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Australian Road Transport  
Industrial Organisation

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# *The Courier*

*Information and Advice for NSW Transport Operators*

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## **New Transport Industry – General Carriers Contract Determination Close to Finalisation**

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The NSW Industrial Relations Commission is close to finalising a new Transport Industry – General Carriers Contract Determination. This follows an application from the TWU NSW to seek a new

application which it lodged in December 2013. This led to an extensive process of conciliation and arbitration which included active involvement by ARTIO NSW.

On 29 April, Acting Justice Kite, who is presiding over this matter, issued a Decision which included substantial amendments to the existing Determination. This Decision deals with non-rates matters only. He requested the parties to seek agreement on a number of clauses. The parties undertook this in good faith.

On 26 May, Acting Justice Kite made a decision in relation to outstanding clauses where agreement was not reached and gave the parties a week to come back with comments. The new Determination will have broadened geographic coverage as well as broadened coverage within industry sectors.

Negotiations on rates matters are continuing through conciliation.

It is proposed that **an ARTIO NSW Industrial Circular will be issued** which will provide further specific detail on this new Determination.

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## **New Transport Industry – General Carriers Contract Determination – Breakfast Briefing 22 June**

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ARTIO NSW encourages all Members to attend a Breakfast Briefing to be held at Breakfast Point on 22 June so they can be better informed on what the new Transport Industry – General Carriers Contract Determination means for the transport operators operating in NSW. Guest speaker is Maurice Baroni, who has represented ARTIO NSW in these proceedings.

For further details, please refer to the flyer accompanying this edition of 'The Courier'.

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## **National Wage Case: Award Wages to Increase by 2.4 Per Cent from 1 July**

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On 31 May, the Fair Work Commission issued its decision in this year's National Wage Case. Wages will increase by 2.4 per cent from 1 July 2016. The minimum wage will increase to \$17.70 per hour.

Industrial Circulars outlining the impact on transport industry related awards will be prepared and distributed to Members in the near future.

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## **Amended Annual Leave Provisions to be put in Industry's Modern Awards**

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Amendments will be made to annual leave provisions in most Modern Awards, including the Road Transport & Distribution Award, Road Transport Long Distance Operations Award and the Clerks Award. This follows a decision of a Fair Work Commission Full Bench as part of its consideration of 'common issues' in the four-yearly review of modern awards. 'Common Issues' are matters that affect all Modern Awards as opposed to matters/issues that relate to the specific operation of an individual Award.

The FWC decided:

- Employers will be able to grant annual leave in advance of it accruing and deduct amounts for any negative leave balance from termination payments. It will only be available where an employee and employer have agreed in writing to taking leave in advance.

- When employees are paid by electronic funds transfer they may be paid in accordance with their usual pay cycle while on paid annual leave.
- All Modern Awards will enable (by consent between employer and employee) cashing-out of up to two weeks in any twelve month period but the employee must retain a balance of four weeks. Cashing out is done by separate agreement in writing outlining when the payment is to be made. This clause will include additional safeguards including:
  - Mandating keeping of specific records;
  - Necessitating a signature from parents for under-18 employees; and
  - Drawing attention to general protections provisions at Part 3-1 of the *Fair Work Act* 'against undue employer influence and misrepresentation in relation to rights under the clause'.
- Modern awards will give employers the right to direct employees to reduce 'excessive' accruals. Employees seeking to use excessive leave will also be able to give notice of the taking of leave. Excessive leave is more than accrual of eight weeks for non-shiftworkers and ten weeks for shiftworkers. Employers cannot make a direction that results in the employee's accrual dropping below six weeks and must not give less than eight weeks' notice that the leave must be taken.

Where provisions covering these entitlements exist in industry awards they will be amended in line with the model clause drafted by the Full Bench.

Each Modern Award will be varied individually and final determinations issued by the FWC before the changes come into effect. **Members are urged not to apply the Award amendments until this process is complete.** Members will be notified as soon as this occurs.

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## ARTIO NSW Lodges Submission to Statutory Review of NSW Workplace Health and Safety Laws

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Safe Work NSW has given the Australian Road Transport Industrial Organisation NSW Branch the opportunity as a targeted stakeholder to comment on the proposed Terms of Reference for the statutory review of the *Work Health and Safety Act 2011*.

