



Australian Road Transport
Industrial Organisation

New South Wales Branch

PO Box 277

HURSTVILLE NSW 2220

Tel/Fax: 02 9579 2333

Mob: 0412 880861

Email: hughmc@artionsw.com.au

ABN: 93149961882

The Courier

Information and Advice for NSW Transport Operators

Newsletter Vol. 1 No. 9: November 2015

Contents

1. ARTIO NSW Participates in Industrial Relations Commission Hearings on the Transport Industry – General Carriers Contract Determination
2. Fair Work Amendment Bill 2014 Passes Federal Parliament
3. NSW Government Introduces Further Workers Compensation Reforms
4. Fair Work Ombudsman to Audit Western Sydney Businesses for Award Compliance
5. Unfair to Dismiss Manager for Aberrant Behaviour at Christmas Function where Employer Supplied Unlimited Free Alcohol: Fair Work Commission
6. Private Sector Wage Growth Rates Hit New Low
7. Double Demerit Points, Additional Demerit Point, to Apply to Mobile Phone Offences
8. Reminder: Further George St Closures from 2 December
9. Do you Want to Reduce your Insurance Claims? University of NSW Seeks Transport Operators for Research Project
10. Skin Cancer Action Week – Protect Yourself in the Sun and Encourage Others To Do Likewise
11. NHVR, TCA, Announce Commencement of Work on Electronic Work Diaries
12. Ministers Reach Agreement on New Chain of Responsibility Package
13. Ministers Take Steps to Reduce Unroadworthy Heavy Vehicles on Roads
14. NTC Releases Public Consultation Report and Guidelines on Fitness to Drive
15. NHVAS Auditor Requirements
16. Economic and Industry Indicators

ARTIO NSW Participates in NSW Industrial Relations Commission Hearings on the Transport Industry General Carriers Contract Determination

ARTIO NSW participated in further hearings before the NSW Industrial Relations Commission in relation to the Transport Industry General Carriers Contract Determination during the week commencing 16 November. These hearings were confined to Stage 1 (non –rates) matters and are subject to arbitration.

Witnesses who lodged witness statements on behalf of the TWU or employer representatives were cross examined. Employer organisation representatives met on 18 November in order to develop a position on differences between the TWU's application and a counter application developed by the NSW Business Chamber with the support of ARTIO NSW. This narrowed differences between employer organisations.

A further meeting involving ARTIO NSW, the NSW Business Chamber, Linfox and Toll, who together reached a common position on an employer version of the Determination was held with the TWU on 19 November. This led to the narrowing of differences with the TWU.

On 19 November, the Australian Industry Group requested and was granted an adjournment of hearings so it could consider the joint ARTIO NSW/NSW Business Chamber/Linfox/Toll position. The Australian Industry Group has yet to respond to this joint position.

A hearing on Stage 2 (rates matters), which are still subject to conciliation, will be held in Newcastle on 1 December.

Fair Work Amendment Bill 2014 Passes Federal Parliament

On 11 November, Federal Parliament passed the Fair Work Amendment Bill 2014 which makes amendments to the *Fair Work Act 2009* (the Act) to implement elements of *The Coalition's Policy to Improve the Fair Work Laws*. These amendments respond to some recommendations from the *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* (June 2012) review into the operation of the Act.

The main amendments are to:

