

IN THE FAIR WORK COMMISSION

Four yearly review of modern awards – Finalisation of exposure drafts (AM2019/17)

Exposure draft – *Road Transport and Distribution Award (the Draft)* - AM2014/212

Reply Submissions of the National Road Transport Association (NatRoad)

Background

1. These submissions are filed on behalf of the National Road Transport Association (**NatRoad**). They follow on from the NatRoad submission lodged in respect of the hours of work and related issues concerning oil distribution workers¹ (Oil Workers Issue) which was required to be filed by 21 November 2019 pursuant to the relevant Directions in that regard.²
2. On 21 November 2019, the Transport Workers Union (TWU) made a submission³ that addresses the Oil Workers Issue and other issues that it believes arise from the publication of the Draft on 14 October 2019.⁴
3. In this submission we respond to the TWU submission by way of reply but note that there are a number of issues raised by the TWU that have not been previously flagged and which were not raised in prior hearings or submissions. In NatRoad's understanding all contentious issues were to be raised at the hearing on 9 October 2019 which the TWU attended. Contentious issues outstanding and their resolution or otherwise are set out in the Full Bench decision dated 14 October 2019.⁵ They are comprehensively dealt with in respect of this Award at paragraphs 107-145 of that decision. To the extent that the TWU wishes to now agitate other issues that are not in fact within the ambit of settling otherwise agreed Award terms, we indicate that it is the NatRoad view that the TWU should make separate application in order to advance its arguments, if pressed.

Casual conversion

4. We believe that the TWU is supporting the process underway to redraft the extant modern award casual conversion clauses although the wording of paragraph 4 of the TWU submission is unclear.
5. The Statement⁶ that the TWU refers to in paragraph 4 of its submission reflects that the Commission has reached a provisional view that the current casual conversion clause be inserted in the Draft pending the resolution of issues associated with the

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201917-212-sub-natroad-181119.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201917-dirs-241019.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014212-sub-twu-211119.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/ma000038-ed-tracked.pdf>

⁵ <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwcfb6935.htm>

⁶ <https://www.fwc.gov.au/documents/decisionssigned/html/2019fwcfb6894.htm>

Filed 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

drafting of the term by another Full Bench. No issues arise for current purposes. That is exactly what is said in the note that appears at clause 11.6 of the Draft.

Oil Workers Issue Extension

6. The statement in paragraph 5 of the TWU submission that there is an “amendment” to clause 14.4 that “prescribes that the ordinary hours of work for oil distribution workers must not exceed 8 hours per day.” But, in fact, there is merely a change in expression from “eight” to “8”. The substance of the clause reflects current clause 23.3 of the Award so no amendment has been effected.
7. The TWU at paragraphs 8-10 of its submission seeks a reduction of the ordinary hours of work of oil distribution workers from 8 to 7, purportedly as a reflection of the total number of ordinary hours being 35 and then divided by 5. This issue is new. It has not otherwise been in contention. It is accompanied by no merit arguments, save an assertion, which is denied, at paragraph 9 that the differences it points to are “likely to cause confusion.”
8. The TWU proposal is a clear change from the current Award provision and one which misconstrues how clause 14 of the Draft is structured. For example, clause 14.6(a)(i) sets out how rostered days off (RDOs) may be provided for. It says that the relevant roster must be established “for nine 9 days each of seven 7 hours and 47 minutes, and one rostered day off over a continuous two-week period.” Clearly for the nine days of the RDO, ordinary hours exceed 7. This is one example of how the current provision works perfectly well establishing 8 hours as ordinary hours. There are no grounds for the change sought which, in any event, has nothing to do with the current issues in contention. There are no arguments to support the change sought. If the TWU wishes to pursue this issue, it should institute separate variation proceedings.

Oil Workers Issue – casual overtime

9. In paragraphs 11-13 of the TWU submission, the TWU seeks to have tables C.4.3 and C.4.4 of the Draft changed to include overtime rates. This is unnecessary and is not a feature of table C.4.1. The example of how to calculate the casual overtime rate that appears under the substance of clause 11.5 in the Draft appears sufficiently clear that the rates need not be in the tables.
10. In any event if the NatRoad position on the hourly rates for oil distribution workers is upheld, then the separate tables at C.4.3 and C.4.4 are otiose.

