Australian Livestock and Rural Transporters Association

12 February 2016

Regulation of Agriculture – Public Inquiry
Productivity Commission

Via email: agriculture@pc.gov.au

Regulation of Agriculture

The Australian Livestock and Rural Transporter's Association (ALRTA) is pleased to offer this submission to the Public Inquiry into the Regulation of Agriculture.

The ALRTA represents road transport companies based in rural, regional and remote Australia. We are a National Council made up of elected representatives from our six state-level associations in New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania.

Our councillors own and operate their own road transport businesses. Some are owner-drivers while others manage small, medium or large fleets. We know rural and regional road transport and we know how to make it better.

This submission reflects the view of the ALRTA membership on how to reduce red tape for transport operators in the agricultural supply chain.

If your office would like to discuss any of the matters outlined below, please contact the ALRTA Executive Director, Mathew Munro

Yours sincerely

Kevin Keenan
National President

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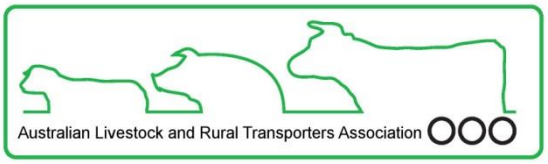


ALRTA Submission

to the

Productivity Commission

Public Inquiry into Regulation of Agriculture

12 February 2016

1.0 Introduction

Road transport is typically the first and last link of our agricultural supply chains, bringing vital supplies to our production centres and taking value-added produce to our markets.

While Australian farmers rely on rural trucking businesses to transport their produce and care for live cargos during transit, road transport is also a significant production cost. Beef cattle for example have the highest imbedded transport cost of all Australian commodities.

Transport costs significantly affect farm gate returns for individual agricultural producers. Fundamentally, higher transport costs mean lower returns and a decreased ability to reinvest in the productive capability of agricultural enterprises.

The Inquiry Report should recognise that the efficiency with which we are able to transport our agricultural commodities from production centres to processing facilities and markets is of critical importance in determining Australia's overall agricultural competitiveness.

The ALRTA has identified a range of areas in which improvements in the regulatory environment are necessary, including:

- Abolishing the Road Safety Remuneration Tribunal.
- Heavy Vehicle National Law;
- Improving road access for high productivity vehicles; and
- Fairer charging for heavy vehicles.

Efforts to improve the regulatory environment will ultimately enhance our agricultural productive capacity, improve the attractiveness of regional Australia as a place to live and work and return dividends to successive Governments to underpin future regional investment.

2.0 Abolishing the Road Safety Remuneration Tribunal

The Road Safety Remuneration Tribunal (RSRT) is a most concerning source of new and unnecessary red-tape in the agricultural transport supply chain.

The RSRT has now made two Road Safety Remuneration Orders (RSRO), these being:

RSRO	Start	End
Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014	1 May 2014	30 April 2018
Contractor Driver Minimum Payments Road Safety Remuneration Order 2016	4 April 2016	3 April 2020

The RSROs massively increase red tape for transport operators and impose impractical requirements that cannot be adhered to.

In the case of both RSROs there are new requirements for transport operators to find out about the legal status and other information about all parties with which the transport operator is dealing with throughout the supply chain. To be complaint with the RSRO, the transport operator even needs to know the original origin and final destination off the goods carried even when the operator is only involved for part of the journey – this is because different rules may apply, or the RSRO in totality may or may not apply, depending upon these factors.

Both RSROs impose an increase in the record keeping burden. Very specific and detailed records must be kept for up to 7 years.

The 2014 RSRO requires written contracts between hirers and contractors before work is undertaken and mandates the use of detailed safe driving plans for all long-distance work. These are new requirements that result in increased paperwork without any significant benefit for the operator.

Very little of the work of most livestock or grain carriers is done under an ongoing written contract. Jobs are more often allocated on a piece-meal basis, as they arise, including during seasonal highs such as the grain harvest. While some carriers have retainers to handle, say, all product moving between a particular feedlot and a certain abattoir which may be amenable to a written contract, most work is ad hoc and at short notice.

Rather than being continuously located at 'the end' of a sub-contracting chain, small rural operators often share work amongst each other and find that they are constantly changing roles. On one day, they will be the 'prime contractor' handing off some work to 'a mate that I trust' and, on the next day, they will act as a sub-contractor, bringing in a backload for 'a mate who can't get out this way' to service his usual client.

This reciprocity and the continuing exchange of roles in rural sub-contracting creates a market that is quite different to that found, for example, in the long-distance 'general freight' business that runs each night on Australia's East Coast highways.

For many small operators, their truck is also their office from which they organise or accept offers of work while already on the road. Communication technologies are still quite rudimentary in most rural and regional areas of Australia and a high proportion of work is organised verbally via a basic mobile phone, often while a job is already underway. Trucks operating on rough roads generally will not carry printers or faxes and limited communication and technology availability substantially limit the use of electronic exchanges such as email.

It is certain that the cost of establishing a written contact multiplied by the number of instances in which a written contract would be required is substantial. The cost of developing and maintaining safe driving plans is also substantial and is the responsibility of the hirer. In reality, it is unlikely that agricultural producers contracting the services of rural transporters will have the expertise, time or resources to developed compliant safe driving plans that are specific for every trip.

The 2016 RSRO will be even more damaging to the industry.

This RSRO mandates a complex system of minimum rates for independent contractors who were previously free to set their own rates. It also imposes new auditing requirements and compels affected operators to proactively promote the RSROs.

One of the most concerning aspects of the 2016 RSRO is the negative impact on the viability of owner-driver transport contractors.

On first glance, some owner-drivers may be attracted to the prospect of minimum rates. However, prime contractors who use their own vehicles staffed with employee drivers are not subject to the minimum rates in the 2016 RSRO and are free to accept work at any rate they choose.

This effectively creates a two tiered system. Owner-drivers must charge minimum rates, yet their major competitors are not required to do so.

In many cases, this will price owner-drivers out of the market and force a structural shift towards employee drivers.

Owner-drivers have invested in their own business to give themselves the freedom to innovate, adapt and accept their own work on their own terms. The RSRO will remove much of this freedom in favour of highly regulated industrial landscape that discriminates against owner-drivers in favour of employee drivers.

The big fleets will get bigger and this will come at the expensive of smaller operators, many of whom will lose their business and personal assets during the transition.

The structure of the minimum rates is also problematic for several reasons. The rates operate on the assumption that there is a single customer, with a full load, to a single destination.

This is far from the normal operating circumstances in the rural transport sector. Very often:

- Loads are made up of various parts owned by different customers;
- Parts of loads may be picked up and dropped off on a multi-destination trip;
- For some parts of a multi-destination journey the vehicle may be unloaded or part loaded;
- The driver may wait at multiple locations with some freight already on board;
- The driver may spend time washing out a vehicle after work is undertaken for several different customers;
- Some work that is unviable in its own right can be undertaken if it is complimentary to other work being undertaken; and
- Some parts of a load or trip may be prime contract work and others may be sub-contract work.

The rates as proposed in the RSRO do not account for this complexity and will certainly lead to some freight becoming unviable and a multitude of disputes about who should pay for each component (including rest, empty periods and washing of the vehicle) for any given trip.

Given that the RSRO requires each hirer to pay the full minimum rate regardless of the amount of freight, aggregate minimum rates for a particular journey are effectively multiplied by the number of hirers. For example, a road train carrying mixed freight for 30 customers must charge 30 times the minimum rate compared with the same vehicle carrying a full load for a single customer.

Quite reasonably, customers and transport operators alike will find this completely unworkable and either the freight will not be moved or the parties will be in breach of the RSRO. This is a completely untenable situation that creates confusion and uncertainty while breeding contempt for the law.

The road transport sector is already one of the most regulated industry sectors in Australia. Acts or omissions of supply chain participants that may result in unsafe on-road behaviours, have already been made illegal. The primary existing legislative basis for regulating such behaviour is the Heavy Vehicle National Law which specifically regulates fatigue, speed, mass, dimension, loading, vehicle standards and maintenance, as well as, national work health and safety laws.

The industry is also already regulated by specific awards for long and short distance driving and there are generally applicable unfair contract laws and collective bargaining provisions.

The Road Safety Remuneration Tribunal has only just begun its journey to impose more and more regulation on the transport sector. While-ever the Tribunal exists, there will be regular decisions that will impose more red tape on a sector that is already overly burdened with it.

The ALRTA considers that the only real solution is to abolish the Road Safety Tribunal along with all of the RSROs it has made.

In January 2014, the ALRTA made a detailed submission to the independent Review of the Road Safety Remuneration System. Our concerns remain about the fundamental lack of evidence for a link between payment rates and safety, the mode of operation of the Tribunal, and the findings of the regulatory impact statement for establishing the Tribunal which estimated a net negative impact of -$228.4m in net present value over 10 years. We are starting to see these negative economic impacts now.

The ALRTA submission to the review is included at Attachment A.

