



ARTIO
Australian Road Transport
Industrial Organisation
ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

SUBMISSION BY THE AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION (ARTIO) TO THE REVIEW OF THE ROAD SAFETY REMUNERATION SYSTEM

The following Submission seeks to address the Terms of Reference for the Review established on the 20th November 2013 by the Honourable Eric Abetz, Minister for Employment into the Road Safety Remuneration System.

ARTIO is an Industrial Organisation of Employers registered under the Fair Work (Registered Organisations) Act 2009. It has been so registered since 1984. ARTIO represents employers in the transport and logistics industry, particularly those engaged in road transport.

ARTIO's membership includes large multi-national transport companies including those publicly listed. Our collective membership extends across privately owned small to medium sized companies. Collectively, members of ARTIO's Branches perform a large percentage of Australia's urban, regional, remote and interstate freight task across the manufacturing, retail, housing and construction, agriculture, mining, import, export and other sectors of the economy.

ARTIO has represented the industry in the Australian Industrial Relations Commission and its successor the Fair Work Commission since achieving registration.

ARTIO operates as a federation with Branches in all States except South Australia. ARTIO and its Branches operate independently and in accordance with the particular Constitution applying in that Branch.

ARTIO Council, which has a representative from each of its State Branches, meets on a bi-monthly basis to consider and discuss Industrial Relations issues impacting on the organisation (industry) and its members. Much of its day-to-day activities are carried out by the Branches, especially when dealing with operational issues and providing advice to members on issues surrounding industrial obligations and other regulatory matters.

Summary of ARTIO Views

At the outset ARTIO wishes to make the following brief observations in response to the Review. We submit that there is a requirement for:

- *Submissions and evidence before the Road Safety Remuneration Tribunal (the Tribunal) highlighting in particular the need for evidentiary links to identify crash data and driver remuneration;*

ARTIO National

PO Box 5, South Melbourne, Victoria 3205

T 03 9646 8590 | F 03 9646 8596 | E reception@vta.com.au

State Branches

ARTIO VIC	PO Box 5, South Melbourne, Victoria 3205	T 03 9646 8590	F 03 9646 8596	E reception@vta.com.au
ARTIO QLD	PO Box 325, Stones Corner, Queensland 4120	T 07 3394 4388	F 07 3397 9324	E admin@qta.com.au
ARTIO NSW	PO Box 277, Hurstville, New South Wales 2220	T 0412 880861	F 02 9579 2333	E hughmc@artionsw.com.au
ARTIO WA	37-41 Cohn Street, Carlisle, Western Australia 6101	T 08 9355 3022	F 08 9355 3122	E iking@warta.com.au
ARTIO TAS	PO Box 728, Riverside, Tasmania 7250	T 0409 274 482		E ed@tta.org.au

- *Avoidance of additional red tape/cost impost on industry;*
- *A safety focus and the need to avoid duplication of (statutory) responsibilities of existing legislation in areas related to industrial law, road law and workplace health and safety (WH&S) law agencies e.g. National Heavy Vehicle Regulator; and*
- *Small to medium sized enterprises and subcontractors to have a legitimate and user friendly process/Tribunal/Legislation to test unfair contracts, delays in invoice settlement and other aspects which demonstrate the abuse of market power.*
- *Supports retention of a policy framework which:*
 - *Aims to address market failure issues in the provision of road freight services, which compliments other legislation affecting the industry and is underpinned by an effective compliance and enforcement regime.*
 - *Identifies the link between the industry's regulatory framework and the community's interest in safer roads.*
 - *Stresses the importance of robust, credible evidence as the basis for policy formulation so there is potential to introduce remedies to root causes of any safety based market failure.*
 - *Encourages an efficient transport operator to cover costs and make an acceptable margin on their investment in order to remain financially viable.*

Substantive Response to the Review Terms of Reference

ARTIO has been very closely involved in all matters leading to the development of the Road Safety Remuneration Act (the Act). Specifically:

