



Road Safety Remuneration Regulation 2012¹

Select Legislative Instrument 2012 No. 198

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Road Safety Remuneration Act 2012*.

Dated 16 August 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

WILLIAM RICHARD SHORTEN
Minister for Employment and Workplace Relations

Contents

Part 1	Preliminary	
1.1	Name of regulation	3
1.2	Commencement	3
1.3	Definition	3
1.4	Concurrent operation with State and Territory laws	3
Part 2	Road safety remuneration orders	
2.1	Matters Tribunal must take into account	4
Part 5	Compliance	
5.1	Small claims procedure	5
Part 6	Road Safety Remuneration Tribunal	
6.1	Information and documents President must provide	6
Part 7	Miscellaneous	
Division 7.1	Records to be kept by employer of road transport driver	
7.1	Records	9
7.2	Form	12
7.3	Inspecting and copying record	12
7.4	Information about records	13
7.5	Records—transfer of business	13
7.6	Records—accuracy	14
Division 7.2	Records to be kept by hirer of contractor driver	
7.7	Records	15
7.8	Form	18
7.9	Inspecting and copying record	18
7.10	Information about records	18
7.11	Records—accuracy	19
Division 7.3	Records to be kept by participants in the supply chain	
7.12	Records to be kept	20
7.13	Records—accuracy	20

Part 1 Preliminary

1.1 Name of regulation

This regulation is the *Road Safety Remuneration Regulation 2012*.

1.2 Commencement

This regulation commences on the day after it is registered.

1.3 Definition

In this regulation:

Act means the *Road Safety Remuneration Act 2012*.

1.4 Concurrent operation with State and Territory laws

For paragraph 10 (2) (f) of the Act, the following laws are specified:

- (a) *Work Health and Safety Act 2011* of New South Wales;
- (b) *Occupational Health and Safety Act 2004* of Victoria;
- (c) *Work Health and Safety Act 2011* of Queensland;
- (d) *Occupational Safety and Health Act 1984* of Western Australia;
- (e) *Occupational Health, Safety and Welfare Act 1986* of South Australia;
- (f) *Workplace Health and Safety Act 1995* of Tasmania;
- (g) *Work Health and Safety Act 2011* of the Australian Capital Territory;
- (h) *Work Health and Safety (National Uniform Legislation) Act 2011* of the Northern Territory.

Section 2.1

Part 2 Road safety remuneration orders

2.1 Matters Tribunal must take into account

For paragraph 20 (1) (g) of the Act, the following laws are prescribed:

- (a) *Work Health and Safety Act 2011*;
- (b) *Work Health and Safety Act 2011* of New South Wales;
- (c) *Occupational Health and Safety Act 2004* of Victoria;
- (d) *Work Health and Safety Act 2011* of Queensland;
- (e) *Occupational Safety and Health Act 1984* of Western Australia;
- (f) *Occupational Health, Safety and Welfare Act 1986* of South Australia;
- (g) *Workplace Health and Safety Act 1995* of Tasmania;
- (h) *Work Health and Safety Act 2011* of the Australian Capital Territory;
- (i) *Work Health and Safety (National Uniform Legislation) Act 2011* of the Northern Territory.

Part 5 Compliance

5.1 Small claims procedure

For subsection 69 (8) of the Act, a party to small claims proceedings may be represented in the proceedings by an official of an industrial association:

- (a) in the following circumstances:
 - (i) the proceedings are in the Federal Magistrates Court;
 - (ii) the Federal Magistrates Court has granted leave for the official to represent the party; or
- (b) in the following circumstances:
 - (i) the proceedings are in a court of a State;
 - (ii) a law of the State allows the party to be represented by the official;
 - (iii) the State court has granted leave for the official to represent the party in accordance with any rules of the court.

Note For paragraph (b), a law of the State must also allow the party to be represented in that court in those circumstances by officials of bodies representing interests related to the matters in dispute: see subsection 69 (9) of the Act.

Section 6.1

Part 6 Road Safety Remuneration Tribunal

6.1 Information and documents President must provide

- (1) For paragraph 117 (1) (b) of the Act, the table sets out information that the President must provide to the Minister and the Fair Work Ombudsman for each quarter.

