

INQUIRY INTO HEAVY VEHICLE SAFETY

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Mr Geoff Corrigan MP
Chair
NSW Parliamentary Joint Standing Committee on Road Safety (Staysafe)
Parliament House
Macquarie St
SYDNEY NSW 2000

By email: staysafe@parliament.nsw.gov.au

Dear Mr Corrigan

Re: Inquiry into Heavy Vehicle Safety

The NSW Farmers' Association welcomes the opportunity to lodge a submission to the Joint Standing Committee on Road Safety (Staysafe) Inquiry into Heavy Vehicle Safety.

Please find attached the Association's submission for your consideration. The Association looks forward to the outcomes of this Inquiry.

Yours sincerely



Jock Laurie
PRESIDENT

**Submission to the
NSW Parliamentary Joint Standing Committee on
Road Safety (Staysafe)**

~ Inquiry into Heavy Vehicle Safety ~

April 2009

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Introduction

The NSW Farmers' Association (the 'Association') is Australia's largest state farming organisation representing the interests of the majority of commercial farm operations throughout the farming community in NSW. Through its commercial, policy and apolitical lobbying activities it provides a powerful and positive link between farmers, the Government and the general public.

The Association is the key state representative body for both intensive and extensive industries ranging from broad acre, meat, wool and grain producers, to more specialised producers in the horticulture, dairy, poultry meat, egg, pork, oyster and goat industries. The Association also represents the interests of rural and regional communities and the important issues associated with natural resource management.

The Association welcomes the opportunity to provide a submission to the NSW Parliamentary Joint Standing Committee on Road Safety (Staysafe) Inquiry into Heavy Vehicle Safety. Due to the need to transport good across long distances and the increased pressure which is placed upon road freight in Australia, heavy vehicle safety is an extremely important issue. According to the ABS Survey of Motor Vehicle Use in October 2004, heavy trucks travel over 3.5 billion kilometres per year in NSW. Although only 2% of registered vehicles in NSW are heavy trucks, they represent 6% of the kilometres travelled in the State and are involved in on average 17% of fatal crashes. ABS data also shows that about 80% of Australia's interstate freight moves through NSW.

The Association is concerned about the adequacy of the current Regulation and Award relating to heavy vehicle safety. The driver fatigue management plans and safe driving plans are useful in their own right as tools to assist in providing a framework for safety. However, the industrial context in which they were introduced to the industry may have restricted their impact and caused the necessity for a substantial review process.

The Association notes that there is a substantial need for improvement in the provision of infrastructure to progress heavy vehicle safety, particularly in relation to rest areas. Furthermore there is a requirement for heavy vehicle industry participants to gain further education with regards to the introduced complex regulations, especially across borders.

The Association encourages the harmonisation of heavy vehicle safety regulations as well as co-operation and consistency between State and territory jurisdictions as this is imperative to achieve safety and efficiency in heavy vehicle transportation.

Adequacy of implementation of the Regulation and Award

The submission will refer to the driver fatigue management plans located in section 81D of the NSW Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 as the 'Regulation', and the safe driving plans located in Part 3 of the Transport Industry - Mutual Responsibility for Road Safety (State) Award as the 'Award'.

There is a lack of investment in safety (e.g. rest areas), efficiency, road maintenance and improvement within heavy vehicle transportation. Achieving a more successful implementation of the Chain of Responsibility approach will be an important mechanism for improving heavy vehicle safety.

There is a concern that the safe driving plans have a "tick the box" approach which may not necessarily cover all the risks associated with heavy vehicle safety. A more thorough approach would be to consider all the risks associated with heavy vehicles and risk

management strategies such as increased seat belt usage, safer roads, speed management, reduced driver impairment and safer heavy vehicles.

Implementation of these risk management strategies would require enhanced driver and industry management, effective enforcement and targeted research and education. This would take on a much more holistic approach to the whole industry instead of prescribing to drivers of heavy vehicles only certain criteria which must be complied with.

Safer roads have to be a shared goal between different jurisdictions. An example of this approach is the newly formed Memorandum of Understanding between the Association and the Livestock and Bulk Carrier's Association ('LBCA'). Through this MOU both organisations have agreed to share resources and their respective strengths in pursuing common goals such as delivering better freight efficiency and safety outcomes in regional NSW. In addition to this MOU, the Association also has a quarterly forum with the NSW Roads and Traffic Authority ('RTA').

Integration of NSW OH&S and IR legislation

The background of the interaction of the Workplace Relations Act 1996 (the WRA) with NSW law is relevant to the constitutional hurdles to use of Industrial Relations Awards in Safety. The Workplace Relations Act provides that it excludes most state industrial legislation (s.16). It however excludes certain provisions such as OH&S and superannuation. It also provides that a Federal Award or agreement will override an applicable State Act with the exception of OH&S, workers compensation and training arrangements. The Industrial Relations Commission of NSW (IRC) relied on these exceptions when it made the Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determinations (Road Safety Award).

However the IRC also sought to use this power in making a specific long service leave award in the coal industry. This decision was challenged by members of the coal industry in the Federal Court (Endeavour Coal Pty Ltd v Construction, Forestry, Mining and Energy Union (New South Wales Branch)) where it was held that because the IRC was using an award making power (which is an industrial power) that it could not rely upon the exclusion for superannuation within the WRA. This is because the State was using an industrial arbitral power and not a legislative one.

