Road Safety Remuneration Tribunal and Fair Work Australia: Plans and Priorities

The Honourable Jennifer Acton,
President, Road Safety Remuneration Tribunal and
Senior Deputy President, Fair Work Australia

(Address to the AIG National PIR Group Conference, 22 October 2012, Canberra)

Introduction

I welcome the opportunity to speak with you today to introduce the roles and responsibilities of the newly-commenced Road Safety Remuneration Tribunal (RSRT). I will also take the opportunity to speak to you about the plans and priorities of Fair Work Australia (FWA), as I have been a member of FWA and its predecessor for over 20 years.

The RSRT was established under the Road Safety Remuneration Act 2012 (Cth) (RSR Act) on 1 July 2012. FWA and its predecessors extend back to 1905. The RSRT and FWA are separate tribunals. Although, I think they have much to learn from each other.

The object of the RSR Act is to promote safety and fairness in the road transport industry.

It is a sobering thought that over 1.2 million people die on the world’s roads each year and up to 50 million people are injured as a result of road crashes.\(^1\) The economic consequences of such crashes have been estimated to cost countries up to 3% of their gross domestic product (GDP).\(^2\)

---

According to the World Health Organisation, in 2004, road traffic injuries were the ninth most common cause of death, globally. They predict that at the current rate, by 2030, road traffic injuries will be the fifth most common cause of death in the world, surpassing HIV/AIDS.³

As such, the World Health Organisation’s goal of the decade is to halt and then reverse the forecasted level of road traffic fatalities around the world.

Against this background, I will address:

- the United Nations Decade of Action for Road Safety;
- road transport safety in Australia and overseas; and
- the role of the Road Safety Remuneration Tribunal compared to Fair Work Australia.

**United Nations Decade of Action for Road Safety**

Turning firstly to the United Nations Decade of Action for Road Safety.

In March 2010, the United Nations General Assembly took steps to address the global problem of road safety by proclaiming the Decade of Action for Road Safety 2011-2020.

The United Nations Decade of Action for Road Safety aims to save five million lives globally by 2020.

---

A global plan of action has been created which encourages nations to take a proactive approach to reducing death and serious road injury by adopting five pillars: road safety management, safer roads and mobility, safer vehicles, safer road users and post-crash response.

Coincidentally, Australia’s National Road Safety Strategy 2011-2020 has the main target of reducing the annual numbers of both death and serious injuries on Australian roads by at least 30%.\(^4\) To put that in some context, in 2011 there were 1291 fatalities from road crashes in Australia.\(^5\) One of the key challenges in the strategy is to reduce the number of crashes involving heavy vehicles.

**Road transport safety in Australia and overseas**

Against the backdrop of the United Nations Decade of Action for Road Safety, it is instructive to consider some statistics on road transport safety in Australia and overseas.

Articulated trucks are involved in the majority of fatal truck crashes in Australia.\(^6\) Articulated trucks account for about three per cent of the vehicle kilometres travelled on Australian roads but are involved in about 11 per cent of road fatalities.\(^7\) Further, fatal crashes involving articulated trucks are high in Australia compared to the United States, Great Britain and Canada. OECD data released in 2011 shows there were some 2.08 fatal articulated truck crashes per 100 million kilometres travelled in Australia in 2007, compared to 1.33 in the United States and 1.26 in Great Britain\(^8\) (see Chart 1). In Australia in 2011, 141

---

\(^7\) Australian Transport Council (2011), *National Road Safety Strategy 2011-2020*, Table 2.
people died as a result of 125 crashes involving just articulated trucks. The death rate from all truck crashes is considerably higher.

Of course, a truck is a mobile workplace. Compared to other OECD countries, Australia also has a high rate of truck occupant fatalities, with a high incidence of single vehicle fatal truck crashes. In 2005, there were 0.5 truck occupant fatalities per 100 million kilometres travelled in Australia, compared to 0.32 in Canada, 0.22 in the United States, 0.19 in Great Britain and 0.04 in Switzerland (see Chart 2).

