

From: Richard Calver

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To: Paul Ryan; Chambers - Hamberger SDP; kyle.scott@ablawyers.com.au; bdudley@seyfarth.com; 'Brent Ferguson'; 'Ruchi Bhatt'; jmattson@bartier.com.au; smaxwell@cfmeu.org; 'Wendy Carr'; 'Roushan Walsh'; djmacken@macken.com.au; 'Hugh Arjonilla'

Cc: AMOD

Subject: AM2016/32 - submissions and evidence National Road Transport Association

Please find attached NatRoad's submissions in this matter. We also file the evidence of Dr Brent Davis. Dr Davis is available for cross-examination on either 8 or 9 March 2017, with a preference for attendance if required on 9 March 2017. The submissions attached deal with a number of issues related to the evidence proposed to be adduced by the TWU. We respectfully seek that these matters be addressed at the mention tomorrow even if that discussion deals only with whether these submissions should be raised initially at the hearing on 6 March 2017 or whether the Full Bench would require a different approach.

Regards

Richard Calver

Adviser, Compliance and Workplace Relations

IN THE FAIR WORK COMMISSION

AM2016/32

Road Transport (Long Distance Operations) Award 2010

Road Transport and Distribution Award 2010

SUBMISSIONS OF THE NATIONAL ROAD TRANSPORT ASSOCIATION

2 March 2017

Introduction

1. These submissions are filed on behalf of the National Road Transport Association (**NatRoad**) and its members in opposition to the variations proposed by the Transport Workers Union (**TWU**) as part of the Transport Industry Awards 4 yearly review.
2. The submissions relate to the TWU's proposed variations in respect of the *Road Transport (Long Distance Operations) Award 2010* (the **Long-Distance Award**) and the *Road Transport and Distribution Award 2010* (the **Distribution Award**).
3. Whilst some NatRoad members are covered by the other transport awards, these submissions are confined to the variations proposed for the Long-Distance Award and the Distribution Award as the predominant awards covering members and the only awards now sought to be varied by the TWU.

Timing

4. The Fair Work Commission (the **Commission**) first issued Directions in respect of the transport award proceedings on 1 December 2016.¹ These Directions required the TWU to file draft determinations specifying the terms of the variations sought by close of business on 19 December 2016.
5. The TWU failed to meet this deadline. Instead, by letter dated 19 December 2016² the TWU sought an extension of time to file the draft determinations by close of business 21 December 2016.
6. In that letter, the TWU asserted that no party would be prejudiced by the granting of the relevant extension.
7. NatRoad, in email correspondence to the Commission dated 20 December 2016,³ indicated that it was indeed prejudiced by the grant of the relevant extension. We

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-directions-011216.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-corr-twu-191216.pdf>

Filed on behalf of:	Members of the National Road Transport Association
By:	The National Road Transport Association
Address:	Level 3, Minter Ellison Building, 25 National Circuit, Forrest, ACT, 2603
Email:	richard.calver@natroad.com.au
Telephone:	(02) 6295 3000

pointed out that the relevant prejudice arose in respect to the design of the survey which NatRoad has commissioned for the purposes of these proceedings.

8. The Commission issued Amended Directions dated 20 December 2016 in this matter. Those Amended Directions required parties seeking variations to file comprehensive written submissions and any witness evidence and/or documentary material upon which they seek to rely by close of business 13 January 2017.

9. The TWU also failed to meet that deadline indicating in an email letter dated 13 January 2017⁴ seeking an extension of time to 18 January 2017 that:

*We do not believe other parties will be prejudiced should an extension be granted as a number of the variations will not be pursued at this stage.*⁵

10. The TWU's statement that a number of the variations would not be pursued shows a disjunction between the case to be answered as reflected in the draft determinations lodged on 21 December 2016 and the submissions dated 18 January 2017 (but lodged on 19 January 2017). This disjunction was prejudicial in that, despite prior indications of the nature and extent of the claim, the case to be answered remained unclear until late on the day 19 January 2017.

11. Accordingly, as NatRoad indicated in an email submission dated 30 January 2017 to the Commission,⁶ the quantitative survey that NatRoad commissioned for these proceedings was already designed (the **NatRoad survey**). Indeed, the NatRoad survey was at a point where amendments to reflect the actual case to be answered that was subsequently revealed, could not be made at the time the final submissions and draft determinations were able to be accessed by NatRoad. This matter is explored in the report attached to the witness statement of Dr Brent Davis and marked as BD-2. Dr Davis' statement is annexed to this submission. Dr Davis provides expert evidence in this matter.

12. NatRoad's quantitative survey proceeded on the basis that the case to answer was reflected in the draft determinations ultimately lodged on 21 December 2016. It is only useful in respect of the question about fatigue management. Therefore, we have been prejudiced in respect of:

- a. the cost of designing a survey to cover additional matters that are now irrelevant (two-up driving, passenger costs and the issue of linking pick-up and drop-off with excessive waiting time): this issue is addressed by Dr Davis by way of "Caveats" set out at page 4-5 of BD-2;
- b. in respect of the timing of the design of the relevant focus groups which were to form part of the qualitative analysis commissioned for these proceedings but were instead subsumed into the phone interviews conducted by Dr Davis; and
- c. the nature and extent of the claim that we were asked to answer only being made clear (subject to the issues pointed to in this submission where we show a lack of clarity around the final proposed variations) from mid-afternoon 19 January 2017.

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-corr-natroad-201216.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-corr-twu-130117.pdf>

⁵ *Ibid*

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-dirretwu-natroad-300117.pdf>

13. The delay associated with preparing material to obtain qualitative feedback together with the additional cost of modifying the materials drafted on the basis of the apprehension of the case to answer also represented additional prejudice incurred through the TWU's delays.
14. Accordingly, the TWU's assertions about prejudice are not correct and the survey material now before the Commission contains material that is not confined to the variations ultimately pursued. That additional material is adduced without prejudice.
15. The NatRoad Board has considered the matter of a change in the case to be answered and the expense and inconvenience associated with the conduct of a survey on aspects of the TWU's claims that are no longer pressed. The Board seeks that the Commission disregard the results of the quantitative survey where the variation proposed by the TWU is no longer the subject of proceedings, albeit that the results are required to be included in Dr Davis's expert report given that his conduct must reflect the rules relating to the provision of expert evidence. If the TWU were to press aspects of the claim that were previously foreshadowed, the NatRoad Board has instructed that an application for an adjournment be sought so as to enable the re-survey of members. The quantitative survey (BD-2) currently forming part of the witness statement of Dr Davis was tailored to the matters reflected in the draft determinations that were lodged on 21 December 2016 not those subject of current proceedings.
16. The specific details associated with the design of the NatRoad survey and the results are set out in the reports attached to the witness statement of Dr Davis. The use of survey material is a matter that the Commission has taken into account in other modern award proceedings.⁷ It is noted that the quantitative survey is largely irrelevant to the revised claims.
17. These submissions are filed in accordance with paragraph 3 of the Amended Directions.

Modern Award Variations – Standard and Required Evidence

18. The legislative framework applicable to the 4 Yearly Review was considered in detail in the Preliminary Issues Decision.⁸ As is clear from that decision, parties seeking to vary a modern award must advance a merit argument in support of the proposed variation.⁹
19. When considering merit-based arguments relating to variations, the Preliminary Issues Decision establishes that there may be cases where the need for an award variation is self-evident. In such circumstances, proposed variations can be determined with little formality.¹⁰ We submit the variations sought by the Australian Industry Group in these proceedings¹¹ fall within this category. NatRoad supports the AiG submission and the variations it proposes.

⁷ [2015] FWCFB 3406 – see especially at para 46

⁸ *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788

⁹ *Id* at para 60, point 3

¹⁰ *Id* and at para 23

¹¹ See the submission dated 13 January 2017

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-aig-130117.pdf>

20. However, as required by the Preliminary Issues Decision, where significant award changes are proposed, they must be supported by submissions addressing the legislative provisions and must also be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variations.¹²
21. In a subsequent decision considering claims made to vary the *Security Services Industry Award 2010*¹³, the Commission made the following relevant comments [emphasis added]:
- While this may be the first opportunity to seek significant changes to the terms of modern awards, a substantive case for change is nevertheless required. The more significant the change, in terms of impact or a lengthy history of particular award provisions, the more detailed the case must be. Variations to awards have rarely been made merely on the basis of bare requests or strongly contested submissions. In order to found a case for an award variation it is usually necessary to advance detailed evidence of the operation of the award, the impact of the current provisions on employers and employees covered by it and the likely impact of the proposed changes. Such evidence should be combined with sound and balanced reasoning supporting a change.*¹⁴
22. The evidence the TWU proposes to adduce in this case fails to meet the requirements established by the Preliminary Issues Decision (as clarified in the highlighted extract in the prior paragraph) for the following reasons.
23. Firstly, it was provided to the Commission and other parties well beyond even the extended date granted for lodgement. We note that given this, some of the witness evidence has already been excluded from consideration.¹⁵
24. Secondly, the matters set out in the paragraphs that follow the heading below of "Evidence Analysed" show that a number of the witness statements should not be admitted into evidence or should be given little or no weight. Each is dealt with in turn, in the order of witnesses mentioned at paragraph 64 of the TWU submission relating to the Distribution Award, rather than in the date order in which they were filed. In addition, we note that the witness statement of Mr Lyle Fear has been filed in respect of the claims under the Long-Distance Award only: see paragraph 33 of the TWU submission relating to that Award.
25. Thirdly, later in this submission, when we discuss the details of each claim, the inadequacies in the submitted evidence when considering the test established by the Commission for the modern award review process are pointed out.

Evidence Analysed

26. Nine of the witness statements filed by the TWU are analysed below. Whilst we are, of course, aware that the Commission is not bound by the rules of evidence¹⁶, the clear test for modern award variations is that the evidence must be of probative value. For the detailed reasons that follow, we show that this test has not been met.

¹² Above note 8

¹³ *Re Security Services Industry Award 2010* [2015] FWCFB 620

¹⁴ *Id* at para 8

¹⁵ Email correspondence dated 31 January 2017 from the Chambers of SDP Hamberger to the parties

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-decision-natroad-twu-310117.pdf>

¹⁶ Section 591 *Fair Work Act, 2009* (Cth)

Statement of Tracey Carrington

27. The TWU submission dated 18 January 2017 (but which only became available on 19 January 2017)¹⁷ merely attaches Ms Carrington's statement without textual reference.
28. It, like the other statements of Mr Charles Nichols and Mr Mitchell O'Brien referred to below, is not referenced in the TWU's submission but merely appended; albeit in the TWU's submissions on the Distribution Award there is mention at paragraph 9 that: "*the evidence demonstrates that, as will be well known to the Commission, transport workers undertake non-driving duties in addition to simply performing the task of driving a motor vehicle.*"
29. We agree. That is the case. Many drivers do, and must, as part of their duties, undertake a range of non-driving tasks.
30. That said, we do not agree with the TWU's proposed variation on this issue. That variation is an attempt to extend the coverage of the award.
31. We submit that it would introduce into the award a *per se* occupational category: see paragraph 77 below. There is no evidence adduced about that matter which, we submit, is central to the proposed variation – its effect on the coverage question.
32. Ms Carrington's statement appears irrelevant to all of the claims or any other matter in contention. It should be discarded or disregarded as irrelevant because as per section 55 of the *Evidence Act, 1995 (Cth)* it could not "*rationaly affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding.*"
33. Ms Carrington's statement is evidence of the tasks/working career of a particular driver whose work was previously covered by an enterprise agreement. It does not relate to the issue of the necessity for a definition of a driver to be included in the Distribution Award. The work that Ms Carrington undertook relates to her work under an enterprise agreement. All that is clear from her evidence is that bargaining can result in an outcome where the tasks of a driver can be appropriately tailored to the work of the enterprise.
34. Further, Ms Carrington's statement does not speak to the issue in contention: that the Distribution Award should contain a definition of the term "driver" and that the proposed definition has utility for a particular reason. Also, it does not speak to the fact that with a detailed definition of the kind proposed the Distribution Award is likely to be construed as an occupational based award rather than as an industry based award. In addition, it does not speak to the fact of how the definition of a driver proposed relates to the work of Ms Carrington.
35. Ms Carrington's witness statement is irrelevant and should be excluded.

Statement of Charles Nichols

36. This statement is merely attached to the TWU submission without textual reference. Mr Nichols work is governed by an enterprise agreement.

¹⁷ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-twu-180117.pdf>

37. Like the other two statements mentioned in this context, Mr Nichols' statement is not referenced in the submission but merely appended.
38. It appears irrelevant on the same basis as Ms Carrington's statement and should be excluded.

Statement of Mitchell O'Brien

39. We contend that this statement appears irrelevant on the same basis as the statements of Ms Carrington and Mr Nichols and should be excluded. Mr O'Brien's employment is covered by an enterprise agreement.

Statement of Dennis Mealin

40. We rely on and adopt the submissions of Bartier Perry Lawyers concerning this witness statement.

Statement of Glen DeClase

41. We rely on and adopt the submissions of Bartier Perry Lawyers concerning this witness statement.

Statement of Daryl Coghill

42. We contend that this statement should be treated as if it were a submission and given that status only.
43. Mr Coghill has made unsubstantiated claims that fall into the category of speculation or advocacy.
44. A clear example of this is found at paragraph 8 which is unsubstantiated opinion and speculation.
45. In our view, this statement should be accorded the same status as other TWU submissions. It falls short of the standard of probative evidence required to found a variation as it is the non-expert opinion of a person associated with the TWU.
46. As nothing in this statement offers substantiating evidence of a kind that would be able to be adduced as a matter of objective proof, it does not advance the TWU case other than to be acknowledged as a submission made by the TWU.

Statement of Max Bird

47. As Mr Bird is no longer employed by the undisclosed company, his former employer should be made known.
48. If Mr Bird's claims concerning the unnamed company are permitted to stand then they cannot be objectively tested. Therefore, it is only Mr Bird's subjective recollection that is in play. That is of limited probative value.
49. Paragraph 8 is categorically speculative and should be excluded or accorded little or no weight for the reason advanced in the prior paragraph of this submission. The statement at paragraph 8 indicates that Mr Bird did not even know if his then (undisclosed) employer "*did pay in accordance with the provisions under the Award.*"

50. Accordingly, all that then flows is, by Mr Bird's own words, unknown.
51. Similarly, the allegation at paragraph 10 is unable to be tested objectively. Therefore, that paragraph should either be excluded or given no weight.
52. Paragraph 12 is vague and unable to be substantiated. The statement begs the question of what was or was not "permissible." There is no way that statement is able to be objectively proved and therefore paragraph 12 should be excluded or given little weight.
53. At paragraph 19 Mr Bird advances contradictory evidence. In the third sentence of that paragraph, Mr Bird indicates he receives a "*trip rate for the kilometres travelled and one drop despite having to do two or more drops.*" However, in the next sentence he appears to contradict that proposition where he claims "*Greenfreight would only pay for one drop if both the trailers were going to the same store but if there were two different stores it was paid as 2 drops.*" The last two sentences of paragraph 19 should be excluded on the basis that they are contradictory and have no probative value.

Statement of Garry Anderson

54. Mr Anderson's statement purports to set out his experience with long distance driving.
55. However, the example used by Mr Anderson at paragraph 7 of his statement to substantiate his allegations does not relate to a "long distance journey" as defined in clause 3.1 of the Long-Distance Award. At paragraph 7, the additional material about pay rates is not only speculative but appears to relate to Mr Anderson's employment under an unspecified enterprise agreement mentioned at paragraph 3. His statement is therefore irrelevant in relation to the issue and paragraph 7 should be excluded or given little weight.
56. It appears that the generalised conclusion reached in paragraph 6 is presaged on the example in paragraph 7 and should also therefore be excluded or given little weight.
57. The allegation in paragraph 11 is unable to be substantiated. It appears Mr Anderson is comparing a prior employer's payment under an award with his current employer's payment under an enterprise bargaining agreement.
58. Therefore, the statement is speculative and should either be excluded or given little or no weight.

Statement of Lyle Fear

59. In his statement, Mr Fear's employment is deposed as being covered by the enterprise agreement noted at paragraph 4. The statement indicates that a copy of the agreement was attached and marked LF-1 but that exhibit was not filed with the statement.¹⁸
60. On 2 February 2017, by email we sought a copy of same from the TWU. No reply has been received from the TWU. We have since found a copy of the agreement on the

¹⁸ NatRoad notes that the submission at <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-twu-190117.pdf> where the witness statements are contained contains a notation that LF-1 was inserted on 15 February 2017

Commission's web site. However, it was not filed with the statement and therefore the statement was deficient at the time it was filed and should be excluded.

61. In any event, Mr Fear indicates in his statement that his employment is governed by the relevant enterprise agreement and a trip rate is set by its terms. His evidence is irrelevant other than to show a pattern of work governed by that document. It should therefore either be excluded as failing to be a complete document lodged within the time set for the doing so under the Amended Directions, or given little or no weight on the grounds of irrelevance.

First Proposed Variation – Distribution Award

62. As expressed in TWU-1, the TWU proposes to insert a new definition of the term "driver" in clause 3.1 of the Distribution Award. This is purportedly advanced, per clause 3 of the relevant TWU submission,¹⁹ (**TWU Submission**) "to better explain the scope of duties which may be undertaken by driving employees covered by the Award."
63. The variation is principally advanced by the TWU on the basis that the Distribution Award would be "simple and easy to understand and that the standard provision dealing with the interaction between modern awards is capable of appropriate application."²⁰

The Coles Case

64. NatRoad submits that, in reality, the TWU submission is concerned with reversing the effect of a Full Federal Court (FFC) decision²¹ (the **Coles case**).
65. In this respect, there is a relevant comment in the qualitative report attached to Dr Davis' witness statement and marked BD-3. The cogent comment was made by a NatRoad member: "*the TWU is just trying to capture Woolies and Coles.*" In other words, it seems to be a grab for members by the TWU. Our legal analysis shows the insight expressed in that member comment. The comment appears to be entirely accurate.
66. The following legal analysis precedes a consideration of the arguments the TWU made in its TWU Submission to support the variation.
67. In essence the *Coles* case saw the specific award classifications in another award exclude coverage by the Distribution Award. The court found that Coles' employee delivery drivers also known as Customer Service Agents (CSAs) were **covered** by the Distribution Award. But significantly, they were also covered by the *General Retail Industry Award 2010* (the **Retail Award**).
68. The relevant classification under the Retail Award was considered to be the most appropriate to the work performed by the CSAs **and the environment in which they work**. Hence, the Retail Award, and **not** the Distribution Award **applied** to them.

¹⁹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-twu-180117.pdf>

²⁰ Id at para 4

²¹ *Transport Workers Union of Australia v Coles Supermarkets Australia P/L* (2014) 284 FLR 238 mentioned at Id para 16

69. To contextualise our approach to the legal analysis, we first set out the perspective we have adopted. NatRoad considers that the TWU variation would cause havoc, rather than merely simplify the Distribution Award or clarify modern award coverage.
70. In our view, simplicity would be confounded not advanced. No other modern award objective is in play. The FCC found that determination of coverage was achieved via a process of considering which award classification is most appropriate to the work performed by the CSAs and their work environment. It is this latter consideration that would be, we contend, nullified by the TWU proposed variation. The analysis of the FFC would need to be re-considered. The opening up of settled litigation would be a very real possibility should the TWU variation be granted.

