



Australian Road Transport
Industrial Organisation

ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

Road Transport Industry Position Statement: Closing the Loopholes Road Transport Reform

Submission on behalf of the
Australian Road Transport Industrial Organization
28th September 2023

Submitted by:
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Respect, Respond and Represent

TABLE OF CONTENTS

1.0 Introduction

2.0 Overview

3.0 Executive Summary

4.0 Establishing a Road Transport Advisory Panel

5.0 Coverage

6.0 Establishing and Maintaining Minimum Standards

7.0 Main Amendments

Schedule 1 – Part 16 – *provisions related to regulated workers.*

1. Minimum Standards

2. *Division 2—Road transport industry objective*

3. *Operation of Road Transport Orders - 536JF When a minimum standards order is in operation*

4. *Regulations relating to the road transport industry contractual chain*

8.0 Summary



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AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

1.0 Introduction

The Australian Road Transport Industrial Organisation (ARTIO) was established in 1984 as a national industrial body to represent the industry and its members in matters before the Australian Conciliation and Arbitration Commission (now the Fair Work Commission (FWC)). It became a registered organisation and legal entity on 22 March 1984.

ARTIO and each of its 6 x branches have their own sets of rules, with the supreme governing body being the National Council which consists of national office bearers and representatives from each branch. Elections for those positions are conducted by the Australian Electoral Commission every four years.

ARTIO is the only registered organisation concerned solely with the representation of employers/prime contractors in the road transport industry. Since establishment, ARTIO, in conjunction with its branches, has represented thousands of members in major industrial cases, industrial disputes and unfair dismissals both at federal and state levels.

With over 400 member companies ranging from the biggest to smallest employer companies in the freight industry nationally, ARTIO is well placed to provide a balanced and experienced perspective on industrial matters affecting the industry.

2.0 Overview

Over the past four years ARTIO has been working with the Transport Workers Union in establishing the guidelines and framework for the introduction of a specific and specialised representative body within the Fair Work Commission to oversee the structured accountability of the road freight industry in matters that would otherwise have no specific jurisdiction or process to deliver a fair and equitable workplace.

The work done by Senate Standing Committees on Rural and Regional Affairs and Transport in its August 2021 report **“Without Trucks Australia Stops: the importance of a viable, safe, sustainable and efficient road transport industry”** by its reference committee established the specific need and genuine hardship that many businesses and individuals were experiencing in their workplace on issues that were not being resolved through any other industrial process.

Over the past few years ARTIO has been able to work closely with the TWU in establishing a balanced perspective and a framework of application and how the aims of these improvements can be put into place.



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AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

3.0 Executive Summary

ARTIO is referencing the broader principles of the Bill and the overall benefits and positive outcomes that will be generated in this submission. It is important to note that there is provision within the legislation for the Minister to be able to further review any decision should that decision not be easily enforceable. This is a strong safeguard that will enable fairness for all stakeholders and the best possible outcomes.

Sustainable and viable road transport industry supply chains and contract networks are vital to the economic future of Australia as well as the safety of all road users. The road transport industry is a price taking industry that operates on small margins and tight timelines. Decades of domestic and international evidence has established that where unfair commercial influence and pressure is applied to transport operations, business viability is compromised with dangerous consequences for transport workers and road users. ARTIO is in support of the notice of intention for rule making that will improve the likelihood of enforceable determinations.

Transport operators are uniquely reliant on entities with economic and market power and influence at the top of supply chains and/or in charge of contractual networks. The viability and sustainability of transport operations are dictated by the economic arrangements imposed by these entities and this, in turn, determines the standards applying to transport operators and workers.

To achieve and maintain a safe, sustainable, viable and fair road transport industry, it is necessary to ensure protection of work arrangements beyond the traditional employee-employer relationship. To accomplish and safeguard a modern transport economy it is essential for protections to be afforded transport workers – regardless of their legal label. Establishing and maintaining enforceable standards and dispute resolution mechanisms will have a proactive effect throughout road transport industry supply chains including, critically, on those with economic influence and power over transport operations. The necessity for such change has become more acute given the relatively sudden emergence of “gig” type arrangements that are exacerbating the dangerous downward spiral of standards and business viability evidenced through the “Without Trucks Australia Stops” report.

These issues and consequences cannot be addressed and improved through current structures and processes. It is the position of ARTIO that greater emphasis on Minimum Standards with the appropriate mechanisms put in place is critical to reform and improve safety, fairness and sustainability for transport operators and workers in Australia.

ARTIO therefore confirms the following proposal for consideration in relation to the Work legislation Amendment (Closing the Loopholes) Bill 2023 in confirming the establishment of a Road Transport Division addressing Minimum Standards within the Fair Work Commission.



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Industrial Organisation

ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

4.0 Establishing a Road Transport Advisory Panel

Under the proposed amendments to law relating to workplace relations, work health and safety, workers compensation and rehabilitation, certain independent contractors, unfair contracts, the road transport industry the Australian Road Transport Industrial Organization (ARTIO), has clearly defined the need for the establishment of transport reforms that include a Road Transport Advisory Group that will facilitate the actions of the proposed legislation in previous submissions.

