



Australian Road Transport  
Industrial Organisation

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# *The Courier*

*Information and Advice for NSW Transport Operators*

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## **ARTIO Alert: *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016: Termination of Services of Contractor Drivers***

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ARTIO is aware from Member feedback and from the numerous submissions made to the Road Safety Remuneration Tribunal that as a consequence of owner drivers being un-competitive compared to other transport providers not covered by the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*, that non-engagement of owner drivers was likely.

Whilst the entire matter is still being argued before the Tribunal, Members need to be aware and exercise extreme caution when or if they make business decisions to terminate the services of

contractor drivers on that basis. Under workplace laws, contractors have protections under the general protections provisions of the *Fair Work Act 2009*.

The general protections provisions, amongst other things, prohibit the taking of adverse action by a principal against an independent contractor because that independent contractor is entitled to the benefit of an instrument made under a workplace law.

The *Road Safety Remuneration Act 2012* is deemed to be a “workplace law” for the purposes of the *Fair Work Act 2009*. To summarise the point, the Payments Order is a ‘workplace right’ and one is unable to ‘discriminate’ because of that workplace right.

Whilst it is inconceivable that general protection laws could operate to force continued business practices that are unviable, it is still, on its face, a complication that all parties must consider.

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## **Road Safety Remuneration Tribunal *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* – ARTIO Continues to Represent Members before the Road Safety Remuneration Tribunal**

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ARTIO NSW and other ARTIO Branches have experienced an unprecedented level of interest, and in many instances, concern from Members at the impact of the proposed *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* on contractual relationships with both contractor drivers covered by the Order as well as contractual relationships with customers.

In collaboration with other Branches, and through regular dialogue at the Branch level, a list of issues was compiled by the Victorian Transport Association (ARTIO Victorian Branch). This list of issues was included in submissions by ARTIO to the Tribunal to support that part of the application to postpone the proposed start date from 4 April 2016.

ARTIO Branches have dealt with hundreds of queries from Members and non-members as well as owner-drivers. Concerns repeatedly aired by Members include:

- Uncertainty over who is and is not covered by the Order.
- Lack of informed information and advice from the Fair Work Ombudsman.
- Concerns in relation to backloading rates.
- Uncertainties in relation to dealing with part loads or split loads.
- Insufficient time available to understand and interpret the Order following its release on 18 December and, as a result insufficient time to have meaningful discussions with affected contractor drivers and customers.
- Concerns about the impact of a one-off increase in contractor driver remuneration, often in the order of 20 to 30 per cent, arising from the adoption of the Order by hirers and how it would impact on contractual relationships with affected contractor drivers and customers.

ARTIO remained active throughout February and March by engaging informally with other employer organisations as ideas developed around an application for a variation to the Order to delay commencement and allow for a phase-in of rates as set out in the Order. That application was subsequently lodged by the Australian Industry Group seeking to:

- Vary the Order by delaying its commencement until 1 January 2017 and to allow for a phase in of rates as determined by the Tribunal over three years; and
- Consider whether the Order ought to be stayed (i.e. suspended) until the above application could be decided.

Since the application to vary the Order has been made:

