



ORDER

Road Safety Remuneration Act 2012
s.27 - Making road safety remuneration order

Annual Work Program
(RTP2012/1)

Transport Workers' Union of Australia
(RTO2013/1)

Australian Road Transport Industrial Organization
(RTO2013/2)

National Union of Workers
(RTO2013/3)

Intercapital Trucking Pty Ltd
(RTO2013/4)

PRESIDENT ACTON
COMMISSIONER HAMPTON
PROFESSOR WILLIAMSON

MELBOURNE, 17 DECEMBER 2013

Road safety remuneration order (RSRO).

Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014

Table of Contents

Part 1—Application and Operation	3
1. Title	3
2. Commencement and expiry	3
3. Definitions and interpretation	3
4. Application.....	9
Part 2—Dispute Resolution and Adverse Conduct Protection	9
5. Dispute resolution	9
6. Adverse conduct protection	9

Part 3—Contracts	10
7. Written contracts for road transport drivers	10
8. Other contracts	11
Part 4—Payment Related Matters.....	12
9. Payment time.....	12
Part 5—Safe Driving Plans, Training and Drug and Alcohol Policy	13
10. Safe driving plans.....	13
11. Training	15
12. Drug and alcohol policy	15

Part 1—Application and Operation

1. Title

This order is the *Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014*.

2. Commencement and expiry

This order commences on 1 May 2014 and expires on 30 April 2018.

3. Definitions and interpretation

In this order, unless the contrary intention appears:

Act means the *Road Safety Remuneration Act 2012* (Cth).

Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest.

consignor or consignee means a person:

- (a) who is the consignor or consignee of a thing in respect of which a road transport driver is providing road transport services; and
- (b) to whom any of the following apply:
 - (i) the person is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (ii) the person is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory; or
 - (iii) the person is the consignor or consignee for the purposes of a business undertaking of a constitutional corporation; or
 - (iv) the person is the consignor or consignee for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or

- (v) the person is the consignor or consignee in the course of or in relation to constitutional trade or commerce; or
- (vi) the person is a corporation that was the consignor or consignee of a thing for the purposes of the business of that corporation.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between two Territories; or
- (e) within a Territory.

contractor driver means a road transport driver who is an independent contractor.

controlling interest means controlling interest in a corporation.

controlling interest in a corporation means an interest in the corporation that enables the person holding the interest to:

- (a) control the composition of the board of directors of the corporation; or
- (b) cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the corporation; or
- (c) control more than one half of the issued share capital of the corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

enterprise agreement means an enterprise agreement approved under the *Fair Work Act 2009* (Cth).

Fair Work Commission means the body established under section 575 of the *Fair Work Act 2009* (Cth).

FWC order means an order of the Fair Work Commission made under the *Fair Work Act 2009* (Cth).

gross vehicle mass (GVM) means the maximum permissible mass (whether described as the gross train vehicle mass or otherwise) for the motor vehicle and its load (but excluding any trailer and its load) as stated in a certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant authority or by the corresponding authority of another State or Territory or that is required by the law to be painted or displayed on the motor vehicle.

hirer means the party to a road transport contract, other than the contractor driver who is a party to the road transport contract.

immediate family of an individual has the same meaning as immediate family has for a national system employee under the *Fair Work Act 2009* (Cth).

independent contractor is not confined to an individual.

industrial association means:

- (a) an association of employees or independent contractors, or both, or an association of employers, that is registered or recognised as such an association (however described) under a workplace law; or
- (b) an association of employees, or independent contractors, or both (whether formed formally or informally), a purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors (as the case may be); or
- (c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors;

and includes:

- (d) a branch of such an association; and
- (e) an organisation; and
- (f) a branch of an organisation.

intermediary means a person who is party to a contract for the carriage of goods, where the contract concerns the transport of a thing in respect of which a road transport driver is providing road transport services, provided:

- (a) the person is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
- (b) the contract was entered into in a Territory; or
- (c) at least one of the parties to the contract is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory; or

- (d) the contract is for the purposes of a business undertaking of a constitutional corporation; or
- (e) the contract is for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
- (f) the contract was made in the course of or in relation to constitutional trade or commerce; or
- (g) the person is a corporation that has entered into the contract for the purposes of the business of that corporation.

interstate operation means an operation involving a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement in one State or Territory to a principal point of destination in another State or Territory. Provided that to be an interstate operation the distance involved must exceed 200 kilometres, for any single journey. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.

