

# Complying with the RSRT Contractor Driver Minimum Payments Order

If affected (*almost everyone operating a transport business is affected*) you must be compliant by **4 April 2016**.

## Will the Order Affect Your Business?

The Order is Law, and compliance with it is mandatory. If you own a truck or engage a transport business to do work for you it is likely that you will be impacted to some extent by this Order. To determine the impact of the Order on your business, follow the steps below.

**Step 1.** Download the Order and read it. Even if you don't understand all of it you will gain a general understanding of its requirements [www.natroad.com.au/rsrt/](http://www.natroad.com.au/rsrt/).

**Step 2.** Determine whether you are a 'contractor driver' or not. To do so, read the 'Owner Driver Checklist' available on the Fair Work Ombudsman website ([www.fairwork.gov.au/about-us/legislation/road-safety-remuneration-tribunal/owner-drivers-and-hirers/checklist-for-owner-drivers](http://www.fairwork.gov.au/about-us/legislation/road-safety-remuneration-tribunal/owner-drivers-and-hirers/checklist-for-owner-drivers))

If you own a truck or trucks and you or your immediate family members drive it, you are probably a 'contractor driver'. If you are definitely NOT a 'contractor driver' those who engage your services are not required to pay you at or above the minimum contractor rates. **Proceed to Step 2.02**

**Step 3.** Determine whether you are a 'hirer'. To do so, read the 'Hirers Checklist' available on the Fair Work Ombudsman website (<https://www.fairwork.gov.au/about-us/legislation/road-safety-remuneration-tribunal/owner-drivers-and-hirers/checklist-for-hirers>).

If you engage the services of another transport company or operator for any job, you probably are a 'hirer'.

## Complying with the RSRT Contractor Driver Minimum Payments Order

The process now divides into two streams, one for 'contractor driver' and one for 'hirers'.

If you are both a 'contractor driver' and a 'hirer' you will need to follow both streams.

There are common elements, we recommend completing one stream at a time.

CONTRACTOR DRIVER	HIRERS
<p><b>Step 2.01 - Identify the Rates that Apply to Your Main or Most Frequent Jobs</b></p> <ul style="list-style-type: none"> <li>Using the rates tables provided in the Order, identify the rates which apply to your main or most frequent jobs. There are different rates for local distribution work, and long distance work. The rate structure is fairly complex so take time to understand how they are calculated.</li> <li>Determine the 'minimum rate' which those who engage your services must pay you for those jobs.</li> <li>Compare that rate to your current charges so you know if they are higher or lower than your current rates. A direct comparison will be difficult, but the Order mandates that anyone who hires you must pay at least the minimum rates calculated as detailed in the Order. Note, the forward rate and return rate are the same, and the minimum engagement for any one customer is a full load. Seek advice if necessary from NatRoad or the Fair Work Ombudsman to confirm you have calculated the rates correctly.</li> </ul>	<p><b>Step 3.01 - Compliance with the RSRT Order</b></p> <ul style="list-style-type: none"> <li>Compliance with the requirements of the RSRT Order is wholly the responsibility of the 'hirer'. If you get it wrong you are the one who will be required to make good any deficiency or under-payment to a 'contractor driver' you have engaged.</li> <li>Read the Order closely and understand this obligation clearly.</li> </ul>
<p><b>Step 2.02 - Openly Discuss the New Rates</b></p> <ul style="list-style-type: none"> <li>Contact your Customers and discuss openly the new rates. Your Customers need to know if you are a 'contractor driver' or not. If you are not a 'contractor driver' you can continue to negotiate your own rate.</li> <li>If you are a 'contractor driver', your customer must pay you at or above the minimum rate for all jobs commencing on or after 4 April 2016. If you have a 'contract' at rates higher than the minimum rate, your Customer is required to maintain those rates, they cannot reduce your rate to the minimum rate.</li> <li>If the 'contract' rate is lower than the minimum rate your Customer must pay the higher minimum rate for all jobs commenced on or after 4 April 2016.</li> <li>Confirm with your Customers that they will continue to engage your services and pay the higher of the 'contract' rate or the minimum rate. If you work on an 'ad hoc' basis (eg they call you when they have a load) make sure they understand that they must pay the minimum rate or higher after 4 April 2016.</li> <li>It is probably necessary to work through all your customers to determine which of them will continue to use your services.</li> </ul>	<p><b>Step 3.02 - Display the Order</b></p> <ul style="list-style-type: none"> <li>The 'hirer' is required to display (eg have readily available to view) the Order at every depot or workplace, and on every website operated by the hirer.</li> <li>The hirer must make all reasonable attempts to ensure the Order is made known to, and available to, every 'contractor driver' whose services they engage. In simple terms you must ensure every 'contractor driver' is aware of the Order and your obligation to comply with the Order.</li> <li>You cannot hide or deny existence of the Order or your obligation to comply with it.</li> </ul>
<p><b>Step 2.03 - Review which Customers You Are Able to Retain</b></p> <ul style="list-style-type: none"> <li>There is a view that the 'minimum rates' are well above existing market rates on many lanes, particularly back loading routes. If you are adversely affected look at other lanes or work that is available which you may be able to get.</li> </ul> <p style="text-align: right;"><i>...continued overleaf</i></p>	<p><b>Step 3.03 - Determine Which Contractors are Contractor Drivers</b></p> <ul style="list-style-type: none"> <li>The hirer needs to determine which of their contractors are in fact 'contractor drivers'. Review the 'Owner Driver Checklist' and ensure you know how to determine which contractors are 'contractor drivers'.</li> <li>Contact every contractor and determine their status.</li> <li>It is essential that you obtain a declaration from every contractor confirming that there is an agreement between the hirer and the contractor of the contractor's status. <b>This is critical, do not get it wrong.</b></li> </ul> <p><b>Step 3.04 - Determine the Applicable Minimum Rate</b></p> <ul style="list-style-type: none"> <li>Using the rates tables provided in the Order, identify the minimum rate applicable to every job which you engage a contractor.</li> <li>Compare the new rate to the rate you are currently paying. This will not be easy, given that the variables in the minimum rate calculation can in many instances not be determined until after the job is completed. Please note: <ul style="list-style-type: none"> <li><i>There is no provision in the Order to agree a fixed trip or job rate with the contractor driver even if that rate is calculated in accordance with the minimum rates calculation.</i></li> <li><i>There is no provision for part load or back load rates.</i></li> <li><i>There is no provision for a round trip rate, but if one was contemplated it would have to be at the same rate for all hours and all kilometres.</i></li> </ul> </li> </ul> <p style="text-align: right;"><i>...continued overleaf</i></p>