3.0 Heavy Vehicle National Laws

A September 2011 Regulatory Impact Statement[1] determined that the successful establishment of a National Heavy Vehicle Regulator (NHVR) overseeing nationally consistent heavy vehicle laws would deliver $12.4b in net present benefits to the Australian economy over the next 20 years through reduced red tape and improved access to the road network.

Road transport is highly competitive and efficiency gains or losses are typically passed to customers at the end of the supply chain[2]. This is particularly important for agricultural producers who must accept a market price for their product, but can improve their margins through lower costs of production and delivery to market.

[1] Heavy Vehicle National Law Regulation Impact Statement. September 2011. National Transport Commission.
[2] Freight Rates in Australia, 1964-65 to 2007-08. BITRE.

Heavy Vehicle National Laws (HVNL) commenced in all jurisdictions except WA and NT on 10 February 2014.

While the introduction of the HVNL has no doubt improved the consistency of laws across participating jurisdictions, there is still much work to do. There are many instruments that sit under the HVNL, such as access permits and notices that differ across jurisdictions and freight tasks.

Ultimately, there should be only one rule book for the whole of Australia. In due course, this should also extend to vehicle roadworthiness / inspection requirements and driver licencing.

It is vitally important that the Federal Government and all States continue to support the NHVR politically and financially. Above all, participating jurisdictions need to take a pragmatic approach to improving regulatory consistency and be willing to make changes to their own regulatory regimes which are in the national interest.

To date, further change has been difficult to effect. A fundamental trait of the new system is that changes can only be made with the consent of all participating jurisdictions. Recently, the ALRTA has experienced a situation in which a sensible regulatory change proposed by ALRTA, and supported by the NHVR, Federal Government, NSW, VIC, SA, the Australian Trucking Association and the Transport Workers Union has not been able to progress because of minor concerns in one jurisdiction.

The new nationally consistent system will not reach its full potential while every jurisdiction effectively has a veto power. A 'majority' voting system would be much more effective in progressing regulatory reform.

4.0 Improving Road Access for High Productivity Vehicles

Over two-thirds of our agricultural production is exported, contributing 20% of our total export earnings. Yet, we are three times more reliant on land transport than our international competitors, and together with New Zealand, Australia has the highest total transport cost for exports across all countries in the OECD.

There are tantalising new opportunities for Australian agriculture on our doorstep. As we start the 'Asian Century' we sit poised to capitalise on our potential as a global food bowl, supplying agricultural commodities to a new Asian middle class that is demanding quality meat, milk, grain, vegetables and fibre from trusted suppliers.

With the amount of interstate road freight forecast to double between 2005 and 2030[3], we must ensure that Australia can deliver bulk or processed agricultural commodities from farm to world markets in the most efficient manner possible.

Part of the solution will involve greater use of high productivity vehicles (HPVs) such as b-doubles, b-triples and road trains on an expanded HPV road network. On a tonne per

[3] Road Freight Estimates and Forecasts in Australia: Interstate, capital cities and rest of state. BITRE. December 2011.

kilometre basis, these vehicles impact less on road wear and are more efficient, safer and environmentally friendly than smaller vehicles[4].

We must act today to deliver the road network required tomorrow. However, there are two factors restraining greater use of HPVs in Australia:

1. Access decision-making; and
2. Infrastructure supply.

4.1 Better Road Access Decision Making

The NHVR has unfortunately been unsuccessful in transitioning to the laudable goal of being a 'one stop shop' for managing all road access permit applications. This function was handed back to the States after the centralised access system collapsed and became unworkable within a few weeks of commencement.

It is well known that it is often the local 'first mile' or 'last mile' of a transport task for which road access is most problematic. Many local road managers simply deny access because of unfounded or ill-informed concerns about safety or local amenity impacts.

Decisions about HPV access should be based on engineering principles, network design and measurable impacts, not underlying attitudes towards industry or heavy transport.

There are a number of possible measures for improving access decision making including:

1. Mandating the agreed Ministerial Guidelines on access decision making;
2. Reducing the statutory maximum decision period from 28days to 72hours;
3. Allowing independent third party review of decisions;
4. Requiring local governments to identify critical roads or infrastructure for which decisions are required and empowering the NHVR to make decisions in all other cases;
5. Fully transferring power over road access decisions from local councils to the NHVR;
6. Establishing new 'low use' decision thresholds that would allow default access to HPVs on rural roads on infrequent occasions (e.g. to pick up a load of livestock from a farm for sale once a year);
7. Examining the possibility of extending HPV network maps right up to a critical infrastructure bottle neck rather than prohibiting use on the entire stretch of road that the bottleneck is located on (i.e. allowing access to all destinations between the approved route and the bottleneck);
8. Abolishing excessive access conditions that add cost without any benefit. For example, the NSW and QLD requirement for vehicle operating at approved higher mass limits should not require entry into the intelligent access program (which tracks all movements at a cost to the operator).

4.2 Infrastructure Supply

Road infrastructure planning is currently based on short-term decision-making, often reflecting annual budgets or election cycles. There is very little positive planning for greater

[4] See separate submission from the Australian Trucking Association.

use of HPVs. In fact, many Governments seem to consider HPVs as something that should be kept out of public view and consigned to a second class road network.

There is no long-term plan for expanding the HPV network.

There is also little attention paid to identifying critical infrastructure bottle necks that exist now, that if fixed, could expand the HPV network and result in immediate productivity benefits.

Identification of HPV access impediments just results in an argument about who is responsible and who should pay for it while the transport industry and rural communities wear the ongoing cost of inefficiencies.

The ALRTA recognises that the Federal Government is currently consulting on longer term infrastructure supply reform. The ALRTA is concerned about the direction of the reforms which seem highly likely to involve charging based on 'mass, distance and location' - a proposal that would require constant tracking and weighing of every truck in Australia.

Realistically, this would involve intrusive new technology in every vehicle, centralised collection, analysis and storage of copious amounts of data, and several new layers of bureaucracy supported by a small army of public servants.

Even with all of this expense and effort the proposal still does not guarantee effective supply-side reform in the areas which most require it.

After participating in the consultation process the ALRTA considers that the options currently under consideration are overly complex and impractical.

Much more could be gained through spending efficiencies and strategic supply-side reforms so that funding 'follows the truck' and returns to local roads in rural and regional areas.

A simpler solution is required.

To put the matter in perspective, Governments collectively spend around $14.5b annually on road infrastructure and associated activities. If the efficiency of this spend could be improved by just 10%, a further $1.45b would be available without increasing charges for road users. Put simply, we must reduce overheads and build quality infrastructure that delivers better value over the life of the asset.

From a regulatory perspective, there would be far less red tape involved if heavy vehicle charging was based on the current system for collecting fuel tax (see next section).

5.0 Fairer Charging for Heavy Vehicles

Heavy vehicle charges are levied through a combination of a large up-front registration fee and a fuel-based road user charge (RUC).

Heavy vehicles operate under a cost recovery model which is reviewed by the National Transport Commission (NTC) annually and charges adjusted as appropriate.

In 2014, the NTC discovered flaws in the PAYGO model and recommended that Ministers decrease registration charges by 6.3% and the fuel levy by 1.14cpl from 1 July 2014.

Instead, Ministers agreed to delay implementation of the new charging methodology until 1 July 2016.

In November 2015, Transport Ministers agreed to continue over charging for at least another two years. Collectively, these decisions have cost the heavy vehicle sector around $900m over 4 years.

Overcharging must be recovered from customers, including from agricultural producers.

One of the most concerning things about the decision is that revenue collection is being frozen at a level calculated under the old flawed model. Governments will now collect $3.2b no matter how much they spend on roads. Given that government expenditure on road infrastructure actually decreased during the past two years of over-charging, the ALRTA expects that there will now be further deferment of road spending.

The persistent over-charging is effectively being used as leverage to push the heavy vehicle sector into a more complex user-pay charging scheme, that will add a massive amount of new red tape.

In 2013, the NTC conducted a more thorough review of the charging methodology, and after determining that costs have been over-recovered from heavy vehicles for some years, recommended a 6.3% decrease in charges (on average) for 2014-15.

However, the Ministerial Council on Transport and Infrastructure first delayed any reduction in charges for two years, and then in November 2015, decided to continue over charging indefinitely.

5.1 Other Options for Charging Reform

Large upfront registration fees are grossly unfair for most rural and regional transport operators. Such fees are problematic for managing cash flow and are applied equally to all operators regardless of the real cost to the road network.

Rural operators will often have several different trailer types (livestock crates, tippers, flat bed etc) for different types of work that may be undertaken. Large upfront registration fees apply to each trailer even though these cannot all be used simultaneously and may sit idle for much of the year.

The national registration fee for a rural double road train combination is currently $14,205, approximately the same fee as an inter-capital line haul B-double combination of $14,769. However road network access, attributable road wear and infrastructure spending is vastly different.