Further, in Australia in 2009-10, the Transport and Storage industry experienced a fatality rate of 7.8 compensated fatalities per 100,000 employees. This is the highest rate for any industry in Australia, followed by the Construction industry with 5.9 compensated fatalities per 100,000 employees and the Agriculture, Forestry and Fishing industry with 5.5 compensated fatalities per 100,000 employees. Employees in the Transport and Storage industry also sustained

---

11 Safe Work Australia (2012), Compendium of workers’ compensation statistics Australia 2009-10, p.44.
the highest incidence of serious compensation claims - 24 per 1,000 employees. Nearly twice the national rate of 12.6.\textsuperscript{12}

It seems that for truck drivers, their workplace is one of the most dangerous of any industry.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Truck occupant fatalities per 100 million kilometres travelled 2005}
\end{figure}

The overall social cost of road accidents is also important.

The Bureau of Infrastructure, Transport and Regional Economics (BITRE) estimates the social cost of road crashes for 2006 was nearly $18 billion\textsuperscript{13} (see Table 1). The estimated cost of a fatal crash was $2.67 million. The cost of a hospitalised injury crash was approximately $266,000 and the cost of a non-hospitalised injury crash was approximately $14,700. BITRE has have further estimated that the average cost of a property damage-only crash was approximately $9,950.\textsuperscript{14}

\begin{flushleft}
\textsuperscript{12} Ibid, p.vii.
\textsuperscript{14} Ibid, p.v.
\end{flushleft}
Table 1: Major components of the social cost of road crashes, 2006

<table>
<thead>
<tr>
<th>Cost element</th>
<th>Human related cost ($ millions)</th>
<th>Property damage and general costs ($ millions)</th>
<th>Total crash cost ($ millions)</th>
<th>Proportion (per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workplace and household losses</td>
<td>5 690.0</td>
<td>na</td>
<td>5 690.0</td>
<td>31.9</td>
</tr>
<tr>
<td>Repair costs</td>
<td>0</td>
<td>4 227.5</td>
<td>4 227.5</td>
<td>23.7</td>
</tr>
<tr>
<td>Disability-related costs</td>
<td>1 863.9</td>
<td>na</td>
<td>1 863.9</td>
<td>10.4</td>
</tr>
<tr>
<td>Non-pecuniary costs</td>
<td>1 768.0</td>
<td>na</td>
<td>1 768.0</td>
<td>9.9</td>
</tr>
<tr>
<td>Insurance administration</td>
<td>269.7</td>
<td>1 421.3</td>
<td>1 691.0</td>
<td>9.5</td>
</tr>
<tr>
<td>Medical and related costs</td>
<td>864.2</td>
<td>na</td>
<td>864.2</td>
<td>4.8</td>
</tr>
<tr>
<td>Travel delay and additional vehicle operating costs</td>
<td>na</td>
<td>839.7</td>
<td>839.7</td>
<td>4.7</td>
</tr>
<tr>
<td>Legal costs</td>
<td>267.9</td>
<td>nse</td>
<td>258.2</td>
<td>1.5</td>
</tr>
<tr>
<td>Vehicle unavailability costs</td>
<td>na</td>
<td>214.1</td>
<td>214.1</td>
<td>1.2</td>
</tr>
<tr>
<td>Other</td>
<td>256.5</td>
<td>166.5</td>
<td>423.0</td>
<td>2.4</td>
</tr>
<tr>
<td>Total</td>
<td>10 980.2</td>
<td>6 869.1</td>
<td>17 849.3</td>
<td>100</td>
</tr>
</tbody>
</table>


The role of the Road Safety Remuneration Tribunal

The Road Safety Remuneration Tribunal was established to assist in improving these outcomes.

The Tribunal is an independent, federal tribunal which, as I indicated earlier, is separate to Fair Work Australia. It currently has eight members: myself as President, three other dual members who are also members of Fair Work Australia, and four part-time industry members. Together, the dual members have more than 100 years’ professional experience in workplace relations. The industry members have extensive experience in aspects of the road transport industry, whether as participants, representatives or researchers.