livestock means horses, cattle, sheep, pigs, goats or poultry.

long distance operation means any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a principal point of destination. An area within a radius of 32 kilometres from the GPO of a capital city will be deemed to be the capital city.

operator of premises for loading and unloading means a person who is a constitutional corporation that operates premises or part of premises:

- (a) that are used by a road transport driver to load or unload a vehicle; and
- (b) at which an average of at least 5 vehicles are loaded or unloaded on each active day the premises or part of the premises are used to load or unload vehicles, having regard to each active day in the previous 12 months or, if the corporation first used the premises or part of the premises to load or unload vehicles less than 12 months ago, having regard to each active day in the period since the premises or part of the premises were first used to load or unload vehicles.

organisation means an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

participant in the supply chain means a participant in the supply chain in relation to a road transport driver.

participant in the supply chain in relation to a road transport driver means a consignor or consignee, intermediary or operator of premises for loading and unloading.

related individual means a related individual of a corporation.

related individual of a corporation means each of the following individuals:

- (a) a director of the corporation;
- (b) a member of the immediate family of a director of the corporation;
- (c) an individual who, together with members of the individual's immediate family, has a controlling interest in the corporation;
- (d) a member of the immediate family of an individual who, together with members of the individual's immediate family, has a controlling interest in the corporation.

road transport contract means a contract for services under which a contractor driver is to provide road transport services to the hirer, including a reference to a condition or collateral arrangement that relates to the contract.

road transport driver means:

- (a) an individual, other than a related individual of a corporation who drives one or more of the corporation's vehicles, who engages in the road transport industry by driving a vehicle to transport things by road, provided the individual does so:
 - (i) as an employee of a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (ii) under a road transport contract the other party to which is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (iii) under a contract entered into in a Territory; or
 - (iv) under a contract at least one of the parties to which is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory; or
 - (v) for the purposes of a business undertaking of a constitutional corporation; or
 - (vi) for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (vii) in the course of or in relation to constitutional trade or commerce; or
 - (viii) under a road transport contract the other party to which is a corporation that has entered into the contract for the purposes of the business of that corporation.

- (b) a corporation that engages in the road transport industry by transporting things by road using one or more vehicles supplied by the corporation or a related individual, provided:
 - (i) the vehicle or each vehicle is mainly driven by a related individual; and
 - (ii) the related individual's principal occupation is driving the vehicle or vehicles; and
 - (iii) the corporation is a constitutional corporation.

road transport industry means any of the following:

- (a) the road transport and distribution industry within the meaning of the *Road Transport and Distribution Award 2010* as in force on 1 July 2012;
- (b) long distance operations in the private transport industry within the meaning of the *Road Transport (Long Distance Operations) Award 2010* as in force on 1 July 2012;
- (c) the cash in transit industry within the meaning of the *Transport (Cash in Transit) Award 2010* as in force on 1 July 2012;
- (d) the waste management industry within the meaning of the *Waste Management Award 2010* as in force on 1 July 2012;
- (e) the meaning prescribed by the *Road Safety Remuneration Regulation 2012* by reference to a modern award specified in the regulation.

road transport service means a service provided in the road transport industry.

supermarket chain means a business which operates five or more supermarkets.

Territory authority means:

- (a) a body corporate established for a public purpose by or under a law of a Territory; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which a Territory has a controlling interest.

transitional instrument means a transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

4. Application

4.1 This order applies to a road transport driver employed or engaged in:

- (a) the road transport and distribution industry within the meaning of the *Road Transport and Distribution Award 2010* as in force on 1 July 2012, in respect of the provision by the road transport driver of a road transport service wholly or substantially in relation to goods, wares, merchandise, material or anything whatsoever destined for sale or hire by a supermarket chain; or
- (b) long distance operations in the private transport industry within the meaning of the *Road Transport (Long Distance Operations) Award 2010* as in force on 1 July 2012.

4.2 This order imposes requirements on an employer or a hirer of a road transport driver to whom this order applies, and on a participant in the supply chain in relation to a road transport driver to whom this order applies.

Part 2—Dispute Resolution and Adverse Conduct Protection

5. Dispute resolution

Part 4 of the Act provides for the Road Safety Remuneration Tribunal, on application, to deal with certain disputes about remuneration or related conditions.