A review of the Act is required as it has been in force for five years.

ARTIO NSW has advised SafeWork NSW that in its opinion the proposed Terms of Reference are appropriate having regard to the prevailing national and state based legislative and regulatory framework.

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## Compliance with Workplace Laws: The Fair Work Ombudsman's View of 'Good', 'Bad' and 'Ugly' Employers

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***(The following article has been modified from a speech delivered by Natalie James, Fair Work Ombudsman on 2 May 2016. For a full copy of Ms James' speech, please contact the ARTIO NSW office)***

In an address earlier this month, Fair Work Ombudsman, Natalie James, provided advice to employers on how to ensure compliance with Australia's workplace relations laws.

In terms of compliance with workplace laws Ms James said there were three types of employers – 'good', 'bad', or 'ugly'

Ms James said "the good' set out to understand and comply with workplace laws'.

'If 'the good' aren't sure what the law is or how to apply it, they seek advice – either from their industrial organisation, a qualified professional or from us. If a problem still arises, such as a suggestion that perhaps someone hasn't been paid correctly, a good business fixes it.'

She said that 'the good' might not always comply but that is their default position.

Ms James provided examples of 'ugly' employers. She said that in many cases, the FWO sees deliberate exploitation of migrant workers with limited English skills and limited understanding of Australia's workplace laws who are often in low-skilled work. Their visa status compounds their vulnerability.

She said the FWO, employer organisations and unions 'can't stand by and let this happen'. This is because '...the impact of such exploitation extends beyond the individuals involved. It affects the reputation of our towns, regions and indeed the whole country. It distorts our labour market, creating a race for the bottom. And it undermines the integrity of our...workplace laws, but also our corporate, tax, criminal and immigration laws.'

She stressed that '(m)embers of employer organisations....are less likely to come across my desk, and very unlikely to end up in court. This is because you are generally well advised'.

In explaining how an employer becomes 'ugly', Ms James referred to 7-Eleven, Baiada Poultry, Myer and Coles. She said 7-Eleven is a franchisor, Baiada was the head contractor, while Myer and Coles outsourced contracting arrangements meaning the direct employers of the workers are clearly responsible for making sure that those workers receive their minimum wages and other entitlements. She said these companies took the view that they were not responsible which is why these cases got 'ugly'.

Ms James said that the FWO's inquiries into the operations of Baiada Poultry and 7-Eleven were characterised by varying degrees of non-cooperation and a preparedness to act only after extensive media coverage.

She said Baiada has returned approximately \$140,000 to its contractors' workers under the terms of the agreement, and has sacked one of its remaining seven contractors over compliance issues.

Ms James said media coverage led to 7-Eleven's Chairman, CEO and Operations Manager resigning and that 7-Eleven instituted the Fels Wage Fairness Panel process to repay exploited workers – since disbanded. She said that in mid-April 2016, the Panel announced that it had hit \$11 million in underpayment determinations and received 3,100 claims from workers.

Ms James said a critical decision point for a business is how it first responds when a problem arises. She gave the example of Aged Care Services Australia as one that was 'bad' but never turned 'ugly'. She said they owned-up to inadvertently underpaying almost \$5 million in overtime entitlements to over 2,000 employees due to a systems failure. She said they were trying to be good.

Ms James said the company identified the underpayment, notified the FWO, the relevant union and, through its parent company, the ASX, and took immediate responsibility by entering into an enforceable undertaking with the FWO to begin the process of repaying the employees and to put systems in place to fix the problem moving forward.

She said there was no angry public response because of the way the company responded to the problem when it arose: they took responsibility; they were open with the FWO; they were cooperative.

Ms James said Coles Supermarkets adopted an active program of robust supply chain management after Coles' contracted trolley collectors, and Coles, ended up in court over the exploitation of vulnerable migrant workers.

She said Coles chose to assume responsibility for its role in the labour supply chain and entered into an Enforceable Undertaking with the FWO whereby they agreed to back pay their contractors'

employees and rolled out an ongoing sustainable self-audit program of their outsourced trolley collectors. She said Coles is now in-sourcing a significant percentage of its trolley collectors.

Ms James said Coles deserves credit for cleaning up its act and working with the FWO to put a stop to non-compliance in its supply chain.

