

Submission
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**INQUIRY INTO PRESSURES ON HEAVY VEHICLE
DRIVERS AND THEIR IMPACT IN NEW SOUTH WALES**

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Chain of Responsibility, Where we are and Where to from here?

An Analysis by Brian Turpie former President of the LHDA

I have spent the last 40 years campaigning for a better future for our long suffering transport drivers. The problems in the Road Transport Industry can be traced back to the one, over riding root cause, Money. The industry has always been hamstrung by the ease that entrants to the industry can set up shop unchecked and without any official oversight or constraint. The fact that you can gain finance and operate a transport company or truck with virtually no training or qualifications has always led to unregulated mayhem that without fail has always transferred to our nations highways. How is that possible you might ask? Well the trouble begins with operators who run poorly resourced and under funded operations and use the drivers wages as the first bargaining chip to reduce costs. We have seen a multitude of National Business enterprises exposed for what we call Wage Theft but the Transport Industry has historically been the Wild West of Wage Theft with transport operators having written the book on how to exploit workers for financial gain. Compliance with Industrial awards and OH&S rules have never been treated with the urgency required to stamp out the illegal operating practices of the peripheral operators who have escaped scrutiny for far too long. For over 50 years transport drivers have been at the mercy of small transport operators who make up the vast majority of the transport fleet. Drivers have never had any strength at the negotiating table because they have always been fragmented and independent to their own cause allowing unscrupulous operators free reign to subvert the regulatory constraints that are supposed to protect us without fear of consequences. The rogue operators in the road transport industry have been allowed to operate outside the industrial relations regime for far too long without the checks and balances that are required and that has led us to where we are today. Where is that you may ask? Well, have a look at the evening news for starters, where tragedy on our highways unfolds at an alarming pace. 10 years ago I wrote an analysis of the road safety implications of this lawlessness for the NTC. In that analysis I pointed out that the critical point to understand was the carnage that was unfolding on our highways because the relentless push from these rogue operators would only deteriorate over the coming decades and sadly that prophesy has been coming to fruition year on year. The same problems that were with us when I wrote that analysis are still with us now and sadly they will still be with us in the next decade without a major shift in the safety focus in the heavy transport sector

One of the suggestions in that analysis was for Government to implement a National approach to transport through a body that would oversee the the transport industry across State Borders and for a uniform code to become seamless across all jurisdictions. That objective has come to fruition through the National Heavy Vehicle Regulator although that name is somewhat of a misnomer because one State and one Territory are still refusing to sign up to the national code The NTC must make it a prime objective to have the West Australian and NT governments sign up to the NHVR to make it it a truly National Regulator.

The other significant objective for the Regulator was to implement a comprehensive Chain of Responsibility program to combat the apparent abrogation of Corporate responsibility to the driver. To its credit the Regulator has taken this task forward in leaps and bounds but still the question remains, Why is it still just the driver bearing the brunt of the culpability? Lately

there has been a push back from the Transport Industry claiming COR was unfair because it didn't include the driver in the chain and that IS the entire point of COR.

Until the implementation of COR the driver was rather hamstrung in his own defence when things went awry out on the highway because the Employer had always enjoyed a dubious Reasonable Steps defence that was not open to a driver in court proceedings or in roadside intercepts. It was traditionally only the driver who wore the consequences of any and all transgressions.

For my entire career in road transport the driver has always been the target of Authorities and Law Enforcement agencies with relentless Strategies implemented to contain the endless stream of road carnage that ensues through the overt pressure applied to drivers to break the law in order to meet the unrealistic deadlines and the "just get it done" Attitude that has always pervaded the freight industry. Freight Forwarders, Customers and Truck Owners all exert overbearing influence on the driver to meet demanding schedules and time frames all the while refusing to accept any responsibility when things go wrong. The age old chestnut "I had no idea of what the driver was doing" has finally been put to the sword with technological advances now showing real time assessment of where the trucks are, what they are doing and the ability for a Transport Operator to be in constant touch with drivers and their vehicles in an instant in real time means that sorry old excuse no longer applies. It is a well known fact in the Transport Industry that drivers are being encouraged, pressured and bullied into doing whatever it takes to get the job done legally, illegally or anywhere in between. I have witnessed the aftermath of this subversive tactic so many times with the driver either losing his life or his family when it turns to mud. I have always counselled drivers to be aware that, at the end of the day it will be them standing before the Magistrate trying to explain why they are there and why they did what they did. Employers in the Transport Industry have enjoyed the benefit of a one way street with the option of a reasonable steps defence available to them far too long, a defence not available to a driver .

The truck owner sets the timetable for the driver, he sets the load schedule, he also sets the remuneration so a driver has only two options, do the job or find another job. I can personally vouch for this, as throughout my career I have worked for over a dozen Transport Employers and because I refused to be intimidated into breaking the law I was forever looking for a new job. Drivers have historically been exposed to the wrath of an Employer due to the often lax scrutiny that has been applied to compliance with industrial awards dealing with the Transport Sector. You were either prepared to break the law or find another job it was always that simple equation. They say that the only thing that changes in the Road transport Industry is the date. The new century has been a never ending blur of rules and regulations that have been almost as useless as the paper that they are written on because well known Overnight Express Companies have completely subverted the the intent of Chain of Responsibility legislation by stealth. For instance

How do they do this? Well, if a driver doesn't comply with this deadline system they call their Contractor and tell them not to send that driver to them again, problem solved by stealth.

use a sub-contract carrier on this run and in turn that contractor places a driver in the truck for 1.5 hours during the journey so that it appears to be running non-stop Legally but in reality the main driver is still sitting in the passengers seat during the time the second driver is in the vehicle. Is that really a kosher business practice or just another sham to subvert the COR and Fatigue Regulations? This has resulted in Sub Contract fleets telling drivers they should not Stop at all in transit. This is just the tip of the iceberg, most Express Companies now have 24 hour call centres where they call drivers for so called 'welfare checks' at 2am, 3am, 4am but the true reason can't be much plainer, they are calling to make sure the truck hasn't stopped for any reason. Care to watch the result of this pressure on the 6 o'clock News any night and see the carnage on our Highways overnight? The reason trucks are continually running off the road and crashing? The constant overt and covert pressure to keep driving/working that is applied relentlessly is never ending for us and is always at the forefront of the decisions that can change our lives forever.