A line-haul B-double will typically travel over 400,000 kilometres annually on some of the best and most expensive roads in the country. In contrast, a road train typically travels less than half of this distance and on a lower quality and more restricted road network. In effect, road train registration fees are subsidising infrastructure spending on parts of the network from which they are prohibited.

Industry stakeholders generally agree that significant charging reform is required to establish a closer relationship between the costs imposed on the road network and the charges levied on individual operators.

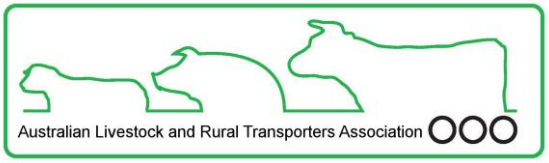
The ALRTA is strongly supportive of significantly decreasing upfront registration fees and proportionally increasing the RUC.

Compared with large upfront registration fees, fuel-based charges are more transparent, predictable and more equitable in their application. Customers are generally comfortable with fuel surcharges and operators can estimate these with some certainty for any given task.

One of the most attractive elements of fuel-based charging is the close relationship between the costs imposed on the road network and the charges levied on individual operators. In effect, those travelling greater distances at higher masses will pay more for using the road network.

Administratively, a higher RUC would cost no more to collect than under current arrangements. There is already a system for collecting fuel tax. Operators do not need to record and report kilometres travelled. The charge is simply levied at the fuel bowser making this the lowest red-tape option available.

Australia could have an effective user-pay heavy vehicle charge without complex new layers of technology and red-tape.



15 January 2014

Rex Deighton-Smith
Review of the Road Safety Remuneration System
Australian Government Department of Employment

via email: roadsafetyreview@employment.gov.au

Dear President,

ALRTA Submission to the Review of Road Safety Remuneration System

I write on behalf of Australian Livestock and Rural Transporters Association (ALRTA) to contribute to the Review of the Road Safety Remuneration System announced by the Minister for Employment, Senator the Hon. Eric Abetz on 20 November 2013.

The content of this submission was prepared in consultation with the ALRTA's six state associations.

If you have any questions or require clarification on the content contained in this submission, please contact the ALRTA Executive Director, Mathew Munro

Yours sincerely

Liz Schmidt
National President
Australian Livestock and Rural Transporters Association

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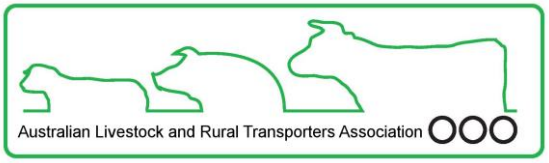
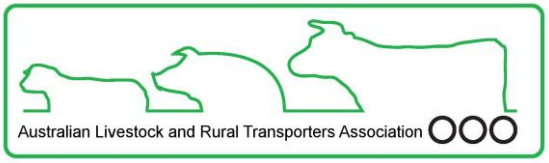
ATTACHMENT A



ALRTA SUBMISSION TO REVIEW OF THE ROAD SAFETY REMUNERATION SYSTEM

15 JANUARY 2014



INTRODUCTION

The ALRTA is pleased to make this submission to the Review of the Road Safety Remuneration System. Our association was represented on the Safe Rates Advisory Committee which considered possible models for addressing safety and remuneration in the road transport sector.

We have previously made detailed submissions outlining our general support for the aims of the Road Safety Remuneration tribunal (RSRT) in improving safety and fairness. However, while we acknowledge that there are some safety and fairness issues within the road transport sector that should be addressed, after observing the operation of the RSRT the ALRTA considers that the Tribunal is not the appropriate vehicle for resolving these matters in its current form and should be abolished or substantially reconstituted.

Fundamentally, we consider that the RSRT has overstepped its original safety-related purpose.

Our primary concerns are that the Tribunal is not required to produce regulatory impact statements on significant proposals (as would normally be the case for comparable regulatory reforms) and has so far provided wholly inadequate consultation processes. There are also questions about the Tribunal's breadth of powers, regulatory duplication and the balance of representation in decision-making.

In addition, the process of making Road Safety Remuneration Orders (RSROs) results in a series of 'temporary' band-aid responses that must be continually reassessed and remade, perpetuating uncertainty and placing an ongoing burden on peak bodies in the transport sector.

The ALRTA recommends that the Australian Government:

- identifies the fundamental issues of concern in the road transport sector;
- considers permanent legislative responses where warranted;
- produce and publish a regulatory impact statement addressing each element of each specific proposal;
- adequately consult with all stakeholders; and
- implement permanent legislative solutions.

THE ALRTA

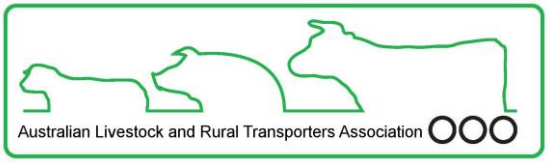
1. The Australian Livestock and Rural Transporters Association (ALRTA) is the national federation that represents road transport companies who provide the 'first and last' link of the supply chain for Australia's agricultural industries and communities.

2. Australian agriculture relies on ALRTA's members in order to access domestic and global markets. Almost all inputs to, and production from Australian agriculture involves some transport by truck. Two-thirds of Australia's agricultural production is exported, comprising 20% of Australia's global merchandise exports.

3. Established in 1985, ALRTA is Australia's oldest purely policy-focused road transport industry association. ALRTA has no political affiliation and does not engage in industrial representation.

4. The National Council of the ALRTA is solely comprised of road transport operators, as are each State Council. ALRTA and its member bodies represent transport operators located in every Australian State and Territory. Our member operators are engaged in both short haul operations and long-distance haulage, extending to trans-continental movements. Our members provide services to remote stations, regional communities, coastal urban areas and regional and metropolitan ports.

5. Over 50 per cent of ALRTA's member operators run fully or partially diversified businesses in order to service the needs of the regional and rural communities in which they are based. In addition to their focus on livestock, many of our member operators are involved in transport of grains, feeds, fertilizer and other bulk materials cartage, fuel, milk, molasses, water and other tanker operations, refrigerated transport, inland retail fulfilment, and various forms of industrial and general freight cartage. Predominantly smaller businesses, our member operators are operationally complex.



TERMS OF REFERENCE

- **The impact to date of the Tribunal on the road transport industry and its safety performance**

The RSRT has not yet made an RSRO that has come into effect and cannot be said to have improved the safety performance of the transport sector in any way – but has created considerable uncertainty and fear.

- **The potential future impact of the Tribunal on the road transport industry and its safety performance**

The ALRTA considers that the potential future positive impact of the RSRT on safety within the road transport industry is limited at best. On the other hand, the potential for the RSRT to impose more regulation and unnecessary red-tape is extreme.

The RSRT's first order handed down on 18 December 2013 is largely concerned with alleged 'fairness' rather than 'safety'.

New requirements for written contracts and safe driving plans will increase the amount of red tape for drivers, contractors, hirers, employers and supply chain participants without improving safety outcomes. The ALRTA's previous submission to the RSRT detailing the problems with these proposals is at **Attachment A**.

It is interesting that these proposals will add cost and red-tape for drivers when the very premise used to underpin the establishment of the Tribunal was that drivers were being 'squeezed' by low margins and were pressured to cut corners leading to poor safety outcomes.

The RSRO does not in any way increase payments for drivers, yet it will add significant new costs into the supply chain which the RSRT has not quantified. The ALRTA asks what will be likely safety outcome of even higher cost pressures for drivers and contractors?

- **The appropriateness of the Tribunal model as a means of addressing safety performance in the road transport industry, having regard to key policy considerations of effectiveness and efficiency**

The ALRTA considers that the RSRT is not the appropriate vehicle for addressing safety performance in the road transport industry in its current form.

There are several reasons for this position:

a. The RSRT is not required to produce a detailed regulatory impacts statement when making significant new regulatory proposals. The ALRTA has comprehensively addressed this issue at **Attachment A**.

b. The RSRT operates as a judicial instrument rather than an appropriately resourced safety regulator. As recently noted by the NSW High Court when commenting about specialist courts and tribunals, such bodies often lose contact with the traditions and standards of the wider judiciary and tend to become over-enthusiastic about vindicating the purposes for which they were set up.

c. Some individuals within industry have expressed a view that the RSRT decision-making body has been 'stacked' with sympathisers and cannot be assumed to be completely impartial on any matter concerning road safety. It is possible that there is a pre-disposition towards action and regulatory intervention based on opinion, even when evidence is scare or absent.

d. Consultation processes have so far been woefully inadequate and operate like a court environment in which industry witnesses 'appear' and are cross-examined by legal professionals. Safety matters should be well-researched and debated by a community of peers. Stakeholders should not be at risk of being held in 'contempt' of a Tribunal if they express an opinion that the operation of the Tribunal itself is inappropriate.

e. The legislative basis of the RSRT is incomplete and thus the Tribunal can never be entirely effective. Federal laws are unable to provide full coverage of the primary legislation resulting in a piecemeal outcome in which some drivers and hirers are covered in some circumstances and some are not. This can impact on fair competition by creating a different basis on which drivers compete with one another. A perverse outcome is possible in which the base price is set by the driver with the lowest 'overheads' while other drivers must further reduce their margins to remain competitive – potentially leading to poorer safety outcomes.

f. Using the draft RSRO as an example, **Table 1** below illustrates some of the outcomes possible for a single contract driver who undertakes both long and short distance work and who is not a constitutional corporation. This is clearly not an efficient regulatory outcome given that contracting practices will change depending upon customer status and specific driving tasks.

