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**JUNE 2024** THE OFFICIAL PUBLICATION OF THE AUSTRALIAN FURNITURE REMOVERS ASSOCIATION

## **AFRA CONFERENCE**

**15 – 17 AUGUST 2024**

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**CHAIN OF RESPONSIBILITY (COR)**  
**CLOSING LOOPHOLES**

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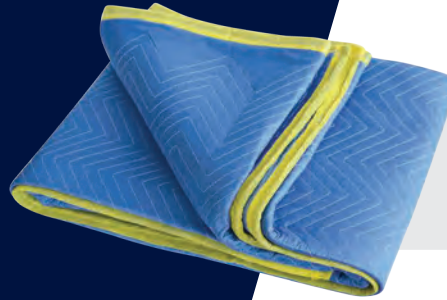
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BY CATHERINE KUIPERS

## PRESIDENT'S REPORT

**W**e have all been there. Enjoying a night out at a charity event, you perhaps drink a few more glasses of bubbles than the recommended daily intake, although, that's not what I am saying may have happened here, and the next thing you know you are bidding on Tony Oro's fleece jacket or a week's vacation on a tropical island. In hindsight, I wish that perhaps had been the case. As I got swept up in the amazing cause I was there to support, I mean who doesn't get all emotional thinking about underprivileged children in Thailand, living in orphanages, having experienced such loss and trauma in their very short lives. Not a dry eye in the room. Then the screen displays their campaign for the upcoming fundraising activities they have coming up over the next 12 months. Sign up for a bike riding experience and provide a child with a life of choice, it says. Of course, I can do that, I tell myself.

- Cycle 800km in 9 days down Thailand's east coast from Bangkok to Phuket!
- Raise \$10,000 to participate
- January 2025 is ages away. I have heaps of time to train

I didn't let thoughts, like the fact that I still have the same bike I bought some 30 years ago at home, or that I have barely ridden more than a few kilometres at a time with the kids over the last few years stand in my way.

Look how far I have come in just 3 years, I tell myself. From a complete couch potato that couldn't tell you what the inside of a gym looked like, to Catherine 2.0, that wakes up at 4:30am, 4-5 times a week to make her 5:15am gym class, how much harder could riding a bike for

800kms be? Glass in hand, I handed over my credit card details to secure myself a spot in Ride to Provide.

Fast forward 5 months and it's time for a reality check.

It's now May! How did that happen? Is it just me or has this year just flown by? And I have yet to get in a single kilometre on the bike. I have however, managed to upgrade my antique bike for a new state of the art road bike. I've bought the outfit and the new helmet and I've managed to kickstart my fundraising campaign with my first donation.

So, whilst I now look the part, with 7 months left on the countdown, in the words of my daughters' favourite tune, it's time to "get down to business".

Feeling slightly overwhelmed, about what I needed to do, let's face it raising \$10,000 is no easier than riding 800kms, and much procrastination, I decided that I needed to treat this ride like any other project at work. Break it down, in to step by step milestones, which immediately made it start to feel less daunting and set them to what I hope will be an achievable timeline. 800kms is a long way and I certainly won't be training to ride that distance, but when I broke it down, we will be riding 4 by 25km segments per day, so I figure if I can just get comfortable in riding 25kms at a time, then I just need to keep doing and repeating. So that's exactly what I've done. With targets for training and fundraising set I can now focus on the doing.

Now fast forward to my first scheduled ride day, and it was a wash out, I had not planned for bad weather. Like in business, when you meet a challenge or something goes wrong with your plans, you often don't have the option to give up, you need to find a new solution.

“ I look forward to catching up at conference in a few months time.”

So, I've re-assessed my training schedule, and I now amend it on a weekly basis to account for weather, work and family schedule permitting. From a risk management point of view Apple weather seems to be more miss than hit with its predictions, so I went online, did some research and ordered myself a stationary bike trainer stand. I even went as far as seeing my doctor to get scans on my joints to rule out any potential issues that will prevent me from achieving my goals. Now I have zero excuses.

I'm not really sure what message I am hoping to get across in this quarter's presidents report. It's a given that I definitely would love your support to help me reach my fundraising goal, and get me to Thailand in January 2025, so this old girl can prove to herself, her family and the many doubters that she can do this. I also believe that many of the tools we use in our everyday work life can be used to our advantage in our personal lives and that each and every one of us has it in us to achieve what may seem the impossible.

I look forward to catching up with everyone at conference in a few months' time and sharing my riding adventures.

Oh and did I mention I also bought that overseas vacation. ●



## EXECUTIVE DIRECTOR'S REPORT

**A**utumn is upon us. In the AFRA office this means we're up to our necks in conference organisation and well into our annual audit and training calendar.

The lion's share of conference organisation falls to our newest team member Madeleine. Maddy has been working hard bringing together the many moving parts that make up conference – evening events, speakers, entertainers, AV, accommodation, goodie bags, and on and on – as well as developing some new offerings this year. After the success of having members attend with their children and grandchildren last year, we are encouraging members to bring along partners and offspring in 2024. We have organised group babysitting on the evenings of the VISY Bugshifters' Dinner and the Gala Dinner, with entertainment and food included. As kids will be joining us for our 'AFRA's got talent' opening night, we are secretly hoping they will steal the show. If you would like more details about this part of the program or the conference generally, please reach out to Maddy [memberservices@afra.com.au](mailto:memberservices@afra.com.au). If you have not yet booked, get your skates on! This year is shaping up to be a fantastic event.