- In 2008 ARTIO made detailed submissions to the National Transport Commission (NTC) Inquiry into 'Safe Payments in the Heavy Vehicle Industry'. Following that report and subsequent brief policy discussion, the then Government would be looking to implement some of the recommendations made in the NTC Report.
- In December 2009, the then Deputy Prime Minister established a Safe Rates Advisory Group to provide advice to the then Department of Employment Education and Workplace Relations (DEEWR). ARTIO had several representatives invited to participate in that Group. The product of the advice and discussions was the 'Safe Rates, Safe Roads' Directions Paper, which was released in November 2010. The purpose of the 2010 Directions Paper was to obtain further industry feedback on potential models developed by DEEWR to deal with the Government view that there is some causal link between payment schemes and methodologies and road safety outcomes in the heavy vehicle industry.
- In 2010 ARTIO made submissions on the Directions Paper and, while it did not necessarily agree with all the findings made in earlier papers, nor did it accept all of the conclusions reached in the Directions Paper, it conceded that it was time to move ahead in this debate and work towards the development of a safer and, one would believe, a more productive and efficient road transport industry.
- In 2011 ARTIO made a submission to the House of Representatives Standing Committee on Infrastructure and Communications' Inquiry into the Road Safety Remuneration Bill 2011.

Since 2012 ARTIO has at every opportunity engaged and been actively involved with the activities of the Road Safety Remuneration Tribunal. ARTIO has been present at all hearings, directions conferences and facilitated discussions. ARTIO has made submissions on all aspects of the Tribunal's annual work programs and draft orders.

In general, ARTIO has been supportive of the concept of addressing safety concerns that stem from rates of pay or payment related practices. ARTIO is however unconvinced that the current legislative system is the most effective or efficient means of addressing those concerns.

ARTIO views the current review as an opportunity to better understand how the market failure issues which affect the industry can best be addressed through the best possible regulatory response.

1. The impact to date of the Tribunal on the road transport industry and its safety performance.

On the 17th December 2013 the Tribunal published its first Road Safety Remuneration Order (RSRO). Much legal argument had occurred during hearings about the interpretation of the Act and uncertainty around the jurisdiction of the Tribunal primarily around s27 of the Act.

S27 Making road safety remuneration order

What the order may deal with

(1) *If the Tribunal decides to make a road safety remuneration order, the Tribunal may make any provision in the order that the Tribunal considers appropriate in relation to remuneration and related conditions for road transport drivers to whom the order applies.*

In essence the question put to the Tribunal is whether the 'related conditions' is any related condition, or, is it a condition that must have some connection to remuneration. The TWU and others have argued that orders may contain anything as long as it is remotely safety related while ARTIO and other employer groups argue that the order can only relate to remuneration related conditions.

The issue is relevant to this review because there are a number of items in the RSRO released by the Tribunal for example Training, Drug and Alcohol Policies, Safe Driving Plans, which are issues not strictly related to remuneration or payment methods but which are impacting on industry safety outcomes.

The Tribunal ruled that its jurisdiction was not limited strictly to remuneration related conditions and may include within an order any measure that may be related to safety within the industry. Therefore, we submit there exists considerable potential for orders to overlap and duplicate existing regulatory schemes and impose significant cost and compliance burdens on the industry. The actual implications will depend on the contents of the order itself and exposure of the order on a particular operator given their existing business operations.

ARTIO is opposed to the 'extended' power of the Tribunal to impose wide ranging conditions on all safety related matters across the entirety of the road freight/trucking industry. This outcome creates uncertainty and possible inequity within the industry.

The impact of the order will, as stated above, depend on the sector or coverage of the order and how the business is currently managed.

Although only a minority of members may perform a transport task to a ‘supermarket chain’ a larger proportion of the freight task (approximately 35 percent) is engaged in ‘long distance’ work. Many operators would in some form utilise safe driving plans, have drug and alcohol policies and undertake training to comply with WH&S obligations. Such policies are implemented by operators utilising best practice principles. However the very prescriptive nature of the RSRO in relation to some of these provisions means that in many cases their current practices may not comply with the RSRO and or systems currently utilized to manage risks may not be recognised, even though those practices may be consistent with and comply with other legislative obligations.