The Tribunal’s role in promoting safety and fairness in the road transport industry primarily relates to addressing the relationship between remuneration and related conditions and safety in the industry. The “road transport industry” means any of the following:
“(a) the road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2010 as in force on 1 July 2012;

(b) long distance operations in the private transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2010 as in force on 1 July 2012;

(c) the cash in transit industry within the meaning of the Transport (Cash in Transit) Award 2010 as in force on 1 July 2012;

(d) the waste management industry within the meaning of the Waste Management Award 2010 as in force on 1 July 2012.”

The Tribunal’s functions apply to both employee drivers and contractor drivers in the road transport industry, their employers or hirers, and participants in the supply chain. “Participants in the supply chain” means certain:

- consignors or consignees of a thing in respect of which a road transport driver is providing road transport services;

- intermediaries, being parties to contracts for the carriage of goods which concern the transport of a thing in respect of which a road transport driver is providing road transport services; or

- operators of premises used, on average at least five times each day, by road transport drivers to load or unload vehicles.16

---

15 Road Safety Remuneration Act 2012 (Cth), s.4.
16 Ibid.
The specific functions of the Tribunal are outlined in s.80 of the RSR Act and include:

- making road safety remuneration orders;
- approving road transport collective agreements;
- dealing with disputes between certain participants in the road transport industry; and
- conducting research into remuneration-related matters that may affect safety in the industry.

I will discuss each of these functions in turn.

**Road safety remuneration orders**

Road safety remuneration orders may contain any provision in relation to remuneration or related conditions that the Tribunal considers appropriate for the road transport drivers to whom the order applies.

Such provisions may concern but are not limited to:

- conditions about minimum remuneration and other entitlements for road transport drivers who are employees;
- conditions about minimum rates of remuneration and conditions of engagement for contractor drivers;
- conditions for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods; and
• ways of reducing or removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.

A term of a road safety remuneration order takes precedence over instruments such as modern awards and enterprise agreements to the extent that a term of those instruments is less beneficial to a road transport driver than a term in the order.

The Tribunal can make an order on its own initiative or on application by a road transport driver, employer or hirer, participant in the supply chain or relevant representative organisation or industrial association.

Before making a road safety remuneration order, the Tribunal is required to consult extensively.

In that regard, each year the Tribunal must prepare and publish an annual work program identifying matters the Tribunal proposes to inquire into with a view to making a road safety remuneration order in relation to any or all of the matters. In preparing the annual work program, the Tribunal must consult with industry. The matters identified in the annual work program may be any or all of:

• a sector or sectors of the road transport industry;

• issues for the road transport industry or a sector of it;

• practices affecting the road transport industry or a sector of it.

The Tribunal recently invited interested persons to make written submissions on the matters the Tribunal should identify in its first annual work program. Eighteen submissions were received from a range of parties, including the AIG,
and have been published on the Tribunal’s website. Further action concerning the first annual work program will be taken shortly.

The Tribunal must also prepare a draft road safety remuneration order and consult with relevant persons on the draft before making a road safety remuneration order. As a result, the Tribunal may change the draft of the order before making an order based on the draft or may decide not to make an order.

In deciding whether to make an order, the Tribunal is required by s.20 of the RSR Act to consider a range of matters. The matters to be considered include the need to apply fair, reasonable and enforceable standards in the road transport industry so as to ensure the safety and fair treatment of road transport drivers, and the likely impact of any order on the viability of businesses in the road transport industry. The Tribunal is also required to consider the need to avoid unnecessary overlap with the Fair Work Act 2009 (Cth) and certain prescribed laws. The Road Safety Remuneration Regulation 2012 prescribes Commonwealth, State and Territory occupational health and safety laws for that purpose.

Road transport collective agreements

As I have already indicted, another function of the Tribunal is to approve road transport collective agreements, which are instruments that can be collectively negotiated between contractor drivers and a hirer, or potential hirer, and specify remuneration or related conditions for those drivers.