AFRA received a substantial training grant from the HVNR late last year to overhaul our COR training. Jo has been working hard – thank you Jo! – to produce a thorough and easy to use training program that will be delivered online via short informative videos. This impressive project will deliver high quality COR training in a user friendly format. COR training is vital for keeping those in the transport industry HVNL compliant, and

consequently helps keep roads safer for all users. Good news for everyone.

AFRA hosted face-to-face training sessions at our Castle Hill offices with Max, a first for us. Visy kindly helped us out by providing packing materials and Pedemonts loaned us a container truck – an AFRA member group effort. Thank you to those who helped, attended or sent staff along. We will hold more of these sessions as demand arises.

We have also been busy continuing the evolution of AFRA with the introduction of a new CRM. As a business owner you will know that being able to easily access contact information, client history and customer engagement information is key to running a productive venture. Our new CRM will enable us not only to manage current members more efficiently – combining membership contact details and data from several locations into one single program – but will establish powerful follow up systems to assist us to attract and onboard new members. The introduction of this new CRM has required a significant amount of work from the team, in particular Rose.

“ We have also been busy continuing the evolution of AFRA with the introduction of a new CRM. ”

Rose celebrates 18 years – 18 years! – with us this month and continues to embrace new developments at AFRA with positivity and professionalism. Thank you Rose.

I've been out on the road undertaking audits in NSW, ACT, SA and Queensland. Getting out to visit members is an important part of my role, both ensuring that members are meeting the high standards AFRA sets and also as an opportunity for me to hear directly from members about what is happening in the industry and what more AFRA could be doing as the industry Association. Maddy and I also attended the ATA's Trucking Australia conference in Canberra. The ATA does a great job as our voice in transport, and under that umbrella we work alongside various state-based transport Associations. Refreshing connections with the executive directors of those Associations during such events is vitally important, as AFRA frequently works with them on state and national issues. I flew the AFRA flag at conference by participating in a panel discussion with the other Transport Associations, as well as undertaking an on-stage interview with National Transport Commissioner Michael Hopkins about the significant and frustrating delays with NTC's HVNL review.

Last but not least, I advise that the AFRA Charity is awaiting final government approval. This has been an enormous administrative task. I thank Tony Pedemont and Tim Peken for kindly agreeing to join me as foundation Directors of the charity trust. I am so excited about this special project and can't wait to share the details of the AFRA Foundation following our formal registration.

See you at conference! ●





BY MADELEINE VUMBACA

## MARKETING & MEMBER SERVICES OFFICE REPORT

**W**e are nearly halfway through the year and time has flown by.

This year's conference planning is going full steam ahead as well as continuous work on social media and the AFRA website.

In April, I attended the ATA conference in Canberra with Simone, who did an amazing job hosting a discussion with Michael Hopkins from the National Transport Commission, and representing AFRA and the part we play in the trucking industry. Being new to the industry, the ATA conference was very educational for me, covering topics from biodiesel and renewable diesel to the issues surrounding level crossings.

In May, I hosted an AFRA Learning Lunch for our members on all things' social media. We had over 30 people in attendance, which was great! I went over starting an account, creating a social media strategy, scheduling content, and measuring success through analytics. A recording of the Learning Lunch can be found on the members website under Library > Learning Lunches.

I am always looking for content from our members to share and promote across AFRA's social media platforms and for inclusion in the Week in Wrap. If your business has any pictures or videos of moves or achievements, please send them to [memberservices@afra.com.au](mailto:memberservices@afra.com.au).

“The conference will be jam packed with motivational, industry related, and business excellence sessions as well as a scavenger hunt.”



The Annual AFRA Conference 2024 is taking place in the beautiful Barossa Valley – surrounded by serene views and indulging in delicious food. Of course, being in an internationally acclaimed wine region means you are bound to get your hands on some great wine. Be sure to book your tickets to the conference through our Humanitix page and accommodation at the Novotel Barossa Valley Resort. The link to book both a ticket and accommodation has been sent out through email and is included in the Week in Wrap. I am really looking forward to meeting you all this August during what is looking to be an awesome event.

The theme for the conference is 'Reuse, Relove, Relocate' after the recent release of our sustainability campaign. Looking at removals from a sustainable angle aligns AFRA with ecofriendly values and minimising fast furniture through relocating and reusing, rather than buying new.

The conference kicks off bright and early on the Thursday 15 August in the morning with the Golf Day taking place at Tanunda Pines Golf Club.

With registrations that afternoon, followed by 'AFRA's Got Talent' in the evening, the conference gets underway with some fun.

Conference sessions are jam packed with motivational, industry related, and business excellence sessions as well as a scavenger hunt. The social tour (previously known as the partners tour) is at Maggie Beer's Farmshop with a cooking demonstration, wine tasting, and more.

Friday night is the VISY Boxes & More Bugshifters' Dinner offsite at Seppeltsfield, with the final night dinner on Saturday being the AFRA 'All the Fun of the Fair' Gala dinner. I am looking forward to seeing everyone dressed in Fun Fair attire!

Do you have a staff member or coworker who has demonstrated excellence? Be sure to nominate them for the annual AFRA Awards presented at our conference. Nominations are open now so please take a few moments to nominate those who you believe should be recognised for their outstanding contributions to the industry. ●



## TRAINING OFFICER'S REPORT

**A**s we reach the halfway mark of 2024, it is evident that this year has been marked by significant activity in training and audits within our organisation. Since the last edition of OTM, a series of developments have taken place that are worth highlighting.