ARTIO submits that the introduction and implementation of such measures should be undertaken by businesses in accordance with their own risk assessment of the hazard identified in the particular circumstances of the business having regard to obligations under relevant WH&S and Road Law.

It is the ARTIO view that to date that impact of the Tribunal on the industry has been limited in terms of compliance burdens, cost to business and in any improved safety requirements. However we foresee additional administrative burden and uncertainty for business as this RSRO, and future Orders are implemented going forward.

We also believe that operators will be likely to view orders as ‘another piece of paper’ or red tape that must be considered along with their chain of responsibility (COR), WH&S, industrial and general business bureaucratic obligations with no demonstrable safety outcomes achieved. Operators will not comply as part of a genuine attempt to improve safety outcomes, but will merely comply as a regulatory obligation.

2. The potential future impact of the Tribunal on the road transport industry and its safety performance

ARTIO notes the Act’s object to promote safety and fairness in the road transport industry by (in part):

- a) *ensuring that road transport drivers do not have remuneration related incentives to work in an unsafe manner; and*
- b) *removing remuneration related incentives, pressures and practices that contribute to unsafe work practices.*

ARTIO recognises that there are circumstances where subcontractors have limited ability to effectively negotiate with principal contractors (hirers) and this may provide payment rates that are insufficient to maintain a viable business observing both on road and off road safety standards established by Road Law and other Regulatory obligations. ARTIO however maintains that the Act or orders of the Tribunal should not be aimed at assuring the viability of businesses that would in the ordinary course fail due to inefficiency, bad business practices and or poor management.

It is with the Act’s objects in mind that ARTIO sees legislative assistance as being important in order to address potential market failures as a consequence of imbalances in market power.

ARTIO notes that if one extracts from all the material filed with the Tribunal, particularly from small operators and owner drivers, themes and a 'real' indication of the core issues affecting those parties are identified. They are:

2.1 Profitability and Imbalances in Market Power to Effectively Negotiate Viable Rates.

ARTIO submits there is considerable anecdotal evidence to the effect that the industry is unable to negotiate viable rates which provide a rate of return in order to allow a business a reasonable chance of being viable in the medium to long term. ARTIO submits this market failure is evident in the power held by consignors/consignees, the inability to negotiate reasonable contract conditions to address unpredictable movements in costs such as fuel, a preparedness on the part of transport operators to win business on price and a preparedness on the part of consignors/consignees to accept that price is the basis on which a contract is agreed.

Korda Mentha¹ has found that:

- The industry is highly competitive with low barriers to entry in non-specialised areas of the industry.
- Smaller transport operators in particular have little control over:
 - Labour and fuel costs.
 - Rates they charge consignors/consignees.
- Small transport operators are price takers.
- Large transport operators struggle to differentiate themselves from owner drivers and small operators who drive down price.
- Consignors/consignees are often large and can negotiate conditions in their favour.
- Consignors/consignees view general road freight as a market akin to a commodity.
- Profitability for the industry in 2011-12 averaged 6.2 per cent (4.2 per cent in 2008-09) compared to 10.2 per cent for all industries.
- There is a narrow dividing line between success and failure.
- Many transport operators lack business skills.

In ARTIO's opinion, the findings from the Korda Mentha report supports its anecdotal evidence about how the market for freight services behaves. This report also highlights the difficulties in predicting future operating costs. This adds to risk and uncertainty which is not rewarded by the high profitability levels normally associated with a properly functioning market.

These market conditions are likely to have an adverse impact on fleet management, equipment purchasing, truck and trailer age and adherence to heavy vehicle maintenance requirements in areas such as brakes and tyres.

¹ See 'Road Freight – Part 1 Industry Overview', December 2012, Publication No. 12-08, www.kordamentha.com.

