



Australian Road Transport  
Industrial Organisation

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# *The Courier*

*Information and Advice for NSW Transport Operators*

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## **Road Safety Remuneration Tribunal *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* – Industry Briefing**

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ARTIO NSW is conducting an industry briefing on the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* at the Novotel, Sydney Olympic Park, on 15 March. This briefing will give you an insight into what orders issued by the Road Safety Remuneration Tribunal in the retail (five or more supermarkets) and long distance sectors mean for the industry. If you wish to attend this briefing please refer to the flyer issued by the ARTIO NSW secretariat.

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## **Road Safety Remuneration Tribunal *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* – Comment: ARTIO NSW Secretariat**

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From 4 April 2016, ARTIO NSW Members and other transport operators who engage owner drivers (or contractor drivers as they are defined in the *Contractor Driver Minimum Payments Road Safety*

*Remuneration Order 2016* (the Order)) in the supermarket and long distance sectors of the industry will be obliged to comply with terms and conditions handed down in the Order. Transport operators (or hirers as they are defined in the Order) will also be obliged to meet the provisions of the *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014* which took effect last year.

This comment aims to provide some background to this decision and what it means for your business. This comment also aims to provide assurance that ARTIO and its Branches, including ARTIO NSW, will work together to ensure Members are as well informed as they can be about what orders issued by the Road Safety Remuneration Tribunal (RSRT) mean.

### **Background**

The RSRT was established in 2013 following a process of inquiry, policy development and legislative development undertaken during previous Labor Governments.

Since 2008, ARTIO has been actively involved in putting forward its views on the appropriateness of and feasibility of setting up a tribunal to determine rates and other conditions related to the engagement of contractor drivers by hirers.

It became clear that the then Gillard Government was determined to enact legislation establishing a tribunal with the power to make orders regarding remuneration and related conditions of contractor drivers. ARTIO took the view that it was better in those circumstances to work with the Government of the day and, therefore, contribute to shaping policy and legislative outcomes.

ARTIO consistently put the following views during this process:

- Rates and conditions payable by hirers to contractor drivers reflect the position in the market of industry participants at large. This is characterised by amongst other things low levels of industry profitability and unsatisfactory payment terms. This means transport operators are price takers and that market failure is evident.
- That the complexity of the industry in terms of variables such as types of freight, imbalances on particular corridors, difficulties in securing backloads in parts of the road freight market and on some corridors, different equipment requirements and seasonality of some types of freight means that determining a 'one size fits all' approach to rate setting would be difficult.
- Factors contributing to fatalities and injuries involving heavy vehicles are complex. It is important that research continues in order to better understand causes of fatal and other serious crashes. It is also important to avoid regulatory duplication.

During the 2013 election campaign, the Coalition promised to abolish the RSRT. In November 2013, it set up an inquiry which was conducted by an independent economist who reported to the then Minister for Employment, Eric Abetz. ARTIO put forward a submission and engaged at length with that economist. The report of this inquiry was to be made public in March 2014. It has still not been released.

While the Coalition was committed to abolition of the RSRT, the combined strength of the Labor, Greens and minor parties, and most independents in the Senate, means it is unable to do so because it lacks the numbers.

This also means the RSRT continues its work. ARTIO has been invited to hearings conducted by the RSRT which led to the development of these orders. ARTIO was represented at all of these hearings and participated in a constructive manner through the process of conciliation and arbitration with other representatives of hirers as well as contractor driver, consignor and consignee representatives.

### **What does this Order Mean?**

This needs to be looked at from two viewpoints – what it means in a legal sense and how it might impact on the market for contractor drivers.

As a legal document, all parties are trying to come to grips with what it means. ARTIO NSW has to date issued two versions of a circular, the latter on 1 February. In that circular ARTIO NSW said:

***“The content of this alert has been prepared with the best intent and professional interpretation as able to be applied to the examination of the Decision and Order at this point in time. Continuous analysis of the Order may lead to further or different interpretation and where that occurs members will be advised accordingly.”***

At its National Council meeting on 3 February ARTIO Branches agreed to work together to identify questions raised by Members of Branches and build a collective understanding of this Order.