Use of the Terms "Driver" or "Driving" in the Modern Awards

71. NatRoad has compiled a list of where the term "driver" or the notion of "driving" is integral to the work governed by particular modern awards and where the modern award recognises that notion. That list is at **Attachment A**.
72. Attachment A contains an explanation relating to the method used in its compilation. The main contention we make is that doubts would arise about current classifications across a range of industries where drivers are engaged, including those who were the subject of the FFC proceedings in the *Coles* case. We submit the TWU is in effect seeking the Commission to (inappropriately) reverse that FFC decision.
73. Rather than maintain the particularities (and peculiarities) of the driving task as set out in a multiple number of awards, the wording proposed by the TWU would see a large number of tasks recognised as being covered by the Distribution Award. This is because of the expansive way the proposed definition is expressed.
74. This proposed variation opens up a large number of potential re-classifications. The extent of that potentiality is put in context having regard to the number of drivers who are in an ancillary role in their primary industry. The National Transport Commission has estimated that in 2011 there were about 217,000 truck or delivery drivers employed in Australia. About 125,000 (57.7% of the national total) of these drivers are employed in the Transport, Postal and Warehousing sector and are therefore classed as performing a hire and reward task. The other 91,800 drivers (42.3%) are considered to be fulfilling an ancillary role, within their primary industry of employment.²²
75. Should the proposed TWU variation be granted, it is likely that **all** driving tasks, including those undertaken by workers fulfilling an ancillary role, would then sit within the Distribution Award. This is because it would be the modern award where a specific definition of driver and a comprehensive inclusive definition of driver-related tasks resided. This is especially so given the statement set out in paragraph 77 below that the practical effect of the Distribution Award classification structure is to render it a de facto occupational award. Even if that proposition is speculative, the change would at the very least trigger that doubt. It would also confound the suggestion that the proposed variation will simplify and ease understanding of the award.
76. The doubt referred to above is further fuelled by the history of the making of the Distribution Award. The Distribution Award was deliberately structured to include within

²² National Transport Commission *Who Moves What Where* August 2016
[https://ntc.gov.au/Media/Reports/\(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE\).pdf](https://ntc.gov.au/Media/Reports/(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE).pdf) at p32-33

the definition of the road transport and distribution industry (in current clause 3.1), the notion of "ancillary" work. The Full Bench of the Australian Industrial Relations Commission (AIRC) charged with the creation of the transport modern awards²³ noted that:

*We have retained the reference in paragraph (a) of the definition of the road transport and distribution industry to the transport of goods etc where that work is ancillary to the principal business, undertaking or industry of the employer.*²⁴

77. The inter-connection between the way in which the classifications are structured in the Distribution Award and the notion of ancillary work is explained by the AIRC Full Bench as follows:

*Even though the RT&D Modern Award is an industry award it is clear that the practical effect of the various existing private transport awards it encompasses is that they operate by reference to a structure of types, models and classes of vehicle and, it follows, to the driver of those vehicles thereby having occupational coverage. We note that there are very few transport classifications in the modern awards made to date and it is likely that any transport functions of any significance are carried out by dedicated transport operators. If the transport of goods etc as defined in the RT&D Modern Award is ancillary to an employer's business but it is carried out by an employee in one of the classifications in the award it should be covered by the award.*²⁵

78. The proposed variation would facilitate a potential massive shift from, at the least, all of the awards set out in Attachment A to the Distribution Award. Driving would, by reason of the definition, encompass a range of other tasks that would capture a range of occupations/classifications as set out in Attachment A.
79. The introduction of the proposed clause would certainly open the way for the TWU to re-litigate the *Coles* case – the case which appears to have sparked this proposed change. There is no way that the proposed change would induce a measure of simplicity or advance any modern award objective, particularly that of ease of understanding. It is abundantly clear that the proposed variation seeks to materially undermine the reasoning for the findings in the case which was resolved against the TWU.
80. In the *Coles* case, the FFC held that the primary judge was correct in determining that the relevant classification under the Retail Award was a better and more comprehensive match with the work performed by the CSAs than the relevant classification under the Distribution Award. A Retail Employee Level 1 is defined as an employee performing one or more of various functions including the wrapping or packing of goods for despatch, the delivery of goods and work that is incidental to or in connection with that work. These tasks would be encompassed by the inclusive definition established by the proposed variation. A Transport Worker Grade 2 under the Distribution Award is much more narrowly defined. That classification is simple. The classification is expressed to cover a driver of a "rigid vehicle (including a motor cycle) not exceeding 4.5 tonnes gross vehicle mass (GVM)."

²³ [2009] AIRCFB 345 (3 April 2009)

²⁴ *Id* at para 169

²⁵ *Id* at 171

81. It is clear that with a greater level of description such as is now proposed in the detail of the definition put forward by the TWU, the court would have reached a different conclusion than is summarised in the prior paragraph. That much is clear from the following passage:

34. *When the primary judge turned to examine the question of whether Transport Worker Grade 2 or Retail Employee Level 1 was the more appropriate award classification his Honour was influenced by the fact that the latter classification appeared to be a more comprehensive match with the work of CSAs than the former. His Honour said:*

229. *As has already been discussed, the indicative tasks and job titles within the Retail Employee Level 1 classification specifically cover the tasks of a CSA. This degree of specificity supports the Retail Award as most appropriate. The fact that each CSA is a team member of a particular retail store and performs a range of tasks at their particular store provides a further important connection with the Retail Employee Level 1 classification. Even when undertaking delivery tasks, CSAs are involved in the consolidation of orders in the store with other team members and perform the customer service and transaction processing tasks which would ordinarily be performed by team members in the physical store. In short, the CSA role does not simply involve the collection and delivery of goods from a warehouse. ...*

(Footnote omitted.)

and:

231. *In light of the scope of clause B.1.1 of the Retail Award, all tasks performed by CSAs described earlier, including delivery driving tasks and van loading and unloading, fall within the Retail Employee Level 1 classification. This is because the Retail Employee Level 1 classification encompasses both “delivery of goods” and “packing of goods for despatch and despatch of goods”.*

232. *By contrast, delivery driving tasks are the only aspect of the CSA role that could fall under the Transport Worker Grade 2 classification. The Road Transport Award merely describes that classification as Transport Worker Grade 2 – Driver of a rigid vehicle (including a motorcycle) not exceeding 4.5 tonnes gross vehicle mass. No detail is provided around the types of tasks associated with that classification. Moreover, the indicative job title (Driver) covers only one component of the wide range of tasks performed by CSAs. This component is in any event covered equally by the Retail Employee Level 1 classification within the Retail Award as described above.*

(Footnote omitted.) (Emphasis in original.)

35. *We are unable to fault this approach. It appears to us that the primary judge applied himself diligently to the comparison and evaluation which was required. On the facts found by the primary judge we would reach the same conclusion.²⁶*

82. In short the variation is designed to reverse the decision of the FFC. The additional tasks included in the proposed definition would encompass many of the “wide range of tasks” set out in Retail Employee Level 1 classification. Further, the definition proposed

²⁶ *Id* at para 34-35 NatRoad’s emphasis

is inclusive and so the wide range of tasks performed by CSAs would be able to fit within the terms of the proposed definition.

83. The TWU Submission deals with the arguments proposed in favour of the definition in paragraphs 9 to 19.
84. In paragraph 9, the TWU by way of its first argument, asserts that that "the evidence demonstrates that...transport workers undertake non-driving duties in addition to simply performing the task of driving a moving vehicle." The evidence does not support that conclusion. The work of the drivers where evidence is adduced in these proceedings all arises under enterprise bargaining agreements. It falls short of being probative of the facts stated.
85. Despite the argument in the prior paragraph, it would be absurd to assert that just driving of itself is all that is covered in the driving task. Drivers might undertake a range of other tasks associated with driving; the Distribution Award is set up so that they are paid an hourly rate for their work. They are not paid solely for driving time. Nothing in clause 15.2 of the Distribution Award is able to be construed so as to limit the hourly payment there expressed for non-driving tasks.
86. In the qualitative report attached to Dr Davis' witness statement, one of the comments is that the definition "really just describes the normal tasks a driver does anyway." This reflects the fact that the ordinary meaning of the term driver is used in the award. There is no evidence before the Commission that the ordinary usage of the term is deficient. This is especially the case given the wide range of usage in the term driver throughout the modern award system, as reflected in Attachment A. Even if the Commission were to accept the evidence proposed to be adduced (and NatRoad's earlier contentions argue against that) the statements do not reveal any deficiency in the current award arrangements or, as asserted by the TWU, in the proper application of the ordinary meaning of the term "driver."
87. In setting out its second argument, the TWU acknowledges that the classification and rates of pay under the Distribution Award have been determined "on the basis of a recognition that the work undertaken by drivers encompasses non-driving tasks such as loading and unloading, customer relationships, use of mechanical aids and the like": paragraph 11 of the TWU Submission. We agree. We submit that this proposition detracts from any alleged need to include a detailed inclusive definition of driver by reference to non-driving tasks in the Distribution Award. The ordinary use of that term suffices.
88. The third TWU argument is that it is incongruent for the Distribution Award to contain detailed classification descriptors for Distribution Facility Employees and not Transport Worker classifications. But the TWU proposal is not related to expanding the classification system. It is to include a definition in the terms sought and, in NatRoad's submission, is intended to expand the de facto occupational coverage of the Distribution Award. The alleged incongruence is explained by the extract from the AIRC Full Bench decision set out in paragraph 77 above.
89. The fourth argument is that the Distribution Award will be simple and easy to understand if the definition of driver as proposed is inserted. As has been argued above, the opposite is the case. The TWU asserts in paragraph 13 of the TWU Submission that the variation would "allow proper appreciation of the nature of the work

covered by the Award." This is a misleading statement. It is unrelated to any of the criteria in section 134(1) *Fair Work Act, 2009* (Cth) (FW Act).

90. The Commission must of course be satisfied that the Distribution Award includes terms only to the extent necessary to achieve the modern awards objective. That objective is to ensure that the Award, together with the NES, provides a fair and relevant minimum safety net, taking into account the range of matters listed at s.134(1) of the FW Act. An approach that is based on promoting the alleged "proper appreciation" of the nature of the work covered by the driving task is not a matter that advances any of the modern award objectives. It must be emphasised that the definition proposed is inclusive. It does not encompass, and should not encompass, the full extent of all tasks that a driver might undertake. This will be, in part, moulded by the industry within which the driving task is undertaken. It is the nature of the driving work in the individual modern award context that is the main differentiating character of the tasks associated with driving. That much is able to be ascertained from Attachment A.
91. Further the variation is not necessary to achieve the modern award objectives as required by the Preliminary Issues Decision. The Full Bench made it plain that:

*Relevantly, s.138 provides that such terms only be included in a modern award 'to the extent necessary to achieve the modern awards objective'. To comply with s.138 the formulation of terms which must be included in modern award or terms which are permitted to be included in modern awards must be in terms 'necessary to achieve the modern awards objective'. What is 'necessary' in a particular case is a value judgment based on an assessment of the considerations in s.134(1)(a) to (h), having regard to the submissions and evidence directed to those considerations. In the Review the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective.'*²⁷
92. The variation will not achieve any of the modern award objectives, especially the one advanced by the TWU, s134(1)(g), for the reasons set out above.
93. The fifth argument advanced by the TWU is as expressed in paragraph 19 of the TWU Submission. The TWU indicate the view that "the absence of express recognition in the RT&D Award of the non-driving tasks undertaken by drivers inhibits the capacity of employers, employees, regulators and courts to properly assess the appropriateness of the classifications in the RT&D Award." This statement is made following reference to the *Coles* case. It is a clear indication that, as expressed earlier, the TWU wishes to reverse the outcome of the *Coles* case with all of the doubts and difficulties that such a reversal would bring about.
94. The FFC was able to "properly assess" the appropriateness of the classifications in the Distribution Award. It's just that the TWU didn't like the result. Further, the TWU rationale is not reflective of any of the modern award objectives.
95. There is no connection with the necessity to achieve any of the modern award objectives with the proposed variation. In fact, the resulting outcome would compromise achieving a simple and easy to understand modern award system. The variation should be rejected.

²⁷ Above note 8 at para 36

Second Proposed Variation- Distribution Award

96. We rely on the submissions of Bartier Perry Lawyers.

Third Proposed Variation- Distribution Award

97. At paragraph 42 of the TWU Submission, the TWU says that the proposed variation is “a new subclause in the overtime provisions contained in clause 27 of the Award to ensure that the Award provides for overtime in circumstances where employees engaged under another award are required to temporarily transfer to this Award.”
98. We contend that just as with the first proposed variation, this variation arises because the TWU failed in prior litigation (the 2012 case).²⁸ In the 2012 modern award review, the TWU opposed a change to the coverage provisions of the Long Distance Award. The employer arguments prevailed.²⁹ The Senior Deputy President said:

I am persuaded, with some minor provisos, to make the variation sought. I do not agree with the TWU that this issue was addressed by the Full Bench when the Award was made. The principal argument there ruled upon was whether there should be one or two awards. Allied to that was an argument that c.p.k. payments should not be included in any award. The need for the retention of a provision like that in clause 5 of the LDD 2000 Award does not appear to have been raised. That award acknowledged employees could transfer between it and a local award. There was no definition of “local award” but I assume it envisaged the several state awards which operated in the private road transport industry. Provided the local award was one under which the employee was engaged to perform driving duties a transfer between the two awards was envisaged. Here, the Ai Group proposal identifies the transfer will be between the RT&D Award and the Award only. There was no submission or evidence of any difficulties arising from the LDD 2000 Award provision. The agreed facts support the need to make clear the interaction between the two awards in circumstances where operators undertake work, and employees perform work which is covered by both awards. For many years the LDD 2000 Award provided in clause 20.4 for an allowance in the event an employer required a local driver to “temporarily transfer to duties covered” by the LDD 2000 Award. A similar allowance is now contained in the Award. It is clause 14.1(c)(i). That deals with the employee who transfers from local to long distance work. The Ai Group proposal will recognise the opposite, an employee who transfers from long distance to local driving duties. It is important to note that this only relates to driving duties. As I have earlier commented, I do not agree with the TWU that this particular issue was addressed by the Full Bench in its April 2009 decision. In any event, the variation sought will not change the fact that the Award will continue to be the only award which covers long distance operations.³⁰

99. The proposed variation will cause confusion and an unnecessary increase to road transport employers’ regulatory burden: s134(1)(f). The inter-action between the Distribution Award and the Long Distance Award is at the nub of this matter. At present that inter-action is clear cut. The proposed amendment would add an additional unnecessary complication to that inter-relationship and unnecessarily increase the regulatory burden on employers.

²⁸ [2014] FWC 3529

²⁹ Id at para 27 and 28

³⁰ Id at para 27

100. The variation would require the hours worked under another award to be added to the hours worked under the Distribution Award in order to calculate ordinary hours. Work outside of the "combined" ordinary hours would be required to be paid at overtime rates. There is nothing in the TWU Submission which reveals how this would work in practice. In fact, below, we show that it would be incapable of practical operation.
101. The Distribution Award's coverage is excluded per clause 4.2 where employees are covered by the Long Distance Award "whilst undertaking long distance operations." Therefore the Distribution Award applies unless a long distance operation is undertaken. It is the interaction between these two awards that is at issue given the unique interdependency that these awards possess in the modern award system.
102. The phrase "whilst undertaking long distance operations" is able to be ascertained via two definitions contained in both the Distribution Award and the Long Distance Award (clause 3.1 of both). The first is the definition of a long distance operation:

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

And as modified by:

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

103. A long distance operation is therefore one which exceeds 500 kilometres from a principal point of commencement to a principal point of destination or an interstate journey in excess of 200 kilometres.
104. The two Awards are structured so that overlap between the two awards is contemplated and compensation adjusted accordingly. The 2012 case outcome was the recognition that long distance drivers may be required to work under the Distribution Award. Senior Deputy President Harrison recognised that there was already recognition in the Long Distance Award for transfer from the Distribution Award to the Long Distance Award per the allowance in clause 14.1(c)(i).³¹ The change brought about as a result of the 2012 case provided recognition of a transfer from the Long Distance Award to the Distribution Award: new clause 4.2 of the Long Distance Award.
105. The TWU's concern in advancing the variation appears to be that an employee who is engaged under one of the transport awards and then required to work under the other is properly remunerated. That proposition is made in paragraph 45 of the TWU Submission. It does appear that the TWU is invoking the requirement of s134(1)(da)(i) that the need to provide additional remuneration for employees working overtime should be taken into account when considering a fair and relevant minimum safety net; per paragraph 62 of the TWU Submission.

³¹ Ibid

106. NatRoad contends that the current arrangements under the two awards provide for appropriate remuneration when there is a transfer between the awards, including in relation to overtime. First, the transfer from the Distribution Award to the Long Distance Award attracts an allowance that is 1.24% of the standard rate. Secondly, under the Long Distance Award the employer is required to nominate whether the employee is to be paid via a cents per kilometre method or the hourly award method.
107. The hourly driving rate under the Long Distance Award includes an industry disability rate and an overtime allowance per clause 13.5(b) of the Long Distance Award. These two components are also incorporated into the cents per kilometre rate: see clause 14.1(b) Long Distance Award. As the TWU notes in paragraph 57 of the TWU Submission, both methods of payment do not depend on the time worked by an employee for their operation. But it is equally clear that there is an overtime allowance built into the Long Distance Award's payment terms.
108. The Long Distance Award sets out in clause 20.1(a) that the ordinary hours of work shall be an average of 38 per week, and may be calculated over a period of not more than 28 days.
109. The Long Distance Award contains proscriptions about hours of work. These must be worked in accordance with fatigue management rules per clause 20.2(a) or in accordance with clause 20.2(b). For example, one element of clause 20.2(b) limits the number of hours in a day which a driver may work to 12. It requires 10 hours off duty immediately after the working period is completed.
110. For a transfer from the Long Distance Award to the Distribution Award, the hours worked under the Long Distance Award would have already attracted the two components discussed in paragraph 107 of this submission: the industry disability allowance and the overtime allowance. To then set hours under the Distribution Award as overtime hours would be double counting. As was expressed in one of the qualitative responses recorded by Dr Davis: "sounds like double counting to me."
111. The latter point is reinforced when the definition of ordinary hours in each award is considered and when the absence of a per kilometre rate in the Distribution Award is considered. The Distribution Award also indicates that the ordinary hours of work must not exceed eight hours per day and must be worked continuously between 5.30am and 6.30pm. Accordingly, the administrative burden in calculating overtime hours under the Distribution Award, especially where the driver was paid under the cents per kilometre rate under the Long Distance Award before transfer, would be high and would involve the double counting previously mentioned. Again as one of the qualitative responses set out in BD-3 indicate: "(it) would be hard to operationalise."
112. How the Long Distance Award might need to be changed to accommodate the need to collect the actual hours in a manner that accords with the structure of the Distribution Award is not considered in the TWU submission. This practical point is not considered in the TWU Submission but is at the nub of the difficulty with the proposed variation. The proposed variation would therefore not advance simplicity or ease of understanding. The opposite is the case.
113. The Commission should reject the proposed variation as not advancing the modern award objectives. In particular, the proposed variation would not recognise the fact that a component of overtime had already been built into the wage rate for payments under the Long Distance Award. Further, because of the administrative difficulties associated

with additional recording of hours, time of day within which those hours were worked and other matters that would not necessarily be currently recorded or not recorded in a manner that would be compatible with what is essentially a part merger of the two awards, the regulatory burden would be unacceptably expanded.

114. In addition, the evidence presented by the TWU falls short of indicating that there is a real issue to be addressed in the industry. For example paragraph 13 of the witness statement of Mr Coghill contains speculative hearsay about a breach of the law. That allegation is repeated in paragraph 15 of the statement. It does not properly isolate any problem with the inter-action of the awards and potentially founds action that the TWU could take to enforce a breach of award conditions. There is no evidence that the TWU took action against the alleged award breach therefore further reinforcing that the evidence lacks cogency.
115. Mr Bird's witness statement disregards the fact that under the Long Distance Award, he would be paid an overtime component for the interstate journey.
116. Mr Anderson's statement regarding payment is not relevant as payment is made in accordance with an enterprise bargaining agreement. The allegation made against Visy therefore is not related to the inter-action between two awards but relates to an alleged deficiency and/or breach in an enterprise bargaining agreement.
117. No evidence has been adduced sufficient to support a variation. There is no cogent evidence that would support the variation proceeding. It should be rejected as not advancing any modern award objective.

Fourth Proposed Variation- Long Distance Award

118. The TWU seeks to vary subclause 13.5(a)(iii) of the Long Distance Award. That provision sets out one of the methods by which an employee may be paid the hourly driving rate for long distance driving.
119. The subclause permits the employer to use a Fatigue Management Plan (**FMP**) to calculate the hourly rate. The subclause states that "the hourly rate may be used to calculate a trip rate for any journey by multiplying the hourly rate by the number of driving hours specified in the FMP for that journey." It is emphasised that FMPs are not safe driving plans or safe trip plans. The latter are only one element of an FMP and in some contexts an unnecessary element.
120. The TWU seeks the addition of a final sentence to the current clause. That sentence is proposed as: "A copy of the FMP for that journey must be provided to the driver."
121. At paragraph 4 of the TWU submission dated 19 January 2017 dealing with the Long Distance Award³² (**TWU Submission2**) the rationale for the proposed variation is given as being "so that the employee understands the basis upon which the relevant trip rate is calculated."
122. The TWU also indicates at paragraph 4 that "The proposed variation will ensure that the Award is simple and easy to understand so that employees know the basis upon which they are paid."

³² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201632-sub-twu-190117.pdf>

123. NatRoad submits that the real purpose of the proposed variation is to reintroduce safe driving plans that were no longer a regulatory requirement following the repeal of the *Road Safety Remuneration Act, 2012 (Cth) (RSR)*.³³ Rather than merely seek for a provision which would require, say, disclosure of the method of calculation to the driver, the TWU seeks for a detailed plan per the form marked TWU-4 attached to TWU Submission2.
124. The TWU's support for the RSRT is well known.³⁴ This proposed variation is not about making drivers safer. It is not about complete disclosure. It is about bringing back regulation that has been rejected by the Government and the community. The burden of the regulation falls unacceptably on drivers. It is about unnecessarily increasing the regulatory burden and therefore should be rejected.
125. Safe driving plans were a requirement of the Road Safety Remuneration Tribunal's 2014 Order³⁵ (**the 2014 Order**). Clause 10 of the 2014 Order said:
- 10.1 *An employer or hirer must prepare a written safe driving plan for a road transport driver employed or engaged by them who is to undertake a long distance operation for the employer or hirer using a motor vehicle with a gross vehicle mass of more than 4.5 tonnes.*
- 10.2 *The safe driving plan must be prepared in relation to the road transport service to be provided by the road transport driver as part of the long distance operation.*
- 10.3 *The safe driving plan must be reviewed regularly and updated by the employer or hirer when there is any change in the circumstances applicable to the long distance operation to be undertaken, or the road transport service to be provided, by the road transport driver or when safety issues warrant a review and update.*
- 10.4 *The safe driving plan must be prepared and implemented, and reviewed and updated, in consultation with the road transport driver.*
- 10.5 *The safe driving plan must be provided to the road transport driver by the employer or hirer on each occasion the road transport service is provided.*
126. There were also further highly prescriptive requirements associated with safe driving plans set out in the 2014 Order. The sort of detail set out in paragraphs 10 and 11 of the TWU Submission2 were required to be included in a safe driving plan.
127. The level of prescription sought by the TWU is said to be proposed so that an employee is able "to determine how the trip rate has been calculated and whether or not all work and travel has been factored into the rate." The FMP would be required to accommodate the required fatigue management rest breaks and times for a particular

³³ By the *Road Safety Remuneration Repeal Act 2016 (Cth)*

<https://www.legislation.gov.au/Details/C2016A00035>

³⁴ See for example <https://www.ownerdriver.com.au/industry-news/1604/twu-and-labor-slam-rsrt-decision>

³⁵ The Order remains accessible on this site: <http://www.fairwork.gov.au/about-us/legislation/road-safety-remuneration-system>

journey. It would be structured around those legal requirements. It should not need to be contested on each occasion that a driver undertook a particular journey. The level of detail and the regulatory burden sought to be imposed is therefore out of proportion to any issue identified by the TWU. Once the trip plan for a particular journey had been established within the FMP the need to modify that for each journey is unnecessary and could actually derogate from safety. So long as the basis for the calculation of the hourly rate was made known to the driver, the other regulatory issues are not relevant to matters that modern awards may or must contain per s 136 FW Act.

128. In fact, the level of prescription in a plan could mean that a driver if fatigued could be discouraged from resting when needed. For example if a driver felt fatigued say within the first two hours of a journey, he or she should not be discouraged by the prescription in a safe driving plan from doing so. In fact the regulation of rest breaks under the Heavy Vehicle National Law during journeys is currently too prescriptive, not taking individual needs sufficiently into account.
129. NatRoad members have given feedback that the real purpose of these individual plans is problematic. Employees must be provided with training on fatigue management and the completion of related work diaries and in that context the completion of a separate plan for each journey is administrative overkill.
130. The quantitative survey undertaken by NatRoad shows that the costs associated with the introduction of individual safe driving plans would substantially affect a number of members. At page 20 of that report attached to Dr Davis' witness statement as BD-2, it is shown that over one-third (35.4 per cent) expected the introduction of such an arrangement would impose moderate (18.2 percentage points) or significant (17.2 percentage points) costs on their business. We emphasise that, in effect, because of the TWU's late change in the case to be answered these statistics are the only material that connects with the actual case to be answered.
131. These numbers are given added significance when it is realised that the survey participants were chosen at random to reflect the make-up of NatRoad membership. Hence, as is expressed in the quantitative survey attached to Dr Davis' witness statement, a clear majority (75.0 per cent) of respondents operated between 1 and 4 trucks. The proposed variation is therefore less likely to affect this cohort given that they are less likely to maintain a fatigue management system that will have pay rates for a range of long distance journeys. The relevant system where trip details are required by the regulator are, in NatRoad's understanding, those associated with Advanced Fatigue Management.³⁶
132. To assist the Commission, the following is an extract from the National Heavy Vehicle Regulator's (NHVR) web site that details the basis of the various methods of regulating fatigue in the heavy vehicle sector³⁷:

³⁶ <https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/work-and-rest-requirements/advanced-fatigue> There are 10 AFM standards shown on the regulator's web site. The first of these is that: *Scheduling and rostering – scheduling of trips and rostering of drivers must incorporate fatigue management measures*. See also <https://www.nhvr.gov.au/files/201402-149-risk-classification-system-for-afm-policy.pdf> See also the specifics for the livestock industry <https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/work-and-rest-requirements/livestock-fatigue-scheme>

³⁷ For the definition of a fatigue-regulated heavy vehicle see s7 National Heavy Vehicle Law <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/H/HeavyVehNatLaw.pdf>

The Heavy Vehicle National Law (HVNL) sets three work and rest options.

1. Standard hours

Standard hours are the work and rest hours allowed in the HVNL for all drivers who are not operating under National Heavy Vehicle Accreditation Scheme (NHVAS) accreditation or an exemption. They are the maximum amount of work and minimum amount of rest possible that can be performed safely without additional safety countermeasures.

2. Basic Fatigue Management (BFM)

Those operating under NHVAS with Basic Fatigue Management (BFM) accreditation can operate under more flexible work and rest hours, allowing for (among other things) work of up to 14 hours in a 24-hour period. BFM gives operators a greater say in when drivers can work and rest, as long as the risks of driver fatigue are properly managed.

3. Advanced Fatigue Management (AFM)

Those operating under NHVAS with Advanced Fatigue Management (AFM) accreditation adopt a genuine risk management approach to managing heavy vehicle driver fatigue. Rather than prescribing work and rest hours, AFM offers more flexibility than standard hours or BFM in return for the operator demonstrating greater accountability for managing their drivers' fatigue risks.³⁸

133. The variation proposed by the TWU will not make the Award simpler and easier to understand. Instead, it would go well beyond any reasonable requirement to disclose the basis of a payment. It would reinstate a defunct regulatory requirement through the Award, a requirement that would confound the management of fatigue and introduce a dubious regulatory requirement under the guise of regulating the employment contract. It would do so at an unacceptable cost to employers. The variation should be rejected as failing to advance any of the modern award objectives.

Fifth Proposed Variation- Long Distance Award

134. The TWU seeks to amend that part of the Long Distance Award dealing with minimum rates of pay and classifications "to make clear that employees should be appropriately remunerated for work that does not form part of a long distance operation."
135. This objective (albeit confused, as will be shown) is said to be achieved via the introduction of a pick-up and drop off allowance in terms, inter alia, set out in TWU-7 attached to TWU Submission2.
136. The wording of the proposed variation differs markedly from the wording first proposed by the TWU which was addressed in the NatRoad quantitative survey and which, for the purposes of the variation now in issue, should be completely ignored. We reiterate the earlier NatRoad Board instruction that should the TWU seek to modify the wording of this variation, we would seek an adjournment of proceedings to undertake again a survey of members on this critical issue.

³⁸ <https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/work-and-rest-requirements>

137. The allowance proposed to be introduced into the Long Distance Award is not supported by any work value material. The evidence of the need for any such allowance is discussed below and is entirely deficient to found a variation which is uncosted and which, as further discussed below is uncertain in its application. In addition, the proposal ignores the previously explained inter-action between the Long Distance Award and the Distribution Award.
138. On the basis that the allowance is intended to effect increased remuneration without a proper evidentiary base, the variation should fail albeit that the notion of an allowance is not specifically encompassed in the definition of minimum modern award wages at s284(3) FW Act. The extent of probative evidence necessary to found an increase in remuneration without a concomitant increase in productivity, we submit, should be accompanied by material which is akin to the requirements related to the work value considerations under the FW Act which are as follows per sections 156(3) and 156(4) FW Act:
- (3) In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.*
- (4) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:*
- (a) the nature of the work;*
 - (b) the level of skill or responsibility involved in doing the work;*
 - (c) the conditions under which the work is done.*
139. The evidence in support of this matter first comprises the statement of Mr Coghill. In paragraphs 42-46 above, we have indicated that his evidence should be disregarded as probative and treated as if it were a further TWU submission in this matter.
140. In addition, paragraph 8 of Mr Coghill's statement shows the confusion between the payment for loading and unloading currently set out in the Long Distance Award and the allowance proposed in the variation. As noted in the qualitative material compiled by Dr Davis at BD-3: *"One participant stated the loading/unloading allowance ostensibly covered pick-up and delivery and would find difficulty in distinguishing the two allowances."* We believe that the member's comments are more cogent than any of the remarks in favour of the variation. The proposed variation would make the Long Distance Award less easy to understand thus detracting from the relevant modern award objective.
141. Mr Coghill, however, appears to indicate that they are allowances of the same kind. The astounding, unsubstantiated statement is then made in paragraph 8 of his witness statement that *"however this payment, if paid, is insufficient to cover the time spent if the driver has to make numerous stops along the way."* There is no evidence of the kind mentioned in paragraph 138 of this submission that substantiates this allegation.
142. Mr Fear substantiates that pickup and drop offs are akin to loading and unloading. At paragraph 6 of his statement he says: *"When doing pickups and drop offs I am physically engaged in the task of loading and unloading."* The particular practices that Mr Fear then describes are remunerated in accordance with the allowances set out in Schedule 3 of the enterprise agreement that applies to his employment. His evidence is

therefore only probative of practices which are undertaken pursuant to that agreement. They have no relevance in distinguishing the two allowances in a practical sense.

143. The manner in which the proposed allowance is supposed to reflect a differentiation between the idea of loading and unloading and pick up and drop off is unclear. At paragraph 29 of TWU Submission2 it is said that "the evidence demonstrates that employees engaged in long distance operations are performing long distance operations and making multiple pickups or drop offs at either end of the long distance operation." It does not.
144. We have already dealt with the evidence of Mr Coghill and Mr Fear.
145. The evidence of Mr Bird relates to this matter at paragraphs 14-17 inclusive of his witness statement. There are allegations in these paragraphs that under his employment with an undisclosed employer he was unpaid for time or travel to the destination of Port Kembla: paragraph 16. That matter and the matters attested to in paragraph 15 of his statement are unrelated to the allowance proposed to be introduced. The material in paragraphs 16 and 17 appear to amount to allegations of breach of award conditions. They are not probative of any widespread industry practice. They merely relate to allegations that are unable to be objectively proved in relation to an undisclosed prior employer. They have no probative value. The statement is irrelevant to the substance of the proposed allowance and is not probative of the extracted statement made by the TWU reproduced in paragraph 134 of this submission.
146. Mr Anderson's employment appears to be governed by an enterprise agreement. In relation to his prior employment, he appears to be alleging a breach of the Distribution Award. If there were short journeys which required the multiple pick-ups of which he speaks then the appropriate coverage is under the Distribution Award. That much is clear from the discussion of the inter-relationship between the Distribution Award and the Long Distance Award set out in the discussion of the third variation above.
147. The other issue with the proposed allowance is that it is expressed so as to be unclear as to its application. Per TWU-7 the hourly rate to be paid is expressed to be triggered when there are "additional hours worked." But additional to what? In paragraph 31 of TWU Submission2 the TWU alleges that the variation would advance the objective of ensuring that the award is simple and easy to understand. The opposite is correct when the expression "additional hours worked" is used as a trigger for the payment of the allowance. This is because the Long Distance Award is structured so that payment methods are not necessarily linked with hours worked for example where payment is via the cents per kilometre method. At the heart of the proposed variation is unacceptable ambiguity.
148. The fact that the allowance is triggered by "additional hours worked" also reinforces the point made in paragraph 138 of this submission. In other words, the "trigger" mentioned in the previous paragraph appears to raise the issue of whether the so-called allowance does in fact comprise a claim for an additional hourly payment. That characterisation would require the work value evidence referred to above to be adduced.
149. Finally we note that at paragraph 22 of TWU Submission 2 it is said:

It is appropriate that the Commission should vary the Award to ensure that an employee who performs duties that do not form part of a long distance operation is appropriately remunerated for those duties. This will ensure that the Award provides a fair and relevant safety net of terms and conditions.

150. Essentially, if an employee performs duties that do not form part of a long distance operation, the employee is performing duties under the Distribution Award. That award contains the appropriate remuneration for tasks that are not covered by the Long Distance Award. The allowance is therefore clearly unnecessary. The proposed variation does not advance any of the modern award objectives. It should therefore be rejected.



NATIONAL ROAD TRANSPORT ASSOCIATION

P: PO Box 3656, Manuka ACT 2603
A: Level 3, Minter Ellison Building
25 National Circuit, Forrest ACT 2603
T: (02) 6295 3000
E: info@natroad.com.au

IN THE FAIR WORK COMMISSION

Attachment A

AM2016/32

Road Transport and Distribution Award 2010

Awards (excluding the Distribution Award and the Long Distance Award) which include driver tasks

Basis of Compilation: Part A

All 122 modern awards were searched using the terms “driver”, “drive” and “driving.” Awards were also examined for occupations where driving was considered a component of the tasks set out in the award. On that basis, an analysis of 73 awards is included in this document.

1. ***Aboriginal Community Controlled Health Services Award 2010:*** There are two salient definitions:

B.4.2 Driver—Grade 1 means a person whose primary duties include undertaking a range of driving activities on behalf of the employer in a vehicle that has the capacity to carry between one and 15 passengers.

B.4.3 Driver—Grade 2 means a person whose primary duties include undertaking a range of driving activities on behalf of the employer in a vehicle that has the capacity to carry 16 or a greater number of passengers.

2. ***Aged Care Award 2010:*** There is no definition of “driver”; however, the classification structure contains the following:

B.2 Aged care employee—level 2 includes “Driver (less than 3 ton)”

B.3 Aged care employee—level 3 includes “Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate.”

B.4 Aged care employee—level 4 includes “Driver (3 ton and over) ”

3. ***Airline Operations – Ground Staff Award 2010:*** There is no definition of driver, however, the classification structure contains the following:

B.1.3 Level 3—Airlines Services Operator

Hands-on activities in all areas of work including that which is both directly and indirectly associated with aircraft handling, and/or AAF PUD drivers

Filed on behalf of:	Members of the National Road Transport Association
By:	The National Road Transport Association
Address:	Level 3, Minter Ellison Building, 25 National Circuit, Forrest, ACT, 2603
Email:	richard.calver@natroad.com.au

- Operate equipment and vehicles including tow motors, small vans, tarmac buses, mobile steps, belts, non-tarmac fork-lift and equipment requiring similar operational skills associated with ramp, cargo, freight, catering, aircraft servicing and general transport operations.

4. **Airport Employees Award 2010:** There is no definition of driver, however, the classification structure contains the following:

B.3.1 Ground services officer Level 1

Employees perform a broad range of tasks with close guidance, using established routines, methods and procedures which require the application of basic skills.

A driver's licence is required for employment at this level.

This is the entry level. Initially tasks performed are of a simple/routine nature under close guidance.

(a) Typical Level 1 duties:

(b) Typical equipment and machinery used at Level 1:

- tractors;
- truck over 3 tonne;
- water and chemical tanker; and
- wheeled tractor over 75 kW power.

5. **Alpine Resorts Award 2010:** There is no definition of "driver" but there is a reference to 'drivers' at clause B.3.2 which describes a 'Resort Worker Level 2 and provides:

- Trainee Plant Operator roles (including Trainee Train Drivers) who are undergoing training and assessment and are yet to be deemed competent

6. **Ambulance and Patient Transport Industry Award 2010:** Strangely, there is no mention of the driving tasks which are typically and necessarily associated with driving an ambulance or other emergency vehicle. However, this may reflect the fact that ambulance paramedics consider themselves to be health professionals, rather than "ambulance drivers."

7. **Amusement, Events and Recreation Award 2010:** There is no definition of 'driver' but reference is made to a grade 2 workers in clause B.3.3. (k) which lists numerous miscellaneous duties including 'drive forklift'.

8. **Asphalt Industry Award 2010:** There is no definition of driver. However, B.4 Skill level 4 provides:

Skill level 4 is a multi-skilled employee who is assessed by the employer to be competent to perform all of the duties required within the work team.

B.4.1 Typically this will mean that the employee has an endorsed licence for the operation of heavy vehicles, is competent in the operation of the major pieces of plant and equipment utilised in the work team and who can perform all manual tasks in the work team.

9. ***Black Coal Mining Industry Award 2010***: There is reference to 'drift driving' at clause C.2 (Preserved Allowances – New South Wales)
10. ***Broadcasting and Recorded Entertainment Award 2010***: There is no definition of 'driver', but the classification schedule contains the following. H.1.1 Level 1: (h) Undertake courier or driver duties.
11. ***Building and Construction General On-site Award 2010***: There are 13 references to drivers of various types but there is no definition of driver.
12. ***Car Parking Award 2010***: There is no mention of driving or definition of a "driver" but the classification structure at B.2 Car Parking Officer Level 2 mentions parking cars as an indicative task.
13. ***Cement and Lime Award 2010***: no mention of driver or driving but one of the core competencies set out at Schedule C.2.7 is "(e) operate light vehicles."
14. ***Cemetery Industry Award 2010***: B.3.1 Indicative of tasks which an employee at this level may perform on a daily or periodic basis including lawn mowing including ride-on i.e. tractor driver (without implements)."
15. ***Children's Services Award 2010***: Indicative tasks at B.2.1 Level 1 include "driving."
16. ***Coal Export Terminals Award 2010***: Tasks at B.3.2 include an operations employee "driving and or operating mobile plant and light vehicles such as motor vehicles, cranes and or machines."
17. ***Commercial Sales Award 2010***: There is no reference to driver or driving; the notion of travel is only implicit. This is evident from the definition of "commercial traveller" which is defined as a person employed, substantially away from the employer's place of business..."
18. ***Concrete Products Award 2010***: There are three references to "driver." B.4.4(e) Classification descriptors includes truck drivers 3 to 6 tons carrying capacity."
19. ***Corrections and Detention (Private Sector) Award 2010***: There is reference to drive in/drive out remote work at clause 3.1.
20. ***Cotton Ginning Award 2010***: There is reference to level 2 cotton ginning employees having a driver's licence (clause 13.2(b))
21. ***Dredging Industry Award 2010***: This award contains 2 references to a "launch driver."
22. ***Educational Services (Schools) General Staff Award 2010***: The classification structure contains reference to a bus driver and a school bus driver.
23. ***Electrical Power Industry Award 2010***: There is an indicative position at classification B.5.2 Operations Grade 3 is "Dredge Driver—an employee who has been trained and tested to a competent level in all facets of working with and operating large earth moving and coal digging machinery in an open cut mine."

24. **Electrical, Electronic and Communications Contracting Award 2010:** There is no definition or use of the term driver but B.2.3 Electrical worker grade 3 indicates that the employee in this grade "is qualified and required to drive or operate the employer's vehicles, machinery, plant or equipment incidental to the employee's primary task or function."
25. **Fire Fighting Industry Award 2010:** There is no definition or use of the term driver but 4.2(b) that deals with coverage raises the notion of rescue services implicitly requiring access by vehicle to the referenced "accidents, explosions or other emergencies." As with other emergency responders such as police and ambulance, the requirement to drive a vehicle to a scene is typically a necessary task associated with the occupation of fire fighter.
26. **Food, Beverage and Tobacco Manufacturing Award 2010:** There is no definition or use of the term "driver". However, clause 26.1(b) contains a heavy vehicle driver allowance provision. And refers to different heavy vehicle sizes up to semi-trailers.
27. **Funeral Industry Award 2010:** Again, there is no definition or use of the term driver. However, the definition of "funeral director's assistant" means "an employee who performs tasks associated with... driving tasks; including hearses, mourning cars and transfer vehicles."
28. **Gardening and Landscaping Services Award 2010:** There is no definition or use of the term driver. However, clause 15.2 specifies that an employee who is required to drive a work vehicle (which requires a licence for a truck or tractor) or operate plant in the course of their work should be paid an allowance.
29. **Gas Industry Award 2010:** There is no definition or use of the term driver. However, the last paragraph of the introductory words of Schedule B provides:

All roles that require an employee to travel to various locations to undertake the employee's duties, the employee must hold a current and relevant drivers licence.
30. **General Retail Industry Award 2010:** There are three references to the term "driver." This includes "B.1.3 Indicative job titles which are usually within the definition of a Retail Employee Level 1 are: ... Driver. "
31. **Health Professionals and Support Services Award 2010:** There are three references to the term driver as part of the classification structure, two under 3 tonne and one 3 tonne and over, latter as an indicative task under B.1.4 Support Services employee—level 4. Again, health workers, particularly community health workers, will usually drive as part of their work when visiting patients at home.
32. **Horticulture Award 2010:** There is no definition or use of the term driver. However, two references to driving tasks in the classification structure. An indicative task at B.3.3 is "driving motor lorries or mechanical harvesters or forklifts" and at B.4.3 is "licensed and certified to operate forklifts, engine driving and crane driving operation."
33. **Hospitality Industry (General) Award 2010:** There are six references to fork lift driver including a definition of same at D.2.8.

34. **Joinery and Building Trades Award 2010:** There are two references to driver occupational categories. One is at B.1.3: "Dispatch worker/glass vehicle driver (other than crane mounted vehicle)." The other is at B.1.4 "dispatch worker/glass vehicle driver (crane mounted vehicles)."

35. **Journalists Published Media Award 2010:** There is no definition or use of the term driver. However, clause 15.10 refers to a journalist's conditions relating to driving an office-owned car on assignment. Journalists and photographers typically drive to scenes and incidents are part of their work.

36. **Live Performance Award 2010:** There is no definition of the term driver. However, clause 25.4 provides:

"An employee who is required to perform work as driver or a person in charge whilst on tour will be paid not less than 7% of the standard rate per week in addition to the per week rate."