Situation	Written Contract	Safe Driving Plan
long distance work, customer a corporation/govt	Yes	Yes
long distance work, customer not a corporation/govt	No	No
long distance work, customer not a corporation, drives across a state border	Yes	Yes
short distance work, customer not a supermarket	No	No
short distance work, customer a supermarket	Yes	No

Table 1: *Possible regulatory outcomes for a contract driver who undertakes both long and short distance work and who is not a constitutional corporation.*

- **Any preferred approaches to addressing road safety concerns in the road transport industry**

The operation of the RSRT is in stark contrast to more appropriate consultative processes that have been in operation within the road transport industry for many years.

The National Transport Commission has recently undertaken an exemplary regulatory 'co-design' process that has involved all stakeholders participating in an open, transparent, timely and fair process underpinned by sound expert research and analysis.

This process provides usually begins by involving all stakeholders in a research phase that either undertakes new research or critically examines existing research or perhaps even surveying stakeholder opinions. This leads to a 'shared ownership' of the research results allowing stakeholders to focus on the development of solutions rather than continuing to debate the basis for regulatory change.

The NTC either uses expert researchers 'in house' or engages highly regarded external consultants with relevant skills and expertise. This also helps to improve confidence in the research outcomes or recommendations.

A representative group of peak stakeholders are then involved in the consideration of preferred options, followed by a broad public consultation phase.

At this stage a draft regulatory impact statement is produced and released for comment, followed by legislative drafting which may also involve the release of exposure draft legislation.

Stakeholders are free to lobby decision makers throughout the process to highlight particular concerns that may greatly affect a stakeholder group.

Final decisions are made by Transport Ministers from all Australian States and Territories to ensure a uniform national approach is implemented as far as possible. Each jurisdiction then proceeds to introduce their own legislation in accordance with their own procedures and conventions.

This approach has been applied to the development the Heavy Vehicle National Law and heavy vehicle charging options. While it carries some risks in terms of jurisdictional derogations, it remains the ALRTA's preferred model in the absence of clear Federal constitutional powers to impose uniform national legislation.

- **The nature and extent of any regulatory overlap and duplication arising from the operation of the Road Safety Remuneration System, including any additional regulatory or economic burdens and potential means of addressing these**

The ALRTA has received conflicting advice concerning the degree to which there is regulatory overlap and duplication arising from the Road Safety Remuneration System.

Certainly, the RSRT is operating in a highly regulated environment in which unsafe on-road behaviours, and acts or omissions of supply chain participants that may result in unsafe on-road behaviours, have already been made illegal. The primary existing legislative basis for regulating such behaviour is the Heavy Vehicle National Law due to come into effect on 10 February 2014 (not including WA and NT) which specifically regulates fatigue, speed, mass, dimension, loading, vehicle standards and maintenance, as well as, national work health and safety laws.

The industry is also already regulated by specific awards for long and short distance driving and there are generally applicable unfair contract laws and collective bargaining provisions.

From the perspective of road transport drivers and operators the introduction of another layer of regulation is highly concerning. There are three possible outcomes:

1. The RSRO introduces a new regulatory requirement that must be observed;
2. The RSRO overrides an existing regulatory requirement. Legal advice may be required to ascertain the extent of the inconsistency and the any change of practice that may be necessary.
3. The RSRO does not apply because an existing law has primacy. Legal advice may be required to provide comfort that the RSRO does not in-fact apply with regard to all of the circumstances.

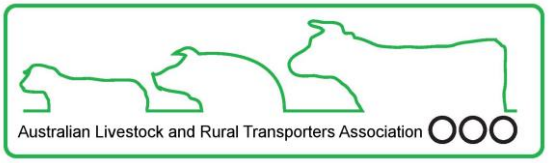
Each of these outcomes results in some level of regulatory burden through the acquisition of legal advice, a change in practice or the introduction of a new practice. This contrasts with standard regulatory processes in which old laws are repealed (if necessary) and new laws are introduced.

Another issue is that the temporary nature of RSROs brings an ongoing level of uncertainty about whether or not new practices will be continued, modified or removed. This can impact on investment decisions and lead to cyclical anxiety about ongoing regulatory change. This may even be greatly exacerbated over time as the RSRT progressively establishes a spectrum of new RSROs that will be expiring at different times.

While we have not asked for a remuneration rate, we have identified five areas in which the RSRT should initially focus:

1. delays in payment of invoices;
2. unpaid waiting times;
3. customers not paying for costs of wash-outs;
4. low levels of equipment utilisation in the bush; and
5. the lack of market rewards for safer (accredited) operators.

The ALRTA has also been of the opinion that there are special circumstances that apply to the rural and remote transport sectors that set it apart from the rest of the road transport industry (these reasons are reiterated elsewhere in this submission). We have asked that any orders be specific to each sub-sector to account for structural and operational differences.



ANY OTHER ISSUES CONSIDERED RELEVANT TO THE REVIEW

- **Is there a Link between Remuneration and Safety?**

The terms of reference for the review do not specifically require the consideration of whether or not there is a link between remuneration and road safety.

It is however worth noting that the regulatory impact statement released in support of the *Road Safety Remuneration Bill 2012* acknowledged that the supporting data is both incomplete and uncertain and that there is no absolute conclusive proof that higher pay will lead to lower crash rates. The RIS states that:

- "….*data at this point in time is limited and being definitive around the causal link between rates and safety is difficult*."
- *"…..studies and academic literature have not conclusively proven the extent to which rates and safe transport outcomes are related".*

The RIS found that all three options under consideration were likely to produce negative cost-benefit outcomes, with higher coverage rates producing more negative outcomes. The favoured 'Option 3' involved establishing a Tribunal with an expected negative outcome of -$228.4m in net present value over 10 years.

Given the uncertainty about the fundamental causal link and the expectations of a negative economic impact, the ALRTA considers that creation of the RSRT was premature and economically imprudent.

- **Prevailing Road Safety Trends**

Crash rates in the heavy transport sector have improved dramatically since 1960. This has continued to occur even during times when remuneration rates have been declining in real terms.

Proponents of the RSRT tend to focus on short term statistical fluctuations or inappropriate comparisons between vehicle classes as evidence that urgent regulatory intervention is necessary.

The fact is that there are already laws against dangerous and unsafe driving practices and long-term statistics demonstrate that incremental improvements in heavy vehicle laws, vehicle standards and road condition are continuing to improve safety outcomes.

1 August 2013

Road Safety Remuneration Tribunal
GPO Box 1994
Melbourne VIC 3001

via email: inquiries@rsrt.gov.au

Dear President,

ALRTA Submission on Draft Order

I write on behalf of the livestock and rural road transport sector to respond to the Road Safety Remuneration Tribunal's (RSRT) draft Road Safety Remuneration Order (RSRO) published for comment on 12 July 2013.

The content of this submission was prepared in consultation with the ALRTA's six state associations. I understand that the Livestock and Rural Transporters Association of Western Australia intends to lodge a largely complimentary submission.

This submission is prepared in two parts:

A) General Comments on the Process for Developing the Draft Order; and
B) Comments on the content of the draft Order (using the RSRT template).

Representatives from the ALRTA would be pleased to appear before a hearing of the Tribunal on this matter if required. Please contact the ALRTA Executive Director, Mathew Munro

Yours sincerely

John Beer
National President
Australian Livestock and Rural Transporters Association

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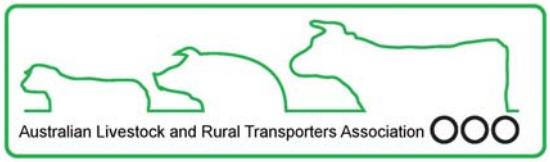


PART A: GENERAL COMMENTS ON THE PROCESS FOR DEVELOPING THE DRAFT ORDER

The ALRTA General Position

The ALRTA has previously made detailed submissions outlining our general support for the aims of the RSRT in improving safety and fairness in the road transport sector.

While we have not asked for a remuneration rate, we have identified five areas in which the RSRT should initially focus:

1. delays in payment of invoices
2. unpaid waiting times
3. customers not paying for costs of wash-outs
4. low levels of equipment utilisation in the bush
5. the lack of market rewards for safer (accredited) operators

The ALRTA has also been of the opinion that there are special circumstances that apply to the rural and remote transport sectors that set it apart from the rest of the road transport industry (these reasons are reiterated elsewhere in this submission). We have asked that any orders be specific to each sub-sector to account for structural and operational differences.