The amendments proposed in the four schedules need to be balanced and include all perspectives of parties that will be involved affected by this legislation

5.0 Coverage

The provisions within the draft Bill note that there will be powers to facilitate bargaining in the road transport industry, including between employees and employers, carriers and principal contractors and (where relevant) between an entity engaging both employees and carriers and those Transport Workers. It is understood that the transport agreements that will be included are:

- **Enterprise Agreements** – agreements on foot at the date of operation of this Part that include coverage of the road transport industry;
- **Road Transport Agreements** – will be new agreements between employees and employers; carriers and principal contractors; and agreements between an entity that engages both employees and carriers and those Transport Workers; and
- **Supply Chain Agreements** – agreements between a relevant Registered Organisation and supply chain participants applying to supply chains/contract networks that set minimum enforceable standards.

The legislation will cover agreements of all supply chain participants, including consignors and consignees, clients (such as retailers and manufacturers), all transport operators, both employee and non-employee transport drivers (including those in the on-demand delivery or rideshare economy) and anyone responsible for the facilitation of road transport.



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Respect, Respond and Represent

6.0 Establishing and Maintaining Minimum Standards

Standard Setting Instruments

ARTIO believes that these amendments will have carriage over the following standard setting instruments:

- **Modern Awards** – the five current Modern Awards that apply to the road transport industry. It will be tasked with reviewing these Modern Awards to ensure the objectives of the Division are met and these will become Road Transport Awards.
- **Road Transport Awards** – following the above review the Division will have the power to vary these Awards on application or through the resolution of a dispute. It will also have the power to make new Awards through application or dispute resolution.
- **Road Transport Worker Determinations** – the power to make, vary and revoke Road Transport Determinations containing minimum enforceable standards applying to the relationship between principal contractors and non-employee transport workers (“carriers”) including owner-drivers, on-demand and rideshare workers.
- **Road Transport Supply Chain Determinations** – the power to make Road Transport Supply Chain Determination with application throughout a supply chain or contract network, including standards that will apply to transport operators and transport drivers (employees and carriers) in a supply chain or contract network.

Through the establishment of a Road Transport Advisory Group (RTAG) there will be an ability to ensure there will be powers to facilitate bargaining in the road transport industry, including between employees and employers, carriers and principal contractors and (where relevant) between an entity engaging both employees and carriers that is delivered through a process that allows guidance before enforcement and the confidence to all parties and industry that these reforms are fair and equitable.

ARTIO is in agreement with the framework of the establishment of the Road Transport Advisory Group.



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ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

7.0 Main Amendments

ARTIO understands the structure of the Main Amendments as set out in Schedules 1, 2, 3 and 4 of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, however, needs to ensure that there is an understanding that some fundamental changes need to occur to meet the objectives of the reforms and maintain the critical integrity of what this legislation will deliver.

ARTIO is in support of the Bill based upon the following recommendations of the provisions to the proposed amendments listed below and should be taken into consideration during the review process by the Committee.

ARTIO is in support of the amendments that would:

- provide a framework for the FWC to exercise functions and powers that relate to the road transport industry;
- insert a new jurisdiction enabling the FWC to set minimum standards orders and minimum standards guidelines in relation to employee-like workers performing digital platform work and regulated road transport industry contractors;
- enable digital labour platform operators and road transport businesses to make consent-based collective agreements with registered employee organisations;
- empower the FWC to deal with disputes over an employee-like worker's unfair deactivation from a digital labour platform, or the unfair termination of a road transport contractor's services contract by a road transport business; and
- enable independent contractors earning below a specified high-income threshold to dispute unfair contract terms in the FWC.

Schedule 1 – Part 16 – *provisions related to regulated workers.*

1. Minimum Standards

Minimum Standards should be clearly defined to describe the base level of operating cost for all participants. Reflected in the Minimum Standards Guidelines and the respective Minimum Standards Orders, Minimum Standards cannot be excluded from being applied to unfair workplace systems and processes that create an unfair and uncontestable practice that puts the working entity at risk of their ongoing health and safety.

As noted in, *536KL Terms that may be included in a minimum standards order*, cost recovery is a key element in ensuring that there is a safe and viable workplace. Where there are gaps currently identified in the workplace the legislation must ensure that the responsibility of all entities are considered including those that are outside of the direct engagement relationship.

That is, all participants in the supply chain must accept that they have a responsibility for the Minimum Standards of cost to the participants that are engaged.



Australian Road Transport
Industrial Organisation

ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

Minimum Standards must cover independent contractors and the supply chain networks within which they operate. It is important to note that it is not the intent of Minimum Standards to represent rates but rather the relative costs that a party must incur to provide the transport service that are required.

This will include all parties in the supply chain transaction and will not be defined as just employer and employee.