Simone has been diligently conducting audits throughout the first half of the year, January to May 2024, audits were performed in New South Wales, ACT, Queensland and South Australia. Additionally, our aXcelerate online training completions have been improving where our members' employees achieved 86% completion rate, a big improvement compared to previous quarters. A reminder that aXcelerate online courses are only valid for 30 days from date of enrolment.

Max, our travelling trainer started this year's face-to-face training in May with two Sydney sessions (one pack & unpack and the other furniture & effects), held at the AFRA office. Are you interested in the Pack & Unpack (1 day) or the Furniture & Effects (1 day) face-to-face training courses with our trainer, Max? These will be on offer throughout the year at different locations. If you have a group of 8 to 10 employees in your business that you want to have trained in either or both courses, why not organise with us to book Max to run face-to-face course in your business. If you are interested just contact [training@afra.com.au](mailto:training@afra.com.au) or the AFRA office for further information on how to organise this.

Additionally, upcoming online courses will include the release of the Estimator's course as an online training and assessment package. This will enable employees from around the country who need to do this course, book through aXcelerate and complete the course online.

We are currently developing an updated online HNVR Chain of Responsibility (COR) course in aXcelerate which will be available next year. This OTM issue features an

article on "As an employer why is Chain of Responsibility relevant for all employees in your business". This article emphasises why it is important for you and your employees to understand duties relevant to COR, it explains some of the basic information everyone needs to know. In the next issue we will investigate discharging duties and what is involved.

The Toolbox talk article for this month focuses on Risk Awareness, highlighting the significance of a Risk Management process in your business and outlining steps for its effective implementation. A comprehensive toolbox talk is accessible in the AFRA members' area of the website for your use. If you have a toolbox talk that you believe would benefit other members or have a specific topic you would like us to cover, please share your suggestions by emailing [training@afra.com.au](mailto:training@afra.com.au). ●

“ In this issue Toolbox Talk focuses on Risk Awareness, highlighting the significance of a Risk Management process in your business. ”

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# TOOLBOX TALKS

## RISK AWARENESS

**R**isks in the workplace are potential chance of an incident or circumstances that could cause injury, sickness, death of people, damage or the loss of equipment.

The outcomes of risks can vary based on their nature and severity. Potential consequences may involve trauma, fatalities, stress, illness, physical injuries, financial setbacks, safety incidents, legal obligations, operational interruptions, reduced efficiency, regulatory penalties, harm to reputation and loss of customer confidence.

Developing a business culture of putting the importance of safety first.

### WHY USE A RISK MANAGEMENT PROCESS

Risk management entails considering the potential consequences and likelihood of exposure to hazards. The goal is to eliminate risks whenever possible – the most effective control measure – and if not possible or feasible, to minimise risks so far as reasonably practicable. The hierarchy of control measures helps duty holders choose the most effective controls to manage risks efficiently. Additional risk management measures include regular workplace inspections, servicing vehicles, maintaining equipment, utilising hazard reports and incident reports effectively.

The step-to-step approach for managing risks are listed in the chart above.

Reasonably practicable is part of effective risk management and involves addressing both Workplace Health & Safety and Chain of Responsibility risks to the extent that is reasonably practicable. When

#### Step 1 Identify Hazards

Hazards are things or situations that could harm a person (death, injury or illness). Find out what could cause harm in the workplace

#### Step 2 Assess risks

Risk of possibility that harm might occur when exposed to a hazard. Risk assessment looks at what might happen if someone is exposed to a hazard the likelihood of it happening.

#### Step 3 Control risks

You should always aim to eliminate risks, as this is the best way to manage risks. Where this is not possible, you must minimise risks so far as is reasonably practicable. To minimise risks, you can follow the hierarchy of control measures, which are ranked from the highest level of protection and reliability to the lowest

#### Step 4 Review control measures

Regularly review your control measures to make sure they work as planned. Use Hierarchy of Control

evaluating risks, it is important to ensure that risk management measures are implemented to the extent that is reasonably practicable. Therefore, when determining what is reasonably practicable, it is crucial to consider the following factors:

- the likelihood of the hazard or risk
- the harm that could occur
- ways to minimise or eliminate the risk, and if these are available and suitable
- cost, include whether the cost is grossly disproportionate to the risk

There are four levels in the risk management process to consider:

**STEP 1: IDENTIFY HAZARD**, find out what could cause harm.

**STEP 2: ASSESS RISKS**, look at what could happen if someone was exposed to a hazard and the likelihood of it happening. Ask the following questions:

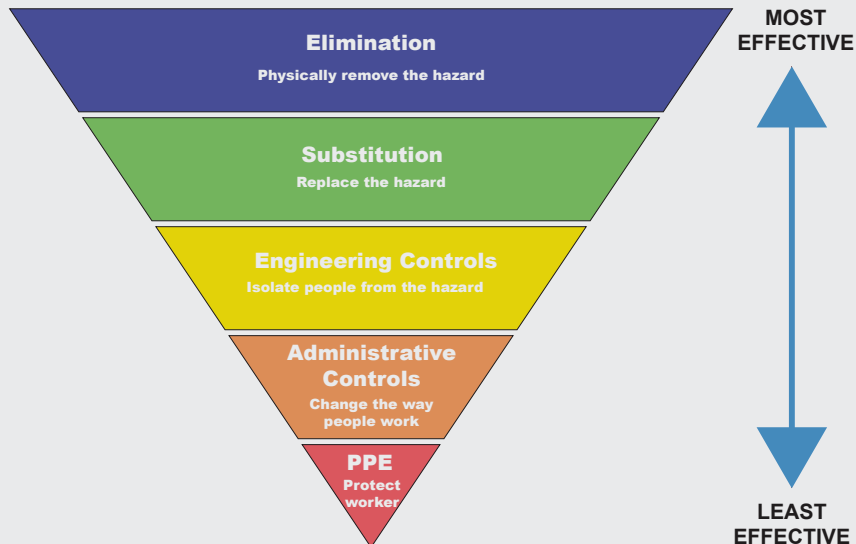
- how severe a risk is
- if your control measures are effective
- what action you should take to control the risk
- how urgently you need to take action