2.2 Payment for All Time Worked

Transport operators incur costs when trucks are idle at consignors/consignees' premises. Time spent loading/unloading varies according to the nature of the work. This time spent is beyond the control of the transport operator and has adverse impacts on revenue, profitability, business relationships with other consignors/consignees, asset utilisation and labour productivity. The highly competitive nature of the industry means that demurrage is rarely applied. This means there is no incentive on consignors/consignees to turn trucks around quickly.

In ARTIO's opinion it will require intervention for demurrage to be a standard condition of contracts in most part of the industry. If that can be achieved it is likely to drive more efficient behaviour in the logistics sector, greater predictability in asset utilisation, cash flow and profitability and higher levels of productivity.

2.3 Reasonable Payment Terms

It is not uncommon for consignors/consignees to settle invoices after 60 or 90 days. This has flow on impact in terms of cash flow, ability to borrow and meet loan repayments, and in terms of fleet management in areas such as vehicle maintenance, tyre condition and fleet age.

2.4 Reference Either to a Specific Rate of Remuneration or to a Rate Calculated in Accordance with a Cost Model

NSW, WA and Victoria have different approaches which involve varying degrees of regulatory intervention through an industrial tribunal which determines a fixed rate (NSW) and the small business portfolio which provides the parties with the opportunity to negotiate a mutually acceptable outcome (Victoria and WA).

2.5 Concluding Remarks

ARTIO views these as the 'real' issues for the industry and submits that legislation and the Tribunal, or any replacement body should focus its attention around addressing these core items. Our view is that these issues are directly relevant when contemplating the purpose of the Act to address links between road safety and remuneration practices and methodologies.

These 'core issues' are also identified as the primary causal link between remuneration and safety by Professor Michael Quinlan in his 2008 report to the NTC.

Therefore, ARTIO is and has been generally supportive of the underlying intent of the Act and the Tribunal because it is the only legislative mechanism currently available to address these core issues pertaining to remuneration and safety (as opposed to any matter solely related to safety) at the national level. However, ARTIO is not necessarily wedded to the idea that a Tribunal of the type currently in place is the best mechanism to address industry's concerns.

There exists a raft of legislation and significant industry reforms, implemented over the last decade, which address safety concerns and heavy vehicle crash causation, but not necessarily connected to rates of pay or payment practices.

Road Law reforms are supported by both industry and agency regulators as a best practice method for achieving safety outcomes.

There is a potential for the Tribunal through orders that address the payment/safety link, and by addressing contract conditions, to improve safety outcomes. The Tribunal has issued an RSRO that goes some way to mandating minimum contract standards which would go some way to addressing core issues. However, Orders are only applicable to the sectors identified and are generally determined by the Tribunal's annual work program.

We say enormous potential to overlap and duplicate existing regulatory obligations on operators/employers imposing significant cost and compliance burdens on the industry, may occur where Jurisdiction extends outside the payment/safety area.

3. 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; And

ARTIO views the Tribunal's functions essentially as those provided for in s80 (1) of the Act:

- Making road safety remuneration orders,
- Approving road transport collective agreements,
- Dispute resolution, and
- Conducting research into pay and conditions that could be affecting safety.

The appropriateness for a Tribunal model to intervene in the Industry and its safety performance should depend on the problems to be addressed.

While ARTIO believes there is merit in a tribunal model we suggest consideration needs to be given to the following:

- The annual work program 'investigation' into various industry sectors (that in turn are the subject of road safety remuneration orders) is a drawn out burdensome process that is uncertain for industry and an inefficient use of Tribunal resources.
- It is important for the Tribunal to have internal mechanisms to distinguish genuine safety based issues raised by stakeholders from issues which rely on anecdotal assertions and which may be motivated either by a desire to externalise responsibility or may be self-serving. ARTIO believes that the evidence presented and allegations levelled mostly at the retail sector at hearings so far to 'substantiate' a log of claims, did not establish the prevalence and characteristics of heavy vehicle crashes or the extent that remuneration contributes to those crashes, if at all. We believe that the adversarial manner of hearings may be an inefficient use of the Tribunal's power to create meaningful reform to address core issues concerning remuneration and remuneration related conditions.
- Many of the issues raised cut across the industry and are not confined to particular sectors. An example is payment terms. ARTIO believes it is an inefficient use of the Tribunal's resources to focus on payment terms in, say the long distance interstate sector of the industry when such problems are prevalent in other industry sectors.