In addition, classification schedule B.3.1 Production and Support Staff Level 3 includes the following as an indicative task: "licensed and certificated for fork-lift, engine driving and crane driving operations to a higher level than Level 2". This is the case even though level 2 tasks do not specifically use the term driving

37. **Manufacturing and Associated Industries and Occupations Award 2010:** There are 23 references to driving of which 22 relate to engine driving tasks. Engine driver is defined in the award at clause 3.1 as follows:

"**engine driver** means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity, and includes any person who is called on in the ordinary course of their duty to do engine driver's work other than simply stopping or starting an engine under the supervision of an engine driver."

Note that in clause 4.9 (c)(vii) the occupation of engine driver is part of the definition of Manufacturing and Associated Industries and Occupations".

38. **Marine Tourism and Charter Vessels Award 2010:** clause 3.1 contains the following:

MED means Marine Engineer Driver.

39. **Marine Towage Award 2010:** There is no definition of driver, but there is one reference to a crane driver at 16.1(c) where qualification as such attracts the payment of an additional skills allowance.

40. **Meat Industry Award 2010:** There is no definition of driver. However, references in the classification structure as follows:

B.3.4 Meat Industry Level 4: Driver of motor vehicle not exceeding 6 tonne carrying capacity.

B.3.5 Meat Industry Level 5: Driver of motor vehicle exceeding 6 tonne carrying capacity; Tractor driver; Auto-truck or tow motor drivers.

41. **Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015:** The industry of the award refers to motor drivers, fork-lift truck drivers, crane drivers,"(clause 3.3); includes 'motor driver', fork-lift or crane driver' classifications (clause 20.2), makes provision for motor drivers allowances, including hotel and accommodation costs and refers to "adult drivers'(clause 21.7).
42. **Mining Industry Award 2010:** This award refers to locomotive drivers (clause 14.2) and drive in/drive out remote workers (clause 3.1).
43. **Mobile Crane Hiring Award 2010:** There is no definition of driver. However, references to crane driver in clause 14.2(a) deals with the multi crane lift allowance. Reference in Schedule B classification structure at B.1.1 Mobile Crane Employee Level 1 (MCE1) to performance of the task of Counterweight/Gear Truck Driver.
44. **Nursery Award 2010:** There is no definition of driver. However, in Schedule B re the classification structure, part of grade 3 work is:

"Employees will be graded at this level where the principal functions of their employment, as determined by the employer, require the exercise of any one or more of the skill levels set out below:

regular driver
45. **Oil Refining and Manufacturing Award 2010:** There is no definition of driver in this award. However, in the classification structure at B.1.4 Lubricants/bitumen plants and terminals a plant and terminal operator "may perform the following duties:

"forklift driving and operation and minor maintenance of other mechanical handling equipment."
46. **Passenger Vehicle Transportation Award 2010:** There are 23 references to the term "driver" but there is no definition of "driver" per se. However, the classification structure differentiates driver grades by indicating driver duties associated with those grades.
47. **Pastoral Award 2010:** There is no definition of "driver". The classification structure for a poultry farm worker at clause 39 indicates that a poultry farm worker level 2 (PW2) may be required to perform "drive and/or operate farm plant and equipment." At clause 27.5(b) which describes a farm and livestock hand level 5 (FLH5) sets out that a senior station hand is an employee who may perform indicative tasks which include drive, maintain and operate farm vehicles and machinery".
48. **Ports, Harbours and Enclosed Water Vessels Award 2010:** There is no definition of "driver. However, clause 13.1 specifies minimum wages for two categories of crane driver, under 20 tonnes and over 20 tonnes.

49. **Poultry Processing Award 2010:** There is no definition of driver. However, one of the indicative tasks under B.1.4 Process Employee Level 4 in the classification structure includes “adult employees, driving a semi-trailer of any capacity within plant environs, loading and unloading the vehicle, monitoring livestock cooling devices and completing records as required.”
50. **Premixed Concrete Award 2010:** There is no definition of “driver”. However, at B.2 of the classification structure a Level 2 employee’s descriptor is as follows:
“An employee responsible for materials handling, labouring, cleaning, casual operation of the batching plant, operation of associated plant including front end loader driver, and/or plant servicing/basic maintenance.”
51. **Quarrying Award 2010:** There is no definition of “driver” or any mention of tasks associated with driving. However, the core competencies in Schedule C refer to the operation of light or medium vehicles.
52. **Racing Clubs Events Award 2010:** no definition of “driver”. However, references in the classification structure clauses 17.4 and 17.5 to a “hare driver” and a “mobile barrier driver” respectively.
53. **Rail Industry Award 2010:** There is no definition of “driver”. However, in Schedule A, classification definitions, operations classifications level 5 contains the following statement:
“This level includes a locomotive freight driver when actually in driver only operation on a main line or the driver of a train exceeding 3,000 tonnes but less than 8,000 tonnes.”
Level 6 contains this statement:
“This level includes a locomotive freight driver when actually the driver of a train of 8,000 tonnes.”
54. **Registered and Licensed Clubs Award 2010:** There is no definition of “driver”. However, the coverage clause at 4.2 lists that amongst other categories the award covers “lawn mower and motor roller drivers.” At clause 17.2 classification Level 3 includes a category of “forklift driver.”
55. **Silviculture Award 2010.** There is no definition of “driver” or tasks associated with driving. However, clause 18.1(m) deals with employees required to drive plant off-site.
56. **Storage Services and Wholesale Award 2010:** There no definition of “driver”. However, the classification structure references driving tasks as relevant to store worker grades 1, 2 and 3.
57. **Sugar Industry Award 2010:** There is no definition of “driver” but there are 15 references to the term throughout the award. These include for production, transport and services operator—level 3 (C13) “truck driver other than articulated as an indicative classification.

For production, transport and services operator—level 4 (C12) an indicative classification is “articulated vehicle driver.”

58. **Supported Employment Services Award 2010:** There is no definition of “driver”. But at B.4 Grade 4, an indicative task is “licensed and certified for forklift, engine driving and crane driving operations to a level higher than Grade 3.”

59. **Textile, Clothing, Footwear and Associated Industries Award 2010:** There is no definition of “driver”. Driver is referred to in clause 20.4 as follows: “The rates of pay for fork-lift drivers and tow motor drivers will be Skill Level 3.” In Schedule C, definitions, a note to the definition of high rise stacker operator at C.2.25 states:

“A high rise stacker operator in addition to being a qualified fork-lift driver will have undertaken additional training and be qualified to operate a high rise stacker in accordance with the various State acts.”

60. **Timber Industry Award 2010:** There is a definition of an “engine driver” at clause 3.1:

“engine driver means any person who operates or drives any engine or engines, the motive power of which is either steam, gas, oil, water, compressed air or electricity and includes any person who is called upon in the ordinary course of their duty to do engine driver’s work other than simply stopping or starting an engine under the supervision of an engine driver.”

There are also 12 other references to “driver”. These include, at B.5.3 harvesting, milling and processing, manufacturing or merchandising employee level 5 the following indicative tasks:

- Driving an articulated vehicle with 3 axles and GCM of 22.4 tonnes or less
- Driving a rigid truck and heavy trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes - over 15 tonnes up to 21 tonnes capacity
- Driving an articulated vehicle with more than 3 axles and a GCM greater than 22.4 tonnes - capacity up to or over 22 tonnes
- Driving a low loader with GCM up to or over 43 tonnes
- Driver of a double articulated vehicle up to and including 53.4 tonne GCM, including B doubles.”

For B.6.3 harvesting and forest management, milling and processing, manufacturing or merchandising employee, the following relevant indicative task is set out:

“Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonne GCM.”

61. **Transport (Cash in Transit) Award 2010:** There is no definition of “driver”. However, this is a transport award and Schedule A (classifications) is based on driving tasks and support roles for those tasks.

62. **Travelling Shows Award 2010:** There is no definition of “driver”. There is reference to driving a motor vehicle in the classification of a grade 1 employee at clause 13.2 (i). There is also a reference to driving a fork lift and a motor vehicle in the classification of a grade 2 employee at clauses 13.3(i) and 13.3(k) respectively. Additionally, there is reference to driving a motor vehicle in the classification of a grade 3 and a grade 4 employees respectively at clause 13.4 (m) and clause 13.5(j).

63. **Vehicle Manufacturing, Repair, Services and Retail Award 2010.** There are 66 references to the term driver. In clause 3.1, two relevant definitions are as follows:

driver handling money means an employee covered by clause 33.4 or clause 33.5 including a junior employee employed in either class of work and who collects and/or pays out money and who is responsible for the safe custody of the amounts so collected or carried to be paid out

driver tow truck references in Section 1—Vehicle Industry RS&R Employees of drivers of classes of tow trucks refer to drivers of the following classes of vehicles, including:

- class 1—small conventional unit: a tow truck with a load capacity of not less than 1270 kilograms equipped with a crane with a safe working load of not less than 1020 kilograms;
- class 2—larger conventional unit: a tow truck with a load capacity of not less than 3040 kilograms equipped with a crane with a safe working load of not less than 2540 kilograms;
- class 3—light salvage unit: a tow truck with a load capacity of not less than 6130 kilograms and equipped with a crane having a safe working load of more than 5080 kilograms; or
- class 4—heavy salvage unit: a tow truck with gross train weight of 25 400 kilograms minimum, tandem drive, power operated crane with a safe working load of 50 580 kilograms minimum, power operated winch, power and vacuum brake take off.

At C15 of the classifications structure, a separate driver classification structure is set out.

64. **Waste Management Award 2010:** This is a transport industry award. There is no definition of “driver”. However, the classification structure involves various levels based principally on the vehicle being driven and contains 14 references to the term “driver.”

65. **Wine Industry Award 2010:** There is no definition of driver. However, the classification structure contains references, particularly in respect of grade 2 employees around the holding of a forklift driver’s licence and a “truck driver’s licence.” The latter does not specify the type of truck.

66. **Wool Storage, Sampling and Testing Award 2010:** There is no definition of “driver”. There is one reference to a fork lift driver in the indicative tasks for a B.3.3 Wool Industry Worker Level 3 (Wool Storage) in the classification structure.

Basis of Compilation: Part B

Enterprise Awards were searched on the same basis as articulated for modern awards.

1. ***Airservices Australia Enterprise Award 2016***: There is no definition of driver, but there is an allowance for a person who 'drives' their own motor vehicle referred to in clause 12.13.
2. ***Australia Post Enterprise Award 2015***: There is no definition of 'driver' but there is reference to a 'driver/sorter' at clause 23, which relates to pay rates. Provision is made for a tonnage allowance where a vehicle is driven on a public highway and clause 26.13 talks about the different types of heavy vehicle driven by employees. There is also provision at clause 26.2 for an intermittent driving allowance for anyone "who is required to drive a motor vehicle or a fork lift on any day or part day shall be paid an allowance to raise salary for that day to the Postal Transport Officer rate".
3. ***The Australian Capital Public Sector Enterprise Award 2016***: There is no definition of 'driver' but a 'transport worker' is defined as 'an employee who performs the duties of a motor driver' in Schedule E-Definitions and a 'transport officer' as an employee whose duties also extend to training and testing of driving personnel in the organisation. Provision is made for a driving allowance for motor drivers (clause 12.9), a 'driver' operating certain tractors is owed a 'sideling' allowance (clause 12.28), reference is made to building trades employees engaged on 'pot and drive' work (B.1.2 Table 2 Disability Allowances), clause 12.29 Senior plant operator provides that:
4. Where a driver of an item of plant holds an engine drivers certificate or has been trained in the work of normal field servicing and maintenance such as cleaning, refuelling, cleaning and replacing lubricating filter, general checking and tightening of bolts, replacement of cutting edges and expendable ropes and the carrying out of field adjustments provided these do not require cutting or shaping of metal, fitting or replacement of parts other than the before mentioned expendable items, shall be regarded as a senior plant operator and in addition to the ordinary rate of pay shall be paid an extra \$16.13 per week.
5. ***Australian Federal Police Enterprise Award 2016***: There is no definition of 'driver' but there is a reference to employees required to drive a motor vehicle (either the employee's private motor vehicle or an official motor vehicle) when travelling by motor vehicle to another town or city: clause 10.9 (e)(ii).
6. ***Australian Government Industry Award 2016***: There is reference to a driving licence (clause H.9.6(c) which addresses disturbance allowance); and there is also a reference to "intermittent motor driving duties as part of their employment involving the acceptance of full responsibility for the operation of a vehicle", at clause K.4.
7. ***Australian Public Service Enterprise Award 2015***: There is reference to a driving licence (clause 11.6 (iii)(c) which addresses disturbance allowance); there is provision for COMCAR employees employed as drivers (clause F.2.1), and reference to payment for irregular or intermittent drivers (clause F.2.3)
8. ***GrainCorp Country Operations Award 2015***: There is reference to having a car drivers licence for Grade 1.2 employees in Schedule A (classifications), Grade 2.2 employees include TRUCK DRIVER – Perform truck driving duties as directed by Operations Manager i.e. transport loaders, tractors etc"; Grade 3.2 employees include TRUCK DRIVERS – Disassemble & assemble grain handling equipment i.e. Lobstar's, grain stackers etc. Place equipment at sites using crane Operate vehicle loading crane to assist maintenance staff", Grade 4.1 employees "TRUCK DRIVERS – Perform all tasks listed in Grades 2.2 & 3.2 Transport larger grain handling equipment on articulated vehicle , Grade 5.1

employees include TRUCK DRIVERS – Perform all tasks listed in Grades 2.2, 3.2 & 4 Drive truck in “B” Double or Road Train Configuration Drive truck with trailer extended to transport grain stackers between sites”.

IN THE FAIR WORK COMMISSION

AM2016/32

Road Transport (Long Distance Operations) Award 2010

Road Transport and Distribution Award 2010

Witness Statement of Dr Brent Davis

I, Dr Brent Davis, of the Australian National University, Canberra, ACT, Scholar, state as follows:

1. I have been provided with, read and understand and complied with the "Federal Court of Australia Practice Note CM 7 – Expert Witness in proceedings in the Federal Court of Australia" in connection with the reports contained in Attachments BD-2 and BD-3. I am aware that I have an overriding duty to the Commission on matters relevant to my areas of expertise.
2. I am a visiting scholar at the School of Politics and International Relations, Colleges of Arts and Social Sciences, at the Australian National University. My research interests focus on political econometrics (in particular voter decision making and forecasting elections), and the interface between law and economics.
3. I have also taught statistics and econometrics courses at, inter alia, the Australian Graduate School of Management (AGSM; then part of the Universities of New South Wales and of Sydney), and in the Australian Consortium for Social and Political Research Inc (ACSPRI) at both the Australian National University (time series modelling) and at the University of Queensland (forecasting).
4. Over a long career in both academe and in industry I have developed and practiced extensively in the fields of quantitative and qualitative research through, inter alia, the design and analysis of surveys and the conduct of focus groups for organisations across both the private and public sectors.
5. A short form of my curriculum vitae is attached as BD-1.
6. Following a meeting on 8 November 2016, I was requested by the National Road Transport Association (NatRoad) to prepare two reports for the purpose of the matter(s) before the Fair Work Commission. My instructions in relation to the preparation of the reports were in large part verbally communicated.
7. The first report concerned an analysis and commentary on a quantitative survey of NatRoad members on a number of elements of the draft determinations proposed by the Transport Workers Union (TWU) in the matter before the Commission.
8. The second report concerned the conduct and report of a qualitative survey (conducted by interview) with a number of NatRoad members on several elements of the same matter.
9. The second report contains what I consider to be a representative sample of the responses given by participants in the interviews to the issues raised with them. Taken as a whole, the quotations constitute a fair and reasonable picture of the views of NatRoad members on the issues concerned.
10. The quantitative survey was designed against the background of the initial draft determinations lodged by the TWU in December 2016, and its utility was diminished by the TWU when the Union amended its draft determination made in January 2017. A further consequence of the

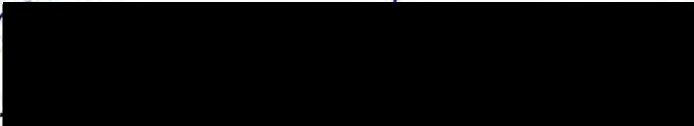
Filed on behalf of:	Members of the National Road Transport Association
By:	The National Road Transport Association
Address:	Level 3, Minter Ellison Building, 25 National Circuit, Forrest, ACT, 2603
Email :	richard.calver@natroad.com.au
Telephone:	(02) 6295 3000

TWU change in its draft determinations was to unsettle the processes for the design of the qualitative survey.

11. Copies of these reports are Attachments BD-2 and BD-3 to this Statement.
12. The design of the quantitative survey instrument and of the content of the qualitative survey was informed by consultations with Ms Catherine Russell, then Corporate Communications Manager and Mr Richard Calver, Adviser, Compliance and Workplace Relations at NatRoad.
13. Under my supervision, NatRoad arranged the conduct of the quantitative survey through StollzNow Research, a company with expertise in the conduct of fieldwork for market research. A copy of the form of survey that was used to gather the information is attached as BD-4.
14. I conducted the qualitative research with the relevant NatRoad members. Mr Calver was present in a passive capacity, and only engaged on a few instances to answer or clarify technical points raised by myself or the NatRoad Member participating in the interview.
15. I have no reason to believe the results of both the quantitative and the qualitative surveys of NatRoad members are not likely to be a fair and reasonable sample and thus reflective of the attitudes, assessments and views of the wider NatRoad members.
16. Several messages stand out from the analyses regarding key elements of the TWU's draft determinations.
17. Regarding the TWU's initial draft determination on the 'pick-up and drop-off' allowance, NatRoad members indicated they are either inclined to support the claim (evident in the quantitative survey) or divided whether to support or oppose the claim (the qualitative survey). However, the two draft determinations were not the same.
18. Regarding the TWU's draft determination on journey-specific Fatigue Management Plans, NatRoad members indicated they either oppose (quantitative survey) or are highly critical (qualitative survey) the claim.
19. These reports reflect my specialist knowledge gained through training, study, research and experience as outlined in this Statement and in BD-1.
20. I have made all of the inquiries which I believe are desirable and appropriate and no matter of significance that I regard as relevant, to my knowledge, have been withheld from the Commission.

27 February 2017

Signed

A large black rectangular redaction box covers the signature area. A blue curved line is drawn above the box, starting from the left side of the date and ending at the right side of the box.

CURRICULUM VITAE

Name: Robert Brent Davis

Capacity: Visiting Scholar
School of Politics and International Relations
College of Arts and Social Sciences
Australian National University

Expertise:

Address: Canberra ACT 2600
brent.davis@anu.edu.au

Academic
Qualifications

Bachelor of Commerce (B Comm)
Faculty of Economics and Commerce
University of Melbourne
Awarded: 1980

Master of Arts (MA)
Research School of Social Sciences
Australian National University
Awarded: 1998

Master of Philosophy (M Phil)
School of Law
Australian National University
Awarded: 1999

Doctor of Philosophy (PhD)
Asia Pacific School of Economics and Government
Australian National University
Awarded: 2003

Relevant Experience: Design and/or Analysis of more than 80 surveys ranging across economic, political, social and/or legal topics

The conduct of well-over 100 focus groups or similar, ranging across business, international trade and other public policy topics

Teaching statistics and econometrics courses, inter alia, at the:

- Australian Graduate School of Management (AGSM; then part of the Universities of New South Wales and of Sydney);
- Australian Consortium for Social and Political Research Inc (ACSPRI) at both the Australian National University (time series modelling) and at the University of Queensland (forecasting); and,
- Australian Institute of Criminology, then a research agency within the Federal Attorney-General's portfolio.

BD-2

Analysis and Report

of the Quantitative Survey of NatRoad Members

Re Transport Workers Union's Claims per

the Road Transport (Long Distance Operations) Award 2010

and the Road Transport and Distribution Award 2010

Dr Brent Davis

February 2017

BD,

BACKGROUND

The National Road Transport Association (NatRoad), the peak representative organisation for the road transport industry in Australia, has committed to participate on behalf of its members to respond to claims made by the Transport Workers Union (TWU) before the Fair Work Commission (FWC) to amend the Road Transport and Distribution Award 2010 and the Road Transport (Long Distance Operations) Award 2010.

As part of its planned participation in these matters, NatRoad has initiated a program of member engagement and research, seeking members' views on key aspects of the TWU claim. This research has two pillars: a quantitative survey of members; and, a series of Focus Groups of members. This report focuses on the key findings of the quantitative survey; a separate, companion report does the same for the Focus Groups. A copy of the survey instrument can be found at Appendix 1.

The survey was 'in-the-field' from Friday 20 January 2017 to Tuesday 24 January (excluding the intervening Saturday 21 and Sunday 22 January) 2017, when it closed-off having exceeded its target of $n = 200$ respondents (the final figure was $n = 204$). The target was set taking into account the desire to achieve a statistically robust sample, and the financial parameters for the project set down by NatRoad.

The final sample used in the analysis was cleansed of 12 respondents who were Associate Members of NatRoad, who were unlikely to be party to either of the modern awards subject to the Transport Workers Union (TWU) claim, leaving $n = 192$ respondents.

