

## INQUIRY INTO HEAVY VEHICLE SAFETY

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Staysafe (Joint Standing Committee on Road Safety)  
Parliament House,  
Macquarie St,  
Sydney NSW 2000

**INQUIRY INTO HEAVY VEHICLE SAFETY**

Dear Committee Members,

The Livestock and Bulk Carriers Association (LBCA) is pleased to provide input to the Committee's Inquiry into Heavy Vehicle Safety as per the attached submission.

The LBCA represents over 200 road freight companies of varying sizes (both small and large) that use regional NSW roads predominantly in the livestock and bulk sectors.

The LBCA's key goals are to deliver better safety and efficiency outcomes in partnership with government and users of our members' services. The LBCA takes its leadership responsibilities in pursuing these goals seriously as evidenced by the specific initiatives outlined in our submission

As an overview, the LBCA holds the view that the focus on safety in the road freight sector has improved considerably in recent times and the industry does a difficult job with an ever increasing task very well. However, despite the industry's genuine efforts, the propensity to deliver better outcomes has been undermined by two key factors namely:

- an ad hoc, inconsistent and confusing approach to regulatory matters both by agencies within the state and nationally;
- a lack of real investment in addressing both its safety and efficiency needs.

We note that the Committee's terms of reference specifically target the effectiveness of what could be termed industrially focused mechanisms to achieve safety gains. The LBCA acknowledges that these mechanisms are seen by some as appropriate tools to pursue change, perhaps due to the frustration with slow progress in achieving gains through traditional regulatory means. However, the end result of this approach has only added to an already overly complex area of fatigue management regulation.

The lack of investment applies to governments at all levels and in some respects to the industry itself. Improving safety and efficiency go hand in hand and must be pursued within a shared and better understood agenda with industry to be successful in making greater positive steps forward.

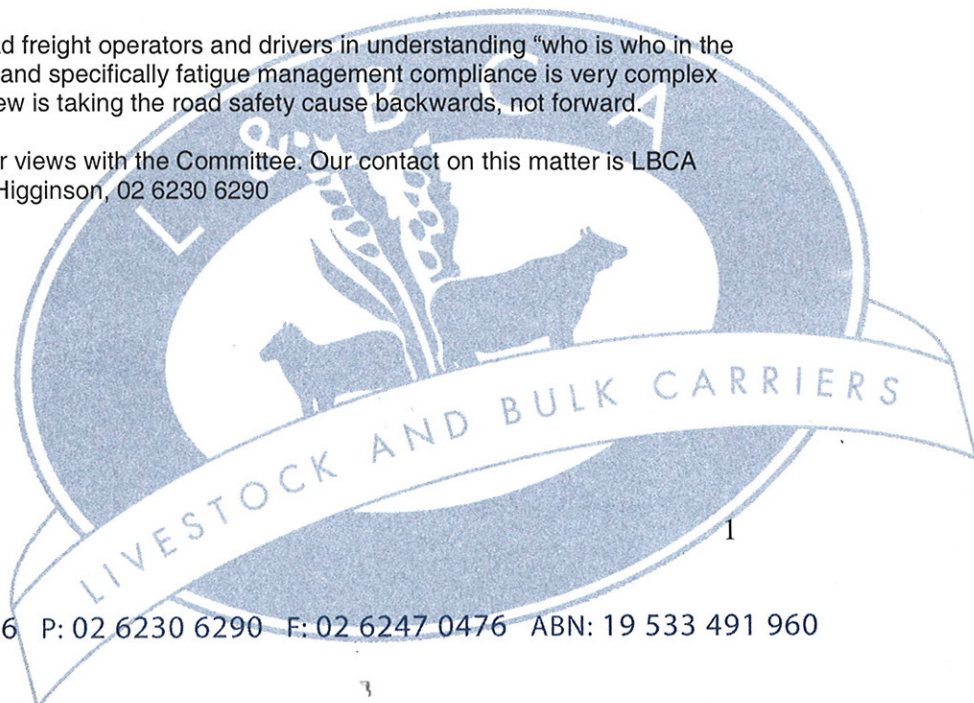
Today, the challenge for road freight operators and drivers in understanding "who is who in the zoo" in terms of road safety and specifically fatigue management compliance is very complex and confusing; this in our view is taking the road safety cause backwards, not forward.

