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### Variations to the NSW Transport Industry – General Carriers Contract Determination

#### SUMMARY

The Industrial Relations Commission of NSW has made significant variations to the *Transport Industry – General Carriers Contract Determination*:

- The instrument has been largely rewritten;
- The coverage of the instrument has been expanded so that it covers all contracts of carriage connected to NSW, subject to certain exemptions for work covered by other contract determinations or performed using certain specialised vehicles; and
- There are significant changes to the obligations that the instrument imposes upon contract carriers (i.e. owner drivers) and upon principal contractors that engage them.

The changes commence operation on 2 July 2016.

Separate proceedings are being conducted by the Commission in order to consider potential changes to the rates of remuneration payable under the instrument.

Ai Group is conducting free workshops for members over the next few weeks in order to explain the changes.

#### Variation to the Transport Industry – General Carriers Contract Determination

The NSW Industrial Relations Commission (Commission) has issued an order that will result in significant variations to the *Transport Industry – General Carriers Contract Determination* (Determination).

The changes are a result of long running proceedings initiated by a Transport Workers Union (TWU) application seeking to replace the current version of the Determination with a new instrument applying throughout NSW.

Ai Group devoted significant resources to opposing the TWU's application. Although a number of problematic variations proposed by the TWU have not been adopted by the Commission, many of the changes that have been made will have an impact on principal contractors covered by the Determination.

The scope of the Determination's coverage has also been expanded so that some principal contractors will now be covered by the Determination for the first time.

The Determination has not yet been published by the Commission but a copy of what we understand will be the final version of the Determination is available on [Ai Group's website](#).

#### What is the nature of the variations to the Determination?

The Determination has been largely re-written.

As a result of the changes there will be a number of new or different obligations imposed on both contract carriers (i.e. owner drivers) performing work covered by the Determination and the principal contractors that engage them.

## Who will the Determination apply to?

The coverage of the Determination will be extended so that it applies throughout NSW, subject to specified exemptions.

The Determination will not apply to contracts of carriage covered by a contract determination listed in Schedule F of the Determination. This means that it will not alter the application of contract determinations such as the *Transport Industry – Courier & Taxi Truck Contract Determination*, the *Transport Industry - Quarried Material Contract Determination*, the *Transport Industry – Car Carriers Contract Determination*, or the *Transport Industry Waste Collection and Recycling Contract Determination*, amongst others.

Part 4 of the Determination, which contains the obligations related to minimum rates of pay, will only have limited application. Generally, these obligations will only apply in relation to the types of contracts of carriage covered by the current version of the contract determination.

## When do the obligations related to the minimum rates of remuneration contained in the Determination apply?

Clause 19 of the Determination specifies the circumstances in which the minimum rates contained in the Determination will apply. Subject to specified exemptions, they will apply to:

- (a) contracts of carriage for the transportation of goods from one place to another place, both of which are within the County of Cumberland (which encompasses most of metropolitan Sydney); and
- (b) contracts of Carriage for the transportation of goods from one place to another place, where the second place is no more than 50 kilometres from the first place.

The rates will not apply to:

- (a) The transportation of goods requiring refrigeration transported in refrigerated vehicles;
- (b) Transportation of cash transported in armoured vehicles;
- (c) Removal of furniture and effects from a place of residence or storage; and
- (d) Transport of goods in the private pathology industry (where the principal contractor is principally engaged in the private pathology industry and the contacts of carriage are by rigid vehicles of less than 2 tonnes).

## What are the major new obligations for Principal Contractors?

The Determination will impose new or altered obligations on principal carriers in relation to matters including:

- Promotion of the Determination, including obligations to provide a copy of the Determination to relevant contract carriers and to display it in the workplace;
- Consulting contract carriers in relation to any change to the Principal Contractor's fleet mix that is likely to have a significant effect on contract carriers;
- The allocation and rostering of work, including an obligation to allocate work to contract carriers "transparently, reasonably and lawfully";
- Keeping records in relation to a range of matters identified in clause 25.1 of the Determination; and
- Recognition of union delegates.

## What are the major new obligations for Contract Carriers?

The Determination will impose obligations on contract carriers in relation to matters including:

- A requirement that drivers be medically fit to perform the relevant work and comply with associated requirements to establish this, potentially including attending medical assessments confirming such fitness;
- Compliance with testing mandated under a principal contractor's drug and alcohol policy;
- Maintenance of relevant valid licenses and permits;
- The maintenance of certain specified insurance cover at the contact carrier's expense;
- Compliance with certain administrative requirements, including: the return of certain documentation (such as delivery dockets or work sheets) as required by the principal contractor and the maintenance of log books, a system verifying vehicle maintenance and records of work that has been undertaken; and
- Ensuring only drivers approved by a principal contractor are used in the provision of the transport service.

## What are the other key changes?

There will be a number of changes to the manner in which the following matters are regulated:

- The use of communication and related technology;
- Painting of a contract carrier's vehicle;
- Loading and unloading arrangements;
- Taking of 'fatigue breaks';
- The supply of uniforms;
- The taking of meal breaks and annual leave; and
- The manner in which the time that is worked, and the distance travelled by a contract carrier, is measured for the purpose of calculating the minimum remuneration payable under the Determination.

## Have the rates payable under the Determination changed?

The rates specified in the Determination have not been varied by the Commission.

Separate proceedings will consider a potential change to the quantum of rates payable under the Determination and the potential expansion of the requirement to pay the rates to all contracts of carriage covered by the Determination.

The Ai Group has consistently opposed the expansion of this obligation. We have also argued that the rates currently payable under the Determination are unjustifiably inflated and should be reduced.

The setting of standard minimum rates to be applied to all work performed in NSW would likely give rise to many of the negative outcomes that were caused by the implementation of the highly controversial Road Safety Remuneration Order made by the recently disbanded Road Safety Remuneration Tribunal.

## What is the operative date for the changes to the Contract Determination?

The changes to the Determination are operative from **2 July 2016**.

## Do you require further advice?

Members wanting to discuss the new Determination, or the related proceedings, can contact Brent Ferguson at Ai Group on telephone (02) 9466 5530 or email [brent.ferguson@aigroup.com.au](mailto:brent.ferguson@aigroup.com.au).

Members can also attend free Ai Group workshops covering the changes to the Determination. An invitation can be accessed on [Ai Group's website](#).

Alternatively, Ai Group can arrange for one of its team of experienced workplace relations advisers and lawyers to provide Members with detailed assistance and advice relating to the implementation of any changes required under the Determination.



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