**STEP 3: CONTROL RISKS**, look at ways to eliminate risks, as this is the best way to manage risks, so far as reasonably practicable. Using this





## HIERARCHY OF CONTROLS



process is a way to choose what the most effective controls are to help manage risk efficiently. It helps identify the level of health and safety protection and the reliability of the control measures.

The hierarchy of controls is a system (see diagram) for classifying safety measures to identify the most effective way to control a certain hazard. It is used to help choose the best way to prevent workplace hazards.

**STEP 4: REVIEW CONTROL MEASURES** to make sure what has been put in place works.

It is crucial that a business prioritise risk management strategies to ensure the safety and well-being of employees and visitors to their workplace and the protection of valuable assets for business's operations. ●



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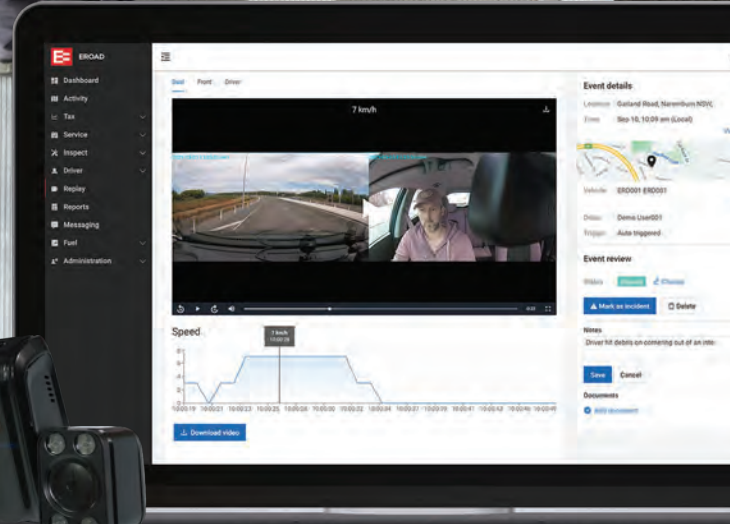
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# CLOSING LOOPHOLES ACTS: Big legal changes for the Road Transport Industry

**W**ith the renewed focus on the gig economy and independent contractors, the new *Closing Loopholes* Acts will change the definition of employment under the *Fair Work Act* and impose additional regulations on contracting within the road transport industry. With most changes set to commence by the end of August of 2024, here are some of the key things you need to know.

## Who is an 'employee' and who is an 'independent contractor' now?

Whether a person is an 'employee' or an 'independent contractor' will now be determined by looking at the whole relationship between the parties, including the terms of the contract and how those terms are performed in practice – a direct response to the High Court's decision in *Jamsek*. It will be the 'real substance' of the relationship, rather than any 'form', that will determine the nature of the engagement.

The consequence of this change is that some previously independent contractors may be captured by the new definition of an 'employee' and will have an additional set of entitlements under the *Fair Work Act*. While the employer and the prospective 'employee' may agree to opt out of the latter being deemed an 'employee', this can only be done if their earnings exceed the 'contractor high income threshold' – this amount is yet to be determined.

## Minimum Standard Orders in the transport industry

Members may remember the Road Safety Remuneration Tribunal, which was brought to an end following its

2016 Order setting minimum pay rates for owner drivers. These new laws will give the Fair Work Commission the power to set minimum standards for employee-like workers, regulated road transport contractors, and any other person within the road transport contractual chain. These standards may be either legally binding or non-binding guidelines, and may cover a wide range of matters, including payments, deductions, and insurance, as well as payment times, fuel levies and rate reviews.

These new Orders will be made by an Expert Panel of the Fair Work Commission. That panel must consider the need for any Orders and their possible impact on sustainability of competition within the industry. Additionally, before making any Order, the Commission must consider the advice of the Road Transport Advisory Group, which will be made up of members who are a part of the road transport industry.

The laws also allow for industry consultation and a long period for industry to adjust. For example, an Order cannot come into operation for at least twelve months from its public announcement, unless the Commission considers that the Order is urgently required.

## 'Unfair Contracts' dispute resolution function

If a contractor thinks that the terms of their agreement are unfair, they will now be able to apply to the Fair Work Commission if they are below the high-income threshold. The Commission will decide whether a term of a services contract is an unfair contract term and can make an order to set aside, amend or vary all or part of the contract, if a services contract contains one or more unfair contract terms.

“The new laws will give the Fair Work Commission the power to set minimum standards.”

