National Farmers' FEDERATION

ROAD SAFETY REMUNERATION TRIBUNAL

What is the Road Safety Remuneration Tribunal (RSRT)?

The RSRT is a Tribunal set up in 2012 by the Gillard Labor Government in response to persistent lobbying by the Transport Workers Union and others. It is built upon the notion that mandated higher rates of pay will lead to safer outcomes in the road transport industry – a theory that is yet unproven.

The RSRT was established under the *Road Safety Remuneration Act 2012*. Legally it is an "independent national body with functions relating to the road transport industry" but in practice it operates as a subset of the Fair Work Commission (FWC), with an annual funding envelope of approximately $2.5million per year.

The RSRT has 8 members who are responsible for undertaking the functions of the RSRT:

Role	Name	Other role / background
President	Jennifer Acton	FWC Senior Deputy President
Deputy President	Lee Drake	FWC Senior Deputy President
Deputy President	Ingrid Asbury	FWC Deputy President
Commissioner	Peter Hampton	FWC Commissioner
Industry Member	Steve Hutchins	Ex TWU
Industry Member	Paul Ryan	ARTIO
Industry Member	Tim Squires	Ex Qld Trucking Association
Industry Member	Prof. Ann Williamson	Academic

What does the RSRT do?

The RSRT's key function is to make road safety remuneration orders. It can also approve road transport collective agreements, deal with disputes in the road transport industry, and conduct research into remuneration-related matters that may affect safety in the industry. Two Orders made by the RSRT affect the agriculture sector and small transport businesses that provide services to agriculture:

- *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014* (2014 Order); and
- *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* (2016 Order).

The 2014 Order

On 17 December 2013, the RSRT made the *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order* 2014. The 2014 Order significantly increased the legal risk and paperwork associated with employees and owner drivers in the transport industry from 1 May 2014.

The order applies broadly to road transport drivers (employees and contractors) in the supermarket supply chain as well as drivers undertaking interstate or long distance work (over 500kms return carrying livestock or materials from one point to another). If it applies, among other things it gives **new legal rights to contract drivers to sue for "adverse conduct"** (similar to the adverse action rules in the *Fair Work Act 2009* which apply to employees) and requires **comprehensive written contracts for each driver** and **safe driving plans for each service** they provide.

There are some exceptions to coverage under the 2014 Order: it does not apply to sole traders/partnerships operating within the confines of one state, and it only applies to certain movements of livestock (horses, cattle, sheep, pigs, goats or poultry).

The 2016 Order

On 18 December 2015 the RSRT made the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*. The 2016 Order only applies to contractor drivers. It sets new minimum prices for contracted transport services, and allows drivers to audit their hirers to see if they are complying with the Order. Key changes to minimum rates include:

- Payments must now reflect a **combination of hourly and kilometre rates**;
- Payments apply to a **much broader range of circumstances** than traditionally required;
- All rates automatically increase by 2% per year; and
- Long distance rates can be used if the contractor travels more than 400km per day.
- Payments must be made for each hour or part thereof, which the contractor driver necessarily spends in providing the transport service.
- This includes rest time, loading/unloading, cleaning, inspecting, servicing, repairing, recording information, waiting up to 8 hours per day due to a natural disaster, supervising others.
- Hirers are not required to pay for time in which there is a breakdown or accident.
- Kilometre rates apply from the work site or depot where the contractor is engaged to the location at which the service concludes.
- The RSRO does not appear to consider how payments should apply to mixed/part loads or 'round trip' loads which may involve legs in which the vehicle may travel empty.

A summary of select long distance rates is set out below.

	Driver + Truck	Driver + Truck + Trailer(s)
Semi	$23.53hr + $1.41km	$31.29hr + $1.53km
B-Double	$23.57hr + $1.57km	$35.33hr + $1.80km
Double RT	$23.53hr + $1.71km	$41.67hr + $2.00km
Triple RT	$23.53hr + $1.97km	$52.06hr + $2.42km

The actual rates in the 2016 Order are much more complex – see Schedules A & B to the 2016 Order.

How does this affect the agriculture sector?

There are a number of issues with the 2016 Order that remain unresolved –but fundamentally there is a real risk that it will price many small owner-operators out of the market, leaving to fewer, more expensive options for movement of agricultural produce. There is a strong possibility that backloads and part loads will become cost-prohibitive, as the minimum rates must be paid by each hirer to the contractor, so the cost of a full load and part load will potentially be the same. Farmers who also drive trucks to supplement their income may no longer be able to source work.