## Complying with the RSRT Contractor Driver Minimum Payments Order

CONTRACTOR DRIVER	HIRERS
<ul style="list-style-type: none"> <li>Consider options to restructure your business/company to avoid the 'contractor driver' classification if that is seen as an impediment to gaining work.</li> <li>Seek as much advice as possible to help you make the best decisions for your circumstances.</li> <li>If you are adversely affected speak urgently with your local Federal politician (the RSRT is Federal Legislation), State and Council members if the financial impact to your local area is significant.</li> </ul>	<p><b>Step 3.05 - Existing Contracts</b></p> <ul style="list-style-type: none"> <li>The hirer must understand that if a contract is in place with a 'contractor driver' at a rate greater than the 'minimum rate' the contract rate can not be reduced.</li> <li>If the contract is at a rate less than the minimum rate, that contract rate must be increased to the minimum rate for all 'contractor driver' engagements commencing on or after 4 April 2016.</li> </ul>
<p><b>Step 2.04 - Implement Changes to Your Business</b></p> <ul style="list-style-type: none"> <li>Implement any necessary changes to your business to adapt to the changed regulatory environment.</li> <li>Unfortunately the RSRT Order mandates obligations on those who engage your services which you are unable to influence or change.</li> </ul>	<p><b>Step 3.06 - Audits</b></p> <ul style="list-style-type: none"> <li>The hirer must read and understand the requirements Part 3, Clause 8, detailing the conduct of audits and the obligation to make good any deficiency within 28 days of the deficiency being identified.</li> </ul>
<p><b>End of Step 2</b></p>	<p><b>Step 3.07 - Payment Calculation Records</b></p> <ul style="list-style-type: none"> <li>The hirer must read and understand the requirements of Part 4, Clauses 9 and 10.</li> <li>You can pay a contractor driver by any reasonable rate calculation method, but you must also keep a record of the payment calculation in accordance with the Order so that you can demonstrate that your payment method is greater than the minimum rates calculation.</li> </ul>
	<p><b>Step 3.08 - Calculation of Hours Paid</b></p> <ul style="list-style-type: none"> <li>The hirer must understand the implications of Part 4, Clause 11, which details the calculation of hours paid to contractor drivers, noting that rest periods, on road delays and waiting time to load and unload are included in paid hours. <b>Read carefully and understand thoroughly.</b></li> </ul>
	<p><b>Step 3.09 - Contractor Driver Unpaid Leave</b></p> <ul style="list-style-type: none"> <li>The hirer must understand his obligations under Part 5, Clause 12 which allows a 'contractor driver' to take 4 weeks of unpaid leave each year, at a time of the contractor's choosing subject to reasonable advice and agreement with the Hirer.</li> </ul>
	<p><b>Step 3.10 - Complying with Order</b></p> <ul style="list-style-type: none"> <li>The hirer needs to review and implement the necessary changes to his business to ensure compliance with the Order if he is engaging 'contractor drivers'.</li> <li>There are significant differences between the hirer's obligations for 'contractor drivers' and 'non-contractor drivers'.</li> <li>It is essential that the correct processes, records and calculations are maintained for every 'contractor driver', even if that 'contract driver' is engaged for one trip only.</li> <li>Keep the Order close by and refer to it frequently. Seek advice from NatRoad or Fair Work Ombudsman as necessary.</li> </ul>
	<p><b>End of Step 3</b></p>