A final sample of $n = 192$, for a population of 1100 NatRoad members, gives a confidence interval of ± 2.19 per cent (at the 95 per cent confidence interval, based on a question with a 33 per cent sample proportion; that is, a question with three response options).

The content of the survey was structured against the draft determinations by the TWU lodged with the Fair Work Commission (FWC) dated 21 December 2016. The TWU lodged revised draft determinations on 19 January 2017 at which time it was too late to amend the content of the survey (it then being prepared for launch the next day in-the-field).

The fieldwork for the survey was undertaken by StollzNow Research, a market research consultancy. A summary of the methodology used by StollzNow Research can be found in Appendix 2.

Disclaimer: This report has been commissioned by the National Road Transport Association (NatRoad). Other than our responsibility to NatRoad, the consultant does not undertake any responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed on any aspect of this report is at the third party's own risk and responsibility.

CAVEATS

The design and the content of the survey of NatRoad members were undertaken against the background of two applications made by the TWU to vary several awards lodged with the FWC on 21 December 2016.

The modern awards of particular interest to NatRoad were the Road Transport and Distribution Award (RTDA) 2010 and the Road Transport (Long Distance Operations) Award (RTLDOA) 2010.

In the draft determinations lodged on 21 December 2016, the TWU proposed changes to a number of provisions of the two Awards relating to:

- the payment of an allowance to employees required to travel as a passenger;
- the payment of an allowance to employees engaged in 'two-up driving' where the employee is not driving;
- the payment of an allowance to employees required to spend more than one hour waiting to effect pick-up or drop-off of a load; and,
- a requirement for employers to provide their drivers with a specific Fatigue Management Plan (FMP) for each journey.

Two questions were included in the survey relating to each of these propositions: the first asking respondents whether they supported or opposed the proposal; and, the second asking respondents the potential impact of the proposal on their business costs should it be included in the relevant Award.

As noted earlier, the survey went 'into the field' on 20 January 2017, the content of the survey having been finalised the preceding week (the intervening period being used to deal with operational issues).

The TWU subsequently lodged, on 19 January 2017, revised draft determinations, key features of which had serious implications for the survey. Most notable of these features were:

- deletion of the 'travel as a passenger' and 'two-up driving' claims, rendering the related questions in the survey (numbers 10 and 11; and, 12 and 13 respectively) wholly redundant;
- amendment of the 'pick-up and drop-off claim, most notably by deleting the temporal element (that is, spending more than one hour of waiting time), thus materially changing a key feature of the question; while,
- the claim regarding the requirement for Fatigue Management Plans (FMPs) remained unchanged.

SUMMARY OF MAIN FINDINGS

Amongst the key findings of this report are NatRoad members:

- have long experience in the road transport, with almost 95 per cent having been in the industry for 10 or more years;
- are generally 'small businesses', with almost 90 per cent operating between 1 and 10 trucks (of which 75 percentage points operated between 1 and 4 trucks);
 - echoing this, almost three-quarters of respondents had either no, or less than 4, (full-time equivalent) employees;
- engage, to varying degrees, in long distance and/or interstate road transport;
- by a slight majority, operate their businesses in both urban and rural locations;
- have only an intermediate level of awareness of which modern Award applies to their business;
- support the TWU's claims for a 'pick-up/ drop-off' allowance as previously expressed (see Caveat above); and,
- oppose the TWU proposal relating to Fatigue Management Plans.

ABOUT THE RESPONDENTS

The Survey asked respondents to classify themselves against seven key business characteristics, namely the:

- length of time (in years) in the transport industry;
- age group of the respondent;
- State/Territory base of their business;
- number of trucks operated by the business;
- nature of their business operations;
- urban/rural location of their business; and,
- number of full-time equivalent employees.

Respondents were also asked to identify which modern award applied to their business, namely the:

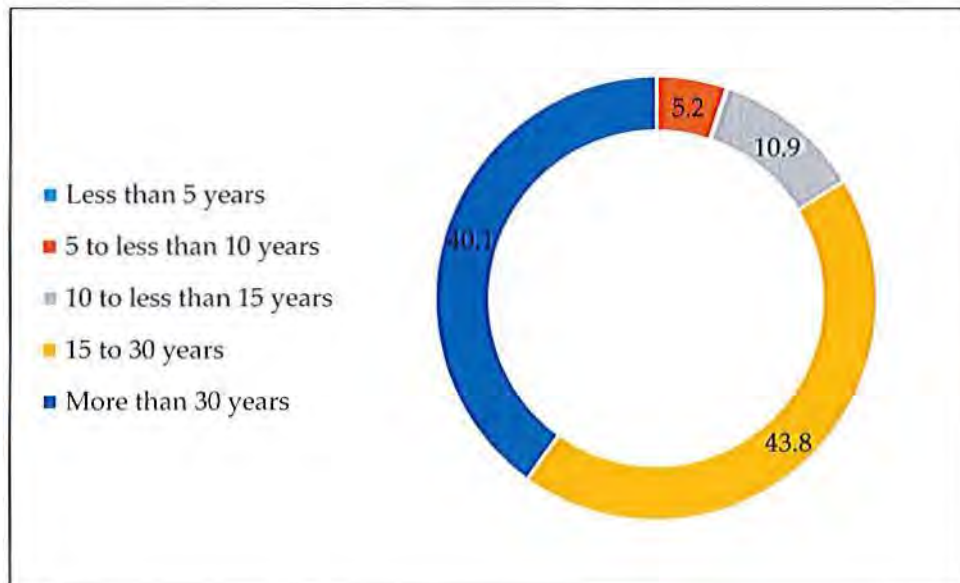
- Road Transport (Long Distance Operations) Award (RTLDOA) 2010; or
- Road Transport and Distribution Award (RTDA) 2010.

Note: the results reported in all of the Graphs contained in this report are percentages, unless otherwise described.

LENGTH OF TIME (IN YEARS) IN THE TRANSPORT INDUSTRY

Graph 1 reports the main findings regarding the length of time, in years, respondents have spent in the transport industry.

Graph 1: Length of time, in years, in the transport industry

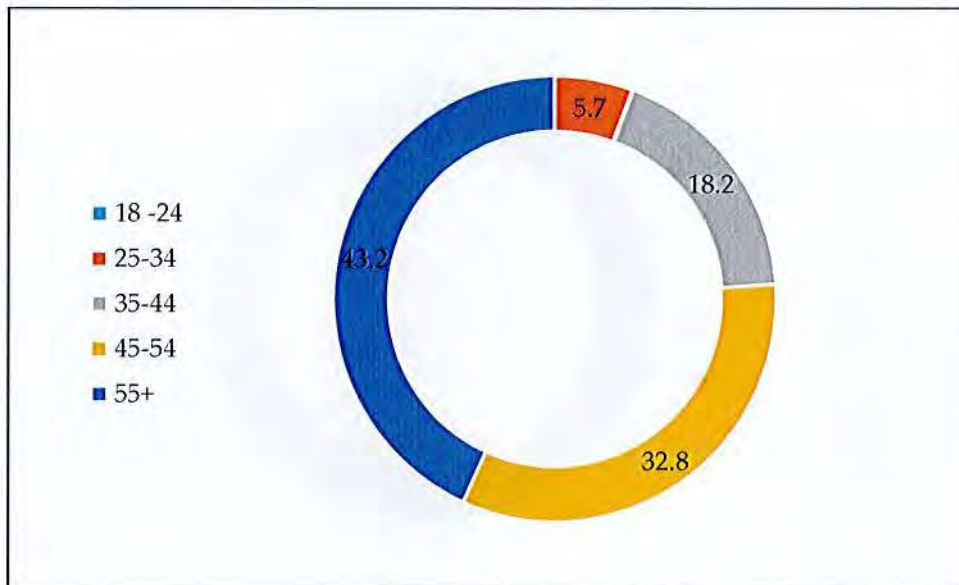


- Almost 95 per cent of respondents have spent 10 or more years in the transport industry.
- Of these:
 - 10.9 per cent had been in the industry between 10 and up to 15 years;
 - 43.8 per cent had been in the industry between 15 and up to 30 years; and,
 - 40.1 per cent had been in the industry more than 30 years.
- Taken as a whole, respondents had extensive experience in the transport industry

AGE GROUP OF THE RESPONDENT

Graph 2 reports the main findings regarding age group of respondents.

Graph 2: Age Group of the Respondent

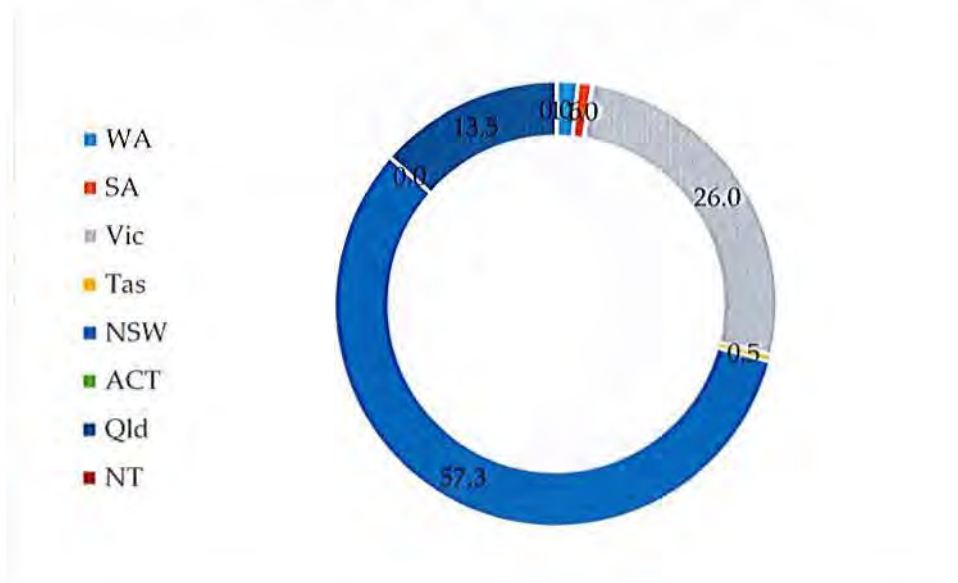


- Just over 94 per cent of respondents were 35 or more years of age.
- Of these:
 - 18.2 per cent of respondents were in the 35 to 44 years of age category;
 - 32.8 per cent of respondents were in the 45 to 54 years of age category; and,
 - 43.2 per cent of respondents were in the 55 or more years of age category.
- The age distribution of respondents broadly parallels the length of time spent in the industry (as reported earlier).

STATE/TERRITORY BASE OF THEIR BUSINESS

Graph 3 reports the main findings regarding the State/Territory base of respondents.

Graph 3: State/Territory Base of the Respondent

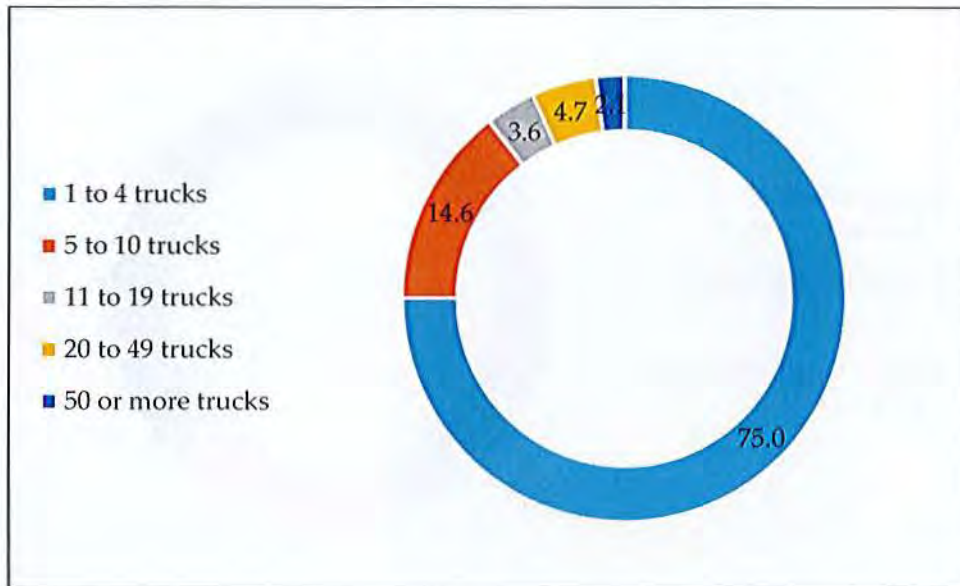


- Respondents were overwhelmingly (97 per cent) drawn from three States:
 - 57.3 per cent of respondents were drawn from New South Wales;
 - 26.0 per cent of respondents were drawn from Victoria; and,
 - 13.5 per cent of respondents were drawn from Queensland.
- There is no reason to believe the views of respondents from these States are meaningfully different from those in the other States/Territories.

NUMBER OF TRUCKS OPERATED BY THE BUSINESS

Graph 4 reports the main findings regarding the number of trucks operated by respondents.

Graph 4: Number of Trucks Operated by the Business

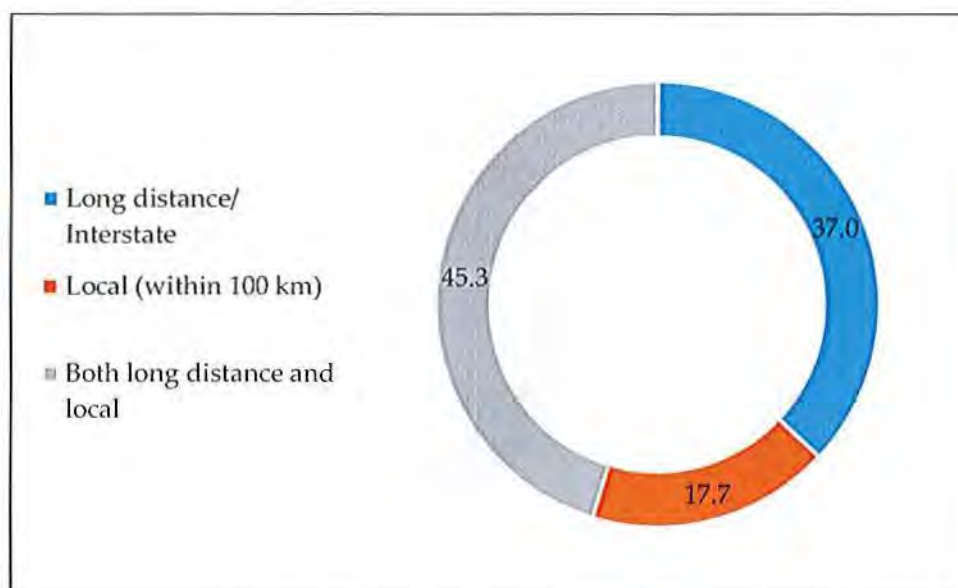


- A clear majority (75.0 per cent) of respondents operated between 1 and 4 trucks, with a further 14.6 per cent operating between 5 and 10 trucks.
- Of the remaining 10.4 per cent of respondents:
 - 3.6 percentage points operated between 11 and 19 trucks; and,
 - 6.8 percentage points operated 20 or more trucks.
- Taken as a whole, respondents can generally be regarded as small business'/ operators.

NATURE OF THE BUSINESS' OPERATIONS

Graph 5 reports the main findings regarding the nature of the business operations of respondents.

Graph 5: Nature of Business Operations

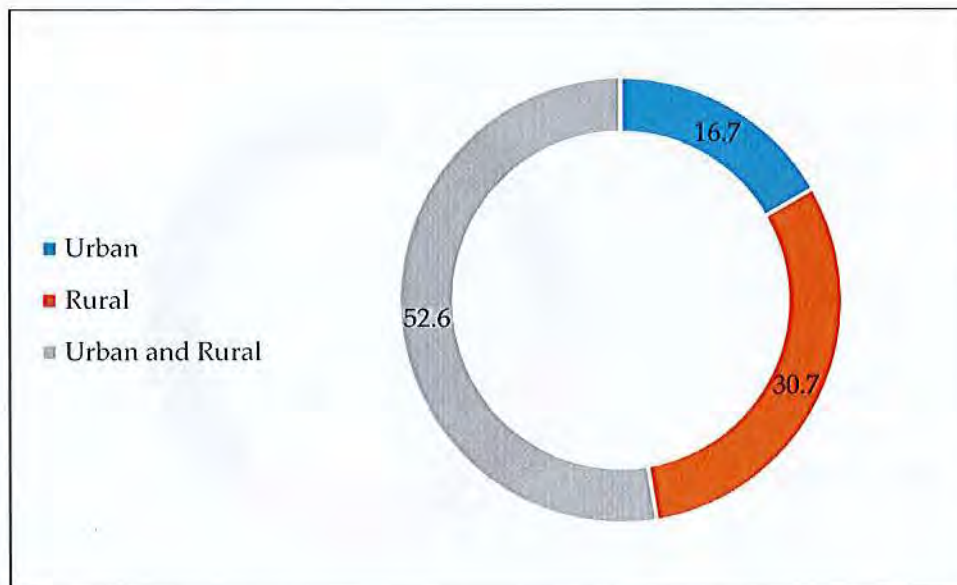


- The great majority (82.3 per cent) of respondents were engaged in some way in long distance and/or interstate road transport, with:
 - 37.0 per cent of respondents being engaged mainly in long distance/interstate transport; and,
 - 45.3 per cent of respondents being engaged in both long distance and local road transport.
- The predominance of businesses engaged in long distance road transport is consistent with the focus and coverage of the RTLDOA.

URBAN/RURAL LOCATION OF THEIR BUSINESS

Graph 6 reports the main findings regarding the urban/rural location of the business of respondents.

Graph 6: Urban/Rural Location of Business

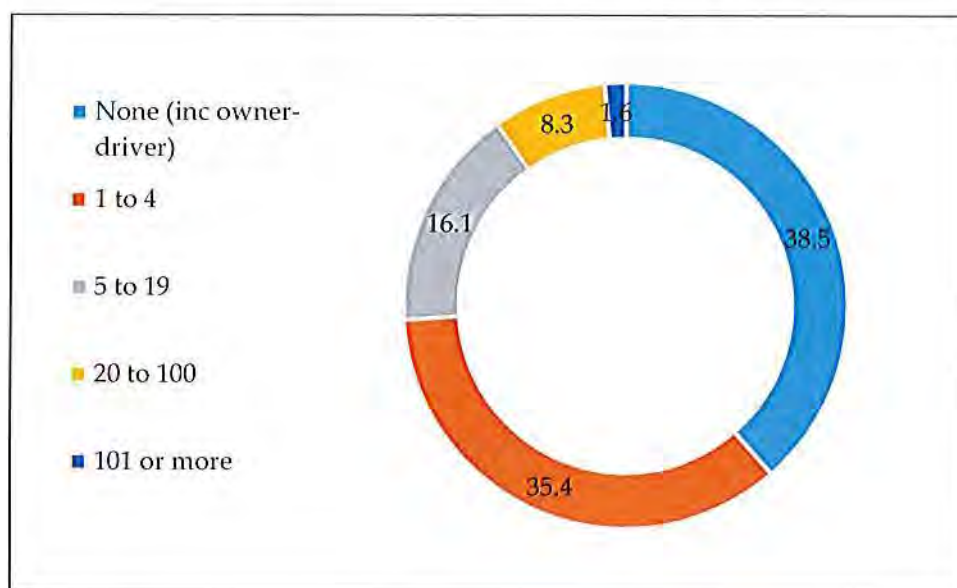


- A slight majority (52.6 per cent) of respondents operate their businesses in both urban and rural locations, with a further:
 - 16.7 per cent of respondents operating primarily in urban areas; and,
 - 30.7 per cent of respondents operating primarily in rural areas.
- Looked at another way, just one-in-six respondents do not operate in rural areas, to some degree.

NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES

Graph 7 reports the main findings regarding the number of employees, on a full-time equivalent basis, of the respondent's business.

Graph 7: Number of Employees (FTE)

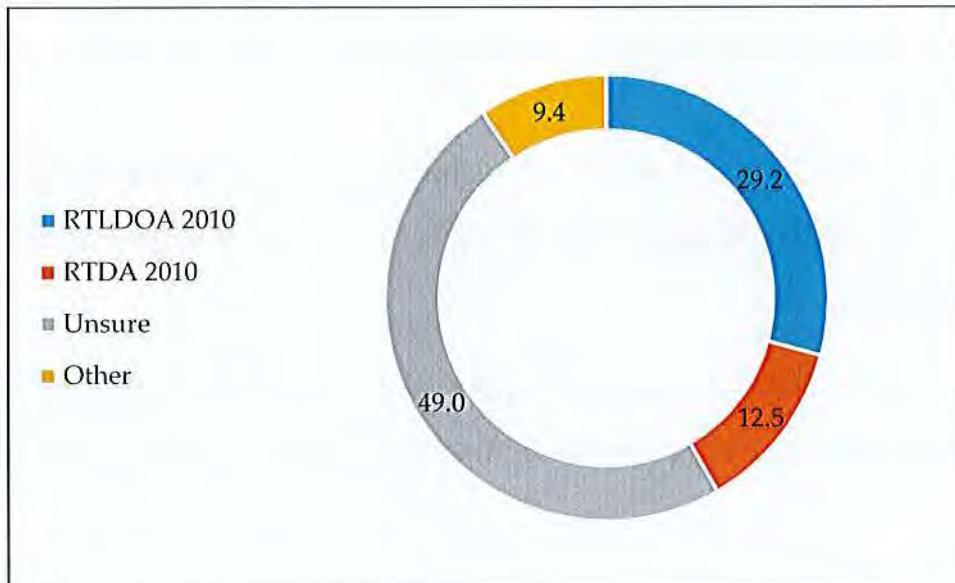


- Almost three-quarters (74.0 per cent) of respondents had either no, or less than 4, (full-time equivalent) employees, of which:
 - 38.5 percentage points of respondents had no employees (ostensibly being owner-drivers); and,
 - 35.4 percentage points of respondents had between 1 and 4 employees (FTE).
- A further 16.1 per cent of respondents had between 5 and 19 employees.
- Taken together, 9 out of 10 respondents were small businesses, as conventionally understood.