6. Adverse conduct protection

6.1 A participant in the supply chain in relation to a road transport driver must not take adverse conduct against the road transport driver:

- (a) because the road transport driver:
 - (i) has a workplace entitlement; or
 - (ii) has, or has not, exercised a workplace entitlement; or
 - (iii) proposes or proposes not to, or has at any time proposed or proposed not to, exercise a workplace entitlement; or
- (b) to prevent the exercise of a workplace entitlement by the road transport driver.

6.2 In subclause 6.1, a road transport driver has a **workplace entitlement** if the road transport driver:

- (a) is entitled to the benefit of, or has a role or responsibility under, the Act or this order; or

- (b) is able to initiate, or participate in, a process or proceedings under the Act or this order; or
- (c) is able to make a complaint or inquiry to a person or body having the capacity under the Act or this order to seek compliance with the Act or this order.

6.3 In subclause 6.1, **adverse conduct** means conduct causing, comprising or involving any of the following:

- (a) injury to the road transport driver in relation to their employment or the terms and conditions of their road transport contract; or
- (b) alteration to the position of the road transport driver to the road transport driver's prejudice; or
- (c) refusal to make use of the services offered by the road transport driver; or
- (d) refusal to supply goods or services to the road transport driver; or
- (e) discrimination against the road transport driver in the terms or conditions of employment or engagement of the road transport driver; or
- (f) termination of the employment or engagement of the road transport driver.

6.4 **Adverse conduct** does not include conduct authorised by or under other law.

6.5 Subclause 6.1 does not apply in circumstances where the road transport driver would otherwise have the right to a cause of action under Division 3 of Part 3-1 of the *Fair Work Act 2009* (Cth), in respect of the conduct constituting the adverse conduct.

Part 3—Contracts

7. Written contracts for road transport drivers

7.1 An employer or hirer must provide a road transport driver with a written employment contract or written road transport contract covering the employment or engagement of the road transport driver, prior to the road transport driver commencing their employment or engagement with the employer or hirer.

7.2 The written employment contract or written road transport contract may be in an electronic format.

7.3 The written employment contract or written road transport contract must at a minimum:

- (a) state the names and contact details of the parties to the contract; and
- (b) state the nature of the road transport service to be provided by the road transport driver; and

- (c) state the nature of the legal relationship between the parties to the contract; and
- (d) state the period of the contract; and
- (e) identify any modern award, enterprise agreement and/or other industrial instrument that covers or applies to the road transport driver; and
- (f) set out the remuneration, including any wage rate or kilometre rate or other piece rate, to be paid to the road transport driver for the road transport service; and
- (g) if applicable, state any guaranteed minimum weekly, fortnightly or monthly number of hours of work or income level for the road transport driver; and
- (h) contain a mechanism for at least annual review and any agreed adjustment by the employer or hirer of the remuneration to be paid to the road transport driver for the road transport service; and
- (i) set out the types of payments that may be sought by the hirer from the contractor driver and/or types of deductions that may be made by the hirer from the amount payable by the hirer as set out in a valid taxation invoice provided by the contractor driver to the hirer or generated for the contractor driver; and
- (j) set out the process by which the road transport driver is to provide to the employer or hirer on an annual basis a printout of their driver history report from the relevant State or Territory driver licensing authority and to advise the employer or hirer immediately of any suspension or cancellation of their driving licence; and
- (k) set out the minimum period of notice of termination of the contract or payment in lieu of notice, and the circumstances in which the contract may be terminated without notice or payment in lieu of notice; and
- (l) require notice of termination of the contract or termination of the contract without notice to be in writing; and
- (m) provide that the employer or hirer will not direct the road transport driver to commit any act that will, or is likely to, result in a breach of any law.

7.4 An employer or hirer must keep a copy of all employment contracts or road transport contracts made with a road transport driver for a period of seven years from the date of cessation of the contract.

8. Other contracts

A participant in the supply chain in relation to a road transport driver must take all reasonable measures to ensure that any contract it has with another participant in the supply chain contains provisions which are relevantly consistent with the requirements of this order.

Part 4—Payment Related Matters

9. Payment time

9.1 A hirer must pay to a contractor driver any undisputed amount set out in a valid taxation invoice provided by the contractor driver, or generated for the contractor driver, for the provision of a road transport service on any given day, within 30 days of the date of receipt by the hirer of the invoice.

9.2 The requirement in subclause 9.1 applies:

- (a) in respect of amounts required to be paid by this order; and
- (b) in respect of amounts required to be paid under a road transport contract; and
- (c) notwithstanding any provision contained in a road transport contract allowing for a longer time to pay.

