

**Submission
No 27**

REVIEW OF ROAD SAFETY ISSUES FOR FUTURE INQUIRY

Organisation: Transport Workers' Union of NSW

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REVIEW OF ROAD SAFETY ISSUES FOR FUTURE INQUIRY

StaySafe (Joint Standing Committee on Road Safety)

Proposal of the Transport Workers' Union of NSW

1 Introduction

- (1) This is the submission of the Transport Workers' Union of New South Wales (**TWU**) to the StaySafe (Joint Standing Committee on Road Safety) (**Committee**) into road safety issues for future inquiry.
- (2) This submission is authorised by TWU State Secretary, Richard Olsen.

2 Proposal of safety issue for future inquiry

- (1) The safety of all road users in New South Wales is inextricably impacted by safety in the heavy vehicle industry.
- (2) Whilst heavy vehicle safety has been a long-standing concern of transport safety regulators, policy, road transport authorities, truck drivers and the transport sector worker representative groups such as the TWU, the heavy vehicle industry sadly remains Australia's deadliest.
- (3) Truck drivers have a 13-fold higher risk of fatal injury than other workers, and more than three quarters of fatalities in truck drivers are due to vehicle crashesⁱ.
- (4) Of course, the heavy vehicle industry does not operate in a vacuum, and the involvement of a heavy vehicle is associated not just with more severe injury and a higher likelihood of death for truck drivers but also for other commuters.
- (5) Nearly 60 per cent of people killed in heavy vehicle truck crashes are occupants of light vehicles, and a further 20 per cent are vulnerable road users including motorcyclists, pedal cyclists or pedestriansⁱⁱ.
- (6) This is an issue that is only going to worsen on current projections. At present, road freight transport is critical to the national productivity and welfare of Australia. Due to the dispersed population over a vast land area, Australia is heavily dependent on road transport, with over 75 per cent of non-bulk domestic freight carried on roads. However, the demand for on road freight is expected to increase with a predicted doubling of freight demands from 2010 to 2030, meaning more and more trucks on our roadsⁱⁱⁱ.
- (7) When it comes to safety, it is well known that there are a number of key factors which contribute to poor outcomes in the road transport industry, namely: speeding, fatigue (the two most common), drug use, poor vehicle maintenance, inattention and road or environmental conditions.
- (8) Further, it is now beyond question that there exists an explicit link between poor rates of pay and methods of remuneration and a heightened likelihood that a driver will be forced or incentivised to engage in those unsafe behaviours, such as speeding, driving fatigued, using stimulants to stay awake and failing to maintain their vehicles^{iv}.
- (9) Whilst government (including in New South Wales by way of this Committee) have previously undertaken inquiries into heavy vehicle safety, they have tended to

adopt a reductionist approach when identifying causes of truck crashes, focussing on immediate symptoms only (for example, fatigue) and targeting preventative strategies at drivers (for example, by looking at the use of in-cab technologies aimed at jolting drivers awake, or by undertaking very public 'blitzes' of heavy vehicle drivers ultimately resulting in the drivers receiving fines, charges and infringement notices)^v.

- (10) However, the driver-focussed approach is clearly failing.
- (11) The Government must focus on addressing the root causes of heavy vehicle crashes and truck driver safety to reduce the burden of fatal injury.
- (12) The harsh reality is that if the root causes of unsafe behaviour in the heavy vehicle industry are not addressed, the death toll from heavy vehicle crashes will continue to tick over and government's vision of achieving zero deaths on New South Wales (and Australian) roads will remain just that, a vision^{vi}.
- (13) The TWU, as the largest representative of heavy vehicle drivers in New South Wales, proposes that the Committee inquire into the root causes of unsafe outcomes in the heavy vehicle industry with a focus on the following:
 - (a) The evidence which exists showing the explicit link between rates of pay and methods of remuneration for truck drivers, and road safety outcomes;
 - (b) The viability of an independent body with the power to set and review rates of pay and methods of remuneration for the heavy vehicle industry;
 - (c) The failure of driver-focussed enforcement and compliance;
 - (d) How true supply chain shared responsibility may be achieved;
 - (e) The adequacy of rest stops and facilities on New South Wales roads; and
 - (f) Any other related matters.