She said Coles also actively assisted the FWO in its work with Baiada, leveraging that relationship to ensure minimum standards are met, so they can reassure their customers and the public. She said this is how a responsible, profitable and established company that cares about its reputation behaves.

Ms James poses the question: What can you do, given the complexity of modern business arrangements? She said a car dealership put this question to FWO Inspectors when they arrived to serve a Notice to Produce. She said FWO's concern was to secure documents that would assist in an investigation into the underpayment of cleaners. She said the dealership manager was happy to cooperate, but he was worried about media attention. He said he paid the going rate.

She said FWO inspectors suggested that he ask some questions:

- Do you know the award rates?
- Do you know if your contractor does?
- Do you know how long it takes for your cleaners to do their work?

Ms James said the FWO took court action against the cleaning contractor, which is still before the Courts. She said the car dealer understood the warning signs before it turned ugly.

She also asked how confident employers are about the governance of supply chains, security contractors and cleaning contractors. She said 7-Eleven and similar cases show that a business should never be complacent about compliance or to think it can outsource its responsibility.

Ms James said it was important to:

- Consider procurement practices and contract terms.
- Pay contractors at least enough to cover the legal wages of the labour.
- Include requirements in contracts that require contractors to comply with workplace laws and to:
  - Regularly and frequently report that they are complying with the law; and
  - Spell out carefully the consequences if they don't comply.

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## **Minister Signs off Return to Work Assistance Amendments**

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NSW Minister for Innovation and Better Regulation, Victor Dominello, has amended *Workers Compensation Regulation 2010* to narrow circumstances where an employer in NSW is obliged to pay compensation for work assistance.

As a result of regulatory amendments, a pre-injury employer is no longer liable to pay compensation for work assistance provided to assist a worker to return to work with a new employer if:

- The offer of employment with a new employer is an offer of employment for a period of less than three months; or
- The offer of employment has not been made in writing.

Amended regulations also remove the liability of an employer to pay compensation for the cost of education or training provided to assist a worker to return to work if the education or training:

- Is inconsistent with the retraining or employment objectives of the injury management plan established for the worker.

- Is not provided by a person or body which is not registered under relevant Commonwealth law.
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## Invitation Open for SafeWork NSW Awards

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SafeWork NSW is calling for entries for the 2016 SafeWork NSW awards.

This year SafeWork NSW is inviting entries for the new category 'excellence in workplace health and safety culture'. Other awards are invited for the following categories:

- Best solution to an identified WHS issue.
- Best individual contribution to WHS.
- Excellence in recovery at work.
- Recovery at work achievement award for injured workers.
- SafeWork NSW leadership in safety award.

Entries are due by 8 July. The winners will be announced on 27 October.

Further information is available from [www.safeworkawards.com.au/categories](http://www.safeworkawards.com.au/categories).

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## Annual Private Sector Wages Growth Dips below 2 Per Cent

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For the first time since the Australian Bureau of Statistics released its Wage Price Index in 1998, the annual rate of growth in private sector wages in trend terms has dipped to below 2 per cent.

Across the private sector, wages grew by 0.4 per cent in the March 2016 quarter and by 1.9 per cent in the year ending 31 March 2016. In the transport, postal and warehousing sector, wages grew by 0.7 per cent in the March 2016 quarter and by 2.1 per cent in the year ending 31 March 2016.

For the economy as a whole, wages also grew by 0.4 per cent in the March 2016 quarter but by 2.1 per cent in the year ending 31 March 2016.

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## Ministers Launch Towards Zero Advertising Campaign

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### *(Extracts from joint media release)*

The Deputy Premier and Minister for Police Troy Grant and Minister for Roads, Maritime and Freight Duncan Gay have launched a new advertising campaign, Towards Zero, which highlights the human element of the road toll to help drive down crashes and fatalities.

'We're facing what can only be described as a state tragedy where too many people are dying on our roads – 38 more than the same time last year,' Mr Grant said.

'A road toll of 164 in less than six months is not just a number – it's children's lives that have ended before their time, it's mums and dads who will never come home again, and it's grandparents lost to their families forever.'

'If this trend continues, there will be more than 60 more people killed in 2016 than 2015 which is horrifying.'

'The reality is that as a community we've become complacent. We've come to accept that people will die on our roads and that's not good enough. We need to all work together towards zero deaths on our roads.'

