



June 2016

NSW Industrial Relations Commission makes significant changes to the *General Carriers Contract Determination*

The New South Wales Industrial Relations Commission has varied the *General Carriers Contract Determination* to expand the Determination's coverage and impose new obligations on owner drivers and the principal contractors that engage them. The new obligations bear some similarity to those imposed under the now repealed *Federal Road Safety Remuneration Orders* and are likely to affect transport operators who engage owner drivers to provide transport services in New South Wales.

Background

The New South Wales Industrial Relations Commission has power under Chapter 6 of the *Industrial Relations Act 1996* (NSW) to make determinations with respect to certain 'contracts of carriage'.

In December 2013, the Transport Workers' Union (TWU) made an application to vary the *General Carriers Contract Determination*, which then applied only to certain local and Sydney metropolitan contracts.

Following conciliation conferences throughout 2014 and 2015, the proceedings were divided into two stages; Stage 1 dealing with 'non-rates' issues and Stage 2 dealing with rates of payment. This two stage approach is similar to the approach taken by the Road Safety Remuneration Tribunal.

In April 2016, the Commission completed Stage 1 and ordered that the Determination be varied to expand its coverage and impose new contractual obligations. The new Determination was published in the NSW Industrial Gazette on 24 June 2016 and will commence operation on 2 July 2016.

The Commission has indicated that it will hear submissions in relation to rates in September and October of this year.

Who is now caught by the Determination?

The Determination now applies to 'contracts of carriage' generally, as defined under Chapter 6 of the *Industrial Relations Act 1996* (NSW).

A 'contract of carriage' is an agreement for the transportation of goods by motor vehicle or bicycle in the course of a business of transporting those goods, but only where, if the carrier is a:

- sole trader – no person other than the carrier is employed in driving the vehicle in the course of that business;
- partnership – no person other than a partner is employed in driving the vehicle in the course of that business; or
- company – no person is employed in driving the vehicle in the course of that business other than:
 - i. a director of the company or family member of a director;
 - ii. a person who, together with members of their family, has a controlling interest in the company; or
 - iii. a member of the family of a person, who together with the members of his or her family, has a controlling interest in the company.

If a carrier satisfies this definition of 'contract of carriage', then the contract will be covered by the Determination unless the contract falls within an excluded category.

The excluded categories include contracts:

- covered by a Nominated Contract Determination (see schedule F of the Determination for a full list);
- performed using a Specialised Vehicle (see the definition in clause 1.1 of the Determination);



- for the carriage of packaged goods for multiple hirers using the same vehicle; and
- for the carriage of livestock.

By comparison, the Road Safety Remuneration Orders applied to individual owner drivers and corporations where each of the corporation's vehicles was **mainly** driven by an individual who was a director or majority shareholder of the corporation, or an immediate family member of such a person. The Determination is therefore narrower in its scope than the Road Safety Remuneration Orders.

What are the new obligations imposed by the Determination?

The Determination imposes a number of new obligations on owner drivers and principal contractors.

Some of the new obligations imposed on owner drivers include obligations to:

- ensure that drivers are medically fit to perform the work and submit to medical examinations if reasonably required by the principal contractor;
- ensure that drivers submit to drug and alcohol testing if required by the principal contractor's policies and programs;
- ensure that drivers maintain valid licences and permits;
- maintain certain types of insurance cover; and
- ensure only drivers approved by the principal contractor are used in provision of transport services.

Some of the new obligations imposed on principal contractors include obligations to:

- provide a copy of the Determination to relevant owner drivers and display the Determination in the workplace;
- provide a copy of the applicable rates schedule to relevant owner drivers prior to the provision of transport services, and whenever there is a change to the rates;
- ensure rostering and allocation of work is transparent, reasonable and lawful;
- keep records in relation to rates schedules, start and finish times, hours worked per day, kilometres travelled per day, start and finish places, remuneration paid, written contracts, schedules and rosters, safe driving plans, and breaches or potential breaches of fatigue management laws;
- consult with owner drivers about any decision to change a fleet mix that is likely to have significant effects on the owner drivers;
- comply with administrative requirements (such as returning delivery dockets and work sheets to principal contractors, maintaining up to date log books and ensuring that the driver maintains a system verifying vehicle maintenance); and

- comply with loading and delivery requirements.

As a result of the amendments, undisputed tax invoices rendered by owner drivers covered by the Determination must be paid within 30 days of receipt.

Who is required to pay minimum rates under the Determination?

The obligation to pay minimum rates under the Determination has not yet been expanded. Even if a principal contractor's arrangements with an owner driver satisfy the definition of 'contract of carriage', the principal contractor will still only have to pay the minimum rates of remuneration set out in the Determination where:

- the contract is for the transportation of goods from one place to another place:
 - i. both of which are within the County of Cumberland (which covers most of metropolitan Sydney); or
 - ii. where the second place is no more than 50 kilometres from the first place; and
- the goods do not fall within an excluded category of goods (such as goods requiring refrigeration in a refrigerated vehicle).

However, the TWU has applied to extend the coverage of the minimum rates so that they will apply to any contract that meets the definition of 'contract of carriage' as set out above. The Commission will consider this application later this year.

What must you do now?

Parties caught by the Determination must:

- establish which of their contracts with transport providers fall within the scope of the Determination;
- review any contracts to ensure they comply with the Determination;
- become familiar with their new obligations under the Determination and ensure their work systems, policies and procedures are consistent with the Determination; and
- in the case of principal contractors, supply copies of the Determination to relevant owner drivers and display the Determination at workplaces.

If you have any questions in relation to your obligations, or would like assistance in complying with the Determination, please contact Annie Smeaton on +61 7 3231 2946 or Gillian Bristow on +61 7 3231 2925.