

Passenger Vehicle Transportation Award 2020: Explanatory Notes (5th Edition)



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Bus Australia Network



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PASSENGER VEHICLE TRANSPORTATION AWARD 2020

EXPLANATORY NOTES (5th Edition)

The Passenger Vehicle Transportation Award 2020 (PVTA 2020) commenced operation on 13 April 2020.

The PVTA 2020 replaces the Passenger Vehicle Transportation Award 2010 (PVTA 2010), which, along with all other 122 modern awards, was the subject of a 4-yearly review, pursuant to section 156 of the Fair Work Act 2009 (the Act). Note that section 156 has now been repealed and there will be no further 4-year reviews.

An Award may still be varied in circumstances outlined by sections 157 to 161 of the Act. These interpretations have been developed by the Bus Industry Confederation's Industrial Working Group and are guidance only and should not be relied upon without seeking professional advice.

This version is the 5th Edition (i.e. 1st Edition of the PVTA 2020) based on discussions that have occurred at an IWG level on 25 March 2020.

The main differences between the PVTA 2010 version and the PVTA 2020 version is, apart from additional clauses, a changed format, which contains various examples and notations provided to assist in understanding the various meanings.

Part 1 – Application and Operation of this Award

Title and Commencement (Clause 1)

The award is known as the Passenger Vehicle Transportation Award 2020.

Definitions (Clause 2)

- (i) A 'broken shift' is defined as two portions of work, with a break of more than 60 minutes. In a broken shift the employee must be able to return to their place of work and are not obliged to undertake any further work until the commencement of the second part of the shift later in the day.

It is possible for a casual employee to have an engagement divided into 2 parts and to have another engagement later in the day which is a single part.

Example:

- *Casual driver works 7-9 school run for the first part of the broken shift, then is rostered to perform charter work 11-1 which is the second part of the broken shift, and then rostered to perform the second school run from 3 – 5 as a separate shift.*
- *Alternatively, a casual driver could work 7-9, have an unpaid meal break, then work 10-12 on charter work. This work together is taken as one part of the broken shift. The second part of the broken shift is then rostered from 3 -5.*

Whilst you could roster in this way, note that in both scenarios the employee will no longer be solely engaged for the purpose of transporting school children, and accordingly the minimum roster time for that purpose in clause 11.4(ii) may not apply.

Accordingly, in the first scenario, the employee may be entitled to three hours minimum for work from 3-5pm, and, in both scenarios, the two hour shift in the middle of the day (11-1 in the first scenario and 10-12 in the second) would need to be an additional hour (or paid as such).

- (ii) The National Employment Standards which apply to all employees, irrespective of any Award coverage are defined in sections 59 to 131 of the Act and are therefore incorporated 'in toto' into the PVTA 2020.
- (iii) 'Passenger vehicle' includes motor vehicles, limousines, hire cars, buses, coaches, electric trams, monorail and light rail.
- (iv) A 'specified route service' is defined as any route on which a passenger vehicle operates and includes government contracted operations but excludes school bus services.
- (v) 'Two Up driver' operations are defined to mean any express, charter or tour operation in which another driver shares the driving. It doesn't include feeder or shuttle services driven by another driver.

- (vi) 'Waiting time' is defined as time, excluding meal breaks, in which no demand for work is made upon the driver and the driver is placed under no restraint as to their movements and is not otherwise on call by the employer. During waiting time, the driver must be away from the depot and not working as part of the shift. Waiting time is also referred to in section 13.3 of the PVTA 2020 and is payable to coach drivers or bus drivers on single day charters who work 2 separate work periods where the driver does not have to return to the depot during the rostered shift. Waiting time is not included when calculating overtime.

Note: Historically, the Transport Workers (Passenger Vehicles) Award 2002 provided higher waiting time payments for waiting time on Saturdays, Sundays and Public Holidays, which tends to suggest it should not be interpreted as a stand-alone allowance.

That said, the provision is not entirely clear noting that clause 11.3 provides that the casual loading is payable for each ordinary hour worked. In the absence of a settled position on this matter, weekend and shift penalties as well as the casual loading may apply to the calculation of waiting time.

