



# **Fair Work (Road Transport Industry Termination Code) Instrument 2024**

---

I, Murray Watt, Minister for Employment and Workplace Relations, make the following instrument.

Dated            3            December            2024

Murray Watt  
Minister for Employment and Workplace Relations

---



---

# Contents

<b>Part 1—Preliminary</b>	1
1 Name .....	1
2 Commencement.....	1
3 Authority .....	1
4 Simplified outline.....	1
5 Definitions.....	2
<b>Part 2—Code process for termination</b>	3
<b>Division 1—Application of code process</b>	3
6 When code process for termination must be followed.....	3
7 Warning generally required before termination.....	3
8 Exception—circumstances when warning not required.....	4
9 Show cause process before termination .....	4
10 Decision about termination of services contract .....	5
<b>Division 2—Matters relating to code process generally</b>	7
11 Time frame for conducting code process .....	7
12 Representation of regulated road transport contractor .....	7
13 Privacy obligations.....	7
<b>Part 3—Matters relating to termination generally</b>	8
14 Matters that may constitute a valid reason for termination.....	8
15 Communications relating to termination.....	9



## Part 1—Preliminary

### 1 Name

This instrument is the *Fair Work (Road Transport Industry Termination Code) Instrument 2024*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) 25 February 2025.	25 February 2025 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Fair Work Act 2009*.

### 4 Simplified outline

Chapter 3A of the Act deals with minimum standards for certain workers (called regulated workers).

Regulated workers include regulated road transport contractors who perform work in the road transport industry under services contracts with road transport businesses.

Section 536LN of the Act provides that the Minister may make a code to be known as the Road Transport Industry Termination Code. This instrument is the Road Transport Industry Termination Code.

A regulated road transport contractor may be found to be unfairly terminated by a road transport business if the Fair Work Commission is satisfied that the termination is not consistent with this Code (see paragraph 536LK(d) of the Act).

## Section 5

---

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) regulated road transport contractor;
- (b) road transport business;
- (c) road transport industry;
- (d) services contract;
- (e) terminated.

In this instrument:

*Act* means the *Fair Work Act 2009*.

*code process* means the process, set out in Part 2, leading up to and including the termination by a road transport business of a services contract with a regulated road transport contractor.

*warning* means a warning given, or required to be given, under section 7.

---

## Part 2—Code process for termination

### Division 1—Application of code process

#### 6 When code process for termination must be followed

- (1) To be taken to comply with this instrument, a road transport business must follow the code process in relation to the proposed termination of a services contract of a regulated road transport contractor who is protected from unfair termination if:
  - (a) the business is considering terminating the contract; and
  - (b) the reason for the termination is:
    - (i) subject to subsection (2), a matter related to the contractor's conduct in performing work in the road transport industry for the business under the contract; or
    - (ii) a matter related to the contractor's capacity to perform such work under the contract.

Note: To be protected from unfair termination by a road transport business, a regulated road transport contractor must have performed work for the business under one or more services contracts for at least 6 months (see paragraph 536LE(c) of the Act).

- (2) The code process does not apply to the termination by a road transport business of a services contract of a regulated road transport contractor for serious misconduct by the contractor.

Note 1: A termination that occurs because of serious misconduct of a regulated road transport contractor is not unfair (see subsection 536LM(2) of the Act).

Note 2: **Serious misconduct** has the meaning prescribed by the regulations (see section 12 of the Act).

#### 7 Warning generally required before termination

- (1) Before terminating the services contract of a regulated road transport contractor, a road transport business must warn the contractor in accordance with subsection (2).
- (2) The warning must provide sufficient information to enable a reasonable person in the position of the regulated road transport contractor to understand:
  - (a) the reason, relating to the contractor's conduct or capacity, for which it is given; and
  - (b) that the services contract is at risk of being terminated if:
    - (i) the contractor does not, within a reasonable time, remedy the matters that are the subject of the warning; or
    - (ii) the reason for giving the warning continues or is repeated; or
    - (iii) another issue, relating to the contractor's conduct or capacity, arises; and
  - (c) that the contractor may, within a specified period (which must be reasonable), provide a response to the warning.

