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Industrial Organisation

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The Courier

Information and Advice for NSW Transport Operators

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Make Road Safety your Resolution for 2017

(Extracts from Transport for NSW Media Release 1 January 2017)

'We are all being urged to make road safety our New Year's resolution with 384 people killed in NSW in 2016, 34 more than last year.

'The increase in the road toll is a tragedy after achieving the lowest road toll on record in 2014 at 307, we have seen increases for two years in a row.' Centre for Road Safety Executive Director Bernard Carlon said.

'No loss of life is acceptable and we are investing heavily in road safety programs to drive the road toll towards zero,' Mr Carlon said.

'Since the worst road toll in 1978 with more than 1,300 fatalities, we reduced that to around 800 fatalities in 1990, and around 600 fatalities in 2000, but there is more work to do.

'We know we can continue to strive for zero fatalities because road deaths are decreasing over time.

'We need the help of every single road user to take personal responsibility and make safe choices on and around our roads.

'If you make a New Year's resolution to keep yourself accountable in 2017, then let it be a commitment to making responsible decisions every time you get behind the wheel so you and the people you love get back home safely.

'Although there has been a marked increase in the road toll in 2016, it is the seventh lowest total since 1944. The fatality rate based on population is the fourth lowest since records began in 1908.

Chain of Responsibility Amendments Set to Harmonise Heavy Vehicle and National Safety Laws

(Article courtesy McCabes Lawyers)

The Purpose of the Bill

On 1 December 2016, the Queensland Parliament passed the *Heavy Vehicle National Law and Other Legislation Amendment Bill 2016* which will be to be incorporated within the uniform national law, *Heavy Vehicle National Law (HVNL)*.

The HVNL regulates the use of heavy vehicles. All Australian states and territories with the exception of Western Australia and the Northern Territory are participating jurisdictions for the purposes of the HVNL.

The rationale for the amendment was to allow for a more flexible approach to compliance with 'Chain of Responsibility' by providing an overarching and positive duty of care consistent with the duty of care approach adopted in other national safety laws.

Each party in the chain of responsibility has a primary duty of care to ensure the safety of their transport activities 'so far as reasonably practicable'.

An implementation period has been proposed that will see these reforms come into effect in midway through 2018.

Primary Duties

A primary duty is to eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, to minimise public risks. It is also important the party's conduct does not directly or indirectly cause or encourage the driver of the heavy vehicle to contravene this law.

Parties (Chain of Responsibility)

The level and nature of a party's responsibility for a transport activity depends on the functions the person performs or is required to perform rather than the person's job title or those which are described in the person's job description. The following parties are considered to have a primary duty of care:

- (a) if the vehicle's driver is an employed driver—an employer of the driver;
- (b) if the vehicle's driver is a self-employed driver—a prime contractor for the driver;
- (c) an operator of the vehicle;
- (d) a scheduler for the vehicle;
- (e) a consignor of any goods in the vehicle;
- (f) a consignee of any goods in the vehicle;
- (g) a packer of any goods in the vehicle;
- (h) a loading manager for any goods in the vehicle;
- (i) a loader of any goods in the vehicle;
- (j) an unloader of any goods in the vehicle.

What is 'so far as reasonably practicable'?

Reasonably practicable, in relation to a duty, means that which is, or was at a particular time, reasonably able to be done in relation to the duty, weighing up all relevant matter, including the likelihood of a safety risk, or damage to road infrastructure happening including the harm that could result from the risk or damage.

It also includes what the person knows, or ought reasonably to know, about the risk or damage and about the ways of removing or preventing the risk or preventing or minimising the damage.

Costs are also taken into consideration including whether the cost is grossly disproportionate to the likelihood of the risk or damage.

Breaches of Primary Duties

Category 1 offence

A party has a primary duty and without a reasonable excuse, engages in conduct that exposes an individual to a risk of death or serious injury or illness, and is reckless to the risk.

The penalty is \$300,000 or 5 years' imprisonment, or both for an individual and \$3 million for a corporation.

Category 2 offence

Where a party has a primary duty, breaches the duty and thereby exposes an individual, or class of individuals, to a risk of death or serious injury or illness.

The penalty is \$150,000 for an individual and \$1.5 million for a corporation.

Category 3 offence

Where a party has a primary duty and breaches that duty.

The penalty is \$50,000 for an individual and \$500,000 for a corporation.

Summary

The law has introduced the Chain of Responsibility concept which is designed to drive greater accountability along the various parties involved during the transport process and its various functions. However in order to ensure compliance, it is necessary to educate employees on the new law as well as providing them with the knowledge and skills to use as evidence in the event of an incident to show that the person took all reasonable steps to prevent the contravention.

