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Information and Advice for NSW Transport Operators

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Transport Industry – General Carriers Contract Determination: ARTIO NSW Briefings

ARTIO NSW will hold the following Briefings on the Transport Industry – General Carriers Contract Determination:

- **Sydney:** 2 May 2107, 7.30am-9am – Breakfast Point Country Club, 72 Village Dr Breakfast Point.
- **Wollongong:** 3 May 2017; 10am-11.30am – Sage Hotel, 60-62 Harbour St, Wollongong.
- **Newcastle:** 4 May 2017, 10am-11.30am – Chifley Apartments, cnr Wright and Settlement Lanes, Newcastle.

Transport Industry – General Carriers Contract Determination: Summary and Analysis of the Decision and Provision of Advice

ARTIO NSW has kept Members informed of developments following the decision of Commissioner Newall in the NSW Industrial Relations Commission that a new Transport Industry – General Carriers Contract Determination will take effect on 15 April.

Summary of Commissioner Newall's Decision

Commissioner Newall noted and agreed with the TWU that its application for a new Determination, which it lodged on 15 December 2013 can be described as a 'really substantial review'.

He said the Determination is the product of negotiations between the parties and that the TWU and notional respondents agree that rates set out in the Determination are fair and reasonable.

He stressed that the Commission is bound to consider the public interest and the state of the NSW economy and that it has wide discretion to vary contract determinations. He said the Minister's submissions on the economy assisted the Commission. No submissions were advanced by the Minister that making the agreed Determination would be contrary to the public interest, nor would it adversely affect the state of the NSW economy.

Commissioner Newall said that while the consent position reached by the parties is important and relevant, ultimately, the Commission must exercise its powers under the *Industrial Relations Act*. In that regard, he said the overarching responsibility of the Commission when setting rates is to ensure they are fair and reasonable. No party said the rates proposed are not reasonable. He said the Commission is satisfied that the approach taken to rates and conditions is reasonable and that the Determination will provide fair and reasonable rates and conditions.

However, he said that while parties reached a consent position, this was not a deal. They 'have adopted the approach of developing a quite sophisticated cost and rate model', the complexity of which he said he has not seen before. He said the value of the model is that it provides a proper justification for the rates, a platform for dealing with disputes and a platform for dealing with variations to the Determination.

Commissioner Newall said that the rates reflect proper cost recovery and a margin, they allow Contract Carriers to be properly remunerated and they do not impose either unfair costs or a windfall gain on Principal Contractors. He said that transitional provisions will provide stability which the Commission endorses.

He noted that the expanded coverage is modest when compared to what was sought by the TWU. Coverage can be reviewed by the Commission in 2021. He said it is appropriate that 'a conservative and modest approach' to expansion has been taken given price differentials on a range of regional and remote transport corridors.

Commissioner Newall said that evidence submitted related to the possibility of setting rates across NSW did not need to be settled adversarially. As a result, the Commission has not been required to make any findings about it.

He praised the parties who consented, including ARTIO NSW, on the alternative remuneration arrangements clause on the basis that it is essential to the modernisation of the Determination because it permits utilisation based remuneration practices which are likely to drive greater productivity and efficiency.

He rejected a request from an unregistered association for ongoing stakeholder engagement in favour of the long-standing system of stakeholder engagement by registered industrial parties such as ARTIO NSW. He said the present system and the way it works is there for good reason and ought to be observed while also stating that this does not prevent an unregistered party from demonstrating an interest through evidence.

Commissioner Newall noted that the NSW Industrial Relations Minister conveyed the commendation of the parties for achieving a consent position. He said the Commission also commends the parties and noted that this is not a platitude because the parties took the step of developing and investing in a model and approaching their differences 'in a particularly sophisticated way' as it allows the parties to resolve difficulties in 'the next round and perhaps the one after that'.

There is now a model everyone understands which is based on not just on haggling and horse trading but proper modelling, proper expert reports and verifiable evidence.

Provision of Advice

Members were provided with advice that a decision had been made in relation to the Determination within an hour of Commissioner Newall's announcement.

In his decision, Commissioner Newall noted that further minor technical drafting was required. Legal counsel for the TWU sought feedback from all participants in these proceedings on whether further technical amendments were required. Submissions from ARTIO NSW in relation to technical amendments were accepted by the TWU and other employer parties. There were no submissions from other parties.

On 20 March, the TWU filed the agreed version of the Determination. ARTIO NSW Members were provided with a copy of the Determination within an hour of filing.

Editorial Comment

ARTIO NSW engaged with the TWU well before its application to vary the Determination was filed in December, 2013. This gave ARTIO NSW early insight and understanding of what the TWU wanted to achieve.