9.3 A hirer must not require a contractor driver to pay any amount, or make any deductions from an amount payable to a contractor driver, in respect of the provision of any services or equipment by the hirer or any other person to the contractor driver unless:

- (a) the particular services or equipment are set out in the road transport contract between the hirer and the contractor driver as a type of payment or type of deduction the hirer may seek payment or make deduction for; and
- (b) the amounts are a direct and proper reflection of the actual cost of the services or equipment in respect of which the costs are charged; and
- (c) if practicable, the hirer has given the contractor driver an opportunity to obtain the services or equipment from another supplier.

9.4 A hirer must not require a contractor driver to pay any amount, or make any deductions from an amount payable to a contractor driver, in respect of insurance unless:

- (a) the insurance is set out in the road transport contract between the hirer and the contractor driver as a type of payment or type of deduction the hirer may seek payment or make deduction for; and
- (b) an insurance policy is in force; and
- (c) the hirer has provided a copy of the policy to the contractor driver.

9.5 Without limiting subclauses 9.3 and 9.4, a hirer must not otherwise require a contractor driver to pay any amount, or make any deductions from an amount payable to a contractor driver, unless specifically permitted by Commonwealth, State or Territory legislation as in force on 17 December 2013.

Part 5—Safe Driving Plans, Training and Drug and Alcohol Policy

10. Safe driving plans

- 10.1** An employer or hirer must prepare a written safe driving plan for a road transport driver employed or engaged by them who is to undertake a long distance operation for the employer or hirer using a motor vehicle with a gross vehicle mass of more than 4.5 tonnes.
- 10.2** The safe driving plan must be prepared in relation to the road transport service to be provided by the road transport driver as part of the long distance operation.
- 10.3** The safe driving plan must be reviewed regularly and updated by the employer or hirer when there is any change in the circumstances applicable to the long distance operation to be undertaken, or the road transport service to be provided, by the road transport driver or when safety issues warrant a review and update.
- 10.4** The safe driving plan must be prepared and implemented, and reviewed and updated, in consultation with the road transport driver.
- 10.5** The safe driving plan must be provided to the road transport driver by the employer or hirer on each occasion the road transport service is provided.
- 10.6** The safe driving plan must:
- (a) state the name and address of the employer or hirer of the road transport driver, and of the known participants in the supply chain in relation to the road transport driver and the road transport service to be provided by the road transport driver under the safe driving plan; and
 - (b) state the period covered by the safe driving plan; and
 - (c) state all pick up and delivery locations in relation to the road transport service; and
 - (d) provide for the road transport driver to record the vehicle registration number and the make and model of the vehicles used in the provision of the road transport service covered by the safe driving plan; and
 - (e) provide for the road transport driver to record the type of Fatigue Risk Management System they are operating under in providing the road transport service covered by the safe driving plan; and
 - (f) provide for the road transport driver to declare pre-departure whether he/she:
 - (i) has a current driver's licence for the class of vehicle(s); and
 - (ii) is fit to provide the road transport service; and

- (iii) has received the training in clause 11 of this order; and
- (iv) has inspected the vehicle(s) and rectified or had rectified any defects likely to affect the safe operation of the vehicle(s); and
- (g) include a travel plan detailing the anticipated timeframes and distances for each leg or stage involved in the provision of the road transport service, including but not limited to, when meal breaks, rest breaks, crib breaks and any other breaks are to be taken; and
- (h) provide for the identification of potential risks including those regarding fatigue, vehicle fitness, speed, communication, fauna, vegetation, weather and visibility, and the means of lessening the risks; and
- (i) include instructions about how the road transport driver is to inform their employer or hirer of any circumstances which make compliance with the safe driving plan impracticable; and
- (j) include instructions for the road transport driver to manage their fatigue and provide for the road transport driver to amend the safe driving plan to include additional rest breaks, in circumstances where the road transport driver reasonably believes the additional rest breaks are necessary to ensure the safe completion of the road transport service and the road transport driver informs their employer or hirer of any additional rest break as soon as practicable following the additional rest break being taken by the road transport driver; and
- (k) provide for the road transport driver to sign on the completed safe driving plan, at the conclusion of each occasion on which the road transport service is provided, a declaration that the information provided by the road transport driver in the completed safe driving plan is true and correct; and
- (l) include instructions that the road transport driver is to return the completed and signed safe driving plan to their employer or hirer within 48 hours, or as soon as reasonably practicable, following the completion of the road transport service provided under the safe driving plan.

