

TWU campaigns & Key Developments in IR for Road Transport

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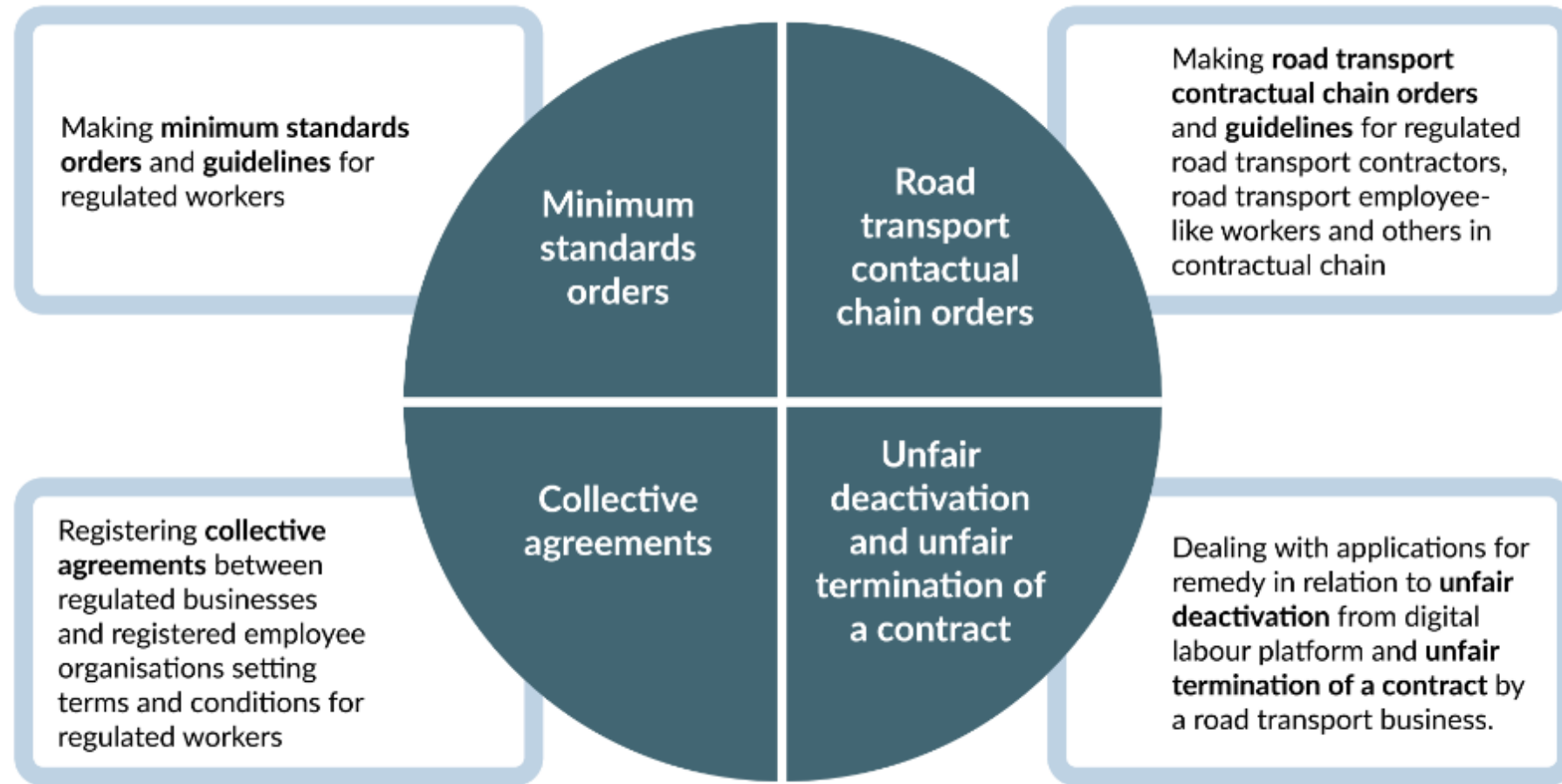
Overview

- TWU proposed 'Minimum standards orders' and 'Contractual Chain Orders'
- Proposed changes to the Road Transport (Long Distance Operations) Award
- TWU's national enterprise bargaining campaign
- Government's legislative agenda – Recent changes & emerging issues
- Other issues
 - the 'working from home' case – Clerks Award
 - Implications of the FWO v Coles / Woolworths decision



