

**Submission
No 1**

INQUIRY INTO HEAVY VEHICLE SAFETY

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SPAI

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Mr Geoff Corrigan MP
Chairman
Staysafe (Joint Standing Committee on Road Safety)
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Chairman,

I welcome the announcement of the inquiry into heavy vehicle safety. This inquiry is in accord with the general terms of reference of the Staysafe Committee (see 1 (b)(v) of the resolution passed 21 June 2007, 54th Parliament, Votes and Proceedings No.14, Item 13, Page 7), and is a timely and appropriate review of this critically important area of the road transport system in New South Wales.

This submission provides some general comments at the commencement of the inquiry. Safety and Policy Analysis International may, in due course, forward a further supplementary submission commenting in detail on the heads of inquiry, as published.

While heavy vehicles are involved in 21% of fatal crashes on New South Wales roads, it is also important to recognise that truck drivers themselves are judged responsible (or partly responsible) for less than 40% of these fatal crashes involving trucks.

It is noteworthy that the Staysafe Committee has examined issues relevant to this inquiry in the past, and several of the reports of these inquiries remain relevant: Staysafe 28 (1995); Staysafe 36 (1997); Staysafe 46 (1998); Staysafe 57 (2002). As well, the committee has held general meetings that also contain important commentary relating to heavy vehicle safety: Staysafe 38 (1997); Staysafe 59 (2002); Staysafe 62 (2004); Staysafe 70 (2006).

The focus of the Staysafe committee inquiry is on driver fatigue and safety management in the New South Wales trucking industry (which include such regulatory measures as requirements for the preparation of driver fatigue management plans and safe driving plans) and the impact of such regulatory measures on road safety and road trauma reduction. However, it is crucial to remember that heavy vehicle safety issues are embedded in much broader policy contexts than road safety for New South Wales, including:

- Heavy vehicle drivers are always workers, so occupational health and safety laws must have effect (and there has been considerable tension between road safety and workplace safety regarding issues of heavy vehicle safety) (see Staysafe 36, 1996; Staysafe 57, 2002);
- Heavy vehicle road use occurs within a transport and logistics framework that transcends state or territory jurisdictions, and, in fact, operates at national, world regional, and global levels – this impacts on management structures, the organisation of supply chains, technology development (particularly information technologies and telecommunications), and the capacity for an individual jurisdiction to effect reform.

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I recently wrote that the high level organisation and administration of the road safety effort of a jurisdiction is a very important issue, and that here in New South Wales, the road transport system is critical to local communities, and to the State and the national economy. New South Wales is, in terms of surface transportation, a transit state as much of the national road movements of people and freight pass through our state. The efficiency of our road transport system affects the daily life of all Australians, not just in terms of safety, but also in terms of mobility and access (Faulks, 2008). We continue to need new and improved road infrastructure, and face significant challenges in the management of the motor vehicle fleet and in the management of our driving population. Traffic congestion continues to grow, and the identified problems in the forecast growth in travel demand, particularly in the area of road freight, are still not being adequately addressed. The economic and environmental implications of congestion and travel demand are significant, ranging from wasted fuel and lost time as cars and trucks idle in traffic to increased costs for businesses as the system grows more unreliable. We have seen remarkable improvements in safety, but these are attributable to legislative and policy decisions taken five, eight and even ten years ago. The challenge is to take the right decisions now, so that we can maintain these gains into the future.

The New South Wales road transport system is, I would suggest, a high-risk area, not only with regard to long term financing, but also because of its strong and relatively inflexible links with economic, health, environmental, and energy policies. Transport policy decisions are, in fact, inextricably linked with economic, health, environmental, and energy policy concerns. Clearly, we need to be clever in progressing road safety policy and programs in a way that ensures proper concordance with these other critical policy areas. Calls for increased investment and reform of the New South Wales road transport system come at a time when traditional funding sources are increasingly strained. To be frank, looking out ten to twenty years into the future, the budgetary position concerning the support and renewal of the New South Wales road transport system already looks bleak. The ability to address these issues is complicated by the fact that the New South Wales government's financial condition and fiscal outlook are worse than many may understand. We do not know where the financial impacts will be felt, but they are likely to equally fall on road safety-related activities by government as they will impact in other areas. We need to be realistic about this.