We are happy to discuss our views with the Committee. Our contact on this matter is LBCA Executive Director Andrew Higginson, 02 6230 6290

Regards,

Jim Savage  
President

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## STAYSAFE INQUIRY INTO HEAVY VEHICLE SAFETY – LBCA VIEWS

The LBCA submission addresses the following issues:

1. Road freight safety is a shared responsibility and the LBCA is taking a leadership role in seeking realistic improvements
2. NSW Occupational Health and Safety Amendment (long distance truck driver fatigue) Regulation 2005 and Transport Industry – Mutual Responsibility for Road Safety (State) Award – good intentions but confusion reigns
3. There are too many fatalities – but there are many causes
4. The Chain of Responsibility concept is the key factor in delivering better outcomes
5. New Heavy Vehicle Driver Fatigue Regulations – 85% supported but 15% still problematic
6. Lack of rest areas and inconsistent enforcement are two strong examples of a lack of focus and lack of investment in road freight safety needs
7. Rewards/encouragement/accreditation for good operators still missing

### **1. Road freight safety is a shared responsibility and goal; LBCA taking a leadership role in seeking realistic improvements**

Most professional road freight operators acknowledge today that there are no magic solutions nor is there any turning back the clock in regard to improving road safety.

LBCA members all want safer roads; they don't set out to have their drivers undertake "suicide missions" so that a customer gets his product an hour earlier.

As professional carriers, we share the goal of making a positive difference to road safety. As part of that goal, LBCA members decided several years ago that the Association should pursue a stronger leadership role in pushing for better safety and efficiency outcomes.

Firstly, the LBCA has pursued a more proactive approach to partnering with the NSW Roads and Traffic Authority (RTA) as the key government agency involved in regulating our industry.

The LBCA is an active partner in the NSW Government's initiatives in recent years to re-establish consultative forums where options to address road freight safety and efficiency challenges are reviewed and actions agreed. These forums include the Road Freight Advisory Council (RFAC) and the Transport Operations Liaison Group (TOLG) that are charged with advising the Minister and the RTA on the key road freight challenges NSW faces into the future.

The challenges being addressed through these bodies include both safety and efficiency priorities such as the provision of more and better rest area facilities, the establishment of a Transport Industry Safety Group (incorporating the major parties involved in delivering better safety outcomes), and the future urban and regional freight needs of the state.

Secondly, the LBCA has also expanded its relationships with key players along the supply chains our members work in so as to improve communication and education on the importance of better road safety practices by all who impact on our work.

An example of this proactive approach is a recently signed Memorandum of Understanding (MoU) with the NSW Farmers Association. The MoU specifically looks to establish initiatives to improve safety including on road matters like fatigue management and at loading and unloading facilities so as to ensure drivers work in a safer environment. We also see the implementation of the chain of responsibility concept across road freight law as being key to achieving progress in this area.

*Recommendation One: That the StaySafe Committee acknowledge the importance of government agencies, road freight operators and the users of freight services working more closely together in the future to deliver agreed realistic safety and efficiency initiatives for road freight operations in the state.*

**2. NSW Occupational Health and Safety Amendment (long distance truck driver fatigue) Regulation 2005 and Transport Industry – Mutual Responsibility for Road Safety (State) Award – good intentions but confusion reigns!**

Good progress has in the LBCA'S view been made in achieving a culture change across the whole community in relation to road safety over the last two decades. This includes the road freight sector where the industry is asked to manage a massive and ever growing road freight task in a professional, safe and efficient manner.

Whilst "doom and gloom" on the road safety agenda is easy to engender, working to achieve meaningful reform takes time and a partnership between key participants is essential. Imposing complex regulations on groups like road freight just doesn't work.

Concepts like trip planning and fatigue management plans which are central themes in the NSW Occupational Health and Safety Amendment (long distance truck driver fatigue) Regulation 2005 and Transport Industry – Mutual Responsibility for Road Safety (State) Award are commonly used and do assist in improving the focus on achieving better fatigue management outcomes in the road freight sector.

However, the way the formal introduction of these concepts was undertaken was controversial because of the industrial context in which this occurred. Subsequently, their impact has been less than it might have been if they had been part of an overall strategy adding to a culture of better planning and seeking better road safety outcomes within the industry.

To NSW WorkCover's credit, they did look to adopt an educative rather than a confrontational or infringement focused approach when the new regulations were introduced. In the main, they tried working with road freight industry participants to achieve better outcomes through education where they deemed there were genuine attempts being made by operators to comply.

Unfortunately - and again controversially - the association of the BlueCard initiative with the move to introduce requirements for Driver Fatigue Management Plans has diluted the intent and ability to drive and deliver these concepts deep into the industry. The confusion over coverage has also lessened the intended impact.

A further problem has been the additional layer of red tape and confusion added to operators and drivers by these two initiatives being pursued through OH&S and/or industrial mechanisms. Rather, the LBCA considers that this should have been pursued through a single agency or mechanism responsible for road freight safety outcomes in NSW.