On this basis, the ALRTA considers that the draft order published on 12 July 2013 is far too broad in its coverage, affecting the entire retail, livestock, bulk grain, interstate long distance and intrastate long distance sectors of the road transport industry as defined by two primary road transport awards and also including equivalent contract drivers.

The scope is also far too broad for a single order. It is quite unreasonable for the RSRT to expect industry to incur massive changes at short notice in areas including:

- a detailed written contract to be in place prior to employment or engagement;
- contract drivers to be paid for all work (including waiting, washing, servicing etc);
- the hirer/employer to pay for protective clothing and equipment;
- payments to contractors to be made within 14 days of the invoice date;
- hirer's/employer's to ensure that detailed safe driving plans to be in place for all trips exceeding 500km;
- all hirer's/employers to have a drug and alcohol policy; and
- hirers to be prohibited from engaging drivers unless they have completed a recognised WH&S training and have been trained in the employer's/hirer's drug and alcohol policy. Hirer's/employers must also pay the driver for all time spent in training.

Each and every one of these proposals has the potential to have a significant impact on the rural and remote road transport sector.

The sector is already grappling with significant regulatory changes scheduled over the next twelve months. States and Territories are currently preparing to proclaim their Heavy Vehicle National Laws which will change the rules across jurisdictions and greatly expand the role of the National Heavy Vehicle Regulator from 1 September 2013. In addition, there are reviews underway on heavy vehicle charging, chain of responsibility, compliance and enforcement, vehicle standards, intelligent access program, animal welfare, work health and safety and national penalties which will result in further regulatory change.

While uniform national laws will benefit the industry over the longer term, it is expected that over the short-term there will be significant challenges for operators in understanding and meeting the requirements of such a dynamic regulatory environment.

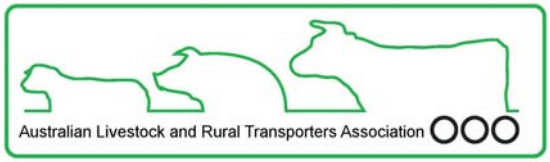
The RSRT is required to have regard for the need to reduce complexity and minimise the compliance burden on industry. The draft order will in fact add another very significant layer of complex regulation.

The ALRTA contends that the scope of the order should be reduced significantly to guard against the very real prospect of 'regulatory burn-out' for operators, particularly small operators.

This also makes good sense when introducing new types of regulations overseen by a new type of regulator. The draft order is the first of its kind. It would be reasonable to 'test the water' by first making an order with a sharp focus. This would assist the RSRT in assessing:

- The impacts of different types of orders on safety and fairness;
- The impacts of orders on industry operations, structure and viability;
- Preferred drafting methods;
- Preferred consultation methods;
- Preferred communication methods;
- Compliance rates (including identifying mechanisms for improving compliance); and
- Impacts on the resources of the RSRT.

A key benefit of this approach is also the opportunity to establish goodwill amongst industry participants. Demonstrating a clear commitment to good practice at the outset and focussing on discrete orders with the highest level of need and support will ultimately be reflected in the level of underlying industry support for the RSRT and its decisions. It well known that regulators must be both accepted and respected if reasonable levels of compliance are to be achieved.



Cost and Safety Benefits

The ALRTA has previously argued that the RSRT should avoid making orders or determinations of broader application that it cannot demonstrate to be necessary and appropriate within each discrete sector. This kind of flexibility – and restraint – is a common feature of many economic, industrial and general regulatory schemes. Economic regulators, for example, frequently must define the boundaries and characteristics of a market in order to determine whether it is contestable, whether changes within the market will lessen competition, or whether certain infrastructure should be made subject to a declared access regime.

The ALRTA is aware that a general regulatory impact statement (RIS) was prepared to support the passage of the *Road Safety Remuneration Act (RSRA) 2012*. However, this RIS was primarily predicated on the basis of a new minimum 'safe rate' and was inherently unable to specifically consider the impact of the full range of workplace conditions that the RSRT may or may not make, nor did it examine likely impacts within discrete industry sectors.

Among other things, the RSRT is required to have regard for the likely impact of any order on the viability of businesses in the road transport industry, the impacts on areas particularly reliant on the road transport industry and the impact on freight movement across the nation.

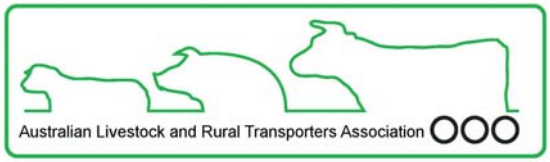
The ALRTA is concerned that the RSRT will be unable to have proper regard for these matters. The draft RSRO is not accompanied by a specific RIS and as such there is no available independent analysis of the costs or benefits of the proposal available to either the RSRT or stakeholders.

It is simply not satisfactory to reply on the original RIS as the basis for determining that any type of proposal made by the RSRT will have a positive safety impact and an acceptable cost impact. It is also unacceptable to require under-resourced stakeholders to undertake their own analysis and supply this information in the exceedingly short timetable available for submissions to be made.

As far the ALRTA can determine a specific RIS would be appropriate and is indeed required in this case.

The RSRT would appear to be a Commonwealth Government decision making body established under a Commonwealth Act. Supporting this position, s118 prescribes the RSRA as a workplace law for the purposes of the *Fair Work Act 2009*. Road Safety Remuneration orders are described as 'enforceable instruments' under s117 and copies must be provided to both the Federal Minister for Workplace Relations and the Fair Work Ombudsman.

The Commonwealth Government Office of Best Practice Regulation provides clear guidance on the development of new regulation and supporting consultative mechanisms in the published 'Best Practice Regulation Guide (The Guide)'.



The Guide states that regulatory impact statement (RIS) requirements apply to:

- "*...all Australian Government departments, agencies, statutory authorities and boards (referred to collectively as 'agencies') that review or make regulations that have an impact on business or the not-for-profit sector, including agencies or boards with administrative or statutory independence*."

Regulations are described as:

- "*.....any 'rule' endorsed by government where there is an expectation of compliance. It includes primary legislation and legislative instruments (both disallowable and non-disallowable) and international treaties. It also comprises other means by which governments influence businesses and the not-for-profit sector to comply but that do not form part of explicit government regulation (for example, industry codes of practice, guidance notes, industry-government agreements and accreditation schemes)."*

The Guide also states that:

- "*A RIS is mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements."*

In summary, it appears to the ALRTA that the draft order under consideration is:

- made by a decision-making authority under a Commonwealth law;
- could be reasonably described as an enforceable instrument; and
- is likely to have a significant regulatory impact on business.

On this basis, the ALRTA concludes that the RSRT Tribunal ought to have regard for the Best Practice Regulation Guide when making an RSRO. In respect of the draft RSRO released on 12 July 2013, we assert that a detailed RIS should be published which clearly identifies the costs and benefits of each proposal on each specific sector of the industry.

Submission Timeframes

The ALRTA has previously supplied a short submission raising our concerns about the consultation timetable for the draft RSRO. While we appreciate the timetable extension of an additional four business days to make initial submissions, the ALRTA remains concerned about the quality of consultation that can realistically be undertaken in this period.

As you would be aware, s24 of the *RSRA 2012* requires that affected persons and bodies must have a reasonable opportunity to make and comment on the submissions for a draft order.

The 'Best Practice Regulation Guide' offers useful advice in terms of what is reasonable for a consultative period. Annex C states that:

- Agencies should provide realistic timeframes for participants to contribute.
- Small businesses should be given sufficient time to consider the issue and respond, including allowing time for representative bodies to contact their members.
- As a general guide, six to twelve weeks seems appropriate for effective consultation depending on the significance of the proposals.

This is issue is compounded by the lack of a specific RIS accompanying the draft RSRO. The absence of an independent analysis of the costs and benefits subsequently requires each stakeholder to make their own case in this regard. It is not reasonable to expect industry associations to consult with their members, consult with one another, conduct necessary research, prepare a comprehensive submission and seek endorsement from their controlling boards or councils in less than 15 business days. Typically, a robust RIS would take several months to prepare by multiple skilled, experienced and dedicated personnel.

Given the considerations above, the broad scope of the order and clear concerns already raised with the RSRT about the proposed consultation timetable, the ALRTA respectfully suggests that the Tribunal should resolve to extend the time available to make an initial submission to at least the period suggested in the Guide of six to twelve weeks, for this, and all future draft orders.

