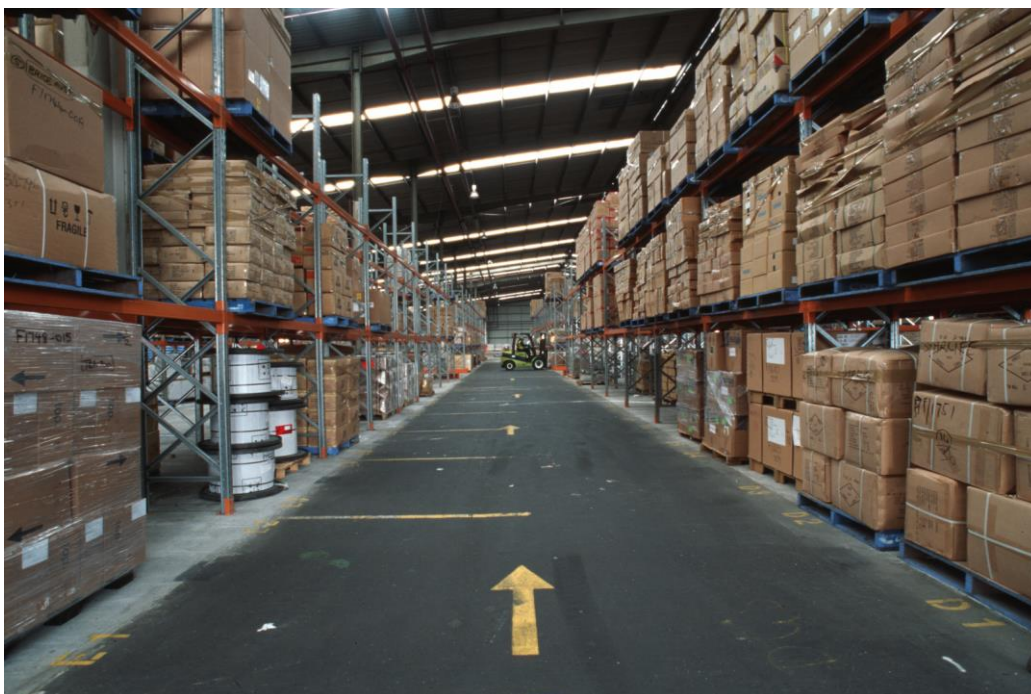


# Modern Award Handbook

## Road Transport and Distribution Award 2010

### “RTD Award”



# MODERN AWARD HANDBOOK

## ROAD TRANSPORT AND DISTRIBUTION AWARD 2010

### (“RTD AWARD”)

#### *Fair Work Ombudsman*

A primary objective of the Fair Work Ombudsman 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](http://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 Fair Work Ombudsman 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 Industry Organisation (ARTIO) website at [www.artio.org.au](http://www.artio.org.au).

This Handbook has been specifically designed to assist in the understanding and application of the **Road Transport and Distribution Award 2010 (RTD Award)** in conjunction with the **National Employment Standards** 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 (Long Distance Operations) Award 2010** (LDO 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 and 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](http://www.artio.org.au) or through its Branch network at the following contact points:-

Victoria:	<a href="mailto:reception@vta.com.au">reception@vta.com.au</a>	T: 0396468590
NSW:	<a href="mailto:hughmc@artionsw.com.au">hughmc@artionsw.com.au</a>	T: 0412880861
Queensland:	<a href="mailto:travis@qta.com.au">travis@qta.com.au</a>	T: 0733944388
WA:	<a href="mailto:accounts@warta.com.au">accounts@warta.com.au</a>	T: 0893553022
Tasmania:	<a href="mailto:ed@tta.org.au">ed@tta.org.au</a>	T: 0409274482

### **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

**FW Act** – Fair Work Act 2009

**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 Agreements

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

**NAPSA** – Notional Agreement Preserving a State Award

**NES** – National Employment Standards

**RDO** – Rostered Day Off

**RTD Award** – Road Transport and Distribution Award 2010

# Table of Contents

Table of Contents .....	5
Background .....	8
Road transport businesses	8
Modern awards .....	10
What are modern awards?	10
Division 2B employers	10
Who is excluded from modern awards?	11
Safety Net Provisions .....	11
Fair Work Act 2009	11
National Employment Standards (sections 59 to 131 of Fair Work Act)	11
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.	13
Key Dates	13
Modern Award Structure	13
Fundamentals of the RTD Award.	14
RTD Award coverage.....	14
Coverage clause	15
RTD Industry	15
RTD Award classifications	15
Award overlap principles	15
Ranking of competing awards	16
Most appropriate environment clause	16
Applicable occupational based modern awards	16
Interaction with Road Transport (Long Distance Operations) Award	17
Other types of employees not covered by the RTD Award	17
Other definitions	18
Hiring and employing staff under RTD Award .....	19
Types of employment	19
Junior employees	20
Letters of engagement	20
Fair Work Information Statement	20
Wage rates .....	21
Full-time, part-time and casual rates	21
Junior employees	23
Payment of wages	23
Superannuation	23
Allowances .....	24
Background to allowances	24
Expense related allowances	24
Direct reimbursement of expenses	25
Disabilities and reward based allowances	25
Higher duties	26
Accident Pay	26
District allowances	26
Hours of Work.....	27

Ordinary hours of work (general transport)	27
Ordinary hours of work (oil distribution)	27
Rostered Days Off (general transport)	27
Where an RDO does not apply (general transport)	28
Rostered Days Off (oil distribution)	28
Where RDO does not apply (oil distribution)	28
Start times	28
Early start times (newspaper, meat, live poultry deliveries, or fish, fruit and vegetable transport)	29
<b>Breaks .....</b>	<b>29</b>
Meal breaks during ordinary hours	29
Rest breaks during overtime	29
Meal allowance entitlements	29
<b>Overtime and Penalty Rates .....</b>	<b>30</b>
Working outside of ordinary hours is covered under the heading of “shiftwork allowances” or loadings, mentioned later in this handbook.	30
Overtime rates	30
10 consecutive hours rest period after overtime	30
Call-back	31
Standing –by (or on-call) rates	31
Transport reimbursement or travelling time payment after finishing overtime	31
Paid time off instead of payment for overtime	31
<b>Penalty Rates .....</b>	<b>31</b>
Weekend rates	31
Public Holidays rates	32
<b>Shiftwork .....</b>	<b>33</b>
Shift hours and shift rosters	33
Afternoon and night shift loadings	34
Casual employees engaged on shift work	34
Shiftwork overtime	34
Shiftwork on weekend or public holiday	34
Shiftwork meal breaks	34
Rate of pay when less than 5 consecutive afternoon or night shifts are worked	34
Rate of pay when shift extends beyond midnight	34
Public holiday shift	35
<b>Public Holidays .....</b>	<b>35</b>
<b>Leave .....</b>	<b>36</b>
Annual leave	36
Personal/carer’s leave	37
Compassionate leave	38
Community service leave	38
Long Service Leave	39
Dispute resolution training leave	40
<b>Termination of employment.....</b>	<b>41</b>
Termination of employment by employer	41
Exceptions to the general rule on notice of termination	41
Job search entitlement	41
Employee resignation	41
<b>Redundancy/severance pay .....</b>	<b>42</b>
Severance Payments in NSW	43
Exceptions to the general rule on redundancy pay	43

Job search entitlement	43
Reasonable alternative employment	44
<b>Transitional provisions</b> .....	<b>45</b>
Basic summary of the transitional wage provisions	45
<b>Process clauses</b> .....	<b>48</b>
Access to Award and National Employment Standards	48
Award flexibility	48
Facilitative flexibility arrangements	48
Consultation regarding major workplace change	49
Dispute resolution procedure	49
<b>Appendices</b> .....	<b>50</b>
Appendix A: List of old Federal and State Awards subsumed in whole or in part by the RTD Award	51
Appendix B: Table of employee Classification Descriptors under Schedules B and C of the RTD Award	53
Appendix C: Transitional Provisions in the RTD Award	54
Appendix D - RTD Award Wages and Allowances Ready Reckoner -	59
Appendix E - National Employment Standards not covered elsewhere in this Handbook	61

# Background

Throughout the greater part of the 20<sup>th</sup> 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<sup>1</sup> 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***

This Handbook will apply to all private sector road transport and distribution businesses employing workers throughout Australia, except for non-incorporated employers in WA.

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 - that is, the industry of **road transport and distribution**, and the industry of private road transport that is engaged in long distance operations.

**The road transport and distribution industry** means:

- i. the transport by road of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock, including where the work performed is ancillary to the principal business, undertaking or industry of the employer;
- ii. the receiving, handling or storing of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise in a distribution facility;

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<sup>1</sup> Second Reading Speech, Workplace Relations Amendment (Transition To Forward With Fairness) Bill 2008



- iii. the storage and distribution of goods, wares, merchandise, materials or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock where the storage and distribution activities are carried out in connection with air freight forwarding and customs clearance;
- iv. the wholesale transport and delivery by road of meat from abattoirs, slaughterhouses, and wholesale meat depots;
- v. mobile food vending;
- vi. the cartage and/or distribution, in tankers, of petrol or bulk petroleum products (in the raw or manufactured state) from refineries, terminals or depots of oil companies and/or distributors; the cartage and/or distribution on road vehicles of packaged petroleum products (in the raw or manufactured state) from refineries, terminals or depots of oil companies and/or distributors and the transport and/or distribution of petrol and petroleum products (in the raw or manufactured state) for distributors of oil companies or for contractors or subcontractors to such distributors;
- vii. the road transport of crude oil or gas condensate;
- viii. the transport on public roads of milk and cream in bulk, and the transport, vending and distribution of milk, cream, butter, cheese and their derivatives (including fruit juices, yoghurt and custard); and/or
- ix. the cartage by road of quarried materials.

The RTD Award replaces 54 separate awards under the old system. Because the (old) *Transport Workers Award 1998* was regarded as having the most influence and penetration for the road transport industry generally, that award was used as the primary template for creating the RTD Award.

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

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](http://www.artio.org.au) or through its Branch network at the following locations:

Victoria:	<a href="mailto:reception@vta.com.au">reception@vta.com.au</a>	T: 0396468590
NSW:	<a href="mailto:hughmc@artionsw.com.au">hughmc@artionsw.com.au</a>	T: 0412880861
Queensland:	<a href="mailto:travis.degen@qta.com.au">travis.degen@qta.com.au</a>	T: 0733944388
WA:	<a href="mailto:accounts@warta.com.au">accounts@warta.com.au</a>	T: 0893553022
Tasmania:	<a href="mailto:ed@tta.org.au">ed@tta.org.au</a>	T: 0409274482

Modern Awards all follow a similar pattern, in a structural sense. In addition, all modern awards contain a number of clauses with standard wording.

There are 122 modern awards that cover all of Australia for the private sector. Most, but not all of these 122 modern awards have their coverage framed by reference to the **industry of the employer**. This is a major change from the past when awards were largely designed by reference to the occupation, trade or profession of the employee.

The RTD Award is an award covering the industry of the employer, and this is a significant advantage in ensuring correct award coverage.

### ***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. Amount is indexed annually

## **Safety Net Provisions**

### ***Fair Work Act 2009***

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 – RTD Award takes effect, except for the pay rates in that award.
- 1 July 2010 – Pay rates in RTD Award take effect, subject to transitional provisions. Note that 1 July 2010 coincided with the first annual safety net review of wages by FWA under the new system.