'We hope the Towards Zero campaign will start a conversation about how many road deaths are acceptable and the role everyone can play preventing them. There is only so much police and government can do, it's up to every road user to do their bit too.'

Mr Gay said speeding sadly is still killing people despite our extensive efforts to slow people down. Pedestrian deaths have increased in this year's toll even though we have put in place more measures than ever before to protect them.

'Motorists are still flouting the law, regardless of the longest and most intense high-visibility police operations this state has ever seen,' Mr Gay said.

'All of this, and more, is partly funded by the NSW Community Road Safety Fund, a fund created from the money raised from speeding fines. We'll keep funding and in fact, increase our infrastructure build, police enforcement, our education campaigns and investment in safer vehicles and technology, to continue to try and save lives.'

'I can invest billions into making our road network safer and continue to deliver our road safety programs but I cannot control drivers, riders or pedestrians from making bad choices,' Mr Gay said.

'People need to make smarter choices and think about all the other innocent road users around them.' The Towards Zero advertising campaign began on 29 May.

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## **Digitisation Underway for Fitness to Drive Medical Assessments for NSW Driver Licence Holders**

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The Minister for Roads, Maritime and Freight, Duncan Gay, has announced that a new online system for streamlining NSW Fitness to Drive medical assessments is in the process of implementation.

'This digital service developed by Healthlink, means the 400,000 people who go through this process each year can now cross the visit to a registry or service centre of their to-do-list,' Mr Gay said.

Mr Gay said 'the NSW Fitness to Drive medical assessment form will now be completed and submitted by medical practitioners using their respective software systems to the Roads and Maritime Licence Review Unit immediately for review'.

Medical assessments are required for heavy vehicle drivers, elderly drivers and drivers with medical conditions such as epilepsy.

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## **Commonwealth Government Outlines Objective for Superannuation**

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For the first time the Commonwealth Government has outlined an objective for superannuation which it intends will be enshrined into law.

The objective for superannuation was outlined in a joint statement issued by the Treasurer, Scott Morrison, and the Minister for Small Business and Assistant Treasurer, Kelly O'Dwyer, on 3 May. It follows the Government's response to a discussion paper on the objective of superannuation which was released by The Treasury on 9 March as well as consultations with stakeholders following an earlier recommendation from the Financial System Inquiry.

The Ministers' joint media release states that the objective of superannuation is '**to provide income in retirement to substitute or supplement the Age Pension**'.

The Ministers said that as Australia's population ages 'it is becoming increasingly important to ensure that the superannuation system is based on a clearly stated objective, is providing the right incentives to save, and is flexible enough to ensure all Australians are given the opportunity to enjoy a fulfilling retirement'.

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## **NSW Government Announces Major Reforms to Construction Materials Sector**

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The NSW Government has announced major reforms designed to enhance the productivity and efficiency of the construction materials sector of the industry. These reforms apply to 6 and 7 axle truck and dog combinations, semi-trailers up to 20 metres in length and concrete agitators operating in the NSW Urban Zone in Sydney, Wollongong and Newcastle on approved roads. Vehicles operating under these reforms will operate under a scheme to be known as the Safety, Productivity & Environment Construction Transport Scheme, or SPECTS.

SPECTS applies to government run construction projects and all other construction projects.

Under the reforms, which were announced by the Minister for Roads, Maritime and Freight, Duncan Gay, on 9 May, eligible vehicles can operate at approved mass for the following combinations:

- 6 axle truck and dog: up to 49.5 tonnes GVM.
- 7 axle truck and dog: up to 57.5 tonnes GVM.
- Semi-trailers up to 20 metres with a quad axle group: 50.5 tonnes GVM

At this stage approved mass limits have not been determined for concrete agitators.

In return, eligible vehicles will be required to comply with a raft of safety and environmental measures. They are:

- A requirement to have Performance Based Standards approval.
- A requirement to have at least a Euro 5 engine.
- Be enrolled in the Intelligent Access Program (IAP).
- Be equipped with On-Board Mass (OBM) monitoring systems linked to the IAP.
- Be fitted with a range of safety features, i.e.:
  - Electronic Stability Control (ESC) – on new vehicles only – from 1 January 2017.
  - A roll-over control system on the trailer – to be fitted with new vehicles in conjunction with ESC.,
  - Blind spot mirrors or other systems for stability and detection of vulnerable road users.
  - Enhanced vehicle visibility markings including reflective tape to provide a contour outline of the vehicle.
  - 'Smart' reversing alarm, which adjusts the noise level to be appropriate for the environment the vehicle, and operates in both truck and trailer.
  - Reversing lights on both truck and trailer.