The TWU's original application was ambitious in terms of what it wanted for its affected members. That is consistent with their rights as a party to these types of proceedings. The TWU's application instigated proceedings before the Commission. ARTIO NSW did not consent to the TWU's application and lodged a counter application. This meant the TWU needed to consider ARTIO NSW's alternative position and provided the basis for negotiations aimed at resolving differences presided over by the Commission.

Numerous meetings were held before consent was achieved. These generally arose following directions from the bench, however, in early stages in particular, there were meetings between ARTIO NSW and the TWU only. Others involved employer representatives only. Others only involved the TWU, ARTIO NSW and the NSW Business Chamber.

Parties agreed to a two-stage process. Consent was initially reached between the TWU, ARTIO NSW and most other employer parties through what became Stage 1 of these proceedings, which dealt with non-rates matters. This led the Commission to make a decision in relation to the Transport Industry – General Carriers Interim Contract Determination which currently applies. For the employers, ARTIO NSW and the NSW Business Chamber shaped the outcome as far as Stage 1 was concerned.

The Commission then presided over consideration of Stage 2, which related to rates even though considerable ground work had been completed beforehand around the principles which, it was agreed, would underpin the new cost model framework.

The NSW Business Chamber provided leadership, with ARTIO NSW's input and full support on cost model construction, methodology and evidence gathering. Support was also provided from major employers with a significant Contract Carrier fleet. The TWU approached this aspect of negotiations constructively and with a shared vision of achieving substantial reform of the rates framework based on cost recovery, a margin for profit and the avoidance of windfall gains or losses. The consensus was that the existing cost model framework reflected 30 years of compounding problems with model inputs and methodology.

With the support of other employers, ARTIO NSW's role was to gather evidence of how the market for the transport of general freight worked in regional corridors to and from Sydney. This evidence, from reputable and respected individuals showed that freight imbalances exist on these corridors, which in turn drives rates that operators can extract from the market. The evidence showed this occurs because most manufacturing, warehousing and distribution is undertaken in Sydney and freight generally moves from there to non-metropolitan areas. Evidence gathered also showed that seasonal factors such as harvests have an impact on freight imbalances and rates. Other evidence gathered showed the wide variety of rate setting mechanisms used in the industry. Similar evidence was also supplied by some of the major employers.

As Commissioner Newall said, the Commission did not need to consider this evidence. It was not contested during proceedings. Geographic extension of the coverage of the Determination is confined

to single door to door journeys ex-Sydney to Newcastle, Wollongong and surrounding areas, well short of the TWU's original application seeking state-wide coverage and coverage on some interstate work.

The Determination includes provisions outlining how registered organisations, including ARTIO NSW, and employers are to meet in order to discuss issues such as rate variations and coverage.

ARTIO NSW, the major employers the NSW Business Chamber and the Master Builders Association of NSW all reached a consent position with the TWU. Other employer organisations did not consent, nor did they oppose.

Maurice Baroni from McCabes Lawyers represented ARTIO NSW throughout these proceedings. This ensured ARTIO NSW had an effective, influential advocate who provided leadership on ARTIO NSW's behalf at the bar table.

New Licensing Requirements for Operators of Reach Stackers

SafeWork NSW has advised ARTIO NSW that new licensing requirements will apply to reach stackers from 1 July 2017.

The Work Health and Safety Act 2011 and Work Health and Safety Regulation 2011 place obligations on both the worker and person/s conducting a business or undertaking (PCBU) to ensure high risk work, such as that involving reach stackers, is performed by those with an appropriate high risk work licence.

Currently, SafeWork NSW has a requirement in place where operators of reach stackers in NSW must hold a valid non-slewing mobile crane licence (CN). From 1 July 2017, SafeWork NSW is introducing a new high risk work licence for reach stackers.

SafeWork NSW has sent correspondence to all NSW CN licence holders advising that operators of reach stackers who are working under the current arrangements (CN licence) and who will continue to operate a reach stacker after 1 July 2017, are required to add the reach stacker class (RS) to their licence prior to that date.

The following steps are required for impacted licence holders:

- Complete a short application form. There is no fee for this application.
- Read and sign the declaration on the form.
- Have a current employer, or business referee read and sign their declaration and provide their details.
- Submit the form to SafeWork NSW before 1 July 2017 to continue to be qualified for operating a reach stacker.

Note: the RS class will not be encompassed under the non-slewing mobile crane class after 30 June 2017. Workers will retain the existing CN licence class.

Holders of any of the slewing mobile crane classes, being C2, C6, C1 and C0, may still operate a reach stacker under the encompassment of that class, and adding the RS class to their licence is not required.