PART B: COMMENTS ON THE CONTENT OF THE DRAFT ORDER

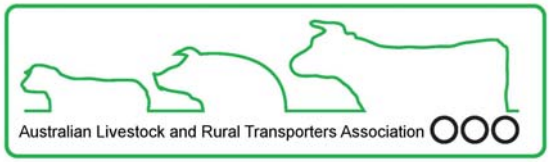
Name:	Australian Livestock and Rural Transporters Association				
	Title [*if applicable*] Mr [ ] Mrs [ ] Ms [ ] Other [ ] specify:				
Address:	PO Box 615				
Suburb:	Belconnen	**State:**	ACT	**Postcode:**	2616
If the person submitting or commenting is a company or organisation:					
Contact person:	Mathew Munro	**ABN:**			
Other contact details:					
Telephone:		**Mobile:**			
Fax:		**Email:**			
An attachment (eg witness statement(s)) is included with your submission		**No**			

Section 20 of the *Road Safety Remuneration Act 2012* (Cth) provides as follows:

(1) In deciding whether to make a remuneration order, the Tribunal must have regard to the following matters:

(a) the need to apply fair, reasonable and enforceable standards in the road transport industry to ensure the safety and fair treatment of road transport drivers;
(b) the likely impact of any order on the viability of businesses in the road transport industry;
(c) the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas;
(d) the likely impact of any order on the national economy and on the movement of freight across the nation;
(e) orders and determinations made by the Minimum Wage Panel of Fair WorkAustralia in annual wage reviews and the reasons for those orders and determinations;
(f) any modern awards relevant to the road transport industry (see subsection (2)) and the reasons for those awards;
(g) the need to avoid unnecessary overlap with the Fair Work Act 2009 and any other laws prescribed for the purposes of this paragraph;
(h) the need to reduce complexity and for any order to be simple and easy to understand;
(i) the need to minimise the compliance burden on the road transport industry;
(j) any other matter prescribed by the regulations for the purposes of this paragraph.

(2) For the purposes of paragraph (1)(f), each of the awards referred to in the definition of road transport industry (including an award referred to in regulations made for the purposes of paragraph (e) of the definition) is taken to be relevant to the road transport industry.



Part 1 - Application and Operation

1. Title

The proposed title "*Road Transport and Distribution and Long distance Operations Road Safety Remuneration Order 2013*" is appropriate for the current scope of the draft order.

However, the ALRTA argues in this submission for reduced coverage and scope, which if accommodated, should be reflected in an appropriately modified title(s).

2. Commencement and expiry

The ALRTA considers that the commencement date of 1 October 2013 is too soon for such an expansive draft order. The order will result in significant changes in the way in which the industry operates and if the order commences in its current form a reasonable lead time will be required to establish compliant written contracts, drug and alcohol policies and safe driving plans.

For many operators, these requirements will be just as onerous as the requirement to undergo approved Work Health and Safety training and similar grace periods of between three and twelve months should also apply.

The expiry date appears to be set at the maximum duration provided for under the powers of the Tribunal. Given this the is first order of the RSRT, the ALRTA suggests that a shorter period of perhaps two years would be sufficient to test and refine the RSRO before locking in orders of a longer duration.

3. Definitions and interpretation

No comment.

4. Coverage

The ALRTA is of the view that in discharging its function, the RSRT should only take actions that are proportionate, necessary, well-targeted and effective in addressing problems within a discrete market or industry sectors. The RSRT should strive to avoid using the 'wrong tool' or incidentally impact on the 'wrong target'.

The RSRT Annual Work Program identified the retail, livestock, bulk grain, interstate long distance and intrastate long distance sectors of the road transport industry as sectors the RSRT proposed to inquire into with a view to making a RSRO.

Presumably, in identifying these sectors, the RSRT felt that special circumstances applied and that specific intervention was required for each sector.

The draft RSRO does not however distinguish any meaningful difference between these sectors nor does the order or supporting statement recognise even a single difference in the current practices, operational requirements, safety risks, or cost impacts that might be better catered for by a more specific order or spectrum of orders.

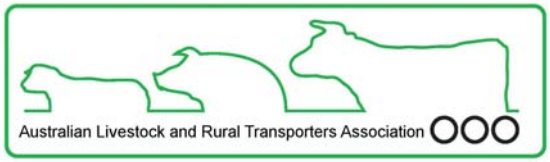
The RSRT is required to have regard for the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas.

The ALRTA asserts that the livestock and bulk grain sectors are sufficiently unique and should be the subject of a separate and specific order which includes provisions tailored to suit the different operation conditions of each sector. Such an order could specifically take account of factors such as communication difficulties, current accepted practice, industry structure and likely substitution effects.

A summary of some of the unique characteristics of the rural transport sector are provided below.

Characteristics of the Rural Transport Sector

- Road transport is of particular economic significant to rural and regional Australia.
- Road transport makes up a high share of the costs of production of Australian agriculture. ALRTA's understanding is that road transport comprises a higher percentage of the final cost of production for meat products than for any other commodity or product made in Australia.
- None of 'the majors' that are active in almost every other sector of the road transport industry have any role in livestock transport in Australia and, in grain carting, there is very little involvement of even mid-sized city-based fleet operators.
- The typical rural transport operator is a very small business, often an owner-operator – 86% of ALRTA's members indicate that they operate 5 or fewer trucks. A high share of ALRTA's members would be classed as 'owner-drivers'.
- While sub-contracting between carriers does occur, rural carriers will often find themselves dealing directly with a farmer, producer, processor, exporter or, most commonly, 'an agent' who routinely acts for large numbers of these parties.
- Real time communication between industry participants is much more difficult in rural and remote environments.
- The opportunity to 'run your own business' is strongly valued by rural transporters, particularly the many smaller operators and owner-drivers.
- ALRTA is concerned about substitution effects of new regulations that place a disproportionately high compliance burden on small businesses and how this can reduce the viability of smaller rural transporters' services. This may occur in three ways:
    - A higher compliance burden on small business will affect the relative prices offered by different operators, making it more attractive for a customer to turn to a larger operator for their transport services.
    - Rural transporters are, in effect, competing against the possibility that their customers will decide to in-source their transport services. This is already an evident trend amongst the larger corporate customers such as meat processors.
    - For smaller rural customers, such as family farmers who receive large concessional discounts on their heavy vehicle registration fees, the possibility of driving their produce to market in their own vehicle is always an option (around 50% of heavy vehicles in Australia are owned by farmers).



Part 2 - Dispute Resolution and Whistleblower Protection

5. Dispute Resolution

The ALRTA is generally supportive of a role for the RSRT in providing a low-cost and easily accessible dispute resolution service.

Commercial mediation is not suited to rural transport as this kind of service typically requires a pre-existing written contract and is unlikely to be accessible and affordable to a rural transport operator. Imbalances in resources make formal legal processes unsustainable as a dispute resolution mechanism and direct negotiation between parties is unlikely consistently to be effective given the market asymmetries typical of the rural transport sector.

While generally supportive, the ALRTA considers that the RSRT already has sufficient powers to hear disputes under the RSRA 2012 and specific inclusion in the RSRO is unlikely to be required unless it is determined that the RSRO specifically extends into new areas for which the dispute hearing provisions of the legislation does not.

6. Whistleblower Protection

The whistle blower provisions are a reasonable inclusion in the draft Order.

The ALRTA is concerned that the RSRO will simply increase operating expenses for good operators, while the 'cowboys' and recidivist offenders who already choose not comply with current heavy vehicle laws (inflating safety risks and reducing fairness) will not change their modus operandi.

We suggest that a compliance program that is based only on government-funded Authorised Officers making inspections and undertaking audits and investigations is unlikely to be successful in addressing such threats, particularly in the bush. A traditional compliance program of this type will struggle to marshal the resources and expertise, achieve the physical reach, gather the requisite operational intelligence, and promote the cultural changes that will be needed to have impact.

Rather than relying on the intervention of government-funded Authorised Officers, ALRTA supports measures that empower and enlist the participants in each relevant market sector to uphold the new requirements themselves.

The provisions prevent adverse conduct against a driver on the basis of a workplace entitlement. This seems reasonable in the context of an employer-employee relationship. However, the ALRTA has some concern about the application of the provisions in a highly competitive environment for sub-contractors.

Some of the other provisions of the order such as those relating to the provision by the hirer of protective equipment or training (or payment for time spent in training) bestow benefits on contract drivers and might rightly be considered to be a ‘workplace entitlement’.

Hirers will often 'go to the market' seeking tenders from prospective contractors - even when work may have recently been undertaken by one particular contractor. This is a perfectly healthy feature of a competitive marketplace.

Given a choice of two potential sub-contractors, one of whom already has protective equipment and has undergone approved WH&S training, and one of whom has not, the hirer would naturally choose the sub-contractor that does not attract avoidable costs in these areas – all other things being equal.

The ALRTA considers that this is a reasonable position for a hirer to take given that the successful contractor can undertake the work both safely and legally, such a choice should not be considered to be an 'adverse action' against the unsuccessful contractor.

In fact, this situation effectively creates a market for safety and can be a powerful incentive for contract drivers to obtain protective equipment and undergo training so that they have a competitive advantage when offering their services. While this may come at their own cost, it is generally expected that contractors are able to provide all of the tools of their trade and will reflect related costs in their quoted rates.

Part 3 - Contracts

7. Contracts

The ALRTA does not support the proposal to mandate written contracts.

The RSRT is required to have regard for the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas. We argue that there are special circumstances that require the ongoing use of verbal contracting in the rural and remote transport sector.