APPLICABLE AWARDS

Graph 8 reports the respondent's awareness of the application of a modern award to their business.

Graph 8: Application of Modern Award to their Business



- Almost one-half (49.0 per cent) of respondents were unsure which modern award applied to their business.
- Where respondents were aware of the applicable modern award, 29.2 per cent cited the RTLDOA 2010, with 12.5 per cent citing the RTDA 2010.
- Respondents were also asked about their awareness of the TWU's draft determination, with 62 per cent saying they were aware and the remaining 38 per cent saying they were not aware, of the claims.

KEY QUESTIONS

The survey sought respondents' views on two elements of the TWU's draft determination, namely the:

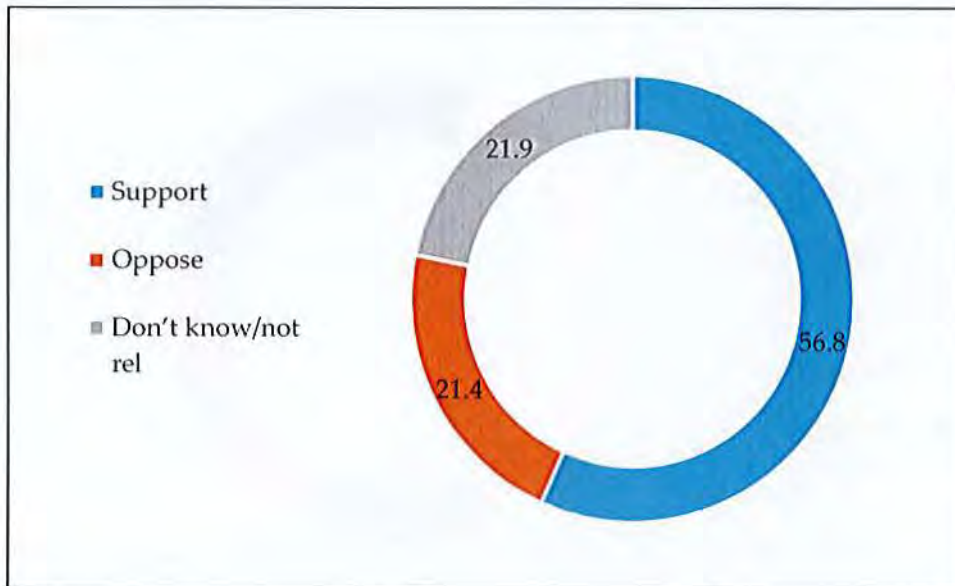
- payment of an allowance for an employee who is required to spend more than one hour waiting to effect a pick-up or drop-off of a load (recall: the Caveat above); and,
- insertion into the RTLDOA of a clause requiring employers to provide their drivers with a Fatigue Management Plan (FMP) for each journey (as distinct from a general FMP).

Respondents were asked whether they supported or opposed each of the proposals, and if the proposals were to be introduced the likely impact on the respondent's business.

PICK-UP AND DROP-OFF: SUPPORT/OPPOSE

Graph 9 reports the main findings regarding respondent's attitudes to the TWU claim for an allowance for an employee who is required to spend more than one hour waiting to effect a pick-up or drop-off of a load.

Graph 9: Pick-up/Drop-off Allowance: Support/Oppose

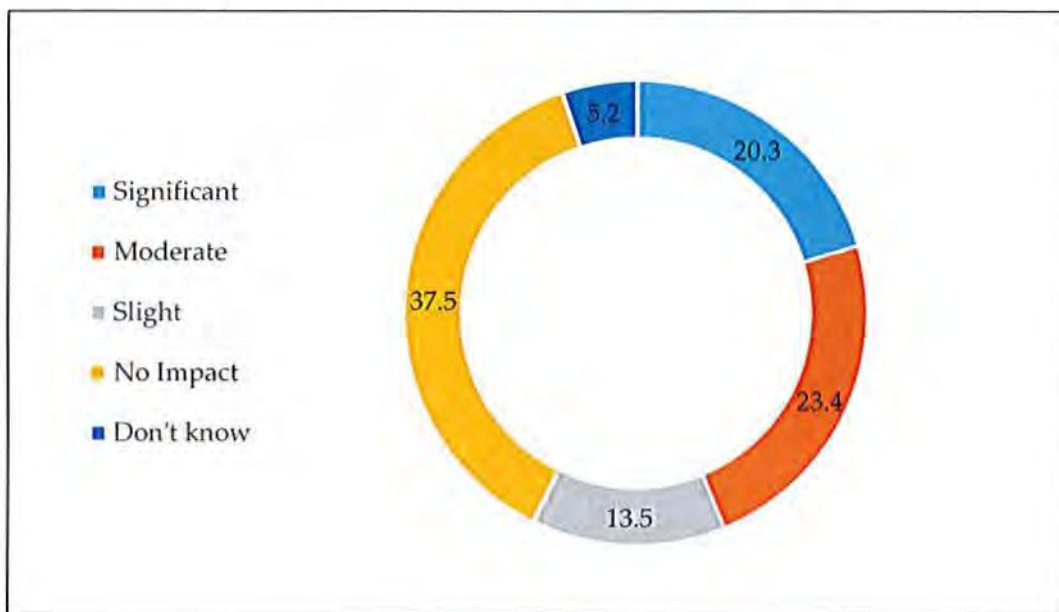


- A majority (almost 56.8 per cent) of respondents support the TWU's claims for a 'pick-up/ drop-off' allowance;
- By comparison, less than half that proportion (21.4 per cent) oppose the claim, with the remaining 21.9 per cent holding no opinion or considering the matter as not relevant to their business.
- However, as noted in the Caveat earlier, these results should be treated with caution, given the question asked in the survey (based on the TWU draft determination dated 21 December 2016) does not exactly match the amended claim made by the TWU (dated 19 January 2017).

PICK-UP AND DROP-OFF: POTENTIAL IMPACT

Graph 10 reports the main findings regarding respondent's assessment of the potential impact on their business costs of the introduction of the pick-up/drop off allowance being sought by the TWU.

Graph 10: Pick-up/Drop-off Allowance: Potential Impact

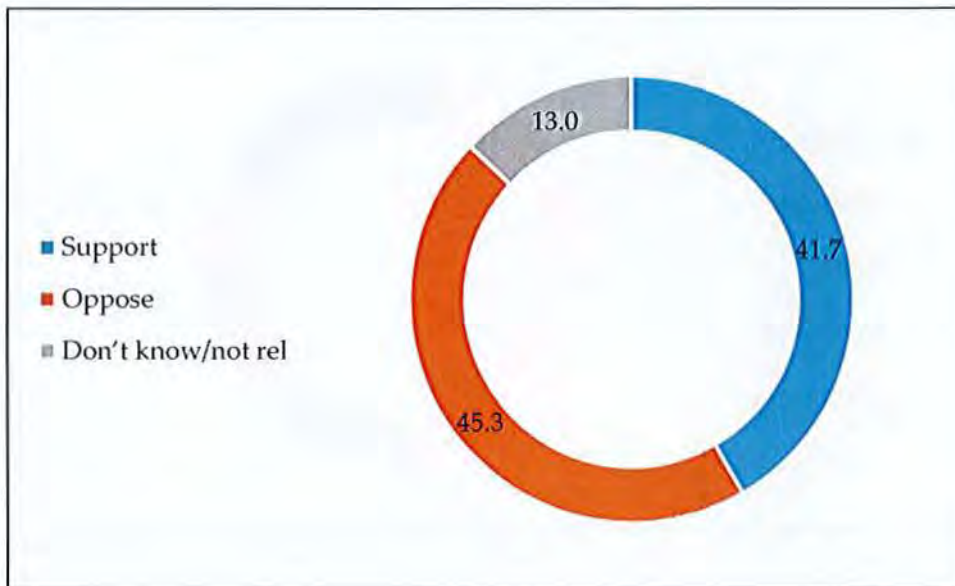


- Just over one-half (51.0 per cent) of respondents expect the introduction of the 'pick-up/drop-off' allowance sought by the TWU would likely have little (slight = 13.5 percentage points) or no impact (37.5 percentage points) on their business.
- However, a sizeable proportion (43.8 per cent) expect such an allowance would impose moderate (23.4 percentage points) or significant (20.3 percentage points) costs on their business.
- Readers should again note the Caveat above.

FATIGUE MANAGEMENT PLANS: SUPPORT/OPPOSE

Graph 11 reports the main findings regarding respondent's attitudes to the TWU proposal to insert into the RTLDOA a clause requiring employers to provide their drivers with a specific Fatigue Management Plan (FMP) for each journey.

Graph 11: Fatigue Management Plan per Journey: Support/Oppose

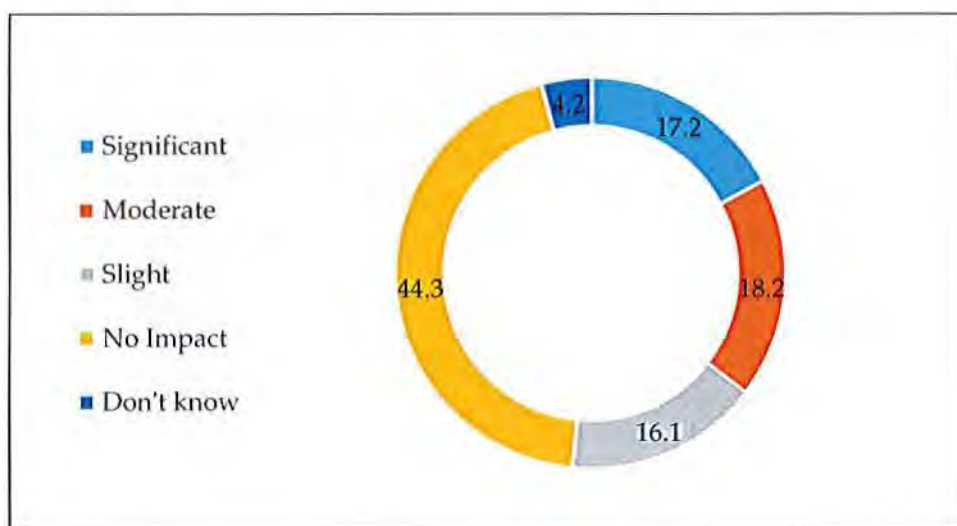


- Respondents as a whole were divided in their support for/ opposition to the TWU claim for the insertion of a clause requiring employers to issue drivers with FMPs for each journey, with:
 - 41.7 per cent of respondents supporting the proposal; and,
 - 45.3 per cent of respondents opposing the proposal.
- The remaining 13.0 per cent of respondents had no opinion or saw the matter as not relevant to their business.

FATIGUE MANAGEMENT PLANS: POTENTIAL IMPACT

Graph 12 reports the main findings regarding respondent's assessment of the potential impact on their business costs of the introduction of the FMPs per journey proposal sought by the TWU.

Graph 12: Fatigue Management Plan per Journey: Potential Impact



- A majority (60.4 per cent) of respondents expected the introduction of FMPs, per journey sought by the TWU would have little (slight = 16.1 percentage points) or no (44.3 percentage points) impact on their business.
- However, just over one-third (35.4 per cent) expected the introduction of such an arrangement would impose moderate (18.2 percentage points) or significant (17.2 percentage points) costs on their business.

FATIGUE MANAGEMENT: IN MORE DETAIL

The following section provides a more detailed examination of NatRoad members' attitudes to the TWU claim regarding (FMPs by a number of criteria: whether they support or oppose the claim; and, their expectation of the cost to their business if the claim is granted.

The commercial characteristics are:

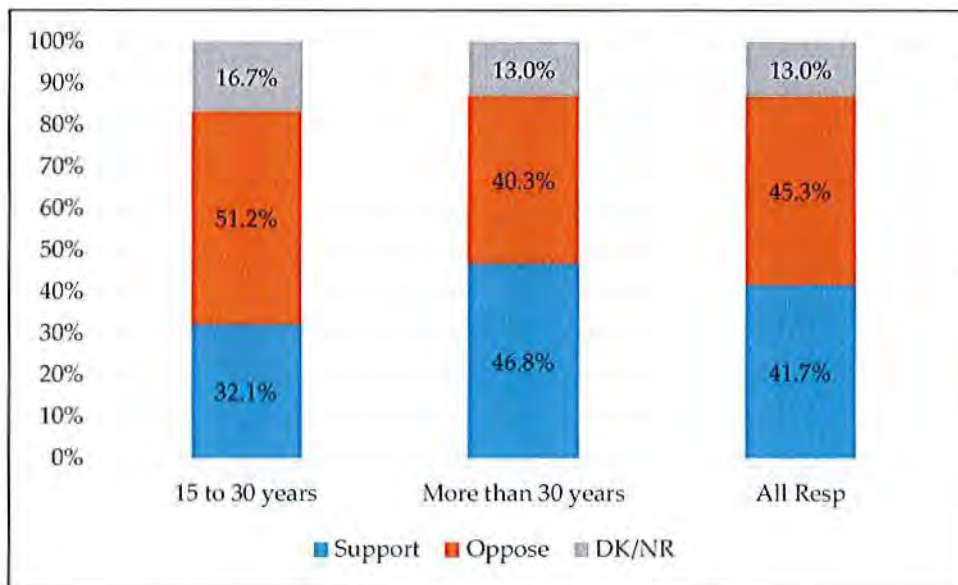
- length of time (in years) in the transport industry;
- State/Territory base of their business;
- number of trucks operated by the business;
- nature of their business operations;
- urban/rural location of their business;
- number of full-time equivalent employees; and,
- the modern award to which their business is a party.

The graphs and associated narrative focus on the attitudes/ expectations for the largest respondent groups.

FATIGUE MANAGEMENT PLANS: BY YEARS IN INDUSTRY

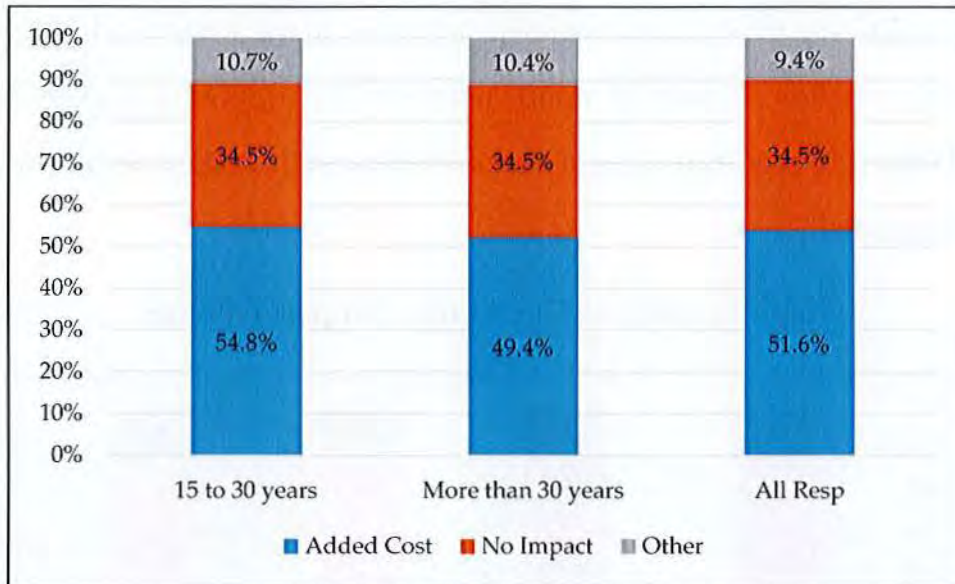
Graphs 13 and 14 report NatRoad members' attitudes to the TWU's claims based on their years of operation in the industry. Graph 13 reports whether they support or oppose the claim, and Graph 14 reports their expectation of the cost impact on their business if the claim is granted.

Graph 13: Years in Industry – Support/Oppose



Respondents who have been in the industry for between 15 and 30 years were more likely to oppose (51.2 per cent), while those with more than 30 years' experience in the industry were more likely to support (46.8 per cent) the TWU claim on FMPs than the all-respondent total (support = 41.7 per cent; oppose = 45.3 per cent)

Graph 14: Years in Industry – Expected Cost

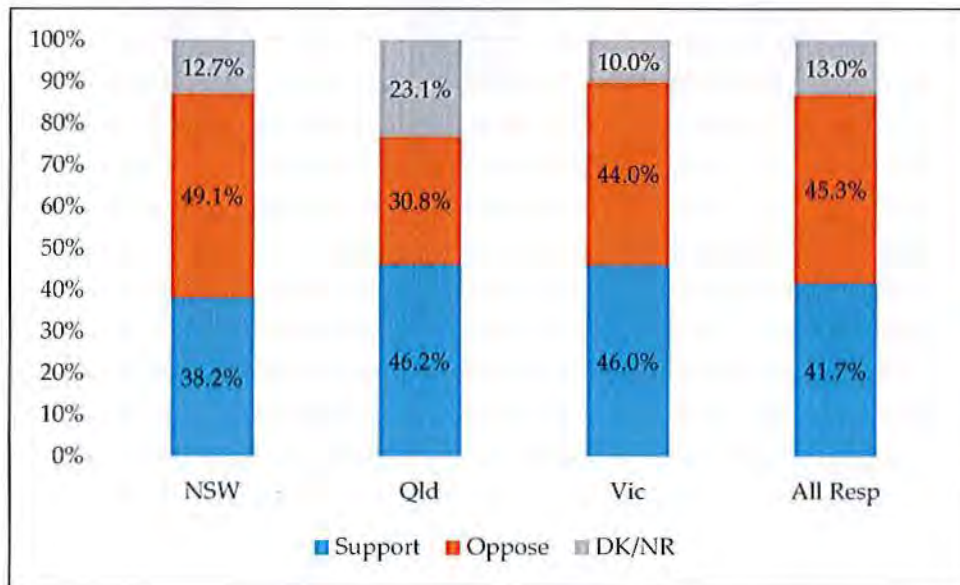


Respondents who had been in the industry between 15 and 30 years were slightly more likely (54.8 per cent), and those with more than 30 years' experience in the industry were slightly less likely (49.4 per cent) to expect the TWU to add to their business costs, compared to the all-respondents total (51.6 per cent);

FATIGUE MANAGEMENT: BY STATE OF OPERATION

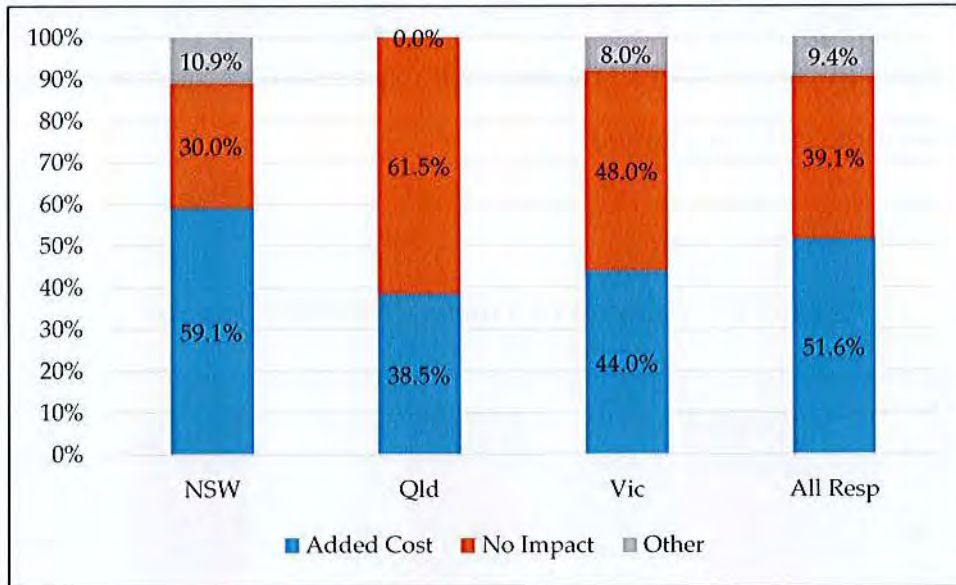
Graphs 15 and 16 report NatRoad members' attitudes to the TWU's claims based on their State of operation. Graph 15 reports whether they support or oppose the claim, and Graph 16 reports their expectation of the cost impact on their business if the claim is granted.

