

## **Waste Contractors & Recyclers Association of NSW**

**January, 2007**

### **Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (2006)**

In November 2006, the Full Bench of the NSW Industrial Relations Commission (NSW IRC) handed down a decision on the Transport Workers' Union application for a new Award and Contract Determination relating to Mutual Responsibility for Road Safety in the transport industry.

The core of the application deals with a number of measures that come under the banner of occupational health and safety. Much of the discussion in the decision relates to the effect of the Federal Government's WorkChoices amendment on the application.

Following WorkChoices, awards made by the NSW IRC no longer have application to employees of corporations. In this case, the NSW IRC made a distinction between awards about industrial matters, and awards about occupational health and safety matters. The Full Bench said that the Federal Government only excluded state laws where they relate to industrial matters, and WorkChoices specifically allows laws relating to occupational health and safety to continue to have effect. The Full Bench decided that the term "law" in WorkChoices should be extended to include awards made by the IRC. This certainly represents a novel interpretation of the intention of the WorkChoices amendment. However, unless and until the decision is challenged in the Federal jurisdiction, the interpretation stands.

This means that the Award and Contract Determination apply to:

- All transport operators operating wholly or partly in NSW and to all employees, sub-contractors, owner/drivers and labour hire casuals utilised by such transport operators;
- All consignors party to transport contracts which require the cartage of freight partly or wholly within NSW.

### **What do the Award and Contract Determination do?**

The purpose of the instruments is to ensure that:

- All parties connected with road transport take responsibility for health and safety issues;

- Long distance work is carried out safely and in accordance with the law;
- Long distance work is planned to avoid fatigue;
- Drivers are properly trained in health and safety;
- Drug taking is eliminated from the industry.

To achieve these aims, the instruments impose a number of obligations.

## **1. Safe Driving Plans**

An employer engaged in road transport (a “transport operator”), must prepare a safe driving plan in relation to any work performed by employees, labour hire casuals, sub-contractors and owner/drivers which forms part of a long distance transport contract.

Long distance is defined as a single journey or a series of journeys in any one shift of more than 500kms carried out in a heavy vehicle (GVM of 4.5 tonnes or over).

These plans have to be quite detailed and contain the following information:

- The period in which the work is to be performed;
- The relevant pick up and delivery locations;
- How the work is to be remunerated, the remuneration method and the rate;
- Identify a system by which the effect the chosen remuneration on driver fatigue may be monitored and measured;
- Identify the means by which the hours will be restricted and monitored in order to prevent driver fatigue;
- Details of how the rest breaks will work;
- Identify the means by which the transport operator will ensure the driver is free of drugs and alcohol.

These plans must be provided to the head consignor to any long distance contract and must be developed in consultation with the drivers. There is a standard form annexed to the Award to be used as a template for the plans.

The Award and Contract Determination also place an obligation on head consignors enter into long haul transport contracts only where there is strict compliance with safe driving plans. It gives consignors the power to monitor transport operators pro-actively and take any action to ensure the breach is rectified and not repeated.

## **2. Blue Cards**

The Award and Contract Determination require all sub-contractors, owner/drivers and employees of transport operators to obtain a blue card. The blue card training must be paid for by the transport operator and the employee, sub-contractors and owner/drivers must be paid to attend. From February no employee, labour hire employee, sub-contractor or owner/driver shall be permitted to perform work under a long haul transport contract unless in possession of a valid blue card.

## **3. Drug and Alcohol Policy**

By May 2007, all transport operators must develop and implement a written drug and alcohol policy. It should contain:

- A fair and transparent systems for drug and alcohol testing;
- Specify procedures to be followed when a positive result is obtained;
- Provide for paid training in relation to the policy and drugs and alcohol generally;

The policy must place an obligation on the transport operator to respond and investigate any information about the use of drugs and alcohol amongst the workforce. This policy must be developed in conjunction with the workforce and, if applicable to your worksite, the Union.

Should you require any assistance with the above matters, please contact WCRA on (02) 9604 7206 or by email to [memberservices@wcra.com.au](mailto:memberservices@wcra.com.au)