



# REPORT TO THE FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

(AM2014/208)

## **PASSENGER VEHICLE TRANSPORTATION AWARD 2010**

(ODN AM2008/51) [MA000063]

(AM2014/211)

## **ROAD TRANSPORT (LONG DISTANCE OPERATIONS) AWARD 2010**

(ODN AM2008/21) [MA000039]

(AM2014/212)

## **ROAD TRANSPORT AND DISTRIBUTION AWARD 2010**

(ODN AM2008/21) [MA000038]

(AM2014/215)

## **TRANSPORT (CASH IN TRANSIT) AWARD 2010**

(ODN AM2008/21) [MA000042]

(AM2014/216)

## **WASTE MANAGEMENT AWARD 2010**

(ODN AM2008/23) [MA000043]

SENIOR DEPUTY PRESIDENT HAMBERGER

SYDNEY, 19 FEBRUARY 2016

[1] A conference was held in Sydney on 3 February 2016 attended by representatives of:

- The Transport Workers' Union of Australia (TWU);
- The Australian Workers' Union (AWU);
- The Shop Distributive and Allied Employees Association (SDA);
- The Construction, Forestry, Mining and Energy Union (CFMEU);

- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU);
- The Australian Industry Group (AIG);
- The Australian Federation of Employers and Industries (AFEI);
- The NSW Business Chamber and Australian Business Industrial (ABI);
- The Waste Contractors & Recyclers Association (WCRA);
- Public Transport Industrial Association;
- The Australian Security Industry Association Ltd (ASIAL); and
- Coles Supermarkets Australia Pty Ltd (Coles).

[2] The Australian Road Transport Industry Organisation (ARTIO) forwarded an apology for being unable to attend.

[3] The parties reviewed the earlier Reports to the Full Bench dealing with each of the five transport awards. While agreement has been reached on a number of proposed variations to the exposure drafts and some other proposed changes are no longer pressed (as outlined below) there remain a number of proposed changes that are in dispute. In each of these matters the parties have indicated they would like the opportunity to make further submissions (and in some cases would wish to tender evidence). Accordingly the parties have requested that a (single) Full Bench be constituted to hear and consider all the outstanding proposed changes to the five transport awards that remain in dispute. Once the Full Bench has been established it would be appropriate to convene a directions conference to consider hearing dates and directions for submissions and evidence.

### **Waste Management Award 2010**

[4] The parties discussed the eight proposed changes referred to in Attachment B in the Report to the Full Bench of 30 November 2015 concerning this award. It was agreed that the sixth proposed change (prevailing customs regarding call-back) would no longer be pursued. The parties agreed, with regard to the eighth proposed change (the substitution of public holidays), that the provision in the exposure draft should be redrafted to reflect that in the current award. The other six proposed changes remain in dispute and need to be considered by a Full Bench. The parties wish to make further submissions about each of them, and in at least two cases wish to tender evidence.

[5] Two other proposed changes were raised that were not referred to in the 30 November 2015 Report to the Full Bench. The employers are proposing a change to clause 6.5(h) of the Exposure Draft to clarify the relevant rate of pay for casual employees working overtime or outside ordinary hours. The change is not (at this stage) agreed to by the unions and will need to be considered by the Full Bench (unless agreement is reached beforehand).

[6] The parties also agreed to alter clause 20.5 of the exposure draft (concerning payment for work on public holidays). The agreed changes to this clause are as outlined in the attached email from the AIG (attachment A).

## **Transport (Cash in Transit) Award 2010**

[7] The third and fourth proposed changes referred to in Attachment B of the Report to the Full Bench of 30 November 2015 (chain of responsibility and definition of armoured and non-armoured vehicles) are no longer being pressed.

[8] The other proposed changes remain in dispute and will need to be dealt with by a Full Bench, with the parties wishing to make further submissions.

## **Passenger Vehicle Transportation Award 2010**

[9] The parties noted that the first previously agreed change referred to in Attachment A in the Report to the Full Bench of 30 November 2015 (reference to the Act) had not been made in the latest version of the exposure draft. The parties also noted that there were some infelicities of drafting in clause 11.3(g) and Schedule A.6 in the latest version of the exposure draft. There was also a typographic error at clause 6.4 (g). These should be corrected.

[10] The parties now agree with the fourth proposed change at Attachment B in the Report to the Full Bench (living away from home allowance). The other four proposed changes listed in that attachment remain in dispute and will need to be referred to a Full Bench.

## **Road Transport and Distribution Award 2010**

[11] The parties agreed to change the title of clause 11.2 in the current exposure draft to read 'Meal and Rest Breaks after Ordinary Hours and Before Overtime Hours'.

[12] The fourth proposed change in Attachment B of the Report to the Full Bench of 30 November 2015 (review of classifications where higher duties are being performed) is no longer being pressed.

[13] The parties agreed that the clause 6.5(d) in the exposure draft (minimum engagement) should become part of 6.5 (c), as an additional sentence.

[14] The parties reached agreement on a change to clause 16.2 (work on public holidays) proposed by AIG to clause 16.2 as set out in email from AIG of 3 February 2016 (Attachment B).

[15] All other proposed changes in Attachment B to the Report to the Full Bench of 30 November 2015 remain in dispute and will need to be considered by a Full Bench. This includes two other proposed changes that were not identified in the Full Bench Report of 30 November, namely:

- An AIG claim to introduce an additional limitation on circumstances in which an employee is entitled to a meal break; and
- A variation sought to Schedule C.4 of the *Exposure Draft – Road Transport and Distribution Award 2010* to clarify that the rates prescribed there are payable for the performance of ordinary hours of work.

## Road Transport (Long Distance Operations) Award 2010

[16] With regard to the first proposed change at Attachment A in the Report to the Full Bench of 30 November 2015 it was agreed by the parties that the following sentence should be added at the end of clause 11.2 (a): ‘The fortnightly payment must be calculated by reference to continuous consecutive fortnightly periods.’

[17] It was also agreed by the parties that the last proposed change listed in Attachment A needs to be reflected in the revised version of the exposure draft. The parties agreed that the most effective way of doing this would be to align the grades with those in Road Transport and Distribution Award. Thus the first grade in the long distance award should be referred to as ‘grade three’. This could be given effect by the following:

- Clause 7: the description for grades 1 and 2 be replaced with N/A;
- Clause 7: the description that presently corresponds with grade 1 be relocated to align with grade 3 and all remaining classification descriptions be realigned accordingly, such that the descriptions that presently correspond with grades 7 and 8 be aligned with new grades 9 and 10;
- Clause 11.1: the text in the first column be deleted and replaced with grade 3-10;
- Clause 11.4(a): the text in the first column be deleted and replaced with grade 3 – grade 10;
- Clause 11.5(b): the text in the first column be deleted and replaced with grade 3 – grade 10; and
- Schedule A: the text in the first column of each table be deleted and replaced with grade 3 – grade 10.

[18] The parties now agree on making the second and third changes proposed in Attachment B in the Report to the Full Bench of 30 November 2015. The other seven proposed changes at Attachment B remain in dispute and will need to be considered by a Full Bench. The parties would wish to make further submissions, and in some cases would need to tender evidence.



SENIOR DEPUTY PRESIDENT

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