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ⁱ Monash University, May 2018, 'Driving Health # 2: Work-Related Injury and Disease in Australian Truck Drivers'.

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} See, for example:

- *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, the National Transport Commission with the Honourable Lance Wright QC and Professor Michael Quinlan, October 2008:

"This Review finds that the overwhelming weight of evidence indicates that commercial/industrial practices affecting road transport play a direct and significant role in causing hazardous practices. There is solid survey evidence linking payment levels and systems to crashes, speeding, driving while fatigued and drug use. The evidence has been accepted and indeed confirmed by Government inquiries, coronial inquests, courts and industrial tribunal hearings in Australia over a number of years. The association between remuneration and safety applies to both employed and owner drivers."

and

"Economic factors create an incentive for truck drivers to drive fast, work long hours and use illicit substances to stay awake. These economic factors include:

- *Low rates of pay; incentive based payment methods (such as per kilometre or per trip);*
 - *Unpaid working time; and*
 - *Other factors include the hyper-competitive nature of the industry and the low bargaining power faced by drivers.*
- *National Road Freight Industry Inquiry, Report of Inquiry to the Minister for Transport, Commonwealth of Australia, (1984), Canberra;*
 - *Long Distance Truck Drivers: On road performance and economic reward*, December 1991, Federal Department of Transport and Communications:

"Any deviation from a fixed salary tends to encourage practices designed to increase economic reward which are not synergetic with reducing exposure to risk".

and

"The Federal Department of Transport and Communications (Commonwealth) study into on-road performance and economic reward found: 'It is the rate per se which acts to stimulate road practices in various forms in order than an acceptable level of total earnings (net of truck-related expenses) is obtained. Any deviation from a fixed salary tends to encourage practices designed to increase economic reward which are not synergetic with reducing exposure to risk.

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- Beyond the Midnight Oil, An Inquiry into the Management of Fatigue in Transport, House of Representatives Standing Committee on Communication, Transport and the Arts, October 2000, Canberra:

“Risks are compounded by the commercial imperative on transport operators to maximise the return on their investment, the demands of customers and by the pressure this places on transport workers to undertake longer hours with fewer rest breaks.”

- Professor Michael Quinlan, *Report into Safety in the Long Haul Trucking Industry*, A report Commissioned by the Motor Accidents Authority of New South Wales, 2001, Sydney:

“Customer and consignor requirements on price, schedules and loading/unloading and freight contracts more generally, in conjunction with the atomistic and intensely competitive nature of the industry, encourage problematic tendering practices, unsustainable freight rates and dangerous work practices.”

- R Johnstone, ‘The Legal Framework for Regulating Road Transport Safety: Chains of Responsibility, Compliance and Enforcement’, March 2002, National Research Centre for OHS Regulation, the ANU;
- C. Jones, J. Dorrian and D. Dawson, ‘Legal Implications of Fatigue in the Australian Transportation Industries’ (2003), 45 *JIR* 344 at 351;
- *WorkCover Authority of NSW v Hitchcock* (2005) 139 IR 439, per Walton J:

“30 The evidence demonstrated that fatigue is a significant risk to the safety of long-haul truck drivers and to anyone on or in the vicinity of the highway. The evidence also demonstrated that the regulatory system established to avoid the risk of fatigued truck drivers was not wholly effective: the drivers who gave evidence at the trial were unanimous in their opinion that all drivers knew various ways of “beating the system”, and that this was simply a necessary part of their job. Indeed, Mr Richard O’Neill, Safe-T-Cam Co-ordinator for the RTA, agreed under cross-examination that truck drivers use various techniques to avoid Safe-T-Cam sites. The following paragraph from one of the character testimonials (written by a long-haul driver of 9 years’ experience) annexed to Mr Hitchcock’s affidavit is illustrative of the point:

In an industry where there are poorly maintained trucks, impossible deadlines, and rampant disregard for the law, it is a pity that Jim Hitchcock will no longer be involved in the industry. [Emphasis added].

31 In the case of the Company’s operations, it could be said that the regulatory system was almost wholly ineffective to avoid the risk of fatigued drivers: the Company’s entire system relied upon abuse of the log-book regime. Furthermore, the evidence suggested that work practices in breach of the regulatory system were not limited to the Company.