The National Employment Standards and this award (Clause 3)

- (i) Employers must ensure that employees have access to the PVTA 2020 and the National Employment Standards (NES) either by placing them on a notice board or in a suitable place where all employees can access them.

Section 56 of the Fair Work Act makes it clear that a term of the NES will override any term of an Award. Clause 21.3 of the PVTA 2020 provides for no leave loading to be paid on termination, however, this clause is less than the NES (s.90 (2)) and therefore does not apply.

Coverage (Clause 4)

- (i) The PVTA 2020 covers employers in the passenger vehicle transportation industry and employees who are referred to in the classifications in Schedule A – Grades 1 to 6, including employees who are adults, juniors, the subject of the supported wage systems and national training wage as set out in clause 15.

A depot manager or a depot supervisor, depending on their job description may fall under Grade 5 or Grade 6 of the PVTA 2020. We note that the classifications for Grade 5 and Grade 6 roles under the Award require the employee to still perform the duties of a driver. Accordingly, this interpretation may possibly only apply in smaller operations where drivers may also perform supervisor duties

Depending upon the managerial nature of the work undertaken by a member of management there may be no Award that actually covers this position including the Miscellaneous Award 2010, which is designed to capture those employees for whom no other Modern Award applies. Importantly, the Miscellaneous Award 2010 does not apply to employees who, because of the nature or seniority of the employee's role, have not

traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.

- (ii) The Award covers those employers who are constitutional corporations and single entities and partnerships in circumstances where State Government have legislated to refer their IR powers for these groups (i.e. single entities and partnerships) to the Federal system. Western Australia is the only State not to do so but only private operators who are not incorporated will be under WA Awards.
- (iii) No State, other than Victoria, has agreed to refer their own State employees (e.g. STA) into the Federal system.

Individual flexibility arrangements (IFA) (Clause 5)

- (i) An employer and employee will be able to agree in writing to vary individual terms relating to rostering, overtime rates, penalty rates, allowances and annual leave loadings provided it is in writing and places the employee in a better off 'overall' position.
- (ii) IFA's can be used where employers and employees agree and can eliminate the necessity for enterprise agreements.
- (iii) A copy of the IFA must be given to the employee but does not need the consent of Fair Work Commission (FWC).
- (iv) The applicable period will be 13 weeks as provided under the PVTA if the IFA complies with the terms of section 144 of the FWA. If the IFA is non-compliant with the terms under section 144 of the FWA, the IFA can be terminated on 28 days' notice or as otherwise agreed between the parties under ss 145(4)

Although potentially a useful tool IFAs are rarely used by employers in the passenger transport industry.

Request for flexible working arrangements (Clause 6)

- (i) Clause 6 applies in addition to section 65 of the FWA. Section 65 is part of the NES. It applies to employees in the following circumstances:
 - a) the employee is the parent, or has responsibility for the care, of a child of school age or younger.
 - b) the employee is a carer (within the meaning of the *Carer Recognition Act 2010*)
 - c) the employee has a disability.
 - d) the employee is aged 55 and over.
 - e) the employee is experiencing violence from a member of the employee's family.
 - f) the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

- (ii) The Award prescribes a procedure that must be followed when seeking or receiving the request. It provides a set of notes about its application in addition to section 65.
- (iii) If an employee makes a request in writing under section 65, before responding to the request, the employer must consult and discuss the needs of the employee, the consequences of any change and whether any business grounds exist for a refusal.
- (iv) An employer must provide a written response in 21 days stating whether the employer grants or refuses the request. If the employer refuses the request, the written response must give reasons for the refusal, including the business ground/s for the refusal and how the ground/s apply. The employer must also state whether any changes in working arrangements may apply to accommodate the employee's circumstances, and if the changes can be offered, set out those changes in working arrangements.

An employee may dispute a failure in the process but not the substance of the decision.

Facilitative provisions (Clause 7)

- (i) This provision is new and simply outlines those areas in the PVTA 2020 in which an employer and employee can agree to vary the standard provisions of an Award such as accumulation of days off, changes to rostered ordinary hours, time off in lieu of O/T payments, annual leave in advance and cashing out annual leave and substitution of public holidays.

