

ARTIO
Australian Road Transport
Industrial Organisation

The Courier

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New South Wales Branch

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NSW Industrial Relations Commission to Arbitrate on Transport Industry – General Carriers Contract Determination

Following a conference involving the Transport Workers Union NSW and employer parties, including ARTIO NSW held before Acting Justice Kite of the NSW Industrial Relations Commission (NSW IRC) on 10 July, dates have been set aside for parties to make submissions to enable the application from the TWU NSW for a new Transport Industry – General Carriers Contract Determination to be arbitrated. This recognises that the parties can no longer narrow their differences.

As a result, the TWU NSW filed an amended application to vary this Determination on 15 July. The NSW Business Chamber Ltd filed its alternate proposed Determination on 16 July. In submissions dated 28 July 2015, ARTIO NSW said the NSWBC's alternate proposed Determination has its fundamental support.

Parties will need to file an outline of submissions and evidence the wish to rely upon well before this matter is heard, that is during the week commencing 16 November.

The TWU NSW originally lodged an application to vary this Determination in December 2013. Since that time ARTIO NSW has held a number of meetings with the TWU NSW. Meetings between ARTIO NSW and the TWU NSW were first held before the parties put their views to the NSW IRC in March 2014.

At that first conciliation conference in March last year, parties were asked to continue discussions in order to seek to narrow their differences. These discussions have continued since that time in good faith and on a 'without prejudice' basis. At other times, ARTIO NSW participated with certain other employer parties and the TWU NSW.

Agreement or substantial agreement has been reached on many of the clauses in the TWU NSW's amended application. However, on some matters, including Application, which deals with the proposed geographic coverage of this Determination, and Remuneration, ARTIO NSW and other employer parties are in dispute with the TWU NSW.

Coalition has no Plans to Get Rid of Road Safety Remuneration Tribunal

Federal Infrastructure and Regional Development Minister, Warren Truss, has told Federal Parliament that the Abbott Government does not propose to 'get rid' of the Road Safety Remuneration Tribunal.

In response to a question from ALP backbencher, Jan MacTiernan, Mr Truss said that 'we were not enthusiastic about its introduction' and that he 'is concerned about the very long periods of time it is taking the (Tribunal) to deal with issues'. He said 'that is something (the Tribunal) ought to look at.

Mr Truss went on to say that '(w)e do not have any plans to get rid of it. Even if we did, we would not get it through the parliament. So, the reality is that the (Tribunal) will continue to do its job.'

Mr Truss's comments are the first by a member of the Abbott Government since June last year.

Full Federal Court Rules on Annual Leave Payouts

(Adapted from Article courtesy of 'Workplace Express')

A full Federal Court has confirmed that annual leave owed to workers on termination of employment must be paid at the same rate as would have been applicable if taken while working.

This decision clarifies the meaning of s.90.2 of the *Fair Work Act 2009* which governs payment of untaken annual leave when employment ends.

In March this year, Justice Buchanan of the Federal Court rejected an appeal from Centennial Mining Services Limited that it owed 58 employees it had retrenched their annual leave at ordinary rates under an existing enterprise agreement.

In its appeal to the full Federal Court, the company argued that Justice Buchanan had misinterpreted this statutory provision.

It argued that employees were only entitled to receive payment upon termination for accrued untaken leave at their hourly rate plus their 'average bonus'. Such payment would exclude rostered overtime, shift allowances, weekend penalty rates and leave loadings.

The company also argued that the National Employment Standard set the floor as far as annual leave payouts are concerned.

The full bench of the Federal Court stated that s.90.2 'is the rate at which the employee is paid when he or she takes annual leave, then that is the minimum amount that must be paid for accrued annual leave'.

The full bench also confirmed that where a Modern Award or an enterprise agreement provides for annual leave at a higher rate that higher rate will be payable under s.90 (2) upon termination.