Casual work on a Sunday

11. The TWU in paragraphs 14-18 of the submission has confused working ordinary hours on a Sunday (per 23.1(b) of the Draft), with the requisite overtime rate. No adjustment to the Draft is required.
12. A similar argument is made at paragraphs 28-32 of the TWU submission. Again, no adjustment to the Draft is required as no substantive argument based on merit has been proposed for what is in effect an increase in the currently applicable rates, in fact attributable to the TWU error mentioned in the prior paragraph of this submission rather than any actual, real world issue.

Clauses 24.4 and 24.9

13. We refer to paragraph 19 of the TWU submission. We note that decisions are awaited in respect of leave loading and in respect of a “model” shut down clause. In the context of the latter subject we support the submissions of AiG⁷ and in particular agree that it would be inappropriate to adopt the uniform approach of replacing existing shutdown provisions with the Model Shutdown Term for the reasons articulated by AiG.⁸

Schedules C.2 and C.3

14. NatRoad supports the inclusion of a proposed footnote in C.2 which is as follows: “Payment for work on a public holiday is in addition to any amount payable in respect of the weekly wage (see clause 23.2(b)).” In addition, we support adjusting the percentages and rates in the table to reflect the percentages in clause 23.2(a). Both of these matters were raised in notes on the Draft.
15. In respect of C.3, the proposed footnote is unnecessary given the terms of clause 23.2(c) which provides for payment outside of the usual range of working time when worked on a public holiday.

Oil Workers Issue

16. NatRoad stands by its prior submissions.
17. The essential argument of the TWU is that by using a divisor of 35 oil distribution workers will be “underpaid” when having regard to the Award rates per week. The argument is not correct: when working a 38 hour week, at least three hours will be paid at overtime rates. This does not lead to an underpayment; the reverse is the case.
18. The TWU indicates at paragraph 35 that this matter was not advanced by it. Despite that acknowledgement, the TWU relies on the Fair Work Ombudsman’s (FWO) submission dated 24 November 2014 on the Award⁹ (which it did not reference in the submission), as substantiating that this matter was advanced in the Award proceedings. It says, “the relevant reference can be found at item 22 on page 7 of the FWO’s submission of that date.” That is incorrect. However, item 25 of the attachment to the FWO’s submission says:

It may be difficult to determine the hourly wage for part-time oil distribution workers as:

- *clause 12.4(f) states that a part-time employee is paid 1/38th of the weekly wage prescribed by clause 15 per hour worked; and*
- *clause 23.2 states that the ordinary weekly hours for oil distribution workers are 35 hours per week.*

19. The extract in fact supports NatRoad’s position – the FWO rightly states that a part-time employee is paid 1/38th of the weekly wage for hours worked. Clearly, **no distinction is made for oil distribution workers**. The fact that the FWO made this observation does not in any way detract from the fact that the TWU did not advance its case and therefore the Draft should not, by default, establish the position it argues.

⁷ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-aig-220319.pdf>

⁸ Id at paragraph 39

⁹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014198andors-corr-fwo-241114.pdf>