Part 2 – Types of Employment and Classifications

Types of employment (Clause 8)

- (i) Employees may be engaged full-time, part-time or casual.

Full-time employees (Clause 9)

- (i) Full time employees are entitled to at least 38 hours per week on average and be paid for a minimum period of 4 hours per shift/ day engaged. Per shift/ day engaged means the entirety of a daily shift including a broken shift.

Part-time employees (Clause 10)

- (i) Part time employees are engaged to work reasonably predictable hours, which are agreed by the employer and employee and less than 38-hours, with a minimum of three hours daily engagement.
- (ii) Daily engagement means the entirety of a daily shift including a broken shift.

- (iii) The terms of engagement for a permanent part time employee must be agreed to in writing by the employer and employee at the commencement of the employment. The terms must include the employee's usual hours, starting time and finishing time, and days worked.
- (iv) The terms referred to (v) can be varied by consent in writing, with a copy of the variation given to the employee.
- (v) Time worked in addition to the hours agreed upon above in (iv) may be paid at ordinary rates if there has been a further agreement between the employee and the employer. Where no further agreement as been reached, additional hours will be paid at overtime rates.

Casual employees (Clause 11)

- (i) Casuals are paid by the hour and are entitled to receive a 25% loading on the minimum rate (defined in clause 15.1) for all ordinary hours worked.
- (ii) A casual receives a minimum payment of 3 hours each shift, except where a casual is solely engaged to transport school children to and from school they are entitled to receive 2 hours for each engagement i.e. engagement 1 is the journey to school and engagement 2 is the journey from school to home. It is possible that only one engagement occurs in a day.
- (iii) If a casual who takes school children to school as one engagement and as part of that engagement also does a charter in concert with the school services, then the 3-hour minimum would then apply to the day's work.
- (iv) A casual may work overtime if they work more than 38 hours in a week (clause 13.1 (e)) but this overtime would not be considered as ordinary hours and therefore does not attract the 25% loading.
- (v) In relation to the living away from home allowance, it is not clear from the provision that the employee is not working ordinary hours. Clause 17.3(d)(i) provides that the employee is to be paid a minimum of 8 hours on Mondays and Fridays, and a minimum of 8 hours plus penalty rates on Saturdays and Sundays for actual time worked.

Assuming a casual employee is rostered to work ordinary hours of say 3 hours while away from home and unable to return, the 3 hours would include the casual loading, and it is therefore arguable that the additional 5 hours should be paid similarly.

- (vi) A “regular casual employee,” who works regular hours over a period of 12 months is entitled in writing to request an employer to convert their employment to permanent or part time employment so long as the work in the previous 12 months has been a regular pattern of work. The request must be in writing and can only be refused, after consultation, and on reasonable business grounds which includes:
- A significant adjustment would have to be made to the hours of work
 - The casual’s position will not last more than 12 months
 - The hours of work will significantly reduce, or
 - The hours of work will change and do not accommodate the hours the employee seeks to work.
- (vii) For the purpose of the right to request casual conversion, the definition of regular casual employee provided in the Award may rule out school bus drivers who do not work regular hours during school holidays and charter drivers whose work depends upon a 24 hour, as required, inbound tourist market.
- (viii) All existing casuals must receive a copy of the conversion clause and any new casual employee within their first 12 months of work.

Classifications (Clause 12)

Classifications are set out in Schedule A – Classifications and range from Grade 1 to Grade 6.

- (i) Grade 1 – cleaners, coach attendants, oil and greasers, yard people and accompanied drivers (induction period for drivers)
- (ii) Grade 2 – ticketing, customer relations, drivers of small school buses (less than 25 passengers)
- (iii) Grade 3 – school bus drivers of larger buses (25 or more), route service drivers of small buses and coach and bus drivers who do day charters less than 650Klms
- (iv) Grade 4 – Route service drivers of larger buses and coach drivers on extended trips i.e. overnight of more than 650Klms
- (v) Grade 5 – senior bus drivers who do other operational task such as scheduling, supervising or training such as a depot supervisor
- (vi) Grade 6 – higher responsibilities as a senior supervisor. Would not include the depot manager and does not have final decision-making capabilities.