Finally, I would like to briefly draw the attention of the Staysafe Committee to some important research relevant to heavy vehicle safety in New South Wales.

Principal among current research into heavy vehicle safety is an Australian Research Council research project aimed at identifying the role played by key risk factors such as sleepiness/fatigue, sleep apnea, scheduling and payment in precipitating a heavy vehicle crash. The study will identify cost-effective strategies to improve safety within the heavy vehicle industry. The study design is a population based case-control study with the cases being drivers of heavy vehicles who are involved in police-attended crashes in New South Wales, Western Australia and Queensland over the three year study period (2007-2009). The study is a collaboration involving the Australian Government Department of Infrastructure, Transport, Regional Development and Local Government, the George Institute for International Health, Curtin University of Technology, DiagnoseIT, Main Roads Western Australia, the National Transport Commission, New South Wales Police, the Roads and Traffic Authority, Queensland Transport, the Centre for Accident Research and Road Safety (CARRS-Q, at Queensland University of Technology) and the Injury Risk Management Research Centre (University of New South Wales). The research project is funded by the Australian Research Council, supported by the Australian Government Department of

Infrastructure, Transport, Regional Development and Local Government, DiagnoseIT, the National Transport Commission, Queensland Transport, and the Roads and Traffic Authority.

Researchers at the Monash University Accident Research Centre reported in late 2007 that one in three truckies reported that they had fallen asleep at the wheel over a three month study period (Misa, Coleman & Conduit, 2007). A survey of interstate truckies also found that 40 per cent reported sleepiness was a problem on half of all trips and fifty per cent of drivers also said despite knowing they're tired they get behind the wheel anyway. 255 interstate truck drivers participated in the self-report survey and were asked to report on a variety of sleepiness-related experiences during the previous three months. The research focused on why truck drivers continue to drive while they are sleepy, finding evidence to support the long-held beliefs that truck drivers are under enormous pressure to meet delivery deadlines and these combined with their own perceptions on work performance can lead to continued driving regardless of how sleepy the driver feels. Drivers rated work regulations such as maintenance of logbooks and other organisational requirements as the greatest contributor to continuing to drive, this was closely followed by the need to meet schedules and deadlines. This was compounded by their inability to make a decision to stop and rest.

In April 2000 the Motor Accidents Authority of New South Wales established an inquiry into safety matters in long distance road haulage under Professor Michael Quinlan. The report of the inquiry was released in 2001. A good summary of the issues raised in the inquiry and report and the New South Wales government response to the recommendations arising is found in Jamieson (2006, see attached)

Yours sincerely,

Ian Faulks
Partner

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The long distance trucking industry in New South Wales and the role of the state

Employment Relations Record, July 2006, by Suzanne Jamieson, University of Sydney

In April 2000 the Motor Accidents Authority of New South Wales established an Inquiry into safety matters in long distance road haulage under Professor Michael Quinlan which reported to the government in the latter part of that year. In December 2001 the report of the Inquiry was released to the public (MAA, 2001). For some time after that, the report remained under active consideration by the government before any obvious reform occurred. This article seeks to look at the reform process arising from the commissioned report and to situate the so-far limited reforms within a context of intense debate around regulation and deregulation which must be balanced with public demands for road safety and increasing popular demands for a reduction in the number of workplace fatalities generally.

INTRODUCTION

Long distance trucking would almost seem to be the paradigm case in any examination of supply chains and their regulation. As Nossar et al point out (2004: 137) the recent past has seen an obvious move in many business organizations to outsource or subcontract various parts of the manufacturing or service delivery supply chain by use of temporary, fixed-term or leased workers and the self-employed and home-based workers. Nossar et al term this kind of work "precarious" or "contingent" work and note that there is a great mass of research to support the view that these arrangements generally are associated with a significant deterioration in occupational health and safety (OHS) (2004:138). Supply chain management itself is a relatively new concept (Gibson et al, 2005) with a history of less than twenty five years and a natural propensity to focus on the financial bottom line. As we will see below that may produce the result of a so-called race to the bottom amongst various providers along the chain. As we will see below that is a particular feature of the fierce competition in long distance trucking.