### ***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 RTD 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 RTD Award.***

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

*“standard rate means the minimum wage for a **Transport Worker Grade 3** in clause 15 – (Classifications and minimum wage rates clause)”*

The relevant part of **clause 15** currently reads in part -

The classifications under this award are set out in Schedule B and Schedule C.

The minimum wage rates of pay for a full-time adult employee are set out below:

Transport worker grade	Minimum weekly rate
	\$
1	603.60
2	618.90
<b>3</b>	<b>Standard rate 626.60</b>
4	638.10
5	645.70
6	653.40
7	663.10
8	682.10
9	693.60
10	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.**

## **RTD 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 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 RTD Award, as well as the obvious clause headed “**coverage**” (clause 4), employers need to refer to a number of other clauses directly or indirectly related to the coverage clause, being

- the relevant terms in the definitions and interpretations clause 3;
- the classifications clause 15, and
- Schedules B and C (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 RTD Award.

- the **coverage** clause 4
- the relevant terms in the **definitions and interpretations** clause 3,
- the **classifications** clause 15, and
- **Schedules B and C** (the classification descriptors).

## ***Coverage clause***

Sub-clause 4.1 of the RTD Award states:

*“This industry award covers employers throughout Australia in the road transport and distribution industry and their employees in the classifications listed in clause 15 ... to the exclusion of any other modern award.”*

## ***RTD Industry***

The meaning of the “*road transport and distribution industry*” is expanded upon in the definitions (clause 3) to constitute any of nine criteria (or 11, when including related labour hire and group training businesses as per sub-clauses 4.6 and 4.7).

A further significant definition concerns the meaning of a “distribution facility” which is a necessary consequence of the integration of the distribution facility classification structure into the RTD Award.

Therefore, there is a wide and comprehensive definition referable to the business operations of the employer.

## ***RTD Award classifications***

The business of the employer however, is not enough by itself to establish the RTD 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 and distribution companies.

Clause 15, which covers *Transport Worker Grades 1 to 10*, draws upon the expanded classification descriptors set out in Schedules B (for Distribution Facility Employees) and Schedule C of the award. The full classification descriptors according to the respective classification Grade is at **Appendix B** of this Handbook.

## ***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.

## ***Ranking of competing awards***

Sub clause 4.2 of the RTD Award provides:-

*“This award does not cover employers and employees covered by the following awards:*

- *Mining Industry Award 2010;*
- *Road Transport (Long Distance Operations) Award 2010 whilst undertaking long distance operations;*
- *Transport (Cash in Transit) Award 2010; and*
- *Waste Management Award 2010.*

In other words, the above awards will prevail over the RTD Award if there is an award overlap situation. An examination of the respective coverage clauses of the aforementioned awards [not covered in this Handbook] would be necessary to determine with certainty the applicable modern award. Broadly speaking, the RTD Award will apply to most general transport businesses.

## ***Most appropriate environment clause***

Sub clause 4.8 of the RTD Award provides:-

*“Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.* (emphasis added)

*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 in most circumstances.

For transport and distribution 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 (Long Distance Operations) Award***

Note that sub-clause 4.2 provides that the RTD Award does not cover employers and employees covered by the LDO Award whilst undertaking long distance operations. In other words, in circumstances where award coverage can be grounded notionally under both the RTD Award and the LDO Award, the latter award prevails.

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 apply.

The key difference between the two awards is that employees under the RTD Award are paid according to hours worked, whereas employees under the LDO Award can be paid on a trip rate determined either according to notional hours worked or according to the distances travelled (called a cents per kilometre or “cpk” rate).

Given the nature of the industry, there can be some overlap between these 2 awards. In fact, sub-clause 14(c)(i) of the LDO 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 5 of the LDO Award. These trip payments which can either be “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.

Another important difference between the two awards is that a long distance driver must also be paid for any ‘loading/unloading’ work at the mandated rates specified in sub-clause 13.6 of the LDO Award.

## ***Other types of employees not covered by the RTD Award***

The coverage clause (at sub clauses 4.3, 4.4 and 4.5) also identifies those categories of employees not covered by the RTD Award.

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

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 of the RDT Award:

<i>aerodrome attendant</i>	<i>interstate operation</i>
<i>ancillary vehicles and/or equipment</i>	<i>livestock loader</i>
<i>articulated vehicle</i>	<i>long distance operation</i>
<i>courier</i>	<i>low loader</i>
<i>crane chaser/dogger</i>	<i>motor drivers assistant</i>
<i>crane offsider</i>	<i>offensive material</i>
<i>dirty material</i>	<i>on-hire</i>
<i>double-articulated vehicle</i>	<i>quarried materials</i>
<i>driver-salesperson</i>	<i>radio operator</i>
<i>employee handling money</i>	<i>road-train vehicle</i>
<i>furniture</i>	<i>transport rigger</i>
<i>greaser and cleaner</i>	<i>truck loading crane</i>
<i>gross combination mass</i>	<i>yardperson</i>
<i>gross vehicle mass</i>	

The above definitions (as fully explained in clause 3) are important in understanding the classification descriptors in Schedules B and C of the RTD Award and/or in relation to certain allowances.

# Hiring and employing staff under RTD Award

## *Types of employment*

Clause 12 explains the 3 types of employment - full-time, part-time or casual.

**Full-time** – engaged to work an average of 38 ordinary hours per week (underlining added).

**Part-time** - engaged to work less than 38 ordinary hours per week. Before commencing part-time employment, the employee and employer must agree upon:

- the hours to be worked by the employee,
- the days upon which they will be worked, and
- the commencing and finishing times for the work; and
- the classification applying to the work to be performed.

The terms of the agreement may be varied by consent. The terms of the agreement or any variation must be in writing and retained by the employer. A copy of the agreement and any variation must be provided to the employee by the employer.

Part-time employees -

- are paid per hour 1/38th of the weekly rate per clause 15.
- must receive a minimum payment of 4 hours for each day engaged.
- are entitled to all award benefits on pro rata basis of full-time employees, and
- are paid at appropriate overtime rates for all time worked in excess of the agreed hours.

**Casual** - engaged as such and paid by the hour – the employer must, wherever practicable, notify a casual employee if their services are not required the next working day.

- While working ordinary hours, casual employees must be paid on an hourly basis 1/38th of the minimum weekly rate for their classification plus a loading of 25%. This is calculated by dividing the weekly rate by 38 and then multiplying that sum by 1.25 to give a casual hourly rate.
- In addition to **normal overtime rates** (time and a half or double time - or 150% or 200% respectively) a casual working overtime or outside the spread of hours is only entitled to a 10% loading (instead of 25%) on the relevant minimum classification rate (sub-clause 12.5(d)). The 10% loading is added to the applicable overtime rate.
- A minimum payment of 4 hours is to be paid.
- Casual loadings derive from the principle of compensating such employees for other conditions which full-time and part-time employees receive.
- A regular casual can, after 12 months employment with the employer, elect to move to full-time or part-time, but must give advance notice of his/her election of such move. The employer cannot unreasonably refuse, after taking account of a number of considerations set out in sub-clause 12.6 (h), including that the work will continue to be required to be performed.

*Note: the employer must advise the casual employee of their right to elect to convert to full-time or part-time employment within 4 weeks of their 12 month anniversary date.*

## ***Junior employees***

See under Wage rates. Juniors can be engaged in any of the employment categories listed above.

## ***Letters of engagement***

While the RTD Award requires all employees to be informed of the terms of their engagement (sub-clause 12.2), it is recommended that such employees be informed in writing. Template letters of engagement, covering full-time, part-time and casual employment are contained on the FWO website (<http://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](http://www.fairwork.gov.au/FWISdocs/Fair-Work-Information-Statement.pdf)

# Wage rates

Clause 15 sets out the minimum wage rates of pay for full-time adult employees. The hourly rates has been added in this Handbook.

## *Full-time, part-time and casual rates*

Classification Transport worker grade	Wage rate per week* \$	Wage Rate per hour for full-time and part time *(weekly rate divided by 38) \$	Wage Rate per hour for casuals* (incorporating 25% loading)	Wage Rate per hour for oil distribution full- time and part time* (weekly rate divided by 35)
Grade 1	603.60	15.88	19.85	17.25
Grade 2	618.90	16.29	20.36	17.68
Grade 3	626.60	16.49	20.61	17.90
Grade 4	638.10	16.79	20.99	18.23
Grade 5	645.70	16.99	21.24	18.45
Grade 6	653.40	17.19	21.49	18.67
Grade 7	663.10	17.45	21.81	18.95
Grade 8	682.10	17.95	22.44	19.49
Grade 9	693.60	18.25	22.81	19.82
Grade 10	710.70	18.70	23.38	20.31

**\*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 above rates are increased by a range of circumstances other than overtime. This includes –

- A special wage loading for employees who start work early in certain circumstances for newspaper, meat, or live poultry deliveries, or drivers employed at a fish, fruit or vegetable store, where the weekly wage of such class of employee is increased by 30%. (sub-clause 22.4(d))
- overtime rates for working outside or beyond ordinary hours of work – discussed in more detail under “Overtime”;
- loadings or premium rates applying to weekend work or work on a public holiday – discussed in more detail under “Penalty rates”;
- working afternoon or night shift – discussed in more detail under “Shiftwork”.



## ***Junior employees***

Under the RTD Award junior employees are those under 20 years of age. Sub-clause 15.3 sets out the junior minimum pay rates –

- under 19 → 70% of relevant adult rate
- 19 and under 20 → 80% of relevant adult rate
- 20+ is full adult rate

Note also that where a junior aged 18 or more is required to drive a motor vehicle and is in charge of that vehicle, the employee must be paid the full adult rate.

## ***Payment of wages***

All earnings, including overtime, must be paid in the employer's time on a day fixed by the employer, but not later than Thursday of each week (clause 20).

Any employee leaving must be paid all monies due at the time of resignation or termination.

## ***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 superannuation fund. If an employee does not nominate a fund then one of the following funds must be used:

- TWUSUPER
- OAMPS
- Tasplan
- Sunsuper
- Austsafe Super
- 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 (clause 21).

**Appendix D contains a 'ready reckoner' on commonly sought information on wages and allowances under the RTD Award.**

# 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.) These are called “disability allowances”. 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.

Allowances are generally increased by Fair Work Australia around July each year.

## ***Expense related allowances***

*Please note: the allowances provided below apply from the first pay period on or after 1 July 2010 and are subject to the annual review by Fair Work Australia.*

**Travelling allowance** – where unable to return home at night - \$30.33 per day (sub-clause 16.1(f)(i)).

Note sub-clause 16.1(f) (ii) - An employee prevented from returning with the employee's turn-out to the depot, yard or garage from which the employee started must be paid

- any travelling expenses required to be incurred, and
- as if for time worked for the time the employee reasonably takes to get home beyond the time it would ordinarily have taken to get home from the depot, yard or garage.

**Meal allowance** (sub-clause 26.3)

- An employee required to work overtime for two continuous hours or more must either be supplied with a meal by the employer or paid the amount specified for a meal allowance for each meal required to be taken.
- An employee required to commence work two hours or more prior to the normal starting time must be paid the amount specified for a meal allowance.