Finally, there is also a perceived lack of focus by WorkCover on other parties in the transport chain (see chain of responsibility in point four below) where the real impact of these concepts could be driven more successfully in our view.

*Recommendation Two; That the StaySafe Committee acknowledge the need to focus road freight safety law making through a single legal mechanism, preferably a nationally consistent one that delivers clear and realistic regulations that reduce the current confusion and red tape involved in regulating road freight safety outcomes.*

**3. Too many fatalities – but many causes and more can be done.**

None of us like it that approximately 50 people die on NSW roads each year as a result of accidents involving articulated trucks. No one likes it that another 20 to 30 people are killed in accidents with rigid trucks.

The LBCA presumes this sentiment is shared by the regulators, by people employed in road freight companies and by industry customers – but the LBCA considers that you can't solve the issues by running separate agendas as appears to be the case today, everyone must work together as a team in a transparent way to achieve better safety outcomes.

There are many factors that contribute to the road toll involving road freight vehicles including in some cases driver fatigue. These factors vary from urban to rural settings and each needs different strategies to deliver better outcomes. Road freight operators are at fault sometimes and the LBCA is up front about that. But in the main, our members aren't the bad people that others make them out to be to suit their own agendas and the LBCA believes an agreed suite of initiatives including better education of other road users is required.

We need to separate the sometimes different challenges that face urban and regional environments. The statistics as understood by the LBCA suggest speed and fatigue are the major issues in regional areas. However, the science and understanding in this area (i.e. an objective scorecard and statistics base) needs more scrutiny and investment so we can address the main issues in the right manner.

*Recommendation Three; That the StaySafe Committee:*

- *acknowledge that many factors contribute to our road toll*
- *agree that different strategies need to be developed to address urban and regional causes*
- *acknowledge that the current blame game attitude towards road freight needs to be neutralised to deliver better outcomes*
- *agree that a shared and objective scorecard and statistics base needs to be developed to assist in delivering better safety outcomes.*

#### **4. The Chain of Responsibility concept is the key factor in delivering better road safety outcomes**

LBCA members are strong supporters of the push to increase the effectiveness of the chain of responsibility concept along transport supply chains and in helping to keep everyone honest about truck safety. In discussing this point, the LBCA make two clear statements about the importance of the chain of responsibility concept:

- Firstly, this concept was an industry one that has been adopted by the regulators;
- Secondly, achieving more success with the implementation of the chain of responsibility concept is the key strategy that will truly improve safety in our industry.

As an example, the NSW Roads and Traffic Authority achieved good results with the chain of responsibility in regards to addressing overloading in the NSW grain sector. This was done with the strong support of the LBCA. By involving the customers, better on road and safer outcomes were achieved.

Importantly, these customers are now working with the LBCA on a grain transport code of practice which includes key safety matters, is further evidence of a positive culture change and road safety in this area.

Unfortunately, we've not seen evidence that the regulators are still fair dinkum about targeting others in the supply chain with the Chain of Responsibility. The LBCA acknowledges that a large investment is required to deliver results in this area and that it can take years to deliver successful prosecutions – but the success in the grain area in achieving a positive culture change suggests this longer term view may deliver better and lasting outcomes. There's plenty of focus on the transporter but the scorecard on the customer side is disappointing.

Another worrying aspect of this is that we find little knowledge within end user groups of the tough and complex regulations governing road freight in Australia, whether that is in specific areas such as vehicle weights and driving hours or in a raft of other laws which govern our operations. This is understandable given the complex regulatory environment governing our members operations. This is exacerbated by the differing laws and interpretations that apply from state to state which causes frustration within the industry let alone for those who use our member's services.

*Recommendation Four: That the StaySafe Committee recognise:*

- *the importance of a greater focus being achieved within government in promoting and pursuing the benefits of the chain of responsibility concept in road freight law;*
- *the complexities involved in the current approach to road freight law and the difficulties companies and drivers have in understanding and achieving compliance*
- *the need for greater promotion, education and then enforcement activities being undertaken by governments to customer groups to meet their obligations under road freight law in respect to the chain of responsibility.*

**5. New Heavy Vehicle Driver Fatigue Regulations – 85% supported but 15% still problematic**

The LBCA is working with NSW Roads Minister Michael Daley to address problems with the new heavy vehicle driver fatigue regulations introduced late last year. The Minister's quick action to introduce transition arrangements and specific exemptions at the last minute was supported by industry following the clumsy way their introduction was handled in NSW and nationally. A list of over 30 problem issues has been prepared that require either a NSW specific or a national "fix".