- The Tribunal has invited submissions in support of an application to vary the Order and to consider whether the Order ought to be stayed. On mainly jurisdictional points of law, the Full Bench of the Tribunal asked parties to address:
  - Whether the Tribunal had jurisdiction power under the *Road Safety Remuneration Act 2012* to 'suspend' the Order until the application could be heard;
  - Whether the Tribunal had to publish a new 'Draft' Order for industry consultation before it makes any variation to the Order, and
  - Proposed timetables to deal with the matters given the pressing time constraints of the Order's commencement (4 April 2016).
- The Tribunal also invited parties to respond to submissions made to it.
- ARTIO lodged submissions in support of the application.
- The Tribunal conducted a Hearing on 15 March which was attended by employer associations, including ARTIO, the TWU, fleet operators and owner drivers.
- A representative of the Commonwealth Government also attended the 15 March Hearing. The Commonwealth sought to intervene in support of the application to vary the Order.
- After consideration of submissions made from parties at the bar-table, including ARTIO, the Tribunal has issued a Statement and Draft Variation. A summary of their decision is as follows:
  - The Application for a stay was refused.
  - The Tribunal issued a draft variation to the existing Order in the following terms:
    - Proposed new operative date of 1 January 2017.
    - Proposed transitional provisions where contractor Payment Rates can be phased in over three years where the new rates exceed the current market rate.
  - The Tribunal President also:
    - Set down a Hearing of a Full Bench for 4pm on 24 March to determine witnesses who would be called upon to provide evidence and be subjected to cross examination.
    - Determined that a Full Bench of the Tribunal would sit over Easter (26-28 March) so parties could be cross-examined.
    - Sought comments on this draft variation by 21 March and submissions in reply by 24 March.
- In response ARTIO:
  - Lodged submissions in support of the draft variation;
  - In collaboration with Australian Business Lawyers and Advisors and the Australian Industry Group provided an opportunity for Members to participate in an online survey on the impact of the Order and the draft variation. Aggregated responses from Members of these organisations were included in submissions from ABLA to the Tribunal.
  - Lodged submissions in reply which focussed on the TWU's submissions.
  - Determined that it would be represented at the entirety of these hearings, including those held over Easter and, where warranted, take part in cross-examination of witnesses.
- ARTIO and other employer organisation representatives met with the TWU on the morning of 24 March and agreed on a 'without prejudice' basis on a compromise which involved a shorter delay and a shorter phase in period than proposed by the draft variation as well as other matters. It was also agreed that:
  - Each employer organisation would seek advice from their respective organisation on whether this compromise had their support.
  - Meeting participants reconvene at 3pm to indicate their respective positions on the compromise.
- After consultation with Branches, ARTIO advised that meeting that it did not support the compromise. Some of the other employer representatives expressed support for the agreement, some others did not.

- The compromise was tabled at the Hearing on 24 March. On 28 March, the Tribunal sought comment on the compromise by 4pm on 29 March. ARTIO made submissions restating its opposition to the compromise and the grounds and reasons for its position.

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### **Road Safety Remuneration Tribunal *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* – ARTIO Participation with the Fair Work Ombudsman on the Application of the Order**

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ARTIO is continuing to have direct conversation with Senior Fair Work Ombudsman (FWO) staff on the application of the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*. ARTIO has and will continue to put a number of issues (and solutions) to the FWO and seek resolutions to the difficulties in applying the Order to a range of operational circumstances.

Queensland Trucking Association (ARTIO Queensland Branch) Employment Relations Manager, Travis Degen has been invited to participate in the Fair Work Commission IR Practitioners Assist Group which will meet regularly by teleconference to consider the practical application of the Order and associated issues.

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### **Road Safety Remuneration Tribunal *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* – Fair Work Ombudsman Reverses Position on the Application of the Order Following Intervention by ARTIO**

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On 1 March 2016 ARTIO NSW advised Members (Industrial Circular 3/2016) that the Fair Work Ombudsman had formed a position regarding the coverage of Contractor Drivers under the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* that may drive their Company vehicle but also has employees driving one or more other company vehicles.

ARTIO NSW advised Members that the FWO position was that the owner driver whilst driving his own truck will come under the Order while work performed by an employee driving another truck also owned by the owner driver will not come under the Order. ARTIO advised the FWO that it disagreed with that interpretation and that ARTIO would discuss this issue with Senior FWO staff to have their interpretation and website information changed.

As a direct result of ARTIO's involvement the FWO have agreed with ARTIO's position and, subsequently, amended their advice to industry. Accordingly, Members can rely on Industrial Circular 3/2016 issued on 1 February in relation to matters related to coverage under the Order.

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### **Fair Work Commission Orders Reinstatement of Worker Following Inappropriate Workplace Behaviour**

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*(Adapted from article courtesy of Workplace Express)*

The Fair Work Commission has ordered a transport company to reinstate a worker it sacked for making inappropriate comments about Islam and the Taliban to an Afghani colleague.

Although the company had policies in place which were purportedly designed to redress inappropriate workplace behavior, the FWC found it failed to implement them or discipline the employee it sacked for his conduct.

Commissioner Michelle Bissett said that '(i)t is my strong opinion that appropriate formal disciplinary action should have been taken in the past so that he was fully aware that his conduct, should it persist, would not be tolerated'.

'By its actions (the company) has not provided such an indication. While its Code may be clear on what is tolerable, this is undermined if such behavior continues to be tolerated by inaction or mild rebuke,' Commissioner Bissett said.

