

REVIEW OF THE ROAD SAFETY REMUNERATION SYSTEM

NSW GOVERNMENT SUBMISSION

Executive Summary

The NSW Government supports any initiatives to improve work health and safety outcomes in the road transport industry, which is recognised as one of the highest risk industries, both nationally and in NSW.

However, the NSW Government is concerned that the Commonwealth regime has created an unnecessary overlap with existing State and Territory arrangements and other Commonwealth laws. Over-regulation can create uncertainty in the road transport industry.

Any approach to addressing safe payments must closely consider how to complement, potentially leverage or at the very least not duplicate existing work health and safety, and road safety, legislation. Such duplication may cause confusion for participants in the road freight transport sector and thereby detract from their ability or willingness to comply with 'safe rates' legislation.

This conflict and overlap with existing legislation could result in job losses, small business closures, reduced industry investment, prevent market entry and limit innovation within the industry and pass unnecessary costs on to consumers.

Outline of submission

The NSW Government's submission focuses on the following matters from the Terms of Reference guiding the Review.

- A. The regulatory and economic burden of the Road Safety Remuneration System on participants in the road transport industry and the Australian economy generally.
- B. Whether other Commonwealth, state and/or territory regulations and initiatives provide a more appropriate means of improving safety outcomes in the road transport industry.
- C. Assess the operation and conduct of the Tribunal and the extent to which it has achieved its aim and objectives.

A: Regulatory Burden

NSW Provisions

Chapter 6 of the *Industrial Relations Act 1996* (NSW) (IR Act) provides for a discrete regulatory regime which applies to:

- contracts of bailment (taxi drivers); and
- contracts of carriage (drivers involved in the transportation of goods who own their own vehicle).

These provisions provide the Industrial Relations Commission of NSW (IRC) with the power to make and approve:

- contract determinations (analogous to awards); and
- contract agreements (analogous to enterprise agreements) between parties in relation to such contracts.

Chapter 6 also empowers the IRC to resolve disputes in the transport industry. A Contracts of Carriage Tribunal can be established which is empowered to order the payment of

compensation for termination of 'head contracts of carriage'. Chapter 6 provisions also allow for the recovery of outstanding monies where owner drivers are able to pursue underpayments. Finally, Chapter 6 provides for the registration of associations of contract drivers and associations of contract carriers, and for the registration of associations of 'employing contractors' (that is, those who engage contract drivers and contract carriers).

The current Chapter 6 provisions and their statutory forerunners have been a feature of the NSW system for a number of decades and are well-used and supported by the relevant stakeholders.¹ The provisions constitute a well-established and robust regime for the regulation of pay and conditions in the transport industry.

Chapter 6 of the IR Act and Commonwealth Legislation

The *Road Safety Remuneration Act 2012* (RSR Act) applies to all road transport drivers with the requisite constitutional connections. That is, it applies to drivers who are employed by, or contracted to, a constitutional corporation, or who engage in interstate trade or commerce. In addition, the RSR Act covers the hirers of such road transport drivers as well as participants in the supply chain. The terms 'road transport driver', 'hirer' and 'participant in the supply chain' are defined in the RSR Act and the definitions are broad.

The overall coverage of the RSR Act therefore appears to be quite broad and importantly includes persons who are parties to either contracts of carriage or contracts of bailment, pursuant to Chapter 6 of the IR Act, provided that they fall within the relevant definitions in the RSR Act.

Consequently, it is highly likely that Road Safety Remuneration Orders (RSROs) made by the Road Safety Remuneration Tribunal (RSRT), and the provisions of the IR Act's Chapter 6 contract determinations or agreements, will both cover relevant pay rates, and possibly other matters.

Given the operation of s109 of the Constitution, the RSRO will prevail on those matters where there is a direct correlation of matters covered. However, the matters encompassed by RSROs are restricted to 'remuneration and related conditions' (s27 RSR Act), in contrast to contract determinations or agreements which often contain provisions not covered by an RSRO.² As such, it is likely that the two instruments could operate concurrently. Indeed, it is noted that the RSR Act appears to provide for concurrent operation of this kind.³

The only RSRO made by the RSRT to date does not deal with the issue of rates of payment for road transport drivers although this matter will be the subject of future proceedings.⁴

Work Health and Safety legislation

Under the *Work Health and Safety Act 2011* (NSW) (WHS Act), persons conducting a business or undertaking already have obligations to drivers whose activities they influence regardless of whether the driver is employed by them, is an owner/driver or is an employee

¹ Some recent Contract Carrier Agreements include: *CA11/1 TNT Australia - TWU New South Wales (Contract Carriers) Agreement 2011-2013*, approved on 1 January 2011; *CA11/2 AirRoad Local Parcel Sydney Contract Carriers Agreement 2010*, approved 16 June 2011; *CA11/3 Fulton Hogan Industries Pty Ltd and Transport Workers Union of New South Wales, Asphalt Cartage Agreement 2011*, approved 4 July 2011.