ARTIO has submitted on numerous occasions that the Tribunal ought to concentrate on core issues pertaining to remuneration and safety (as opposed to any matter related to safety). However, ARTIO submits that the prevalence and characteristics of remuneration related heavy vehicle crashes must be properly understood and accordingly we have urged the Tribunal to use its resources and express jurisdiction under s.80(d) to undertake independent research (particularly examining crash data and industry statistics) to obtain tangible information to establish the extent that contract conditions, payment methods or any other issues have in fact contributed to fatal and serious incidents or unsafe practices generally and assist the Tribunal to make informed and targeted orders.

ARTIO believes that much academic research material submitted to the Tribunal lacks Australian specificity, currency and or has not been objectively tested nor has been considered against other data such as road crash analysis to verify findings.

ARTIO continues to encourage the Tribunal to develop a working relationship with transport and road agencies, police agencies, workplace safety agencies, coroners' offices and insurance providers in order to understand characteristics of:

- Fatal and serious crashes involving trucks, including location, causation and 'at fault' issues.
- Breaches of road laws under COR legislation, especially in relation to speed and fatigue.

ARTIO also believes the Tribunal should consider significant developments in road safety management such as:

- Heavy Vehicle National Law, especially fatigue management regulation and speeding ;
- Improvements in road conditions;
- Improvements in and frequency of rest stop facilities;
- WH&S legislation.

ARTIO believes there is real opportunity for the Tribunal to obtain credible evidence on firstly, the prevalence and characteristics of heavy vehicle crashes and secondly the extent that remuneration contributes to those crashes.

4. Any preferred approaches to addressing road safety concerns in the road transport industry

In this submission ARTIO has put the case for intervention by highlighting weakness in the manner in which the market for the provision of road freight services works. In considering whether the Tribunal is the appropriate model to address safety performance ARTIO believes it is necessary to clearly understand the problem, how and why it arises, its significance and whether other types of regulatory intervention are more likely to address those market based weaknesses.

As previously stated, at the jurisdictional level different approaches have been used to address what is the same problem. These different approaches may provide guidance on a preferred course of action.

In ARTIO's view the following also require consideration:

- To have a common approach which aims to specifically address what are common problems irrespective of the jurisdiction/s in which they occur.
- To ensure the agency which undertakes the intervention compliments and does not overlap with existing regulatory agencies in areas related to industrial law, road law and WH&S law.

The concerns highlighted in this submission are essentially economic in nature which suggests consideration should be given to ensuring a body which deals with these issues includes expertise in economics.

ARTIO believes improvements could be achieved by the introduction of amendments to the Act or new legislation with a safety emphasis that requires minimum standards and terms within road transport contracts and mandating use of a generic costs modelling framework to allow the contracting parties to establish a sustainable rate reflecting the particular freight task and equipment used. Such legislation exists in Western Australia and Victoria albeit not founded upon safety outcomes.

Key features of industry commercial functions have a similarity. Minimum terms and conditions within a road transport contract would eliminate the need for a sectoral type investigation by the Tribunal each year given the root causes are consistent through all areas of the industry.

ARTIO supports a Tribunal exercising powers in the area of dispute resolution for remuneration-safety issues and sees this role expanding in assisting parties during contract negotiations or disputes on mandated minimum conditions.

We also believe that it is appropriate to facilitate a collective arrangement for likeminded independent contractors operating within a particular sector of the freight task obligated to a single prime contractor.

ARTIO strongly holds the view that it is not appropriate that the Road Safety Remuneration Tribunal system have jurisdiction over employees already covered by the Fair Work Act, modern awards or enterprise agreements.

