

Answer to question on Notice:

Question:

CHAIR: The other model that has been talked about here is a system that would have the same functions as the previous Road Safety Remuneration Tribunal writ large for the contractor space, not limited just to road transport... In terms of examining what a system design should look like to deliver an outcome-based approach, is that also a system that we should be looking at a principal level to apply and recommend?...

Mr DAVID SHOEBRIDGE: If anybody wanted to add something in that space on notice having reflected upon it, I give you that opportunity now, but it is not required

Response:

The Road Safety Remuneration Tribunal (RSRT) is a useful model for regulation of various forms of work in the platform or 'gig' economy, one not just restricted to food delivery (the focus of much of the discussion during this session).

The RSRT model is relevant because it was designed to cover a specific area, and was attempting to convert a time-based minimum standard approach into a piece-based approach, which is the dominant payment model in most of the 'gig' economy, as most 'gig' economy workers are treated as contractors rather than employees.

The RSRT had been established by the then federal government to deal with the problem that low pay for owner-drivers contributed to the industry having the longest working hours and the most deaths – especially bystander deaths – of any industry (Australian Bureau of Statistics 6306.0; Quinlan 2016; Safe Work Australia 2015). The road transport industry was based on a form of 'not-there employment', in which top firms avoided accountability but retained control and extracted profit, making collective organisation hard, transferring risk to workers (and contractors) at the end of the supply chain, and concentrating profits at the core. Using the corporations power in the constitution, and following examples in the apparel industry in Australia and internationally (Nossar et al. 2015; Reinecke and Donaghey 2015), the RSRT set minimum pay rates for distances and for hours of owner-drivers. Three months before the 2016 election, a different government abolished the RSRT (Retail Council 2016). The chief problems that the RSRT encountered, and which led to its abolition, were:

- It met resistance from the top of the supply chain (where profits were threatened, by higher labour incomes); and
- it failed to adequately deal with the 'backload problem', which meant that it also faced resistance from some contractors (who faced a loss of income from empty 'backloads' when returning to the city of origin).

That is, its demise was partly due to political factors but also due to a policy failure. It is plausible that more extensive consultation would have led to a better recognition of the backload problem. The policy failure arose from the fact that the RSRT was not able to be sufficiently innovative in dealing with backloads. It was very effective in identifying an appropriate piece rate for long haul trips that corresponded with adequate safety standards, but these were in turn difficult to apply to backloads, and it had not adequately considered that issue.

However, this failure was not inherent in the creation of the RSRT — though perhaps a sign that new administrative arrangements might have some teething issues before the full benefits are realised.

Learning from this and other experiences, then, it would be appropriate for the Inquiry to recommend the following:

1. The Industrial Relations Act and, where necessary, other legislation be amended to enable the following.
2. Specialist tribunals be created to establish minimum payment and conditions and other relevant standards for workers not covered by awards in the following areas:
 - a. food delivery
 - b. vehicle passenger transport services
 - c. aged and disability care
 - d. any other areas deemed appropriate by the Minister (that is, once the initial legislation was passed, it would not be necessary for new legislation to be enacted if it was decided that a new area needed to be covered).
3. Membership of these specialist tribunals would be drawn from the Industrial Relations Commission (IRC) of NSW, such that
 - a. some (but not necessarily all) members of the specialist tribunal would be members of the IRC;
 - b. other members of the specialist tribunal would be recognised experts in the industry or sector covered by the tribunal ('independent experts');
 - c. at least one member of the specialist tribunal would have experience or expertise in relation to the 'platform' or 'gig' economy;
 - d. each of the industries or sectors listed above would have a separate tribunal.
4. The tasks of a specialist tribunal would include:
 - a. establishing minimum remuneration in the sector, such that it is, to the maximum extent possible, equivalent to the minimum rate(s) in the relevant award, even if the resultant minimum standard is expressed as a piece rate rather than a time rate, and regardless of whether the award is a state or federal award;
 - b. establishing other minimum conditions of employment, as appropriate and suitable for the sector. These might be analogous to award conditions but in

- some cases may be unique and specifically responding to issues regarding 'gig' employment in the sector;
- c. assessing whether any safety standards in the sector need clarification or augmentation to respond to the circumstances of 'gig' employment in the sector, and either establishing those standards directly or ensuring they are applied by the relevant health and safety authority;
 - d. expressing standards in such a way that, if they are derived from external reference points such as award rates, they can be readily updated when that external reference point is updated.
5. The above tasks need not be undertaken simultaneously.
 6. A specialist tribunal may receive evidence from any interested party but may also commission its own research. It should have sufficient budget to enable research to be undertaken.
 7. The specialist tribunals should co-ordinate and share information amongst themselves on the procedures and resources they have used and the difficulties and innovations they have encountered or implemented.
 8. Representative bodies of workers in any of the areas identified in recommendation 2 above to have rights to collective bargaining and agreement making, without being exposed to actions against them under competition policy, along the lines of existing chapter 6 of the Industrial Relations Act. Such bodies could also have the ability to be registered under chapter 6, or the rules of existing registered organisations can be amended to enable coverage of those workers.
 9. The IRC should have jurisdiction over any matters presently encompassed by existing Chapter 6 of the Industrial Relations Act, including unfair dismissals or contract terminations and other disputes, except to the extent that a specialist tribunal is granted jurisdiction as per the above recommendations.
 10. A specialist tribunal may also make recommendations to the Minister on any improvements that could be made to the decision-making processes.

References

- Australian Bureau of Statistics (6306.0). Employee Earnings and Hours, Australia. Canberra: AGPS.
- Nossar, Igor, Richard Johnstone, Anna Macklin, and Michael Rawling (2015) "Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains." *Journal of Industrial Relations* 57 (4): 585–603.
- Quinlan, Michael (2016) "FactCheck: do better pay rates for truck drivers improve safety?" *The Conversation*, 13 April, 2016. <https://theconversation.com/factcheck-do-better-pay-rates-for-truck-drivers-improve-safety-57639>.
- Reinecke, Juliane, and Jimmy Donaghey (2015) "After Rana Plaza: Building coalitional power for labour rights between unions and (consumption-based) social movement organisations." *Organization* 22 (5): 720-740.
- Retail Council (2016). Statement on the abolition of the RSRT. Sydney.
- Safe Work Australia (2015). Notifiable Fatalities – Monthly Report.