NSW Government; New Portfolio Responsibilities

The Premier, Gladys Berejiklian, has announced sweeping changes to the NSW Liberal-National Coalition Cabinet following her election as leader of the parliamentary Liberal Party and her appointment as Premier on 23 January.

The new cabinet was unveiled as a joint press conference with National's Leader and Deputy Premier, John Barilaro in Mr Barilaro's electorate of Queanbeyan on 29 January.

Key portfolios and responsible Ministers are:

Dominic Perrottet MP (Member for Hawkesbury) – Treasurer, Minister for Industrial Relations

Andrew Constance MP (Member for Bega) – Minister for Transport and Infrastructure

Matt Kean MP (Member for Hornsby) – Minister for Innovation and Better Regulation. Mr Kean has responsibility for SafeWork NSW

Melinda Pavey MP (Member for Oxley) – Minister for Roads, Maritime and Freight

Stuart Ayres MP (Member for Penrith) – Minister for Western Sydney, WestConnex and Sport

Troy Grant MP (Member for Dubbo) – Minister for Police and Emergency Services

Mr Constance and Mr Grant retain portfolio responsibilities from the cabinet of the former Premier, Mike Baird. Former Roads Minister, Duncan Gay, was dumped from Cabinet.

Federal Government Responds to the Australian Small Business and Family Enterprise Ombudsman Inquiry Report into the Effects of the Road Safety Remuneration Tribunal's Payments Order on Australian Small Businesses

Earlier this month, the Federal Government responded to the Australian Small Business and Family Enterprise Ombudsman Inquiry Report (ASBFEO) into the Effects of the Road Safety Remuneration Tribunal's Payments Order on Australian Small Businesses.

The following outlines the Federal Government's response noting that recommendations are paraphrased:

Recommendation 1: when developing regulation that will have a significant impact on small business consider the potential impact on mental health.

Government Response: supports in principle. The Government recognises that regulation can have a disproportionate impact on small business and requires a regulatory impact analysis of all legislation. It encourages policy makers to consider regulatory alternatives such as flexible compliance options and differentiated regulatory requirements based on turnover or number of employees.

Recommendation 2: the NSW Industrial Relations Commission should consider the experience of the Payments Order on small business.

Government Response: supports. The Government supports the NSW Government's decision to become a party to these proceedings. It is committed to never re-establishing the Road Safety Remuneration Tribunal or a similar body that sets mandatory rates of pay for owner drivers and small transport businesses. It will continue to monitor proceedings in NSW as well as the Victorian review of its owner drivers' legislation.

Recommendation 3: existing and future tribunals dealing with small business should employ less formal and legalistic processes and be free of bias, actual or perceived.

Government Response: noted. Tribunals have differing functions, however they aim to be less adversarial and technical and provide informal avenues to resolve disputes where possible.

Recommendation 4: governments should consider other bodies or frameworks as tribunals are not appropriate vehicles for developing industry-wide regulation that intervenes in market forces.

Recommendation 5: the development of any major piece of legislation by a government agency that impacts on small business should involve significant consultation with all stakeholders, take the concerns of small business into account and be based on ongoing and accessible feedback mechanisms.

Recommendation 6: the implementation of new regulation should afford small business sufficient time to understand, seek advice and to be able to make changes to adapt to legislation.

Government Response – 4, 5 and 6: supports. The impact of regulation should be a significant consideration. Small business should be appropriately consulted so regulation can be implemented successfully.

Recommendation 7: when government introduces legislation in a market, it has the opportunity to provide education and adequate support and to consider providing compensation where appropriate.

Government Response: supports in principle. Small business should be appropriately informed and supported. The Government does not accept as a general principle compensation for small business.

Recommendation 8: industry associations should work with the media to ensure reporting of accidents involving trucks is not impliedly attributed to truck drivers before the outcome of a police investigation.

Government Response: supports. This is a matter for industry associations to consider.

Recommendation 9: the Transport and Infrastructure Council (Commonwealth, State and Territory transport and roads ministers) and the National Heavy Vehicle Regulator consider funding advertisements to educate road users about how to drive around and near trucks.

Government Response: supports in principle. Heavy vehicle safety and community awareness issues were discussed by the Council last November. \$4 million per annum saved from the abolition of the RSRT has been redirected to the NHVR to implement measures related to smarter roadside compliance systems, more flexible code of practice arrangements and education materials to help the industry better understand its obligations.

Recommendation 10: the Government should consider establishing an apprenticeship/traineeship scheme to get more young people into the trucking industry.