The Order itself is very difficult to understand, and many drivers do not know if they are covered by it or not. The Fair Work Ombudsman, who is responsible for enforcing the 2016 Order, is still coming to grips with what it means.

Key questions about the effect of the 2016 Order remain unresolved:

a. **Part loads:** The published minimum rates do not take account of the proportion of available vehicle space or maximum payload mass occupied by a particular hirer's goods. This means that every hirer must pay the full rate equivalent to the maximum potential of the load. Most owner-drivers have only one vehicle and are not able to instead use a smaller vehicle that would be more appropriate for smaller loads. Without further clarification, part-loads will immediately become unviable for most hirers.

b. **Loads with multiple hirers:** The situation outlined above becomes even more confusing when there are multiple hirers with goods comprising part of a larger load. If each hirer is required to pay the full minimum rate, owner-drivers will need to charge a rate for the total load that is a multiple of the number of the hirers. In the case of road trains carrying general freight this could mean the base minimum rates must be multiplied up to 30 times. No owner driver who is required to charge at this level could ever compete with larger companies that are not subject to minimum rates because they use employee drivers.

c. **Multiple pick-up and drop-off points:** In the case of multiple-hirers, there is much confusion around which of the hirers should pay for parts of a multi-leg trip that involves periods in which the vehicle is part-loaded or unloaded. Which of the hirers must pay for waiting time at one of the drop off points?

d. **Supermarket Work:** There is significant uncertainty about what exactly constitutes supermarket work. Almost any item produced in the agricultural supply chain might be 'destined for sale' in a supermarket chain. However, these items can change hands several times and/or be processed along the way or allocated to a transport operator via a third party agent. We also do not know whether or not a business that operates five or more supermarkets includes all retail business (e.g. Elders / Landmark or a chain of hairdressers that offer some products for retail sale) or only businesses akin to Coles and Woolworths.

e. **Factoring for the grade of transport worker when calculating rates**: If drivers are paid only at the rate *'….which corresponds to the Description of the work or driving undertaken…'* rather than the highest Transport Worker Grade at which they are potentially able to work, then logically, the vehicle combination alone would be a sufficient basis for calculating the minimum rate (and any driver must simply hold the minimum qualification required).

f. **Defining distance to GPO as part of long-distance work**: it is not clear why a definition is required where it appears to have no practical application to the 2016 Order.

g. **Scope**: Determination of who is actually covered by the RSRO is inherently difficult because of the new requirement for knowledge of the legal status of all related supply chain parties and the ultimate origin/destination of the goods being transported.

h. **Audit obligations**: inconsistent advice from various parties about the effect of the audit provisions in the 2016 Order highlight the need for clarity about how these provisions work, who can request audits and who must comply with any such requests.

ALRTA Case Studies: Modelling the Impact of the Road Safety Remuneration Orders

1.0 Introduction

The following case studies have been developed by the Australian Livestock and Rural Transporters Association (ALRTA) in consultation with member transport operators to illustrate the expected impacts of the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* (2016 RSRO) which will come into force on 4 April 2016.

Each case study is based on a single real world example. Each example has been chosen because it is broadly representative of the circumstances faced by thousands of other affected transport operators who are undertaking the same work in different locations around Australia – many of whom have raised concerns either directly with the ALRTA or one of our six state associations.

Some are affected by a combination of the circumstances described below.

The names of the companies involved have been changed or omitted to protect their identities. All are concerned that public exposure will have commercial consequences or trigger the adverse conduct provisions of the 2016 RSRO.

The generalised impacts of the case studies on owner drivers, hirers, customers, communities and governments are summarised in the concluding section.

2.0 Case Studies

2.1 Case Study 1: Mixed Loads

<u>Background</u>

Farmers often buy or sell animals at saleyards in small consignments of between 5 and 15 head. This helps with cash flow and can be an attractive option depending upon the prevailing prices at different local saleyards or the seasonal production needs of farmers. The livestock must be transported to or from a saleyard either by the farmer or a professional carrier. Professional carriers generally use larger vehicles such as b-double which carry around 60 cattle.

<u>Scenario</u>

ALRTA owner-driver 'Keith' operates a B-double from a home base near Canberra ACT. On a typical journey, Keith will initially agree to pick up 45 head of cattle from Goulburn Saleyards to be transported to a farm near Quirindi.

Before travelling north, Keith will call ahead to advise several other transport companies and agents of the approximate route and the time he is expected to be in the area. Along the way, Keith receives several calls requesting small pick-ups and drop offs at various farms and saleyards. The full round trip takes two days and also includes the area around Moree, Gunnedah and Tamworth, with a final drop off at Maitland Saleyards.