Construction materials covered by SPECTS are:

- Bitumen.
- Bricks and masonry.
- Cement and concrete.
- Fly ash and slag.
- Plasterboard.
- Quarry products (aggregates and sand).
- Spoil.
- Steel.
- Timber.
- Glass.

Eligible vehicles will be able to travel on all State Roads and approved local roads within the NSW Urban Zone, excluding bridges signposted with load limits. This will be known as the SPECTS network.

No bridge restrictions will apply to 6 axle truck and dogs and 20 metre semi-trailers. Only two bridge restrictions will apply on the State road network in the NSW Urban Zone. National Heavy Vehicle Regulator issued permits or a Notice to travel will be required to travel on local council roads within the NSW Urban Zone for roads which have not been approved under the SPECTS network.

All vehicles, including trailers, approved to operate under SPECTS will be issued with a SPECTS label which must be displayed on or adjacent to the driver's side door as well as on each trailer. They must also be fitted with an approved IAP in-vehicle unit and with OBM measurement devices.

Members interested in joining SPECTS can lodge an application with RMS with proof of eligibility.

Mr Gay said that SPECTS 'would remove up to 1,000 trucks per week' and deliver 'estimated productivity gains of up to \$100,000 per truck per year'.

According to Mr Gay, SPECTS will commence on 1 July 2016.

Further information on SPECTS is available from the RMS website as follows:

- SPECTS overview: [www.rms.nsw.gov.au/business-industry/heavy-vehicles/safety-productivity-environment-construction-transport/scheme/index.html](http://www.rms.nsw.gov.au/business-industry/heavy-vehicles/safety-productivity-environment-construction-transport/scheme/index.html).
- SPECTS Frequently Asked Questions: [www.rms.nsw.gov.au/about/news-events/news/ministerial/2016/spects-fast-facts-index.pdf](http://www.rms.nsw.gov.au/about/news-events/news/ministerial/2016/spects-fast-facts-index.pdf).

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## **PBS Truck and Dog Vehicles Gain National Networks**

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The National Heavy Vehicle Regulator has published Australia's first gazette notice for PBS vehicles. Three and four axle trucks towing three, four or five axle dog trailers that have PBS Vehicle Approvals will now be able to travel on a gazetted network of routes without the need to obtain an access permit.

The NHVR has developed the notice in collaboration with all participating states and territories to produce a nationally consistent approach to PBS access. This notice replaces the need for permits for PBS vehicles covered by the notice and aligns with the principles of PBS to have the right vehicles on the right roads.

Permits will still be required to access roads which are not part of the approved networks and also for PBS vehicles that are not truck and dogs covered by the notice.

PBS vehicle approvals are also required (regardless of travel under the notice or a permit). These must be carried and operators must comply with the conditions contained within.

The NHVR expects around 1500 permits to be removed from the system through this notice and will continue working with road managers and industry to expand the networks.

The notice and supporting documents (including information on the operation of quad dogs in NSW) can be found at [www.nhvr.gov.au/national-notice](http://www.nhvr.gov.au/national-notice).

NSW PBS network maps can be accessed from the RMS website, [www.rms.nsw.gov.au/business-industry/heavy-vehicles/performance-based-standards/map/index.html](http://www.rms.nsw.gov.au/business-industry/heavy-vehicles/performance-based-standards/map/index.html).

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## **RMS Releases Details of Operation StateTrans NSW**

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RMS has released the findings of Operation StateTrans NSW, which has seen over 13,800 trucks and trailers inspected on NSW roads during the first week of May.

As a result of Operation StateTrans NSW, in the first week the following have been issued:

- 1,609 defect notices.
- 888 infringement notices.
- 317 breach notices.

In addition, 321 engine control modules were downloaded, 66 of which were found to be non-compliant or tampered while 756 random drug tests were undertaken, 12 of which were found to be positive.

Operation StateTrans NSW involves over 300 heavy vehicle inspectors working in collaboration with the NSW Police Force over a four week period in May.