## Section 8

---

### **8 Exception—circumstances when warning not required**

- (1) Despite section 7, a road transport business is not required to give a regulated road transport contractor a warning before terminating a services contract if the business considers on reasonable grounds that the matter relating to the contractor's conduct or capacity is such that:
  - (a) it warrants taking immediate steps to terminate the contract; or
  - (b) it is not reasonable to expect the business to allow the contractor to continue to perform work in the road transport industry for the business.

Note: The following are examples of when this subsection might apply:

- (a) the termination of a regulated road transport contractor is required for a serious safety breach;
  - (b) a regulated road transport contractor's driver licence is suspended or cancelled.
- (2) In such circumstances, the road transport business may proceed directly to the show cause process in section 9.

### **9 Show cause process before termination**

#### *Scope*

- (1) This section applies if:
  - (a) section 8 means that a road transport business is not required to give a regulated road transport contractor a warning before terminating a services contract; or
  - (b) a road transport business has given a regulated road transport contractor a warning and the business considers, on reasonable grounds, that termination of a services contract is justified because:
    - (i) the contractor has not, within a reasonable time, remedied the matters that were the subject of the warning; or
    - (ii) the reason for giving the warning has continued or been repeated; or
    - (iii) another issue, relating to the contractor's conduct or capacity, has arisen.

#### *Opportunity to show cause*

- (2) Before the road transport business terminates the services contract, the business must give the regulated road transport contractor an opportunity to show cause why the contract should not be terminated.
- (3) As part of the opportunity to show cause mentioned in subsection (2), the road transport business must provide sufficient information to enable a reasonable person in the position of the regulated road transport contractor to understand:
  - (a) that the business proposes to terminate the services contract; and
  - (b) the reason for the termination of the contract; and
  - (c) that the contractor has the opportunity, within a specified period, to show cause why the business should not terminate the contract; and
  - (d) what steps the business intends to take next (subject to the contractor's show cause response, if any).



*Meeting with business's representative*

- (4) The regulated road transport contractor may request the road transport business, within the period mentioned in paragraph (3)(c), to make a representative available to discuss the proposed termination of the contractor's services contract.
- (5) If the regulated road transport contractor makes such a request:
  - (a) the road transport business must make the representative available for the discussion within a reasonable time; and
  - (b) the representative must have knowledge about the reason for the proposed termination.
- (6) The person appointed by the regulated road transport contractor for support or representation (see section 12) may participate in the discussion.

## **10 Decision about termination of services contract**

*Mandatory considerations in termination decision*

- (1) In considering whether to terminate the services contract of a regulated road transport contractor after the show cause process in section 9 is complete, a road transport business must have regard to the following matters (where applicable):
  - (a) the contractor's response to the opportunity to show cause why the contract should not be terminated;
  - (b) whether the circumstances that led to the show cause process:
    - (i) were within the control of the contractor; or
    - (ii) resulted from the contractor meeting its obligations under the Heavy Vehicle National Law (as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld)) or any other State or Territory law that regulates the use of vehicles on roads;
  - (c) the financial investment that the contractor has made in vehicles and other equipment necessary to perform work under the contract (in particular, whether such investment was necessary for the contractor to obtain the contract);
  - (d) the history of performance of services by the contractor for the business under the contract;
  - (e) the length of time the contractor has performed work in the road transport industry for the business;
  - (f) any other relevant matters.
- (2) After considering the matters in subsection (1), the road transport business must:
  - (a) decide not to terminate the contractor's services contract; or
  - (b) decide to terminate the contract.
- (3) The road transport business may decide to terminate the services contract only if:
  - (a) the reason for the termination is a valid reason; and
  - (b) the business considers on reasonable grounds that the reason has been established.