The full bench dismissed Centennial's argument that Justice Buchanan's interpretation of s.90 (2) would create uncertainty because it obliged employers to incorporate variable entitlements such as rostered overtime and shift allowances as 'a furphy'.

'The intention of the legislation is that untaken annual leave is payable at the rate it would have been paid had the employee taken it at the time the employee was eligible for it,' the full bench said.

Centennial Northern Mining Services Pty Ltd v Construction, Forestry, Mining and Energy Union (No 2) [2015] FCAC 100 (23 July 2015)

Full Federal Court Rules on Annual Leave Payouts – Potential Implications

(Adapted from Article courtesy of Queensland Trucking Association 'Transporter News Brief')

The Road Transport (Long Distance Operations) Award 2010 is one of a handful of Awards that exempts the loading payment on annual leave owed on termination. The Road Transport and Distribution Award 2010 specifically includes paying the loading on termination.

Despite the Federal Court full bench ruling, the Fair Work Commission (FWC) full bench adjourned an application from the ACTU to vary 118 modern awards to ensure that, on termination of employment, workers are paid incorporate variable entitlements on untaken annual leave.

The FWC bench said that with a bill before Federal Parliament seeking to change the law on this matter there 'is plainly a degree of uncertainty surrounding the statutory provision at the centre of this issue' and noted that the 'proper construction of s.90(2)' is expected to be considered by a full Federal Court this year.

Provisions in the Fair Work Amendment Bill 2014 potentially re-draft s.90(2) of the *Fair Work Act 2010* providing for pro rata annual leave on termination to be payable at the base rate only unless a particular award specifies payment at a higher rate, for example a rate that includes leave loading.

This Bill has been stalled in the Senate since last year. Given what appears to be a lack of appetite by cross-bench Senators to entertain Industrial issues, it is considered unlikely that any change will occur in this term of government.

NSW Government Launches Workers' Compensation Online Tool

The NSW Government has launched an online interactive tool developed by WorkCover NSW to assist employers in NSW on their workers' compensation arrangements.

In a media release issued on 21 July, Minister for Finance, Services and Property, Dominic Perottet, said this online tool, *Employer Assist*, will provide businesses with 'information to their specific needs, without having to navigate through large volumes of information on the (WorkCover NSW) website'.

'*Employer Assist* is an interactive mobile, tablet and desktop experience that provides businesses with a user-friendly overview of workers compensation insurance at their fingertips,' Mr Perottet said.

He said that content in *Employer Assist* addresses 90 per cent of questions raised by businesses which call WorkCover NSW's Customer Service Centre.

Mr Perottet said that a companion resource for injured workers is also under development through WorkCover NSW.

Employer Assist can be accessed via www.workcover.nsw.gov.au/employerassist.

Slip in Bathroom was Work Related

(Adapted from Article courtesy of 'OHS Alert')

A manager of a transport company who injured his back while 'hurrying' to answer his work phone has been awarded workers' compensation after satisfying a High Court test.

Deputy President of the Queensland Industrial Relations Commission, Daniel O'Connor, found the manager had been on call and his actions at the time of the incident were encouraged by his employer.

The fleet service manager of the transport company sustained a disc protrusion in his lower back when getting out of the shower at home to answer his work phone and slipped on wet tiles.

He claimed workers' compensation, however his employer denied liability.

In defending his claim, the manager said he was obliged to answer his work mobile whenever it rang.

He said his supervisor had chastised him on a number of occasions for not answering his phone when on call. This was because he was responsible for driver and public safety.

'If a truck is broken down in the middle of the road or on a blind corner...I want to do everything I can to make sure it's safe as soon as possible,' the manager said.

The Workers' Compensation Regulator claimed that the manager's disc protrusion didn't fall under the definition of 'injury' in Queensland workers compensation legislation.

However, Deputy President O'Connor cited the two part test established in *Comcare v PVYW [2013] HCA 41* to state that the injury was compensable if the employer induced or encouraged the activity that caused the injury.

