



ARTIO

Australian Road Transport
Industrial Organisation

ABN: 63734697902

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Safe Rates Secretariat
Workplace Relations Policy Group
LOC C148CW3
DEEWR
GPO Box 9880
Canberra ACT 2601

By email: srsecretariat@deewr.gov.au

RE: 'Safe Rates, Safe Roads' Directions Paper

Please find attached the submission made by the Australian Road Transport Organisation (ARTIO) in response to the 'Safe Rates' Safe Roads' Directions Paper released by Parliamentary Secretary, Senator Jacinta Collins in late November 2010.

Should you require any further information or clarification of issues raised herein, please contact ARTIO's National Industrial Advisor, Paul Ryan on 0415331031.

Yours faithfully

Philip Lovel AM
Secretary/Treasurer

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Australian Road Transport Industrial Organisation (ARTIO) - Submission in Response to the ‘Safe Rates, Safe Roads’ Directions Paper

Background

1. The Australian Road Transport Industrial Organisation (ARTIO) is an Industrial Organisation of Employers registered under the Fair Work (Registered Organisations) Act 2009. It represents employers and prime contractors in the transport and logistics industry, particularly those engaged in road transport. As at 31 December 2010, it had around 440 members. These include the large multi-national transport companies such as Linfox down to the small family owned businesses that perform a large percentage of Australia’s freight task.
2. ARTIO operates as a federation with Branches in all States except South Australia. ARTIO and its Branches operate independently and in accordance with the particular Constitution applying in that Branch.
3. ARTIO Council, which has a representative from each of its State Branches, meets on a bi-monthly basis to consider and discuss Industrial Relations issues impacting on the organisation (industry) and its members. Much of its day-to-day activities are carried out by the Branches, especially when dealing with operational issues and provision of advice to members on issues surrounding industrial obligations and other regulatory matters.
4. ARTIO was directly involved in the process of Award Modernisation established by the then Deputy Prime Minister in February 2008. ARTIO made extensive submissions on the major awards in the road transport industry, specifically the
 - Road Transport & Distribution Award 2010 and
 - Road Transport (Long Distance Operations) Award 2010
5. ARTIO also made submissions to the National Transport Commission (NTC) Enquiry into ‘Safe Payments in the Heavy Vehicle Industry’. Following that report and subsequent brief

policy discussion, a joint media release was issued advising that the Government would be looking to implement some of the recommendations made in that NTC Report.

6. The Deputy Prime Minister established a Safe Rates Advisory Group in December 2009 to provide advice to the Department of Employment Education and Workplace Relations (DEEWR). The product of that advice and discussions is the 'Safe Rates, Safe Roads' Directions Paper. It has been prepared to obtain further industry feedback on 3 different models presented for consideration by industry to deal with the generally accepted view that there is some causal link between payment methodologies and road safety outcomes in the heavy vehicle industry.
7. ARTIO does not necessarily agree with all the findings made in earlier papers, nor does it accept all the conclusions reached in the Directions Paper, nevertheless ARTIO does concede that it is time to move ahead in this debate and work towards the development of a safer and, one would believe a more productive and efficient road transport industry.

The Directions Paper

8. ARTIO submits that the 5 principles agreed to and used by the Safe Rates Advisory Group must be maintained in any policy consideration and draft legislation that may follow. More specifically, any of the models must:
 - a. provide national consistency,
 - b. be able to cover all transport contracts and therefore consider employees and owner drivers, as they can compete for, and perform, the same tasks,
 - c. review pay rates and related conditions with safety as paramount,
 - d. include the supply chains, which apply economic pressure, but also have the resources to adjust the way the supply chain operates to deal with safety issues
 - e. be the single decision-maker on pay/payment methodologies and safety in the road transport industry
9. The Directions Paper suggests 3 options around the development of a Tribunal to respond to the issues arising from the causal link mentioned above. The options are:

- A. A new specialist tribunal with the power to make orders regarding safe rates and related terms in the road transport industry
 - i. Under this model a new Specialist Tribunal for road transport would be established under transport legislation. This Tribunal would be an independent statutory body
- B. A safe rates panel within Fair Work Australia with power to make orders regarding safe rates and related terms in the road transport industry (Safe Rates Panel)
 - ii. Owner drivers would be dealt with under a specialist tribunal established under the Independent contractors Act 2006. This body would operate alongside the Safe Rates Panel of Fair Work Australia
 - iii. This model would facilitate concurrent treatment of owner driver and employee matters through a structure consistent with the current legislative approach to employees and independent contractors
- C. Extending the Fair Work Act 2009 to owner drivers, with Fair Work Australia empowered to make orders regarding safe rates and related terms in the road transport industry (Outworker Model)

