

UPDATE – THE RSRT'S 2016 ORDER

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Labor Employment, Workplace Safety Alert

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DELAYED

START

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Yesterday, the Full Bench of the Road Safety Remuneration Tribunal (**RSRT**) heard from various applicants who had applied for variations to and a stay of the *Contractor Driver Minimum Payments and Road Safety Remuneration Order 2016* (**RSRO 2016**).

The RSRO 2016 and the pay rates mandated under it are to commence on 4 April 2016.

WHAT WERE THE APPLICATIONS ABOUT

The applications sought variations to the RSRO 2016 and some sought a 'stay' of the RSRO 2016 until the issues raised in the applications were determined.

Some of the principal issues raised or relied upon in the applications included:

- the minimum rates of pay (on an hourly and kilometre basis) fundamentally changing the commercial transport industry landscape
- which 'contractor drivers' were covered by the RSRO 2016 was too ambiguous
- the FWO was giving ambiguous and inconsistent advice about the application of RSRO 2016 causing confusion in the industry
- the FWO's checklist (intended as guidance for contractor drivers) used terminology such as 'most likely' and 'unlikely' rather than giving definitive guidance, exacerbating the uncertainty in the industry
- there is insufficient time for hirers and others to amend business practices, payments systems and computer software system to meet the changes imposed by RSRO 2016
- hirers and others have had insufficient time to amend their commercial arrangements with their customers and as a result, will suffer losses when they have to pay contractor drivers the significantly higher rates compared to the commercial rates used in their current commercial arrangements
- the mandated pay rates are significantly higher than current industry norms and will make certain transport routes unprofitable.

WHAT DID THE RSRT DO

The Full Bench did not deal with all the issues raised by the applications, but only whether it could stay the commencement of RSRO 2016, whether it could vary RSRO 2016 without a consultation process and if a consultation process is required, what was the appropriate timetable for that process.

There were a number of submissions made (and it seems that only the TWU opposed any variation of RSRO 2016) and as a consequence the Full Bench proposed consideration of the following variations to RSRO 2016:

- a variation of the commencement date – so that RSRO 2016 will commence on 1 January 2017 and expire on 3 April 2020
- a transitional introduction of the pay rates so that the difference between the amount a hirer is lawfully paying to a contractor driver now, and the amount payable pursuant to the order will be called the "*transitional amount*" and the hirer must pay the contractor driver:
 - from 1 January 2017, the amount in the order less 75% of the transitional amount
 - from 1 January 2018, the amount in the order less 50% of the transitional amount
 - from 1 January 2019, the amount in the order less 25% of the transitional amount
 - from 1 January 2020, the amount in the order.

CONSULTATION

The Full Bench made it clear that the proposed variation cannot be taken as decision to vary RSRO 2016. The Full Bench will only decide whether to vary RSRO 2016 following the consultations set out below:

- persons likely to be affected by the variation may make written submissions to the RSRT by midday **Monday, 21 March 2016** (next Monday) and these submissions will be published on the RSRT website
- persons likely to be affected by the variation may make written comments to the RSRT on the submissions filed with the RSRT by midday **Thursday, 24 March 2016**
- The Full Bench will sit at 4.00 pm AEDT on Thursday, 24 March 2016 (by video link to all capital cities) to ascertain the number of hearing days, if any, required in respect of the applications over the period **26 to 28 March 2016** (the Easter weekend).

The Full Bench proposes to make its decision before the 1 April 2016 commencement date.

If you would like assistance to make a submission to the RSRT or want to review the application and submissions made by others, copies can be obtained from the RSRT website or, ask us and we can send them to you.

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