- The meal allowance amount specified is \$13.14 (sub-clause 16.3(e))

### **Transport allowance** - when finishing overtime (sub-clause 27.6)

When an employee, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer must reimburse the employee for the cost of obtaining transport home, or alternatively provide the employee with transport to the employee's home, or pay the employee the current wage for the time reasonably occupied in getting home

### ***Direct reimbursement of expenses***

An employer must reimburse the costs outlaid by an employee in certain circumstances concerning –

- Dangerous goods license - where a weekly employee is required to possess a license to operate a vehicle carrying dangerous goods, then he/she is entitled to be reimbursed for the training and medical costs related to obtaining that license(sub-clause 16.1(d)(iii).
- First aid training course costs (sub-clause 16.1(e)).
- Cost of Work Diary (sub-clause 16.3(a)).
- Cost of medical checks (sub-clause 16.3(d))
- Articles of clothing – uniforms, protective clothing (sub-clause 16.3(b)).
- Housing (sub-clause 16.3(c))

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 rental, the employer must pay the employee an allowance of \$2.60 less than the amount of rental charged by the employer for the accommodation. This would mean that the net rental cost would be \$2.60 per rental period.

### ***Disabilities and reward based allowances***

(skills, special responsibilities, disabilities per sub-clauses 16.1(a) to (e))

- leading hand (percentage of standard rate per **week** according to number of employees). Note that "leading loader" is **not** a leading hand.
- driving vehicle (0.46% of the standard rate per **day**)
  - of excess length
  - with truck loading crane
  - with side-lifter crane
  - with excess width
  - with load of excess width
- furniture or livestock carting (2.59% of the standard rate per **week**)
- sanitary vehicle (2.92% of the standard rate per **week**)

- collecting garbage (2.39% of the standard rate per **week**)
- driver-salesperson (2.19% of the standard rate per **week**)
- carting, loading or unloading carbon black – unless sealed (0.28% of the standard rate per **day**)
- carting, loading or unloading offensive material (0.36% of the standard rate per day).
- carting, loading or unloading dirty material (0.06% of the standard rate per hour)
- carting tar – unless in sealed containers (0.45% of the standard rate per **week**)
- handling coffins containing human remains (0.38% of the standard rate per **coffin**)
- employee handling money (percentage of the standard rate per **week** according to the amount handled)
- transport of bulk dangerous goods or explosives (2.37% of the standard rate per **day**)
- transport of packaged dangerous goods requiring placarding (0.99% of the standard rate per **day**)
- first aid allowance (1.6% of the standard rate per **week**)

It can be seen that the above allowances contain a mix of weekly, daily, hourly or by incidence entitlements.

### ***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 19.

### ***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 18.

Accident pay is limited to the amount which exceeds the employee's entitlement to accident pay, if any, under any other instrument.

In practice, employers 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. the rate that applied prior to 1 January 2010) such allowances are being phased out over 5 years so that they cease to operate on 31 December 2014 (clause 17). This is because modern awards cannot (over time) provide for State based differences.

# ***Hours of Work***

(clauses 22 to 26)

## ***Ordinary hours of work (general transport)***

Ordinary hours of work are an average of 38 per week, worked on one of the following bases -

- 38 hours within work cycle not exceeding 7 consecutive days; or
- 76 hours within work cycle not exceeding 14 consecutive days; or
- 114 hours within work cycle not exceeding 21 consecutive days; or
- 152 hours within work cycle not exceeding 28 consecutive days (sub-clause 22.1)

The ordinary hours of work must not exceed 8 hours per day (where accrued RDO arrangements are in place) or 7 hours 36 mins (where no RDO arrangements apply) and must be worked continuously (except for meal breaks) between the hours of 0530 to 1830, Monday to Friday (sub-clauses 22.2 and 3). *Note that reasonable overtime hours are discussed under the heading “Overtime”.*

This is a 13 hour window (or spread of hours) however, numerous variations and alternative arrangements are prescribed in the RTD Award, given the nature of the industry.

Further, under sub-clause 22.3 the spread of ordinary hours (0530 to 1830) may be altered by one hour at each end, by agreement between the employer and the majority of employees concerned or by agreement between the employer and an individual employee (by flexibility agreement subject to certain safeguards – see clauses 7 and 8).

Ordinary hours of work may include Saturday and Sunday subject to flexibility agreement as described above. Note that if ordinary hours are worked on those days (or on either day) then the following ‘premium’ will be payable under the “*penalty rates*” sub-clause 28.1 as follows:

Saturday (0001 to 2400) – 150%

Sunday (0001 to 2400) – 200%

*Please note that transitional provisions could apply to the above penalty rates.*

## ***Ordinary hours of work (oil distribution)***

Employees engaged in the transport and/or distribution of petroleum products:-

- work a 35 hour week being 5 days per week at 7 hours per day (where no RDO arrangements apply) or 9 days each of 7 hrs 47 mins (where RDO’s apply);
- have a spread of ordinary hours from 0630 to 1730 Monday to Friday (an 11 hour window);
- by majority agreement may include Saturday where rural distribution operations apply. (clause 23)

## ***Rostered Days Off (general transport)***

An employee working an 8 hour day Monday to Friday will accrue 24 minutes per day, or 2 hours per week beyond the standard 38 hours. Over a four weekly cycle this accrued total is equivalent to 480 minutes or 8 hours.

Ordinary hours of work may operate in such a way that an employee working an 8 hour day takes a rostered day off (RDO) in accordance with the roster implementing the 1, 2, 3 or 4 week

work cycle per sub-clause 22.1 as applicable in the yard, depot or garage. An employee's normal RDO may be changed by agreement, or if no agreement, by 48 hours notice of such proposed change given to the employee. RDO's may be accumulated to a maximum of 10 days (sub-clause 22.5(a) and in practice may be paid out in lieu of being taken.

### ***Where an RDO does not apply (general transport)***

Where an employer

- engages 20 employees or less or operates 15 vehicles or less at a particular yard, depot or garage; or
- has entered into arrangements with a client for transport services over each of 5 days Monday to Friday and where such arrangements would be prejudiced by RDO arrangements; or
- has operations of a kind that it is necessary for particular employees to work each of 5 days per week Monday to Friday; or
- has reached written agreement with the majority of its employees,

it may choose to operate on the basis that its employees ordinary hours of work over 5 days Monday to Friday inclusive are not more than 7 hours 36 minutes continuously (except for meal breaks) per day, in which case RDO arrangements do not apply (sub-clause 22.5(b)). An employee working 7 hrs 36 mins per day Monday to Friday will work exactly a 38 hr week.

### ***Rostered Days Off (oil distribution)***

Employees must work to a fortnightly roster comprising 9 days each of 7 hours 47 minutes and 1 RDO.

Where an employee's RDO falls on a public holiday, the employee is entitled, at the discretion of the employer to either –

- 7 hours pay at ordinary overtime rate; or
- 7 hours extra annual leave; or
- a substituted RDO on an alternative week day.

### ***Where RDO does not apply (oil distribution)***

Where an employer

- engages 20 employees or less or operates 15 vehicles or less at a particular yard, depot or garage; or
- has entered into arrangements with a client for transport services over each of 5 days Monday to Friday and where such arrangements would be prejudiced by RDO arrangements; or
- has operations of a kind that it is necessary for particular employees to work each of 5 days per week Monday to Friday;

it may choose to operate on the basis that its employees ordinary hours of work are 7 hours per day over 5 days Monday to Friday inclusive, in which case RDO arrangements do not apply (sub-clause 23.5(b)).

### ***Start times***

A regular starting time for each employee is to be fixed by the employer. The employer must give the employee one week's notice of any change to the employee's regular starting time (clause 25).

### ***Early start times (newspaper, meat, live poultry deliveries, or fish, fruit and vegetable transport)***

Where an employer requires an employee to commence ordinary hours between 0001 and 0600 Monday to Friday, in the case of the sole purpose being newspaper, meat, or live poultry deliveries, or drivers employed at a fish, fruit or vegetable store, the weekly wage of such employee must be increased by 30% for all hours worked (sub-clause 22.4).

*Please note that transitional provisions could apply to the above loading.*

## ***Breaks***

Sub-clause 26.4 provides an overriding direction that an employee must not be required or permitted to work longer than 5½ hours without a break for a meal.

### ***Meal breaks during ordinary hours***

For day workers, meal breaks during ordinary hours of work are unpaid and do not attract meal allowance. An employee must be allowed a regular meal break during ordinary hours of work except where unforeseen extraordinary circumstances arise (sub-clause 26.1).

The meal break must be of regular duration. The duration of a meal break is minimum of 30 mins and maximum of 1 hour.

The meal break must commence at a point no earlier than 3½ hours and no later than 5½ hours after an employee's fixed starting time of the ordinary hours of work.

*If the meal break is not allowed, all time worked after the commencement time of the regular meal break until a break without pay for a meal time is allowed must be paid for at the rate of ordinary time, the payment to be in addition to any payment due in respect of a weekly or casual wage.*

### ***Rest breaks during overtime***

If, after working ordinary hours, an employee is then required to work overtime for 2 hours or more, he/she must be allowed a paid rest break of 20 minutes before that overtime period commences. A further paid rest break of 20 minutes will accrue after each 4 hours of that period of overtime. (sub-clause 26.2) The Paid break in sub-clause 26.2 means paid as if time worked.

### ***Meal allowance entitlements***

The payment of a meal allowance (\$13.14 from 1 July 2010) is triggered in overtime situations. This rate applies from 1 July 2010 and will likely be varied with effect from July 2011.

An employee working overtime for 2 continuous hours or more, or commencing work 2 hours or more prior to normal starting time, must be paid a meal allowance. The exception is where the employer supplies a meal in the overtime period (sub-clause 26.3).

# Overtime and Penalty Rates

In general terms “overtime” concerns the rate of pay for work done beyond or in addition to the ordinary hours of work (see clause 22) on any given day of the ordinary working week (Monday to Friday).

“Penalty rates” concerns the rate of pay for work done on a weekend (Saturday and/or Sunday) or on a public holiday.

Each concept is derived from the premise that an employee is entitled to a premium rate, over and above their normal hourly rate, when required to work extended continuous hours of work, or when required to work on days and/or at times which are outside the ordinary hours of work as defined in the RTD Award.

Working outside of ordinary hours is covered under the heading of “shiftwork allowances” or loadings, mentioned later in this handbook.

## ***Overtime rates***

Any work outside of the ordinary spread of hours or beyond 7.6 hours (or 8 hours if RDO accruing arrangements apply) should be paid at overtime rates. *Note: unlike shift penalties, overtime rates are not to be phased in or out.*

The NES (at section 62 of the FW Act) covers the factors to be taken into account by employers and employees concerning the requirement to work reasonable overtime – See appendix E.

Overtime rates are

- time and a half (i.e. 150% of the hourly rate) for the first 2 hours, and
- double time (i.e. 200% of the hourly rate) thereafter, with such double time to continue until the completion of the overtime work (sub-clause 27.1).

In computing overtime, each day’s work will stand alone (sub-clause 27.2).

## ***10 consecutive hours rest period after overtime***

Sub-clause 27.3 concerns the principle that employees should have at least 10 consecutive hours off duty between work on successive days. The clause contains firstly a direction for arranging overtime in a way that meets the preferred 10 hour break, and secondly imposes two forms of penalties on the employer (and conversely an extended pay entitlement for the employee) where the employee did not take the 10 hour break at the preferred time.

Sub-clause 27.3 reads -

(a) When overtime work is necessary it must, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days.

(b) An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to this clause, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during the absence.

(c) If, on the instruction of the employer, an employee resumes or continues work without having had 10 consecutive hours off duty the employee must be paid at double time rates until released from duty for that period, and the employee will then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence (note the words underlined).

*Please note that transitional provisions could apply to the above penalty rates.*

### ***Call-back***

An employee recalled to work overtime after completing work must be paid a minimum of 4 hours work. This will be 4 hours at overtime rates. Where the actual overtime worked is less than 4 hours on such recall or on each of such recalls, such overtime worked is not regarded as overtime for the purpose of the 10 hour break under sub-clause 27.3 (sub-clause 27.4).