- Provide that an employer must not refuse a request for extended unpaid parental leave unless the employer has given the employee a reasonable opportunity to discuss the request.
- Provide that, on termination of employment, untaken annual leave is paid out as provided by the applicable industrial instrument.
- Provide that an employee cannot take or accrue leave under the Fair Work Act during a period in which the employee is absent from work and in receipt of workers' compensation.
- Provide that for unilateral termination of individual flexibility arrangements with 13 weeks' notice.
- Provide as a minimum that individual flexibility arrangements may deal with when work is performed overtime rates, penalty rates, allowances and leave loading.
- Confirm that benefits other than an entitlement to a payment of money may be taken into account in determining whether an employee is better off overall under an individual flexibility arrangement and require individual flexibility arrangements to include a statement by the employee setting out why he or she believes that the arrangement meets his or her genuine needs and leaves him or her better off overall at the time of agreeing to the arrangement.
- Provide a defence to an alleged contravention of a flexibility term where the employer reasonably believed that the requirements of the term were complied with at the time of agreeing to a particular individual flexibility arrangement.
- Establish a new process for the efficient negotiation of single-enterprise greenfields agreements by:
 - Extending good faith bargaining to the negotiation of these agreements.
 - Providing an optional three month negotiation timeframe for the parties to reach agreement. An employer will be able to apply to the Fair Work Commission (FWC) for approval of its agreement where agreement cannot be reached with the relevant employee organisation(s) in that period. The existing approval tests under the Act will be retained with a new requirement to ensure that the agreement is consistent with prevailing industry standards.
- Provide that there will not be a transfer of business under Part 2-8 of the Act when an employee becomes employed with an associated entity of his or her former employer after seeking that employment on his or her own initiative before the termination of the employee's employment with the old employer.
- Amend the right of entry framework of the Act by:

- Repealing amendments made by the *Fair Work Amendment Act 2013* (the Amendment Act) that required an employer or occupier to facilitate transport and accommodation arrangements for permit holders exercising entry rights at work sites in remote locations.
 - Providing for new eligibility criteria that determine when a permit holder may enter premises for the purposes of holding discussions or conducting interviews with one or more employees or Textile, Clothing and Footwear award workers.
 - Repealing amendments made by the Amendment Act relating to the default location of interviews and discussions and reinstating pre-existing rules.
 - Expanding the FWC's capacity to deal with disputes about the frequency of visits to premises for discussion purposes.
- Provide that an application for a protected action ballot order cannot be made unless bargaining has commenced.

NSW Government Introduces Further Workers Compensation Reforms

(Adapted from article courtesy of OHS Alert)

New incentives have been introduced by the NSW Government to ensure medium to large employers with good safety and return to work records contribute no more than one third of the premium pool.

According to Finance Minister Dominic Perrottet, approximately 25 per cent of medium to large employers have 'below average' safety records, generate 80 per cent of workers' compensation scheme costs yet pay similar premiums to competitors with safer records.

According to the Chief Executive Officer of icare, Vivek Bhatia, a two year grace period will apply to help employers with higher than average claims number to improve their safety performance by capping annual premiums at 30 per cent above 'the relevant average during this period'.

According to Mr Perrottet, under the reforms business which keep their workers safe and help injured employees return to work will contribute one third of total premiums. Collectively, the reduction in premiums paid will total \$200 million per year.

Fair Work Ombudsman to Audit Western Sydney Businesses for Award Compliance

The Fair Work Ombudsman (FWO), Natalie James, has announced that random audits of businesses will take place in Merrylands, Guildford, Fairfield, Parramatta and Mount Druitt in western Sydney as part of a campaign to improve award compliance.

In a statement issued on 23 November the FWO said its inspectors will check that employers are paying 'the correct minimum hourly rates, penalty rates, allowances, loadings and providing appropriate meal breaks'. According to the FWO, compliance with record keeping and pay slips will also be monitored.

Employers will be targeted from a range of industries, including 'road freight transport'

Ms James said an aim of the campaign is to ensure are aware of their workplace responsibilities.

ARTIO NSW urges all members to take appropriate steps to ensure they are complying with relevant awards. Further information can be obtained from Hugh McMaster, telephone, 0412 880861, email, hughmc@artionsw.com.au.

Unfair to Dismiss Manager for Aberrant Behaviour at Christmas Function where Employer Supplied Unlimited Free Alcohol: Fair Work Commission

(Adapted from article courtesy of Workplace Express)

The Fair Work Commission (FWC) has questioned whether companies can insist on compliance with conduct standards at functions when they provide 'unlimited service of free alcohol'. The FWC drew this conclusion after finding that a team leader, Stephen Keenan who spent the night of his work Christmas party sexually harassing colleagues and swearing to superiors and colleagues was unfairly dismissed.