32 Moreover, a large number of long-distance truck drivers die each year in road accidents in New South Wales - during these very proceedings, one of the witnesses (a long-haul truck driver) died in a highway accident - and a proportion of these accidents is fatigue-related.”

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- *R v Randall John Harm*, District Court of New South Wales, 26 August 2005, per Graham J:

“In the present matter, the statement of facts refers to safety cams and log books. Restrictions on the maximum speed of heavy vehicles have also been implemented. Despite those measures, heavy vehicle truck drivers are still placed under what is, clearly, intolerable pressure in order to get produce to the markets or goods to their destination within a time fixed, not by any rational consideration of the risks involved in too tight a timetable, but by the dictates of the marketplace. Or, to put it bluntly, sheer greed on the part of the end users of these transport services. The time has come when those who are the beneficiaries of the interstate transport industry must take some blame for what happens at the sharp end of the interstate transport industry. The drivers are put under intolerable pressure. They drive when they are too tired, and when that becomes too difficult, they take drugs to try and prolong the state of awakening, albeit with risks that it can impede their concentration and actually make things worse.

When a collision occurs, such as happened here, who ends up in the dock? Who ends up behind bars? Not the operators. Not the transport companies. Not the big corporations who are the people who use those transport services. But the driver. It’s the driver who goes to gaol. The companies still make the profits. The drivers become another casualty of the heavy transport industry. Their lives are ruined, in many ways just as badly as many of the victims’ lives are ruined, by the imperative greed which lies at the heart of the interstate transport industry. Case after case in the Courts demonstrates the inadequacy of the government’s response to these problems and the inadequacy of the transport industry’s own response to these problems.”

- NSW Deputy Coroner Dorelle Pinch expressed the consequences of this heightened ‘exposure to risk’ in her 2005 findings regarding the tragic deaths of a number of employee drivers Anthony Forsythe, Barry Supple and Timothy John Walsh. The Deputy Coroner highlighted the impact of inadequate rates:

“As long as driver payments are based on a (low) rate per kilometre there will always be an incentive for drivers to maximise the hours they drive, not because they are greedy but simply to earn a decent wage.”

- In *Re Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (No 2)* [2006] NSWIRComm 328, the Full Bench of the Industrial Relations Commission of NSW said:

“We consider that the evidence in the proceedings establishes that there is a direct link between methods of payment and/ or rates of pay and safety outcomes”;

The Full Bench also noted that the following are characteristic of the heavy transport industry:

*“(a) there is widespread non-compliance with award and contract determination provisions and, in particular, underpayment of wages (a view supported by the Executive Director of the NSW Road Transport Association, Martin Iffland);
(b) it is not uncommon for transport companies, which themselves would not engage in conduct in breach of industrial instruments, to subcontract work of marginal viability to other transport companies, which are prepared to breach industrial instruments in order to make a profit;
(c) labour costs are the most significant component of transportation costs and there is an inherent incentive to achieve savings through non-compliance with*

industrial instruments or through the engagement of owner drivers or small fleet owners who are prepared to "do what it takes" to make the work profitable;

(d) the competitive pressures in the long distance sector have resulted in a situation where the major transport operators perform only a fraction of the work in the industry with the rest being contracted out;

(e) most companies performing long distance work resist enterprise bargaining because of the likelihood that an enterprise bargaining arrangement will price them out of the market by requiring the payment of labour costs measured against yardsticks other than that of financial viability;

(f) there is a link between remuneration and safety issues such as excessive hours of work;

(g) commercial pressures, most notably from major retailers, have intensified, resulting in the major transport companies tendering for contracts at very low rates and leading to the result that they subcontract out any work that they cannot perform profitably. Commercial pressure is also exercised by major retailers in the form of directed delivery schedules placing stress and, at times, unrealistic expectations on the driver actually performing the work;

(h) major retailers refuse to take responsibility for the consequences of the time restrictions that their delivery systems impose on subcontractors and major transport operators themselves contract out responsibility for the work and yet resist being called to account when things go wrong further down the chain;

(i) the transport industry is characterised by chains of successive contracting out of work with commercial power decreasing with each successive step; and

j) those higher up the chain often contract out work for the express reason of transferring responsibility for the safe performance of the work to others.