² For example, the NSW Transport Industry - General Carriers Contract Determination provides for conditions including uniforms and lunch breaks. It is not clear whether these are the kind of matters that can be included in an RSRO.

³ See s10 – *Road Safety Remuneration Act 2012*

⁴ Road Transport and Distribution and Long Distance Operations RSRO 2014

of another entity. It is not apparent how the Commonwealth's road safety remuneration provisions will complement those WHS provisions.

Conclusion

The concurrent operation of these State and Commonwealth provisions could create significant duplication of regulation which is a matter of material concern to the NSW Government and NSW stakeholders. Duplication generally leads to uncertainty and confusion for stakeholders and may increase costs that are passed on to consumers.

B: Alternate means of achieving improvements in road safety

Work Health and Safety legislation

In NSW, WorkCover, through its function of ensuring compliance with WHS legislation, has regulatory responsibilities that have a bearing on road safety. WorkCover is responsible for administering a range of regulatory measures to promote and manage workplace health and safety of people at work across all industries, including Road Freight Transport.

In terms of injury incidence rates, workers compensation data provided in WorkCover's NSW Road Freight Action Plan 2013 – 2014 indicates that the number of injuries per 1000 workers for the 'hire & reward' sector of the Road Freight Transport industry is significantly higher than the NSW average.

It is for this reason that Road Freight Transport has been identified as a priority under WorkCover's *Focus on Industry Program*, designed to improve workplace safety, return to work and injury management outcomes in high risk sectors. As part of this program, WorkCover developed a Road Freight Transport Industry Action Plan, in consultation with key stakeholders, which was officially launched in May 2013. The Plan, currently being implemented, focuses on 'hire and reward' operators (whose main business is the transport of other people's goods) and targets four key issues: onsite traffic management, manually loading/unloading trucks, driver wellness, and return to work/ injury management.

Other activities undertaken by WorkCover in the Road Freight Transport sector include those set out below.

- A Long Distance Truck Driver Fatigue Strategy, encompassing short and long-term initiatives focused on addressing a range of issues associated with long distance road freight.
- Co-host with NSW Roads and Maritime Services (RMS) of Driver Awareness Days to raise awareness of fatigue management responsibilities for all parties in the supply chain.
- Working in partnership with RMS and NSW Police to gather intelligence on high freight movement organisations that may be placing their employees and others at risk.
- An Interagency Agreement between WorkCover, RMS, NSW Police and the Office of Environment and Heritage that aims to promote cooperation and collaboration between government agencies with regulatory interests in long distance and heavy vehicle trucking, and road safety.

Road safety initiatives

RMS has key responsibility for ensuring road safety. For example, it works closely with NSW Police to monitor heavy vehicle speed compliance throughout NSW. In 2012, combined efforts targeting heavy vehicle speeding resulted in a 79 per cent decrease in the number of heavy vehicles detected speeding at more than 105 km/h. This reduction was a result of concerted efforts to educate the heavy vehicle industry about the social and economic costs of speeding, and effective compliance campaigns.

Multi-jurisdictional operations involving the interception, checking and monitoring of heavy vehicles are ongoing as part of RMS's efforts to ensure heavy vehicle speed and safety compliance.

Conclusion

Within a framework of comprehensive legislation, the initiatives undertaken by WorkCover and RMS focus on working with key stakeholders in the road freight industry 'on-the ground' in a practical manner to achieve improved road safety outcomes.

C: Comments on the Commonwealth's Road Safety Remuneration Tribunal (RSRT)

The introduction of new requirements by the RSRT already covered through other legislation and government agencies may lead to a more complex and unwieldy regulatory road safety environment. The RSRT now has greater powers to override, cause inconsistency and conflict with many aspects of the existing road safety regulatory framework and industrial relations requirements (at both Federal and State levels). This conflict and overlap with existing legislation could result in an additional compliance burden, uncertainty and costs, particularly for smaller businesses, without achieving any real gain in productivity, safety or remuneration.

Independent contractors and small businesses do not have adequate resources and systems to enable them to implement duplicated obligations that already exist under other legislation such as the WHS Act. In addition, the multiple client points of contact that independent contractors engage with will burden the driver with additional paperwork and regulatory obligations, which is very different from the experience of a driver within a large operator, whose freight task may be a single delivery of an entire truckload between only two points.

The RSRT should not create enforceable instruments capable of overriding current regulation until a thorough examination of existing complementary regulatory laws including the NSW system of 'contract determinations' has occurred.

Conclusion

The RSRT may have a disproportionate impact upon smaller businesses within the road transport industry. This conclusion is strengthened by the introduction of the *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014* which places additional regulatory requirements upon small business. These additional requirements will, in turn, impose increased costs upon road transport companies and higher prices for transported goods upon the community.

At this time it is unclear how current and future obligations under work health and safety legislation, and heavy vehicle and road safety legislation will interact with the operation of the RSRT and its education and compliance framework.