The FWC heard that Mr Keenan employed by a road asset management joint venture business (the employer) consumed 13 alcoholic drinks, including two drinks before arriving at the party and one drink after the party at a bar attached to the same venue.

The FWC heard the employer relied on eight separate alleged incidents in defence of its dismissal as well as his position of responsibility in the joint venture business. The incidents included three separate swearing incidents directed at a company director and two female colleagues and asking a female colleague for her phone number.

The FWC also heard that at the public bar he spoke crudely to female colleagues. He allegedly spoke crudely, kissed another on the mouth and told her he was going home to dream about her. He allegedly told another female colleague it was his 'mission' to find out the colour of her underwear.

The FWC heard that the employer decided to wait until the employee returned to work in January to dismiss him for two counts of sexual harassment being the intimidation and phone number request of one colleague and the after party kissing of another colleague.

While the FWC established the 'factual basis' of the eight incidents Vice-President Adam Hatcher said that for the purpose of establishing whether his conduct warranted dismissal, the FWC could only consider incidents occurring in the hours and in the room in which the party was booked.

VP Hatcher said that '(e)mloyees were informed in advance that in substance the (employer's) standards of conduct would apply to behaviour outside the temporal and physical boundaries of the function'.

'The period spent by employees in the upstairs bar and out in the street after 10.00pm was outside of the workplace and outside of working time, however broadly construed the concepts may be.'

He said it was 'abundantly clear' that kissing a colleague constituted sexual harassment under s.28 of the *Sex Discrimination Act* (the Act).

However, VP Hatcher said the incident did not occur 'in connection' with Mr Keenan's employment. Accordingly, the employer did not have a vicarious liability under s.106(1) and s.288 of the Act and, accordingly, did not have a lawful or valid reason for dismissal.

'Those who gathered there did so entirely of their own volition. It was a public place. There was nothing in the (employer's) Code of Conduct or relevant policies which suggested that they had any application to social activities of this nature....(Mr Keenan's) conduct in the upstairs bar was merely incidental to his employment.'

VP Hatcher described the phone number incident as a 'boorish attempt by a drunk to lay the foundation for a future relationship with a woman whom he hardly knew' but said this was not sexual harassment and was not a valid reason for dismissal.

VP Hatcher said the most serious allegation was directed towards the 'much younger and smaller' colleague of whom he swore.

He said that while this was not referred to in the letter of dismissal it did constitute a valid reason for dismissal.

However he said the 'substance' of the allegation had not been communicated to Mr Keenan. Accordingly, he had not been given the opportunity to respond.

VP Hatcher described this 'procedural failure' as 'surprising'.

He also took into account the team leader's 'good record of continuous service', the 'isolated and aberrant' nature of the conduct and the 'exacerbating' fact that this conduct was as a result of becoming intoxicated at a work function where he was 'never refused a drink'.

'It is contradictory and self-defeating for an employer to require compliance with the usual standards of behaviour at a function but at the same time to allow the unlimited service of free alcohol at the function,' VP Hatcher said.

Mr Keenan is seeking reinstatement which the employer argues is untenable due to the non-availability of a position and the 'personal workplace distress' to a colleague.

VP hatcher has paused proceedings to allow parties to provide more information before determining a remedy.

Keenan v. Leighton Boral Amey Joint Venture (2015) FWC 3156 (26 June 2015)

Private Sector Wage Growth Rates Hit New Low

Figures released by the Australian Bureau of Statistics on 18 November showed a continued downward trend in wages growth, especially in the private sector.

ABS data showed that private sector wages when measured on an hourly basis excluding bonuses grew by 2.1 per cent in the year ending 30 September, irrespective of whether wages growth was measured on a nominal (or original), trend or seasonally adjusted basis. This was the lowest rate of growth in private sector wages since this series began in 1997. By comparison, wages grew in the public sector by 2.7 per cent.