Andrew Villis, former driver, gave the following evidence to the NSW Industrial Relations Commission in that case:

"When I was required to perform excessive hours I would sometimes experience a state of mind that I can only describe as hallucinations, which I considered to be due to sleep deprivation. I would 'see' trees turning into machinery, which would lift my truck off the road. I 'saw' myself run over motorcycles, cars and people. On one occasion I held up the highway in Grafton while waiting for a truck which was not there to do a three point turn (I was radioed by drivers behind me asking why I had stopped). I estimate that I had experiences like these roughly every second day. They were not an uncommon thing for me."

Professor Michael Belzer gave the following evidence before the NSW Industrial Relations Commission in that case:

"Higher pay produces superior safety performance for firms and drivers. The precise driver-level study of Hunt suggests this relationship may be as high as 1:4"

and

"Every 10% more that drivers earn in pay rate is associated with an 18.7% lower probability of crash, and for every 10% more paid days off the probability of driver crashes declines 6.3%".

Officers of the NSW Road Transport Association gave the following evidence in that case:

Q: Can I give an example? If a company operates a payment system which rewards drivers not by time worked, but for the completion of the trip and that system doesn't adequately remunerate the driver for the time worked, that might lead to a result where the driver simply tries to complete the work as quickly as he or she can in order to maximise their income. Is that right?

A: *That's right, I agree with that.*

- 'Pay Incentives and Truck Driver Safety: A Case Study' (January 2006), *Industrial and Labor Relations Review* (59. Ind. & Lab. Rel. Rev. 205):

"The pay increase influenced safety by modifying the behaviour of current drivers. The data indicate that drivers had better crash records after the pay increase, when the analysis controls for demographic, occupational and human capital characteristics."

- Rodriguez, DA, Targa, F & Belzer MH, 'Pay Incentives and Truck Driver Safety: A Case Study', *Industrial and Labour Relations Review*, Vol 59, No. 2, January 2006:

"A 1% increase in pay rates from median level leads to a 1.33% decrease in crash risk, for those drivers currently receiving the industry median award. Extrapolation of the U-shape "pay incentive to truck driver safety" suggests increasing pay 10% to the median level can approximately reduce crash probability by around 20%."

- Professor Michael Belzer, statement in the National Transport Commission Report - *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, 2008:

"The point estimates indicate that if mileage rate were to increase to \$0.37 a mile, drivers would reduce their weekly hours to be in compliance with current regulations. At this rate, drivers are being compensated at a rate sufficient for them to be able to satisfy their income requirements without being induced to work in excess of mandated law."

- Professor Michael Belzer, excerpt from *'The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety'*, 2011:

"Higher driver pay is associated with safer operations. Clearly the more drivers are paid, and the more they are paid for their non-driving time, the less likely they are to have crashes ... if the fundamental exigencies of markets work at all, then cargo owners' need for lower price will lead to a race to the bottom and safety will suffer. Because economic forces are involved, economic solutions must be considered."

- Dr Angela Wallace, Professor Jeremy Davey and Mr Jason Edwards, Centre for Accident Research and Road Safety – Qld, Queensland University of Technology, *'Safety Culture in Supply Chains: Customer is King'*, 2012;
- Ann Williamson and Rena Friswell, 'The effect of external non-driving factors, payment type and waiting and queuing on fatigue in long distance trucking' (2013), *Accident Analysis Prevention* (58), 26-34;

A/Prof. Louise Thornwaite and Dr Sharon O'Neill, *'Evaluating Approaches to Regulating WHS in the Australian Road Freight Transport Industry'* (2016), Final Report to the Transport Education, Audit and Compliance Health Organisation Ltd (TEACHO).

^v Thornthwaite L and O'Neill S, Nov. 2016, Macquarie University, 'Evaluating Approaches to Regulating WHS in the Australian Road Freight Transport Industry' Final Report to the Transport Education, Audit and Compliance Health Organisation (TEACHO).

^{vi} A 'vision' of both the NSW Road Safety Strategy 2012-2021 and the National Road Safety Strategy 2011-2020.