This call-back clause does not apply where it is customary for an employee to return to the workplace to perform a specific job outside ordinary working hours or where overtime is continuous (save for reasonable meal break) with the start or finish of ordinary hours (sub-clause 27.4(b)).

### ***Standing -by (or on-call) rates***

Subject to any custom now prevailing under which an employee is required regularly to be available for a call-back, an employee required to be available for work after ordinary hours must, until released, be paid standing-by time at ordinary rates from the time from which the employee is told to be available. (sub-clause 27.5)

### ***Transport reimbursement or travelling time payment after finishing overtime***

Refer to the 'Allowances' section.

### ***Paid time off instead of payment for overtime***

Despite the overtime rates in clause 27.1, an employee may choose, with the consent of the employer, to take time off instead of payment for overtime at a time or times agreed with the employer. This agreement must be in writing. The employee must take the time off within four weeks of working overtime. In such a case then the amount of time is taken to be equivalent to the pay the employee would otherwise have received for working overtime (sub-clauses 27.7(a) and (b)).

If requested by an employee an employer must within one week of receiving a request pay the employee for any overtime worked. The employee must be paid at overtime rates (sub-clause 27.7(c)).

## ***Penalty Rates***

*Please note that transitional provisions could apply to the penalty rates below.*

### ***Weekend rates***

For any ordinary time hours worked between

- midnight on Friday and midnight on Saturday an employee must be paid at the rate of 150%.
- midnight on Saturday and midnight Sunday an employee must be paid at the rate of 200%.

An employee required to work on a Saturday or Sunday must be paid for a minimum of four hours work (sub-clause 28.1).

All time worked on Sunday will stand alone.

## ***Public Holidays rates***

### **Full time or part-time employees**

As a general rule, a full-time or part-time employee is entitled to a day's pay for the public holiday, unless the employee does not normally work on that holiday, for example a full-time employee who works Monday to Friday each week will not be entitled to the Easter Saturday holiday. A day's pay means 7.6 hours or 8 hours (if accrued RDO arrangements apply) and pro-rata for part-time employees.

If such employees are required to work on a public holiday, then they are entitled to be paid for all time worked (with a minimum payment of 4 hours) at the following rates:

- Good Friday and Christmas Day – 200%
- Any other public holiday – 150%

If an employee works into what normally would be overtime hours, the rates become 300% and 250% respectively.

### **Casual Employees**

A casual employee is entitled to be paid for all time worked (with a minimum payment for 4 hours) at the following rates:

- Good Friday and Christmas Day – triple plus the 10% loading of the minimum applicable rate
- Any other public holiday – double time and a half plus the 10% loading of the minimum applicable rate

If a casual employee works on a public holiday, then the casual loading applicable is 10% of the minimum applicable rate (not the 25% ordinary casual loading). Please note the current view of the Fair Work Ombudsman is that the casual loading of 25% should be paid when a casual employee works on a public holiday.

Note that sub-clause 28.2(b) provides that an employee absent without consent or reasonable cause either side of a public holiday loses the entitlement to the day's pay that would otherwise be due for the public holiday.

The award also contains detailed provisions for rates when working on a Christmas Day that falls on a Saturday or Sunday (sub-clause 28.2(a)).

*Please note casual loading may be subject to transitional provisions*



# Shiftwork

*Please note that transitional provisions could apply to the following shiftwork loadings.*

**Shiftwork** means work extending for at least 2 weeks and performed wholly or partly in daily recurrent periods between the hours of 1830 (in the evening) and 0830 (in the morning) or in regular rotating periods.( sub-clause 24.1(d))

Shiftwork therefore has 3 elements –

- the length of time being at least 2 weeks, and
- the regular and recurrent nature of the work, and
- some performance of work occurring in that 12 hour window

An **afternoon** shift is one that finishes sometime later than 1830 but not later than 0030 the next day.

A **night** shift is one that finishes sometime after 0030 but not later than 0830.

The distinction between afternoon and night shift therefore dependent upon the finishing time of that shift.

A **day** shift or **day** work is a shift commencing at 0530 or later, and finishing at or before 1830.

Where a company does not work shiftwork, as defined above, and requires an employee to work until 2200 then overtime rates will apply from normal finishing time.

## Shift hours and shift rosters

Businesses operating under shift arrangements are required to use a **shift roster** that must specify starting and finishing times of the ordinary hours of respective shifts, and be posted in a prominent place ( sub-clause 24.2(b)and (c)).

Ordinary shift hours of work must be an average of 38 per week not exceeding 8 continuous hours per shift (including meal break) worked on one of the following bases;

- 38 hours within work cycle not exceeding 7 consecutive days; or
- 76 hours within work cycle not exceeding 14 consecutive days; or
- 114 hours within work cycle not exceeding 21 consecutive days; or
- 152 hours within work cycle not exceeding 28 consecutive days (sub-clause 24.2(a))

The ordinary shift hours (and the work cycle) is similar to the standard ordinary hours of non shift work under sub-clause 22.1, except that ordinary shift working hours include a paid meal break, known as a crib break, whereas for non shift work, the standard ordinary 8 hours do not.

A shift roster must also provide for rotation - unless agreed otherwise by consent of majority of employees or by individual flexibility agreement (sub-clause 24.2(b)).

A shift roster must not be altered unless 48 hours notice is given, and a rostered shift means a shift of which the employee concerned has had at least 48 hours notice (sub-clauses 24.1(e) and 24.2(c)).

Failure to provide an employee with 48 hours notice of any change of shift triggers an entitlement to overtime rates.

As well as the 48 hours notice of a change of shift where it is proposed that a day worker is to transferred to an afternoon or night shift, the day worker must be given at least 10 hours off duty before commencing the new shift. The 10 hour break provision may be waived by agreement between the employer and employee (sub-clause 24.7).

### ***Afternoon and night shift loadings***

For ordinary hours, shiftworkers must be paid as follows:

- Afternoon shift – 117.5% of the ordinary time rate
- Night shift – 130% of the ordinary time rate (sub-clause 24.3)

### ***Casual employees engaged on shift work***

Casual employees on shiftwork must be paid the casual loading of 25% in addition to the loading applying to afternoon or night shift as above (sub-clause 24.4).

### ***Shiftwork overtime***

For all time worked outside or in excess of the ordinary shift hours, or on a shift other than a rostered shift, the shiftworker must be paid overtime at 150% for the first 2 hours and at 200% thereafter, such double time to continue until the completion of the overtime work. This is consistent with the overarching overtime rates in the RTD Award discussed earlier in this Handbook.

### ***Shiftwork on weekend or public holiday***

Sub-clause 24.8 provides that for work performed on a rostered shift where the major portion of work occurs on a Saturday, Sunday or public holiday, the following penalty rates apply -

- Saturday – 150%
- Sunday - 200%
- Public holiday – 250%

Note: these penalty rates for shiftworkers apply instead of the shift loadings under sub-clause 24.3.

### ***Shiftwork meal breaks***

All shiftworkers while working day, afternoon or night shift respectively are entitled to a paid meal break of 20 minutes which is counted as time worked. This clause does not attract meal allowance.

An employee on shift work must not be required to work more than 5 hours without a meal break (sub-clause 24.9).

### ***Rate of pay when less than 5 consecutive afternoon or night shifts are worked***

A shiftworker who works on any afternoon or night shift, which does not continue for at least 5 consecutive afternoons or nights, must be paid at the rate of 150% for the first 3 hours and at 200% thereafter for each shift. These amounts are in lieu of the shift loadings prescribed earlier in this Handbook.

### ***Rate of pay when shift extends beyond midnight***

Despite anything contained elsewhere in clause 24, each shift must be paid for at the rate applicable to the day on which the major portion of the shift is worked (sub-clause 24.11).

### ***Public holiday shift***

Where the major portion of a shift falls on a public holiday the whole of the shift will be regarded as a public holiday (sub-clause 24.12), which thus attracts the public holiday penalty rate.

## **Public Holidays**

Public holidays are covered by the NES (at sections 114 to 116 of the FW Act) and under clauses 32 and sub-clause 28.2 of the RTD Award).

Generally stated, full-time and part-time employees are entitled to have paid time off from work (at the base rate of pay) on public holidays. If a business is closed on a public holiday, or if full-time or part-time employees elect not to work, an employer must pay them at their base rate for the ordinary hours they would have otherwise worked. 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, and who are absent on the public holiday, are not entitled to paid time off. For example, casual employees who are not rostered on for the public holiday, and those part-time employees whose part-time hours do not include the day or the week on which the public holiday falls, would not be entitled to payment.

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 32.2 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 the 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.

### ***Unauthorized Absence***

Note that the deterrence against employees taking unauthorized absence from work either side of a public holiday is to be found at sub-clause 28.2(b) under "Penalty Rates".

# Leave

## ***Annual leave***

Annual leave is largely covered by Division 5 of the NES. Annual leave does not apply to casual employees (Clause 29).

**Amount of annual leave** - for each year of service with his or her employer an employee is entitled to:

- 4 weeks of paid annual leave; or
- in the case of an eligible shiftworker, up to 5 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](http://www.fairwork.gov.au/leave/annual-leave/pages/calculating-annual-leave.aspx)

### **Eligible shiftworker**

Sub-clause 29.1(a) provides that for the additional week of paid annual leave, a shiftworker is one who is a seven day shiftworker and who is regularly rostered to work on Sundays or public holidays, as part of their ordinary hours, or pro rata where not a shift worker for whole of 12 months of continuous service.

Sub-clause 29.1(b) covers the pro rata additional annual leave entitlement so that where an employee with 12 months continuous service is engaged for part of the 12 month period as a shiftworker, that employee must have their annual leave increased by ½ a day for each month the employee is continuously engaged as a 7 day shiftworker.

### **Payment for annual leave**

The NES (at section 90 of the FW Act) prescribes the basis of payment for annual leave, including payment for untaken leave upon termination of employment, shall be at the employee's base rate of pay for the employee's ordinary hours of work in the period.

### **Annual leave loading**

Annual leave loading, calculated on the relevant minimum wage rate, is payable on leave accrued and taken, as follows-

- Day work – employees who would have worked on day work only had they not been on leave – a loading of 17.5% OR the relevant weekend penalty rates, whichever is the greater, but not both.
- Shiftwork – employees who would have worked on shiftwork had they not been on leave – a loading of 17.5% OR the shift loading (including relevant weekend penalty rates), whichever is the greater, but not both.

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

## **Cashing out annual leave**

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

## **Taking paid annual leave**

Annual leave shall be taken as agreed between the employer and the employee. Payment shall be at the employee's base rate for the ordinary hours of work for the period of leave. The employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave, however the employer's operational requirements are relevant.

The employer can direct an employee to take a quarter of 8 weeks or more accrued annual leave (sub-clause 29.4). An annual close down can involve an employee or employees taking of portion of annual leave (sub-clause 29.5)

**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 (Clause 30).

## **Amount of leave**

For each year of service with his or her employer, an employee is entitled to 10 days of paid personal/carer's leave at his/her base rate of pay. This applies pro-rata to part-time employees.

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 2 days unpaid carer's leave per permissible occasion is available to casual employees and those permanent 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:

### **Cashing out of personal/carer's leave**

The RTD 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 base rate of pay (excludes overtime, loadings, penalties, allowances etc) and is not accrued based on service but available for 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; or
- a voluntary emergency management activity or
- an activity prescribed in regulations (Clause 31)

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 10 days. Any days served on a jury after the 10 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. The emergency management body must request the employee to engage in the activity or, if circumstances do not permit the making of such request, it must be reasonable to expect the employee's absence in those circumstances and that a request would have been likely. Though the activity is voluntary the employee is not precluded 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 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 2 of this Handbook.