In April 2000 the Motor Accidents Authority of New South Wales established an Inquiry into safety matters in long distance road haulage under Professor Michael Quinlan which reported to the government in the latter part of that year. In December 2001 the report of the Inquiry was released to the public (MAA, 2001). For some time after that, the report remained under active consideration by the government before any obvious reform occurred. It has been observed elsewhere that the current New South Wales Labor government often approaches policy formulation in a series of tranches where many interests are involved (Jamieson and Westcott, 2001:177-180) and that the process of reform is then necessarily slow. This particular area of public policy is a difficult and contentious one with so many stakeholders and involving not only public perceptions of danger on the highways but also questions of the degree of regulation required of the State in a central area of economic activity. Beyond that it would be difficult to dispute the national ramifications of whatever the New South Wales government decides to do.

Briefly, the Inquiry was prompted by rapidly rising third party insurance costs in the industry and by public concerns that many truck drivers were working for excessive numbers of hours (and occasionally under the influence of unlawful substances) that put the lives of truck drivers and anyone using the public highways at real risk of injury and death. Below there is an examination of one such truck death

which captured the attention of the public and resulted in the first "fatigue" prosecution by the NSW Workcover Authority. The four terms of reference included the impact on the drivers of the clients' and consignors requirements, including tendering and pricing practices, delivery times, transport contacts between the road transport companies and the major clients and the lack of client responsibility for hours, performance and driver remuneration . The second term addressed the issue of industry enforcement of driving hours, speeding and drug use. The third term covered regulation issues and the fourth term addressed the institutional issue of whether the existing regulatory agencies with responsibility for the industry were properly co-ordinated with each other and that their resourcing was adequate (MAA,2001:6).

Long haul trucking was defined as those circumstances where a truck travels with a load on a single trip to an unloading destination of over 100 kilometres (cf Regulation 2005 below) and could therefore involve interstate and intrastate trips (MAA,2001:16).The methodology chosen by Professor Quinlan was to conduct a literature survey of all the previous state and federal government inquiries that have been undertaken in the past twenty years, to invite written and oral submissions by interested parties and to commission a representative survey of 300 long distance truck drivers (MAA, Appendix 3, 2001:355) to be conducted by Claire Mayhew, a highly experienced occupational health and safety researcher. Additional legal advice was provided by Professor Richard Johnstone (MAA, 2001, Appendix 2:334).

This article seeks to look at the reform process arising from the commissioned report and to situate the so-far limited reforms within a context of intense debate around regulation and deregulation which must be balanced with public demands for road safety and increasing popular demands for a reduction in the number of workplace fatalities generally.

SOME BACKGROUND ISSUES

Many of the principal issues raised by Professor Quinlan in his Report are not peculiar to Australia or New South Wales. In his work in the 1990's and beyond, Michael Belzer (Belzer, 2000) has argued that the major deregulation of the United States trucking industry that occurred after 1977 when the Interstate Commerce Commission removed the regulations limiting entry to the trucking industry has witnessed reduced rates for the bigger manufacturers and shippers, the widespread bankruptcy amongst trucking companies, a fall in non-union drivers pay accompanied by an increase in non-paid hours, a widening gap between union and non-union pay levels for drivers and perhaps most significantly, exacerbated the risks to truck drivers and public users of the roads in general (MAA, 2001:175). Professor Belzer also provided oral evidence to the Inquiry and is acknowledged as an important intellectual influence on the Report.

Belzer points out that payment on a mileage basis rewards driving but not other tasks carried out by truck drivers such as loading, waiting and acting to some degree as moving warehouses (MAA, 2001:175 and Belzer, 2000:139). He argues that this enables the trucking companies to shift some of the market pressure risks onto the drivers who then have a ready incentive to violate both road laws and OHS laws designed to encourage safe operations (MAA, 2001:175). The Report adopts Belzer's research connection between reward or payment systems and levels of safety (MAA,2001:176). The Report notes that similar price squeezes have occurred in an increasingly competitive road transport market in Europe where serious concerns about social costs and public safety have been expressed (MAA, 2001:177).