In terms of market impact, there will not be a ‘one size fits all’ response from hirers directly affected by this Order. This is because there is no such thing as a road freight market but rather a series of markets based on variables including those referred to above such as different equipment requirements and difficulties in securing backloads in parts of the market.

Members who engage contractor drivers and who have spoken to the ARTIO NSW secretariat have generally expressed the view that they intend to reduce reliance on contractor drivers and instead rely more on fleet owners or employees. Others are still considering the cost impact. What actually happens, time will tell.

One thing is certain. The payment structure and other contract conditions in hirer-contractor driver relationships which are affected due to coverage by the Order will change. That in itself changes the relative attractiveness of engaging employees or fleet owners as opposed to contractor drivers.

#### **Who Has Responsibility for Explaining what Orders Mean?**

At the ARTIO NSW briefing on 9 February, many questions were directed to RSRT President Hon Jennifer Acton seeking advice on what certain provisions in orders handed down by the RSRT mean. It is not the RSRT’s role to advise and interpret orders it hands down. Its role is limited to responding to matters before it by issuing both orders and a decision which accompanies any order it issues. The role of interpreting what decisions of the RSRT mean rests with the Fair Work Ombudsman.

ARTIO NSW shares the concerns expressed about the lack of information on what orders issued by the RSRT mean. ARTIO is in urgent discussions with the FWO and is stressing the need for the FWO to promptly provide clearly understood information and advice to the industry.

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## **Road Safety Remuneration Tribunal – Update on Oil, Fuel and Gas Sector Proceedings**

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The Road Safety Remuneration Tribunal issued a Statement on 18 February 2016 inviting any party wishing to submit a draft order covering the Oil, Fuel and Gas sectors to do so by 7 April 2016. Any draft order must be accompanied by a submission to support the proposed order. The RSRT has also invited parties wishing to comment on any order to do so by 23 May 2016.

This Statement follows on from a hearing held on 9 February at which parties, including ARTIO, put forward their views on a report issued by the RSRT in response to a dispute lodged by the Transport Workers Union and a separate application from the TWU for an Order covering the oil, fuel and gas sectors of the industry.

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## **Wage Growth Rates Continue to Drift Downwards**

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Figures issued by the Australian Bureau of Statistics on 24 February show a continuation of the downward trend in the rate of wages growth in the Australian economy. Wages grew by 2.2 per cent in the year ending 31 December 2015 and 0.5 per cent in the economy as a whole. This is the lowest rate of growth in wages since the ABS started collecting records in 1997.

Wages in the transport, postal and warehousing sector grew by 2 per cent in the 2015 calendar year and 0.4 per cent in the December quarter. In the private sector, wages also grew by 2 per cent over the year but by 0.5 per cent in the December quarter.

Wage trends quoted above for the economy as a whole are measured on an underlying basis and in terms of an hourly rate excluding bonuses basis.

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## **Transport Operator Fined over \$40,000 for Wages Underpayments**

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*(Source – various media articles)*

Trade and suburban media have reported that Melbourne based Openica Logistics has been fined \$34,500 for underpayment of wages in the Federal Circuit Court. A further fine of \$7,100 has been imposed on its director, Vladimir Taseki.

The Fair Work Ombudsman found three drivers were underpaid, two in relation to non-payment of casual loading while the third was underpaid in relation to kilometres driven. All three drivers were also underpaid living away from home allowances. A total of \$69,175 was underpaid to the three drivers.

The court was told that back payments were paid in full after the FWO began legal proceedings. These proceedings began after the affected drivers contacted the FWO.

Fair Work Ombudsman, Natalie James, said that the Court's decision sent a message that employers can expect to face tough penalties for repeated breaches of workplace obligations.

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## **Safe Work Australia Releases Information Sheets on Unpacking Shipping Containers**

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Safe Work Australia has issued a series of information sheets on a range of health and safety risks associated with unpacking shipping containers.

Some information sheets relate to exposure of workers to hazardous chemicals such as fumigants and solvents. There is also an information sheet which examines hazards such as falls from height, falling objects, mobile plant, exposure to heat and cold, manual tasks as well as slips, trips and falls.

Further information can be downloaded from [www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Pages/Managing-risks-when-unpacking-shipping-containers](http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Pages/Managing-risks-when-unpacking-shipping-containers).

