

2016

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ROAD SAFETY REMUNERATION AMENDMENT (PROTECTING OWNER
DRIVERS) BILL 2016**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Senator the Hon. Michaelia Cash)

ROAD SAFETY REMUNERATION AMENDMENT (PROTECTING OWNER DRIVERS) BILL 2016

OUTLINE

The Road Safety Remuneration Amendment (Protecting Owner Drivers) Bill 2016 will suspend the operation of the Contractor Driver Minimum Payments Order 2016, and any subsequent orders that may be made by the Road Safety Remuneration Tribunal, until 1 January 2017 and allow the Minister to make rules dealing with transitional and other matters.

FINANCIAL IMPACT STATEMENT

Nil

REGULATION IMPACT STATEMENT

Nil

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Road Safety Remuneration Amendment (Protecting Owner Drivers) Bill 2016

The Road Safety Remuneration Amendment (Protecting Owner Drivers) Bill 2016 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill will suspend the effect of the Contractor Driver Minimum Payments Order 2016 (2016 Order), and any subsequent orders that may be made by the Road Safety Remuneration Tribunal, (the Tribunal) until 1 January 2017 and allow the Minister to make rules dealing with transitional and other matters.

Human rights implications

The Bill engages the right to just and favourable conditions of work under Article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Article 7 of the ICESCR requires that State Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, remuneration that provides all workers with fair wages, a decent living, safe and healthy working conditions and rest, leisure and reasonable limitation of working hours.

The 2016 Order was issued by the Tribunal on 18 December 2015 and was due to commence on 4 April 2016. The 2016 Order sets mandatory minimum pay rates for owner drivers (i.e. contractor drivers) working either in supermarket distribution or long distance operations. The 2016 Order effectively intervenes in contractual arrangements. While the 2016 Order was intended to benefit owner drivers, overwhelmingly, the industry including owner drivers and small road transport businesses opposed it due to high levels of uncertainty. This is evidenced by proceedings before the Tribunal and the Federal Court.

In March 2016 over 30 parties applied to change the commencement date of the 2016 Order on the ground that the industry had not had sufficient time to prepare for the order. Around 800 submissions from across the industry were presented to the Tribunal highlighting significant concern and confusion about the impacts of the order, particularly on the viability and livelihoods of owner-drivers and small road transport businesses.

On 1 April 2016, the Tribunal decided not to delay the commencement of the 2016 Order. Subsequently, the Federal Court granted an urgent stay of the 2016 Order. However, on 7 April 2016, the Full Federal Court refused to extend the stay.

Suspension of the 2016 Order means that the minimum rates it stipulates will not be mandatory during the suspension period. However, the Bill does not limit the right of parties to negotiate payment rates.

The Bill will not extinguish rights and obligations that have accrued during the operation of the 2016 Order between its commencement and the commencement of the Bill.

Australia's principal means of ensuring safe and healthy workplaces is through a system of state and Commonwealth work health and safety laws, which have been harmonised across the majority of jurisdictions through the adoption of model laws.

Two independent reviews, one by Jaguar Consulting of April 2014 and one by PricewaterhouseCoopers of January 2016, concluded that there is limited evidence of a link between safety and remuneration and that the main Act has not delivered any tangible safety benefits. Both reviews found there is substantial regulatory overlap with work health and safety laws and other road safety regulation, and that the level of regulation is not justified based on the limited evidence.

To the extent that the Bill may limit enjoyment of the right to just and favourable conditions of work, it pursues the reasonable objective of suspending the 2016 Order to prevent any unnecessary and irreversible negative impacts on the industry, particularly on the viability of owner drivers and small transport operators. The period of the suspension of the 2016 Order and any subsequent orders that the Tribunal may make until 1 January 2017 is a proportionate response to these concerns.

Conclusion

The Bill is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Employment, Senator the Hon. Michaelia Cash

NOTES ON CLAUSES

In these notes on clauses, the following abbreviations are used:

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|-------------------|--|
| The Bill | The Road Safety Remuneration Amendment (Protecting Owner Drivers) Bill 2016 |
| Main Act | <i>Road Safety Remuneration Act 2012</i> |
| 2016 Order | Contractor Drivers Minimum Payments Road Safety Remuneration Order 2016 |
| Suspension period | The period that starts at the start of the day the Act commences and ends at the end of 31 December 2016 |
| Tribunal | Road Safety Remuneration Tribunal |

Clause 1 – Short title

1. This is a formal provision specifying the short title.

Clause 2 – Commencement

2. The table in this clause sets out when the provisions of the Bill commence.

Clause 3 – Schedule(s)

3. Clause 3 of the Bill provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.

SCHEDULE 1 – SUSPENSION OF CERTAIN ORDERS

Overview

4. Schedule 1 will suspend the operation of the 2016 Order, and any subsequent orders that may be made by the Tribunal under Part 2 of the main Act, until the end of 31 December 2016.

Item 1 – Definitions

5. This item provides the definitions of *2016 Order*, *later order*, *main Act* and *suspension period*.

Item 2 – 2016 Order not to have effect in suspension period

6. The 2016 Order was made by the Tribunal on 18 December 2015 with a specified commencement date of 4 April 2016.
7. Item 2 provides that the 2016 Order has no effect in the suspension period. Item 2 operates despite any other law (including the main Act).
8. Suspension of the 2016 Order will not extinguish any rights or obligations that may have accrued during its operation between 4.15pm on 7 April 2016 and the start of the suspension period.

Item 3 – Later orders not to have effect in suspension period

9. The Tribunal may continue to make orders during the suspension period.
10. However, item 3 provides that an order that is made under Part 2 of the main Act, and is made after the 2016 Order, has no effect in the suspension period.
11. This item has no effect on the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014.
12. Item 3 operates despite any other law (including the main Act).

Item 4 – Rules about transitional matters etc.

13. This item provides for the Minister to make rules about transitional and other matters.
14. Such rules would be a legislative instrument and therefore subject to publication requirements and disallowance provisions contained in the *Legislative Instruments Act 2003*.
15. The power to make rules includes the power to make rules of a transitional nature relating to the 2016 Order or a later order and to modify the operation of the main Act in relation to the 2016 Order or a later order. The rule making power will allow the Government to deal with unforeseen consequences relating to the period during which the 2016 Order was in effect. It is not anticipated that the power to make rules will be readily relied upon.

16. For the avoidance of doubt, the item provides that rules may not create an offence or civil penalty; provide powers of arrest, detention, entry, search or seizure; impose a tax, set an amount to be appropriated from the Consolidated Revenue Fund or directly amend the text of this Act.