**Section 10**

---

*Notifying decision not to terminate services contract*

- (4) If the road transport business decides not to terminate the services contract, the business must, as soon as reasonably practicable, give notice to the regulated road transport contractor to that effect.

*Notifying decision to terminate services contract*

- (5) If the road transport business decides to terminate the services contract, the business must, as soon as reasonably practicable, notify the regulated road transport contractor of the following matters:
- (a) that the business has decided to terminate the contract;
  - (b) the reason for the termination;
  - (c) the day on which the termination will take effect;
  - (d) when and how any final payments owing to the contractor will be made.

## **Division 2—Matters relating to code process generally**

### **11 Time frame for conducting code process**

A road transport business must use its best endeavours to ensure that:

- (a) a process that is required to be conducted in accordance with this Part is carried out within a reasonable time frame; and
- (b) a regulated road transport contractor is given a reasonable time frame in which to show cause under section 9 why the contractor's services contract should not be terminated.

### **12 Representation of regulated road transport contractor**

- (1) A regulated road transport contractor may appoint a person to provide the contractor with support or representation in relation to the proposed termination, under the code process, of the contractor's services contract by a road transport business.
- (2) The person appointed may be a delegate or an employee of an organisation.

Note: For *organisation*, see section 12 of the Act.

### **13 Privacy obligations**

Nothing in this Part requires a road transport business to contravene any obligations that the business has in relation to the protection of personal information (within the meaning of the *Privacy Act 1988*).

## Part 3—Matters relating to termination generally

### 14 Matters that may constitute a valid reason for termination

- (1) A matter set out in any of the following subsections may constitute a valid reason for the termination, by a road transport business, of a services contract with a regulated road transport contractor who performs work for the business under the contract.

Note: If the matter constitutes serious misconduct, the code process does not apply to the termination of the services contract with the regulated road transport contractor (see subsection 6(2)).

#### *Failure to meet standards etc.*

- (2) The regulated road transport contractor fails or refuses to meet standards or requirements for the performance of services that have been communicated to the contractor by the road transport business or of which the contractor is otherwise aware.

#### *Safety breaches*

- (3) The regulated road transport contractor engages in, or is engaged in:
- (a) a serious safety breach; or
  - (b) a series of safety breaches.
- (4) For the purposes of subsection (3), a reference to a safety breach includes, but is not limited to, a failure or refusal to comply with any one or more of the following laws:
- (a) a work, health and safety law that applies to the regulated road transport contractor in providing services under the services contract;
  - (b) the Heavy Vehicle National Law (as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld));
  - (c) any other law of a State or Territory that regulates the use of vehicles on roads.

#### *Fraudulent or dishonest conduct*

- (5) The regulated road transport contractor engages in fraudulent or dishonest conduct including, but not limited to, misrepresenting or falsifying information provided to the road transport business.

#### *Licensing or accreditation requirements*

- (6) The regulated road transport contractor has not complied with licensing or accreditation requirements imposed on the contractor by or under a law of the Commonwealth, a State or a Territory.
- (7) The road transport business contravenes, or may contravene, licensing or accreditation requirements imposed on the business by or under a law of the Commonwealth, a State or a Territory because of a matter relating to the conduct or capacity of the regulated road transport contractor.

*Termination permitted by services contract*

- (8) The matter is one for which the services contract allows termination of the contract by the road transport business for breach of the contract by the regulated road transport contractor.

*No limitation on valid reasons*

- (9) This section does not limit the matters that may constitute a valid reason for the termination, by a road transport business, of a services contract with a regulated road transport contractor.

**15 Communications relating to termination**

- (1) A road transport business must ensure that all communications relating to the termination of the services contract of a regulated road transport contractor are conveyed clearly to the contractor.
- (2) The road transport business must:
- (a) use its best endeavours to make a written record of any such oral communication as soon as practicable after the communication takes place; and
  - (b) if requested by the regulated road transport contractor—provide written confirmation of any such oral communication.