



Allow the Fair Work Commission to Set Minimum Standards to Ensure the Road Transport Industry is Safe, Sustainable and Viable

These amendments implement a Jobs and Skills Summit commitment to allow the Fair Work Commission to set fair minimum standards to ensure the Road Transport Industry is safe, sustainable and viable.

What has changed?

This measure amends the *Fair Work Act 2009* (the Act) to give the Fair Work Commission (the Commission) the power to set minimum standards for the road transport industry. The measure also introduces a consent-based collective agreements framework and access to dispute resolution for road transport contractors that have had a services contract unfairly terminated.

What do these changes mean?

The changes will mean the Commission will be able to set fair minimum standards in the road transport industry, where the Commission is satisfied it is appropriate to do so. Standards will be able to apply to:

- road transport contractors and businesses that hire them
- persons in road transport contractual chains.

Road transport work is often undertaken through a contractual chain relationship, where the work is sub-contracted out one or many times. A person will be in a road transport contractual chain if they are the persons or businesses who make an initial contract or arrangement for the delivery of goods, the driver that performs the delivery and the persons or businesses who are party to the series of contracts or arrangements sitting between them. A person who requires delivery of a good for private or domestic purposes is not part of a contractual chain. Employees will also not form part of a contractual chain.

Who can apply for the Fair Work Commission to set a standard?

Applications for minimum standards applying to road transport contractors and road transport businesses will be able to be made by a road transport business, a registered organisation representing road transport contractors or businesses, and the Minister for Employment and Workplace Relations.

Applications for standards applying to road transport contractual chains will be able to be made by a regulated business in a road transport contractual chain, a party to the first contract or arrangement in a

road transport contractual chain, a registered organisation representing one or more persons in a contractual chain, and the Minister for Employment and Workplace Relations.

The Commission may also set standards on its own motion. Standards can be in the form of mandatory orders or non-binding guidelines.

What can be in a standard?

The Commission has discretion to determine what terms and conditions will be set as standards. For example, standards could include terms about payment terms or cost recovery. The Commission cannot include certain terms, such as overtime rates, rostering arrangements or terms that would change the form of engagement of road transport contractors covered by the order. The Commission also cannot include terms on matters relating to work health and safety and national heavy vehicle safety that are otherwise comprehensively dealt with by other laws.

Process for setting standards

Standards will be made by a Fair Work Commission Expert Panel for the Road Transport Industry, informed by advice from a Road Transport Advisory Group, and its sub-committees when established, including a majority owner driver sub-committee which must be established for any new standards that will impact owner drivers. When setting minimum standards, the Commission is required to consider and balance a range of factors set out in a 'minimum standards objective' and 'road transport objective'. This list of factors includes ensuring standards are tailored to the type of work, suit workers' preferences, and considering the impacts of standards on business viability, and on parties that use the services, as well as the need for standards to ensure the road transport industry is safe, sustainable and viable.

The Commission will be required to genuinely engage with the parties to be covered by a standard, including through a new notice of intent to make an order process, where draft orders must be published for an appropriate period before they come into effect to give parties time to respond appropriately.

Consent-based collective agreements

Registered organisations representing road transport contractors will also have a new ability to make collective agreements with road transport businesses. Negotiating entities have obligations to consult and explain the terms of the proposed agreements to the workers covered by the agreement, and a finalised agreement must be registered with the Commission and published on its website. There is no capacity to make collective agreements covering road transport contractual chains.

A new fair process to dispute unfair termination of a contract.

Road transport contractors will have a new ability to apply to the Commission for assistance if their services contract has been unfairly terminated. The new 'unfair termination' dispute resolution process will be available to road transport contractors who have performed work under a services contract, or a series of services contracts for the same road transport business for at least 6 months.

New protections for workplace delegates

New protections will also come into place for road transport contractors who are workplace delegates, including the entitlement to reasonable communication with members of their employee organisation and any persons eligible to be members about matters of industrial concern and reasonable access to workplace facilities.

When will these changes come into effect?

The measure will commence on 26 August 2024, or earlier by proclamation.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>