Depending on the relevant State or Territory law an employee may be entitled to long service leave after 7 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](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](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](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](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](http://www.commerce.wa.gov.au/labourrelations/Content/Wages%20and%20Leave/Leave%20entitlements/long_service.html)  
1300 655 266

## ***Dispute resolution training leave***

Clause 11 provides for an eligible employee representative to be entitled to a maximum of 5 days leave per year (paid at ordinary times earning) to attend an approved 'Dispute Resolution Training Course'. Such leave is non-cumulative.

Eligibility to attend such training requires 6 months continuous service. The granting of leave is subject to the employer being able to make adequate staffing arrangements among current employees during period of such leave. The number of employees eligible to attend depends on the number of employees of the employer at a particular yard, depot or garage.



# Termination of employment

## *Termination of employment by employer*

### **Notice of Termination**

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 (clause 13 refers to the NES. The relevant section is s.117 of the FW Act).

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.

<b>Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period</b>
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 2 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 13.3 of the RTD 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 1 and 4 weeks) as that required by an employer (except for the extra week if over 45 years old).

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; however the 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 provisions – clause 9 of the RTD 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:

- your employer no longer needs the person's job to be done by anyone because of changes in the operational requirements of the business, **and**
- your 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:

<b>Employee's period of continuous service with the employer on termination</b>	<b>Redundancy pay period</b>
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 made redundant and who previously worked under the NSW Transport Industry (State) Award will have an increased severance entitlement when compared to the remainder of the country. The effect of sub-clause 14.5 of the RTD Award, is that those NSW employees made redundant are entitled to the following severance payments:

Years of Service	<b>Under 45 Years of Age Entitlement</b>	<b>Over 45 Years of Age Entitlement</b>
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 (s121(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 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 in the national workplace relations system Australia-wide.

## ***Job search entitlement***

Sub-clause 14.4 of the RTD 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 1 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, 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 – s.122 of the FW Act.

# Transitional provisions

The transitional provisions are standard word clauses that have been included in nearly all of the 122 modern awards. These transitional clauses are designed to phase in or phase out any pay differences (up or down, as the case may be) between the pay rates under the old award compared to the rates in the modern award. If there were no transitional arrangements in moving from the old state/federal award to the new (Australia-wide) modern award, then there would be significant labour cost impositions on employers (or windfall wage rises to employees) from the start date of the modern award.

The transitional clause smoothes out the pay differences so that the increased (or decreased) difference in the pay rate is adjusted by 20% (one-fifth) every year [on 1 July] over 5 years from 2010 to 2014 (i.e.  $20\% \times 5 = 100\%$ ).

The major issue for road transport employers concerning transitional provisions arises in NSW where there were substantial differences between the NSW Transport Industry (State) Award and the new modern Road Transport & Distribution Award 2010 – see Appendix C of this Handbook.

## ***Basic summary of the transitional wage provisions***

The transitional provisions are set out at Schedule A of the RTD Award. Although they may seem confusing at first, once you understand the principles behind them they are not too confronting.

There are basically 5 steps you should follow to work out your minimum wage rate (or your employee's minimum wage rate) under the RTD Award during the transition period.

**Step 1:** you need to know your old award (or the old award that would have applied to you or your employees if employed prior to 1 January 2010), and the wage rate applicable to your classification under the old award immediately prior to 1 January 2010.

**Step 2:** identify your employee's classification under the RTD Award and the wage rate applicable to that classification as at 1 January 2010. The classification under your old award may not be the same as under the RTD Award, so care should be taken to identify your modern award classification correctly.

***Important:*** Take note of whether the wage rate under the old award was higher or lower than under the RTD Award as at 1 January 2010, as this is important for the remaining steps.

**Step 3:** calculate the difference between the wage rate under the old award and the wage rate under the RTD Award. This is known as the "transitional amount".

***Important:*** If the wage rate under the old award was higher than under the RTD Award as at 1 January 2010 **and** the transitional amount is equal to or less than the 2010 annual wage increase (which was \$26 per week), then the transitional provisions do not apply and the relevant minimum wage is simply as prescribed under clause 15 of the RTD Award. However, if the transitional amount is more than \$26 per week, the transitional provisions do apply and you should move on to steps 4 and 5.

**Step 4:** multiply the transitional amount by the "specified proportion" set out in the table below:

Pay Period	Specified proportion of the transitional amount
From 1 July 2010 to 30 June 2011	80% of the transitional amount
From 1 July 2011 to 30 June 2012	60% of the transitional amount
From 1 July 2012 to 30 June 2013	40% of the transitional amount
From 1 July 2013 to 30 June 2014	20% of the transitional amount

Note that the specified proportion changes as at 1 July each year between 2010 and 2013. From 1 July 2014, the transitional provisions will cease to apply and the minimum wage rate will simply be as prescribed under the RTD Award at that time.

**Step 5:** you are now ready to work out the relevant minimum wage under the RTD Award. Simply take the minimum wage prescribed under clause 15 of the RTD Award and either *add* or *subtract* the specified proportion of the transitional amount. If the rate under the old award was *higher* than under the RTD Award immediately before 1 January 2010, then you *add* the specified proportion of the transitional amount. If the rate under the old award was *lower* than under the RTD Award immediately before 1 January 2010, then you *subtract* the specified proportion of the transitional amount.

An example illustrating the methodology is below:

Example
<p>Bob is employed in NSW to drive a fork-lift with a lifting capacity of up to 9 tonnes. He is therefore a Transport Worker Grade 3 under the NSW <i>Transport Industry (State) Award</i>. Immediately prior to 1 January 2010, Bob's wage rate under the <i>Transport Industry (State) Award</i> was \$656.70 per week.</p> <p>Under the RTD Award, Bob is a Transport Worker Grade 4. As at 1 January 2010, the wage rate for Transport Workers Grade 4 was \$612.10 per week. Accordingly, the rate under the old award was higher than under the RTD Award.</p> <p>The difference between the rates under the old award and the RTD Award as at 1 January 2010 is \$44.60. This is the transitional amount. As the transitional amount is more than the 2010 annual wage increase (which was \$26), the transitional provisions do apply.</p> <p>In February 2011, Bob wants to make sure he is being paid no less than his minimum wage entitlement under the RTD Award, taking into account the transitional provisions. As at February 2011, the minimum wage for the relevant classification under clause 15 of the RTD Award is \$638.10 (it increased by \$26 because of the 2010 annual wage increase). Between 1 July 2010 and 30 June 2011, the specified proportion of the transitional amount is 80%. Eighty percent of \$44.60 (Bob's transitional amount) is \$35.68. Because the rate under the old award was <i>higher</i> than under the RTD Award, this amount (\$35.68) is <i>added</i> to the minimum wage prescribed under the RTD.</p> <p>Accordingly, as at February 2011, Bob's minimum wage for his classification under the RTD Award and taking into account the transitional provisions, is \$673.78 per week or \$17.73 per hour.</p>

It is important to remember that the transitional amount (see Step 3 above) remains constant throughout the transition period. The specified proportion of the transitional amount (see Step 4 above) is also set (it is 80%, 60%, 40% or 20% depending on the year). Accordingly, the only

unknown variables required to determine the minimum wage at any point during the transition period are the annual wage increases (if any) to be passed down by Fair Work Australia in 2011, 2012 and 2013. From 1 July 2014, the transitional provisions will cease to operate and the relevant minimum wage will simply be as prescribed under the RTD Award at that time, with no transitional adjustments required.

Please note that penalties and loadings are also subject to transitional provisions in the RTD Award.

In order to assist employers, and employees, better understand the transitional provisions Appendix C provides information of transitioning employees into the new Classification detailed in the RTD Award. This appendix aims to 'get it right' for 90% of the people (both workers and employers) 90% of the time.

**For any information prior to 29 April 2011, requiring more specific detail on unusual or complicated situations, an employer 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](http://www.artio.org.au) or through its Branch network at the following locations:

Victoria:	<a href="mailto:reception@vta.com.au">reception@vta.com.au</a>	T: 0396468590
NSW:	<a href="mailto:hughmc@artionsw.com.au">hughmc@artionsw.com.au</a>	T: 0412880861
Queensland:	<a href="mailto:travis@qta.com.au">travis@qta.com.au</a>	T: 0733944388
WA:	<a href="mailto:reception@transportforumwa.com.au">reception@transportforumwa.com.au</a>	T: 0893553022
Tasmania:	<a href="mailto:ed@tta.org.au">ed@tta.org.au</a>	T: 0409274482

After this date you will need to contact the Fair Work Info Line on 13 13 94.

# 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**

An IFA may be terminated:

- by the employer or the individual employee giving four weeks' notice of termination, 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.

## *Facilitative flexibility arrangements*

The facilitative provisions of this award allow agreement between an employer and employees on how specific award provisions are to apply in the workplace at a practical level. Facilitative



provisions cannot be used to avoid award obligations or result in unfairness to employees covered by the award (clause 8).

Facilitation can be used by agreement of the employer and an individual employee concerning the following sub-clauses:

- travelling allowance (sub-clause 16.1(f));
- hours of work (sub-clauses 22.2, 3 and 5; 23.3 and 6); and
- shiftwork (sub-clause 24.6)

Facilitation can also be used by agreement of the employer and the majority of employees in the workplace or part of the workplace concerning the following sub clauses as follows–

- hours of work (sub-clauses 22.2, 22.3 and 23.3, 23.4 and 23.6), and
- shiftwork (sub-clause 24.2)

Facilitation arrangements agreed to must be recorded in writing and kept as a time and wages record.

### ***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 - see clause 9. 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 9.1(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 9.2.

### ***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 10).

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.

Employee representatives are entitled in certain circumstances to attend (without loss of pay) particular training courses directed to effective resolution of industrial and workplace disputes. Clause 11 sets out the eligibility and other criteria for dispute resolution training leave.