## Disputes regarding unfair termination of contracts

The Fair Work Commission will also have the power to deal with disputes regarding unfair termination of the engagement of a 'regulated road transport contractor' by a road transport business, provided that the contractor earns below the high-income threshold. This new regime is very similar to what currently happens in the case of termination of an employee. For example:

- to bring an application alleging unfair termination, the contractor must have been performing work under one or a series of service contracts for at least 6 months; and
- if the contractor has been unfairly terminated the remedy is reinstatement or payment of compensation up to the total amount of pay received or to which the contractor was entitled (whichever is higher) for any working period under the contract during the 26 weeks immediately before the termination.

If you have any questions about these new reforms, please contact the AFRA Helpline ([afrahelpline@bristowlegal.com.au](mailto:afrahelpline@bristowlegal.com.au)). ●





# AFRA CONFERENCE

## 15 – 17 AUGUST 2024

Novotel  
Barossa Valley,  
South Australia

**T**he Barossa Valley is an amazing location for our 2024 AFRA Conference, just an hour north-east of Adelaide, it holds gorgeous views, great food, and a famous wine region. Please ensure you have registered for the conference and booked your accommodation to not miss out on what is shaping up to be an amazing event.

Members and Associate Members would have received links to book conference tickets and Novotel Barossa Valley Resort accommodation. All AFRA Members are entitled to one complimentary ticket to the conference as part of their membership. This can be redeemed through the code that was emailed to you – please be sure to take advantage of this complimentary ticket.

If you cannot find your code or if it has not been sent through to you, please email Madeleine at [memberservices@afra.com.au](mailto:memberservices@afra.com.au) and she will resolve any issues.



The Conference is an awesome opportunity to learn about industry matters, catch up with old friends, meet new people in the industry, build business skills, and network. We are ecstatic about the abounding program we have put together.

### 2024 AWARD NOMINATIONS

Do you have an employee or coworker who you believe deserves recognition for their excellence in the industry? Is your fleet outstanding in the industry? Please submit your nominations for the 2024 AFRA Awards presented at the conference. The categories are as follows:

- VISY Trainee of the Year
- Podium Furniture Removalist of the Year
- AFRA Woman of the Year
- Ceva Logistics Employee of the Year
- AFRA Removal Fleet Award
- AFRA Outstanding Contribution Award





**DON'T  
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We appreciate you taking the time to submit a nomination for someone who has performed exceptionally within the industry. The nomination forms are accessible on the home page of our website, [afra.com.au](http://afra.com.au), and have been emailed to members. Entries close on Friday 5 July 2024. We are looking forward to seeing who has been working exceptionally hard and is deserving of recognition. The awards will be presented to recipients throughout the conference.

#### **GUEST SPEAKERS INCLUDE**

**Bernard Salt:** Social and Economic Trends, Product Differentiation

**Stirling Mortlock:** Former Wallabies Captain, Leadership and Team Culture

**Marnie Brokenshire:** Resilience, Courage, and Sustainable Success

#### **THURSDAY 15 AUGUST**

The Golf Day will tee off Thursday morning at Tanunda Pines Golf Club. Thank you to all Associate Members who have contributed to the prizes for the golf winners.

Registrations begin in the afternoon so be sure to collect your delegate bags and name tags. Toll, Move Dynamics, KRS will be at registration hosting information tables, giving you the opportunity to have a one-on-one meeting with these service providers to discuss being on their panel. Any current panel members can have direct, face-to-face communication with the panel operators. The conference scavenger hunt kicks off here so make sure you play to win and get to registrations.

The opening night is taking place at the Novotel, with 'AFRA's Got Talent'. Be sure to brush up on your singing and dancing skills with prizes to win. This will be a pay-to-vote system, with proceeds going to the AFRA Charity so make sure you bring cash to donate and vote.



#### **FRIDAY 16 AUGUST**

Starting Friday off with the Cowden Welcome Breakfast, as insightful, industry specific sessions commence for the day.

Those with a Social Ticket are off to Maggie Beer's Farmshop for a cooking demonstration, wine tasting, and lunch. They will be back in time to sit in for Stirling Mortlock's speaking session.

Ending the day with the VISY Boxes & More Bugshifter's Dinner offsite at Seppeltsfield. For delegates who have purchased a child ticket, the kids will be staying at the Novotel for dinner with babysitters and entertainment.

#### **SATURDAY 17 AUGUST**

Breakfast to commence the half day of sessions with industry relevant sessions. Ending the conference with the Members Forum and Annual General Meeting for regular members.

Once conference sessions have concluded, there will be a few hours to relax or explore the Barossa Valley. 'All the Fun of the Fair' will close the conference for the themed AFRA



Gala Dinner at the Novotel. We encourage dressing to the fun fair theme. The kids will have their own entertainment and special themed dinner.

#### **CONFERENCE TICKETS**

Be sure to get tickets to the 2024 AFRA Conference via the members website. There are tickets available to have a guest join members for social events and to bring your children along. If you cannot attend this year's conference, consider sending one of your staff members to enrich their industry knowledge. Do not let your complimentary ticket go to waste, make the most of your AFRA Membership.

#### **ACCOMMODATION & TRAVEL**

Accommodation and travel are not included in the conference tickets. Make sure to book your accommodation for the conference at the Novotel Barossa Valley Resort through the link sent by email. Book your accommodation as soon as possible to not miss out on the special delegate discounted rate. Flights and other travel to the Barossa Valley are not organised by AFRA. You will need to organise and book your own travel arrangements to get to and from the conference. ●

# IR UPDATE

## NEW UPCOMING CHANGES TO THE REGULATION OF THE ROAD TRANSPORT INDUSTRY

In February 2024, the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (the **Closing Loopholes No.2 Act**) was enacted.