<u>The Problem</u>

Keith earns good rates from his primary hirer which exceed the stipulated minimums in the 2016 RSRO. However, Keith generally charges around $35 per head for any smaller loads of cattle that he picks up on his way to and from the primary destination(s).

From 4 April 2016, all hirers will be required to pay the full minimum rate for his b-double regardless of how many livestock are carried. The impact for a b-double is summarised in the table below.

	# cattle	Minimum RSRO Rates for 500km	Current Market Rate	% Increase
Farmer 1	20	$784	$700	12%
Farmer 2	15	$784	$525	49%
Farmer 3	10	$784	$350	124%
Farmer 4	5	$784	$175	348%

While Keith must charge a minimum rate, a larger company using employee drivers is not required to do so. Keith will simply not be able to compete with the lower market rates charged by these larger companies for pickups with smaller numbers of animals.

In addition, the *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014* (2014 RSRO) also requires each farmer to agree a written contract and safe driving plan with Keith prior to the work being undertaken. These are not required when farmers use larger companies with employee drivers.

Farmers will either:

1. Engage a larger company with employee drivers to move smaller consignments of livestock;
2. Move the livestock in their own truck. This outcome is problematic because smaller trucks are much less efficient, less safe and do more damage to the road on a tonne/km basis; or
3. Pay significantly higher freight rates – but only if no other options are available.

Keith knows that if the 2016 RSRO is enforced he will be unable to find sufficient work from 4 April 2016. The RSRO will impact hardest on owner drivers like Keith who do their best to understand the law and do everything they can to abide by it.

2.2 Case Study 2: Back loading

<u>Background</u>

General freight, including fresh produce, is regularly transported from the NSW/VIC Riverina to Brisbane. A typical one-way trip is around 1,500km and will take around 17hrs of driving time. ALRTA members report that the rates paid by hirers to owner drivers for the inward bound leg to Brisbane exceeds the minimum rates stipulated in the 2016 RSRO. However, there is very little freight returned from Brisbane to the Riverina. Market rates are extremely competitive and any freight that is available to a particular owner driver is likely to be a 'part load'.

<u>Scenario</u>

'Bruce' is a sole trader owner-driver based in the NSW Riverina. He is regularly engaged by a local company to carry a full load of general freight to Brisbane. Currently, Bruce makes very good money on his trip to Brisbane. Bruce is also able to supplement his income on the return leg if he is able to find a backload that can be picked up and dropped off somewhere between Brisbane and home base.

<u>The Problem</u>

From 4 April 2016, Bruce will be required to charge a minimum rate for all freight, including backloads. While this will not directly impact his forward leg to Brisbane, he must charge each hirer at least $3,300, for the return leg - even if the load is just one pallet.

Company trucks with employee drivers that are competing for this work will not be required to charge a minimum rate.

The choice for hirers is a simple one. Bruce knows that from 4 April 2016 he will no longer be able to supplement his income on the return leg. He estimates that the 2016 RSRO will reduce his gross annual income by around $50,000.

2.3 Case Study 3: Viability of Longer Multi-leg Round Trips

Background

An ALRTA member operator 'Joe' has for the past 4 years been undertaking a regular multi-leg journey which encompasses Adelaide-Brisbane-Perth-Adelaide. The round trip is undertaken in a b-double and usually occurs twice each fortnight on a relaxed schedule with very little pressure on Joe to meet specific time frames.

Scenario

Joe has a regular long-term contract of carriage and receives full loads of freight to transport from Adelaide to Brisbane. The rates paid exceed the minimum rates stipulated in the 2016 RSRO. Joe is very lucky that he also has a regular contract of carriage from Brisbane to Perth for which he is paid at a rate exceeding the minimum stipulated in the 2016 RSRO. However, freight flows between Perth and Adelaide are low and Joe is unable to find any work that meets the minimum rate.

The Problem

The only work available to Joe for the Perth to Adelaide leg is worth $2,500 on average. From 4 April 2016 Joe will be required to charge $6,000 or he must refuse to accept the work. Joe knows that no one will pay $6,000 for the Adelaide to Perth leg which means that he will receive $2,500 less every time he completes the multi-leg journey. As a result, the entire round trip will become unviable and Joe will lose both of his profitable contracts.

2.4 Case Study 4: Distorted Interstate Competition

Background

Export grain harvested in the NSW / Victoria Riverina area is delivered to the port of Melbourne by road transport. Most pickup-drop off points in Victoria are less than 500km from port and would not trigger the RSRO requirements (unless the export of the grain is considered to be interstate trade – something which is not clear in the RSRO). However, the RSRO requirements will certainly be triggered by cross-border grain movements from NSW into Victoria that exceed 200km in total distance.