Graph 15: State of Operation – Support/Oppose



Respondents located in New South Wales were more likely to oppose (49.1 per cent), while those in Queensland and Victoria were more likely to support (46.2 per cent and 46.0 per cent, respectively) the TWU claim on FMP than the all-respondent total (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 16: State of Operation – Expected Cost

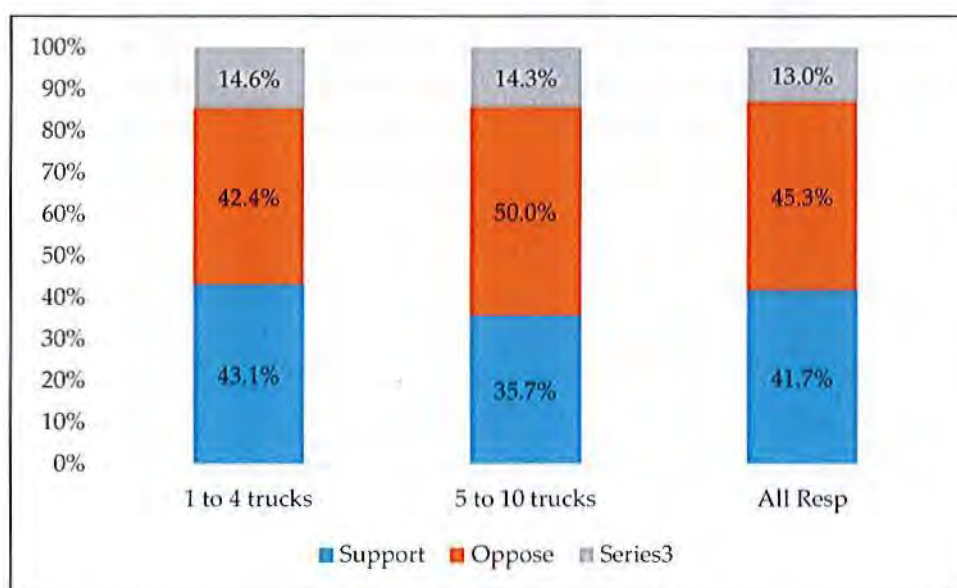


Respondents located in NSW were more likely (59.1 per cent), and those in Queensland and Victoria were less likely (38.5 per cent, and 44.0 per cent, respectively) to expect the TWU to add to their business costs, compared to the all-respondents total (51.6 per cent).

FATIGUE MANAGEMENT: BY NUMBER OF TRUCKS

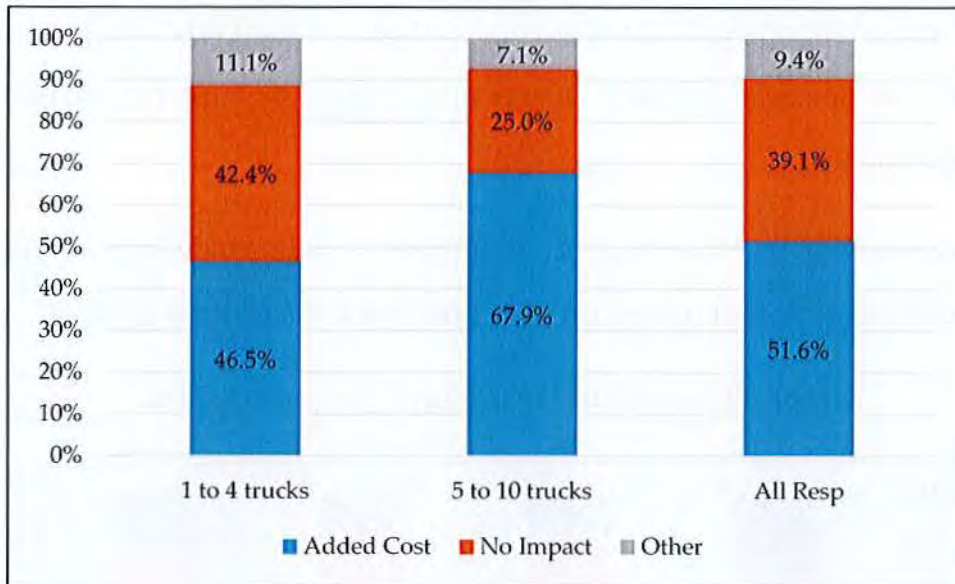
Graphs 17 and 18 report NatRoad members' attitudes to the TWU's claims based on the number of trucks their business operates. Graph 17 reports whether they support or oppose the claim, and Graph 18 reports their expectation of the cost impact on their business if the claim is granted.

Graph 17: Number of Trucks – Support/Oppose



Respondents with between 1 and 4 trucks were fairly evenly divided (support = 43.1 per cent; opposed = 42.4 per cent) over the merit of the TWU claim, while those with between 5 to 10 trucks were more likely (50 per cent) to oppose the claim, compared to the all-respondent totals (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 18: Number of Trucks – Expected Cost



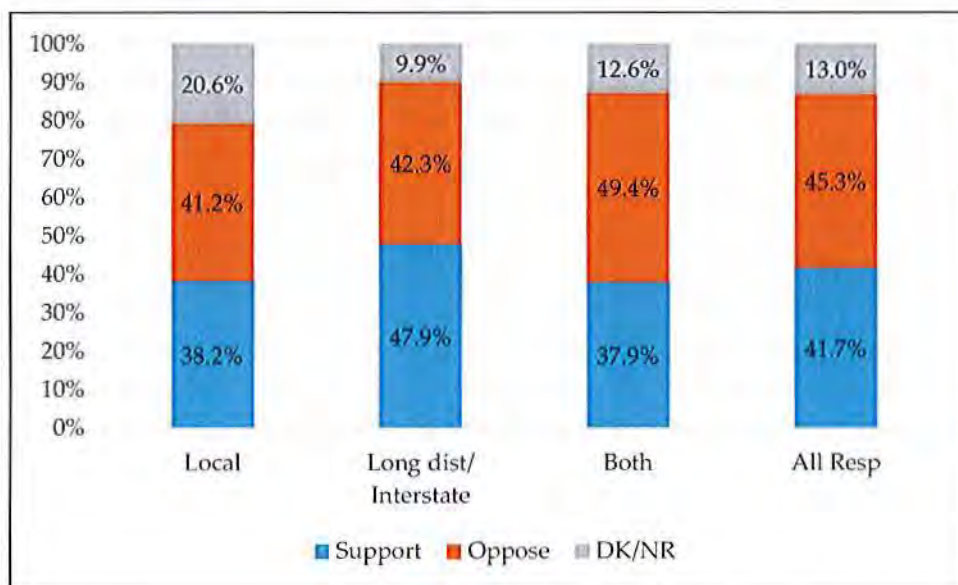
Respondents with between 1 and 4 trucks were less likely (46.5 per cent), and those with between 5 to 10 trucks were much more likely (67.9 per cent) to expect the TWU to add to their business costs, compared to the all-respondents total (51.6 per cent).

FATIGUE MANAGEMENT: BY NATURE OF OPERATION

Graphs 19 and 20 report NatRoad members' attitudes to the TWU's claims based on the nature of the operations of their business (local; long distance/ interstate; or, a combination thereof).

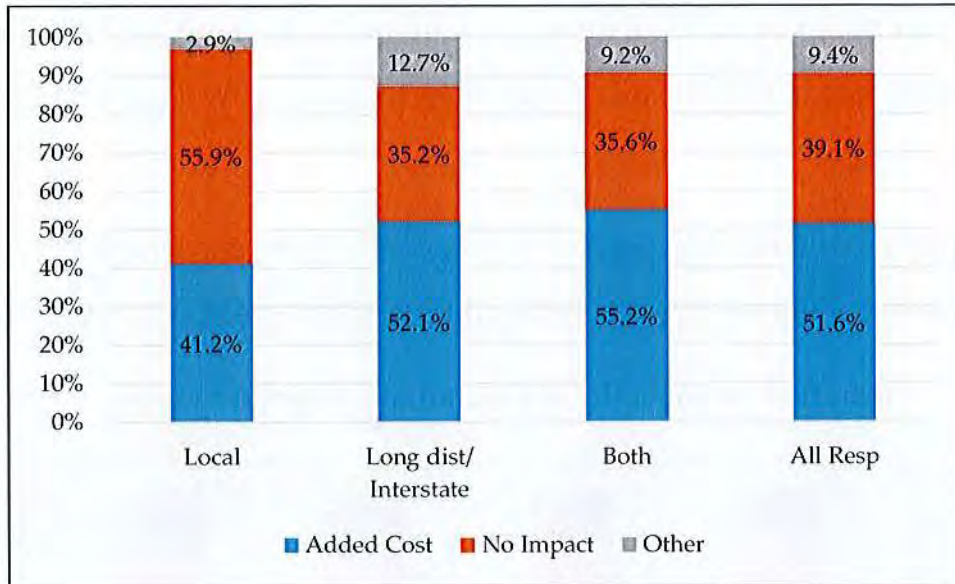
Graph 19 reports whether they support or oppose the claim, and Graph 20 reports their expectation of the cost impact on their business if the claim is granted.

Graph 19: Nature of Operation – Support/Oppose



Respondents whose business was largely local in nature (within 100 kms of their main place of business) were less inclined (38.2 per cent) to support the TWU claim, while those mainly involved in long distance/interstate operations were more likely to support (47.9 per cent), and those engaged in both long distance and local carriage were more likely to oppose (49.4 per cent) the TWU claim compared to the all respondent totals (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 20: Nature of Operation – Expected Cost



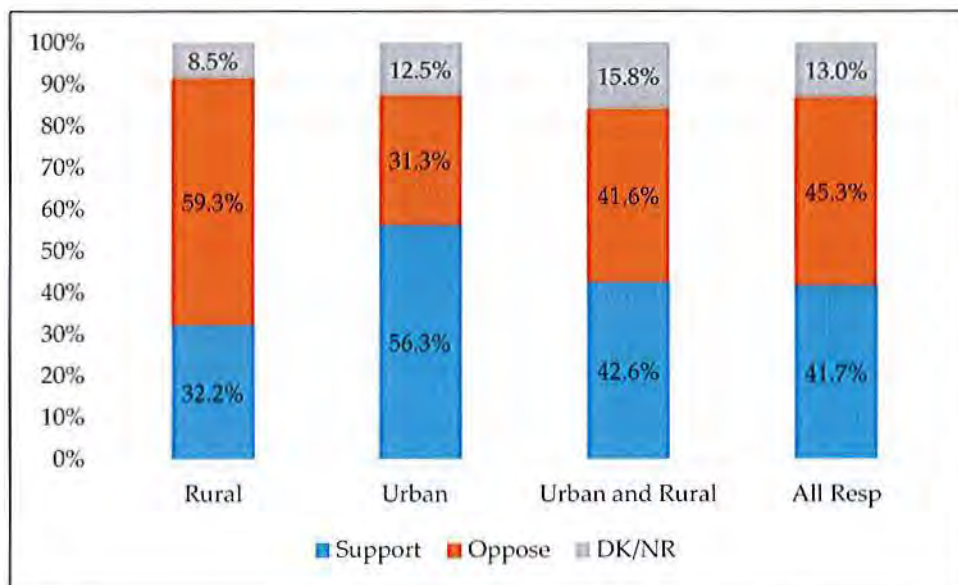
Respondents who operated primarily in their local area were much less likely (41.2 per cent), while those operating primarily long distance/ interstate, and a mix of long distance and local were more likely (52.1 per cent, and 55.2 per cent, respectively) to expect the TWU to add to their business costs, compared to the all-respondent total (51.6 per cent).

FATIGUE MANAGEMENT: BY GEOGRAPHY OF OPERATION

Graphs 21 and 22 report NatRoad members' attitudes to the TWU's claims based on the geographic base of their business' operations (namely, NSW, Queensland and Victoria).

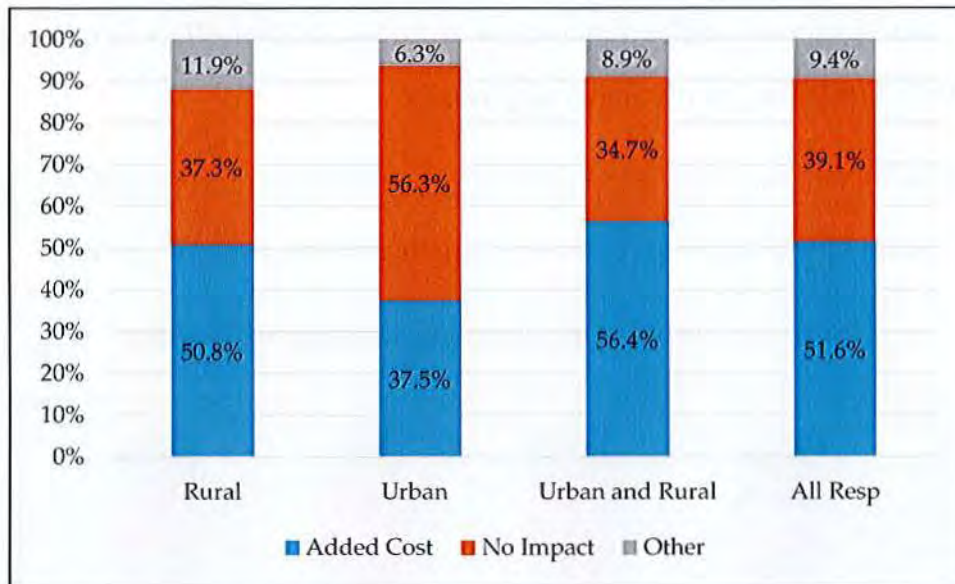
Graph 21 reports whether they support or oppose the claim, and Graph 22 reports their expectation of the cost impact on their business if the claim is granted.

Graph 21: Geography of Operation – Support/Oppose



Respondents whose business was largely focused on rural areas were much more likely to oppose (59.3 per cent), those who operated primarily in urban areas were more likely to support (56.3 per cent), while those who operated in both areas were fairly evenly divided (support = 42.6 per cent; oppose = 41.6 per cent), the TWU claim compared to the all respondent totals (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 22: Geography of Operation – Expected Cost



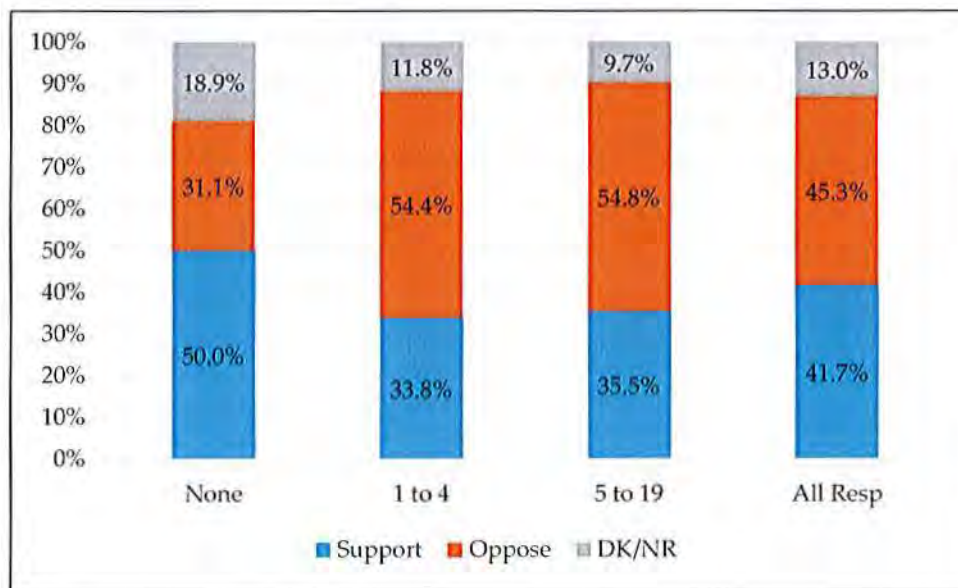
Respondents whose operations were largely rural- or -urban-based were slightly less likely (50.8 per cent) and substantially less likely (37.5 per cent) respectively, and those operating in both rural and urban areas were more likely (56.4 per cent) to expect the TWU claim to add to their business costs, compared to the all-respondents total (51.6 per cent).

FATIGUE MANAGEMENT: BY NUMBER OF EMPLOYEES

Graphs 23 and 24 report NatRoad members' attitudes to the TWU's claims based on their number of (full-time equivalent) employees.

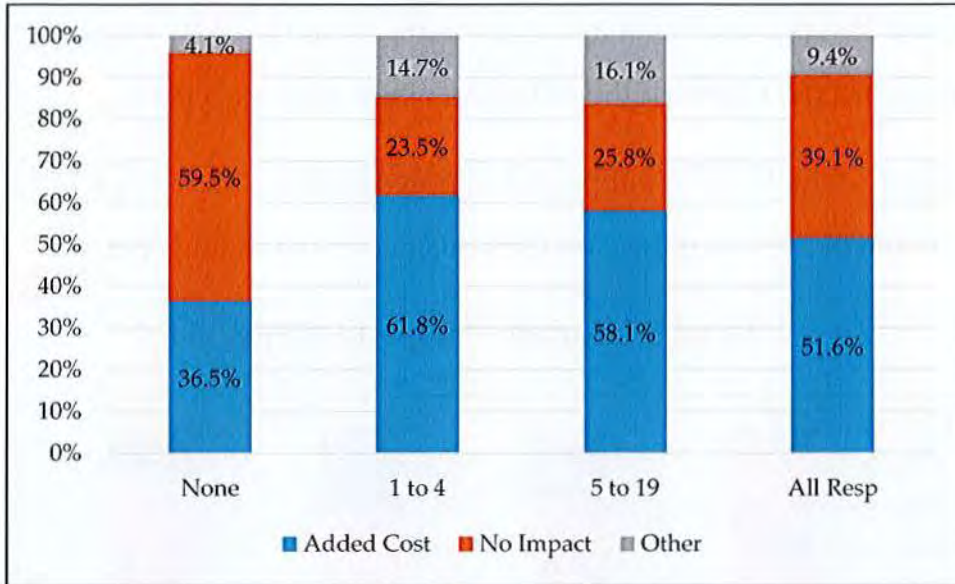
Graph 23 reports whether they support or oppose the claim, and Graph 24 reports their expectation of the cost impact on their business if the claim is granted.

Graph 23: Number of Employees – Support/Oppose



Respondents who had no employees (for example, owner-drivers) were much more likely (50 per cent) to support, while those with between 1 and 4, and 5 to 19 employees were more likely (54.4 per cent, and 54.8 per cent respectively) to oppose the TWU claim, compared to the all respondent totals (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 24: Number of Employees – Expected Cost



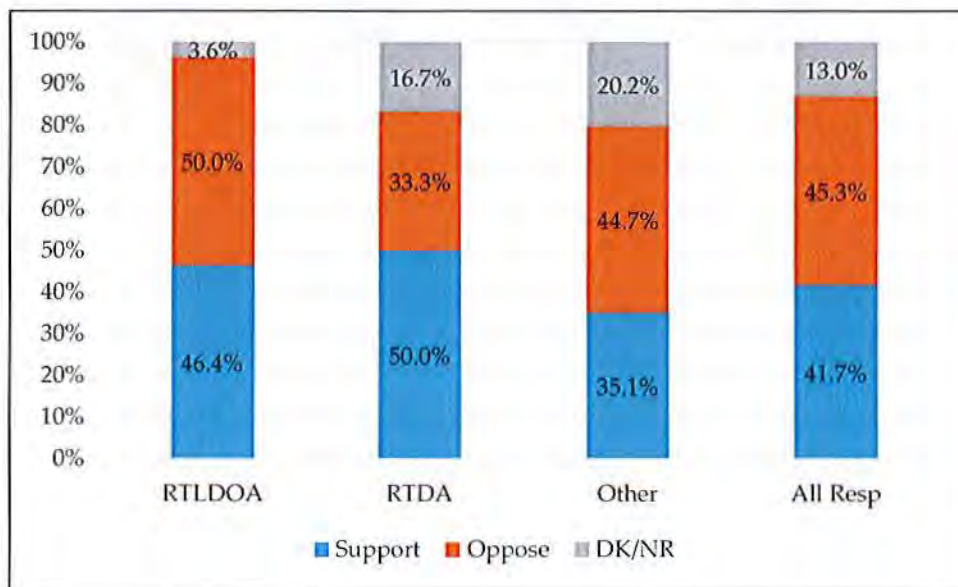
Respondents with no employees were much less likely (36.5 per cent), and those with 1 to 4, and 5 to 19 employees were much more likely (61.8 per cent, and 58.1 per cent, respectively) to expect the TWU claim to add to their business costs, compared to the all-respondent total (51.6 per cent).

FATIGUE MANAGEMENT: BY AWARD

Graphs 25 and 26 report NatRoad members' attitudes to the TWU's claims based on the modern award (RTLDOA or the RTDA) to which they are a party.