In our view, the new fatigue regulations are a classic example of how not to implement a major reform. It also highlights the challenges the RTA faces in dealing with its many hats.

The LBCA is seeking an environment where government and the RTA move away from the old ways of "telling, not asking us" and "dictating and not explaining". The RTA didn't genuinely consult with industry on what were in effect covert changes they had the NSW Roads Minister advise the NTC that NSW was making to the national model.

The RTA did attempt to undertake a comprehensive education style campaign in the months leading up to the introduction in September 2008. They ran many seminars across the state that were "how we'll enforce it" events; questioning and industry scrutiny were missing. They were short on specific details as they had not finalised regulations in what was probably the biggest reform the industry had seen in the last decade.

The complex detail of the new regulations was in effect hidden till the last minute with the gazettal of this major reform occurring just a few days before the new regulations came into effect.

The new fatigue regulation fiasco has been debated in the NSW Parliament with the Regulations being the subject of a dis-allowance motion at one stage. The frustrating point is that LBCA members can work with 85% of the content of the new fatigue regulations which will in the long run assist with achieving the required culture change and our roads will become safer.

As pointed out earlier in this submission, the way in which the new regulations operate in parallel with the NSW Occupational Health and Safety Amendment (long distance truck driver fatigue) Regulation 2005 and Transport Industry – Mutual Responsibility for Road Safety (State) Award is also not clear nor understood on an industry wide basis which added to the confusion.

The challenge now remains to sort out the remaining 15% of problem areas; this is the key to success in this area. The main areas that need to be addressed have been identified and are currently under consideration by the NSW Roads Minister. These key issues include:

- o Providing simpler and more user friendly access to the BFM and AFM modules including enlisting industry support to develop and deliver better educational tools
- o Providing for a fortnightly cycle to assist the rural operational cycle;
- o Simplifying the 100 kilometre record keeping exemption requirement & restricting the 160 kilometre record keeping exemption to bona fide primary production activities;
- o Lifting the focus on customer responsibilities under the chain of responsibility including more proactive work by the RTA to target customer groups to achieve higher levels of understanding of the consequences of non compliance;

- o Delivering workable outcomes to the current provisions covering the 48 hour reset, early starters, split rest and incidental activities on the day off requirement;
- o Removing state by state inconsistencies (including NSW specific ones) in the way the law is interpreted and enforced;
- o Removing areas of complexity including the compliance history declaration, the requirement for a fatigue expert sign off on AFM applications and a range of work diary and counting issues.

Until the new Roads Minister stepped in last September, there was no real acceptance of the need to address the 15% of problem areas - and there's still a lot of resistance today to what the Minister is doing to address legitimate industry concerns.

It also has to be recorded that the National Transport Commission (NTC) process of developing the national legislation model for the new heavy vehicle driver fatigue regulations and then handing it to the individual states to struggle with the implementation process failed.

The states involved have gone away and done their own thing, including making subtle changes which has created more confusion especially for operators crossing state borders. Industry and governments need to follow through and fix this problem at the national level as part of the review currently being undertaken of that organisation and also within the context of the National Truck Regulator concept.

LBCA members today are scared and frustrated about the complexity of the regulations they face in the fatigue management area. Operators don't understand what's right or wrong – or who to turn to for the right answers. Industry can't even get agreement between the States on simple issues like how to count the hours we work in a day!

The LBCA doesn't accept that our members, mostly good hard working people, start assuming and accepting that others can treat them as criminals just because they can't get their heads around the new laws. The LBCA is of the opinion that we've seen a decrease in safety as a result of this fiasco and the momentum to deliver better safety outcomes has stalled.

*Recommendation Five: That the StaySafe Committee:*

- *applaud the NSW Roads Minister Michael Daley for the leadership he has exhibited in introducing transition and exemption arrangements in NSW to smooth the introduction of the new heavy vehicle driver fatigue regulations in 2008;*
- *note that 85% of the new regulations appear to have broad industry support with the remaining 15% causing problems;*
- *agree that NSW should continue to play a leadership role in looking for a sensible way forward in relation to ensuring the new regulations are workable and have a positive impact on heavy vehicle safety in NSW.*

## **6. Lack of rest areas and inconsistent enforcement are two strong examples of a lack of focus and investment in road freight needs**

You need to look no further than the lack of provision of truck rest areas on our major highways let alone in regional areas and the inconsistency in enforcement practices to see where grossly insufficient investment has been made by governments across the board to deliver more professional outcomes in the road freight sector.