Existing reach stacker operators, operating under a CN licence who do not lodge an application prior to 1 July 2017, and new reach stacker licence applicants from 1 July 2017 will be required to successfully complete training and assessment in the reach stacker national unit of competency with a SafeWork NSW approved Registered Training Organisation and be assessed by a SafeWork NSW accredited assessor.

Registered Training Organisations with SafeWork NSW approval to deliver RS training and assessments in NSW will be locatable on our website www.safework.nsw.gov.au/licences-and-registrations/licences/high-risk-work-licences.

SafeWork NSW will be conducting advisory and verification visits after the transition to assist workers and industry reach compliance.

Further information about the transition to the new reach stacker licence class is available by contacting SafeWork NSW telephone 131050 or by email at thirdparty@safework.nsw.gov.au.

ARTIO Lodges Submission to Annual Wages Review

ARTIO has lodged a submission to the Fair Work Commission's Annual Wages Review.

Main points made in the ARTIO submission are:

- That the Australian economy continues to grow at a sluggish rate.
- Growth in Gross Domestic Product for the year ending 31 December 2016 stands at 2.4 per cent. This is consistent with growth rates which have generally hovered at between 2 and 3 per cent since the end of the Global Financial Crisis but well below growth rates achieved in recent decades.
- Recent GDP growth rates are underpinned by strong growth in commodity prices for iron ore and coal as well as a generally good season for Australia's farmers. Sectors which have held back economic growth include manufacturing, building and construction, retail and wholesale trade, accommodation and transport.
- Lead indicators of economic activity such as building and dwelling approvals as well as actual capital expenditure indicate there is nothing on the horizon to provide additional economic stimulus. This suggests the next source of longer term economic stimulus following strong mining and energy investment as well as strong activity in the housing and construction sector has yet to emerge and continued drift in overall economic activity as measured by GDP is likely.
- Inflation as measured by the Consumer Price Index rose 1.5 per cent in the year ending 31 December. The CPI remains at levels outside the Reserve Bank of Australia's target range of 2-3 per cent and has stayed within a range of 1 to 1.7 per cent for the past two years.
- There is every indication that the RBA will keep interest rates on hold for most, if not all of 2017. While predicting the timing, frequency and extent of interest rate movements is an inexact science, there is consensus that interest rate settings should err towards encouraging economic stimulus.
- The labour market in Australia is anaemic. The number of people in full time employment has fallen by approximately 21,200 over the past 12 months, despite the additional estimated 122,000 jobs categorised as part-time which have been created in the same period. The number of people employed grew by only 0.8 per cent in the year ending February 2017.
- A further sign of the weakening labour market is the 0.4 per cent fall in the participation rate over the past 12 months, suggesting that more people, capable of being employed, are choosing not to seek work.
- Private sector wage growth in Australia continues to drift lower. Once again, this reflects a flat labour market. For the year ending December 2016, annual wage growth rates have been sluggish in all States and Territories. Annual wages growth of less than 2 per cent has occurred in the mining, manufacturing, construction, wholesale trade, retail trade and many other sectors. Wages growth has been highest in sectors where public sector workers comprise a relatively high proportion of the workforce.
- ARTIO's analysis of enterprise bargaining negotiation outcomes in the private transport industry tend to reflect broader trends in the labour market. ARTIO has observed a gradual downward drift in wage increases at the enterprise level to a point where the wage increase component of any agreement in late 2016 was typically in the order of 2 per cent per annum and generally locked in for three years.
- These wages growth trends in the labour market have occurred notwithstanding the FWC's decision to award employees on minimum wages, an increase of 2.4 per cent last year.
- In ARTIO's opinion, these modest wages growth levels reflect prolonged sluggish macroeconomic and labour market conditions as well as low inflation in recent years.
- ARTIO does not intend to specify a quantum, in either nominal or percentage terms, whereby wages should be varied in this Annual Wage Review. ARTIO submits that instead the FWC should be guided by signs of the overall state of the Australian economy, especially the labour market.

- ARTIO reiterates that major macroeconomic indicators all suggest that in ARTIO's opinion any increase in wages decided upon in this Annual Wage Review should be modest.
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Outcomes from ARTIO NSW/SafeWork NSW Briefings

Some common themes are starting to emerge in relation to workplace health and safety issues in the industry following forums conducted by ARTIO NSW in Queanbeyan and Newcastle during March.

Slot booking arrangements at distribution centres and similar facilities were raised as an issue of concern by a number of transport operators. Operators said it was quite common for drivers who miss a slot being forced to wait a considerable period of time before being either loaded or unloaded.

Quite complex slot booking systems operate at stevedores' terminals and in the loading docks of major commercial buildings. There may be an opportunity to review slot booking arrangements in a range of operational settings in order to ensure unplanned events and other factors which cause a slot to be missed are taken into account.