Part 3 – Hours of Work

Ordinary hours of work and rostering (Clause 13)

Ordinary hours and roster cycles (Clause 13.1)

- (i) Ordinary hours of work for a full-time employee are defined as 38 hours a week average over 5 days a week or 76 hours over a 10 days fortnight, 114 hours over a 15 day/ 21 day-period or 152 hours over a 20 day/ 28 day-period.
- (ii) Ordinary hours of work for a part time employee are defined by clause 10 as agreed to in writing by the employer and employee but 38 hours or less.
- (iii) Ordinary hours for a casual will be up to 38 hours a week.
- (iv) Ordinary hours for all employment types may not exceed 10 hours on any one day.
- (v) Superannuation is payable on ordinary hours of work for all employment types but is not payable on overtime.
- (vi) Permanent full-time employees may take one accrued rostered day off (RDO) with 19 days of work each 4-week period (usually 8 hours a day) and can accumulate up to 10 RDOs over a 40-week period if agreed between employer and employee.

Notice requirement (Clause 13.2)

- (i) Rosters must be displayed at least 7 days beforehand but can be changed on 24-hours-notice or less if agreed to.

Coach/bus driver employees on single day charters (Clause 13.3)

- (i) A coach or bus driver who does a single day charter can have their shift divided into two parts during which they don't return to the depot and whilst they are on the shift and not working they may receive a payment equal to 50% of the minimum hourly rate. It is not a broken shift, as defined.
- (ii) This applies to coach and bus drivers doing a single day charter comprising two journeys i.e. usually to and from a destination.
- (iii) It might not apply to a broken shift, if the employee is required to perform other work in between a broken shift.

Breaks (Clause 14)

- (i) Employees may be rostered either for an unpaid meal break (between 30 to 60 minutes) or a paid crib break of between 15 and 30 minutes.
- (ii) The breaks can be taken either at the depot or at a reasonable location.

- (iii) This clause does not preclude the taking of more than one meal break or crib break nor does it preclude the taking of a meal or crib break during either part of a broken shift or during a day charter involving waiting time.
- (iv) The clause requires a meal break to be taken at least within the first 5 hours 30 minutes of a shift. The meal break requirements under the Award exist alongside the requirement for drivers to take a 15-minute rest break within the span of 5 hours and 30 minutes under the National Heavy Vehicle National Law.
- (v) A reasonable location would dictate that the driver has access to toilets, food outlets and an area of exclusivity to take the break.

Part 4 – Wages and Allowances

Minimum rates (Clause 15)

- (i) Schedule B now provides a summary of the wage rates, including the calculation of the early and late work, weekend work and public holidays.
- (ii) The Schedule also contains calculations for casuals, including a cumulative approach to calculating the casual loading and penalty rates for weekends, early and late running and public holidays (i.e. 140% for early and late running, 175% for Saturday and 225% for Sunday and 275% for public holidays).
- (iii) There is no calculation for overtime for casuals in Schedule B. It is likely this omission is because the casual rate for overtime is the same as the overtime rate for full time and part time employees (noting that the casual loading is not payable on overtime hours).
- (iv) There are minimum Junior rates that apply to persons of 20 years and under and 19 years and under along with a supported wage system for persons with disabilities.
- (v) There are minimum rates as part of a national training wage and as defined by the Miscellaneous Award (Schedule E of the Miscellaneous Award).
- (vi) The higher duties provision (clause 15.3) requires a higher wage classification to be paid for the entire shift if more than 2 hours is worked at the higher duty.

Payment of wages (Clause 16)

- (i) Wages must be paid either weekly or fortnightly and within two days of the expiration of the pay period which can be no later than Thursday in the pay period.
- (ii) If an employee leaves, for whatever reason, the final termination pay must be made within 2 days of the termination.