'It is through training and raising and discussion of issues that knowledge is gained, understanding is reached and tolerance found', she said.

She also said that employees engaging in inappropriate workplace behavior must be forewarned their conduct is unacceptable so they know the behavior will not be tolerated and might lead to dismissal.

A co-worker claimed that the Afghani co-worker was subjected to persistent racial and cultural abuse. The co-worker complained about the abuse to management which, following an investigation, dismissed the employee.

Commissioner Riordan of the FWC had previously ordered that the employee be reinstated. On appeal by the employer, a FWC Full Bench rejected their application and remitted the decision to a Full Bench member to fully re-determine it.

Commissioner Bissett found that while there were valid grounds for dismissal, the penalty was severe because the employee had not received formal warnings.

'I am satisfied that the decision to terminate (the employee's) employment was harsh for the personal consequences of it for him and because of the severity of the punishment when little has been done with respect to his past behaviours,' she said.

She said the dismissed employee 'should not feel vindicated' by the decision and that similar conduct 'must be called out' because it is 'unacceptable and disrespectful'.

She ordered the company to reinstate the employee despite objections from the employer that they had lost trust and confidence in the employee. She also ordered remuneration for lost pay for the time he was dismissed, less three months, and that he attend a refresher training course as part of his return to work.

*Johnpulle v Toll Holdings Ltd (2016) FWC 1507 (11 March 2016)*

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## **Reminder: Flu Season Approaching**

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Influenza viruses are highly contagious and spread from person to person by coughing and sneezing and from touching contaminated surfaces. Vaccination is the best defence against the flu, which contributes to over 3000 deaths in Australia each year.

The Federal Minister for Health has announced details of the National Immunisation Program which can be accessed from:

[www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2015-ley133.htm](http://www.health.gov.au/internet/ministers/publishing.nsf/Content/health-mediarel-yr2015-ley133.htm)

The risk of flu can be reduced by getting the flu vaccine each year and maintaining good hand and respiratory hygiene. This protects workers from infection and helps protect others at work, family members, and those who are at higher risk of developing complications from flu such as pregnant women and those with certain medical conditions.

Employers should ensure high of standards hygiene at work and should consider funding an influenza vaccination program for employees. The associated cost may be offset by reduced sick-leave and absenteeism.

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## **National Industry Scholarship Grant Initiative – Leadership Development Opportunities for Women**

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Due to an unprecedented response to the 2016 National Industry Scholarship Grant Initiative to support the development of women's leadership in the Transport and Logistics sector, the National Scholarship Grant Committee have made the decision to provision further funding and extend the deadline for applications until 29 April 2016.

The initiative provides women in all industry sectors with grants for leadership development. More specifically, grant applications are open to women employed in all sectors at two levels. They are:

- Senior Management and Executive level Women Leaders who can apply for \$12,000 Individual Grants to undertake the Advanced Leadership Program.
- Women Managers who can apply for \$5,000 Individual Grants to undertake the Accelerated Leadership Performance Program.

Further details are available from the Women and Leadership Australia website, [www.wla.edu.au](http://www.wla.edu.au) or by contacting Ian Johnson at the office of the National Industry Scholarship Program, Australian School of Applied Management, via telephone 03 9270 9016 or via email, [ijohnson@wla.edu.au](mailto:ijohnson@wla.edu.au).

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## **Marine Order 42 and Container Weight Declarations**

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The Australian Maritime Safety Authority (AMSA) is currently consulting with stakeholders regarding amendments to the Navigation Act 2012 Marine Order 42 (Cargo stowage and securing) (MO42) to meet Australia's commitments as a signatory to the International Convention for the Safety of Life at Sea (SOLAS). The revised MO42 is intended to commence on 1 July 2016.

AMSA wants to identify opportunities to streamline transport documentation required for the transport of freight containers.

Visit the AMSA website, [www.amsa.gov.au](http://www.amsa.gov.au), for guidance on [working with amendments to MO42 and requirements for complying CWDs](#).

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## **Invitation to Register for the Introduction to Safety Culture and Climate Webinar**

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All transport operators are invited to register for the Introduction to Safety Culture and Climate webinar. This webinar will introduce the concepts of safety culture and climate and why they are relevant to organisations in any industry.