The Regulator had claimed the manager was engaged in 'running' at the time of the injury, however Deputy President O'Connor said the activity the manager was engaged in was answering the work mobile. Further he said the manager was 'hurrying to do so' but not 'running'.

'There is no doubt in my mind that the (manager) was induced or encouraged to engage in the activity that he did,' Deputy President O'Connor said.

'It was a term of the (manager's) contract of employment with his employer that he make himself available to be on call from time to time (and) that he was supplied with a work telephone for the purpose of carrying out his employment duties.'

Deputy President O'Connor also found there was a causal relationship between the manager's fall and his disc protrusion. He upheld the appeal.

Zeibarth v Simon Blackwood (Workers' Compensation Regulator) [2015] QIRC 121 (23 June 2015)

RMS Announces Dimensions Changes for Heavy Vehicles Deemed to be 'High Risk'

Roads and Maritime Services (RMS) recently formalised changes to the dimensions for length and height that are considered 'High Risk' and therefore require a Transport Management Plan (TMP).

Since 6 January 2014, TMPs are required for any Oversize and/or Overmass (OSOM) movements that are classified as 'High Risk', on a 'High Risk' route or involved in the movement of a 'Critical/Sensitive Load'.

The new changes to TMP 'High Risk' dimension requirements are as follows:

- Length:
 - TMP to be required if greater than 40 metres on single carriageway sections; and
 - TMP to be required if greater than 50 metres on dual carriageway sections.
- Height:
 - TMP to be required if greater than 5.2 metres high and within 200 millimetres of overhead structure(s) (including trees, overpasses and bridges).

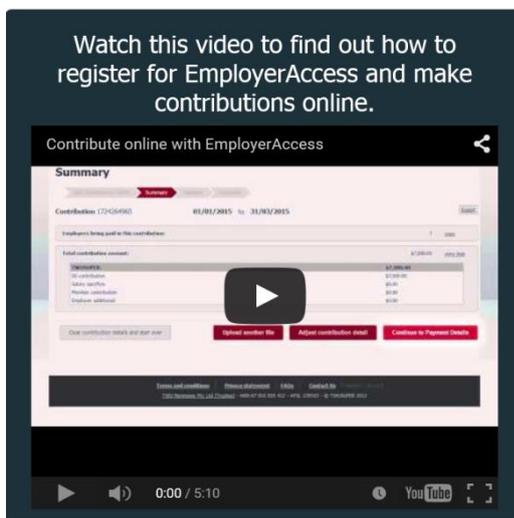
RMS initiated the changes in response to the re-assessment of risks associated with long loads travelling on single and dual carriageway sections of the network. Changes to the height requirements clarify when a TMP is required for high loads.

Further information is available on the RMS website at: [www.rms.nsw.gov.au/business-industry/heavy-vehicles/road-access/restricted-access-vehicles/oversizeovermass.html#TransportManagementPlans\(TMPs\)](http://www.rms.nsw.gov.au/business-industry/heavy-vehicles/road-access/restricted-access-vehicles/oversizeovermass.html#TransportManagementPlans(TMPs)).

Members who have further questions about Transport Management Plans can contact the Special Permits Unit, RMS on 1300 361 570 or at spu@rms.nsw.gov.au.

TWUSUPER Super News July 2015

How to register to pay super online



We've made it easy to pay your super online and meet the SuperStream requirements through *EmployerAccess*.

This 5 minute video will walk you through the process – go to july1.twusuper.com.au to get started.

You can also call the TWUSUPER Employer Service team on **1800 241 877** from 8am to 8pm (AEST/AEDT) weekdays if you have any questions about using *EmployerAccess*.

It's your move

By 1 July 2016 all employers will have to adhere to the Government's StrongerSuper rules, which affect the ways in which data has to be supplied to TWUSUPER, including employee information and super payments.

We have a SuperStream compliant solution ready for you – *EmployerAccess*. Go to july1.twusuper.com.au to find out more.