In the transport, postal and warehousing sector, wages grew by 1.7 per cent in original terms over the 12 months ending 30 September.

For further information on economic and social trends which provide an indication of trends affecting freight demand, please refer to the 'Economic and Industry Indicators' section at the conclusion of 'The Courier'.

Double Demerit Points, Additional Demerit Point to Apply to Mobile Phone Offences

The Deputy Premier and Minister for Police Tony Grant and the Minister, Ports and Freight for Roads Duncan Gay have announced tougher penalties for mobile phone offences.

The ministers announced that double demerit points will apply be extended to include to mobile phone offences. This will take effect from the Christmas/New Year double demerit points period (24 December 2015 to 3 January 2016 inclusive). The ministers also said an additional demerit point will be added to the existing standard penalty of three points 'from early next year'.

Therefore, a driver charged with a mobile phone offence which occurs during a double demerit points period commencing some time in 2016 faces the prospect of losing eight demerit points.

'Holding your mobile phone to call or text while driving is extremely dangerous and just plain reckless for you, your passengers and everyone on the road,' Mr Grant said.

Mr Grant said that '(w)hile driving at 60 kilometres an hour, if you glance at your phone for two seconds, you will travel around 33 metres blind'.

'Last year there were about 35,000 fines handed out for the illegal use of mobile phones – that is just too many,' Mr Gay said.

Mr Gay said the \$319 fine for a mobile phone offence will remain unchanged.

'I am not a fan of draconian fines but we need to get these stats down – and if it doesn't deter motorists, then I'll hit them in the hip pocket,' Mr Gay said.

Traffic and Highway Patrol Commander, Assistant Commissioner John Hartley said that '(i)llegal mobile phone use is a contributing factor in many crashes on our roads and we welcome any deterrent that would convince drivers to remain completely focussed on the road and avoid using their mobile devices, no matter what the circumstances.'

In the year ending 25 November, there were 318 fatalities on NSW roads, compared to 283 for the corresponding period in 2014.

Reminder: Further George St Closures from 2 December

The Minister, Ports and Freight for Roads Duncan Gay and CBD Coordinator General Marg Prendergast have reminded transport operators and others accessing the Sydney CBD that George Street between Market Street and Park Street will be closed late on Wednesday 2 December in order that light rail construction can start the next day.

'(w)e need general traffic to use the outer city routes so that there is capacity in the CBD for those that need to be there – taxis, delivery and service vehicles and tradies,' Ms Prendergast said.

All cross-roads across George Street will remain open. Any intersection work required will be restricted to nights or weekends with prior notification.

Further information, including maps showing access points for pick-ups and deliveries can be obtained from the My Sydney website, www.mysydney.nsw.gov.au/guides/commercial-drivers.

Do you Want to Reduce your Company's Insurance Claims? University of NSW Seeks Transport Operators for Research Project

Researchers at the University of NSW (UNSW) have developed a program for improving safety management specifically for the trucking industry. The program is based on the results of research on what characteristics distinguish companies with low from higher insurance claims. This intervention is ready for trial in real world conditions and UNSW needs companies to take part.

The trial will be a before and after comparison. The UNSW project team will visit your company to record what you do currently to manage safety and will then help you to develop a program to improve your safety management that suits your company. You will be asked to keep a record of the changes you make against the plan. Data collected before and after will be used to measure the effect of the program.

UNSW is looking for companies who operate fleets of approximately 10-50 trucks for hire and reward, or have parts of the business that are around that size.

If you are interested in finding out more about this study, please contact Lori Mooren, Senior Research Fellow on 0412 888 290 or email at lori.mooren@unsw.edu.au.

Skin Cancer Action Week – Protect Yourself in the Sun and Encourage Others To Do Likewise

With the onset of Summer, Cancer Council Australia takes this opportunity to remind all of us to be aware of the risks associated with skin cancer. Every year Cancer Council Australia holds its Skin Cancer Awareness Week to raise awareness of skin cancer. This year, Skin Cancer Awareness Week was held from 15-21 November.