The Problem

NSW farmers already face higher freight costs than their Victorian counterparts because of the increased distance from port. From 4 April 2016 they will be at an even greater disadvantage.

NSW grain farmers will be required to pay at least the RSRO stipulated minimum rates whereas Victorian grain farmers just a stone's throw away will not. The difference is illustrated in the table below.

Origin	Approximate Cost for b-double on a 600km return trip to port of Melbourne
VIC (market rates)	$1, 053
NSW (RSRO rates)	$1,439

From 4 April 2016, NSW farmers can expect to pay freight rates that are 35% higher than VIC farmers for the exact same distance and destination. Apart from being grossly unfair, this situation also has the potential to distort otherwise efficient grain flows. The geographic point in NSW at which it becomes more economic to send bulk grain by road to Port Kembla instead of the Port of Melbourne is likely to move further south. This can have major implications for infrastructure requirements for road authorities and grain receival points.

2.5 Case Study 5: Tow operators

<u>Background</u>

For owner-drivers with their own trailers, the 'work' subject to minimum rates will typically commence at the pickup point and terminate at the unloading point. In contrast, tow operators will normally be required to return the hirer's trailers to their home base.

<u>Scenario</u>

The ALRTA asked a large member company hiring livestock tow operators to use the 2016 RSRO calculator to compare market rates on various return trips with the new minimum rates from 4 April 2016.

	Distance	Driving Time	Market Rate Total Payment	RSRO Required Total Payment	Additional cost
Trip 1	694	22	$1,485	$1,610	$125
Trip 2	628	20	$1,314	$1,460	$146
Trip 3	1,490	40	$2,850	$3,288	$438

<u>The Problem</u>

Tow operators will become comparatively more expensive to use from 4 April 2016. In this case, the hirer advises that the contract will no longer be profitable if tow operators are used. The hirer already operates a large fleet and now intends to phase out the use of all owner-driver tow operators. Some of these tow operators have been working for the hirer safely and profitably for the past 15 years.

2.6 Case Study 6: Liabilities for the Hirer

<u>Background</u>

The RSRO has broad, but not 100% coverage of owner drivers and smaller companies. The Fair Work Ombudsman has ruled that, in the case of a small company with three trucks, the 2016 RSRO can apply when the owner of the company (or a related individual such as an immediate family member) is driving the truck, but it does not apply when a company employee is driving the truck.

<u>Scenario</u>

The ALRTA has several large member companies that routinely sub-contract work to smaller companies including owner drivers. These hirers are already asking sub-contractors to make formal written declarations concerning whether or not the 2014 or 2016 RSRO will apply to their operations.

Hirers are concerned that they will unpredictably become liable under the 2014 or 2016 RSRO when sub-contractors change their circumstances without informing the hirer. For example, a small sub-contractor might normally provide vehicles to the hirer that are driven by an employee driver. However, if that driver was to suddenly resign, become ill or take extended leave the owner of the vehicle might instead get behind the wheel.

The Problem

Situations such as these are not uncommon and will be problematic for both the hirer and the sub-contractor. The operation of the vehicle by the owner driver will trigger over-riding requirements under the 2014 or 2016 RSRO which may not be factored into the established contract of carriage.

If the new requirements have a material impact on the viability of the contract for the hirer (because of minimum rates payable), or impose new layers of otherwise unnecessary red-tape (such as record keeping and audit requirements), then it is likely that the hirer will consider making alternative arrangements.

Given this prospect, the sub-contractor will have a strong motivation not to inform the hirer of any changes to the agreed circumstance. This leaves the hirer exposed to prosecution for failing to adhere to the requirements of the RSROs. This situation might even become prevalent within the operations of a large hirer without their knowledge – appearing to any outside investigator that the hirer was deliberately and systematically beaching their legal requirements.

Large hirers are extremely concerned about increased liabilities such as these arising under the RSROs. In many instances, owner drivers have been informed by larger hirers that their services will no longer be required from 4 April 2016 either because the new minimum rates are too high or because of concerns about increased red tape and liability for the hirer.

3.0 General Implications of the Case Studies

3.1 Effects on Owner Drivers

Case studies 1 – 6 clearly illustrate that, from 4 April 2016, affected owner drivers will be at a competitive disadvantage compared with companies that are using employee drivers.

This can arise in many ways, but generally, the increased level of red tape, reduced flexibility and imposition of minimum rates will result in the services of owner drivers becoming much less attractive to potential hirers.