Government Response: noted. The Government is committed to ensuring truck drivers operate at expected competency levels. Austroads, (the peak organisation for Australasian road and traffic agencies) has been tasked with reviewing the existing driver competency framework. The Government is also committed to an apprenticeship system and a traineeship system.

Recommendation 11: the ASBFEO should inquire into ways to reduce payment terms for owner drivers.

Government Response: supports. As an independent body ASBFEO can initiate its own inquiries. An inquiry is underway. The final report is scheduled to be provided to Government in March 2017.

Recommendation 12: Treasury and the Australian Competition and Consumer Commission work with industry to develop a code of conduct for the industry.

Government Response: noted. A new code of conduct should only be explored after industry-led solutions have been attempted and failed. The Government will only prescribe codes in very limited circumstances.

Recommendation 13: the ACCC should target information materials for owner drivers and small business about the unfair contracts scheme

Government Response: supports. The ACCC has been actively engaging with small business about changes to the law that extend unfair contract terms protections to business-to-business contracts.

Recommendation 14: that industry associations in the industry proactively engage with owner drivers and small business and represent their views to government.

Government Response: supports. The Government appreciates the role of industry associations.

Editorial Comment

This ASBFEO inquiry and recommendations is, at best a mixed response to the Federal Government's decision to abolish the RSRT and repeal the legislation that enabled its establishment and operation. The lack of rigour in ASBFEO's work makes it difficult for the Government to respond holistically and constructively.

Some recommendations are motherhood (e.g., Recommendations 8 and 14). Others it could be argued are naïve. In relation to Recommendation 2, does ASBFEO have the capability to support its statement that it 'strongly discourages the setting of mandated rates of pay that only apply to owner drivers' notwithstanding that the NSW Industrial Relations Commission and representative organisations each

have almost 40 years' experience in their respective roles? In relation to Recommendation 7, it is unclear upon what basis ASBFEO would consider that compensation is warranted when a government introduces 'significant regulation that intervenes in a market'. Sensibly, the Federal Government's response makes clear that it does not accept that compensation is necessary as a 'general principle'. Arguably, Recommendation 4 is also naïve in that there will almost certainly be circumstances where a judicial or similar type of body will be established, will adjudicate and will adopt a legalistic approach because that is a requirement of its governing legislation. Invariably, circumstances will arise when the decisions of such bodies affect small businesses.

However, there are good recommendations in this report. Recommendation 13 which refers to the work of the ACCC is welcome because it has the potential to provide additional protection to small businesses. Likewise, Recommendation 11 is welcome notwithstanding that problems associated with unsatisfactory payment terms are industry wide and not confined to owner drivers.

Underpinning the ASBFEO report was a short inquiry timeframe (six weeks) and a reliance on a very small sample of industry stakeholders from which it was not possible to draw objective conclusions based on rigorous analysis. The sample size itself and the methods used to generate submissions mean valid conclusions could not be drawn. There was no sign that ASBFEO conducted rigorous analysis of the findings and recommendations of earlier reports related to the establishment and operation of the RSRT. Further, it could be argued that some of the assertions made by inquiry participants lacked rigour and were not subject to critical examination and evaluation. Even ASBFEO at times in its report acknowledges the shortcomings of its work. That of itself must risk compromising the validity and integrity of its recommendations, no matter how laudable.

Owner driver remuneration is likely to remain a politically charged issue, at least at the Federal level. The Government says it will never re-establish the RSRT, nor will it set up a similar body that sets mandatory rates of pay. However, the ALP has stated a commitment to reintroduce a tribunal.

Safe Work Australia Releases Results of Return to Work Survey

(Adapted from article, OHS Alert, 17 January 2017)

Safe Work Australia's 21016 *Return to Work Survey* shows that employees are generally well supported by their employers when they return to work after experiencing injury. The survey, which covered 6,200 workers in Australia and New Zealand found that the return to work experience was generally better in larger (\$20m or more revenue per annum) compared to medium (\$1m-\$20m revenue per annum) or small (less than \$1m revenue per annum) businesses.

Survey results include:

Survey Indicator	% Large Businesses	% Medium Businesses	% Small Businesses
Employer treated employee fairly during claims process	85	75	76
Employer made an effort to find suitable employment	75		70
Employer did what they could to support employee	76		73
Employer provided adequate information on their rights and responsibilities	70		64
Employer helped employee with their recovery	67		64
Employees and management are generally supportive of each other	79		85
Immediate supervisors/managers committed to safety	88		91
Employee opinions and suggestions are considered at work	79		84
Business more likely to have been very involved in developing return to work plans		53	67

The survey also found 14% of injured workers felt their employers discouraged them from lodging a workers' compensation claim.