SG payment due

Super Guarantee (SG) payments for the quarter ended 30 June 2015 need to be paid by 28 July to avoid a potential SG charge. It's easy to make your payments online through *EmployerAccess*. You can get to EmployerAccess by logging in to the TWUSUPER website at twusuper.com.au.

Extension for those with 20 or more employees

The ATO will extend compliance flexibility for employers of 20 or more people who are not yet SuperStream-ready until 31 October 2015.

Go to july1.twusuper.com.au to find out more about SuperStream.

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National Heavy Vehicle Regulator Updates

J and P Code Modifications

The National Heavy Vehicle Regulator (NHVR) has announced that from 1 July 2015 it became mandatory for all J and P Code modifications carried out on heavy vehicles to be certified and plated.

The NHVR states that these types of modifications require approval through the issuing of a modification certificate to the operator and affixing a modification plate (or label) to the vehicle identifying the type of modification and when it occurred.

J code modifications relate to body mountings. P code modifications relate to tow coupling, fifth wheel and king pin modification.

A copy of a Fact Sheet on these modifications is available from www.nhvr.gov.au/hvmodifications.

Interpretation of 'Low Loader' under the National Heavy Vehicle Law

The NHVR has advised that following consultation with state and territory road agencies agreement has been reached on which types of trailers fall within the definition of 'low loaders' under the National Heavy Vehicle Law (NHVL).

Under the NHVL, a low loader is defined as a trailer with a loading deck no more than one metre above the ground and includes step-decks, drop-decks and goose-necks.

The NHVR says the agreed definition will provide clarity for operators, driver and manufacturers.

Subscriptions: Reminder

Members should have received their 2015-16 subscriptions to ARTIO NSW on 29 June along with the 2014-15 Report to Members.

Subscriptions were due on 1 July. There is no increase in subscriptions in 2015-16 when compared to 2014-15. ARTIO NSW urges you to pay your subscription promptly.

ARTIO NSW also takes this opportunity to thank all Members for their support in 2014-15. We look forward to being of service in 2015-16.

Economic and Industry Indicators

Indicator/Source ¹	As at	Unit of Measure	Quantity	% Variation
GDP latest quarter (ABS)	Mar 2015 quarter	\$m	400,039	2.2
CPI (ABS)	Jun Qtr 2015	Per cent		1.5
Cash rate (RBA)	Current	Per cent	2.00	
Estimated Residential Population (ABS)	Year ending 30 Jun 2014	Number	23,625.6	1.4
Retail Turnover (ABS)	May 2015	\$m	24,182.9	4.4
Actual New Capital Expenditure (ABS)	Mar 2015 quarter	\$m	36,399	-5.7
Inventories held by private business (ABS)	Mar 2015	\$m	150,577	0.7
Dwelling unit approvals (ABS)	Jun 2015	Number	18,724	14.4
Manufacturers Income (ABS)	Mar 2015	\$m	84,650	-4.2
Employed persons (ABS)	Jun 2015	Number	11,767.2	1.9
Unemployed persons (ABS)	Jun 2015	Percentage	6.0	0.1
Wage Price Index (ABS)	Mar 2015 quarter	Per cent		
All employees				2.3
Transport, postal and warehousing				2.4
New motor vehicle sales (ABS)	Jun 2015	Number	96,026	3.4
Cab Chassis/Prime Mover Sales (TIC)	5 months ending May 2015	Number	9508	-1.4
Vans (TIC)	5 months ending May 2015	Number	2185	29.1
TEU Port Botany	Year ending March 2015	Number	1,729,628	3.1
AIP Terminal Gate Price-Diesel-Sydney	As at 29 July	Cents per litre	117.5	

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¹ ABS – Australian Bureau of Statistics; RBA – Reserve Bank of Australia; AIP – Australian Institute of Petroleum; TIC – Truck Industry Council/’Prime Mover’ latest issue; BITRE – Bureau of Industry, Transport and Regional Economics