



victoriantransportassociation^{inc.}

The Hon President Acton
Road Safety Remuneration Tribunal
GPO Box 1994
Melbourne Vic 3001

by email to: inquiries@rsrt.gov.au

Draft Contractor Payments RSRO published 26 August 2015

The Victorian Transport Association (VTA) is the peak employer association for the transport and logistics industry in Victoria. Comprising approximately 800 member companies, the VTA has represented the views and interests of its members for more than 100 years covering the breadth of issues relating in particular to the freight and logistics industry, especially road transport.

While the VTA supports the Tribunal making a Minimum Rates Contractor Payments Order to cover supermarket chain related road transport services and those relating to long distance operations, and welcomes the development and utility of the 'calculator', the Association has a number of concerns in respect of the draft Order published on 26 August 2015.

We make the observation that a road transport service under a distribution operation not involving goods destined for a supermarket chain will remain outside the scope of the draft Order. That is, **Schedule A** has application to the supply chain for the cartage of goods specifically destined for the supermarket retail chain sector, but not otherwise to 'local' retail sector. This will result in at least in two payment standards for road transport services in non-long distance operations, and may promote activity to avoid the standard required by **Schedule A**, which itself creates a significant additional administrative burden on transport operations coming within the scope of the Order.

The VTA is particularly concerned that the draft Payment Rates have been calculated by reference to erroneous assumptions in the KPMG costs model, resulting in an artificially inflated minimum standard costing for services falling within the scope of the Order.

These concerns are itemised as follows:

A - PAYMENT RATES

i. Fuel input costs should be variable not fixed

The fuel input cost appears to be based on two year old prices that were 17.5% higher than currently. As well as the volatility of fuel prices generally (incl varied arrangements in current road transport cost models relating to a fuel excise surcharge) fuel costs are also significantly affected by the weight of the load (c/f fuel efficiency where vehicle is unladen), and the incidental utilisation of unused fuel. Given the 4 year automatic adjustment in the overall payment rates, the fuel cost correlation with the overall payment rates is likely to create an even greater disparity.



Recommendation

As the fuel cost variable is the most volatile of all cost inputs we recommend that the assumed fuel costs component be removed for the kilometre rates but that fuel be added to the rates equation as a floating amount adjusted monthly upon the published fuel price and fuel efficiency calculations as agreed between the parties.

In the alternative, the per/km rates requires substantial adjustment to become the rates in a Final Order.

ii. GST inclusion creates serious anomaly

The Association reiterates the concern made by parties in earlier submissions of the erroneous inclusion of GST in the acquisition costs component of the payment rates. The inclusion of GST in the model pricing fails to have regard to the tax input credit available to the contractor owner driver in respect of acquisition costs.

Recommendation

That the per/km rates be revised on a cost model that does not include GST in the acquisition costs.

iii. Labour cost component excessive

By our calculation the per hourly labour costs in the Costs Tables at A.4.11.1 and B.4.9.1 are approximately 26% higher than the respective casual hourly wage rates in the Road Transport and Distribution Award 2010 ("RTD Award") and Road Transport (Long Distance Operations) Award 2010 ("LDO Award") equivalent classifications. In the absence of how these payment rates were calculated, by particularising more than a "danger money and certain other allowances" (as per para 41 of the Statement accompanying the draft Payments RSRO) the labour rates are excessive.

Recommendation

Without itemising how 'danger money and certain other allowances' affect the wage rates in the RTD and LDO awards, the Association recommends that the labour cost inputs should be representative of the said awards, and should not include notional values such as danger money.

iv. Depreciation costs inconsistencies

It is the VTA's understanding that the KPMG costs model uses the same period of depreciation for all vehicles, which means firstly, that the modelled depreciation rates do not align with the ATO principles, and secondly, has the effect of condoning the use of older vehicles to the age of 15 years, which in turn is contrary to industry expectations (which is the use of vehicles up to 7 years old).

Recommendation

That the per km rates be revised to take account of the depreciation component that -



- includes a respective age of the vehicle on the basis of the different depreciation rates depending on the age of the vehicle or equipment; and
- applies the depreciation life of all vehicles consistent with ATO depreciation principles.

v. Kilometres travelled assumption is erroneous

It is the VTA's experience that the yearly average distances travelled in the costs model (35,000 kms for rigid in distribution; 150,000 kms for long distance prime movers) can be substantially greater than the static assumption in the costs model. Also, the assumption for kilometres travelled in the costs model segregates 'rigids' from 'articulated' even though both vehicle types may fulfil the same job (eg. a semi-trailer may be engaged in local distribution and never attain 150,000 kms per annum).

Recommendation

That the payments costs be reviewed and revised to reflect the more common or median distances travelled in a given year.

B - PAYMENTS FOR 'SPLIT LOADS'

While it is understood that split loads do not apply for the major supermarket chains, the incidence of such can occur in respect of smaller supermarket consignments and is not infrequent in long distance operations. The draft Payments RSO is silent in this respect, and the difficulty in drafting a clause to deal with these incidences is appreciated.

Recommendation

That the Order makes provision for split or part load consignments.

C - CLAUSE BY CLAUSE COMMENTS

i. Payment Rates generally at Schedules A and B

Schedules A and B (together with the calculator) allow all conceivable combinations of driver classification, vehicle type, trailer type to be input to determine a payment rate.