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## **Commonwealth Government Updates National Code of Practice for Chemicals of Security Concern**

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The Attorney-General's Department has updated its Code of Practice for Security Concern.

A total of 96 chemicals have been identified as of security concern because of their potential to make bombs or toxic weapons. A total of 15 chemicals are assessed as being of particularly high risk.

Further details can be found at [www.nationalsecurity.gov.au/chemicalsecurity/pages/default.aspx](http://www.nationalsecurity.gov.au/chemicalsecurity/pages/default.aspx).

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## **NTC Issues Driverless Vehicles Discussion Paper**

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The National Transport Commission has released 'Regulatory Options for Automated Vehicles', a discussion paper that finds a number of barriers to increasing vehicle automation.

The paper proposes that there are barriers that need to be addressed as soon as possible to ensure clarity around the status of more automated vehicles on Australia's roads and to support further trials. In the longer term other legislative barriers will need to be addressed to allow fully driverless vehicles in the future.

'Australia's laws need to be ready for the biggest change to our transport system since cars replaced horses,' the CEO of the NTC Paul Retter said.

'Amending these laws shouldn't be hard, but making sure the new laws are nationally consistent and encourage innovation while ensuring the safety of all road users will be important.

'The NTC will take recommendations to Australia's transport ministers when they meet in November. Stakeholders now have the opportunity tell us how to make sure we have the best possible national laws for our national economy and our local communities.'

Mr Retter said that some of the questions that will need to be resolved include:

- How can governments enable on-road trials of automated vehicles nationally?
- How can governments help clarify who is controlling a vehicle when the human driver is not driving? Or when control can alternate between a human and an automated driving system?
- How should the requirement that a driver must have proper control of a vehicle be interpreted by police when there is no human driver?
- What should happen to the range of laws that put obligations on a human driver of a vehicle such as:
  - Rendering assistance after a crash?
  - Complying with directions from police?
  - Paying any tolls or fines incurred.

Mr Retter said it is also not clear whether people injured in a crash with an automated vehicle will always be able to claim insurance under compulsory third party insurance or state-based accident compensation schemes.

He said these issues involve fundamental questions about how governments ensure our roads are safe.

Mr Retter said Australian governments must ensure that the removal of these barriers and any new requirements were implemented in a logical sequence, in step with the commercial deployment of different automated vehicles. He said there were risks in trying to rush ahead and amend vehicle standards for fully automated vehicles (such as driverless pods) without first addressing existing barriers to the types of automated vehicles that we are likely to be see on our roads in the near future.

Automated vehicles that share the driving task with humans are expected to be available in Australia within the next few years. As such the NTC is keen to hear views from all parts of industry and the community about the timing, as well as the detail of any reforms.

The [discussion paper released today](#) builds upon the issues paper released by the NTC on 4 February 2016.

Mr Retter called on interested parties to make a submission to help ensure Australia reaps the full benefits of automated vehicles as soon as possible. Submissions can be made at [www.ntc.gov.au](http://www.ntc.gov.au) between now and 4 July 2016.

The NTC will analyse these submissions when making final recommendations to Australia's transport ministers for their scheduled meeting in November 2016.

- [Read more - The 716 rules blocking driverless cars](#)
- Follow us on twitter: [@ntc\\_aus](#)

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## **Fake Drug Test Result Undermines Unfair Dismissal Claim**

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*(Adapted from article courtesy of Workplace Express)*

The Fair Work Commission has made an indemnity costs order exceeding \$18,000 against a former Toll Holdings driver whose claim for unfair dismissal was based 'almost exclusively' a lie and a fabricated drug test result.

The driver had been dismissed after he provided an oral fluid sample that tested positive for amphetamine and methamphetamine. However he told Toll that a urine test taken by his doctor immediately after his dismissal was negative.

He relied on this negative result as the basis for his unfair dismissal application. He argued that Toll had failed to take into account his doctor's purported drug test results.

The driver abandoned the hearing after the doctor produced the original test results to show that he had tested positive to drugs.

Deputy President Val Gostencnik found the driver's application 'was based almost exclusively on the lie and the fabricated drug test result'. He also considered the application to be vexatious.

He said 'the case crumbled and the (driver)... 'did a runner' leaving his representative to clean up the mess and discontinue the proceeding'.

