



Department of  
Transport

# Review of the *Owner-Driver (Contracts and Disputes) Act 2007* Report



# Report of the review of the *Owner-Drivers (Contracts and Disputes) Act 2007*

Prepared by the Department of Transport

June 2014

Objective number A4796206

# Executive Summary

In 2008 the *Owner-Driver (Contracts and Disputes) Act 2007*, (the Act) became operational in Western Australia (WA). This Act regulates the relationship between owner-drivers within the road freight transport industry and the parties that hire them to transport goods (hirers). It also promotes a safe and sustainable road transport industry by setting guideline rates and cost schedules for owner-driver businesses.

Section 59 of the Act requires that the Act be reviewed and its impact evaluated after five years of operation as well as the operation and effectiveness of the Road Freight Transport Industry Council (the Council) and Road Freight Transport Industry Tribunal (the Tribunal), for which it provides.

## Review methodology

As the agency responsible for leading the review, the Department of Transport (DoT) conducted research into similar legislation and arrangements in other jurisdictions and held preliminary consultations with relevant persons and organisations. It also developed a discussion paper (including a feedback form) and online survey to seek detailed stakeholder comment. DoT received five written submissions providing comment on the issues canvassed and 12 responses to the online survey.

## Review findings

In general terms, the review found that the regime established by the Act represents a relatively effective and low-cost mechanism to help establish fair and equitable payment rates for owner-drivers and to assist in the resolution of disputes that arise between owner-drivers and hirers. Conversely, there is little evidence to demonstrate at this point in time a need for any change to the existing provisions of the Act.

Reasons for retaining the Act in its current form include the following:

- Heavy vehicle crashes are not increasing at a time when numbers of heavy vehicles and road freight use in Western Australia is growing.
- The Tribunal had a peak rate of activity in 2010. The rate of use of the Tribunal has declined significantly since then suggesting that the Act has had an impact on establishing safe rates for owner-drivers.
- For owner-drivers, the Tribunal represents a convenient and low-cost alternative to settling small commercial contract disputes which would normally be dealt with by the WA Magistrate's Court.
- The existing regulatory and administrative burden of the Act on both industry and government is low. The Department of Commerce (DoC) and the DoT consider the required level of expenditure appropriate to retain the current level of effectiveness.

- While lessening powers conveyed by the Act would weaken the positive outcomes experienced to date, any changes that strengthen these powers, such as the introduction of penalties in support of enforcement activities, would have uncertain consequences and be likely to substantially increase costs.
- National legislation relating to the remuneration of road freight transport drivers was passed in 2012 and is currently under review. Given the uncertainty of the outcomes of this review and the future of the legislation, it is not appropriate to initiate changes to the local Act in WA at this time.
- There is no evidence that the operation of the Act has created unintended or adverse impacts on the road freight transport industry such as distortion of market prices through institutional involvement of transport unions in contract negotiations between owner-drivers and hirers.

## The Act

There is a lack of qualitative data to reliably indicate the impact of the Act on road safety outcomes or the long term viability of owner-drivers. However statistics do indicate that the number of truck crashes has not risen in the five years between 2008 and 2012, despite increasing numbers of heavy vehicles and road freight use during that period in Western Australia.

Other jurisdictions in Australia have introduced legislation which is broadly similar in principle and operation to WA's Act. In 2012, Commonwealth legislation established a National Road Safety Tribunal to govern remuneration-related matters in the road transport industry and it is currently unclear how this will impact on WA owner-drivers. The Federal Government is currently reviewing this legislation as part of its review of fair work laws. The future of this legislation and its established benefits are uncertain and will take some time to emerge.

Most respondents to the stakeholder consultation process believed the Act does positively contribute to boosting the safety and sustainability of the road transport industry and support its continuation, although some submissions suggested that compliance rates in some industry areas were low leading to potential for rate undercutting to occur.

Most respondents supported the continuation of the Act although many agreed that greater awareness of its provisions is required amongst some sections of the road transport industry.

### Recommendation 1

It is recommended that

- the Act be retained in its current form
- the Department of Transport consider strategies for improving awareness of the Act within the WA road freight transport industry as well as the duties and obligations it imposes on hirers and owner-drivers
- the Department of Transport evaluate the outcome of the national review of the *Road Safety Remuneration Act 2012* (RSR Act) due to be completed in 2014 and any impact this may have on the operation of the WA Act

## *The Council*

The review considered the effectiveness of the operation of the Council which provides advice to the Minister on owner-driver issues, including the development and review of a code of practice and guideline rates. It notes that the focus of the Council's work has shifted over the past five years from development to the review and updating of guideline rates. Terms of appointment for the last Council members expired at the end of 2012 and a Council has not been convened since that time.

Stakeholders were generally supportive of the work developed by the Council to date, in particular the online cost calculator and other tools to assist owner-drivers.

Some respondents, however, argued that its membership did not appropriately represent all interests in the owner-driver industry and that its work could more effectively be undertaken by a government agency with reference to industry stakeholders.

Chairing of the Council by a government staff member reflects the changing focus of the Council's work and ensures a high level of independence from the particular interests of owner-drivers, hirers and other parties within the road transport industry. It also eliminates the need to provide a specific remuneration package to a non-government Council member and boosts the resources available to the Council to carry out its activities.

These issues could be addressed by Ministerial discretion in seeking nominations and appointing members to the Council. This discretion is provided under existing provisions within the Act.

### **Recommendation 2**

It is recommended that

- the Council be retained as established under Part 3 of the Act to meet when and if necessary
- the Council be chaired by a senior executive from the Department of Transport
- the Minister for Transport ensures that, through the nomination and appointment process, Council membership appropriately reflects the interests of regional and single-vehicle owner-driver businesses

## *The Tribunal*

The review considered the effectiveness of the operations of the Tribunal which was created to provide a relatively informal, quick and low cost mechanism to resolve disputes arising between owner-drivers.

Since its inception in 2008 more than 110 disputes have been referred to the Tribunal and the majority of these were discontinued or dismissed before matters proceeded to hearing. Most cases related to owner-drivers seeking payments for services. DoC estimates that the Tribunal has been instrumental in the recovery of more than \$400,000 from hirers to be paid to owner-drivers.

Most stakeholders agreed that, despite some limitations, the Tribunal provided a credible, cost effective instrument for dispute resolution in the road transport industry and increased the likelihood of parties reaching agreement. The majority of respondents believed it contributed

to improving overall road safety and sustainability of owner-drivers, performed its work 'somewhat to reasonably well' and should be continued.

### **Recommendation 3**

It is recommended that

- the Tribunal be retained as established under Part 9 of the Act

### **Conclusion**

The overall benefits of the Act have been to improve the knowledge of owner-drivers in the operation of their businesses, to provide for reasonable business dealings between owner-drivers and hirers and to provide an avenue for enforceable dispute resolution. The legislation is cost effective and there is no apparent need to either strengthen or weaken the regulatory regime.