- (iii) An Award note reflects on the regulatory requirement to provide pay slips to each employee and to keep pay records (up to 7 years)

Allowances (Clause 17)

- (i) Schedule C provides a summary table of the wage-related allowances including the first aid allowance, articulated bus allowances and expense related allowances including the meal allowance, vehicle allowances and the manner of their adjustments.
- (ii) The medical allowance (clause 17.3 (g)) enables an employer at any time to require their employee to take a medical provided that the medical is limited to the ability of the employee to meet the inherent requirements of their job.
- (iii) If an employee provides a report from a doctor of their choosing, the employer should consider whether the report deals with all relevant issues before making a determination on whether to direct the employee to undertake further assessment.
- (iv) When directing employees to attend medical assessments, care needs to be taken to avoid discrimination (including on the basis of age, but also disability and gender). An employer should make inquiries about the health of employees to the extent that their health impacts upon the safety of other workers, or the capacity of the employee to perform their job.

For completeness, there is a real question as to whether a medical capacity to direct employees to attend medical assessments is a permitted term of a modern award (see s139 of the Act), as it is not clear that it is “incidental” to an allowance equal to a reimbursement of the cost of a medical assessment, less the Medicare rebate.

- (v) The living away from home allowance is payable on a daily basis defined as midnight to midnight.

Superannuation (Clause 18)

- (i) The PVTA 2020 supplements the rights and obligations of employers and employees under superannuation legislation.
- (ii) Employers should consult the relevant legislation alongside the provisions of the Award. The Superannuation Guarantee Charge is payable (subject to some exceptions) in respect of an employee’s ordinary time earnings, which includes:
 - Personal leave constitutes ordinary time earnings
 - Family and Domestic Violence leave does not constitute ordinary time earnings
 - In relation to workers’ compensation, superannuation will be payable in respect of payments made where the employee has returned to work,
 - Payments to an employee where the employee has *not* returned to work will not constitute ordinary time earnings
 - Long service leave payments constitute ordinary time earnings.

- (iii) Annual leave loading will constitute OTE unless an employer can demonstrate (with evidence) that the annual leave loading was demonstrably referable to the notional loss of an opportunity to work overtime.
- (iv) The clause provides for default funds if an employee does not choose their own fund e.g. including Tasplan, Statewide, Australian Super, QBIC super and TWU Super.

Part 5 – Overtime and Penalty Rates

Overtime (Clause 19)

- (i) Overtime is defined as any time worked over 38 hours a week or such derivation up to 152 hours in a 28 consecutive day period, more than 10 hours a day or outside of rostered ordinary hours.
- (ii) The rates are 150% for the first 3 hours and 200% after 3 hours.
- (iii) Employers and employees can agree in writing that overtime can be taken as time of in lieu. Schedule E has a template agreement that can be used for this purpose.
- (iv) When an employee takes time off in lieu the time off is equal to the hours of overtime due to the employee. However, the option to take time off must be exercised and agreed to within 6 months otherwise payment at the overtime rate must be made. An employee may request payment at any time.

Penalty rates (Clause 20)

- (i) Penalty rates are identified in a table for two up drivers and non-two up drivers.
- (ii) The penalty rates for two up driving are less.
- (iii) Penalty rate and overtime rates are not cumulative which means an employee is not entitled, for instance, to receive both a penalty for working weekends as well as a loading if the work is for overtime. The higher rate will always apply i.e. a 100% loading for overtime is higher than a 50% penalty for working in a Saturday.

Part 6 – Leave and Public Holidays

Annual Leave (Clause 21)

- (i) Annual leave provisions are covered in the NES (See sections 86 to 94 of FWA), which provides for 20 days to accrue as soon as employment commences. 25 days are provided if the employee is designated as a shift worker.

