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*Practice Group(s):  
Labour, Employment  
and Workplace Safety*

## The Potential Chain Behind This Supply Chain Order

*Australia Labour, Employment and Workplace Safety Alert*

*By Robert King*

### The April start?

Unless the Road Safety Remuneration Tribunal (RSRT) delays the commencement date for the *Contractor Driver Minimum Payments and Road Safety Remuneration Order 2016* (RSRO 2016), the order will commence operation in just under 1 months' time on 4 April 2016.

It is vital for businesses to which the RSRO 2016 may apply, to review and consider if they are ready for a potential 4 April 2016 commencement.

Yesterday, the RSRT announced a full bench hearing regarding applications to vary RSRO 2016 and to delay its commencement indefinitely until all affected and participating parties understand the effect of it.

The Australian Long Distance Drivers Association submit that RSRO 2016 will do the opposite if it purports to do in relation to protecting road safety.

The full bench hearing commences in Brisbane at 9:00am on Tuesday 15 March 2016 (there will be video links to other capital cities). Persons wanting to make submissions and/or present evidence will be expected to do so at that hearing.

<http://www.rsrt.gov.au/index.cfm/hearings-conferences/nol/>

### What is the RSRT?

The RSRT is the statutory body responsible for promoting safety and fairness in the road transport industry. One of its particular responsibilities is to ensure that remuneration related incentives for road transport drivers do not encourage drivers to work in an unsafe manner. The RSRT is also responsible for ensuring that businesses hiring road transport drivers, and the businesses that participate in the road transport supply chain, are responsible for implementing and maintaining those safe contract standards.

### What is the RSRO 2016?

The RSRO 2016 has been designed to ensure that road transport drivers operate safely on the roads, by providing for minimum hourly rates and per kilometre rates for the driver, to ensure that a driver does not feel he/she has to transport the goods in an unsafe manner.

RSRO 2016, has already been the subject of considerable public scrutiny and submission.

Orders by the RSRT can, on the surface, appear complex because of the language needed to ensure the order is enforceable, within the RSRT's jurisdictional power and that they will apply only to the intended parties. In essence, the RSRO 2016 will only apply to:

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- **independent contractor drivers** (but there are exceptions if the driver is with a family run business in which the driver is both a director of the family run business as well as the driver, or if the driver is an immediate family member of a director);
- **road transport contracts** with independent contractor drivers if the contract is to transport:
  - goods and wares or anything that is destined for sale by a supermarket chain
  - goods being transported long distance, meaning interstate transport or for drivers engaged for a return journey of more than 500 km
- **the consignor and a consignee** of the goods being transported or an **intermediary** in the transport process, for example, an entity that warehouses the goods or wares being transported.

This means:

- if you are an entity that hires an independent contractor driver to transport goods or wares or are a consignor, consignee or intermediary of the goods or wares
- the goods or wares:
  - will ultimately be sold through a supermarket chain (a supermarket chain is a business that operates five or more supermarkets)
  - are transported interstate or as part of a return transport journey of more than 500 km then you are an entity to which RSRO 2016 will apply.

An entity to which RSRO 2016 applies must ensure that:

- the rates paid by the hirer to the independent contractor driver meets the minimum hourly rates and per kilometre rates set out in the RSRO 2016 (which are significantly higher than the relevant rates in the applicable modern awards)
- as a supply chain participant, the terms of your contract with another supply chain participant will not interfere with or impede the hirer from complying with the RSRO, for example, by having contractual delivery times that might encourage or require the driver to drive too many hours without a break
- the contract between a participant in the supply chain and the hirer has provisions to allow the supply chain participant to audit a hirer's contract with the driver or with other supply chain participants to confirm compliance.

## What to do

Before 4 April 2016, a business that may be a party to or participate in the supply chain for goods that are ultimately destined for sale by a supermarket chain or that are transported long distance, must:

- consider whether and to what extent they may be caught by RSRO 2016
- review their transport contracts with a transport hirer or another supply chain participant to ensure the terms of the contract will not impede or interfere with compliance
- review who they are hiring to identify those drivers covered by RSRO 2016 and ensure the pay rates are compliant with RSRO 2016

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- consider if the terms of the contract needs additional clauses to include:
  - safe driving plans
  - provisions to facilitate any audit requirements.

This is a big ask for industry participants but with just under 1 month to go (failing an extension to the commencement date or another amendment) businesses must begin to consider if they will comply and if they need to comply.

The penalties for breaches of an order by the RSRT, including RSRO 2016 include civil remedy penalties, an injunction or compensation orders.

The stakes are potentially high and businesses must ensure that they are taking active steps to comply if necessary.

If you are unsure if RSRO 2016 applies to you or if you are unsure of what you must do when it commences, contact us for advice and a review of your contractual terms.

The time to start is now!

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