He found that it was 'plainly a case in which indemnity costs are warranted' and that the driver 'caused all of the costs of the proceedings incurred by (Toll) and it did so by an unreasonable act on his part'. This includes false assertions to his employer, in his witness statement, under oath any by tendering a fabricated drug test result.

He ordered the driver to pay Toll's costs amounting to \$18,618.

*(Mr James Green v Toll Holdings Ltd (2016) FWC 2790 (9 May 2016))*

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## **Forklift Breaches Led to Fatality District Court Finds**

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***(Adapted from article courtesy of OHS Alert)***

An employer that failed to provide a forklift without blind spots has been fined \$187,500 following death of a truck driver at a potato farm near Hillston.

Oakville Produce Pty Ltd was convicted and fined for breaching the *Work Health and Safety Act* after a forklift operator reversed into the driver and a supervisor.

The District Court found the forklift had a blind spot when reversing and that Oakville did not have an effective traffic management system.

SafeWork NSW Executive Director, Peter Dunphy, warned that forklifts are a major cause of workplace deaths and injuries.

'Between July 2012 and July 2014 1360 (NSW) workers were injured in forklift incidents, including two fatalities.' Mr Dunphy said.

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## **Clybucca Bypass Opened**

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The opening on 16 May of the 26km Frederickton to Eungai dual carriageway section of the Pacific Highway means that Clybucca, the location of Australia's worst ever fatal road crash has been bypassed.

On 22 December 1989, two buses collided resulting in 35 fatalities and 41 injuries. A subsequent investigation led the then NSW Coroner to recommend the construction of an upgraded dual carriageway on the Pacific Highway from Hexham to the Queensland border.

There have been substantial improvements to the Pacific Highway in the intervening years however a substantial proportion of the highway between Port Macquarie and Ballina remains single lane. The Australian and NSW Governments have substantially increased funding with the objective of ensuring the Coroner's recommendation is implemented.

According to the RMS website, the Pacific Highway will be dual carriageway for its entire length by 2020.

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## **NTC Releases Heavy Vehicle Driver Fatigue Data Final Report**

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On 13 May, the National Transport Commission has released its Heavy Vehicle Driver Fatigue Data Final Report which has been endorsed by the Transport and Infrastructure Senior Officials Committee.

'We know that fatigue is a major contributor to crashes but without more rigorous data we won't know what reforms will reduce the problem and make Australia's roads safer for everyone,' NTC CEO Paul Retter said.

'The regulation of driver fatigue is a complex policy issue and more detailed research needs to be done on its causes and impacts.'

He said the fatigue data framework would help to ensure data about the frequency and impact of driver fatigue was collected in a consistent and comparable way across the states and territories.

The NTC will conduct four new fatigue-related projects. These are:

- New research to evaluate the fatigue impact of the current laws.
- Develop of nationally consistent definitions and measurements of fatigue.
- Analysis of commercial data to evaluate the frequency and impact of fatigue regulations.
- A review road agencies' ability to link crash data to driver accreditation.

Mr Retter said the fatigue data framework would also obtain more data about the use of nose-to-tail shifts, where a heavy vehicle driver works two long weekend periods within a 24 hour period with a major rest break in between. This work would consider factors such as insufficient sleep, long work shifts, the impact of circadian rhythms and the frequency of nose-to-tail schedules.

Further details are available in the 'Heavy Vehicle Driver Fatigue Data Final Report on the NTC website, [www.ntc.gov.au/current-projects/heavy-vehicle-driver-fatigue-data](http://www.ntc.gov.au/current-projects/heavy-vehicle-driver-fatigue-data).

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## **NTC Announces New Proposals to Further Deter Heavy Vehicle Speeding**

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The National Transport Commission is seeking industry and community views on new proposals which aim to reduce heavy vehicle speeding.

NTC CEO, Paul Retter, said despite a range of regulatory and speed detection tools being introduced since the 1990's heavy vehicles were still over-represented in fatal and serious injury crashes.

'Speed is still a major cause of heavy vehicle crashes and while the majority of drivers do the right thing, we need to ensure there are effective deterrents for the few who are determined to break the law,' Mr Retter said.

'We also need to keep making sure off-road parties are held to account for any putting any undue pressure on drivers to speed.'