- (ii) A shift worker is defined by section 87 (1) (b) of the FWA as a 7-day worker who regularly works on Sundays and public holidays.
- (iii) Western Power Corporation ([AG818831](#); PR944613) of 16 March 2004 and *O'Neill v Roy Hill Holdings Pty Ltd* [2015] FWC 2461 support the view that an employee who works 34 Sundays and 6 public holidays will be considered by the Commission as regularly working on Sundays and public holidays, such that the employee is a shift worker for the purposes of section 87(1)(b) of the FWA.
- (iv) This test was most recently supported by Commissioner Spencer in [Transit Australia Group Pty Ltd T/A Capricorn Sunbus](#) [2019] FWCA 5053, in which the Commission considered the definition of a shift worker under the PVTa against the proposed enterprise agreement. The proposed agreement provided that a shift worker is 'regularly rostered to work Sundays and Public Holidays' if they work 'at least 34 Sundays and 6 Public Holidays'. The Commission approved the proposed agreement, determined that this definition of a shift worker for the purposes of the NES of a shift worker was "appropriate.
- (v) An employee receives their ordinary hours of pay for each day of leave along with a 17.5% loading which if paid to compensate for lost overtime opportunities would not attract the SGC. The ATO has recently clarified its position on the meaning of this phrase, noting that there are two ways in which an employer can demonstrate that annual leave loading was "demonstrably referable to a notional loss of opportunity to work overtime i.e. By wording in the relevant industrial instrument clarifying the reason for the entitlement; or by other written evidence (for example, a documented policy) that clarifies the reason for the entitlement and reflects the mutual understanding of both parties to the agreement that gives rise to the entitlement.
- (vi) Notwithstanding what is said in clause 21.3 of the Award, section 90 (2) of the FWA requires that leave loading is to be paid on accrued annual leave paid out on termination as per the NES requirements which override the Award provision.
- (vii) Subject to the conditions in the Award, annual leave can be taken in advance by written agreement (Schedule F has a template Agreement) and on termination any outstanding leave paid in advance can be deducted from any money due to the employee on termination.
- (viii) If an employee has accrued more than 8 weeks annual leave (10 weeks in the case of a shift worker), subject to the conditions in the Award, the employee can request to take some of the leave (or in prescribed circumstances give notice that they are taking leave), or the employer can direct an employee to take leave.
- (ix) Subject to the requirements of the Award, annual leave may also be cashed out by agreement so long as 4 weeks always remains and no more than 2 weeks is cashed out each year. Schedule G has a template agreement for such a cashing out.

- (x) In accordance with the decision of the Full Federal Court in *Mondelez*, which is subject to appeal, an employee is entitled to be paid on any day that personal leave is taken the amount the employee would have been paid for the ordinary hours the employee would have otherwise worked. This 'counts' as a day, such that an employee's accrued annual leave balance should be reduced by one day (rather than by the number of hours worked by the employee), out of the 10 days of personal/carer's leave which accrue per year of service by an employee.

Personal/ carer's leave and compassionate leave (Clause 22)

- (i) Is dealt with in the NES (see sections 95 – 103 FWA)
- (ii) An employee is entitled to 10 days personal leave each year which accrues progressively and which following the *Mondelez* case may be payable for the hours otherwise worked on specific day's leave.
- (iii) An employee is also entitled to 2 days unpaid carer's leave to look after immediate family who may be ill or in need of care.
- (iv) A reasonable person test applies when consideration is given by an employer to the veracity of the leave taken by the employee who is required to give reasonable notice to the employer of such leave intentions.
- (v) 2 days compassionate leave applies to employees other than casual employees where an immediate family member is seriously ill, sustains a serious injury or dies.
- (vi) Casual employees do not receive personal/carer's leave.

Parental leave and related entitlements (Clause 23)

- (i) Is dealt with in the NES (see sections 67 – 85 FWA).
- (ii) An employee including a long-term casual with up to 12 months continuous service may apply for unpaid leave for parental or custodial reasons.
- (iii) In the case of pregnancy, a female employee may seek maternity leave 6 weeks before the due date or a transfer to a safer job prior to the birth.
- (iv) By agreement the unpaid leave period may be extended for up a further 12 months period.

Community service leave (Clause 24)

- (i) Is dealt with in the NES (see sections 108 – 112)
- (ii) All employees are entitled to take this leave provided they are involved either in jury service or an authorised emergency management activity.
- (iii) Employees other than casuals are entitled to be paid for jury service but have an obligation to set off the payment received for such jury service.

Unpaid family and domestic violence leave (Clause 25)

- (i) Is dealt with in the NES (see sections 106a – 107).
- (ii) 5 days leave is available to any employee over a 12-month period or for a longer period by agreement.
- (iii) Family and domestic violence is defined as threatening or abusive behaviour and the leave is available to the victim if such actions or in a circumstance where they must deal the impact of such behaviour.
- (iv) The PVTA 2020 makes it clear in a footnote about the sensitivity of details relating to this type of leave.