10.7 Subject to subclause 10.9, the safe driving plan must also:

- (a) provide for the road transport driver to record and, where practicable, have witnessed with the signature of the participant in the supply chain in relation to the road transport driver, the time of commencement and conclusion of the road transport service and the time of arrival at and departure from each pickup and/or delivery location; and
- (b) provide for the road transport driver to record the actual timeframes and distances involved in the provision of the road transport service, including but not limited to, the distance travelled at any one time as evidenced by the vehicle odometer readings and the time when each break commenced and concluded.

- 10.8** Subject to subclause 10.9, a participant in the supply chain in relation to a road transport driver must, where practicable, witness a safe driving plan that is being completed by the road transport driver, in accordance with the requirement in subclause 10.7(a).
- 10.9** The safe driving plan need not contain the provisions in subclauses 10.7(a) or (b) if the employer or hirer uses electronic means to monitor on a real time basis the matters those subclauses provide to be recorded.
- 10.10** The written safe driving plan, or part of it, may be in an electronic format.
- 10.11** Completed safe driving plans returned to an employer or hirer and any associated electronic records must be reviewed regularly by the employer or hirer to identify safety issues that have arisen in the provision of the road transport service covered by the safe driving plan and opportunities for improvement.
- 10.12** An employer or hirer must keep a copy of a completed safe driving plan and any associated electronic records for a period of seven years and make a completed safe driving plan and any associated electronic records available to the road transport driver on request. These plans and records may be kept electronically.

11. Training

- 11.1** An employer or hirer must take all reasonable measures to ensure a road transport driver employed or engaged by them is trained in work health and safety systems and procedures relevant to the road transport service to be provided by the road transport driver.
- 11.2** The employer or hirer must reimburse the road transport driver for any expenses reasonably incurred by the road transport driver in undertaking the training specified in subclause 11.1 whilst employed or engaged by the employer or hirer on the road transport driver providing to the employer or hirer satisfactory evidence of such expenditure, subject to the road transport driver having obtained the prior consent of the employer or hirer to incurring the expenses and the employer or hirer not unreasonably withholding such consent.

12. Drug and alcohol policy

- 12.1** An employer or hirer must prepare and implement a written drug and alcohol policy covering a road transport driver employed or engaged by them.
- 12.2** The employer or hirer must, so far as is reasonably practicable, consult with their road transport drivers in preparing the drug and alcohol policy.
- 12.3** The drug and alcohol policy must:
 - (a) prohibit the use, consumption, possession, manufacture, sale, purchase or transfer of illegal drugs; and

- (b) prohibit the unauthorised use, consumption, possession, manufacture, sale, purchase or transfer of prescription and pharmacy drugs or alcohol while on the employer's or hirer's sites or providing a road transport service for the employer or hirer; and
- (c) include a fair and reasonable process for the road transport driver to notify the employer or hirer of drug and alcohol dependency or work related situations conducive to or involving drug or alcohol abuse and require the employer or hirer to investigate and respond to any such notification made to them; and
- (d) specify the drug and blood alcohol content levels that will constitute a breach of the policy by the road transport driver; and
- (e) provide for the implementation of a fair and transparent system of mandatory drug and blood alcohol content testing of the road transport driver in accordance with the relevant Australian standards; and
- (f) specify the procedure for the mandatory drug and blood alcohol content testing of the road transport driver; and
- (g) specify the procedure that will apply if a result in breach of the policy from the road transport driver is recorded and verified from a mandatory drug and blood alcohol content test; and
- (h) set out the repercussions for the road transport driver's breach of the policy, which may include:
 - (i) education and/or rehabilitation; and
 - (ii) disciplinary action up to and including termination of employment or termination of the engagement without notice.

12.4 An employer or hirer must take all reasonable measures to ensure a road transport driver employed or engaged by them is trained in the employer's or hirer's drug and alcohol policy.

12.5 The employer or hirer must reimburse the road transport driver for any expenses reasonably incurred by the road transport driver in undertaking the training specified in subclause 12.4 whilst employed or engaged by the employer or hirer on the road transport driver providing to the employer or hirer satisfactory evidence of such expenditure, subject to the road transport driver having obtained the prior consent of the employer or hirer to incurring the expenses and the employer or hirer not unreasonably withholding such consent.

PRESIDENT

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