



One of the features of the former Rudd-Gillard government's workplace relations platform, which has to date remained relatively unseen by business, was the [Road Safety Remuneration Act 2012](#) (the Act). This situation has now changed, with the introduction of the first major Road Safety Remuneration Order, which includes an unprecedented supply-chain audit and enforcement process.

Under the Act, a [new tribunal](#) was established (using Fair Work Commission resources). The tribunal may make "Road Safety Remuneration Orders", which are like awards although, in this instance, it applies to [contractor drivers](#) (NB: coverage is limited by constitutional considerations, most notably that one party to the contract is a trading corporation or the contract is entered into in a Territory).

First major Road Safety Remuneration Order made

The tribunal recently made the [Contractor Driver Minimum Payments Road Safety Remuneration Order 2016](#) (the Order). The Order applies to [contractor drivers](#) engaged in [long distance operations](#) and parts of the [general road transport sector](#) (as defined in the relevant award). Coverage of the general road transport sector is limited to distribution operations where the goods are destined for sale by "supermarket chains" (five or more supermarkets). Other sectors will be dealt with separately.

What are the obligations?

The main obligations under the Order are:

- Supply chain obligations (see below).
- Minimum rates (either per hour or cents per kilometer) as set out in Schedule A, with an extensive definition of what is meant by time worked and how to determine rates, and an expansive definition of what 'working time' is, including unpaid breaks needing to be paid.
- An obligation to permit regular contractor drivers to take four weeks' unpaid leave after the first year of providing services.
- Requiring the Order be placed in the yard, on their websites and advised to each driver.

Supply chain obligations

While most obligations relate to the person hiring the contractor driver (the hirer), the Order places obligations on the supply chain to audit and enforce compliance.

Who is in a participant in the supply chain?

"A participant in the supply chain in relation to a road transport driver" is defined as a "consignor or consignee, intermediary or operator of premises for loading and unloading". The terms consignor or consignee and intermediary are also defined, although more or less in their normal terms other than the addition of the constitutional limitation (ie. one party to the contract needs to be constitutionally covered). This means that anyone who is either sending, receiving or handling goods have obligations, to a varying degree, placed on them.

"All reasonable steps"

The Order requires all participants in the supply chain to take "all reasonable steps" to ensure that any contract they enter into does not contain any provision that will directly or indirectly prevent compliance with the Order.

This prohibition is intended to capture a broad range of circumstances. It can be expected to capture





contracts where the cartage components is so low that the contract could not lawfully be completed in accordance with the terms of the Order and could extend to circumstances where this is done unwittingly. In other words, the clause places a positive obligation on the party to ensure that the Order is being complied with. NB: a recent Federal Court [decision](#) has confirmed that knowingly entering into arrangements of this nature can be an offence under the *Fair Work Act 2009*.

Supply chain auditing

In addition to the general obligation, the Order introduces an auditing system through the supply chain. The obligation is on contracting party in the supply chain to audit the hirer's compliance with the order each year before 31 December). The audit must be of at least a representative sample of contract drivers. If non-compliance is reasonably suspected, the auditor must require the hirer to rectify it. If the response is unsatisfactory, the person must report it to the [Fair Work Ombudsman](#).

Although the drafting of the Order is not clear, the decision references "certain intermediaries" as having obligations under the clause and, on a plain reading, it appears intermediaries (other than exempt ones, see below), are also required to conduct audits. In other words, the whole supply chain is captured in long distance operations and supermarket distribution operations.

This audit obligation is limited to persons who are, in any financial year, party to contracts that collectively require carriage of goods more than 270 days (ie more than 5 days per week). While many clients' businesses will not be affected by the Order, those engaged in the supermarket supply chain, or larger businesses which regularly use long distance transport services may be captured.

Importantly, the requirement for private contracting parties to take a proactive role in compliance and enforcement, and face heavy penalties for non-compliance, is unprecedented and its extension to other industries or sectors could add significant red-tape to subcontracting operations.

Penalties for breach

Corporations who breach the Order are liable for a maximum penalty of \$51,000 (\$10,200 in the case of an individual). The enforcement of the Order is essentially the same as an award or an agreement, including prosecution by the Fair Work Ombudsman, the contractor or a union.

Other laws not affected

It is important to note that the Act does not affect other laws (including, for example, laws relating to [sham contracting](#) and obligations with respect to [workers compensation](#) etc). As such, simply paying a person the relevant rate in the Order does not make the person a genuine contractor or relieve the person engaging them from other statutory obligations.

Commencement Date

The Order comes into effect on 4 April 2015, and will [expire](#) on 3 April 2020.

Need more information

If you would like further information about the Order, engaging contract drivers or supply chain obligations or auditing, please contact the team at Fair Work Lawyers.

The information contained in this publication is general in nature and does not constitute legal advice. Businesses should seek legal advice in relation to their own specific circumstances.

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