Please also refer to the article in last month's edition of *The Courier* related to SafeWork NSW's Video Safety Alert – Unpacking Shipping Containers.

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## **New Cycling Laws to Commence in NSW on 1 March**

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New minimum distance laws regarding the laws apply to light and heavy vehicles when passing cyclists on NSW roads take effect from 1 March 2016.

Under the new laws road users passing cyclists must allow a minimum distance of at least a metre when the maximum speed limit is 60km/h or less. When the maximum speed limit exceeds 60km/h,

the minimum passing distance between a vehicle and a cyclist increases to 1.5 metres. Drivers who are unable to pass while complying with minimum passing distance requirements must remain behind the bicycle until it is safe to pass.

If drivers cannot pass a cyclist safely, they should slow down and wait until it is safe to pass the rider, leaving the minimum distance.

Drivers caught breaking these laws face a fine of \$319 and a loss of two demerit points.

To help provide the minimum distance, drivers will be exempt from the following rules, as long as it is safe to pass the cyclist with at least a metre of space and they have a clear view of approaching traffic:

- Keep to the left of the centre of the road (two-way road with no dividing line).
- Keep to the left of the centre of a dividing line - broken and unbroken lines.
- Keep off a flat dividing strip.
- Keep off a flat painted island.
- Drive within a single marked lane or line of traffic.
- Move from one marked lane to another across a continuous line separating the lanes.

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## **Free Webinar – Prepare for the New Unfair Contract Terms Law**

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The Australian Competition and Consumer Commission and the Australian Securities and Investments Commission will jointly host a free webinar to advise businesses on what they need to do to prepare for the new business-to-business unfair contract terms law.

This webinar will provide a general overview of the protections of the law and, if you offer standard form contracts to small businesses, what you need to do before the law takes effect on 12 November 2016.

It will also explain:

- Which contracts and terms are covered by the new law.
- Types of terms that may be unfair.
- How to determine if a contract term may be unfair.
- What you can do if you receive a contract that you think includes an unfair term.

The webinar will take place from 7:00pm–8:00pm AEDT on Wednesday 16 March 2016. To register please visit [www.accc.gov.au/update/new-unfair-contract-law-terms-free-webinar](http://www.accc.gov.au/update/new-unfair-contract-law-terms-free-webinar).

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## **Reminder: National Work Diary Exemption in NSW to Expire on 6 March**

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ARTIO NSW takes this opportunity to remind Members that a notice issued by the NHVR giving a limited extension of the *National Work Diary Exemption for 100km work under Basic Fatigue Management or Advanced Fatigue Management in New South Wales (Notice) 2014 (No. 1)* expires on 6 March 2016.

This means that from 7 March, all drivers, (including those in New South Wales) working under BFM and AFM must carry and complete a National Driver Work Diary, even when they are working within a 100 km of their base.

This change brings New South Wales into line with all other participating states and territories.

The NHVR is working with Roads and Maritime Services (RMS) to take an educative approach to enforcement of the new requirements until the end of May, to help drivers transition to the changed work diary requirements.

Drivers who need to purchase a National Diver Work Diary in NSW can go to any RMS motor registry.

Further information is available from [www.nhvr.gov.au](http://www.nhvr.gov.au) or telephone 1300 MYNHVR (1300 696 487).

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## **Apple Issues Wall Plug Adapter Recall**

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Apple has issued a recall Notice affecting all AC wall plug adapters for Macs and IOS devices used for its iPhones, iPods and iPads shipped between 2003 and 2015.

More information on the Apple AC Wall Plug Adapted exchange program, including pictures of affected plugs can be found at:

Apple: [www.apple.com/au/support/ac-wallplug-adapter](http://www.apple.com/au/support/ac-wallplug-adapter)

Federal Government: [www.recalls.gov.au/content/index/pthtml/itemid/1082080](http://www.recalls.gov.au/content/index/pthtml/itemid/1082080)

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## **NHVR Issues New National Heavy Vehicle Accreditation Scheme Compliance Bulletin**

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The National Heavy Vehicle Regulator has released a new compliance bulletin to help industry understand and comply with National Heavy Vehicle Accreditation Scheme requirements of the Heavy Vehicle National Law.

