

12 April 2016

NAT 007/16

Important developments regarding minimum rates for contractor truck drivers

SUMMARY

Over the past few weeks, Ai Group has been heavily involved in proceedings before the Road Safety Remuneration Tribunal (RSRT) and in the Federal Court of Australia to head off increased costs to industry and consumers, and widespread disruption from an order which prescribes minimum rates for certain contractor drivers.

Ai Group has also been urging the Federal Government to take action to stop the operation of the order, and ideally to abolish the RSRT completely, which was introduced by the former Labor Government in response to a campaign by the Transport Workers Union (TWU).

On 4 April, Employment Minister Michaelia Cash announced that the Government would introduce legislation into Parliament when it resumes on 18 April to ensure that orders made by the RSRT setting remuneration rates for contractor truck drivers cannot operate before 1 January 2017. It appears that the Government has the support of sufficient Crossbench Senators to pass the legislation.

On 10 April, Prime Minister Turnbull announced that the Coalition will abolish the RSRT if it is returned to Government after the upcoming federal election.

Overview

In [Member Advice Nat 026/15](#), Members were advised that the RSRT had issued the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* (Order) prescribing minimum payments for certain contractor drivers. The Order was originally operative from 4 April 2016, but due to Federal Court proceedings is now operative from 4.15pm on 7 April 2016.

Adverse effects of the Order

The Order sets minimum rates for thousands of contractor drivers which, in many cases, are much higher than the existing rates that are being paid. In addition to the obligations on hirers of contractor drivers, the Order imposes

auditing obligations on businesses which use road transport. The Order will undoubtedly increase costs for industry and consumers.

The Order applies to contractor drivers involved in long distance operations, and to contractor drivers engaged in the transportation of items destined for sale or hire by a supermarket chain.

Ai Group application to vary the Minimum Payments Order

On 9 March, Ai Group applied to the RSRT to vary the Order to extend the 4 April 2016 operative date to 1 January 2017 and to implement transitional arrangements to phase-in the new rates. A number of other parties also applied to vary the Order to extend the operative date.

The proceedings were listed for hearing on Easter Saturday, Easter Sunday and Easter Monday.

At 3pm on Friday 1 April, the RSRT handed down its decision refusing to delay the operative date for the order despite a large amount of evidence from Ai Group and other industry groups of major adverse consequences for road transport businesses, contractor drivers, industry and the community if the new minimum rates took effect on 4 April.

The RSRT also rejected a compromise position negotiated between Ai Group and the TWU to delay the operation of the new minimum rates until 1 October 2016 and to phase-in the rates over the period up to 1 October 2017.

Federal Court proceedings

Following the RSRT handing down its decision at 3pm, late on Friday 1 April, Ai Group, ACCI, Toll and Linfox jointly sought an interlocutory injunction from the Federal Court stopping the Order coming into operation on Monday 4 April until the Court had heard our application for the RSRT's decision to be judicially reviewed by the Court.

In the evening of 1 April, a Directions Hearing was held in Sydney before Justice Buchanan and the matter was listed for hearing on Sunday 3 April. The Federal Government intervened in the proceedings in support of Ai Group's application. Separate to these developments in Sydney, that same afternoon NatRoad applied to the Federal Court in Brisbane for an order staying the RSRT's Order. Justice Collier of the Federal Court granted the application and stayed the operation of the Order. Given this development, Justice Buchanan cancelled the hearing on Sunday 3 April because, in effect, the outcome that Ai Group was seeking from Justice Buchanan had already been granted by Justice Collier.

On Saturday 2 April, the TWU applied to the Federal Court for an order setting aside the stay order granted by Justice Collier.

The various applications relating to the stay were joined and heard by the Full Federal Court at a full-day hearing in Brisbane on 6 April. The Federal Court's role in these proceedings was not to assess the merits of the RSRT's decision and Order but rather to consider legal

arguments about longstanding legal principles regarding the granting of stays, and the application of such principles to this matter.

In a decision of 7 April, the Full Federal Court decided not to continue the stay on the RSRT's Order.

As a result of the lifting of the stay, the Order became operative at 4.15pm on 7 April, including the minimum rates.

Legislation to be introduced into Parliament in April

On 4 April, Employment Minister Michaelia Cash announced that the Government would introduce legislation into Parliament when it resumes on 18 April to ensure that orders made by the RSRO setting remuneration rates for contractor truck drivers cannot operate before 1 January 2017. The legislation, if passed, would apply to the Order, as well as any other orders made in the future by the RSRT.

It appears that the Government has the support of sufficient Crossbench Senators to pass the legislation.

Position of the FWO

The Fair Work Ombudsman (FWO) is responsible for enforcing the minimum payments. On Friday, 8 April 2016 the FWO released a statement advising that its approach to compliance with the Order *"will be fair and flexible and achieved through a mix of guidance, advice, education and common sense."*

Release of reports of reviews into the RSRT

On 1 April, Employment Minister Michaelia Cash released the reports from two major inquiries into the *Road Safety Remuneration Act 2012* and RSRT, both of which are highly critical of the current system. The Minister also announced a consultation process to consider the future of the Act and RSRT.

Ai Group immediately refreshed its call for the abolition of the Act and RSRT on the basis that the notion that paying truck drivers more or differently will lead to fewer road accidents is flawed. The Act and RSRT are imposing anti-competitive arrangements on industry and are distracting Government and industry attention and resources away from the measures which

are widely recognised as improving safety in the road transport industry such as the Heavy Vehicle National Law, the National Heavy Vehicle Regulator, improved roads, improved compliance and use of technology.

Prime Minister's announcement on the abolition of the RSRT

On 10 April, Prime Minister Turnbull announced that the Coalition will abolish the RSRT if it is returned to Government after the upcoming federal election, consistent with the recommendations of the two inquiries referred to above.

Ai Group has expressed strong support for the Government's position.

Do you require further advice?

For further information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 55 66 77.

Should you require any detailed advice on road transport remuneration matters the team of professional workplace relations advisers and lawyers at [Ai Group](#) and [Ai Group Workplace Lawyers](#) are available to assist you.



Stephen Smith
Head of National Workplace Relations Policy