A copy of the report can be obtained at www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/969/return-to-work-survey.

Inflation Remains Subdued in December 2016 Quarter

The rate of inflation in Australia as measured by the Consumer Price Index rose by 1.5 per cent in the year ending 31 December. This is a slight increase from the year ending 30 September when inflation stood at 1.3 per cent. The inflation rate was 1.7 per cent for the year ending 31 December 2015.

Market economists were expecting the CPI to increase by 0.7 per cent in the three months ending 31 December 2016 compared to an actual result of 0.5 per cent. The lower than expected CPI for the December quarter can be expected to put downward pressure on both interest rates and wage expectations.

NHVR Announces Further Extension to Trailer Brake Testing Transition in NSW

(Adapted from NHVR Media Release, 20 January 2017)

The National Heavy Vehicle Regulator has announced a further extension to transitional arrangements in NSW related to the development of a nationally consistent brake testing standard.

The NHVR said the national brake testing standard, which was due to take effect in NSW on 31 January, will now come into effect on 30 June.

NHVR Safety Director, Daniel Elkins said that the NHVR and Roads and Maritime Services are working together to determine how to achieve consistency in terms of brake testing standards in the National Heavy Vehicle Inspection Manual.

'We need to better understand why some types of trailers are not able to meet the brake performance standard. It is applicable that we extend the current transition period in NSW to June 30,' Mr Elkins said.

NHVR and RMS have agreed that during the extended transition official warnings which were issued to intercepted vehicles during the initial transition period will continue to be issued where a brake test result of greater than 3kN/t but less than 4kN/t was achieved.

'The NHVR encourages operators to regularly maintain their vehicles and take appropriate steps to ensure they exceed the standards in the National Heavy Vehicle Inspection Manual, which was implemented in NSW on July 1 last year,' Mr Elkins said.

TWUSUPER Super News January 2017

Workplace education sessions available

Whether you have employees approaching retirement age or younger employees,

TWUSUPER's workplace education sessions can be tailored specifically to the needs of your employees. The sessions are conducted at no cost to you or your employees and we can arrange them at a time and location that suits you.

We can come to your workplace and cover a range of topics including:

- retirement planning and retirement income products
- making additional contributions
- choosing an investment option
- insurance cover for emergencies, and
- combining super.

For further details, please contact your Business Relationship Manager or call the Employer Service team on 1800 241 877 8am – 8pm (AEST/AEDT) weekdays.

SG contributions due 28 January

Employers must pay Super Guarantee payments for eligible employees at least four times a year, and the ATO can apply the Super Guarantee Charge if payments are late. SG contributions for the 1 October - 31 December quarter are due no later than 28 January 2017.

For the 1 January - 31 March quarter, SG contributions are due on 28 April 2017.

If you are paying via TWUSUPER's free clearing house – SCH Online – please allow 10 business days for contribution data and payments to reach other funds.*

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Economic and Industry Indicators

Indicator/Source ¹	As at	Unit of Measure	Quantity	% Variation
GDP latest quarter (ABS)	Sep Qtr 2016	\$m	419,299	2.2
CPI (ABS)	Dec Qtr 2016	Per cent		1.5

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

Cash rate (RBA)	Current	Per cent	1.5	
Estimated Residential Population (ABS)	As at 31 Jan 2017	Million	24.346	
Retail Turnover (ABS)	Nov 2016	\$m	25,657	3.4
Actual New Capital Expenditure (ABS)	Sep Qtr 2016	\$m	27,964	-15.6
Inventories held by private business (ABS)	Sep 2016	\$m	154.209	0.4
Dwelling unit approvals (ABS)	Oct 2016	Number	17,537	-10.1
Manufacturers Income (ABS)	Sep 2016	\$m	82,397	-3.5
Employed persons (ABS)	Nov 2016	Million	11,967	0.7
Unemployed persons (ABS)	Oct 2016	Percentage	5.7	-0.1
Wage Price Index (ABS)	Sep Qtr 2016	Per cent		
All employees				2.0
Transport, postal and warehousing				2.0
New motor vehicle sales (ABS)	Nov 2016	Number	97,419	-0.5
Cab Chassis/Prime Mover Sales (TIC)	10 months ending Oct 2016	Number	22,441	4.2
Vans (TIC)	10 months ending Oct 2016	Number	4,506	-0.9
AIP Terminal Gate Price-Diesel-Sydney	As at 31 Jan 2017	Cents per litre	118.0	

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