Further information is available from [www.nhvr.gov.au/files/201602-0297-cb6-national-heavy-vehicle-accreditation-scheme.pdf](http://www.nhvr.gov.au/files/201602-0297-cb6-national-heavy-vehicle-accreditation-scheme.pdf).

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## **NHVR Removes White Bumper Bar Requirement**

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The National Heavy Vehicle Regulator has advised that it has issued a vehicle standards exemption notice which removes the requirement for in-service semi-trailers to have rear bumper bars painted white. This decision follows the Federal Government's relaxation of the Australian Design Rules.

This decision means any in-service semi-trailer manufactured after 1 July 1988 will benefit from this decision. Previously, this exemption applied to semi-trailers build after 1 January 2005.

The NHVR estimates this measure will save transport operators \$275 per vehicle for a complete refurbishment and \$125 for maintaining semi-trailers during normal road use.

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## **TWUSUPER Super News February 2016**

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### **SuperStream deadline approaches**

From 1 July 2016, all employers – no matter how large or small – must be

SuperStream compliant. This means no more cheques, no more paper instructions, and no more email instructions when making super contributions, as well as potential penalties from the ATO.

TWUSUPER has been helping businesses get SuperStream compliant for over two years now, and we can help your business too. This includes providing free access – through TWUSUPER’s secure Employer Access site – to a super clearing house\* that allows you to pay all your employees’ super with a single login and payment.

If you’re not yet SuperStream compliant (or aren’t sure) and don’t know where to start:

- call TWUSUPER on 1800 241 877 8am to 8pm (AEST/AEDT) weekdays, or
- register for Employer Access by visiting [july1.twusuper.com.au](http://july1.twusuper.com.au) (if you use Employer Access to make contributions, you’re automatically SuperStream compliant).

\* SCH Online is a financial product operated by The Superannuation Clearing House Pty Limited (Authorised Representative Number 290290) (TSCH), an authorised representative of Pacific Custodians Pty Limited (Australian Financial Services Licence Number 295142) (Pacific Custodians).

## Super payments due 28 April

By law, employers must pay Super Guarantee payments of at least 9.5% to eligible employees at least four times a year. The ATO can apply the Super Guarantee Charge if payments are not made by the quarterly deadlines.

Quarter	Payment date
1 July to 30 September	28 October
1 October to 31 December	28 January
1 January to 31 March	28 April
1 April to 30 June	28 July

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## Economic and Industry Indicators

Indicator/Source <sup>1</sup>	As at	Unit of Measure	Quantity	% Variation
GDP latest quarter (ABS)	Sep Qtr 2015	\$m	411,091	2.3

<sup>1</sup> ABS – Australian Bureau of Statistics; RBA – Reserve Bank of Australia; AIP – Australian Institute of Petroleum; TIC – Truck Industry Council/’Prime Mover’ latest issue.

CPI (ABS)	Dec Qtr 2015	Per cent		1.7
Cash rate (RBA)	Current	Per cent	2.00	
Estimated Residential Population (ABS)	Jun Qtr 2015	Number	23,781	1.4
Retail Turnover (ABS)	Dec 2015	\$m	24,783	4.0
Actual New Capital Expenditure (ABS)	Dec Qtr 2015	\$m	31,203	-17.7
Inventories held by private business (ABS)	Sep 2015	\$m	154,707	0.4
Dwelling unit approvals (ABS)	Dec 2015	Number	18,161	-3.0
Manufacturers Income (ABS)	Sep 2015	\$m	85,321	-5.3
Employed persons (ABS)	Jan 2016	Million	11,910	2.6
Unemployed persons (ABS)	Jan 2016	Percentage	5.8	-0.4
Wage Price Index (ABS)	Dec Qtr 2015	Per cent		
All employees				2.1
Transport, postal and warehousing				2.0
New motor vehicle sales (ABS)	Jan 2016	Number	97,973	4.3
Cab Chassis/Prime Mover Sales (TIC)	12 months ending Dec 2015	Number	26488	1.7
Vans (TIC)	12 months ending Dec 2015	Number	5515	20.5
AIP Terminal Gate Price-Diesel-Sydney	As at 26 Feb 2016	Cents per litre	93.7	

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