TWU MSO & RTCCO Applications

4 New Fair Work Commission Functions / Powers – Road Transport



TWU applications filed in 2024

- Three MSO applications filed in August 2024:
 1. ELWMSO – “Last mile” parcel delivery by employee-like worker engaged via digital labour platform (MS2024/1)
 2. RTMSO - “Last mile” parcel delivery by regulated road transport contractor (MS2024/2)
 3. ELWMSO - Delivery of food, beverage and other “like items” by employee-worker worker engaged via digital labour platform (MS2024/3)
- Application for RTCCO filed in September 2025 (MS2024/4)
 - **Coverage:** the entire road transport supply chain, Australia-wide (limited exclusions)
 - Seeks to mandate 30-day payment terms
 - Compulsory Rate Reviews – review must consider all costs and occur at least yearly
 - Primary party in a supply chain must *ensure* compliance

RTMSO (MS2024/2) – TWU's Proposed Coverage

Work covered - work in the road transport industry:

- *the transport by road of goods, wares or other things from transportation-hubs, logistics centres, distribution facilities, warehouses, storage facilities and other like locations, to their **ultimate destination**;*
- *the work the subject of the proposed order is referred to as 'last mile work' or 'last mile delivery' and involves the **final phase of the delivery process** in respect to goods, wares or other things.*
- *Small Vehicles*
- *The TWU is expected to broaden their claim*
- *Key issue – point-to-point courier work not covered*

RTMSO (MS2024/2) - TWU Proposed Content

- Minimum hourly 'cost recovery' rates: Variable by vehicle type and weight, for vehicles ranging from bicycles up to 3 tonnes + superannuation contributions
- A term enabling variation of the rates to address changes in fuel costs
- Weekly pay
- Detailed obligations regarding invoices to be prepared by the Road Transport Business not the contractor
- Record keeping requirements (relating to contracts, invoices, start and finish times each day, amounts paid, superannuation paid, reasons for termination etc)

RTMSO (MS2024/2) - TWU Proposed Content

- Unpaid annual leave and personal / carers leave
- Paid rest breaks
- Notice of contract termination / pay in lieu of notice
- BlueCard training (business to pay training costs + paid training time)
- Requirements to consult contractors and the TWU about proposed changes that might have a significant effect on contractors
- Dispute resolution
- Union delegates' rights and deductions for union membership fees

Application to vary Road Transport (Long Distance Operations) Award

- **Application by a single driver** – Lawrence Hines, filed August 2024
- **Seeks a wide range of changes to the award** (in at least 23 areas), including:
 - Expanding award coverage, higher minimum payments, higher rates for work on RDOs, payment for breaks, additional payments for delays and breakdowns, higher rates for loading and unloading, increased overtime allowance, applying leave loading on termination, higher public holiday rates, and changing dispute resolution to adopt arbitration.
- Many of these issues were raised in the two-yearly review of awards by the TWU but not pressed
- TWU has foreshadowed an application to vary the Award to include payment for 'waiting time'

TWU applications and LDO Award application – Current status

- **Feb – Aug 2025:** 'RTAG subcommittee consultation' process regarding TWU applications and LDO Award application
 - Australian Industry Group participated in all subcommittee meetings (consultation with SARTA)
- **4 Sep 2025:** RTAG advice to FWC President regarding prioritisation of TWU applications and LDO Award application
- **Key outcome:**
 - No agreement on the terms of any order
 - Disagreement on 'prioritisation of the proposed matters

TWU applications and LDO Award application – Current status

- **17 Oct 2025:** Directions hearing before FWC President – Determining prioritisation & programming
- Ai Group position
- Likely outcomes:
 - **21 November 2025:** TWU to file proposed orders in the form of an order
 - **19 December 2025 (TBC):** Any other party invited to file a counter application and/or alternative proposed orders
 - **February 2026:** TWU to file evidence and submissions in support of proposed orders

TWU applications – outlook for 2026

- Further hearings likely in 2026 dealing with some or all TWU applications (FWC likely to reserve dates)
- Australian Industry Group will file evidence and submissions, and participate in all hearings – Need continuing engagement from SARTA members
- If FWC draft order / guidelines in response to any of the TWU applications:
 - Reasonable opportunity for affected entities to make written submissions
 - FWC must undertake genuine consultation with parties to be covered, before an order is made
 - RTMSO/CCO cannot come into effect less than 12 months after publication of the notice of intent (6 months if FWC satisfied “circumstances urgently require it”)

TWU 's Co-ordinated National Enterprise Bargaining Campaign



"shut down Australian transport"

"This will be the largest co-ordinated industrial campaign in Australian transport history. This alignment of agreements isn't accidental. It's been carefully orchestrated to maximise our collective bargaining power".

"without significant movement to ensure we have good, safe jobs in transport and aviation, there will be disruption, it will be significant, it will be co-ordinated, and it will be effective."

- Aviation, Public Transport (buses), Road Transport
- Links to Multi Enterprise Bargaining

Recent Legislative Developments & the Government's Agenda

Government's legislative agenda – Recent changes & emerging issues

- A raft of radical changes were introduced during the Government's last term
- Government now has a narrow but significant agenda – focused on delivering this and 'bedding down changes'
- There may be further changes flowing from statutory reviews
- Greens and ACTU still have ambitious agendas – Reproductive leave, portable leave, artificial intelligence, working from home, 'roster justice', four-day week, greater entitlements for casuals etc...