Whilst the Road Safety Award has never been challenged with regards to its applicability to constitutional corporations, the Association believes it is likely if it was it would be constitutionally void. As the Fair Work Bill 2008 which has been recently passed by the Federal Parliament appears to contain the same provisions, it would appear that the use of Industrial award making power such as that utilised by the IRC could be restricted to an operation that would only regulate unincorporated "transport operators".

However it is possible that the Federal Government may in the future seek to regulate transport in a similar way, given an amendment that it unsuccessfully sought to the Fair Work Bill in the Senate. This amendment was to allow the Australian Industrial Relations Commission ('AIRC') to make a modern award with regards to fatigue in the road transport industry.

Undesirability of duplication

The matter of duplication was addressed by WorkCover in their submissions to the IRC hearings from which the Road Safety Award was made (paragraph 159 in the Award) particularly with the issue of the OHS regulation. Further in paragraph 160-161 of the Award there are a number of submissions noted by the IRC about how arbitrary award making power can skew both state and national initiatives for road transport safety – i.e. different provisions regarding distances would cause confusion in the industry.

The issue of size and who it affects

Our understanding of the evidence before the IRC matter and the focus on the OH&S Regulation is that they have sought to address a causal link between the stresses placed on trucking businesses by large consignors. There doesn't appear to be any review of the effect on small business in the matter of fatigue in the trucking industry on the record.

Adequacy of the provision of infrastructure

The Association is aware that in their submission to the Federal Heavy Vehicle Safety and Productivity package, the Australia Trucking Association ('ATA') recommended several rest areas that needed construction or capacity upgrades after noting that the 2008 Austroads rest areas audit report concluded that none of Australia's major highways conform to the national guidelines for the provision of rest areas. These recommendations included;

- Construction of a major rest area, including adequate capacity for changeovers and decoupling, in proximity to the intersection of the M7 and M4 freeways in Sydney.
- Construction of a major rest area, including adequate capacity for changeovers and decoupling, on the M5 freeway on approach to the Botany ports precinct in Sydney.
- Construction of rest areas on the Pacific Highway north (heading northbound) and south (heading southbound) of Grafton.
- Construction of a rest area on the Princes Highway between Kiama and Eden.
- Construction of a rest area southbound on the Newell Highway at Pilliga State Forest.
- Capacity upgrades to the existing rest area infrastructure on the Gwydir Highway between Grafton and Moree.
- Capacity upgrades to the existing rest area infrastructure on the Barrier Highway between Narromine and Cobar.
- Construction of major rest areas northbound and southbound on the F3 in proximity to the Hawkesbury area in Sydney.

Rest areas are vital to improving heavy vehicle safety as they provide drivers with a chance to stop and rest. There is currently a lack of rest areas, meaning that drivers are sometimes required to continue driving when under fatigue. The recent introduction of Heavy Vehicle Driver Fatigue regulations stipulating specific driving hours restrictions and strict rest requirements highlights the urgent need for the provision of additional rest area infrastructure.

More road maintenance is required, particularly during post harvest activities. Substantial road work is required east of the Newell to allow more B-Double and Road train access. More overtaking lanes are needed on the Newell Highway for safety due to the large amount of heavy vehicle traffic from Melbourne to Brisbane.

Need for harmonisation across state borders

The Association encourages harmonisation of heavy vehicle regulations across borders. Inconsistencies of regulations between states and territories can result in loss of efficiency and more costly operations. Interstate and territory transport regulation harmonisation is critical to the food supply chain's ability to develop more cost competitive and efficient sectoral performance delivery. Indeed, the Association's policy is to seek that the State and Federal Government's implement the harmonisation of state transport laws and regulations, as recommended by the 2020 summit. Conflicting state regulations add unnecessarily onerous administrative and compliance costs which impede the ability of the transport sector to deliver its services in a timely manner. For agricultural producers, who are intrinsically involved in the effectiveness of the transport sector, this reduces their ability to compete on international commodity markets. The farming sector is directly affected by the artificially inflated costs that come with an inefficient transport sector. It is

for this reason that the Association would like to provide support for the transition towards a national framework for heavy vehicle regulation, registration and licensing.

Some examples of inconsistencies between States in the regulation, registration and licensing of heavy vehicles include;

- Different driver hours schedules. For example, the Association understands that in South Australia work time is recorded as a specific amount of time (eg. 25 minutes), however in Victoria and NSW that same 25 minutes would be rounded up to the next 15 minute multiple, in this case 30 minutes. Conversely, for rest time in Victoria and NSW the amount of time is rounded down to the nearest 15 minute period, so 25 minutes rest is rounded down to 15 minutes.
- The Association understands 'Split defence' is available for split rests in South Australia, but not in Victoria or NSW. Split defence is applicable where a driver has achieved the required 7 hours rest in a 24 hour period, but not continuously.
- Different animal welfare, animal health, prevention of cruelty to animals, disease and chemical regulations. For example, the Association understands that South Australia currently has animal welfare travel periods of up to 16 hours, whereas in NSW and Victoria the corresponding regulation is as low as 14 hours.
- Transport costs associated for a 500 kg animal travelling 200 km are approximately \$4 more expensive in NSW compared to QLD and VIC where volumetric loading is operational.
- Registration costs. Queensland reportedly has the least cost. NSW is reportedly the most expensive state for registration.

Conclusion

The Association recommends that a more holistic approach be taken towards road safety and as opposed to a prescriptive 'tick the box' attitude. Identifying the causes of dangerous road activity would be more effective than a reactive short-sighted view. More investment is required in infrastructure, particularly rest area construction and capacity upgrades, along with general road improvements. Harmonisation of heavy vehicle regulations between States and territories is imperative to improving the efficiency and competitiveness of agriculture.