The Closing Loopholes No.2 Act introduced a range of changes to the *Fair Work Act 2009* (Cth), including with respect to casual employment, the contractor versus employee test, sham contracting, underpayment penalties, and right of entry into the workplace.

Importantly, the Closing Loopholes No.2 Act introduced a raft of changes which impact the road transport industry, namely:

- The power for the Fair Work Commission (**Commission**) to set binding minimum standards orders, as well as non-binding guidelines, for road transport contractors.
- The power for the Commission to make regulations for supply chain participants associated with the road transport industry through the making of binding '*road transport industry contractual chain orders*' and non-binding guidelines.
- The ability for the Commission to approve, vary and terminate collective agreements between road transport businesses and unions.
- The ability for the Commission to deal with unfair termination claims filed by road transport contractors, including the power to order financial compensation and reinstatement.
- The ability for the Commission to review unfair contract terms in service contracts.

These changes are due to commence on 26 August 2024, unless otherwise proclaimed to commence earlier.

The Commission recently issued an Implementation Report which sets out how it will seek to implement

these new changes, including the Commission's processes, procedures, forms, resources, and engagement with relevant stakeholders.

Ai Group has been invited to engage in the consultation processes for the implementation of these changes and has also been appointed to the Commission-established Regulated Worker User Group. Ai Group will play a leading role in the consultation process and as part of the Regulated Worker User Group.

### WHAT DO THE CHANGES MEAN FOR ROAD TRANSPORT INDUSTRY PARTICIPANTS?

It is anticipated that once these changes commence, road transport industry participants (including road transport businesses and those within a road transport contractual chain) will be the subject of greater regulation and increased focus on their contractual arrangements.

#### Binding minimum standards orders

The Commission will have the power to make binding minimum standards orders in respect of the engagement of independent contractors in the industry. The orders will also be able to impose obligations on various supply chain participants, not just the party that directly engages the contractor. The orders may deal with a broad range of matters, including minimum rates, payment times, fuel levies, rate reviews, termination, and cost recovery.

Road transport businesses covered by such orders will need to ensure that they comply with the minimum standards orders. For example, if XYZ Removals Pty Ltd is covered by a minimum standards order which prescribes that payment must be provided to a road transport contractor within 2 weeks

of the service being provided, XYZ Removals Pty Ltd may be prevented from entering into a service contract with John Smith (who has his own ABN) that provides for payment to be provided more than 2 weeks from when John provides his services.

Similarly, if XYZ Removals Pty Ltd enters into a service arrangement with a AABB Removals Pty Ltd, and AABB Removals Pty Ltd subcontracts the work to John Smith, all three parties will be considered to be part of a '*road transport contractual chain*'. If a road transport contractual chain order applies to this chain and it prescribes a fuel levy of \$1 per kilometre travelled, the service contract between XYZ Removals and AABB Removals, and the subcontract between AABB Removals and John Smith may be required to contain a fuel levy clause which prescribes at least \$1 to be paid per kilometre travelled.

#### Collective agreements

Road transport businesses will be able to make a collective agreement with a union that is entitled to represent the contractors that will be covered by the agreement.

It is envisaged that collective agreements will be similar, in effect, to that of an enterprise agreement in that they will be negotiated by the parties (rather than set by the Commission) and a breach of a term of a collective agreement will give rise to a civil penalty. It is however important to appreciate that unlike enterprise agreements, there is no requirement for workers to vote to approve a collective agreement. Only the agreement between the union and the business will be required.

It remains to be seen, to what extent collective agreements will be utilised. The TWU will undoubtedly pursue the making of such agreements but their utility





to most businesses is less clear. In particular, the primary benefit of enterprise bargaining is the ability for businesses to negotiate greater operational flexibility (for example in respect of rostering terms), whilst providing more beneficial monetary terms in other aspects of the enterprise agreement. An enterprise agreement may then be approved by the Commission, so long as the terms of the agreement as a whole leave employees better off overall.

In contrast, a collective agreement made under the new statutory provisions does not provide such benefit, as the Commission will be required to undertake a term-by-term examination of the collective agreement as against an underpinning 'minimum standards order'. Any single term found to be less beneficial than that of a minimum standards order will have no effect. In other words, there will be very little capacity to obtain any flexibilities through the new collective agreement making process. This brings to question, what benefit (if any) there is for a business in entering into a collective agreement.

### Unfair termination

The new unfair termination regime effectively provides unfair dismissal like protections and remedies to road transport contractors who have been performing work in the industry under a service contract (or a series of contracts) with a road transport business for at least 6 months.

Remedies include reinstatement of the terminated service contract, an order for lost pay and compensation.

This new regime will generally mean that road transport businesses must take steps to ensure that there is a valid reason for the termination of the engagement of relevant contractors and that the termination of the contract was not unfair. A business must also ensure that a contractor is afforded procedural fairness before terminating a services contract.

A 'road transport termination code' will be published shortly, which will set out what matters constitute a valid reason for termination and what a procedurally fair process for effecting a termination of a service agreement looks like. Ai Group expects to engage in further consultation with the Government in relation to the development of the code in the near future.

### Unfair contract terms

Parties to a services contract will be able to seek relief from the Fair Work Commission from contract terms that are considered unfair. The Government's view is that this will provide contractors with the ability to seek relief from such terms through a 'low cost' jurisdiction that will be much more accessible than previous avenues for challenging unfair contract terms that required contractors to pursue such matters through a court.