### **Rest areas**

The sorry tale is that anecdotal evidence from drivers suggests that more rest areas have probably been shut in recent times than opened, particularly where new highways have been built (whether they are informal or formally recognised sites).

This has coincided with governments introducing new fatigue management laws under several guises which place stricter controls on drivers and remove any flexibility they might have had under the previous regime.



There are now some promising signs that the rest area situation will change over time so long as the pressure for greater investment in this area is maintained. The LBCA applauds the NSW Government and the Federal Government for recognising the need for better long term strategies and funding for truck rest areas.

The NSW Roads Minister's Road Freight Advisory Council (RFAC) has played a leadership role in encouraging more action in this area. Importantly, the Roads and Traffic Authority is we understand, developing a broad strategy covering rest area requirements in both regional and urban areas of the state.

This awareness of the need for more rest areas and the acceptance of trucks as a major facilitator of freight also needs to be extended into local government. In recent times, we have seen local councils excluding trucks from their boundaries at the request of local residents. This exclusion often encompasses the ability to use local facilities such as toilets and shops. We also have key freight hubs like Dubbo where after a certain time at night, no convenience facility is open despite the large reliance in the area on road freight. Again, this is a subtle and unintended consequence that impacts safety and efficiency in a large way.

#### Enforcement Consistency

Inconsistent enforcement practices between highway patrol and RTA officers as well as across state borders make the job of a truck driver tougher than it should be. The issues in this area have been well documented before but little has been done to address the perceived problems.

The current national regulator concept does include the concept of delivering nationally consistent enforcement practices – perhaps the enforcement of truck specific regulations should be removed from the highway patrol within a new national approach to deliver better outcomes.

#### *Recommendation Six: That the StaySafe Committee:*

- *support the increased focus on delivering more rest areas to support road freight operations*
- *agree that more consistent enforcement practices will underpin a better safety outcome in the road freight sector*

### **7. Rewards for Good Operators/Accreditation**

One of the greatest operator criticisms of the current trucking industry and regulatory system that governs it is that the true professional must invest in safety and professionalism at the direct expense of being competitive in the open market for trucking services.

Put simply, there is no significant distinction in the road freight market for operators who make the effort to be safe and professional. On road enforcement remains a very blunt instrument. In most States, the only real means of enforcement being truly targeted comes about at the personality level, where an enforcement officer – whether a policeman or State heavy vehicle inspector – develops relationships and an understanding of his or her local freight operations, so that after a time, a better picture emerges of who are the 'white hats' and who are the 'black hats' in the industry. Although useful, this arrangement is entirely a chance occurrence, based on enforcement officer personality, prejudice and length of posting, amongst many other intangibles.

There is a way to identify the safer operator in the trucking industry. Austroads research commissioned by the National Transport Commission in 2007 revealed that heavy vehicle operators who were part of audited safety accreditation schemes were around 60% less likely of being involved in an accident than operators who did not subject their businesses to audited safety accreditation. Tellingly, the Austroads research also revealed that only 3% of today's trucking industry was accredited into such schemes.

The implications for safety that this research poses are enormous. It is vital that Australia build into a national safety regulator a structure that will in future be able to administer a

national safety accreditation scheme which can offer real benefits to accredited operators while making non-accredited and therefore higher-risk operators identifiable for more targeted enforcement activities.

Are there national safety accreditation examples to draw upon?

The aviation industry seems a good example of an industry that relies heavily on audited accreditation with good safety outcomes. A CASA style model for national safety accreditation could look to agree national auditable standards for the following road safety issues in heavy vehicles:

- Fatigue
- Mass management
- Maintenance
- Speed

Can a national regulator create a 'market' for the consumption of trucking safety?

With standards agreed, those operators being independently audited to these standards can and should be placed in a public database by the national safety accreditation agency. This arrangement would begin to send a powerful market signal on safety to consumers of road freight services. For the first time, the Australian community could begin to make choices about choosing trucking operators based on their commitment to agreed standards of safety.

A range of benefits can be developed and provided to the say five star companies that exhibit and can prove the behaviours that both regulators and the industry want in place to underpin future road freight operations.

It is vital that any move to a national regulator as currently being proposed makes it explicit that a national safety accreditation agency be established. The industry has led calls on the benefits of audited safety accreditation and sees this reform as the next major achievable breakthrough for Australia in achieving its Vision Zero road fatality objectives.

*Recommendation Seven: That the StaySafe Committee agree that a national safety accreditation agency should be an essential aspect of any future regulatory structure for the road freight industry, in keeping with all Governments' commitment to the Vision Zero road safety policy for Australia.*