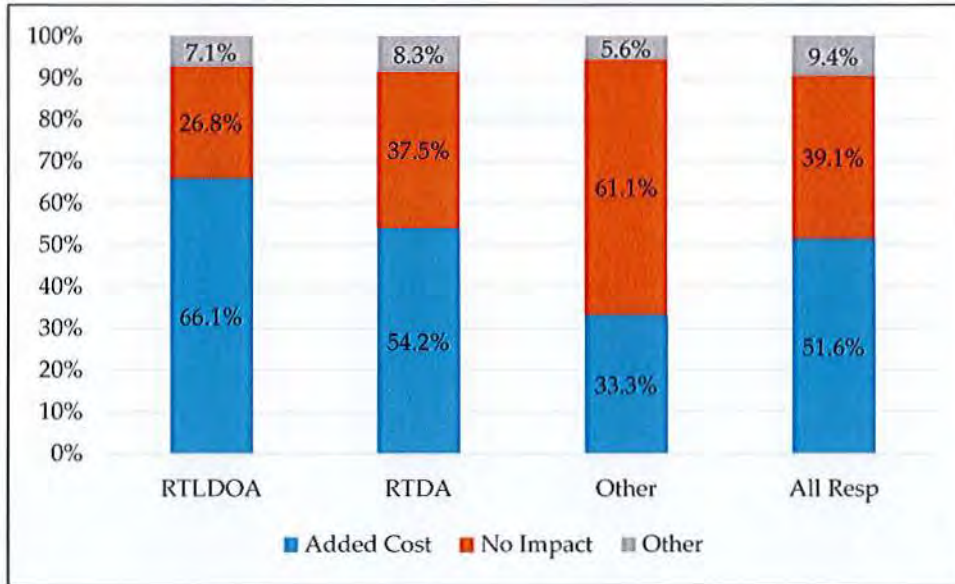
Graph 25 reports whether they support or oppose the claim, and Graph 26 reports their expectation of the cost impact on their business if the claim is granted.

Graph 25: Award – Support/Oppose



Respondents who were party to the Road Transport (Long Distance) Operations Award were more likely to oppose (50 per cent) and those party to the Road Transport and Distribution Award were more likely to support (50 per cent) the TWU claim, compared to the all respondent totals (support = 41.7 per cent; oppose = 45.3 per cent).

Graph 26: Award – Expected Cost



Respondents who were party to the Road Transport (Long Distance) Operations Award were much more likely (66.1 per cent) and to the Road Transport and Distribution Award were more likely (54.2 per cent), to expect the TWU claim to add to their business costs, compared to the all-respondent total (51.6 per cent).

APPENDIX 1: THE SURVEY INSTRUMENT

See Attached

APPENDIX 2: STOLLZNOW METHODOLOGY

Key elements of the data collection methodology used by StollzNow Research include:

- an email was sent by NatRoad to all members advising the study was underway;
- the research was conducted by telephone interview;
- quotas were set based on membership status by number of trucks. The quota and achievement numbers were closely aligned (excluding Associate Members):
 - 1 to 4 trucks: quota n = 144; achieved n = 144;
 - 5 to 10 trucks: quota n = 27; achieved n = 28;
 - 11 to 19 trucks: quota n = 4; achieved = 7;
 - 20 to 49 trucks: quota n = 8; achieved = 9; and,
 - 50 or more trucks: quota n = 4; achieved = 4.
- potential respondents were randomly selected from within each category, and contacted three times to participate in the survey;
- the actual respondent was the NatRoad member, unless they referred StollzNow on to another person who was better able to answer the survey questions;
- the survey responses were validated as being genuine by a 10 per cent recontact the following week; and,
- Fieldwork commenced on Friday 20 January 2017 and concluded on Tuesday 24 January 2017 (with no interviewing conducted on either Saturday 21 or Sunday 22 January 2017).

BD-3

Report of the Qualitative Survey of NatRoad Members

Re Transport Workers Union's Claims per

the Road Transport (Long Distance Operations) Award 2010

and the Road Transport and Distribution Award 2010

Dr Brent Davis

February 2017

BD

BACKGROUND

The National Road Transport Association (NatRoad) proposed a series of Focus Groups of members to examine in a more detailed, qualitative sense, several of the key elements of claims made by the Transport Workers Union (TWU) to, inter alia, amend the Road Transport and Distribution Award (2010) and the Road Transport (Long Distance Operations) Award 2010.

Two Focus Groups, each involving around eight (8) to ten (10) NatRoad members were planned, one in Dubbo in regional NSW and the other in Shepparton in regional Victoria. These regional centres contain a cross-section of members.

For logistics reasons, however, the two Focus Groups did not proceed. Whilst there were strong expressions of interest from NatRoad members in physically attending the Focus Group meetings, they (the individual NatRoad members) were not able to give sufficient robust commitment to ensure attendance and thus validate the events.

As such, NatRoad, on the advice of the consultant, organised a series of 'one-on-one' telephone interviews between the consultant and interested NatRoad members from the two regions.

The Interview Process focused on several key elements of the TWU draft determination, namely the TWU proposals relating to the:

- definition of a "Driver" (TWU-1);
- treatment of overtime (TWU-3);
- creation of a 'pick-up and drop-off' allowance (TWU-7); and,
- introduction of journey-specific Fatigue Management Plans (TWU-5).

Telephone interviews were conducted with eight (8) NatRoad members operating in the Dubbo region of NSW (conducted on Wednesday 1 February 2017) and in the Shepparton region of Victoria (conducted on Monday 6 February 2017).

The interviews were conducted by the NatRoad consultant (Dr Davis) using a structured series of questions relating to specific elements of the TWU claim. Each interview lasted for around 25 to 30 minutes.

The interviews were not recorded for reasons of confidentiality and privacy, with Dr Davis taking notes as a record of the interview. Dr Davis regards these notes (copies of which are reproduced below) as a fair and reasonable record of each interview.

Mr Richard Calver, Adviser, Compliance and Workplace Relations with NatRoad 'sat in' on the interviews, speaking in response to requests from Dr Davis or the interviewee for points of clarification on a technical aspect of the matter at hand; his role was otherwise as a passive observer.

KEY MESSAGES

Definition of a Driver: participants generally regarded the TWU's proposed definition of a "Driver" as largely just reflecting the duties currently performed by a competent Driver.

However, some participants were concerned that formalising the definition of a Driver in the Award may be overly prescriptive, and create obligations on employers to ensure Drivers are trained to perform many or all of the identified tasks. There was apparent confusion on the part of some interviewees as to why this change was necessary.

Calculation of Overtime: participants generally were averse to the TWU proposal regarding overtime, raising serious doubts about how it would be operationalised; made to work in practice. Several participants regarded the TWU proposal as a form of additional regulation, adding further strain to their business.

However, several participants observed they were already making such payments, albeit informally/ 'over the Award', raising the question of whether any new overtime payments would simply be absorbed into these payments.

Pick Up and Drop Off Allowance: participants were divided over the TWU proposal to introduce a pick-up and drop-off allowance, with several pointing out such a payment was appropriate when it reflected work done and/or they already made such payments to their drivers (for example, when paid on a time-worked basis under both awards rather than by, say, a per kilometre rate under the Long Distance Award).

However, several participants pointed out such an arrangement would be difficult to implement, and cause added pressure to freight rates. One participant stated the loading/unloading allowance ostensibly covered pick-up and delivery and would find difficulty in distinguishing the two allowances.

Fatigue Management Plans: participants were highly critical of the TWU proposal relating to Fatigue Management Plans (FMPs) being provided per journey, using terms such as "insulting (to drivers)", "impractical and paternalistic", "micro-manage(ment)" and "absolutely unworkable".

One participant stated, point blank: "basically this is just the old RSRT" (which the Federal Parliament had abolished in 2016).

Participants considered the existing use of generic, as distinct from journey-specific, FMPs as adequate, supporting the continued reliance on time sheets and the like, and on the common sense of drivers.

The TWU wants to insert a definition of “Driver” into the Award.

“*Driver* means an employee who is engaged to drive a rigid vehicle, a rigid vehicle with trailer combinations, an articulated vehicle, a double articulated vehicle and/or multi axle platform trailing equipment. A Driver may also undertake non-driving duties or other tasks in connection with driving the vehicles described in this definition including loading or unloading of vehicles; consolidating goods, wares, merchandise or other materials for loading; refuelling a vehicle; operation of on-board computer equipment; routine vehicle inspections; washing or cleaning of vehicles; basic vehicle maintenance tasks; and log book maintenance and other paperwork associated with the driving task.”

What do you think about this proposal?

Do we need a definition of “driver” in the Award,

and what about the proposed definition?

- “keep any definition of a driver simple, and as close as possible to the national heavy vehicle regulations.”
- “the more complex the definition, the more difficult for employers (to implement)”
- “the TWU proposal is too detailed and is not consistent with other definitions we have to comply with.”
- “not keen on the TWU definition”
- “could cause problems if the definition becomes changeable”
- “if it is not broken, then don’t fix it. And it isn’t broken”
- “the TWU definition just describes what drivers already do”
- “it is not needed in the Award; overly prescriptive”
- “it really just describes the normal tasks a driver does anyway”
- “not all drivers can do all of those tasks successfully”
- “how would (our business) deal with training for drivers to do all of those things”
- “a good description of what a good driver already does”
- “no problem – it is what they do now”
- “basically what they are doing now”
- “would not really affect our business”
- “the TWU is just trying to capture Woolies and Coles”

The road transport industry is covered by a number of industrial awards
– notably, the Road Transport and Distribution Award 2010, and
the Road Transport (Long Distance Operations) Award 2010.

Are your employees covered by these awards?

Do you have an enterprise agreement that uses some of these awards to assess whether employees are better off overall under the agreement?

What other awards cover your employees?

- “(we are covered by) both Awards. But it is not always clear-cut. An employee can be covered by a different Award depending on what they are doing on the day. And, this creates an additional administrative burden.”
- “we have an EB (enterprise bargain). Our employees are much better off under the EB. It (the EB) has simplified key points for the employees and the employer”
- “we don’t have an EB. We just follow the RTDA”
- “we have an EB, and pay over the award in our EB which makes the employee better off”
- “our EB makes our employees more committed to the business, so they will ‘go the extra mile’ for us”
- “we are just a family business, and follow the Award (RT(LD)OA)”
- “we just stick to the Award”
- “we follow the Award”

The TWU has proposed inserting a new clause into the Road Transport and Distribution Award (RTDA) 2010 where time worked under the other award will count in calculating ordinary hours.

This means that it will form part of calculating when overtime applies.

“Where an employee who ordinarily performs work under another award is temporarily required to engage in work covered by this award shall have the hours worked under both awards count towards the ordinary hours of work. Any hours performed outside the combined ordinary hours of work shall be paid in accordance with 27.1 of this clause.”

How do you think this new arrangement would work in practice?

*What would be its likely impact on productivity in your business/
the road transport industry?*

- “it would be hard to work out (how this would operate)”
- “we tend to be generous in our approach with overtime anyway”
- “we look after our drivers; we pay them properly already”
- “road transport is already a highly regulated industry, and government needs to help us (small businesses). We need a better approach to regulation”
- “extra regulation and (associated) administration come at a cost to business, and in the end do not help us to survive (in business)”
- “the TWU need to avoid making things too hard such that employers give up”
- “we have Fair Trading, environment, OHS and award regulation to comply with; it really is getting too onerous”
- “(it would be) unsettling an existing arrangement which works”
- “our employees are generally better off (with) existing arrangements; with the existing allowance”
- “very hard to make workable”
- “we already pay above the Award”
- “(it) would be hard to operationalise”

- “it would have a modest impact on our business, as we use subbies”
- “it’s crazy stuff; sounds like double pay to me”
- “if they are doing the work they should be paid accordingly”
- “it is what we already do now”
- “you just can’t float from one Award to another. You can’t really work under two or more Awards”
- “we already pay our workers on a more generous rate anyway”

**The TWU has proposed amending the Road Transport
(Long Distance Operations) Award 2010 by inserting a new sub-clause
creating a pick-up and drop-off allowance.**

“Where an employee engaged in a long distance operation is required to pick up or drop off at two or more locations at the principal point of commencement or principal point of destination, the employee must be paid an hourly rate for all additional hours worked calculated by dividing the weekly award rate prescribed by clause 13.1 by 40 and multiplying by 1.3 (industry disability allowance)”

“Where an employee engaged in a long distance operation is required to pick up or drop off at a location on route between the principal point of commencement and principal point of destination, the employee must be paid an hourly rate for all additional hours worked calculated by dividing the weekly award rate prescribed by clause 13.1 by 40 and multiplying by 1.3 (industry disability allowance).”

How do you think this new arrangement would work in practice?

*What would be its likely impact on productivity in your business/
the road transport industry?*

- “(it would be) catastrophic”
- “an absolute nightmare to implement; no productivity benefits whatsoever”
- “not an issue for us; we are an ‘end-to-end’ operation. However, (I can see) it would be difficult to implement”
- “the existing Award is adequate”
- “the TWU are just adding to costs when there is already pressure on (freight) rates”
- “(just) an additional burden”
- “that seems fair enough, they should be paid while they are working”
- “I’m not troubled by it, as long as I can get extra money from the client for doing the extra work.”
- “Not happy Jan !”

- “It is already taken into account. We use an hourly rate anyway”
- “we pay drivers to do pick-ups and deliveries now”
- “drivers are already well-paid to do a job”
- “we already have a loading and unloading allowance, which covers pick-up and delivery”
- “it is unclear where the dividing lines fall between loading and unloading, and pick-up and delivery”
- “it is not clear whether (the TWU claim for) pick-up and drop-off covers waiting time”
- “we already do it”
- “we pay a trip payment to our drivers, with an extra three hours allowance to do pick-ups and drop-offs”

The TWU has proposed amending the Road Transport (Long Distance Operations) Award 2010 to require employers to provide drivers with specific Fatigue Management Plans (FMPs) for each journey where the FMP is used to calculate driving hours.

“Where the employer has an accredited Fatigue Management Plan in place, the hourly rate may be used to calculate a trip rate for any journey by multiplying the hourly rate by the number of driving hours specified in the FMP for that journey. For the purposes of this clause accredited Fatigue Management Plan means any program which is approved under an Act of a Commonwealth, State or Territory parliament for the purposes of managing driver fatigue. A copy of the FMP for that journey must be provided to the driver.”

What sort of FMP do you use know?

Do you use an FMP to calculate hours under the award?

If so, how do you communicate the hours calculation to drivers?

How do you think this new arrangement would work compared to current practice?

What would be its likely impact on productivity in your business/ the road transport industry?

- “we are NHVR accredited”
- “we use the standard form manual”
- “our drivers are all certified in fatigue management”
- “the TWU’s fatigue management plan proposal is just the old RSRT through the back-door”
- “even more regulation; extra paperwork”
- “our drivers are very experienced; more than 20 years plus in the industry. It is insulting to direct them in fatigue management”
- “impractical and paternalistic”
- “absolutely unworkable in our industry. It can’t happen”
- “trips, including loads, are not standard. They (drivers and employers) often don’t know the load for the return trip or the destination”

- “(it would) require an extra staff member just to write such plans”
- “generic plans are sufficient”
- “we use generic fatigue management plans”
- “drivers are free to stop if they are tired”
- “let drivers use their own common sense. We encourage our drivers to rest as required”
- “Fatigue Management Plans are the bane of small business operators like us”
- “we already double up on Fatigue Management Plans: our own, and those of prime contractors we work for. And, what’s more, different prime contractors have different Fatigue Management Plans”
- “drivers are likely to revolt against the TWU proposal. They are already frustrated by continually having to fill out paperwork. Drivers are becoming overwhelmed by paperwork”
- “Fatigue Management Plans need to be as simple as possible to get compliance from drivers.”
- “a really stupid idea”
- “the industry is getting bound up by excessive regulation”
- “drivers should rest when they need to, not when the regulations say so”
- “Fatigue Management Plans can be counter-productive; they can cause fatigue in drivers”
- “seems to be just for the benefit of the TWU”
- “totally object to that”
- “drivers are already bound legally to the log book”
- “time sheets when to rest are a complete waste of time. Drivers know when they need to rest”
- “it has no bearing on reality. I really don’t want to stay in business if we have to do this”
- “it is an unnecessary extra obligation on a small business”
- “totally opposed; wholly unnecessary”
- “there are too many variables (for this to work) – distance, task, driver capacity”
- “everybody is different. It ain’t going to work”
- “you can’t micro-manage everybody”
- “basically this is just the old RSRT”
- “we give our blokes safe driving plans, but sometimes not if the trip is at short notice”

Finally, are there any other issues you would like to raise with us about the TWU claim?

- “the current award seems to work quite well at the moment”
- “we are particularly watchful of fatigue issues”

BD-4

INTRO

Good morning/afternoon, my name is XXX from StollzNow Research. We are doing a very short survey for NatRoad members to get input into the NatRoad submission to FairWork Australia for the new Award.

Do you have time to answer these questions now? It will take about 3 minutes?

IF NO

Can I make a time to call you later?

RECORD DETAILS

Would you like to know more about the background to the Award process and this survey?

- Yes
- No
Skip to:Q1

BACKGROUND

NatRoad is preparing a submission on behalf of members in relation to the Modern Award Review

As a member and an owner or operator of heavy vehicles you can provide practical insights into the proposed changes to the awards.

Modern awards are important. They form the second element of Australia's workplace relations safety net. The first is the National Employment Standards (NES). It is unlawful to employ someone on conditions less than in the NES or the applicable modern award. So provisions that increase costs in modern awards affect everyone in the industry. This includes those who have an enterprise bargaining agreement (EBA) as an employee must be better off overall under the EBA than under a modern award.

The National Road Transport Association (NatRoad) is actively involved in examining and promoting proposed changes to the transport modern awards as some of the changes would impose costs on members by adding to the costs of employing drivers without any productivity offsets. NatRoad is also involved in modern award proceedings that affect all awards including these two vital transport awards.

The review process has begun and will continue into late 2017 before new awards are made. The Fair Work Commission is hoping to complete the task by the end of 2017 but has issued no guarantees about when the process will end.

Q1

How many years have you been in the road freight industry?

- Less than 5 years
- 5 to less than 10 years
- 10 to less than 15 years
- 15 to 30 years
- More than 30 years

Q2

BD

Which of these age groups do you fall into?

- 18 -24
- 25-34
- 35-44
- 45-54
- 55+

Q3

Which State is your base in Australia?

- Western Australia
- South Australia
- Victoria
- Tasmania
- News South Wales
- Australian Capital Territory
- Queensland
- Northern Territory

Q4

What category best represents your company?

- Support industry (professional services, logistics, hiring) - no trucks
- 1 to 4 trucks
- 5 to 10 trucks
- 11 to 18 trucks
- 19 to 49 trucks
- 50 or more trucks

Q5

What best describes your operation?

- Long distance/Interstate

- Local (within 100 km)
- Both long distance and local

Q6

What best describes your location of work?

- Urban
- Rural
- Urban and Rural

Q7

How many employees do you have? (Full time equivalent)

- None (includes owner-driver)
- 1 to 4
- 5 to 19
- 20 to 100
- 101 or more

Q8

Which of the modern awards apply in your business?

- Road Transport (Long Distance Operations) Award (RTLDOA) 2010
- Road Transport and Distribution Award (RTDA) 2010
- Unsure
- Other (please specify)

Q9

Are you aware of the claims to change the Road Transport (Long Distance Operations) Award (RTLDOA) 2010 and the Road Transport and Distribution Award (RTDA) 2010?

- Yes
- No

Q10

Would you support or oppose a clause in the Road Transport (Long Distance Operations) Award requiring payment at the base hourly rate for employees required to travel as a passenger?

- Support
- Oppose
- Don't know/not relevant

Q11

If such a provision was introduced, what would be the impact on your business costs?

- Significant Cost
- Moderate Cost
- Slight Cost
- No Impact
- Don't know
- Other (please specify)

Q12

Would you support or oppose a clause in the Road Transport (Long Distance Operations) Award requiring payment at the base hourly rate for employees engaged in two-up driving where the employee is not driving?

- Support
- Oppose
- Don't know/not relevant

Q13

If such a provision was introduced, what would be the impact on your business costs?

- Significant Cost
- Moderate Cost
- Slight Cost
- No Impact
- Don't know
- Other (please specify)

Q14

Would you support or oppose a clause in the Road Transport (Long Distance Operations) Award requiring payment at the base hourly rate for employees required to spend more than one hour waiting to effect pick-up or delivery of a load?

- Support
- Oppose
- Don't know/not relevant

Q15

If such a provision was introduced, what would be the impact on your business costs?

- Significant Cost
- Moderate Cost
- Slight Cost
- No Impact
- Don't know
- Other (please specify)

Q16

Would you support or oppose a clause in the Road Transport (Long Distance Operations) Award requiring employers to provide their drivers with a Fatigue Management Plan for each journey?

- Support
- Oppose
- Don't know/not relevant

Q17

If such a provision was introduced, what would be the impact on your business?

- Significant Cost
- Moderate Cost
- Slight Cost
- No Impact
- Don't know
- Other (please specify)

Q18

Thank you for your time today. As part of the research process 10% of research participants are recontacted to ensure all responses are valid. Do you mind being recontacted for this purpose?

Yes

No

Q19

This concludes the survey, on behalf of NatRoad and StollzNow Research thank you for your time today.

Q20

RECORD DETAILS

NAME

COMPANY

PHONE NUMBER

YOUR NAME (INTERVIEWER)