# Appendices

**Appendix A** is the Table of old federal and state awards subsumed in whole or in part by the RTD Award

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

**Appendix C** is a detailed summary of the applicable transitional provisions relevant to NSW

**Appendix D** is a ‘ready reckoner’ to assist employers find answers quickly to commonly sought information about wages and allowances

**Appendix E** is a summary of NES provisions not covered directly in the body of this Handbook.

**Appendix A: List of old Federal and State Awards subsumed in whole or in part by the RTD Award**

	<i>Previous Award</i>	<i>old Fed or State award</i>	<i>code</i>
1	Transport Workers Award 1998	Fed	<a href="#">AP799474</a>
2	Transport Workers' (Superannuation) Consolidated Award 2004	Fed	<a href="#">AP834577</a>
3	Transport Workers (Oil Distribution) Award 2001	Fed	<a href="#">AP813252</a>
4	Transport Workers (Mixed Industries) Award 2002	Fed	<a href="#">AP813166</a>
5	Transport Workers (Milk Carters) Award 2002	Fed	<a href="#">AP817124</a>
6	Transport Workers' (L.P. Gas Industry) Award 2005	Fed	<a href="#">AP841105</a>
7	Transport Workers (Distribution Facilities) Award 2004	Fed	<a href="#">AP832166</a>
8	Transport Workers (Distribution Facilities - New South Wales) Award 2004	Fed	<a href="#">AP832213</a>
9	Transport Workers (Crude Oil Distribution) Award, 2003	Fed	<a href="#">AP822250</a>
10	Transport Workers (Bulk Milk Carters) Award 2002	Fed	<a href="#">AP817122</a>
11	Transport Workers (Ancillary Vehicles) Award 2002	Fed	<a href="#">AP815801</a>
12	Transport Workers' (Air Freight forwarding) Superannuation Award 1988	Fed	<a href="#">AP799605</a>
13	Transport Workers (Air Freight forwarders and Custom Clearance) Award 2000	Fed	<a href="#">AP801394</a>
14	Transport Workers' - Home Milk Vending (ACT) Award 2002	Fed	<a href="#">AP817315</a>
15	Liquefied Petroleum Gas Industry Award 1998	Fed	<a href="#">AP787043</a>
16	Transport Workers' (Oil Companies) Award 1998	Fed (ACT and NT)	<a href="#">AP799690</a>
17	Transport Workers (Australian Capital Territory) Award 2002	Fed (ACT)	<a href="#">AP820400</a>
18	Transport Workers (Northern Territory) Barge Depots Award 2002	Fed (NT)	<a href="#">AP814315</a>
19	Transport Workers (Northern Territory Oil Distribution) Award 2003	Fed (NT)	<a href="#">AP824019</a>
20	Transport Workers (Mixed Industries) Northern Territory Award 2004	Fed (NT)	<a href="#">AP831632</a>
21	Transport Industry Retail (State) Award 1999	NSW	<a href="#">AN120618</a>
22	Transport Industry (State) Superannuation (No.2) Award	NSW	<a href="#">AN120595</a>
23	Transport Industry (State) Award	NSW	<a href="#">AN120594</a>
24	Transport Industry - Wood and Coal (State) Award	NSW	<a href="#">AN120616</a>
25	Transport Industry - Redundancy (State) Award	NSW	<a href="#">AN120611</a>
26	Transport Industry - Quarried Materials (State) Award	NSW	<a href="#">AN120609</a>
27	Transport Industry - Petroleum, &c., Distribution (State) Award	NSW	<a href="#">AN120608</a>
28	Transport Industry - Mixed Enterprises Interim (State) Award	NSW	<a href="#">AN120606</a>
29	Other Services (Catholic Personal/Carer's Leave) (State) Award	NSW	<a href="#">AN120398</a>
30	Miscellaneous Workers (Catholic Personal/Carer's Leave) (State) Award	NSW	<a href="#">AN120682</a>
31	Ice Cream Carters and Van Salespersons (State) Award	NSW	<a href="#">AN120255</a>
32	Broken Hill Commerce and Industry Agreement Consent Award 2001	NSW	<a href="#">AN120088</a>
33	Transport Distribution and Courier Industry Award - Southern Division 2003	Qld	<a href="#">AN140305</a>
34	Transport Distribution and Courier Industry Award - Northern and Mackay Divisions 2004	Qld	<a href="#">AN140304</a>
35	Milk Industry Transport Award - Southern Division 2003	Qld	<a href="#">AN140174</a>
36	Milk and Cream Distributors and Vendors' Award - Northern and Mackay Divisions 2003	Qld	<a href="#">AN140173</a>
37	Gas Industry Award - State 2003	Qld	<a href="#">AN140130</a>
38	Fishery Employees' Award - State 2003	Qld	<a href="#">AN140116</a>
39	Baking Industry Carters' Award - Southern Division 2003	Qld	<a href="#">AN140021</a>
40	Transport Workers (SA) Award	SA	<a href="#">AN150164</a>
41	Baking Industry Carters Award	SA	<a href="#">AN150012</a>
42	Wholesale Pharmaceutical Award	Tas	<a href="#">AN170112</a>
43	Transport Workers General Award	Tas	<a href="#">AN170109</a>
44	Carriers Award	Tas	<a href="#">AN170013</a>
45	Transport and Storage Industry Sector - Minimum Wage Order - Victoria 1997	Vic MWO	<a href="#">AP800417</a>
46	Communication Services Industry Sector - Minimum Wage Order - Victoria 1998	Vic MWO	<a href="#">AP775457</a>
47	Transport Workers (Mobile Food Vendors) Award 1987	WA	<a href="#">AN160321</a>
48	Transport Workers (Government) Award, 1952	WA	<a href="#">AN160320</a>

49	Transport Workers' (General) Award No. 10 of 1961	WA	<a href="#">AN160324</a>
50	Timber Yard Workers Award No. 11 of 1951	WA	<a href="#">AN160315</a>
51	Timber Workers Award No. 36 of 1950	WA	<a href="#">AN160314</a>
52	Plywood and Veneer Workers Award No. 28 of 1981	WA	<a href="#">AN160250</a>
53	Breadcarters' (Metropolitan) Award	WA	<a href="#">AN160028</a>
54	Breadcarters (Country) Award 1976	WA	<a href="#">AN160027</a>

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

Classification	Schedule C classification descriptors and <i>Distribution facility employee equivalent</i> as per Schedule B
Transport worker grade	
<b>Grade 1</b>	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);
<b>Grade 2</b>	loader (freight forwarder); tow motor driver; Driver of:- rigid vehicle (incl motor cycle) not exceeding 4.5 tonnes GVM:
<b>Grade 3</b>	Driver of :- <ul style="list-style-type: none"> <li>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;</li> <li>fork-lift up to and incl 5 tonnes lifting capacity;</li> <li>concrete mixer up to and incl 2 cubic metre bowl;</li> </ul> <i>Distribution facility employee level 1 (see Item B.1.1. of Sch B for full skills/duties descriptors)</i> ➤ <i>operating small company delivery vehicle is included in the list of optional competencies.</i>
<b>Grade 4</b>	crane chaser/dogger; radio operator; weighbridge attendant; Driver of :- <ul style="list-style-type: none"> <li>three-axle vehicle exceeding 13.9 tonnes GVM;</li> <li>oil tractor;</li> <li>fork-lift with lifting capacity in excess of 5 tonnes and up to and incl 10 tonnes;</li> <li>straddle truck;</li> <li>concrete mixer over 2 cubic metre bowl up to 4.9 metre bowl;</li> </ul> <i>Distribution facility employee level 2 (see Item B.2.1. of Sch B for full skills/duties descriptors)</i> ➤ <i>operating 3 to 6 tonne truck included is included in the list of optional competencies.</i>
<b>Grade 5</b>	Driver of :- <ul style="list-style-type: none"> <li>rigid vehicle with 4 or more axles and GVM exceeding 13.9 tonnes;</li> <li>rigid vehicle and heavy trailer combination with 3 axles and GCM of 22.4 tonnes or less;</li> <li>articulated vehicle with 3 axles and GCM of 22.4 tonnes or less;</li> <li>fork-lift with lifting capacity in excess of 10 tonnes and up to 34 tonnes;</li> <li>concrete mixer with 5 cubic metre bowl and over;</li> </ul>
<b>Grade 6</b>	transport rigger; Driver of :- <ul style="list-style-type: none"> <li>rigid vehicle and heavy trailer combination with more than 3 axles and GCM greater than 22.4 tonnes;</li> <li>mobile crane lifting up to and incl 25 tonnes;</li> <li>articulated vehicle with more than 3 axles and GCM greater than 22.4 tonnes;</li> <li>low loader with GCM up to and incl 43 tonnes;</li> <li>fork-lift with lifting capacity over 34 tonnes;</li> </ul>
<b>Grade 7</b>	Driver of:- <ul style="list-style-type: none"> <li>double articulated vehicle up to and incl 53.4 tonnes GCM including B Doubles;</li> <li>low loader with GCM exceeding 43 tonnes;</li> </ul> <i>Distribution facility employee level 3 (see Item B.3.1. of Sch B for full skills/duties descriptors)</i> ➤ <i>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.</i>
<b>Grade 8</b>	Driver of:- <ul style="list-style-type: none"> <li>mobile crane with lifting capacity in excess of 25 tonnes and up to 50 tonnes;</li> <li>rigid vehicle and trailer(s) or double articulated vehicle exceeding 53.4 tonnes GCM incl B Doubles;</li> <li>multi-axle platform trailing equipment with carrying capacity up to and incl 70 tonnes capacity;</li> </ul>
<b>Grade 9</b>	Aerodrome attendant  Driver of:- <ul style="list-style-type: none"> <li>mobile crane with lifting capacity in excess of 50 tonnes</li> <li>gantry crane</li> <li>rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonnes GCM:</li> </ul> <i>Distribution facility employee level 4 (see Item B.3.1. of Sch B for full skills/duties descriptors).</i>
<b>Grade 10</b>	Driver of multi-axle platform trailing equipment with carrying capacity in excess of 70 tonnes and up to and incl 100 tonnes.

## Appendix C: Transitional Provisions in the RTD Award

Table 1 below can be used as a reference for employers and employees who were covered by the *NSW Transport Industry (State) Award* to determine the transitional minimum wage under the RTD Award at any point during the transitional period.

**Important:** Please note that the classification structure under the *NSW Transport Industry (State) Award* is very different to the classification structure under the RTD Award. In Table 1, each of the classifications under the *NSW Transport Industry (State) Award* has been broken down and the specific positions, vehicles types and vehicles masses has been aligned so far as possible with the corresponding classification under the RTD Award. If there is any doubt about which classification of the RTD Award applies to a particular employee, you can seek advice from your ARTIO Branch.

As the annual wage increase for 2010 is known, Table 1 includes the actual transitional minimum wage for the period from 1 July 2010 to 30 June 2011 for each classification. For subsequent years (2011 to 2013), simply take the minimum wage rate as prescribed under the RTD Award at that time (including any annual wage increases passed down by Fair Work Australia), and *add* the specified proportion of the transitional amount which has been calculated for you in the table. The amount is *added* because the wage rates under the *NSW Transport Industry (State) Award* were significantly higher than under the RTD Award as at 1 January 2010.

Table 1

Position	Wage rate and Transport Worker Grade (TWG) under NSW Transport Industry (State) Award prior to 1 Jan 2010	Wage rate and grade under RTD Award as at 1 Jan 2010	Transitional Amount	Wages Payable during Transitional Period* * "MWR" denotes the minimum wage rate prescribed under the RTD Award, including any annual wage increases				
				Pay rate as at 1 July 2010	Pay rate as at 1 July 2011	Pay rate as at 1 July 2012	Pay rate as at 1 July 2013	Pay rate as at 1 July 2014
Truck Drivers								
Driver of a straddle truck	\$650.56 (TWG - 3)	\$612.10 (TWG - 4)	(+) \$38.46	\$668.87	MWR + \$23.08	MWR + \$15.38	MWR + \$7.69	MWR
Driver of two-axle rigid vehicles with a GVM of up to and including 4.5 tonnes	\$638.78 (TWG - 2)	\$592.90 (TWG - 2)	(+) \$45.88	\$655.60	MWR + \$27.53	MWR + \$18.35	MWR + \$9.18	MWR
Driver of two-axle rigid vehicles with a GVM of over 4.5 tonnes, but less than 13.9 tonnes	\$650.56 (TWG -3)	\$600.60 (TWG - 3)	(+) \$49.96	\$666.57	MWR + \$29.98	MWR + \$19.98	MWR + \$9.99	MWR
Driver of three-axle rigid vehicles with a GVM of 13.9 tonnes or less	\$661.20 (TWG - 4)	\$600.60 (TWG - 3)	(+) \$60.60	\$675.08	MWR + \$36.36	MWR + \$24.24	MWR + \$12.12	MWR
Driver of three-axle rigid vehicles with a GVM greater than 13.9 tonnes	\$661.20 (TWG - 4)	\$612.10 (TWG - 4)	(+) \$49.10	\$677.38	MWR + \$29.46	MWR + \$19.64	MWR + \$9.82	MWR