Item	Information for the quarter
<i>Information about road safety remuneration orders</i>	
101	The number of applications for an order to be made under section 19 of the Act
102	The total number of applications for an order which the Tribunal refused to consider under subsection 19 (5) of the Act
103	The number of applications for an order, made by a person mentioned in paragraph 19 (3) (a) of the Act, which the Tribunal refused to consider under subsection 19 (5) of the Act
104	The number of applications for an order, made by a person mentioned in paragraph 19 (3) (b) of the Act, which the Tribunal refused to consider under subsection 19 (5) of the Act
105	The number of applications for an order, made by a person mentioned in paragraph 19 (3) (c) of the Act, which the Tribunal refused to consider under subsection 19 (5) of the Act
106	The number of applications for an order, made by a person mentioned in paragraph 19 (3) (d) of the Act, which the Tribunal refused to consider under subsection 19 (5) of the Act
107	The number of applications for an order, made by a person mentioned in paragraph 19 (3) (e) of the Act, which the Tribunal refused to consider under subsection 19 (5) of the Act

Section 6.1

Item	Information for the quarter
108	The total number of orders made under section 19 of the Act (including orders made on the Tribunal's own initiative)
109	The number of orders made under section 19 of the Act as a result of an application made by a road transport driver
110	The number of orders made under section 19 of the Act as a result of an application made by an employer or hirer of a road transport driver
111	The number of orders made under section 19 of the Act as a result of an application made by a participant in the supply chain in relation to a road transport driver
112	The number of orders made under section 19 of the Act as a result of an application made by an organisation that is entitled to represent the interests of a road transport driver or employer to whom the order will apply
113	The number of orders made under section 19 of the Act as a result of an application made by an industrial organisation mentioned in paragraph 19 (3) (e) of the Act in the circumstances mentioned in that paragraph
114	The number of drafts of orders prepared under section 22 of the Act
115	The number of drafts of orders that the Tribunal prepared, but decided not to make into orders under section 26 of the Act
116	The number of orders reviewed under section 31 of the Act, and the action taken in relation to each order reviewed
117	The number of orders varied under section 32 of the Act, and the reasons for each variation
	<i>Information about applications for approval of road transport collective agreements</i>
201	The number of applications for approval of a collective agreement under section 32A of the Act
202	The number of approvals given under section 32A of the Act
	<i>Information about disputes</i>
301	The total number of applications for the Tribunal to deal with a dispute under section 40 of the Act

Section 6.1

Item	Information for the quarter
302	The number of applications to which subsection 41 (1) of the Act applies
303	The number of applications to which subsection 41 (2) of the Act applies
304	The number of applications to which subsection 42 (1) of the Act applies
305	The number of applications to which subsection 42 (2) of the Act applies
306	The number of applications to which section 43 of the Act applies
	<i>Other information</i>
401	The number of applications dismissed by the Tribunal under section 84 of the Act

- (2) The President must provide the information as soon as practicable after the end of the quarter.

Part 7 Miscellaneous

Division 7.1 Records to be kept by employer of road transport driver

7.1 Records

- (1) This Division applies in relation to an employer of a road transport driver if a road safety remuneration order or arbitration order imposes requirements on the employer in relation to the driver.
- (2) For subsection 119 (1) of the Act, this Division sets out:
 - (a) general records that the employer must make and keep in relation to the driver; and
 - (b) additional records that the employer must keep, or information that the employer must include in the general records, in particular circumstances.

Note 1 An inaccurate record is not a record of the prescribed kind.

Note 2 The employer may already have these records as part of making and keeping records for the purposes of the *Fair Work Act 2009* or the *Fair Work Regulations 2009*.

General records

- (3) The general records in relation to the road transport driver are:
 - (a) the employer's name; and
 - (b) the Australian Business Number (if any) of the employer; and
 - (c) the driver's name; and
 - (d) whether the driver's employment is permanent, temporary or casual; and
 - (e) whether the driver is employed full-time or part-time; and
 - (f) the date on which the driver's employment began; and
 - (g) the rate of remuneration paid to the driver; and
 - (h) the gross and net amounts paid to the driver; and

Section 7.1

- (i) any deductions made from the gross amount paid to the driver.