Very little of the work of most livestock or grain carriers is done under an ongoing written contract. Jobs are more often allocated on a piece-meal basis, as they arise, including during seasonal highs such as the grain harvest. While some carriers have retainers to handle, say, all product moving between a particular feedlot and a certain abattoir which may be amenable to a written contract, most work is ad hoc and at short notice.

Rather than being continuously located at ‘the end’ of a sub-contracting chain, small rural operators often share work amongst each other and find that they are constantly changing roles. On one day, they will be the ‘prime contractor’ handing off some work to ‘a mate that I trust’ and, on the next day, they will act as a sub-contractor, bringing in a backload for ‘a mate who can’t get out this way’ to service his usual client.

This reciprocity and the continuing exchange of roles in rural sub-contracting creates a market that is quite different to that found, for example, in the long-distance ‘general freight’ business that runs each night on Australia’s East Coast highways.

For many small operators, their truck is also their office from which they organise or accept offers of work while already on the road. Communication technologies are still quite rudimentary in most rural and regional areas of Australia and a high proportion of work is organised verbally via a basic mobile phone, often while a job is already underway. Trucks operating on rough roads generally will not carry printers or faxes and limited communication and technology availability substantially limit the use of electronic exchanges such as email.

The example 'run sheet' and supporting analysis provided as part of the separate submission made by the Livestock and Rural Transporters Association of Western Australia clearly articulates the difficulties faced by supply chain participants in establishing written contracts prior to work being undertaken.

In many cases, there is simply no opportunity or technical ability to establish a written contract between the hirer and contractor prior to the engagement of the road transport driver.

This situation is clearly contemplated in within s8(3) of the RSRA 2013 which states that:

- *A road transport contract may be in writing, oral, or partly in writing and partly oral.*

The RSRT must have regard for the need to avoid unnecessary overlap with the Fair Work Act 2009 and any other laws prescribed for the purposes of this paragraph. Surely, this must also include the primary law (the RSRA 2012) under which the RSRT has been constituted.

In addition to the compelling reasons for allowing oral contracting to continue in the rural transport sector, there are also likely to be significant cost implications for requiring operators to have written contracts in place.

While the time available for making this submission is not sufficient for undertaking a detailed analysis, it is certain that the cost of establishing a written contact multiplied by the number of instances in which a written contract would be required is substantial.

To illustrate:

- If there are 50,000 transport businesses operating in the hire and reward sector;
- And each business enters into one additional written contract per week (52 in a year);
- At a total additional cost of $10 for each contract;
- Over the four year life of the order:

The total estimated additional cost to industry would be: $104,000,000.

This is a staggering figure, particularly given that it is exceedingly conservative, applies only to the hire and reward sector, will further erode profit margins possibly resulting in poor safety outcomes and will occur in addition to the other measures contained in the draft RSRO.

As outlined elsewhere in this submission, the ALRTA considers that it is highly inappropriate for a cost of this magnitude to be proposed for industry without any supporting analysis of the actual regulatory costs or possible safety or economic benefits.

Part 4 - Payment Related Matters

8. Work Payments

The ALRTA is generally supportive of drivers being paid for all work undertaken, including waiting time and washouts.

Waiting Times

The problems created by unpaid waiting times and poorly managed loading and unloading procedures are not limited to the well known difficulties faced by urban road transport operators queuing outside our capital cities' large container ports.

Rural transporters experience queues and delays at their own ports, particularly those involved in the live export trade. In addition, it is commonplace for rural transporters to experience lengthy delays at livestock saleyards and grain storage silos throughout the year and, particularly, during harvest seasons.

All these waiting times, as well as time spent loading and unloading, will typically not be charged against the customer's account, nor is there any recourse to the manager of the port, saleyard or silo.

This is essentially a market failure, with the direct costs of delays and any increased risk to road safety that flows from them, all becoming externalities to these facility managers and the customers whose produce is passing through these sites.

The current RSRO does not however appear to compel the entity responsible for a delay or other unforseen work related cost to be responsible for payment to the driver. Rather, it is the hirer that is required the pay the driver and under the draft RSRO.

A typical case might involve a farmer hiring a transport contractor to deliver grain to a silo. The silo operator is not the hirer and bears no direct liability for paying the driver for any delay incurred at the silo. However, if waiting times are to be improved, it is the silo operator that ultimately must be subject to a clear market signal.

Washouts

For biosecurity, animal welfare and road safety reasons, livestock vehicles must be 'washed out' on a frequent basis, generally after every load. Although the time taken to washout a truck can be heavily influenced by the manner in which a farm, saleyard or feedlot prepares the animals for transport, the costs of washouts are born by rural transport operators.

The costs of washouts are substantial. Washouts can only be performed at facilities fitted with high pressure hoses, bunding to contain waste materials and some form of treatment facility. Typically, pump-water costs $0.42 per minute and washing a livestock vehicle will take 40 minutes per 'deck' – a basic livestock transport vehicle will have three decks.

ALRTA has previously estimated that an 'average' transport operator will spend 8 hours *per week*, *per vehicle* on truck washouts, at a total cost to our industry of $50.2 m per annum and involving annual consumption of 6 billion litres of water.

Grain and fertilizer trucks must also be regularly and diligently washed out, in order to avoid cross-contamination of loads – in the grain exporting industry, microscopic trace elements of, say, corn, in a shipment of, say, sorghum can see a cargo vessel simply turned away from a European port.

At present, the unpredictable costs and delays arising from washouts are born as on-costs by transport operators even though, in at least the case of livestock transport, they are not the party best placed to control the need. This is a classic market failure, with price signals failing to allocate costs efficiently and failing to create incentives to minimise the incidence of washouts.

Handling washouts as an unfunded on-cost also creates some risk that an individual operator, possibly financially distressed, will not perform washes when they are needed.

The draft RSRO address this issue in part by requiring the payment of the driver for the time taken to perform the washout. It does not however send the correct economic signals to those requiring the truck washes and does not require the customer to compensate the operator for the substantial on-cost of using a truck wash.

Conclusion

The ALRTA considers that the draft RSRO should:

- apply to, and require payment from, the influential economic actors within each supply chain, who are ultimately responsible for demands on drivers and who can apply economic pressure and resources to adjust the way the supply chain operates; and
- extend to recovering on-costs involved in the performance of required tasks such as wash outs.

9. Clothing provision and reimbursement

The ALRTA is supportive of this requirement insofar as it applies to employees. However, the ALRTA is not supportive of this provision for contractors.

As outlined in section 6 above, it is generally considered that contractors will provide all of the tools of their trade, including protective clothing and undergoing any required training. Any costs incurred by contractors in this regard should be reflected in their rates.

The draft RSRO is particularly complicated in that it confers ownership of protective clothing on the hirer. This is a highly unusual situation for contractors and in reality completely unworkable. Contractors may do the same work for many different hirers and it would be impossible to determine which of these hirers should actually provide the equipment.

Continued ownership of items is also problematic in that the hirer may have no ongoing contact with the driver and would hence incur a cost with no ongoing benefit. In addition, no hirer should be compelled to provide equipment to a driver that may be used to benefit another hirer with whom they are in competition.

10. Payment time

The ALRTA is supportive of this requirement 'in principle', however a longer period of 30 days would be more appropriate.

Except where State-based legislation has delivered improvements, it is commonplace for rural transporters to find that their accounts will not be paid in less than 90 days, with delays of 120 days being unexceptional. During this period, transporters will carry both the costs of financing this delayed cash flow and also the risk of non-payment.

Assuming an overdraft interest rate of 11%, delays in payment of 90 days will reduce an operator's earnings by around 3%. For many operators, these interest costs will substantially reduce their operating profit, typically by up to one half. Uncertainty and delays in payment therefore pose a significant business cost and risk.

To ease their paperwork, rural transporters will commonly assign handling of their account to the same 'agent' that represents their customer. This does not reduce the time taken to pay, and typically incurs a service charge of 5% of the account's value.

The extended delays in payments to rural transporters are heavily driven by the fact that almost all participants in the agricultural supply chain are not the 'end users' of our nation's produce. Farmers and producers also experience delayed payment of their accounts. The flow of cash down through the agricultural supply chain is aggravated by delays in payments by the 'end users' – exporters, domestic food manufacturers, and retailers.

These delays should be reduced to more reasonable levels but 14 days from the invoice date is unrealistic.

The ALRTA suggests that a payment period not exceeding 30 days would dramatically improve cash-flow and certainty for many drivers without placing undue pressure on the entire supply chain.

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

11. Safe driving plans

The ALRTA is very strongly opposed to the mandatory use of safe driving plans for all long distance work, particularly for contractors.

The reasons for our opposition are largely outlined in the preceding section on written contracts in this submission. However, in the case of the proposed safe driving plans our concerns are even greater.

It is entirely impractical for a safe driving plan to be agreed between the hirer and contractor for short notice long distance work, let alone to require others in the supply chain to witness the arrangements. This simply will not work.