In determining whether a service contract term is unfair, the Commission will have regard to a range of factors, including: the relative bargaining power and imbalance between the parties; whether the term is reasonably necessary to protect the legitimate interests of the parties; whether the term imposes a harsh, unjust

or unreasonable requirement; and whether the contract as a whole provides for a total remuneration that is less than employees or workers performing the same or similar work under a minimum standards order or guideline.

If it is determined that the terms are unfair, the Commission may then potentially alter the offending terms to make them fair, or to set those terms aside in its entirety.

Going forward, there may be a need for businesses to reevaluate their template service contract terms, in order to reduce the risk of being subject to unfair contract applications and orders. Nevertheless, businesses should be prepared for increased claims from independent contractors, in particular, claims which are likely to be claims based on perceived rather than objective unfairness.

### MORE ASSISTANCE REQUIRED?

AFRA members who have any questions regarding the new legislative provisions or any other workplace relations issue can call Ai Group's Workplace Advice Line on 1300 55 66 77.

Alternatively, if you would like to discuss this article or require further assistance from Ai Group's national team of workplace relations lawyers by emailing Colin Chang, at Ai Group, via [colin.chang@aigroup.com.au](mailto:colin.chang@aigroup.com.au).

As a registered employer association, Ai Group's team of workplace relations lawyers have special rights to appear in any such proceedings before the Commission and can provide assistance to AFRA members if required. Lawyers engaged by a standard law firm can only appear in these kinds of proceedings if given permission by the Commission. ●

**For more information regarding the changes introduced by the Closing Loopholes No.2 Act and the earlier Closing Loopholes No.1 Act, advices and detailed guides on the changes are available on AFRA's industrial relations webpage.**



## WHY CHAIN OF RESPONSIBILITY (COR) IS RELEVANT FOR ALL EMPLOYEES IN YOUR BUSINESS

**A**s a removalist business operating within the transport industry, you engage in transport activities. Whether you are a small or large operation, this fact remains unchanged, so all your employees must understand Chain of Responsibility and Workplace Health & Safety (WHS) regulations. Ensuring the safety of employees involved in transport activities is critical to prevent accidents, injuries and fatalities.

Chain of Responsibility is important for all employees because it helps everyone know who is responsible for what, making sure things run smoothly and everyone follows the rules, plus understanding that safety is everyone's responsibility. In addition, it helps reduce risks, improve decision-making, and makes the business work better overall.

The importance of COR is that it encourages businesses to take steps to promote and improve safety concerning speed, fatigue, mass, dimension and loading and vehicle standards. It emphasises the importance of maintaining and loading vehicles correctly, providing

proper training and rest for drivers, effectively managing fatigue, and carefully planning routes to avoid unsafe practices. In other words, it is ensuring that everyone is adequately trained from the warehouse cleaner to the owner of the business as everyone has a responsibility in relation to COR and WHS.

Under the Heavy Vehicle National Law (HVNL), the size of the truck for which training must be completed is determined by the Gross Vehicle Mass (GVM) or Gross Combination Mass (GCM) of the vehicle. Training requirements apply for trucks with a GVM 4.5 tonnes+. To calculate, a 3 tonnes Pantech van plus a 1.6 tonne load, means the GVM is the combined weight of vehicle and load = 4.6. The maximum truck GVM will be specified in the vehicle manufacturer's specifications sheet.

The Chain of Responsibility is part of the Heavy Vehicle National Law that makes parties other than drivers responsible for the safety of heavy vehicles on the road. Parties in the Chain of Responsibility are employer, prime contractor, operator, scheduler, consignor, consignee, packer/unpacker, loading manager,

loader/unloader and the business is also a responsible party in the chain of responsibility.

A heavy vehicle driver is **not** a COR party unless they are an owner/operator or perform another function/s that makes them a party, eg: loads a truck, a packer of goods. However, a driver is subject to other requirements under the HVNL and other road laws.

The latest advice from the HVNR is that drivers who are engaged in driving heavy vehicles only are not within the chain of responsibility and accordingly cannot attract liability as a party in the chain but can potentially be found liable for other breaches of this law (eg: not stopping at a red light), as well as any health and safety regulations.

Under the Chain of Responsibility, the main responsibility cannot be passed onto a third-party contract (eg: contractor). The party directly involved in the task or activity is ultimately accountable. This ensures that the primary duty holder oversees and manages obligations themselves to ensure safety standards are met, eg: open lines of communications between

SFAIRP				
				
<b>Likelihood of risk occurring</b>	<b>Harm that could result</b>	<b>Reasonable knowledge of the risk</b>	<b>Control to remove the risk</b>	<b>Cost related to risk</b>
<b>Probability</b>	<b>The result of injury on loss</b>	<b>Potential risk</b>	<b>How to control the risk</b>	<b>Prevention method and cost</b>

all parties involved in the contract. Parties in transport activities cannot avoid legal responsibilities through contracts. This principle ensures all parties in the transport chain are accountable for their actions, regardless of contracts in place.

## UNDERSTANDING YOUR PRIMARY DUTY

**Under HVNL section 26a Principles of shared responsibility:**

'Safety of transport activities relating to a heavy vehicle is the shared responsibility of each party in the chain of responsibility'.

Each party has a primary duty, regardless of the function they perform but the level of control and/or influence will vary. To ensure the safety of transport activities, so far as reasonably practicable. As a party in the COR your obligations are to:

- eliminate public risks, or to the extent that is not reasonably practicable to eliminate them,
- to minimise public risks – includes a prohibition against directly or indirectly causing or encouraging a driver or another person, including a party in the COR, to speed or contravene the HVNL.