Pay

- (4) If the driver is a casual or irregular part-time employee who is guaranteed a rate of pay set by reference to a period of time worked, the records must include the hours worked by the driver.
- (5) If the driver is entitled to be paid:
 - (a) an incentive-based payment; or
 - (b) a bonus; or
 - (c) a loading; or
 - (d) a penalty rate; or
 - (e) another monetary allowance or separately identifiable entitlement;the record must include details of the payment, bonus, loading, rate, allowance or entitlement.

Overtime

- (6) If a penalty rate or loading (however described) must be paid for overtime hours actually worked by the driver, the records must include:
 - (a) the number of overtime hours worked by the driver during each day; or
 - (b) when the driver started and ceased working overtime hours.

Averaging of hours

- (7) If the employer agrees in writing with the driver to an averaging of the driver's hours of work, the records must include a copy of the agreement.

Section 7.1

Road safety remuneration orders and arbitration orders

- (8) The records must include the following information about the road safety remuneration order or arbitration order that imposes requirements on the employer:
- (a) the name of the order;
 - (b) the amount the employer is required to pay the driver under the order;
 - (c) a description of the conditions the employer is required to provide to the driver under the order.

Leave

- (9) If the driver is entitled to leave, the records must include:
- (a) details of any leave that the driver takes; and
 - (b) the balance (if any) of the driver's entitlement to that leave from time to time.
- (10) If the employer agrees with the driver to cash out an accrued amount of leave, the records must include:
- (a) a copy of the agreement; and
 - (b) a statement of the rate of payment for the amount of leave that was cashed out; and
 - (c) the date when the payment was made.

Superannuation contributions

- (11) If the employer is required to make superannuation contributions for the benefit of the driver, the records must include:
- (a) the amount of the contributions made; and
 - (b) the period over which the contributions were made; and
 - (c) the date on which each contribution was made; and
 - (d) the name of any fund to which a contribution was made; and
 - (e) the basis on which the employer became liable to make the contribution, including:
 - (i) a record of any election made by the driver as to the fund to which contributions are to be made; and

Section 7.2

- (ii) the date of any relevant election.

Termination of employment

- (12) If the driver's employment is terminated, the employer must make and keep a record that sets out:
 - (a) whether the employment was terminated:
 - (i) by consent; or
 - (ii) by notice; or
 - (iii) summarily; or
 - (iv) in some other manner (specifying the manner); and
 - (b) the name of the person who acted to terminate the employment; and
 - (c) the date of the termination.

7.2 Form

For paragraph 119 (2) (a) of the Act, records made and kept by an employer for section 119 of the Act must be:

- (a) legible and in the English language; and
- (b) readily accessible by an inspector.

7.3 Inspecting and copying record

- (1) For subsection 119 (3) of the Act, an employer must make a copy of a record mentioned in Division 7.1 available for inspection and copying on request by the driver or former driver to whom the record relates.
- (2) The employer must make the copy available in a legible form to the driver or former driver for inspection and copying.
- (3) If the record is kept at the premises at which the driver works or at which the former driver worked, the employer must:
 - (a) make the copy available at the premises within 3 business days after receiving the request; or
 - (b) send the copy to the driver or former driver within 14 days of receiving the request, by the following means:
 - (i) by post;

Section 7.5

- (ii) if requested by the driver or former driver—by email or other reasonable means requested by the driver or former driver.
- (4) If the record is not kept at the premises at which the driver works or at which the former driver worked, the employer must, as soon as practicable and no later than 21 days after receiving the request:
 - (a) make the copy available at the premises; or
 - (b) send the copy to the driver or former driver:
 - (i) by post; or
 - (ii) if requested by the driver or former driver—by email or other reasonable means requested by the driver or former driver.

7.4 Information about records

- (1) An employer who has been asked by a driver or former driver to make a copy of a record available for inspection must tell the driver or former driver, on request, where records relating to the driver or former driver are kept.
- (2) The employee or former employee may interview the employer, or a representative of the employer, at any time during the employer's ordinary working hours about a record that the employer has made or will make.

7.5 Records—transfer of business

- (1) This regulation applies if a transfer of business occurs as described in section 311 of the *Fair Work Act 2009*.