The example 'run sheet' and supporting analysis provided as part of the separate submission made by the Livestock and Rural Transporters Association of Western Australia clearly articulates the difficulties faced by supply chain participants in meeting the proposed requirements for safe driving plans.

Safe driving plans are not proven to be effective. There are already laws in place governing fatigue (including record keeping), chain of responsibility and WH&S. Safe driving plans will add a very complex layer of regulation that overlaps with existing laws without any proven safety benefit.

While safe driving plans are already used as a management tool by some transport operators, the RSRO proposes to fundamentally change their purpose by including remuneration information and disclosing commercial and private information to a range of parties in the supply chain. It also requires third parties to witness odometer readings and time recordings. This fundamentally shifts the focus from 'safe trip planning' to 'disclosure, oversight and enforcement'.

Industry, government and fatigue experts have been working together for several years to reform Advanced Fatigue Management with the aim of increasing flexibility and decreasing entry costs. The safe driving plan proposal will do just the opposite.

A safe driving plan requirement will also impose a massive cost on affected parties. There are significant requirements for recording information, planning, consulting, reviewing, document provision, recording odometers, recording times, recording distances, recording breaks, returning completed plans to the hirer.

Again, the timetable provided by the RSRT to make this submission does not allow a detailed costing to be undertaken. However, the cost implications are clearly highly significant and when multiplied across all affected parties over four years would certainly run into hundreds of millions of dollars (as demonstrated above in the section relating to contracts).

The recording of such detailed remuneration and operational information to be provided to others in the supply chain also has serious implications for maintaining fair competition, protecting commercial arrangements and safeguarding the privacy of individuals.

Further, safe driving plans will have a massive impact on the viability of smaller contractors and hirers by disproportionately increasing their record keeping and operating costs. It will also impact on the movement of freight across Australia. No longer will freight be able to be moved by small operators across long distances at short notice. Together, these factors will lead a significant structural change with only larger national carriers being able to perform the task.

Whether or not safe driving plans are mandated should be a matter debated by governments, fatigue experts, industry and the community more broadly. The proposal must be supported by a full RIS and should involve a detailed analysis of the current regulatory regime and evidence for the effectiveness of safe driving plans.

At the very least, a range of exemptions should be available for small and rural contractors and those who are performing 'one off' or 'irregular' tasks.

12. Training

The ALRTA is not opposed to a minimum WH&S training requirement 'in principle'. We welcome the phase in period for any new requirement and argue for similar phased approaches to other requirements of the draft RSRO.

High standard WH&S training does in our view have potential to improve workplace safety.

We do however have some concerns about the practical application of any new requirement, particularly with respect to contractors due to the reasons outlined in the previous sections on whistle blowing and protective clothing.

Contractors should be responsible for providing their own 'tools of the trade' and maintaining training to a reasonable standard - especially when the proposed clothing and training is of such a general nature and not particular to a highly specialised workplace.

Contractors may work for many hirers and it a impossible to determine who should be responsible for covering the costs of training.

It would be more appropriate for the RSRO to simply specify that all drivers must wear appropriate protective clothing and be trained to a particular standard before being engaged (after a phase in period). Employers could be required to cover these costs for employees, but contractors should not be entitled to claim these costs from any particular hirer.

It may be argued that this is inherently unfair. However, employees and contractors are in direct competition with one another to a large extent. Any new cost for employers will increase the relative attractiveness of using contractors resulting in an opportunity for contractors to increase their rates proportionately to cover their own increased costs.

Another peculiarity of the RSRO requirement is that it does not recognise accumulated workplace safety skills and experience or other types of WH&S training that may occur under existing industry accreditation schemes including: TruckSafe, truckcare, Western Australia's fatigue and mass management scheme or the National Heavy Vehicle Accreditation Scheme.

The fact is that there is already a lot of WH&S training being provided across the heavy vehicle sector. There are also many long-term participants in the road transport industry who are recognised 'experts' in this field who may themselves have never undertaken formal WH&S training to the proposed standard.

The new training requirement will render previous training or experience irrelevant if it is not recognised as part of the new competency standard. It will potentially establish a vast and lucrative 'training empire' for organisations monopolising the new requirement - which will involve retraining people that are already competent - not unlike previous proposals in this area.

It is common practice in larger transport companies for key staff to undergo WH&S training (train the trainer) and then extend their skills and knowledge to others in the organisation through ongoing in-house training, inductions and the regular circulation of written materials such as WH&S manuals. The ALRTA considers that this arrangement can work well in larger organisations by creating internal 'experts' who are always available to deal with WH&S issues and who can provide timely advice to drivers more regularly than can be achieved through a 'one-off' training exercise. This results in sustainable action on WH&S issues and builds a positive workplace culture around WH&S over the longer term.

The ALRTA suggests that any WH&S training requirement:

- should recognise previous training undertaken as part of approved accreditation schemes;
- be limited in application to 'train the trainer'; and
- be 'grandfathered' such that it only applies to new entrants to the industry.

13. Drug and alcohol policy

The ALRTA is generally supportive of a requirement for employers and hirers to establish a drug and alcohol policy.

However, there may be subtle differences in the policies of individual employers (e.g. instant dismissal vs intervention and rehabilitation) and contractors should not be required to become familiar with the policies of a plethora of different hirers.

Fundamentally there are enforceable laws prohibiting the consumption of drugs and alcohol when operating a heavy vehicle which remain consistent across all employers and hirers. Considerations around how a particular employer or hirer may react to contraventions of these laws is a secondary concern.

Other matters and issues

Underlying assumptions of the Tribunal in Making an Order

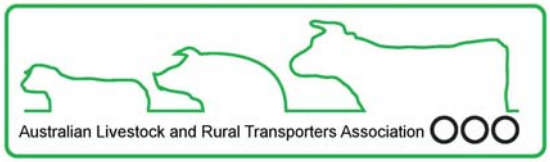
After examining the full range of new proposals contained within the draft RSRO, the ALRTA concludes that one of the main aims of the RSRT is to provide for similar, improved, conditions of engagement for employee drivers and contract drivers.

This appears to be predicated on a belief that contract drivers are essentially doing the same work as employee drivers, that is, regular or ongoing work for a single, or few, hirers.

This is evident in many areas including the requirement to have a detailed written contract, several of the mandatory contract terms (e.g. termination and annual review clauses), requirement to pay for protective clothing and training, continued ownership of protective clothing by the hirer, payment for work performed by a contractor outside the term of engagement (e.g. washing), the requirement to invest in safe driving plans (and to review them regularly) and the requirement to advise a driver of a particular hirer's drug and alcohol policy.

At least in the case of the rural and remote transport sector, the apparent underlying belief of the RSRT is incorrect. Most of these measures will not, and cannot, work in circumstances in which work is adhoc, unpredictable and accepted (or offered) at short notice by a contractor from the cabin of a truck.

One possible solution for dealing with this issue on a general basis would be to include an engagement threshold for the relationship between a particular hirer and contractor. For example, these relationships could be characterised as 'one off',' irregular', 'regular' or 'ongoing' with an increasing spectrum of RSRO provisions becoming applicable as relationships become longer-term and predictable. At the other end of the scale, 'one off' or irregular relationships would not be unnecessarily restricted by layers of new requirements that would apply 'for helping a mate out'.



About the ALRTA

1. The Australian Livestock and Rural Transporters Association (ALRTA) is the national federation that represents road transport companies who provide the 'first and last' link of the supply chain for Australia's agricultural industries and communities.

2. Australian agriculture relies on ALRTA's members in order to access domestic and global markets. Almost all inputs to, and production from Australian agriculture involves some transport by truck. Two-thirds of Australia's agricultural production is exported, comprising 20% of Australia's global merchandise exports.

3. Established in 1985, ALRTA is Australia's oldest purely policy-focused road transport industry association. ALRTA has no political affiliation and does not engage in industrial representation.

4. The National Council of the ALRTA is solely comprised of road transport operators, as are each State Council. ALRTA and its member bodies represent transport operators located in every Australian State and Territory. Our member operators are engaged in both short haul operations and long-distance haulage, extending to trans-continental movements. Our members provide services to remote stations, regional communities, coastal urban areas and regional and metropolitan ports.

5. Over 50 per cent of ALRTA's member operators run fully or partially diversified businesses in order to service the needs of the regional and rural communities in which they are based. In addition to their focus on livestock, many of our member operators are involved in transport of grains, feeds, fertilizer and other bulk materials cartage, fuel, milk, molasses, water and other tanker operations, refrigerated transport, inland retail fulfilment, and various forms of industrial and general freight cartage. Predominantly smaller businesses, our member operators are operationally complex.

6. The unique demands and responsibilities of livestock haulage provide ALRTA with a distinctive focus. To meet the requirements of caring for live cargoes, livestock carters have won unique entitlements, rules and regulations in many parts of Australia. ALRTA owns and operates truckCare, the only industry-based quality assurance scheme that meets the requirements of the new Animal Welfare legislation that will applies to farmers, transporters and processors, as well as addressing other traceability and biosecurity requirements that apply to agriculture in Australia.