Under the primary duty, 'safety' means eliminating 'public risk', so far as reasonably practicable in relation to the:

- safety of driver and passengers in heavy vehicles
- safety of other road users and people near roads
- protection of property including vehicles and loads

“Under the Chain of Responsibility, the main responsibility cannot be passed onto a third-party contract (eg: contractor).”

- protection of road infrastructure
- prevention of harm to the environment

Under primary duty you can eliminate risks by implementing policies and procedures regarding the prevention of public safety risks and strongly communicate these standards to employees and other parties, eg: contractors.

As an executive officer, manager or another person who takes part in the management of the business, you have a due diligence duty and a legal obligation to stay informed about safety issues.

Exercising due diligence involves acquiring and maintaining knowledge on safe transport practices, understanding the risks and hazards related to the business's transport activities, providing adequate resources to mitigate these risks, implementing processes to address hazards effectively, and

promptly responding to information on hazards, risks, and incidents.

Legal obligations can be achieved by gathering data on incident rates to assess the effectiveness of the safety management plan, engaging in industry forums and safety seminars, enforcing work procedures, promptly addressing and investigating safety incidents, implementing findings from incident investigations, allocating adequate resources for risk management activities.

How can you determine whether everything done is reasonably practicable to eliminate or minimise public risk. Reasonably practicable is based on what a reasonable person would determine, whether actions were sufficient and similar risk, circumstances and what the situation was. In other words, “the likelihood of risk or damage and degree of harm that may result”.

To determine how it relates to accident or incident, you should use the so far as is reasonably practicable (SFAIRP) test to analyse the risk.

It is important that as an employer or manager you understand why you and your employees should be trained and up to date on COR regulations. In addition, if anyone who has a function in the Chain of Responsibility party fails to comply with their primary duty what are the consequences of a breach where they fail to comply with primary duty. Depending on the type of breach both the business and COR party involved can be fined or the matter is dealt by the court. ●



## 5 MINUTES WITH..

AFRA's Council comprises up to sixteen council members – two from each state and territory – plus the president and the immediate past president. Council members represent you at AFRA Council meetings. In each edition of *On The Move* we spend five minutes getting to know a board member. This month we chat with...



### Tony Pedemont

**Business Name:**

Pedemonts Moving & Storage

**Business Location:**

Chipping Norton

**Do you have a nick name?** Godzilla

**How long have you been in the removals industry? How did you get into it?** I have been working in the removal industry since 1969. I started working full time at the age of 15 at my parent's depot based in Croydon Park NSW. We also happened to live on site so I had been familiar with the industry from a young age

**What is the biggest change or challenge you have seen in the industry during your time?** The advent of modern vehicles as well as new technology and securing staff

**Coffee or tea?** Coffee

**Favourite holiday destination?**

Basin View NSW

**If you were ship wrecked on a desert island, what food or meal could you not live without?**

T – Bone steak with mushroom sauce

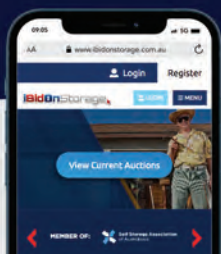
**Do you play a musical instrument/play a sport/have a hobby?** Work

**When you were a kid, what did you want to be when you grew up?** A truck driver and furniture removalist

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## BRANDING

Improved brand image and reputation, brand awareness, brand recall, consumer trust and loyalty, are the results of a successful brand which overall lead to improved competitive position and profitability. Consumers begin to form emotional bonds with brands that reflect similar values to them.

This connection to brands makes consumers inclined to spread positive word-of-mouth recommendations. Being in the removals industry, your customers are prioritising trust in their decision-making process when choosing a removalist to take good care of their belongings. Therefore, encouraging word-of-mouth and testimonials is extremely effective in gaining new customers as it is more trusted by consumers than other marketing efforts.

To take your business that extra mile and transform it into a brand that is recognisable, loved, recalled, and trusted by consumers, you must have cohesiveness and consistency across all branding elements which are:

- **BRAND NAME:** Your brand name is what identifies your company and services to consumers and should suit all other branding elements.
- **LOGO:** Your logo is likely to be the most recognisable element of your brand, with consumers being able to identify it on trucks, emails, and advertisements.
- **SLOGAN:** Not all brands have a slogan but if yours does it should effectively convey the brand's tone.
- **TONE:** Your brand's tone is the attitude conveyed through the elements for example humorous, sleek, adventurous, traditional, or optimistic.
- **GRAPHICS AND IMAGERY:** Brand graphics and imagery should all be cohesive throughout all materials. Editing to construct consistency is simple through filters and cropping.
- **COLOURS:** The colours associated with your brand should be consistent throughout your logo, graphics, emails, website,

and advertising. Being a visual branding element, colours will trigger recognition for consumers.

- **FONTS:** The fonts used across business and marketing materials should be consistent so that consumers can recognise what is coming from your brand.

Another important aspect to branding is your brand story. This is made up of your brand's purpose, core values, mission statement, and goals. It is important to make these known to consumers on your website or social media platforms as it is an aspect that consumers can relate to and subsequently gain an affinity to the brand.

Each of these components together form your desired brand identity. They must be consistent across all materials from your business such as your website, emails, social media pages, marketing, and uniforms. Through this, your business' reputation, trustworthiness, recognition, and value will improve. ●

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