Note Section 311 of the *Fair Work Act 2009* identifies the participants in the transfer of the business as:

 - (a) the old employer; and
 - (b) the new employer; and
 - (c) a transferring employee.

Section 7.6

- (2) The old employer must transfer to the new employer each record concerning a transferring employee that the old employer was required to keep for subsection 119 (1) of the Act at the time at which the connection between the old employer and the new employer mentioned in paragraph 311 (1) (d) of the *Fair Work Act 2009* occurs.
- (3) If the old employer is a Commonwealth authority, the old employer only has to provide copies of those records.
- (4) If the transferring employee becomes an employee of the new employer after the time at which the connection between the old employer and the new employer mentioned in paragraph 311 (1) (d) of the *Fair Work Act 2009* occurs, the new employer must ask the old employer to give the new employer the records concerning the transferring employee.
- (5) If the old employer receives a request under subsection (4), the old employer must give the records to the new employer.
- (6) For subsection 119 (1) of the Act, records received by the new employer from the old employer are records of a kind that must be kept by the new employer.
- (7) The new employer is not required to make records relating to the transferring employee's employment with the old employer.

7.6 Records—accuracy

- (1) An employer must correct a record that the employer is required to keep under subsection 119 (1) of the Act as soon as the employer becomes aware that it contains an error.
- (2) An employer must ensure that a record that the employer is required:
 - (a) to keep under subsection 119 (1) of the Act; and
 - (b) to correct in accordance with subsection (1);contains a notation of the nature of the corrected error with the correction.

Section 7.7

- (3) An employer must not alter a record that the employer is required to keep under the Act or this regulation except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.
- (4) An employer must ensure that a record that the employer is required to keep under subsection 119 (1) of the Act is not altered by another person except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.
- (5) A person must not make use of an entry in a record made and kept by an employer for this Division if the person does so knowing that the entry is false or misleading.

Division 7.2 Records to be kept by hirer of contractor driver

7.7 Records

- (1) This Division applies in relation to a hirer of a contractor driver if:
 - (a) a road safety remuneration order or arbitration order imposes requirements on the hirer in relation to the contractor driver; or
 - (b) an approved road transport collective agreement imposes obligations on the hirer in relation to the contractor driver.
- (2) For subsection 119 (1) of the Act, this Division sets out:
 - (a) general records that the hirer must make and keep in relation to the contractor; and
 - (b) additional records that the hirer must keep, or information that the hirer must include in the general records, in particular circumstances.

Note An inaccurate record is not a record of the prescribed kind.

Section 7.7

General records

- (3) The general records in relation to the contractor driver are:
- (a) the hirer's name; and
 - (b) the Australian Business Number (if any) of the hirer; and
 - (c) the contractor driver's name; and
 - (d) the Australian Business Number (if any) of the contractor driver; and
 - (e) a description of the road transport services to be provided under the road transport contract between the hirer and the contractor driver; and
 - (f) to the best of the hirer's knowledge, the name of the driver who operated the vehicle with which the road transport services were provided; and
 - (g) each date on which road transport services were provided by the contractor driver to the hirer under the road transport contract; and
 - (h) the amount paid or payable by the hirer to the contractor driver for the road transport services, and a description of how the amount was calculated; and
 - (i) if any deduction was, or is to be, made from the amount paid or payable, a record of when the deduction was made or will be made, and the reason for the deduction; and
 - (j) if a deduction is made from the amount paid, the amount of the deduction.

Superannuation contributions

- (4) If the hirer is required to make superannuation contributions for the benefit of the contractor driver, the records must include:
- (a) the amount of the contributions made; and
 - (b) the period over which the contributions were made; and
 - (c) the date on which each contribution was made; and
 - (d) the name of any fund to which a contribution was made; and

Section 7.7

- (e) the basis on which the hirer became liable to make the contribution, including:
 - (i) a record of any election made by the contractor driver as to the fund to which contributions are to be made; and
 - (ii) the date of any relevant election.

Road safety remuneration orders and arbitration orders

- (5) If a road safety remuneration order or arbitration order imposes requirements on the hirer in relation to the contractor driver, the records must include the following information about the road safety remuneration order or arbitration order:
 - (a) the name of the order;
 - (b) the amount the employer is required to pay the contractor driver under the order;
 - (c) a description of the conditions the employer is required to provide to the contractor driver under the order.