20. The TWU cites at paragraph 43 the provision that we utilised to support the arguments in the prior NatRoad submission: that is the relevant Full Bench retained two clauses about ordinary hours. But clearly the Full Bench made no separate determination about two separate minimum wage rates, as was open to it, and which did not occur.
21. Further the TWU argues that two pre-reform awards had a divisor of 35. But in turn the following had 38:
Liquefied Petroleum Gas Industry Award 1998 (Fed)
Transport Industry - Mixed Enterprises Interim (State) Award (NSW)
Transport Industry (State) Award (NSW)
22. In summary, as was confronted by the Full Bench that made the Award, NatRoad research is that in respect of the pre-modern awards, six awards address oil distribution workers (transport). Two out of six of those awards outline the ordinary working week as 35 hours. Out of the other four pre-modern awards, three awards provide a divisor to calculate the hourly rate for oil distribution workers. Those awards provide that the hourly rate is to equal the minimum wage for that classification and divided by 38. (The NatRoad notes on this subject from the research done in the lead up to the Award modernisation process are attached as Attachment A). Hence, the compromise encapsulated in the Full Bench's decision set out in the prior NatRoad submission becomes even more important to acknowledge.
23. An argument in the alternative which we proffer without prejudice is that this matter could be deferred with the status quo replicated (i.e. not include separate tables for oil distribution workers) at least until the TWU brings on evidence and proper merit arguments as was earlier foreshadowed. Any determination of this matter that reversed what NatRoad argues is the status quo could then be instituted prospectively. To proceed otherwise might provide retrospective effect to the TWU position and therefore create regulatory risk about a matter that has been in doubt, as shown inter alia via the FWO submission referred to in paragraph 17 of this submission.

Richard Calver
National Road Transport Association
3 December 2019

Attachment A Oil Workers Pre-Modern Awards

Transport Workers (Oil Distribution) Award 2001 (Fed)

Part 6- Hours of Work, Breaks, Overtime, Shift Work, Weekend Work

2.1 Hours- **Day Workers**

21.1.1 The spread of ordinary hours of day workers shall be **70 hours per two week period** to be worked between 6.30 a.m. to 5.30 p.m. Monday to Friday (with an unpaid lunch break of not less than 30 minutes and not more than one hour). By mutual agreement between an employer and the employees concerned, the spread of hours may be altered for all, or a section of, employees. Time worked within the mutually agreed spread of hours will not attract penalty payments. Provided, however, such agreement does not erode award conditions, is entered into without duress, is signed by both parties and is attached to the relevant employees' time and wages record.

25. **Shift Work**

25.3 Five-day continuous shift work

25.3.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week** over the span of the shift cycle.

25.4 Seven-day non-continuous shift work

25.4.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle** provided that the ordinary hours of any one shift shall not be more than eight. Provided further that by agreement between an employer and the majority of affected employees, different limitations of ordinary hours may be made to meet domestic shift rosters.

25.5 Seven-day continuous shift work

25.5.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle**.

Transport Workers Award 1998 (Fed)

Part 4- Rates of pay and related matters

18 Highest Function

18.3 Notwithstanding any other provisions of this award, **on any day on which an employee covered by this award is engaged in the transport and/or distribution of petrol and/or petroleum products in their raw and/or manufactured state, he or she shall be paid for each such day at the rate of pay prescribed by this award, or the rate of pay prescribed by the Transport Workers (Oil Distribution) Award 2001 [AW813252], as varied from time to time whichever is the higher rate.**

Provided also that on any day on which an employee covered by this award is engaged in the transport and/or distribution of liquefied petroleum gas, he or she shall be paid for each such day at the rate of pay prescribed by this award, or the rate of pay prescribed by the Transport Workers (LP Gas Industry) Award 2002 [AW815107CRA], as varied from time to time, whichever is the higher rate.

Any employee paid the rates of pay prescribed by the Transport Workers (Oil Distribution) Award 2001 or the Transport Workers (LP Gas Industry) Award 2002 in accordance with this clause, is not also entitled to payment of a dangerous goods allowance payable under clause 19 of this Award.

33 Hours of Work

33.1 The ordinary hours of work shall be an average of 38 per week to be worked on one of the following bases:

33.1.1 **38 hours within a work cycle not exceeding seven consecutive days;** or

33.1.2 76 hours within a work cycle not exceeding fourteen consecutive days; or

33.1.3 114 hours within a work cycle not exceeding 21 consecutive days; or

33.1.4 152 hours within a work cycle not exceeding 28 consecutive days.

Liquefied Petroleum Gas Industry Award 1998 (Fed)

Part 6 –Hours of Work, Shift Work, Meal Breaks and Overtime

27. Ordinary Hours of Work- **Day Workers**

The ordinary hours of work will be **152 hours per four week period**, comprising not more than eight hours each day on Monday to Friday inclusive, to be worked between 6.00am and 6.00pm inclusive, or between such hours as may be mutually agreed upon between the employer and the majority of employees affected.