'For these reasons, a number of our stakeholders have asked the NTC to find out if there are further ways that the National Heavy Vehicle National Law can work to deter heavy vehicle drivers from speeding.'

The NTC is seeking feedback on two potential amendments to the Heavy Vehicle National Law. These are:

- An evidentiary provision that deems a speed limiter non-compliant if a vehicle is detected travelling at or above 115 kilometres per hour.
- A power to immediately ground heavy vehicles travelling 15 kilometres per hour or more over posted or default speed limits.

All heavy vehicles over 12 tonnes gross vehicle mass (GVM) and all buses over 5 tonnes GVM are currently required to be fitted with a speed limiter that is set to 100 kilometres per hour.

Under the first proposal, evidence of a heavy vehicle speeding at or above 115 kilometres per hour will be taken as proof that a speed limiter is non-compliant, and in breach of vehicle standard requirements. This proposal is similar to provisions already in place in NSW.

‘Currently, it is technically challenging for enforcement officers to demonstrate a speed limiter is defective, and this proposal would make it easier to prosecute those who break the law,’ Mr Retter said.

The second proposal would give the power for enforcement officers to temporarily stop heavy vehicles from driving if they are detected travelling at 15 kilometres per hour over the speed limit. This aims to ensure that both the driver and off-road parties are held appropriately responsible for speeding significantly above the limit.

Further details on the proposals are available in the ‘Enforcement Approaches for Speeding Heavy Vehicles Discussion Paper’ on the NTC website, [www.ntc.gov.au/current-projects/enforcement-approaches-for-speeding-heavy-vehicles](http://www.ntc.gov.au/current-projects/enforcement-approaches-for-speeding-heavy-vehicles).

Submissions are due before 24 June 2016 and can be made through the NTC’s website.

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## **NHVR Meets with NSW Local Councils to Discuss Improved Access**

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NHVR has met with regional NSW council and industry representatives to discuss streamlining access and permit arrangements. Meetings have taken place with Leeton, Goulburn-Mulwaree, Bathurst, Oberon and Upper Lachlan councils.

The NHVR’s objective is to develop a Memorandum of Understanding with the local government sector throughout NSW.

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## **TWUSUPER Super News May 2016**

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### **Why we need your employees' correct email address**

One of the best ways for us to keep members up-to-date with their super is through email – so it’s critical that employers provide the correct email address for all new members. Care is especially required when uploading files to a super clearing house.

Providing the correct email address for your employees means there is less risk of breaching privacy standards when members are contacted by the Fund on personal matters.

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### **SuperStream deadline approaches**

From 1 July 2016 every employer must be SuperStream compliant, meaning no more cheques, paper instructions, or email instructions when making super contributions. It also means potential penalties

from the ATO.

TWUSUPER has been helping businesses get SuperStream compliant for over two years now, and even with the deadline fast approaching we can still help your business get compliant. 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 one payment.

If you're not yet SuperStream compliant (or aren't sure):

- 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).

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## Economic and Industry Indicators

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)	Mar Qtr 2016	Per cent		1.3
Cash rate (RBA)	Current	Per cent	1.75	
Estimated Residential Population (ABS)	Current	Number	24,089	
Retail Turnover (ABS)	Mar 2016	\$m	24,931	3.6
Actual New Capital Expenditure (ABS)	Mar Qtr 2016	\$m	30,724	-15.4
Inventories held by private business (ABS)	Mar 2016	\$m	154,771	0.3
Dwelling unit approvals (ABS)	Mar 2016	Number	18,754	-7.9
Manufacturers Income (ABS)	Mar 2016	\$m	82,083	-4.0
Employed persons (ABS)	Apr 2016	Million	11,911	2.0
Unemployed persons (ABS)	Apr 2016	Percentage	5.7	-0.4
Wage Price Index (ABS)	Mar Qtr 2016	Per cent		
All employees				2.1
Transport, postal and warehousing				2.1
New motor vehicle sales (ABS)	Apr 2016	Number	98,460	3.5
Cab Chassis/Prime Mover	3 months ending	Number	5455	1.0

<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.

Sales (TIC)	Mar 2016			
Vans (TIC)	3 months ending Mar 2016	Number	1320	8.7
AIP Terminal Gate Price- Diesel-Sydney	As at 31 May 2016	Cents per litre	110.1	

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