Position	Wage rate and Transport Worker Grade (TWG) under NSW Transport Industry (State) Award prior to 1 Jan 2010	Wage rate and grade under RTD Award as at 1 Jan 2010	Transitional Amount	Wages Payable during Transitional Period* * "MWR" denotes the minimum wage rate prescribed under the RTD Award, including any annual wage increases				
				Pay rate as at 1 July 2010	Pay rate as at 1 July 2011	Pay rate as at 1 July 2012	Pay rate as at 1 July 2013	Pay rate as at 1 July 2014
Driver of articulated vehicles with a total of three axles with a GCM of 22.4 tonnes or less	\$687.80 (TWG - 5)	\$619.70 (TWG - 5)	(+) \$68.10	\$700.18	MWR + \$40.86	MWR + \$27.24	MWR + \$13.62	MWR
Driver of articulated vehicles with a total of three axles with a GCM greater than 22.4 tonnes	\$687.80 (TWG - 5)	\$627.40 (TWG - 6)	(+) \$60.40	\$701.72	MWR + \$36.24	MWR + \$24.16	MWR + \$12.08	MWR
Driver of four-axle rigid vehicles with a GVM of 13.9 tonnes or less	\$687.80 (TWG - 5)	\$600.60 (TWG - 3)	(+) \$87.20	\$696.36	MWR + \$52.32	MWR + \$34.88	MWR + \$17.44	MWR
Driver of four-axle rigid vehicles with a GVM greater than 13.9 tonnes	\$687.80 (TWG - 5)	\$619.70 (TWG - 5)	(+) \$68.10	\$700.18	MWR + \$40.86	MWR + \$27.24	MWR + \$13.62	MWR
Driver of articulated vehicles with a total of four axles with a GCM greater than 22.4 tonnes	\$694.64 (TWG - 6)	\$627.40 (TWG - 6)	(+) \$67.24	\$707.19	MWR + \$40.34	MWR + \$26.90	MWR + \$13.45	MWR
Driver of rigid vehicle-trailer combinations with a total of three axles with a GCM of 22.4 tonnes or less	\$687.8 (TWG - 5)	\$619.7 (TWG - 5)	(+) \$68.10	\$700.18	MWR + \$40.86	MWR + \$27.24	MWR + \$13.62	MWR
Driver of rigid vehicle-trailer combinations with a total of four axles with a GCM greater than 22.4 tonnes	\$694.64 (TWG - 6)	\$627.40 (TWG - 6)	(+) \$67.24	\$707.19	MWR + \$40.34	MWR + \$26.90	MWR + \$13.45	MWR
Driver of articulated vehicles with a total of five axles or six axles with a GCM of less than 22.4 tonnes	\$714.78 (TWG - 7)	\$619.7 (TWG - 5)	(+) \$95.08	\$721.76	MWR + \$57.08	MWR + \$38.03	MWR + \$19.02	MWR

Position	Wage rate and Transport Worker Grade (TWG) under NSW Transport Industry (State) Award prior to 1 Jan 2010	Wage rate and grade under RTD Award as at 1 Jan 2010	Transitional Amount	Wages Payable during Transitional Period* * "MWR" denotes the minimum wage rate prescribed under the RTD Award, including any annual wage increases				
				Pay rate as at 1 July 2010	Pay rate as at 1 July 2011	Pay rate as at 1 July 2012	Pay rate as at 1 July 2013	Pay rate as at 1 July 2014
Driver of articulated vehicles with a total of five axles or six axles, with a GCM of 22.4 tonnes or greater	\$714.78 (TWG - 7)	\$627.40 (TWG - 6)	(+) \$87.38	\$723.30	MWR + \$52.43	MWR + \$34.95	MWR + \$17.48	MWR
Driver of rigid vehicle-trailer combinations with a total of five axles or six axles or seven axles with a GCM greater than 22.4 tonnes, but less than 94 tonnes	\$714.78 (TWG - 7)	\$627.40 (TWG - 6)	(+) \$87.38	\$723.30	MWR + \$52.43	MWR + \$34.95	MWR + \$17.48	MWR
Driver of rigid vehicle-trailer combinations with a total of five axles or six axles or seven axles with a GCM greater than 94 tonnes	\$714.78 (TWG - 7)	\$667.60 (TWG - 9)	(+) \$47.18	\$731.34	MWR + \$28.31	MWR + \$18.87	MWR + \$9.43	MWR
Driver of double articulated vehicles with a GCM of 53.4 tonnes or less	\$751.26 (TWG - 8)	\$637.10 (TWG - 7)	(+) \$114.16	\$754.43	MWR + \$68.50	MWR + \$45.66	MWR + \$22.83	MWR
Driver of double articulated vehicles with a GCM greater than 53.4 tonnes	\$751.26 (TWG - 8)	\$656.10 (TWG - 8)	(+) \$95.16	\$758.23	MWR + \$57.10	MWR + \$38.06	MWR + \$19.03	MWR
Driver of rigid vehicle-triple trailer combinations with a GCM greater than 94 tonnes	\$751.26 (TWG - 8)	\$667.60 (TWG - 9)	(+) \$83.66	\$760.53	MWR + \$50.20	MWR + \$33.46	MWR + \$16.73	MWR
<b>Forklift Drivers</b>								
Driver of forklifts with a capacity of up to and including 4.5 tonnes	\$638.78 (TWG - 2)	\$600.60 (TWG - 3)	(+) \$38.18	\$657.14	MWR + \$22.91	MWR + \$15.27	MWR + \$7.63	MWR
Driver of forklifts with a capacity greater than 4.5 tonnes, but no more than 5 tonnes or less	\$650.56 (TWG - 3)	\$600.60 (TWG - 3)	(+) \$49.96	\$666.57	MWR + \$29.98	MWR + \$19.98	MWR + \$9.99	MWR



Position	Wage rate and Transport Worker Grade (TWG) under NSW Transport Industry (State) Award prior to 1 Jan 2010	Wage rate and grade under RTD Award as at 1 Jan 2010	Transitional Amount	Wages Payable during Transitional Period* * "MWR" denotes the minimum wage rate prescribed under the RTD Award, including any annual wage increases				
				Pay rate as at 1 July 2010	Pay rate as at 1 July 2011	Pay rate as at 1 July 2012	Pay rate as at 1 July 2013	Pay rate as at 1 July 2014
Driver of forklifts with a capacity greater than 5 tonnes, but no more than 9 tonnes or less	\$650.56 (TWG - 3)	\$612.10 (TWG - 4)	(+) \$38.46	\$668.87	MWR + \$23.08	MWR + \$15.38	MWR + \$7.69	MWR
Driver of forklifts with a capacity greater than 9 tonnes, but no more than 10 tonnes or less	\$661.20 (TWG - 4)	\$612.10 (TWG - 4)	(+) \$49.10	\$677.38	MWR + \$29.46	MWR + \$19.64	MWR + \$9.82	MWR
Driver of forklifts with a capacity greater than 10 tonnes, but no more than 15 tonnes or less	\$661.20 (TWG - 4)	\$619.70 (TWG - 5)	(+) \$41.50	\$678.9	MWR + \$24.9	MWR + \$16.6	MWR + \$8.3	MWR
Driver of forklifts with a capacity greater than 15 tonnes, but no more than 30 tonnes or less	\$687.80 (TWG - 5)	\$619.70 (TWG - 5)	(+) \$68.10	\$700.18	MWR + \$40.86	MWR + \$27.24	MWR + \$13.62	MWR
Driver of forklifts with a capacity greater than 30 tonnes, but no more than 34 tonnes or less	\$694.64 (TWG - 6)	\$619.70 (TWG - 5)	(+) \$74.94	\$705.65	MWR + \$44.96	MWR + \$29.98	MWR + \$14.99	MWR
Driver of forklifts with a capacity greater than 34 tonnes, but no more than 60 tonnes or less	\$694.64 (TWG - 6)	\$627.40 (TWG - 6)	(+) \$67.24	\$707.19	MWR + \$40.34	MWR + \$26.90	MWR + \$13.45	MWR
Driver of forklifts with a capacity greater than 60 tonnes	\$714.78 (TWG - 7)	\$627.40 (TWG - 6)	(+) \$87.38	\$723.30	MWR + \$52.43	MWR + \$34.95	MWR + \$17.48	MWR
<b>Mobile Crane Drivers</b>								
Driver of a mobile crane with a lifting capacity of 20 tonnes or less	\$745.56 (TWG - A)	\$627.40 (TWG - 6)	(+) \$118.16	\$747.93	MWR + \$70.90	MWR + \$47.26	MWR + \$23.63	MWR
Driver of a mobile crane with a lifting capacity greater than 20 tonnes, but less than 25.1 tonnes	\$756.96 (TWG - B)	\$627.40 (TWG - 6)	(+) \$129.56	\$757.05	MWR + \$77.74	MWR + \$51.82	MWR + \$25.91	MWR
Driver of a mobile crane with a lifting capacity greater than 25 tonnes, but less than 40.1 tonnes	\$756.96 (TWG - B)	\$656.10 (TWG - 8)	(+) \$100.86	\$762.79	MWR + \$60.52	MWR + \$40.34	MWR + \$20.17	MWR

Position	Wage rate and Transport Worker Grade (TWG) under NSW Transport Industry (State) Award prior to 1 Jan 2010	Wage rate and grade under RTD Award as at 1 Jan 2010	Transitional Amount	Wages Payable during Transitional Period* * "MWR" denotes the minimum wage rate prescribed under the RTD Award, including any annual wage increases				
				Pay rate as at 1 July 2010	Pay rate as at 1 July 2011	Pay rate as at 1 July 2012	Pay rate as at 1 July 2013	Pay rate as at 1 July 2014
Driver of a mobile crane with a lifting capacity greater than 40 tonnes, but less than 50.1 tonnes	\$773.3 (TWG - C)	\$656.10 (TWG - 8)	(+) \$117.20	\$775.86	MWR + \$70.32	MWR + \$46.88	MWR + \$23.44	MWR
Driver of a mobile crane with a lifting capacity greater than 50 tonnes, but less than 80.1 tonnes	\$773.3 (TWG - C)	\$667.60 (TWG - 9)	(+) \$105.70	\$778.16	MWR + \$63.42	MWR + \$42.28	MWR + \$21.14	MWR
Driver of a mobile crane with a lifting capacity greater than 80 tonnes, but less than 100 tonnes	\$789.64 (TWG - D)	\$667.60 (TWG - 9)	(+) \$122.04	\$791.23	MWR + \$73.22	MWR + \$48.82	MWR + \$24.41	MWR
<b>Miscellaneous</b>								
Transport Facility Worker (1)	\$638.78 (TWG - 2)	\$600.60 (TWG - 3)	(+) \$38.18	\$657.14	MWR + \$22.91	MWR + \$15.27	MWR + \$7.64	MWR
Transport Facility Worker (2)	\$650.56 (TWG - 3)	\$612.10 (TWG - 4)	(+) \$38.46	\$668.87	MWR + \$23.08	MWR + \$15.38	MWR + \$7.69	MWR
Driver of a gantry crane	\$751.26 (TWG - 8)	\$667.60 (TWG - 9)	(+) \$83.66	\$760.53	MWR + \$50.20	MWR + \$33.46	MWR + \$16.73	MWR
Crane offsider	\$745.56	\$612.10 (TWG - 4)	(+) \$133.46	\$744.87	MWR + \$80.08	MWR + \$53.38	MWR + \$26.69	MWR
Advanced crane offsider	\$773.30	\$627.40 (TWG - 6))	(+) \$145.90	\$770.12	MWR + \$87.54	MWR + \$58.36	MWR + \$29.18	MWR
Extra hand	\$621.68 (TWG - 1)	\$577.60 (TWG - 1)	(+) \$44.08	\$638.86	MWR + \$26.45	MWR + \$17.63	MWR + \$8.81	MWR
Yardperson	\$621.68 (TWG - 1)	\$577.60 (TWG - 1)	(+) \$44.08	\$638.86	MWR + \$26.45	MWR + \$17.63	MWR + \$8.81	MWR
Rider of a motorcycle	\$621.68 (TWG - 1)	\$592.90 (TWG - 2)	(+) \$28.78	\$641.92	MWR + \$17.27	MWR + \$11.51	MWR + \$5.75	MWR
Driver of a tow motor	\$621.68 (TWG - 1)	\$592.90 (TWG - 2)	(+) \$28.78	\$641.92	MWR + \$17.27	MWR + \$11.51	MWR + \$5.75	MWR
Furniture Removalist Offsider	\$628.14	\$577.60 (TWG - 1)	(+) \$50.54	\$644.03	MWR + \$30.32	MWR + \$20.22	MWR + \$10.11	MWR
Bicycle Courier	\$621.68 (TWG - 1)	\$577.60 (TWG - 1)	(+) \$44.08	\$638.86	MWR + \$26.45	MWR + \$17.63	MWR + \$8.81	MWR