Recommendation

The Association strongly recommended that the published rates in the final Order be confined to 'fit for purpose' road transport services. That is, that only configurations of driver classification equivalents, range of vehicle and trailer combinations that are conformable with road safety and other legislation be published as available rates (and that the calculator be revised in the same way).

ii. Fixed annual 3.2% increase over 4 years (Item A2 of Sch A and Item B2 of Sch B)



The Association has particular concerns of extrapolating a fixed annual rate increase over a 4 year period. It is VTA's submission that while RSR Act provides for an Order not exceeding 4 years, it does not necessarily follow that the annual rate increase in the (Final) Order must project over a 4 year period.

Recommendation

That the payment rate increase be determined on an annual basis by the Tribunal (using the formula of the Average Annualised Wage Increase in enterprise agreements in the Transport Postal and Warehousing sector as at the most proximate published data).

iii. Commencement Date (Clause 2)

It is the view of the Association that the commencement date of 1 January 2016 is a particularly difficult time within the road transport industry. The lead time between the making of any (final) Order and its proposed commencement is likely to be very short in an extremely busy pre-Christmas period, with the commencement time occurring when the administration of vast numbers of transport providers are likely to be on leave or in close down.

Recommendation

That the commencement date be moved to 1 July 2016.

iv. Application (Clause 4)

Where a road transport service relates to goods destined for sale or hire by a supermarket chain and that particular service involves a long-distance operation, by reference to the various definitions (cl 3) in the draft Order, as well as by reference to clauses 4, 9 and 10, it is inferred, that Schedule B will override Schedule A.

Recommendation

In order to avoid confusion and the misapplication of the Order, the VTA recommends clarification of the application of Schedule B viz a viz Schedule A, for example by utilising *Notes to the Order*, (immediately following Clause 4) and that the Tribunal considers the inclusion of real case scenarios, where appropriate.

v. Supply Chain Contracts (Clause 8.2)

Subclause 8.2 mandates an annual audit, except for short period contracts and open ended contracts (per sub clause 8.3). The Association is of the view that instead of a mandated annual audit, the onus should lie with one of the parties to the contract with the enforceable right to instigate an annual audit.

As it stands now the annual audit is a new requirement and will appear initially to be relatively complex task. It is the Association's experience to date that the "audit" requirement will not initially be clear to industry participants.

Recommendation

That clause 8.3 be modified to confer on either party to the contract an enforceable right to instigate an audit (not more than annually) of the other party in relation to compliance with the contract.



It is also recommended that a guidance note or a case example be included immediately following sub clause 8.2.

vi. Supply Chain Contracts (Clause 8.3)

Sub clause 8.3 appears to contain a critical drafting error. Sub clause 8.3 is designed to provide an exception from the annual audit required by sub clause 8.2. The exception is said to be for irregular contracts (see para 31 of Statement). It appears that the word “and” should be included before the words “this order” on line 3.

Recommendation

Subclause 8.3 may be more clearly expressed if it is set out in the following format

“8.3 Subclause 8.2 does not apply unless-

- (a) a participant in the supply chain (the first party) in relation to a road transport driver has a contract with another participant in the supply chain (the second party), and*
- (b) this order imposes requirements on the second party, and*
- (c) the contract or contracts between the first party and the second party are, singly or collectively between the first party and the second party*
 - (i) of no fixed duration*
 - or*
 - (ii) for a period of at least 30 days in a year.”*

vii. Facilitative Provisions (Clause 11)

As we understand the terms of the draft, the expression “*necessarily spends in providing the road transport service*” (as stated at cl 11.1, 11.2, and at cl 9.1 and 10.1) enlivens what will commonly be understood as ‘working time’ for the purposes of calculating the hourly component of the payment rates.

In a similar vein, the expression “*necessarily travels in providing the road transport service*” (as stated at cl 11.3 and at cl 9.2, 9.3, 10.2 and 10.3) applies in respect of calculating the kilometre component of the payment rates. In this way the terms “**necessarily spends**” and “**necessarily travels**” are key terms of the draft Order.

Recommendation

That consideration be given to cross referencing the terms “**necessarily spends**” and “**necessarily travels**” in the *Definitions and Interpretations Clause 3*, to the clauses in which those terms appear.

viii. Payment for time spent on rest or fatigue breaks (Clause 11.1(b))

We note that the Tribunal has particularly sought comment on the inclusion of fatigue or rest breaks required by law (as per cl 11.1(b)) as paid work time.

Subclause 11.1 (b) provides in effect that each hour or part thereof that the contractor driver necessarily spends in providing the road transport service includes ... each hour or part thereof that the contractor driver spends in taking a fatigue or rest break required by law.



Under the RTD award a rest break (technically a meal break) taken during ordinary hours is an unpaid break, whereas a rest break taken while on overtime is a paid rest break. Rest breaks taken while performing shift work are paid.

Under the LDO award rest breaks are expressly excluded from the definition of 'driving time' (cl 3.1 defns clause); major rest breaks coincident with away from home travelling allowance are absorbed by payment of a qualified travelling allowance (cl 14.2(c)(i)); ordinary time meal breaks make no provision that they be paid meal breaks (at cl 21).

Fatigue and rest breaks are otherwise governed by the National Heavy Vehicle Law (NHVL). The NHVL does not go to payment for time spent taking such breaks.

Recommendation

In all of the circumstances the VTA recommends the preservation of the status quo in respect of the question as to whether short rest breaks are paid or unpaid.

As to major rest breaks mandated by fatigue management arrangements, the VTA is strongly of the view that such time cannot reasonably be included as time necessarily spent in providing the road transport service.

In summary, the VTA understands the challenges in settling a Contractor Payments Order that will be suitable and appropriate for the majority of users that fall within the scope of the Order, however we would urge the Tribunal to further review the draft Rates to achieve a closer representation of the costs and payments that apply currently, and will be more sustainable in the industry generally.

Peter Anderson
Chief Executive Officer
25 September 2015