2024: year in review

1 January 2024

NES superannuation entitlement

27 February 2024

Maximum civil penalties increase for underpayment related contraventions

Serious contravention test changes

Franchisees access single-enterprise bargaining

27 February 2024

Transitioning from multi-enterprise

Intractable bargaining changes

Sham contracting defence changes

Compliance notice changes

Independent contractor opt-out

Changes to Coal Mining LSL Act

1 July 2024

Exemption certificates for union entry for suspected underpayments

Determinations varying modern awards employee delegates' rights term operate

Delegates' rights term - workplace determination on or after 1 July 2024

Delegates' rights term - in enterprise agreement approved by vote on or after 1 July 2024

26 August 2024

Right to disconnect and modern award right to disconnect terms commence except for small business

26 August 2024

Casual employment changes: definition, employee choice pathway, small claims, sham arrangements

New meaning of 'employee' and 'employer'

Regulated workers (employee-like/ road transport) – minimum standards, unfair deactivation/ termination, consent collective agreements and powers to impose obligations on participants in road transport industry

Regulated workers' delegate rights
FWC Unfair contracts jurisdiction

Contractor high income threshold (currently \$183,100, adjusted on 1 July each year).

1 November 2024

Regulated Labour Hire Arrangement Orders can commence operation

6 December 2024

Voluntary Small Business Wage Compliance Code declared

1 January 2025

Wage theft provisions start – including the ability to determine maximum penalties for contraventions by 3 x value of underpayment.

What has happened this year and what is on the agenda 2025/2026?

26 February 2025

Earliest date by which a casual employee of a non-small business employer (including one employed before 26 August 2024) can be eligible to initiate the employee choice mechanism

Earliest date for eligibility for unfair FWC deactivation/unfair termination applications for regulated workers

New model terms for enterprise agreements addressing flexibility, consultation and dispute resolution under enterprise agreements

1 July 2025

AWR increases to national minimum wage and minimum wages in modern awards

24 weeks paid parental leave (120 days, increasing from 110)

Flexible unpaid parental leave increased to 24 weeks (120 days, increasing from 110).

1 July 2025

Superannuation on Government-funded PPL payments (paid by ATO in July 2026)
FWC to review the model delegates clause
SG rate increased to 12%

10 July 2025

Statutory tort of serious invasion of privacy.

26 August 2025

Employee choice notification available for small business employers

Earliest small business casual employee can make an employee choice notification

Right to disconnect for small business employees

30 August 2025

Penalty rates legislation commences

In Parliament

Pay day superannuation

Company paid parental leave – stillbirth or miscarriage.

Currently on the agenda

Possible changes from SJBPA Act Review

Limiting restraints of trade from 2027

National labour hire licencing (SA and Vic proposing changes)

Disability Discrimination Act changes

Privacy Act changes – employee records and lowering of application threshold

AI changes – Digital Transformation Report

Victoria – right to work from home

Changes to modern slavery laws

Legislative review agenda

2024

Review of the paid family and domestic violence leave entitlement

No changes recommended

Review of Secure Jobs Better Pay amendments and Closing Loopholes (No.1) amendments – right of entry to assist HSRs

Including objects of FW Act, pay secrecy, sexual harassment at work contravention, fixed term contracts, flexible work, EA and bargaining changes, industrial action, multi-enterprise agreements, small claims, pay rate advertisements, unpaid parental leave

Draft report to DEWR 31 January 2025. Ai Group provided further input.

Final report to Minister March 2025. Tabled 14 August 2025.

2025-26

Closing Loopholes (No. 1) amendments

Regulated labour hire arrangements, small business redundancy exemption, employee workplace delegate rights, wage underpayment criminal offence, PABO conference changes etc