Some of the requirements for approving these agreements resemble those that apply to Fair Work Act 2009 (Cth) enterprise agreements. For example, the Tribunal must be satisfied that a majority of participating drivers covered by the
agreement would be better off overall compared to a relevant road safety remuneration order.

**Disputes**

The Tribunal’s dispute resolution function fully commences on 1 January 2013. In summary, there are three broad categories of dispute that the Tribunal may deal with:

- Disputes about remuneration and related conditions that could affect whether an employee or contractor driver works in an unsafe manner;

- Disputes about the alleged dismissal of an employee driver, or termination of a contractor driver’s contract, because they refused to work in an unsafe manner; and

- Disputes about the practices of one or more participants in the supply chain, which an employer or hirer contends affects their ability to provide a driver with remuneration or related conditions that are not incentives to work in an unsafe manner.

The Tribunal may deal with a dispute by any means it considers appropriate, including mediation or conciliation, giving a recommendation or opinion or, if the parties agree, by arbitration.

To ensure appropriate co-ordination of the work of the RSRT and FWA in respect of the road transport industry, I have recently taken up the role of Panel Head for FWA’s road transport panel, in addition to my role as President of the RSRT.
Research

Finally, the Tribunal has the general function of conducting research into remuneration-related matters that may affect safety in the road transport industry. The research will complement existing research and findings from numerous past inquiries into the road transport industry.

Further information about the RSRT can be found on its website at www.rsrt.gov.au

Comparison with Fair Work Australia

The make-up and functions of the RSRT and FWA are in many ways similar. For example, the FWA Minimum Wage Panel comprises both a FWA member or members, and part-time members with economic, social policy, business or workplace relations expertise who are appointed solely to that panel to deal with the annual wage review in respect of minimum wages. Further, FWA sets minimum wage rates and reviews and adjusts modern awards, approves enterprise agreements and deals with workplace disputes.

However, there are important differences as well. RSRT industry members also sit on appeals against dual FWA member decisions in respect of agreements and disputes. In addition, all the RSRT’s functions apply to contractors and hirers, as well as generally applying to employees. Further, the legislation in respect of the RSRT is considerably less prescriptive than that applying to FWA.

FWA has recently implemented and is continuing to develop initiatives regarding industry engagement, efficiency and innovation, access and fairness, and accountability. The initiatives already implemented include timeliness
benchmarks with respect to reserved decisions and agreement approvals, and a Member Conduct Guide.

FWA, Fair Work Building and Construction and the Fair Work Ombudsman have also formalised a commitment to work together on the issue of productivity. In this regard, FWA will principally focus on providing assistance and advice in relation to large infrastructure projects, via its recently created Major Projects Panel. Activities will include encouraging better workplace relations, facilitating discussions at the workplace and industry level on major issues affecting productivity and fairness, identifying best practice productivity measures and promoting advanced leadership, culture and management practices that support more innovative and productive workplaces.

The RSRT will, so far as is practical, replicate such initiatives and will also develop its own. More importantly, however, my dual appointment to the RSRT and FWA provides an opportunity for initiatives that might be suitable for both tribunals to be trialled in the smaller organisation of the RSRT.

**Conclusion**

The RSRT is in its formative stages. FWA is a mature tribunal - the product of more than a century of industrial tribunals in Australia. Nonetheless, FWA is committed to pursuing initiatives designed to assist others to meet the challenges facing Australian workplaces. The RSRT, although new, starts with the knowledge and experience of FWA and its predecessors, but has some important organisational and jurisdictional differences. Those differences provide opportunities for testing other approaches to promoting productivity and supporting co-operative workplace relations.
In a decade when global attention has turned to the issue of road safety, there is much the RSRT can contribute to improving not only productive workplace relations but also Australia’s safety outcomes in the road transport industry for the benefit of those involved in it and the broader community that is affected by it. To that end, the Tribunal intends to continue to actively consult and engage with those with an interest in its work.