The guest speaker for this webinar is Professor Helen De Cieri from the Monash University Business School. Professor De Cieri will discuss the latest research and how it relates to industry practice.

Professor De Cieri has more than 30 years of experience working in areas of management, health and safety, employee wellbeing, gender equality and organisational performance. She is currently leading a large research project investigating leading indicators of occupational health and safety.

This is part of a series of five webinars designed to help organisations improve their safety culture. The webinar series will focus on the key industries of transport, construction, public administration and health and community services. You can attend all five webinars, or choose the industry specific session that relates to your organisation.

Safety culture webinar details:

- Introduction to safety culture and climate – 14 April 2016.
- Safety culture and climate in transport – 28 April 2016.
- Safety culture and climate in public administration and health and community services – 12 May 2016.
- Safety culture and climate in construction – 26 May 2016.
- Conclusion and next steps – 9 June 2016.

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## ATO Issues Employer/Contractor Decision Tool

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The Australian Taxation Office has issued an updated version of its employer/contractor tool to assist businesses in meeting their tax and superannuation obligations to their workers. Common myths in relation to employees and contractors include:

Myth 1: If the worker has an ABN they're a contractor.

Fact: Having an ABN makes no difference and will not make your worker a contractor for a job.

Myth 2: If the worker only works for short periods, they're a contractor.

Fact: Just because work is short term or irregular makes no difference and will not make your worker a contractor for a job.

Myth 3: If others in my industry are doing the same, then my worker is a contractor.

Fact: Industry practices make no difference and will not make your worker a contractor for a job. Don't assume other businesses have worked it out correctly.

Myth 4: If the contract or agreement says so, the worker is a contractor.

Fact: A contract agreement makes no difference and will not make your worker a contractor for a job. If the working arrangement is employment, a contract or agreement stating the worker is a contractor won't override his employment arrangement or change the obligations you need to meet.

Myth 5: If the worker submits an invoice, they are a contractor.

Fact: Submitting an invoice for work done or being paid on 'invoice' makes no difference and will not make your worker a contractor for a job.

For further information visit the ATO website, [www.ato.gov.au/Business/Employee-or-contractor](http://www.ato.gov.au/Business/Employee-or-contractor).

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## ATO App to Assist in Tracking Work Expenses

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Forget storing your old receipts in a shoebox, or tracking expenses in a notebook. Start getting your receipts and records in order with the new *myDeductions* tool in the ATO app. Download it today to ensure you don't miss out on claiming work expenses this year!

It doesn't matter if you are an employed short or long haul truck driver you can still use *myDeductions* to record all of your work related travel expenses on the go, it even lets you quickly take a photo of your receipt and record the details later!

myDeductions can only be used to keep your work-related expenses as an employee truck driver. It is not for small business owners, including sole traders. The Australian Taxation Office's Assistant Commissioner, Graham Whyte explains that 'myDeductions is for individuals claiming work-related expenses as an employee. Whether you lodge your own return or use a tax agent, you can use the *myDeductions* tool to keep your deductions records'.

He also says how useful the *myDeductions* tool will be when it's time to complete your next tax return.

'When you're ready to lodge your return you can email your deductions records directly to your tax agent. Or if you prepare your own return you can pre-fill the information straight into myTax – the ATO's free online tax return for individuals.'

Take a look at some of the support material the ATO have put together to help get started with *myDeductions* here:

- The ATO website to help you understand what you can claim. Further information is available from [www.ato.gov.au/General/Online-services/In-detail/Transact-Online/myDeductions/myDeductions](http://www.ato.gov.au/General/Online-services/In-detail/Transact-Online/myDeductions/myDeductions).
- A video showing how easy it is to manage your work-related expenses using the app.

To start using the *myDeductions* tool download or upgrade the ATO app for free, from Google Play, Windows Phone Store or the Apple App Store.

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## NHVAS Mass Management Record Keeping Requirements

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Operators under NHVAS mass management accreditation are now only required to keep trip records when the vehicle/combination is loaded above general mass limits (GML). Only when the trip involves an axle or gross vehicle mass above GML will the operator be required to keep a mass record for the trip.

The details of the records required to be kept has also been clarified for mass management. Both axle and gross mass records are to be kept where practical, however as a minimum the gross mass records must be kept for every trip the vehicle takes when loaded above GML.