Many owner drivers will lose their regular contracts and will find it especially difficult to pick up smaller jobs that involve a part load or multiple hirers.

The ALRTA expects that the 2016 RSRO will on balance reduce the gross annual income of owner drivers in the rural sector, causing financial hardship and bankruptcy for many.

This would be particularly worrying for owner drivers who need to run their vehicle for another year or more to get themselves into a position in which they have enough equity to sell without leaving themselves with a massive debt burden.

This is compounded by more limited work prospects and the possibility that the second-hand truck market may shortly thereafter plummet as other drivers scramble to exit the industry as soon as possible. Equipment finance brokers are reporting a recent surge in enquiries from concerned owner drivers seeking information about lease exit terms.

3.2 Effects on Smaller Hirers

Case studies 1 -3 demonstrate that smaller hirers such as individual farmers will be hit hard by the 2016 RSRO. Freight rates for smaller jobs normally undertaken by owner drivers will skyrocket. In some cases, the 2016 RSRO will widen competitive disadvantages faced by some farmers when compared with their counterparts in an adjoining state. This will impact similarly on any small business using the service of owner drivers for small freight consignments.

3.3 Effects on Larger Hirers

Case studies 5-6 show that larger hirers will potentially face increases in the amount of red tape, legal liability and the level of rates payable to sub-contractors. To reduce these problems, larger transport companies will simply begin to phase out the use of sub-contractors and grow the size of their own fleets. Many affected sub-contractors have already been informed that there will be no further work from 4 April 2016.

As an interim measure, some larger transport companies have agreed to sub-contract work to one another in preference to using affected owner drivers. Companies will not speak publically about this because of the 'adverse conduct' provisions of the RSRO.

3.4 Structural Changes and Unionisation of the Workforce

The primary beneficiary of the Road Safety Remuneration Tribunal and the RSROs is the Transport Workers Union (TWU). Pricing independent contractors out of the transport industry in favour of a direct employment model is potentially highly advantageous to the TWU, as it grows the pool of persons eligible to be union members. Lifting membership levels creates an opportunity for greater influence over the industrial relations system and more factional power within political parties.

This explains why the TWU is so strongly supportive of the RSROs. For many owner drivers however, the reality will be displacement, either being forced out of the industry altogether or into direct employment after having to sell their truck(s). If one of the impacts is lower resale values, this will leave many owner drivers with significant business debt that they are no longer able to service.

3.5 Impacts on Local Communities

Larger transport companies tend to consolidate their base of operations in larger communities where there is better infrastructure and a bigger pool of potential employees.

In contrast, owner drivers often live in smaller communities close to their families and social networks, and where living costs are comparatively lower.

There are limited opportunities for new small business start-ups in small communities. The loss of owner drivers from these areas will have a devastating impact.

The ALRTA has discussed the likely impact of a structural shift with many owner drivers living in these smaller communities. Owner drivers have told us that:

- Most money earned by owner drivers on their travels around Australia is returned to the small communities in which they live;
- All food and other personal supplies are purchased from local businesses such as the 'hot bread shop' or locally owned minimart;
- Just one owner driver will spend $3,000 each year on work clothes from the local retailer;

- Many local businesses connected with the road transport industry rely heavily on local owner drivers. If transport operations are consolidated in larger regional centres smaller towns can expect that auto-electricians, mechanics, panel beaters, tyre outlets and local service stations will also suffer;
- It is local transport and supplier companies that often sponsor clubs and charities such as the local cricket or football teams or Lions Club.

The imposition of the 2016 RSRO on 4 April 2016 will have broad negative impacts on the social fabric of small communities around Australia.

3.6 Impacts on Governments

The 2016 RSRO may also impact on government revenue and government services.

Firstly, larger fleets generally achieve a better return on capital than owner drivers. Trucks can be kept moving by changing drivers after each shift and by establishing support services such as mechanics within the business. More work can be done with fewer trucks. A sudden change in the relative proportions of large v small fleets would have a significant negative impact on government revenue collected from vehicle registrations.

Secondly, if farmers choose to transport more of their own produce in older, less efficient vehicles, there will be an increase in road pavement damage on a tonne / km basis. These vehicles are also much less safe and have higher environmental impacts.

Thirdly, it is also likely that the imposition of minimum rates will greatly increase the number of disputes within the transport sector. This will have implications for the resourcing of the Fair Work Ombudsman, Road Safety Remuneration tribunal and of course the Courts.

Overall, governments will experience higher costs and lower income.

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