ARTIO Position

- 10. ARTIO supports the adoption of Option 2 – the Safe Rates panel within Fair Work Australia which is contained at ‘B’ immediately above – and ARTIO agrees with the structure proposed in paragraph 63 of the Directions Paper.
- 11. The operation of any such panel would be consistent with the Fair Work Tribunal’s powers and any necessary additional powers to support the suggestions contained herein.
- 12. There would also need to be some protection of the confidentiality of proceedings, unless the Tribunal considered a matter to be of such ‘public interest’ that it should be clearly held in public with transcript available.
- 13. The specific powers of the tribunal would include a power to review upon application by a party to a ‘Transport Contract’ operating across the supply chain and impacting on the safety of transport operators.
- 14. There is no need for a definition of "Owner Driver" because the power the Tribunal would have to review transport contracts would apply to all such contracts and be specifically directed

to determine whether the impugned contract operates safely or has the potential to create unsafe practices with the initial focus being on linehaul/long distance activities.

15. The Tribunal should be given broad powers which allow it to "vary" contracts in such a way that makes them "safe" and such matters could only be determined by a panel involving industry representatives. Some examples of variations which the tribunal could make include:
 - a. an order that demurrage be paid,
 - b. a higher rate be paid,
 - c. that certain practices be altered or ceased,
 - d. that a client change their supply chain practices to ensure the transport task can be more safely carried out, or
 - e. that a client who has had the benefit of work being done by the transport company make good any outstanding payments due within an agreed or specified time frame
 - i. there needs to be a recognition that transport companies have been 'hung out to dry' by clients who withhold payments for 90, or even 120 days, to fund their own cashflow.

16. The Tribunal would be able to:
 - a. exercise compulsory arbitration powers to resolve disputes,
 - b. make industry determinations or
 - c. hold inquiries into work practices in the industry with initial emphasis on "safety in the linehaul/long distance sector" but with an understanding over time, that all elements and sectors of the industry would be subject to review to ensure safety is paramount.
 - d. develop codes of practices or recommend the adoption of existing voluntary codes into mandatory ones.

17. Parties to a dispute should have access to compulsory arbitration with binding orders. Any participant in the supply chain should have access to the tribunal and all decisions must be open to review, with leave, in accordance with normal principles of appeals.
18. The Tribunal should be concerned with ‘transport safety’ and the focus should be on that and not the ‘safe rates brand’, as it creates confusion and can be misleading. The outcome must be about safety NOT money, although in many instances, safety may cost more but this cost will need to be borne by the client.
19. The Tribunal should NOT have any power to review or alter any aspect of the relationship between Employer and Employee, other than via a review of a ‘transport contract’ that cannot be performed safely and any matters that might flow from those conclusions.
20. Within the current heavy vehicle legislative framework, the Tribunal should have powers to ensure that there is national consistency around transport safety issues, such as:
 - a. driving plans,
 - b. driving hours,
 - c. fatigue management and related matters
21. The Tribunal must be able to investigate claims where one party to a transport contract is being held to ransom by the other party refusing to make timely payments.
22. The Tribunal must be empowered to consider the likely impact of its decisions on the viability of transport businesses within the supply chain. In particular, there is a fine balance between different modes of transport and any decision could potentially impact on modal shift from road to rail and or sea.
23. Equally, there are concerns that large operators, with their economies of scale, could expand rapidly at the expense of small fleet operators and/or owner drivers. It is therefore important that consideration be given to this diversity across the industry in ensuring safety outcomes.

Conclusion

24. In seeking responses from the freight and logistics industry, the Directions Paper requested that submissions address the questions raised in paragraph 56 and make comment on any other salient issues.
25. This submission addresses those questions in a more general sense, rather than a line by line approach. This fits with ARTIO's view that this exercise must not be conducted in a 'piece-meal' fashion but rather any solution must be able to be implemented on an industry-wide basis.
26. Further, any solution must not simply add compliance cost to the industry, which already struggles under inconsistent, and at times, poorly applied government regulation at all levels.
27. It is important that any legislation must show an 'intention to cover the field' in this area, so as to ensure national consistency cannot be compromised at a later time.
28. As a final point, ARTIO submits that the registered industry associations be invited to participate in the drafting of any legislation that may follow Government consideration of the Directions Paper and submissions filed in the development of further policy initiatives.

ARTIO

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