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

ARTIO understands the general intention of the Act is to eliminate the financial impediments that remuneration and payment methods create and subsequently contribute to parties acting in an unsafe manner. ARTIO believes road law and particular provisions e.g. fatigue management regulations, are designed to discourage unsafe driving practices. Key to the success of compliance and enforcement strategies related to road law is the willingness of State and Territory governments to fund the necessary human and other resources to ensure compliance and enforcement is implemented effectively and efficiently.

Although the Tribunal must consider in s20 of the Act the need to avoid unnecessary overlap with the Fair Work Act and other prescribed laws (contained in the regulations currently limited to various Work Health and Safety Legislation only), this aspect is merely a consideration of the Tribunal and does not prevent orders from overriding, extending or duplicating obligations contained in other legislation. This leads to the possibility of regulatory overlap and uncertainty.

The draft order published by the Tribunal on July 12 2013 suggested mandatory health and safety training for drivers provided by a registered training provider. We note that this is not a feature of WH&S legislation in any jurisdiction. Although the terms of the draft order were not reflected in the final RSRO, it illustrates that regulatory overlap potential.

ARTIO submits that that employers and prime contractors should accept and exercise their responsibilities under the general duties and obligations of WH&S legislation and supports training as a matter of principle, however training and the content thereof should be determined by the hirer or employer as required having regard to WH&S requirements of the business under applicable State legislation and not be covered by an RSRO.

ARTIO does not believe it is necessary to mandate the use of a registered training provider. This measure will not be practicable to all operators. In its current form the clause only serves to impose unnecessary costs on employers and prime contractors.

Many companies invest in training through their own experienced driver trainers or through external resources. These may incorporate on and off road curriculum including driver skills, customer relations, technology, fatigue management, work health and safety and other particular company requirements.

Under WH&S legislation there are general duties on employers in respect to the implementation of safety and work practices. There is no provision within WH&S legislation that prescribes that a particular trainer or type of trainer be used.

It is also worth noting that no similar provision or obligation is proposed in respect to road law.

ARTIO notes it has yet to be established by any party exactly what this measure within an Order specifically aims to achieve or what practices that impact adversely on safety this measure attempts to redress.

The cost of training for operators should not be measured by RTO training fees only. Other relevant factors include driver payment to attend, lost productivity and revenue, travel and accommodation costs. It is inequitable to impose this cost on operators within the first 3 months of employment when it is unknown if the driver is suited to the position and / or employer's business and a process or period of testing or observing the character or abilities of a driver has not occurred.

Similarly, the Tribunal's draft orders also provided that Safe Driving Plans also be mandated.

ARTIO supports the Safe Driving Plan concept however it has concerns with having to overlay a whole new system that contributes to compliance burden. Many operators have invested in sophisticated systems and have in place practices that would meet the requirements of the safe driving plan proposal and where that occurs ARTIO submits their existing systems should be recognised as meeting the requirements of the Order. It is simply unnecessary to duplicate obligations under existing WH&S Law or Road Law.

ARTIO submitted that the Order ought to recognise alternative methods, systems and practices that would satisfy the components required in the safe driving plan proposed by this draft Order as to not duplicate and further add to compliance burdens.

Many of the requirements of the draft Safe Driving Plan can be and are met by operators complying with other regulatory obligations such as COR obligations and are further complimented by internal risk assessment control measures such as company procedures and policies, employee driver manuals and these are often outlined on consignment notes for driver awareness.

ARTIO further submitted that the administrative compliance burden to produce, audit and store each SDP for each task is prohibitively significant when considering measures already taken by many operators. ARTIO submitted that it is questionable whether 'another piece of paper' will further contribute to any positive safety outcomes considering sophisticated the controls measures used by much of the industry.

With the publication of the RSRO on the 17th December 2013, ARTIO still holds those concerns and believes that the Order in this respect illustrates the potential for the RSR System to increase red tape and compliance burdens, and in our view, without validated study or established evidence to base the purpose for the particular measure.