28.2 **Day Continuous Shift Work**

28.2.1 Shift work will be arranged to provide for an **average of 38 ordinary hours of work per week over the span of the shift cycle.**

28.3 **Day Non-Continuous Shift Work**

28.3.1 Shift work will be arranged to provide for **an average of 38 ordinary hours of work per week over the span of the shift cycle** provided that the ordinary hours of any one shift will not be more than 8 hours. Provided further that by agreement between an employer and the majority of employees concerned, different limitations or ordinary hours may be made to meet domestic shift rosters.

28.4 **Day Continuous Shift Work**

28.4.1 Shift work will be arranged to provide for **an average of 38 ordinary hours of work per week over the span of the shift cycle.**

28.5 Hours - **Other Than Continuous Work**

28.5.1 This subclause will apply to shift workers not performing continuous work as previously defined. The ordinary hours of such shift work will be arranged to provide for an **average of 38 ordinary hours per week.**

Transport Workers (Northern Territory Oil Distribution) Award 2003

Part 6- Hours of Work, Breaks, Overtime, Shift Work, Weekend Work

22. Hours – **Day Workers**

22.1 Ordinary hours of work

22.1.1 The spread of ordinary hours of day workers shall be **70 hours per two week period** to be worked between 6.30 a.m. to 5.30 p.m. Monday to Friday (with a lunch break of not less than 30 minutes and not more than one hour). By mutual agreement between an employer and the employees concerned, the spread of hours may be altered for all, or a section of employees.

25- Shift Work

25.3 Five-day continuous shift work

25.3.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle.**

25.4 Seven-day non-continuous shift work

25.4.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle** provided that the ordinary hours of any one shift shall not be more than eight. Provided further that by agreement between an employer and the majority of affected employees, different limitations of ordinary hours may be made to meet domestic shift rosters.

25.5 Seven-day continuous shift work

25.5.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle.**

25.7 Aircraft refuelling shifts

25.7.1 Shift work shall be arranged to provide for an **average of 35 ordinary hours of work per week over the span of the shift cycle.**

Transport Industry - Mixed Enterprises Interim (State) Award (NSW)

Section II - Wages, Allowances and Hours of Employment

8 Hours of Employment

8.1.2 The ordinary hours of work for employees shall be **an average of 38 per week (exclusive of meal breaks)** to be worked on one of the following bases:

8.1.2.1 38 hours within a work cycle not exceeding seven consecutive days; or

8.1.2.2 76 hours within a work cycle not exceeding fourteen consecutive days; or

8.1.2.3 114 hours within a work cycle not exceeding twenty-one consecutive days; or

8.1.2.4 152 hours within a work cycle not exceeding twenty-eight consecutive days.

11 Shift Work

11.2 Shift Work - Weekly Employees

11.2.1.1 The hours of work of weekly employees on shift work shall be an **average of 38 per week.**

16 Mixed Functions

16.3 On any day on which an employee covered by this award is engaged for more than two hours in the cartage or distribution within New South Wales of petrol or petroleum products from refineries, terminals or depots of oil companies which are respondents to the Transport Workers' (Oil Distribution) Federal Award, in force from time to time, **the employee shall be paid for each such day at the rate of pay prescribed by this award, or the rate of pay prescribed by the Transport Industry - Petroleum, &c., Distribution (State) Award, whichever is the higher rate.**

Transport Industry (State) Award (NSW)

Section 1- Wages, Allowances, and Hours of Employment

3. Hours of Employment

3.1 The ordinary hours of work for all employees **shall not exceed 38 hours per week or 76 hours per fortnight or 114 hours per 3 weeks or 152 hours per 4 weeks** and shall be worked between Monday and Friday inclusive.