Public Holidays (Clause 26)

- (i) Is dealt with in the NES (see sections 114 – 116).
- (ii) An employee as part of the facilitative provisions of the PVTA 2020 is able to substitute a public holiday payment for another day by agreement between the employer and employee.
- (iii) Double time and half applies to public holiday work, except for two-up driving where an additional 8 hours is paid on top of a penalty.
- (iv) Public holidays may be the entire day or part of a day as determined by the State or Territory.
- (v) Schedule H of the PVTA 2020 sets out that a part day public holiday will usually fall between 6pm or 7pm and midnight.
- (vi) An employee cannot be forced to worked on a public holiday so long as they have reasonable grounds for refusal.
- (vii) If an employee is rostered to work but for the public holiday the employee would get paid for those ordinary hours, they would have worked but for the public holiday.

Part 7 – Consultation and Dispute Resolution

Consultation about major workplace change (Clause 27)

- (i) An employer must notify and consult with employees regarding any major changes to the structure or operation of the business which will impact on employees.
- (ii) Significant impacts include changes to staff numbers, elimination of job opportunities, job tenure, retaining employees, changes to hours of work and promotion.
- (iii) The employers must discuss these changes and seek ways to mitigate or to avert the adverse impacts on employees.

Consultation about changes to rosters or hours of work (Clause 28)

- (i) An employer has a duty to consult with an employee whose regular roster or ordinary hours of work are intended to be changed. This requires actual contact with the employee and allows for the employee's representative to attend such a meeting. An employer is required to consider the views of that employee.
- (ii) In circumstances of a network review and an across the board change of hours or roster, the obligation does not diminish for an employer to consult with each affected employee.
- (iii) The PVTA does not impose an obligation that consultation be face-to-face. Consultation can occur in writing or over the phone, which may be more cost-effective and ensure that no employees are 'missed'. This will depend upon the nature of the change which the employer proposes.

Dispute resolution (Clause 29)

- (i) Where there is a dispute about a breach or an interpretation the PVTA or the NES the parties must seek to resolve the issues at the workplace level and, if necessary, by involving senior levels of management.
- (ii) The Parties, if they still can't resolve the dispute, can agree on the best way for FWA to deal with the matter i.e. by mediation, conciliation or even arbitration.
- (iii) In the event that there is no agreement then FWC may decide the manner of dispute resolution.
- (iv) Either the employer or employee can appoint another person, organisation or association to accompany or represent them at any hearing in FWC.
- (v) Whilst the dispute is being resolved work must continue in accordance with the FWA and the PVTA 2020. Similarly, an employee must not unreasonably fail to comply with a direction to work that is safe and appropriate.

- (vi) Clause 29 does not give an employer an unfettered power to change rosters. Accordingly, the notice requirements and entitlements to overtime provided by clause 13 of the PVTA, and the consultation requirements in clause 28, will continue to apply to any roster change occurring during a dispute.

Part 8 – Termination of Employment and Redundancy

Termination of employment (Clause 30)

- (i) Notice of termination is provided under the NES and does not apply to a casual employee, a seasonal employee, a trainee, an employee terminated for serious misconduct or an employee on probation.
- (ii) Employees must also give the same notice to their employer and are entitled to a day off to look for a job during this period.
- (iii) The requirement of an employee to also give notice is new to the industry and will allow an employee to deduct any period of notice not given from outstanding employment entitlements.
- (iv) The notice period varies from 1 week for less than a year employment to 2 weeks for employees of more than a year and under 3 years, 3 weeks for employees more than 3 years but not more than 5 and 4 weeks for anything over 5 years. A further week is added where the employee is older than 45 years.
- (v) A casual employee, who works systematically and regularly, may be counted as a permanent employee for the purpose of this notice. Casuals do not receive the benefit of the notice or redundancy provisions. Note however that case law has suggested that regular and systematic engagements with a reasonable expectation of continuing employment are usually not characteristic of casual employment.