Another theme to emerge was that workplace health and safety issues will to some degree vary from one supply chain to another.

ARTIO NSW is holding a further forum in Sydney on 4 April. A forum will also be held in Wollongong in the near future.

Reminder: Transport Operators Eligible for SafeWork NSW Small Business Rebate

SafeWork NSW has used these forums to remind small business employers with up to 50 full time equivalent employees that they are eligible for a rebate of up to \$500 to assist businesses become smarter and safer.

For further details on the rebate and an application form, please visit www.safework.nsw.gov.au/health-and-safety/how-we-can-help/small-business=rebates.

NSW Parliamentary Committee Recommends Workers' Compensation Reforms

The NSW Legislative Council Standing Committee on Law and Justice has made 26 recommendations aimed at improving the administration of the NSW workers' compensation scheme. These recommendations are outlined in the Committee's report, *First review of the workers compensation scheme*, which was tabled on 9 March.

The Committee noted that reform was required in the following areas:

- By further improving access to entitlements for injured workers.
- By ensuring the State Insurance Regulatory Agency provides more guidance to scheme participants, especially insurers.
- By ensuring ICare to take steps aimed at improving the conduct of insurers.
- By simplifying dispute resolution processes.

These recommendations follow major reform over the past decade which has led to improved scheme viability, lower premiums, incentives for employers with a good claims history, improvements in benefits for injured workers in certain circumstances and the replacement of WorkCover NSW with separate agencies dealing with workers' compensation regulation, workers' compensation insurance and work, health and safety regulation.

ARTIO NSW put a submission into the inquiry.

Parliament will now consider these recommendations.

Participation Sought in Transport for NSW Heavy Vehicle Registration/Renewal Project

The following advice has been received by ARTIO NSW from Roads and Maritime Services:

Heavy Vehicle Registration/Renewal Research Project

Transport for NSW is conducting research with customers who have heavy vehicles registered in New South Wales. The purpose of this research is to better understand the customer experience of our heavy vehicle registration and renewal process.

We are looking to talk to a wide range of heavy vehicle owners - from owner operators, small businesses, primary producers to representatives from large, multistate operations. If members have time to participate in a face-to-face / phone interview, their contribution will inform the ongoing improvement of heavy vehicle registration processes within NSW. In addition, relevant industry feedback may be represented at national forums for the consideration of other jurisdictions.

We assure that all feedback is confidential, and comments will be anonymous and used to inform improvements to the registration and renewal process.

Further information

Should you have any questions about this, please contact Melissa from Transport for NSW via email customer.research@transport.nsw.gov.au or phone (02) 8202 2082.

We will like to thank you in advance for your support and input.

ARTIO NSW strongly encourages Members to participate in this research.

TWUSUPER Super News March 2017

Workplace education sessions available

Whether you have employees approaching retirement age or younger employees, TWUSUPER's workplace education sessions are tailored specifically to the needs of your employees. The sessions are conducted at no cost to you or your employees and we arrange them at a time and location that suits you.

We 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 April

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 January – 31 March quarter are due no later than 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)	Dec Qtr 2016	\$m	421,338	1.9
CPI (ABS)	Dec Qtr 2016	Per cent		1.5
Cash rate (RBA)	Current	Per cent	1.5	
Estimated Residential Population (ABS)	As at 31 Mar 2017	Million	24.411	
Retail Turnover (ABS)	Jan 2017	\$m	25,742	3.2
Actual New Capital Expenditure (ABS)	Dec Qtr 2016	\$m	27,393	-14.4
Inventories held by private business (ABS)	Dec 2016	\$m	155,921	1.8
Dwelling unit approvals (ABS)	Jan 2017	Number	16,728	-15.5
Manufacturers Income (ABS)	Dec 2016	\$m	81,807	-3.2

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

Employed persons (ABS)	Feb 2017	Million	12,005	0.8
Unemployment rate(ABS)	Jan 2017	Percentage	5.8	0.0
TEUs through Port Botany (NSW Ports)	7 months ending Jan 2017	Number	1,459,229	4.6
Wage Price Index (ABS)	Dec Qtr 2016	Per cent		
All employees				1.9
Transport, postal and warehousing				1.8
New motor vehicle sales (ABS)	Feb 2017	Number	95,932	-2.3
Cab Chassis/Prime Mover Sales (TIC)	1 month ending Jan 2017	Number	1,442	14.6
Vans (TIC)	1 month ending Jan 2017	Number	478	46.6
AIP Terminal Gate Price-Diesel-Sydney	31 March 2017	Cents per litre excl. GST	109.6	

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