Cancer Council Australia has implemented many successful skin cancer prevention programs, including 'Slip! Slop! Slap!', 'Protect yourself in five ways from skin cancer' and 'No tan is worth dying for'.

Cancer Council Australia has seen many positive changes in sun-related behaviour which has led to improved skin cancer survival rates in Australia.

ARTIO NSW encourages you, your employees, your workmates and your loved ones to take appropriate preventative measures to reduce the risk of excessive exposure to the harsh Australian sun and to be more aware of the signs of skin cancer and the need for early skin cancer detection.

Further information is available from the Cancer Council Australia website, www.cancer.org.au/preventing-cancer/sun-protection/campaigns-and-events.

NHVR, TCA Announce Commencement of Work on Electronic Work Diaries

The National Heavy Vehicle Regulator and Transport Certification Australia have both released statements indicating they have reached agreement on the development of Electronic Work Diaries (EWDs).

NHVR Executive Director, Productivity and Safety, Geoff Casey said that NHVR had contracted TCA to progress development and implementation of EWDs.

'The EWD specifications are now being finalised as a first step in ensuring EWD systems meet the regulatory requirements regarding work and rest hours,' Mr Casey said.

Mr Casey went on to say that NHVR and TCA 'will work together with industry and telematics service providers to develop a system that meets our requirements to enhance safety, as well as enhance productivity outcomes'.

TCA Chief Executive Officer, Chris Konidistiotis said 'the introduction of EWD will ensure transport operators do not need to purchase new, stand-alone systems or technologies, subject to decisions by telematics providers to offer EWD services'.

'As this is a major technological and regulatory reform, the implementation of EWD will involve coordinated activities not only between TCA and the NHVR, but with road and transport agencies, police and other stakeholders,' Mr Konidistiotis said.

Mr Konidistiotis said that 'TCA will continue to engage with both the transport and telematics industries during the implementation of the EWD'.

'As a regulatory telematics application, EWD services will be certified by TCA on behalf of the NHVR and Australian Governments,' Mr Konidistiotis said.

TCA said in its statement that it anticipates that EWD Service Provider certification will commence in 2017 closely followed by transport industry use.

Ministers Reach Agreement on New Chain of Responsibility Package

At their meeting on 6 November, Commonwealth, State and Territory transport and infrastructure ministers have reached agreement on a package of measures to amend chain of responsibility laws. Proposed changes agreed to include:

- Introducing a 'primary duty of care' on all supply chain parties.
- Introducing due diligence obligations for executive officers.
- Replacing the 'reasonable steps' defence with a 'reasonably practicable' test, thus mirroring responsibilities found in workplace health and safety law.
- Broadening enforcement powers so they apply further up the chain.
- Increased penalties for serious safety breaches.

Ministers have asked the National Transport Commission to develop enabling legislation for their consideration at their May 2016 meeting. Responsibility for passing any agreed legislation will rest with state and territory parliaments.

Ministers Agree on Steps to Reduce Unroadworthy Heavy Vehicles on Roads

(Adapted from article courtesy of Queensland Trucking Association)

Commonwealth, State and Territory transport and infrastructure ministers have also reached agreement on the development of a national approach aimed at reducing the frequency of crashes and breakdowns attributable to unroadworthy heavy vehicles. This follows the adoption by ministers of recommendations developed jointly by the National Transport Commission (NTC) and National Heavy Vehicle Regulator (NHVR).

Proposed changes cover national consistency, compliance, heavy vehicle inspections and improvements to National Heavy Vehicle Accreditation Scheme.

NTC Releases Public Consultation Report and Guidelines on Fitness to Drive

The National Transport Commission (NTC) has released the proposed revised *Assessing Fitness to Drive* guidelines and accompanying Consultation Report as part of the current review of the medical standards.

The NTC is seeking feedback from key stakeholders including the medical community, industry groups and associations, transport operators and their employees, driver licensing authorities, transport departments, unions, regulators and coroners.