Regulation and deregulation were central to the Report as they are to all debates concerning OHS related matters (Gunningham and Johnstone,1999). While Belzer attributes the US situation to problems associated with deregulation, the Report concentrated on regulatory failure in New South Wales (and by implication across Australia) and argued strenuously for increased regulation or reregulation by the

state. The extent to which this general approach runs against the fashion for deregulation or industry self-regulation may explain the government's measured and slow reaction.

The State is said to be in retreat and more particularly the post World War Two welfare state is said to be shrinking. Much of this shrinkage must be accredited to the rise and rise of neo-liberal political and economic thinking that has dominated debate in most of the English speaking world over the past twenty-five years or so (Jamieson, 2005: 69). Some of this deregulation talk has, however, been described as more rhetoric than reality (Parker, 2002:12-13) but nevertheless increased regulation in any sphere of economic life is seen within the popular debate to be stifling productivity and the natural operation of the market. A fashion for "self-regulation" is evident. This self-regulation has been part of the OHS debate in the Anglo-legal world since at least the release of the British Robens Report of 1972 and has been labelled a failure by some writers (Tombs, 1995: 349). Tombs goes on to suggest that the self-regulation proposed by the Robens Committee was really posited on the existence of strong trade unions (1995:350) and that in the wake of their glory days the power of capital at the workplace has no counter balance and that power is something that is critical to any realistic discussion of regulation at the workplace (2002: 121). He is scathing in his discussion of "responsive regulation" and its supporters (see Ayres and Braithwaite, 1992) and of Braithwaite's later attempt to appeal to "communities of regulation" which he mockingly describes as a kind of regulatory "third way" (2002:123). According to Tombs self-regulation is no regulation at all and enforcement by a State agency is necessary if OHS laws are going to have any efficacy at all. He writes:

Most fundamentally, regulation exists because in its absence, as Historical record demonstrates, the result is the wide-scale production of death, injury and illness, destruction and despoliation, not to mention systematic cheating, lying and stealing (2002:114).

With this view the writer humbly agrees. Using more temperate language, Professor Quinlan opted for more and better regulation in his report as we shall see below.

THE NATURE OF THE PROBLEM

The Report noted that road haulage is the major form of land transport in Australia and that its proportion of total freight task is increasing. This mirrors the situation in North America and Europe (MAA, 2001:36). The intensely competitive nature of the industry puts huge pressure on companies to maximize returns and achieve cost savings wherever possible. Entry to the industry is relatively easy and a significant number of workers in the industry are in fact owner/drivers. Competition exists not just between the fleet owners and the owner/drivers but also between both of these groups and their client shippers who may or may not be also engaged in running their own fleets (MAA, 2001: 37). About 80% of interstate road freight travels through New South Wales but given the geographic facts, problems for New South Wales are also problems for Victoria and Queensland. Freight rates have declined in recent years and as there is a close relationship between this and payment systems for drivers it is not surprising that drivers' rates have actually fallen (MAA,2001:38; cf Belzer, 2000:150). As Belzer has pointed out there is a real relationship between falling rates of return for trucking companies, falling wage levels for the workers and higher rates of safety failure in the industry across the board (Belzer,2000 generally).The Report lays much of the blame for this at the feet of the client/consignor group who because of the nature of the so-called chain of supply/ responsibility are not easily caught in practice in existing OHS or other legislation although they are clearly within the ambit of those acts (MAA, 2001, Appendix:339 and 342).

Significant space in the Report was devoted to health and safety risks in the industry (MAA, 2001:39-101). While truck driving is by far one of the most dangerous occupations in Australia in terms of serious injury or death (MAA, 2001:52), most persons killed in fatal accidents involving heavy vehicles are members of the public (MAA, 2001: 39). The Report concluded:

that while the safety performance of articulated trucks shows a substantial overall improvement since the late 1980's the record is by no means as outstanding as some submissions purported and indeed since the mid 1990's little improvement can be detected. Further, even in terms of per kilometers travelled articulated trucks still account for more than three times to (sic) number of fatalities and fatal crashes as all other vehicles (MAA,2001:47).