Further details of the changes can be found in the [National Heavy Vehicle Accreditation Scheme \(NHVAS\) fact sheet \(PDF, 250KB\)](#)

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## NHVR Produces Vehicle Standards Guides

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The NHVR produces Vehicle Standards Guides (VSGs) to provide information on matters relating to heavy vehicle safety standards and modifications. The VSGs cover a range of different topics and issues based on frequently asked questions and hot topics that may arise from time to time.

The six guides below have been developed in consultation with relevant stakeholders and have now been published on the NHVR website at [www.nhvr.gov.au/vsg](http://www.nhvr.gov.au/vsg)

- [Vehicle Standards Guide 4 – Inspection of drawbar eyes](#)
- [Vehicle Standards Guide 5 – Converting a vehicle into a motorhome](#)
- [Vehicle Standards Guide 6 – Update for Approved Vehicle Examiners in New South Wales](#)
- [Vehicle Standards Guide 7 – Modifications to new vehicles](#)
- [Vehicle Standards Guide 8 – Film on bus emergency exits](#)
- [Vehicle Standards Guide 9 – Re-rating of Gross Vehicle Mass](#)

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## TWUSUPER Super News March 2016

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### ASIC warning: Beware super funds offering incentives

ASIC has reminded employers that, if their employees have not chosen their own fund, they must choose a super fund authorised to offer a MySuper product.

It is illegal for a super fund to offer incentives on condition that an employer has its employees join that fund. Inducements might include, but are not limited to:

- **Corporate hospitality:** e.g., a fund offers free tickets to a major sporting event in exchange for signing up members
- **Discounted rates on products and services:** e.g., ABC Bank offers a business reduced business loan rate in exchange for signing up employees to their fund

Employers should also beware of funds making any comparisons with other funds that may not be comparing like with like – for example, with regard to insurance, returns, and fees.

The rules ensure that employers are not distracted from making an informed decision and are able to focus on what is best for their employees.

If you wish to nominate TWUSUPER as your default fund you can find out more at [twusuper.com.au/employers](http://twusuper.com.au/employers), or call us on **1800 241 877** from 8am to 8pm (AEST/AEDT) weekdays.

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### Avoid the Super Guarantee Charge

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.

Your payment for this quarter, ending 31 March 2016, is due by 28 April 2016.

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This information is of a general nature only and does not take into account your objectives, financial situation or needs. Before acting on this information, you should consider its appropriateness having regard to your objectives, financial situation and needs. A copy of TWUSUPER's current Product Disclosure Statement should be obtained from us (by calling 1800 222 071 or visiting [twusuper.com.au](http://twusuper.com.au)) and considered carefully before you make a decision in connection with TWUSUPER. TWU Nominees Pty Ltd ABN 67 002 835 412, AFSL 239163, is the trustee of TWUSUPER ABN 77 343 563 307 and the issuer of interests in it. Transuper and TransPersonal are divisions of TWUSUPER.

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## Economic and Industry Indicators

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Indicator/Source <sup>1</sup>	As at	Unit of Measure	Quantity	% Variation
GDP latest quarter (ABS)	Dec Qtr 2015	\$m	415,021	2.8
CPI (ABS)	Dec Qtr 2015	Per cent		1.7

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<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.

Cash rate (RBA)	Current	Per cent	2.00	
Estimated Residential Population (ABS)	Sep Qtr 2015	Number	23,860	1.3
Retail Turnover (ABS)	Jan 2016	\$m	24,853	4.0
Actual New Capital Expenditure (ABS)	Dec Qtr 2015	\$m	31,302	-17.7
Inventories held by private business (ABS)	Dec 2015	\$m	154,304	0.0
Dwelling unit approvals (ABS)	Jan 2016	Number	17,872	-8.7
Manufacturers Income (ABS)	Dec 2015	\$m	83,133	-7.9
Employed persons (ABS)	Feb 2016	Million	11,903	2.3
Unemployed persons (ABS)	Feb 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)	Feb 2016	Number	97,996	3.8
Cab Chassis/Prime Mover Sales (TIC)	1 month ending Jan 2016	Number	1258	-3.4
Vans (TIC)	1 month ending Jan 2016	Number	326	4.5
AIP Terminal Gate Price-Diesel-Sydney	As at 31 Mar 2016	Cents per litre	97.2	

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