30. Mixed Functions

30.3 On any day on which an employee covered by this award is engaged for more than two hours in the cartage or distribution within New South Wales, of petrol or petroleum products from refineries, terminals or depots of oil companies which are respondents to the Transport Workers' (Oil Companies) Award 1998, in force from time to time, **the employee shall be paid for each such day at the rate of pay prescribed by this award, or the rate of pay prescribed by the Transport Industry-Petroleum, &c., Distribution (State) Award, whichever is the higher rate.**

AP813252CAV - Transport Workers (Oil Distribution) Award 2001

PART 5 - WAGE RATES AND RELATED MATTERS

16. CLASSIFICATIONS AND WAGE RATES

[16 substituted by PR921126 corrected by PR924618; substituted by PR934635 PR948880 PR961274; PR983383 ppc 01Oct08]

The minimum wage to be paid to an adult employee of the classification specified herein shall, except as otherwise required in this award, be at the rate herein after assigned to that classification.

Rate per week for adult service with the same employer including service with a previous employer whose business or part of the business has been acquired or taken over by the employer (as defined).

	Classifications	Minimum rate (\$)
16.1	Aerodrome Servicing	
	Aerodrome Attendant	\$637.20
	Senior Aerodrome Attendant	
	Grade I - Melbourne - Sydney - Brisbane	\$678.90
	Grade II - Perth, Hobart - Adelaide - Launceston	\$668.50
	Grade III - Other Airports or where there are two Senior Aerodrome Attendants on the same shift.	\$658.10
16.2	Delivery Vehicles:	
	Employee driving a motor vehicle with a combined weight of vehicle and maximum load of:	
16.2.1	Rigid Vehicle	
	Utility	\$608.00
	Under 10 tonnes	\$618.40
	10 tonnes and under 13 tonnes	\$621.60
	13 tonnes and under 19 tonnes	\$626.80
	19 tonnes and under 25 tonnes	\$632.00
	Thereafter, for each additional 6 tonnes or part thereof - \$7.65 per week extra.	
16.2.2	Articulated Vehicle	
	Under 10 tonnes	\$621.60
	10 tonnes and under 13 tonnes	\$626.80
	13 tonnes and under 19 tonnes	\$626.80
	19 tonnes and under 25 tonnes	\$637.20
	25 tonnes and under 31 tonnes	\$642.40

	31 tonnes and under 37 tonnes	\$652.80
	37 tonnes and under 43 tonnes	\$658.10
	Thereafter, for each additional 6 tonnes or part thereof - \$7.65 per week extra	
	Where a trailer is drawn behind a vehicle described in 16.2.1, or 16.2.2 above, the combined weight of the trailer and vehicle and maximum load shall be deemed to be the weight of the vehicle on which wages shall be determined for all purposes of the award.	
	The rates in 16.2.1, and 16.2.2 above, include payments for salesman/drivers collecting money and, when required, carting packages, fuel oil in drums or bulk, or carting, spreading and/or spraying bituminous products on the street.	
16.3	Mobile Cranes and Fork Lifts:	
	Employee driving or operating a mobile crane or fork lift with a lifting capacity of: -	
	Up to and including 5 tonnes	\$612.60
	Over 5 tonnes and under 6 tonnes	\$613.60
	6 tonnes and under 7 tonnes	\$615.00
	7 tonnes and under 8 tonnes	\$615.60
	8 tonnes and under 9 tonnes	\$615.80
	9 tonnes and under 10 tonnes	\$616.70
	Thereafter, for each additional six tonnes or part thereof - \$4.37 per week extra.	
16.4	Washer and Greaser	\$599.00

**AP824019CRN - Transport Workers (Northern Territory Oil Distribution) Award 2003
PART 5 - WAGE RATES AND RELATED MATTERS**

16. CLASSIFICATIONS AND WAGE RATES

16.1 An adult employee of a classification specified herein shall, except as otherwise specified be paid the wage rates herein assigned to that classification.

[16.2 substituted by PR933368 PR948143 ppc 23Jun04; varied by PR960564 ppc 01Jul05]

16.2 Rate per week for adult service with the same employer including service with a previous employer whose business or part of the business has been acquired or taken over by the employer (as defined).

