hour loading and one hour unloading per trip shall be made where an employee performs loading and unloading duties.

LIVING AWAY FROM HOME ALLOWANCE

An employee engaged in ordinary travelling on duty or on work on which the employee is unable to return home at night shall be paid such personal expenses as are reasonably incurred in travelling, which shall not be less that the sum **$33.23** for each actual night spent away from home. Provided that where the employer provides suitable accommodation away from the vehicle the employee shall not be entitled to the said allowance.

OTHER ALLOWANCES

- Any employee required to drive a motor vehicle which is in excess of the limit in length prescribed by or under any State or Commonwealth Act shall receive an additional **$2.88** per day or part thereof
- Any employee required to drive a motor vehicle which is in excess of 3.5 metres in width or transport a load in excess of that width shall receive an additional **$2.88** per day or part thereof
- **local driver allowance** (cl 20.4) **$8.10**, per occasion (ie transferring between LD and local awards)
- any employee who is a **recognised livestock carter**, carting livestock as defined - **$15.81** per week
- any employee who is a **recognised furniture carter**, carting furniture as defined - **$15.81** per week
- **a casual employee** shall receive an allowance of 15% when driving on the CPK or hourly rates and 25% when loading/unloading. A casual employee MUST receive a minimum payment of 500 ks or eight hours as per the method of payment.
- **Any work diary must be paid for by the employer, either directly or via reimbursement.**

DANGEROUS GOODS ALLOWANCE

- A driver 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 **$14.85** per day. Bulk Dangerous Goods are those goods defined as such in the Australian Dangerous Goods Code as amended from time to time
- A driver engaged in the transport of packaged dangerous goods which require placarding by public road shall receive an allowance of **$6.20** 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

APPENDIX E - NATIONAL EMPLOYMENT STANDARDS NOT COVERED ELSEWHERE IN THIS HANDBOOK

Maximum Weekly Hours and Reasonable Overtime

The NES stipulates that an employer must not require to work, or request an employee to work:

- More than 38 hours per week for a full time employee; or
- Employees that are not full time, their ordinary hours of work or 38 hours per week, whichever is lesser;

Plus

- A reasonable number of additional hours.

An employee may refuse to work additional hours (overtime) if they are unreasonable. The NES provides that the following be taken into account in determining whether additional hours are reasonable:

- any risk to the employee's health and safety from working the additional hours;
- the employee's personal circumstances, including family circumstances and responsibilities;
- the needs of the workplace or enterprise where the employee is employed;
- whether the employee is entitled to receive overtime payments, penalty rates or other compensation from working the additional hours;
- notice by the employer of a request or requirement to work overtime;
- notice by the employee of an intention to refuse the additional hours;
- the usual patterns of work in the industry, or part of the industry, in which the employee works;
- the nature of the employee's role and the employee's level of responsibility;
- whether the additional hours are in accordance with an averaging arrangement; and
- any other relevant matter.

Requests for Flexible Working Hours

All employees, including 'eligible casual employees' that have completed 12 months continuous service have the right to request a change in working arrangements to assist the employee to care for a child under school age or a child under 18 with a disability. An eligible casual employee is one who has

worked on a regular and systematic basis for more than 12 months and has an expectation of continuing to work on that basis.

In order to access the entitlement the employee must provide the request in writing outlining the changes sought to working arrangements. The employer must consider the request and respond within 21 days.

An employer may only refuse the request on reasonable business grounds. Though reasonable business grounds are not defined in the NES, it is taken that reasonable business grounds might include:

- Effect on the workplace including efficiency, financial, productivity and customer service
- Inability to organise work amongst other staff
- Practicality or inability to recruit replacement staff

Parental and Related Leave

Eligible employees may take up to 12 months of **unpaid parental leave** in relation to the birth of a child or adoption of a child below school age (16). The entitlement is available to the primary care provider of the child, which in most cases is the mother, however, the right is available to fathers and/or a combination of both parents over a separate period of time (e.g. six months each). Further, the employee may request a further 12 months additional leave, which the employer may only refuse on reasonable business grounds.

An employee is entitled up to two days unpaid pre-adoption leave to attend any interviews or examinations required in order to obtain approval for the employee's adoption of a child.

Both parents can take up to three weeks concurrent unpaid parental leave (both on parental leave at the same time) thereby reducing their overall entitlement by that three weeks. This leave must be taken immediately after the birth or placement of a child or, by agreement with the employer, at any time during an extended period starting before the birth and ending no later than six weeks after the birth or placement.

The NES entitlement is available to permanent employees after 12 months continuous service and for casual employees who work on a regular and systematic basis for more than 12 months.

Unpaid parental leave must be taken in a single continuous period and must start:

- for a pregnant female employee no earlier than six weeks before the expected date of birth of the child (unless the employee is eligible for special maternity leave) and no later than the date of the child's birth;
- for an employee other than the pregnant female employee, on the date of the child's birth; and
- for adoption leave, on the day of the child's placement.

Where the employee's spouse or de facto partner has responsibility for the care

of the child (and is not also an employee) the employee's leave may start anytime within 12 months after the date of birth or day of placement of the child.

Unless a medical certificate is provided an employer may require a pregnant employee to start unpaid parental leave up to six weeks before the expected date of birth of the employee's child if the employer considers (based on medical evidence) that there is a risk to the employee in working in their present circumstances.

Alternatively, if an employee provides evidence that she is fit for work, but it would be inadvisable for her to continue in her present position because of illness or risks arising out of a pregnancy, or hazards connected with her work, the employee must be transferred for that period to an appropriate safe job with no other change to her terms and conditions of employment. The employer must pay the employee at the full rate of pay for the position she was in before the transfer, for the hours that she works in the risk period. If there is no appropriate safe job available, the employee is entitled to take paid 'no safe job' leave for the risk period.

An employee is required to give the employer at least ten weeks' written notice before starting parental leave or, if that is not practicable, to provide the notice as soon as practicable (which may be a time after the leave has started). Employers may require evidence of the expected date of birth or the day or expected day of placement for adoption.

An employee may request an additional period of unpaid parental leave of up to 12 months. This must be made in writing at least ten weeks before the expiry of the initial 12 months and must be continuous with the employee's unpaid parental leave. The employer must respond in writing to the written request as soon as practicable, and not later than 21 days after the request is made. A request may only be refused on reasonable business grounds. The employer must give reasons for refusal. Reasonable business grounds may include, for example:

- inability to organise work among existing staff; or
- inability to recruit a replacement employee.

Unpaid special maternity leave may be taken if the employee is not fit to work because of a pregnancy related illness, or because the pregnancy ends otherwise than by the birth of a living child within 28 weeks of the expected date of birth.

During parental leave the employer must consult with the employee about decisions that will have a significant effect on the status, pay or location of an employee's pre-parental leave position, the employer must take all reasonable steps to inform the employee of that decision and give the employee an opportunity to discuss the effect of the decision on his or her position.

When a period of unpaid parental leave ends the employee is entitled to return to their pre-parental leave position. If that position no longer exists, the employee is entitled to return to an available position for which the employee is qualified and suited, that is nearest in status and pay to the employee's pre-parental leave position.

ARTIO
Australian Road Transport Industrial Organisation

Australian Government
Fair Work OMBUDSMAN

Staff can be contacted via ARTIO's website which can be found at **www.artio.org.au** <http://**www.artio.org.au**/> or through its Branch network at the following contact points:-

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