We believe there is limited scope in the Act to recognise the common use of technology utilised by many operators such GPS vehicle tracking and be flexible to facilitate emerging technology such as fatigue eye tracking technology and ignition swipe card access systems, vein and finger print readers which operate to regulate a driver's permitted hours as prescribed in legislation. Further the National Transport Commission has developed in consultation with industry and governments, the Electronic systems for heavy vehicle driver fatigue and speed compliance as a way forward for industry and regulators on the voluntary use of electronic work diaries to monitor fatigue and speed compliance. Trials are currently underway.

COR provisions in Road Law impose obligations on all parties in the transport supply chain and all individuals in the corporate chain of command. Those parties are required to take reasonable steps to prevent a contravention of road transport laws, and to not encourage or coerce others to contravene those laws

The COR provides that consignors, packers, loaders and receivers may be held legally liable for breaches of heavy vehicle mass, dimension, load restraint, fatigue and speed obligations, in addition to drivers and vehicle operators. In this way, off-road parties are as legally liable as their on-road counterparts if a breach of those requirements occurs. This enables authorities to better target the party or parties actually at fault in each case. It also reduces pressures on on-road parties and ultimately leads to improved compliance, and safer roads.

COR is similar to the legal concept of 'duty of care' that underpins WH&S law. This approach has long been used by the courts to impose liability in negligence and damages claims. Penalties and sanctions under the road law will range from formal warnings to court-imposed fines and penalties.

Businesses trying to gain an unfair commercial advantage over competitors by compromising road safety standards can be held liable and fined up to three times the amount of profit gained.

The Road law requires all parties to take all reasonable steps to prevent actions or conduct from causing or contributing to a breach. In addition, the law also prohibits:

- a. making demands that knowingly or “ought to know” would cause a breach
- b. coercing, inducing or encouraging breaches
- c. passing on false or misleading information that could cause a breach.

All parties should ensure that they can demonstrate they did not know and could not have been reasonably expected to know that a breach in the road law occurred and that if one occurred then either:

- a. they had taken all reasonable steps to prevent the breach
- b. there was nothing they could reasonably have done to prevent the breach.

ARTIO submits that the Tribunal activities be limited to addressing the remuneration-safety link and complement the COR and WH&S provisions enacted by the States and Territories. Currently the Road Safety Remuneration Act does not prevent the Tribunal from overriding, extending or duplicating obligations contained in other legislation.

6. Other issues relevant to the review

Safety

ARTIO believes that road safety outcomes are not achieved through an adversarial process and arbitrated outcomes imposing conditions as a substitute for best practice.

Although the RSR Act identifies safety in its Objects, ARTIO finds it curious that safety is rarely referred to in the Act and not a consideration of the Tribunal in devising orders under s20. ARTIO believes that there needs to be a much stronger emphasis on ‘safety’ in all aspects of the Tribunal’s operations. ARTIO’s view is that ‘safety’ must be the critical factor in determining the Tribunal’s jurisdiction and its ability to act and make Orders.

Safety is not just about rates of pay, costs of doing business or charges to a client – it involves assessing risks and then developing systems and procedures to protect individual employees or contractors working in the road transport industry and also members of the public who use our nation’s roads.

ARTIO believes before making an RSRO, the Tribunal must be satisfied that making such an order will lead to safer driving practices and it must be able to follow-up to ensure those changes are embedded into systems and procedures within the supply chain.

Safety is the responsibility of all who work in the road transport industry and ARTIO considers that there must be an obligation imposed on ‘road transport drivers’ to comply with safety policies and procedures implemented by their hirers, employers or imposed by other participants in the supply chain.

Notwithstanding all of the comments herein ARTIO supports the view that having regard to the visibility of the Freight Task and Heavy Vehicles operating on a publicly accessible road network, there is a rightful community expectation and interest in safety standards within our industry. Accordingly Government intervention to support the viability of the industry through the removal of economic pressures on operators, which arise through the imbalance of market power, is warranted.



Peter Garske
Acting Secretary/Treasurer
ARTIO National Council

15th January 2014