Redundancy (Clause 31)

- (i) Redundancy occurs when an employer decides that the job an employee has been doing is no longer needed.
- (ii) The provision does not apply to circumstances where there are less than 15 employees (casual included).
- (iii) Redundancy provisions apply when the notice period is invoked but does not apply, similarly to a casual employee, a seasonal employee, a trainee, an employee terminated for serious misconduct or an employee on probation.
- (iv) In circumstances where a business is sold, if an incoming employer recognises the employee's service then redundancies don't apply. A day off must also be given to find a job once a redundancy notice is given.

The PVTA prescribes the following redundancy payments:

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

Schedule A - Classifications

The Grades

- Grade 1, (employees not involved in driving passengers), includes employees not involved in driving passengers but refuellers, attendants, washers tyre changers, supervisors and coach attendants.
- Grade 2, (school drivers of small buses and limo and hire car drivers), includes drivers of vehicles with carrying capacity of less than 25 school children, bus conductors, a driver of limousines or hire cars carrying less than eight persons. The number of children in the various grades refers to the actual number without reference to any local rules relating to 3 for 2.

- Grade 3, (school drivers of large buses and route service drivers of small buses and day charter drivers), includes drivers who drive vehicles with a carrying capacity of 25 or more school children or who carry specific route service passengers in a bus with a carrying capacity of less than 25 or a coach drivers on day charters and who travel less than 650 Km. Where specific route service passenger is referred to the adult carrying capacity is to be taken as the measure.

It is very important when calculating the transitional rates that the correct grade is used because some of the grades under pre-existing awards do not correlate with the grades in the PVTA. Grade 5 of Part C, Transport Workers (Passenger Vehicles) Award is Grade 4 under the PVTA etc.

- Grade 4, (route service drivers of large buses and long distance drivers), includes drivers who drive specific route services in vehicles with a carrying capacity of 25 or more and coach drivers who drive vehicles with a carrying capacity of 25 or more and who travel a return distances of 650 Km or more.
- Grade 5, (drivers with sound operational knowledge and customer service), includes drivers with higher skills than grade 4 and who have sound operational knowledge including instructors of new drivers.
- Grade 6, (drivers who are also supervisors, trainers and managers), includes supervisors and trainers who are customer focussed and provide operational support to special events.

Schedule B – Summary of Hourly Rates of Pay

The Tables include rates of pay for:

- Full-time and part-time employees
- Full-time and part-time employees on two-driver operations (ordinary and penalty rates)
- Full-time and part-time employees (overtime)
- Casual employees other than two-up driver operations (ordinary and penalty rates)
- Casual employees on two-up driver operations (ordinary and penalty rates)

Schedule C – Summary of Monetary Allowances

The Tables include full details of allowances for:

- Wage-related allowances (first aid & articulated bus)
- Expense-related allowances (meal for more than 2 hours overtime, vehicle when using own vehicle during start and finish & vehicle for use of own vehicle in course of work)

Schedule D – Supported Wages System

- This schedule outlines a supported wages schedule that applies to persons with disabilities and who meet the eligibility criteria as persons who need special rehabilitation.
- It is not intended to act as a worker’s compensation mechanism and expressly distinguishes itself from worker’s compensation legislation.
- There are detailed wage rate for persons base on their assessed capacity for work based on a percentage capacity to work against the relevant minimum wage.

Schedule E – Agreement for Time Off Instead of Payment for Overtime (Template document)

See clause 19 (3).

Schedule F – Agreement to Take Annual Leave in Advance (Template document)

See clause 21.4

Schedule G – Agreement to Cash Out Annual Leave (Template document)

See clause 21.8

Schedule H – Part-day public holidays

See clause 26.4

Schedule X – Additional Measure during COVID-19

This clause was recently added on the initiative of the Fair Work Commission to provide flexibility to employers and employees dealing a reduction in their work force or downturn in work because of the potential spread of the virus.

The Schedule has two measures:

- Unpaid Pandemic Leave – which is available to all employees who has been directed to self-isolate by their doctor, or Government or medical authorities. An employee can take up to 14 days unpaid leave which counts as continuous service.
- Annual Leave at half pay – is available by agreement, in writing, between employer and employee for an employee to take annual leave at half pay and consequently take twice the leave. In this instance the actual leave is half of the paid leave taken,