Starts 14 December 2025

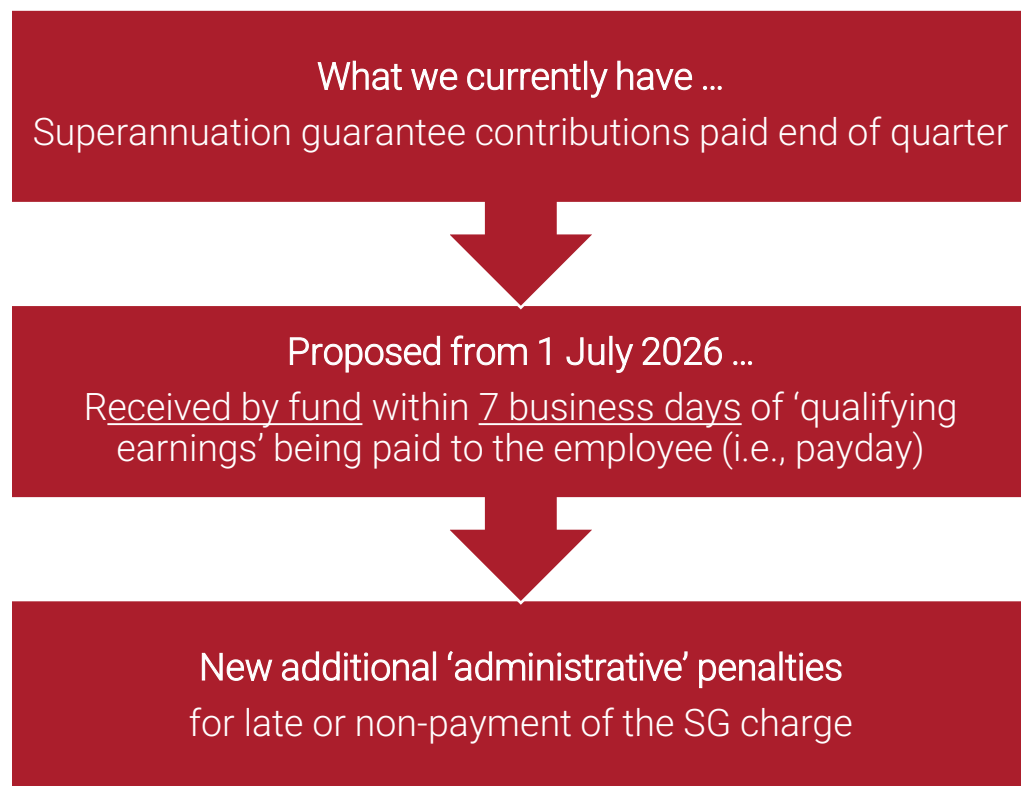
Closing Loopholes (No. 2) amendments

Casuals, employee/er definition, unfair contracts jurisdiction, regulated workers (i.e., road transport, gig worker and other independent contractor changes), intractable bargaining, right to disconnect, exemption certificates for right of entry - underpayments, penalty changes, unfair contracts etc.

Starts 26 February 2026

'Payday' superannuation

Changing landscape



Key points to note

Some limited time extensions

- For example, 20 business days for new employees or a new fund for an existing employee

ATO is consulting on draft guidelines

- For the first 12 months, the ATO will apply a risk-based compliance approach based on its Draft Practical Compliance Guideline - [PGC 2025/D5](#)
- If taxpayers follow the Guideline in good faith, the ATO has stated it will take a "*practical administration approach*".

Proposed changes to restraints of trade / 'non-competes'

A '**restraint of trade**' is a term in an employment contract that stops an ex-employee working for a competitor for a specified period of time

Government
proposing prohibition
< high income threshold (\$183,100)

Australian Industry Group
proposed Fair Non-Compete Code
instead of prohibition

Labour Hire changes in SA –broadening the application

- The SA Government has committed to amend its labour hire licensing legislation by late 2025.
- Currently has a narrow application to horticulture processing, meat processing, seafood processing, cleaning and trolley collection. This was due to amendments made in 2020.
- Proposing to broaden it to return industry to largely the same arrangements as were in place when labour hire licensing first commenced in South Australia in March 2018 and provide alignment with other state schemes, including Victoria, Queensland and the Australian Capital Authority.
- Would “revert the laws to the original requirement that all labour hire providers in SA be licensed”
- **Key Issue – Host employers will need to ensure labour hire providers hold a current labour hire licence.**

Other Developments

Working from home – *Clerks Award*

- FWC initiated proceedings to develop a working from home term for the Clerks Award
- Examining development of a working from home term in the Clerks Award which *'facilitates employers and employees making workable arrangements for working at home and removes any existing award impediments to such arrangements'*
- Unions arguing that there should be a new right to work from home – limited exceptions.
- Australian Industry Group seeks a variation removing barriers to mutually agreed WFH.
- ASU submissions propose requirement for **employers to give 6 months' notice to terminate**.
- ASU demonstrations at Australian Industry Group offices.
- Jurisdictional objections from ASU and ACTU – Penalty Rates Legislation. Subs by 28 October 2025. ACTU and ASU may file submissions in reply by 18 November 2025.
- **Hearing 1-12 February 2026**

FWO v Coles & Woolworths

- Main issue in dispute was use of annualised salaries / set-off clauses under contracts

Key take aways for employers

- Casts doubt over whether employers can use annualised salaries to satisfy award entitlements accrued in a different pay period
- Record keeping obligations
 - Must keep accurate records of hours worked by salaried staff where employees entitled to overtime & other award entitlements (even if they are paid an 'over-award' annual salary)
 - Records must be 'readily accessible'
- Likely to be subject to appeal



Questions

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