## Appendix D - RTD Award Wages and Allowances Ready Reckoner -

This 'ready reckoner' provides the rates and allowances for the RTD Award with effect from 1 July 2010. It is expected that these will be increased by Fair Work Australia from July 2011. **If you are a NSW employer please refer to Appendix C of this Handbook. Please note casual loading may be subject to transitional provisions.**

<b>Grade 1 → \$603.60</b> <ul style="list-style-type: none"> <li>General Hand: Greaser, cleaner, yard person, vehicle washer and detailer, motor driver's assistant/furniture remover's assistant.</li> <li>Loader: other than freight forwarder.</li> <li>Courier: on foot or bicycle.</li> </ul>	<b>Grade 2 → \$618.90</b> <ul style="list-style-type: none"> <li>Loader: freight forwarder.</li> <li>Tow motor driver.</li> <li>Driver of a rigid vehicle (including a motor cycle) not exceeding 4.5 tonnes gross vehicle mass (GVM).</li> </ul>
<b>Grade 3 → \$626.60</b> <ul style="list-style-type: none"> <li>Driver of a fork-lift up to and including 5 tonnes lifting capacity.</li> <li>Driver of a two-axle rigid vehicle or any other rigid vehicle exceeding 4.5 tonnes, but not exceeding 13.9 tonnes gross vehicle mass (GVM) unless by special permit or registration such vehicle may be up to 15 tonnes gross vehicle mass (GVM).</li> <li>Driver of a concrete mixer up to and including 2 cubic metre bowl.</li> <li>Distribution Facility Employee Level 1*</li> </ul>	<b>Grade 4 → \$638.10</b> <ul style="list-style-type: none"> <li>Driver of a three-axle rigid vehicle exceeding 13.9 tonnes gross vehicle mass (GVM).</li> <li>Driver of an oil tractor.</li> <li>Radio operator.</li> <li>Driver of a fork-lift with a lifting capacity in excess of 5 tonnes and up to and including 10 tonnes lifting capacity.</li> <li>Distribution Facility Employee Level 2*</li> </ul>
<b>Grade 5 → \$645.70</b> <ul style="list-style-type: none"> <li>Driver of a fork-lift with a lifting capacity in excess of 10 tonnes and up to 34 tonnes.</li> <li>Driver of a rigid vehicle with four or more axles and a gross vehicle mass (GVM) exceeding 13.9 tonnes</li> <li>Driver of a concrete mixer over 2 cubic metre bowl and up to 4.9 cubic metre bowl.</li> <li>Crane Chaser.</li> <li>Weighbridge attendant</li> <li>Driver of a straddle truck</li> <li>Driver of a rigid vehicle and a heavy trailer combination with 3 axles and a gross combination mass (GCM) of 22.4 tonnes or less.</li> <li>Driver of an articulated vehicle with 3 axles and a gross combination mass (GCM) of 22.4 tonnes or less.</li> <li>Driver of a concrete mixer with 5 cubic metre bowl and over</li> </ul>	<b>Grade 6 → \$653.40</b> <ul style="list-style-type: none"> <li>Driver of a rigid vehicle and a heavy trailer combination with more than 3 axles and a gross combination mass (GCM) greater than 22.4 tonnes.</li> <li>Driver of a mobile crane lifting up to and including 25 tonnes.</li> <li>Driver of an articulated vehicle with more than 3 axles and a gross combination mass (GCM) greater than 22.4 tonnes.</li> <li>Driver of a low loader (as defined) with a gross combination mass (GCM) up to and including 43 tonnes.</li> <li>Driver of a fork-lift with a lifting capacity over 34 tonnes.</li> </ul>
<b>Grade 7 → \$663.10</b> <ul style="list-style-type: none"> <li>Driver of a double articulated vehicle up to and including 53.4 tonnes gross combination mass (GCM) - including B-Doubles.</li> <li>Driver of a low loader (as defined) with a gross combination mass (GCM) exceeding 43 tonnes. <ul style="list-style-type: none"> <li>When driving a low loader for each additional complete tonne over 43 tonnes GCM an extra \$1.13 (as part of the weekly rate for all purposes) shall be payable. Provided that no load shall exceed the limit prescribed by or under any State or Territory Act.</li> </ul> </li> <li>Distribution Facility Employee Level 3*</li> </ul>	<b>Grade 8 → \$682.10</b> <ul style="list-style-type: none"> <li>Driver of a mobile crane with a lifting capacity in excess of 25 tonnes and up to 50 tonnes.</li> <li>Driver of a rigid vehicle and trailer(s) or double articulated vehicle exceeding 53.4 tonnes gross combination mass (GCM) including B-Doubles.</li> <li>Driver of multi-axle platform trailing equipment with a carrying capacity up to and including 70 tonnes capacity</li> </ul>
<b>Grade 9 → \$693.60</b> <ul style="list-style-type: none"> <li>Driver of a mobile crane with a lifting capacity in excess of 50 tonnes.</li> <li>Driver of a gantry crane.</li> <li>Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonnes gross combination mass (GCM)</li> <li>Distribution Facility Employee Level 4*</li> </ul>	<b>Grade 10 → \$710.70</b> <ul style="list-style-type: none"> <li>Driver of multi-axle platform trailing equipment with a carrying capacity in excess of 70 tonnes and up to and including 100 tonnes. <ul style="list-style-type: none"> <li>For each additional 10 tonnes or part thereof in excess of 100 tonnes an extra \$13.65 (as part of the weekly wage rate for all purposes) up to 150 tonnes shall be payable.</li> <li>For each additional 10 tonnes or part thereof in excess of 150 tonnes an extra \$13.10 (as part of the weekly wage rate for all purposes) up to 200 tonnes shall be payable.</li> <li>For work performed in excess of 200 tonnes and up to 300 tonnes, an additional payment of \$12.78 per day (as part of the weekly wage rate for all purposes) to be added to the 200 tonnes rate</li> </ul> </li> </ul>

\*Distribution Facility Employee Levels and related skills/duties can be found in Schedule B of the Award.

**Casuals:** A casual employee shall be entitled to a loading of 25% and it is calculated by dividing the weekly rate by 38 and then multiplying that sum by 1.25 to give a casual hourly rate. In addition to **normal overtime rates (time and a half or double time)**, a casual working overtime or outside the spread of hours is only entitled to a 10% loading (not 25%) on the base award rate.

**Spread of Hours** – the spread of hours in this Award is from **5.30am to 6.30pm, Monday to Friday**. Any work outside of those hours or beyond 7.6 (or 8 if accruing an RDO) should be paid at **overtime rates which are time and a half for the first 2 hours and double time thereafter**. Each day's overtime stands alone.

<b>Juniors (Under 20 Years of Age)</b>	
• < 19 Years = 70% Adult Rate	• 19 Years to <20 Year = 80% Adult Rate

<b>Allowances –</b>		
Meal (Per Meal) = \$13.14 (when applicable)	Travel (Per Day) = \$30.33	First Aid (Per Week) = \$10.02
Dangerous Goods – Bulk (Per Day) = \$14.85 Dangerous Goods – Packaged (Per Day) = \$6.20	<b>Where an employee is required to possess a DG licence any training or medical costs must be reimbursed by the employer</b>	

### Table of Other Allowances

<b>A. Leading hands in charge of:</b>		<b>(i) Per Week (ii) Provided that this item shall not apply to leading loader</b>	
• 3 to < 10 employees = \$29.57	• 10 to <20 employees = \$44.05	• More than 20 employees = \$55.95	
<b>B.</b> Any employee required to drive a motor vehicle 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			
<b>C.</b> Any employee required to drive a motor vehicle with a truck loading crane (or side-lifter crane) mounted on the vehicle shall receive an additional \$2.88 per day			
<b>D.</b> Any employee required to drive a motor vehicle 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.			
<b>E.</b> Employee who is a recognized furniture carter engaged in Removing and/or delivering furniture as defined = \$16.23 per week			
<b>F.</b> Employee who is a recognized livestock carter carting livestock as defined = \$16.23 per week			
<b>G.</b> Employee driving sanitary vehicle = \$18.30 per week			
<b>H.</b> Employee driving a vehicle collecting garbage = \$14.98 per week			
<b>I.</b> Driver-salesman as defined in Clause 3.1 of the Award = \$13.72 per week			
<b>J.</b> Employee carting, loading and/or unloading carbon black, except when packed in sealed metal containers, an extra \$1.75 per day or part thereof			
<b>K.</b> Employee carting, loading and/or unloading offensive material \$2.26 per day or part thereof			
<b>L.</b> Employee carting, loading and/or unloading dirty material - an extra 38 cents per hour			
<b>M.</b> Employee who is required to cart tar (other than in sealed containers) for immediate spreading upon streets, tar in unsealed containers, or tarred material for spreading upon streets; and/or who spreads either of them upon streets - an extra \$2.82 per week			
<b>N.</b> Coffin allowance - employees required to handle coffins containing human remains shall be paid an amount of \$2.38 for each coffin handled			
<b>O.</b> Employee handling money as defined. For any amount handled: Up to \$20 <b>\$1.44</b> ; Over \$20 but not exceeding \$200 <b>\$2.82</b> ; Over \$200 but not exceeding \$600 <b>\$4.82</b> ; Over \$600 but not exceeding \$1000 <b>\$6.26</b> ; Over \$1000 but not exceeding \$1200 <b>\$8.83</b> ; Over \$1200 but not exceeding \$1600 <b>\$13.66</b> ; Over \$1600 but not exceeding \$2000 <b>\$15.10</b> ; Over \$2000 <b>\$17.15</b>			
<b>NOTE: Where a higher further additional amount becomes payable under any item of this table numbered (F), (G), (H), (K), (L), (M) or (N), it shall supersede any lesser additional amount contained in these items which otherwise would have been liable for payment</b>			

## **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. 6 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 2 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 3 weeks concurrent unpaid parental leave (both on parental leave at the same time) thereby reducing their overall entitlement by that 3 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 6 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 6 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 10 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 10 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.