Typical parties who must be covered are as follows:

Carrier—means a person other than an employee and including a body corporate who supplies road transport services under a contract or contracts (whether written or oral or express or implied) for the carriage of goods or passengers by road by means of a motor vehicle or bicycle (whether motorised or otherwise)

Principal Contractor—means the person for whom a carrier under a contract of carriage agrees to transport goods to which a contract of carriage relates.

Road Transport Industry—means the industry or industries involving:

- (a) the transport of goods, wares, merchandise, material or anything whatsoever whether in its raw state or natural state, wholly or partly manufactured state or of a solid or liquid or gaseous nature or otherwise, and/or livestock.
- (b) the transport and delivery by road of any goods of value at any stage of the supply chain transactions.
- (c) products that are covered in over 40 separate freight industry sectors.
- (d) the cartage of living goods on public roads.
- (e) the transportation of passengers by motor vehicles.

Supply Chain Participant—means a person if the person:

- (a) is the consignor or consignee of a thing in respect of which a transport driver is providing road transport services.
- (b) is a party to a contract for the carriage of goods that concerns the transport of a thing in respect of which a transport driver is providing road transport services and is conducting a business that includes or relates to the transportation of things by road.
- (c) is responsible for, involved in or otherwise participates in the facilitation of the performance of work by a transport driver and is conducting a business that includes or relates to the transportation of things by road;
- (d) operates premises in the course of conducting a business used by transport drivers to load or unload vehicles and in relation to which at least 5 vehicles are loaded or unloaded on a working day.



Australian Road Transport
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ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

Note: a Supply Chain Participant is intended to capture the providers and operators of online or electronic platforms that allocate, organise or facilitate work performed by transport drivers and that are conducting a business that includes or relates to the

transportation of things by road. It is also intended to capture entities that have influence over the viability of road transport supply chains like shippers and stevedores.

transport driver—means a carrier or employee performing work in the road transport industry who drives/operates a vehicle to transport things by road.

Transport Operator—means a person who employs or engages a transport driver.

2. Division 2—Road transport industry objective

The current amendment does not clearly define the real objective in s 40(a) and the scope of this definition needs to include the following:

- (a) minimum standards for regulated road transport workers and employees in the road transport industry are complied with and enforceable and not undermined by road transport contractual chains; and
- (b) all participant in road transport industry contractual chains take responsibility for implementing and maintaining minimum standards for regulated road transport workers and employees.

Additionally, it should be made clear that there is a responsibility to provide and apply fair, reasonable and enforceable standards throughout transport industry supply chains to ensure that carriers and small operators in those are supply chains are fairly treated and remunerated in a manner that is fair and which enables them to be commercially viable and achieve cost recovery.

This will also include contracts that must balance the commercial operation of employees, carriers and transport operators to ensure that no party has a commercial or operational advantage in the performance of work as a result of any decision made by a Minimum Service Order.

3. Operation of Road Transport Orders - 536JF When a minimum standards order is in operation

The implementation of a Minimum Services Order must be based upon the evidence, qualification and review process that has been clearly defined. However, that application of the MSO cannot be extended to 24 months.



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ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

The MSO would have been clearly defined and extended based upon expert perspective and evidence and would therefore be qualified to be introduced. By extending the guideline process over 24 months would enable the gaps and issues within that supply chain for too long a period.

ARTIO recommends that this period of operation must be no longer than 12 months before review.

4. Regulations relating to the road transport industry contractual chain

The powers and regulations to be made about the road transport industry contractual chain must be inclusive of all contractual chain participants.

The FWC must be empowered to make orders in relation to road transport contractual chains and all participants within those chains. This reflects the nature of the road transport industry that may see a range of parties throughout a contractual chain that affect the working conditions of road transport workers and operating conditions of road transport and ancillary businesses.

40H Meaning of road transport industry contractual chain participant clearly defines all parties affected whereby there should be no Income Threshold or income test applied.

That is, a road transport industry contractual chain participant is a person connected with the road transport industry who is:

- a national system employer (as defined in section 14);
- a national system employee (as defined in section 14);
- a constitutional corporation (as defined in section 12);
- a regulated road transport contractor (see new section 15Q);
- a road transport business (see new section 15R); or
- a person who satisfies the requirements prescribed by the regulations.

ARTIO contends that all relevant persons in the road transport industry contractual chain are able to be brought within scope, should this be required for the purposes of application of Minimum Standards.



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ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

8.0 Summary

The Australian Road Transport Industrial Organisation agrees with the establishment of a Road Transport Advisory Group within the Fair Work Legislation Amendment Bill and that there needs to be a floor on standards that cannot be overlooked, discounted, contended, or misinterpreted.

It is the establishment of this mechanism that produces enforceable Minimum Standards upon which businesses can build upon that will deliver a safer, more viable and sustainable road transport industry.

ARTIO has recognised, referenced and responded to the findings and recommendations from the Senate Standing Committees on Rural and Regional Affairs and Transport in its August 2021 report the **“Without Trucks Australia Stops: the Importance of a viable, safe, sustainable and efficient road transport industry”**. This new legislation acknowledges the credibility of the findings and their importance to the contextual narrative and substance.