The Report then went on to note that the fatality rate per 100 million kilometers travelled by trucks in Australia is 1.75 times the Finnish rate and 1.85 times the US rate (MAA, 2001:47). Unsurprisingly there is a relationship between the long hours worked by truck drivers (whether employees or owner/drivers) which may consist not only of long periods actually on the road but also of lengthy time waiting to load and unload, sleep apnea (related in no small part to widespread driver obesity), fatigue and safety performance (MAA, 2001:69-74). Speeding amongst truck drivers is another area of public concern (MAA, 2001: 74-76) as is the widely reported use of stimulant drugs (MAA, 2001: 76-81). If these problems were not serious enough, submissions to the Inquiry reported high levels of marital breakdown and significant problems in balancing work and family responsibilities (MAA, 2001: 85-87). The Report noted two recent UK cases involving hours issues and the work/family dilemma (MAA, 2001:87. Also see *Edwards v London Underground* (1998) IRLR 364 and *Cowley v South African Airways* 41 *Discrimination Case Law Digest* 2). Enforcement of road laws and OHS laws was also identified as a problem as was the matter of regulation generally (MAA, 2001:182-239 and 272-294; also see above concerning regulation issues).

These industry characteristics are not inconsistent with the findings of Belzer in his study of the American scene.

THE INQUIRY RECOMMENDATIONS

The Report called for more or better regulation. External regulation rather than self-regulation was put forward as the much preferred alternative. The Report noted:

Transport operators, drivers and other parties like consignors should be encouraged to take a more responsible approach. However, as many parties made clear, this was only likely to occur in the context of vigorously enforced external regulation that lifted the baseline of safety performance and targeted those operators etc undercutting legitimate operators trying to do their business in a professional, legal and ethical manner (MAA, 2001: 295).

Specifically the Report calls for the creation of an Industry Code of Practice with four principal arms.

The first is the establishment of a Long Distance Trucking Safety Authority in New South Wales charged with the job of co-ordinating a strategic and effective compliance system that will ensure better industry/OHS outcomes (MAA, 2001: 296). This Authority would also encompass a small inspectorate which could make targeted prosecutions based on traditional road transport and industrial relations powers (MAA, 2001: 300). The less preferred option is to establish a Permanent Taskforce inside the Motor Accident Authority (under whose auspices the current Inquiry took place). The thinking is perhaps not as explicit here but it could have been that the Report writer had limited confidence in the

capacity of the existing authority to devote enough resources to the particular problems of the trucking industry when its principal focus might be articulated as managing the third party motor vehicle insurance issue for the government and keeping it off the front pages of the metropolitan press. Beyond that a dedicated agency is necessarily more likely to maintain focus on a particular problem and the problems of the industry as articulated above go well beyond a simple focus on road accident statistics. Indeed it is a cardinal point made in the Report that too often in the past there has been a misplaced focus on bad public outcomes (eg major road crashes with high attendant public user fatalities) with little or no discussion of the commercial practices and chain of supply/responsibility issues that lead drivers to work such long hours and in such dangerous conditions (MAA, 2001: 18).

The second arm of the Industry Code of Practice consists of a compulsory licensing system to be implemented by the Long Distance Trucking Safety Authority (MAA, 2001:301) that would encompass operators (including owner/drivers), freight forwarders, consignors and brokers/agents and would ensure that all of these parties meet basic business skills, OHS and other performance standards (MAA, 2001: 301-304). The licensing fees would clearly go some way towards funding the Authority.