The NTC will consider these submissions when drafting final recommendations and providing them to the Commonwealth, States and Territories' Transport and Infrastructure Council at the May 2016 meeting.

The papers can be found at the following link (scroll to bottom of page for Consultation Report, draft AFTD guidelines, and Submission Template):

<http://www.ntc.gov.au/current-projects/reviewing-assessing-fitness-to-drive>

Submissions are due by 8 January 2016.

NHVAS Auditor Requirements

The National Heavy Vehicle Regulator (NHVR) has moved to clarify the requirements around the National Heavy Vehicle Accreditation Scheme (NHVAS) auditor training and qualifications.

This follows the NHVR becoming aware of incorrect information being sent to auditors to promote paying for qualifications and courses that are not necessary to be registered as an NHVAS Approved Auditor.

NHVR Executive Director Productivity and Safety, Geoff Casey said the criteria to be an NHVAS Approved Auditor are set out in the *NHVAS Business Rules and Standards* (Section 14).

'These are the only requirements applicable to becoming an auditor and any material suggesting otherwise is incorrect.'

Changes to the *NHVAS Business Rules and Standards* were made earlier this year and standardised the way audits were conducted - strengthening the quality of auditors and audits.

The NHVR has now delivered NHVAS Auditor Technical Competency courses in Melbourne, Adelaide, Sydney and Brisbane to almost 100 people this year.

Mr Casey said the success and positive feedback from the NHVR courses should not be tarnished by organisations looking to 'cash in' on courses and qualifications incorrectly promoted as 'necessary' to become an NHVAS Approved Auditor.

The NHVR has produced a *NHVAS Auditor Registration Information sheet* which outlines the process to become registered with the NHVR as an NHVAS Approved Auditor. The *NHVAS Business Rules and Standards* and *NHVAS Auditor Registration Information sheet* can be viewed on the NHVR website at www.nhvr.gov.au/nhvas-business-rules.

NHVR urges anyone contacted by organisations offering training on behalf of the NHVR to seek clarification and contact us on 1300 MYNHVR (1300 696 487) or email info@nhvr.gov.au.

Economic and Industry Indicators

Indicator/Source ¹	As at	Unit of Measure	Quantity	% Variation
GDP latest quarter (ABS)	Jun Qtr 2015	\$m	402,310	2.2
CPI (ABS)	Sep Qtr 2015	Per cent		1.5
Cash rate (RBA)	Current	Per cent	2.00	
Estimated Residential Population (ABS)	Mar Qtr 2015	Number	23,714	1.4
Retail Turnover (ABS)	Sep 2015	\$m	24,479	3.7

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

Actual New Capital Expenditure (ABS)	Jun Qtr 2015	\$m	31,949	-17.8
Inventories held by private business (ABS)	Jun 2015	\$m	150,853	0.8
Dwelling unit approvals (ABS)	Sep 2015	Number	18,309	6.8
Manufacturers Income (ABS)	Jun 2015	\$m	82,371	-6.4
Employed persons (ABS)	Oct 2015	Number	11,815	2.3
Unemployed persons (ABS)	Oct 2015	Percentage	6.1	-0.2
Wage Price Index (ABS)	Sep Qtr 2015	Per cent		
All employees				2.3
Transport, postal and warehousing				2.2
New motor vehicle sales (ABS)	Oct 2015	Number	97,903	5.5
Cab Chassis/Prime Mover Sales (TIC)	9 months ending Sep 2015	Number	19215	1.6
Vans (TIC)	9 months ending Sep 2015	Number	4173	22.8
AIP Terminal Gate Price-Diesel-Sydney	As at 30 Nov	Cents per litre	109.6	

DISCLAIMER: This document is an information source only. Despite our best efforts, ARTIO NSW makes no statements, representations or warranties about the accuracy or completeness of the information and disclaims responsibility for all liability for all loss or damage you might incur as a result of the information being inaccurate or incomplete in any way, and for any reason. The information contained in this document is not intended to be nor should it be relied upon as a substitute for legal or other professional advice.