	Base	6 mths to 2 yrs	2 years to 3 yrs	3 years to 5 yrs	over 5 years
	\$	\$	\$	\$	\$
Grade 1					
Aerodrome servicing;					
(a) Aerodrome attendant	652.90	658.60	664.10	670.10	673.50

(b) Senior aerodrome attendant	680.80	686.40	692.00	697.80	703.50
--------------------------------	--------	--------	--------	--------	--------

Grade 2

Assistant Driver, Yard-hand/Store-worker, Washer/Greaser.	625.20	631.30	636.70	642.60	648.30
---	--------	--------	--------	--------	--------

Grade 3

Mobile Cranes and Forklifts.

Employees driving or operating
a mobile crane or forklift,
lifting capacity of:

(a) Up to and including 5 tonnes	627.60	633.30	638.90	644.70	650.20
(b) Up to and including 10 tonnes	632.30	638.10	643.40	649.40	655.10
(c) Up to and including 20 tonnes	640.60	646.30	651.90	657.60	663.60

For each additional 5 tonne or part
thereof \$4.49 per week extra

Grade 4

Rigid Vehicle, Rear Single Axle up to and including 15 Tonne G.V.M.	637.70	643.10	648.70	655.20	660.20
--	--------	--------	--------	--------	--------

Grade 5

Rigid Vehicle, Rear Tandem Axle up to and including 24 Tonne G.V.M.	643.90	649.80	655.60	661.00	666.80
---	--------	--------	--------	--------	--------

Grade 6

Rigid Vehicle, Dual Steer, Rear Tandem Axle up to and including 30 Tonne G.V.M.	655.40	661.00	666.60	672.20	678.20
---	--------	--------	--------	--------	--------

Grade 7

Articulated Vehicle (Single) up to and incl. 42.50 Tonne G.C.M.	675.00	682.70	688.20	694.20	699.80
---	--------	--------	--------	--------	--------

Grade 8

Articulated Vehicle/Road Train (Double) up to and incl. 79.00 Tonne G.C.M.	711.80	717.60	722.90	728.50	734.10
--	--------	--------	--------	--------	--------

Grade 9

Articulated Vehicle/Road Train (Triple) up to and incl. 115.00 Tonne G.C.M.	748.40	754.20	759.50	765.10	770.70
---	--------	--------	--------	--------	--------

Thereafter for each additional
6 tonnes or part thereof,
\$7.52 per week.

Transport Workers Award 1998 (Fed)

12.5.3 A **casual employee** while working ordinary hours shall be paid on an **hourly basis one thirty-eighth of the appropriate weekly wage rate prescribed by the award**, plus 25% of ordinary time earnings for the work performed. A minimum payment of four hours pay is to be paid.

12.5.4 In addition to normal overtime rates a casual employee while working overtime or outside of ordinary hours, shall be paid on an **hourly basis one thirty-eighth of the appropriate weekly wage rate prescribed by the award**, plus 10% of ordinary time earnings for the work performed.

Transport Industry (State) Award (NSW)

10. PART-TIME EMPLOYEES

10.4 The spread of ordinary hours allowable for part-time employees shall be as set out in Clause 3, Hours of Employment, and their **hourly rate equal to the appropriate rate as set out in Clause 1, Wages, and divided by 38.**

14.2.2 Transport Worker Item 2

Grade Eight

14.3 Payment for Loading and Unloading

14.3.1 An employee covered by this section shall be paid for any time worked loading or unloading a vehicle at an **hourly rate calculated by dividing the appropriate classification rate in clause 1, Wages, by 38.**

Transport Industry - Mixed Enterprises Interim (State) Award (NSW)

8.3.4 The spread of ordinary hours allowable for part-time employees shall be as set out in 8.1.2, and their **hourly rate equal to the appropriate rate as set out in clause 7, Wages, and divided by 38.**

SUMMARY

Out of the pre-modern awards, six awards address oil distribution workers (transport). Two out of six of those awards outline the ordinary working week as 35 hours. Out of the other four pre-modern awards, three awards provide a divisor to calculate the hourly rate for oil

distribution workers. Those awards provide that the hourly rate is to equal the minimum wage for that classification and divided by 38.