Approved road transport collective agreements

- (6) If an approved road transport collective agreement imposes obligations on the hirer in relation to the contractor driver, the records must include:
 - (a) the amount of remuneration the hirer is required to pay the contractor driver under the collective agreement; and
 - (b) a description of the conditions the hirer is required to provide to the contractor driver under the collective agreement.

Termination of contract

- (7) If the contract between the hirer and contractor driver is terminated, the hirer must make and keep a record that sets out the reasons for, and date of, the termination.

Section 7.8

7.8 Form

For paragraph 119 (2) (a) of the Act, records made and kept by a hirer for section 119 of the Act must be:

- (a) legible and in the English language; and
- (b) readily accessible by an inspector.

7.9 Inspecting and copying record

- (1) For subsection 119 (3) of the Act a hirer must make a copy of a record mentioned in Division 7.2 available for inspection and copying on request by the contractor driver to whom the record relates.
- (2) The hirer must make the copy available in a legible form to the contractor driver for inspection and copying.
- (3) If the record is kept at the premises of the hirer, the hirer must:
 - (a) make the copy available at the premises within 3 business days after receiving the request; or
 - (b) send the copy to the contractor driver within 14 days of receiving the request, by the following means:
 - (i) by post;
 - (ii) if requested by the contractor driver—by email or other reasonable means requested by the driver.
- (4) If the record is not kept at the premises of the hirer, the hirer must, as soon as practicable and no later than 21 days after receiving the request:
 - (a) make the copy available at the premises; or
 - (b) send the copy to the contractor driver:
 - (i) by post; or
 - (ii) if requested by the contractor driver—by email or other reasonable means requested by the driver.

7.10 Information about records

- (1) A hirer who has been asked by a contractor driver to make a copy of a record available for inspection must tell the contractor driver, on request, where records relating to the contractor driver are kept.

Section 7.11

- (2) The contractor driver may interview the hirer, or a representative of the hirer, at any time during the hirer's ordinary working hours about a record that the hirer has made or will make.

7.11 Records—accuracy

- (1) A hirer must correct a record that the hirer is required to keep under subsection 119 (1) of the Act as soon as the hirer becomes aware that it contains an error.
- (2) A hirer must ensure that a record that the hirer is required:
 - (a) to keep under subsection 119 (1) of the Act; and
 - (b) to correct in accordance with subsection (1);contains a notation of the nature of the corrected error with the correction.
- (3) A hirer must not alter a record that the hirer is required to keep under the Act or this regulation except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.
- (4) A hirer must ensure that a record that the hirer is required to keep under subsection 119 (1) of the Act is not altered by another person except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.
- (5) A person must not make use of an entry in a record made and kept by a hirer for this Division if the person does so knowing that the entry is false or misleading.

Section 7.12

**Division 7.3 Records to be kept by participants
in the supply chain**

7.12 Records to be kept

- (1) For subsection 119 (1) of the Act, this Division applies to a participant in the supply chain who is:
 - (a) an employer of a road transport driver; or
 - (b) a hirer of a contractor driver.

Note Division 7.1 or 7.2 also applies to the employer or hirer.

- (2) This Division also applies to any other participant in the supply chain.
- (3) If a road safety remuneration order or arbitration order imposes requirements on the participant, the participant must make and keep records that show the person has complied with those requirements.

Note An inaccurate record is not a record of the prescribed kind.

7.13 Records—accuracy

- (1) A participant must correct a record that the participant is required to keep under section 7.12 as soon as the participant becomes aware that it contains an error.
- (2) A participant must ensure that a record that the participant is required:
 - (a) to keep under section 7.12; and
 - (b) to correct in accordance with subsection (1);contains a notation of the nature of the corrected error with the correction.
- (3) A participant must not alter a record that the participant is required to keep under section 7.12 except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.

Section 7.13

- (4) A participant must ensure that a record that the participant is required to keep under section 7.12 is not altered by another person except:
 - (a) in compliance with subsection (1) or (2); or
 - (b) to any extent otherwise permitted by the Act or this regulation.
- (5) A person must not make use of an entry in a record made and kept by a participant for this Division if the person does so knowing that the entry is false or misleading.

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.