The third arm of the Code would see the abolition of the current log-book system of monitoring drivers' behaviours. The Report recommends the creation of a Safe Driving Plan or Safe Driving Method Statement, copies of which would be both signed and held by the transport company and the client/consignor. These Plans would apply to all truck one-way trips of more than 100 kilometres in New South Wales and whenever other trucks travel more than 100 kilometres in New South Wales (MAA,2001: 304-308). Importantly, these Safety Plans would be established under the umbrella of the Occupational Health and Safety Act 2000. The Report argues that the new plans would be less easily forged than the existing log-books as they require signatures at more stages in the transaction and that there is less opportunity for collusion. The Report also argues that the OHS legislative sanctions are potentially more powerful than those currently found in the chain of responsibility style road legislation (ie Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999) based on the legal opinion of Professor Johnstone (MAA, 2001, Appendix: 335). Failure to comply with the Safety Plan arrangements would constitute a prima facie offence under the general duties provisions of the OHS legislation as well as a breach of the regulation concerning the Safety Plans in its own right.

The fourth arm of the Industry Code of Practice would be to attack the industrial relations problems by enforcing minimum award rates for employee drivers and introducing safety based payments for owner/drivers (MAA, 2001: 309). The Report notes that better resources would be necessary to enforce the existing minimum award rates and that other state-based industrial relations jurisdictions would need to copy these. Similarly the New South Wales Industrial Relations Commission would need to set the minimum safety rates for the owner/driver component of the workforce and this too, would need to be copied in other jurisdictions. This approach needs to be contrasted with evidence brought to the Inquiry by the Victorian/Tasmanian Branch of the Transport Workers Union which submitted that recent changes to the federal legislation had meant that payment arrangements in both certified agreements and Australian Workplace Agreements were incompatible with the standards laid down in both road transport and OHS legislation (MAA, 2001: 139). The Inquiry, not surprisingly, regarded this evidence with real concern, more particularly as it had previously been tendered to a Parliamentary committee (MAA, 2001: 140 referring to House of Representatives, 2000).

Other recommendations supporting the four arms of the Industry Code of Practice include placing a ban on the use of bonus /penalty payments for drivers which clearly have an effect on safe driving practices (MAA,2001:308) and protection from civil liability for police and other officials when trucks are grounded (MAA, 2001:311).

The final important recommendation involved the amendment of s 8(2) of the Occupational Health and Safety Act 2000 by removing the words "while they are at the employer's place of work" which would make it resemble s 22 of the Victorian Act and that a similar amendment should be made to s 9 which relates to the duties of a self-employed person (MAA, 2001:308). The object of this would be to facilitate the creation of the Safety Plans described above and increase the likelihood of broader patterns of internal responsibility within the industry.

In the period after the release of the Report other events on the highways were to galvanize the attention of the public which drew together industry and OHS concerns directly with those of the travelling public.

PUBLIC AND PARLIAMENTARY CONCERNS

Public concerns around issues of death and injury in the workplace are not a recent phenomenon and had seen expression in the nineteen nineties as the then new Labor government in New South Wales moved towards the reform of the Occupational Health and Safety Act 1983 (Jamieson and Westcott, 2001). The problem of death and serious injury in the workplace did not go away with the introduction of the new Act in 2001 and in 2003 a parliamentary committee was charged with the task of looking into the problem along with the way in which these matters were handled by Workcover. This so-called Nile inquiry sat at a time when considerable interest in the concept of industrial manslaughter was being actively canvassed by a number of the stronger New South Wales trade unions resulting in workplace death amendments to the principal legislation but falling short of industrial manslaughter.

The Nile Committee received significantly contradictory evidence concerning road safety and truck driver deaths arising from road accidents and in the light of this specifically noted that it would rely on the material contained within what it described as the Quinlan Report (Nile, 2004:48). In the course of the Nile hearings the Committee was told by the trade union representative (from the Transport Workers Union) that according to official state government figures sourced from the Roads and Traffic Authority 958 transport workers had been killed on the roads in New South Wales between 1998 and 2002 (Nile,2004:47). The employer representative cited figures that suggested the road safety record in the industry was very much better than that (Nile, 2004:48) but clearly the Committee was not convinced. Committee was not convinced. Recommendation 10 of the Nile Committee (2004:51) was to the effect that "the government seek to amend the OHS legislation to facilitate a greater role for Workcover in the prevention of serious injuries and fatalities in the road transport industry in NSW". Concerns held by the Committee based on Professor Quinlan's work that the Workcover Authority was not active enough in the criminal prosecution of road deaths of long distance truck drivers (Nile, 2004: 50) were alleviated to some extent by the decision in the NSW Industrial Relations Commission in Court Session of Vice President Walton J in the case of the death in 1999 of Mr Darri Haynes on 21 October 2004 (Inspector Campbell v Hitchcock [2004]NSW IR Comm 87).

In this case, the first prosecution arising from a long distance truck driver road death, the employer was found guilty of the charges brought by the Workcover Authority and ultimately fined \$42,000 plus significant costs running into the hundreds of thousands under the Occupational Health and Safety Act 1983. It was clear that the defendant employer had not instituted a safe system of work amongst his employees and in evidence it came out that the mandatory log books required by the then regulations to monitor truck drivers could in no way monitor fatigue brought on by excessive night driving, very tight delivery schedules, lack of appropriate sleep and the consumption of illegal methamphetamines to keep awake, if not alert. In evidence it appeared that in the 48 hours before his eventual death Mr Haynes had had no more than 3 hours and 5 minutes of continuous rest. There was no evidence that that period had been spent asleep. The other damning evidence was that the drivers employed in this company owned by

Mr Hitchcock were paid according to the number of kilometres travelled in any 7 day week and similarly to the situation reported by Belzer (see above) there was no payment for waiting, loading, unloading and washing of the vehicles. Clearly in these circumstances drivers would attempt to maximize their earnings on the road by excessive driving and resort to illegal drug use. The decision made clear the failure of the log-book system that was designed to provide some OHS protection for long distance truck drivers in New South Wales.

THE REFORM PROCESS SO FAR

June 2005 saw the promulgation of the Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 which amends the Occupational Health and Safety Regulation 2001 under the Occupational Health and Safety Act 2000. The regulation quite specifically addresses the place of long distance truck drivers in supply chains and the necessary pressures that this economic arrangement places on those drivers. The regulation, which will operate from 1 March 2006, requires employers, head carriers and consignors/consignees of freight in New South Wales to assess the health and safety risks of driver fatigue for drivers of heavy trucks over distances of more than 500 kilometres and to take steps to eliminate or control those risks. Driver fatigue management plans will need to be drawn up by employers, head carriers and consignors/consignees. Owner-drivers will be covered by means of the inclusion of the head carriers and consignor class of entrepreneurs. This regulation largely mirrors the Safety Plan suggestion made in Professor Quinlan's Report of 2001. The failure of the log book system he criticized in that Report was very clear in the case of the death of Darri Haynes detailed above.

As to the recommendation concerning payment systems and broader industrial relations reforms designed to assist long distance truck drivers contained within the Report of 2001, the sweeping changes contained within the Federal workplace legislative package of 2005 would seem to make unlikely reform in this area as suggested by Professor Quinlan. At the time of writing (late February 2006) the NSW branch of the Transport Workers Union was frantically attempting to investigate other legal avenues for protecting the livelihoods and lives of its members.

As this regulation falls under the broader OHS legislative purview of the Workcover Authority, the recommendation that a separate specialist Authority be established seems to be destined to go nowhere. In the annual reports of the Motor Accident Authority after 2001 the issue of road safety and long distance trucking barely rates a mention. The focus of that agency remains the cost of insurance for the majority of road users.

CONCLUSIONS

In a long history of inquiries into road safety in the long haul truck industry the Report of 2001 stood out for the clear links it made between industrial relations matters (ie payment systems) and actual road safety and OHS outcomes. It did not gloss over the problems of implementing its recommendations. Many of these concerns were reiterated in the Nile Report of 2004. One can only hope that its principal recommendations which depend on currently deeply unfashionable further regulation of a critical part of the national economy are not ignored and that further reform beyond the promulgation of the 2005 Regulation will occur. Immediate improvements in the way in which long distance truck drivers are remunerated do not seem likely and from the work carried out in the US by Belzer it is this issue that will drive a real improvement in trucking OHS. Road deaths of professional drivers and the travelling

public in New South Wales will continue until the contest between regulation and deregulation is decided in the favour of the regulationists.

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