The real downside of paying drivers on LongHaul by the Kilometre is the fact that it's then promotes driving whilst fatigued because if you stop driving you stop getting paid. A driver can spend all day in a Capital City loading, unloading, queuing and attending to the multitude of jobs that need to be undertaken in a day all while not being paid. Yes, you read that right; LongHaul drivers are only paid for the kilometres they Drive, so after a days unpaid work come nightfall he is faced with the pressure of having to drive all night to the next Capital City to earn his income. Is that not the greatest recipe for disaster you've have ever heard of? Well that is the reality that we have faced for way too long and it is well past time to finally eliminate pay by the kilometre for all drivers and eliminate the farce that we call Overnighting once and for all. The Fair Work Commission boasts that it put an end to trip money on long distance work but the truth is they just allowed the Industry to rename it Paid by the Kilometre

The problems facing the Transport Industry today are nothing new to the seasoned drivers working at the coal face, their lot has been in short focus for far too long and now the intensity has shifted slightly to Chain of Responsibility outcomes that have been ignored for too long. Chain off Responsibility is now being questioned by the Major Transport associations who challenge the idea of scrutiny being applied the the transport industry. For the first time in history the Industry is facing the enormous scrutiny that driver have suffered on their own for 5 decades. The industry has always been willing to allow the focus to be solely on the driver. While the Industry shield themselves from the wrath of the Legislation that is supposed to protect us all from the carnage that ensues with lax standards of investigation at the top of the chain. So again the question has to be asked, where to from here? Well, for starters its way past time to call out this obnoxious industrial behaviour for what it is, Bullying, Intimidating and Illegal. The carnage on our Nations highways has been swept under the carpet for too long, it Must End Now. If Regulators, Government and the Transport Industry are serious about ending the carnage on our roads then the truth must be faced head on without fear or favour.

We are well into the 21st Century yet still we dance around the real problems that we face hoping that they will go away or not be revealed to the public at large but that's a fools errand

and always has been. Every day we witness tragedy on our roads while Authorities huff and they puff but they hide from the truth, that the never ending toll of human loss will march on unabated, relentlessly while ever we ignore the problem that is the root cause of all the carnage.

Over the last 5 decades there have been Five major studies to the Transport industry with the focus primarily on the Long Haul sector. Prof. Micheal Quinlan and the HON. Lance Wright QC produced a detailed analysis of the Long Haul sector in 2001 that established a clear link between Payment systems in road transport and road safety especially in the long haul sectors. Prof Anne Williamson conducted a study into road transport in the 1990's that also came to the same conclusion while another report "Burning the Midnight Oil commissioned by the NSW Government also found a direct correlation between Payment Methods and poor Road Safety outcomes. A world renown study into the issue of Heavy Vehicle Road Safety undertaken in the United States by Micheal Belzer (2002) found that an increase in driver remuneration of 10% led to a significant decrease in accidents and incidents in the Road Transport sector. Some Transport Industry Associations have consistently denied this link yet, to date they have never offered a single study nor report that substantiates their claim. To the vast majority of drivers and owner drivers the link between pay and safety is an indisputable fact and one that they have all experienced first hand; that is the quandary that confronts a driver who has been working all day yet to make his pay he is confronted with the dilemma of having to keep driving in order to put bread on the family table. All the denials from those with a vested economic interest in conserving the status quo ring hollow in the cab of a truck at 3am when you are dead tired but your delivery in the next Capital City is still 300 kilometres away.

Some years ago there was a push to rate Transport Companies by a star system with 5 stars being the top rating and the object was to have customers in the Transport Chain to look for 5 star operators to fill their Transport and logistics needs. Sadly that concept never got off the ground but I think that the time is right to once again look for ways to reward Companies that operate legally, professionally and morally. To once again strive for excellence in Road Transport should be the overriding object of COR and one the ways to do this would be to target non-compliant operators with a campaign to identify them through a drivers hot line. The main reason drivers are reluctant to report misbehaviour and non-compliance is because the rules are too difficult for a driver without resources to deal with in real time. The onerous rules and obstacles at the Fair Work Commission fail to protect drivers from unscrupulous operators and there are no incentives for a driver to stick his neck above parapet lest he be shot down and unceremoniously dumped from his job.

Drivers have always been fair game to a system that favours the Employer and the Customers who have historically coerced, threatened, badgered drivers to do whatever it takes to get the job done legally or not. The problem is the driver has always been expendable and the relentless push for more work for less pay has painted the Industry into an dire position with driver candidates at historical lows. Who wants to work for poor rates, arduously long hours and time away from home for lengthy periods in this day and age with the ageing workforce retiring in record numbers new drivers are very hard to come by.

Every night on the news there is yet another report of an over-height truck blocking a tunnel or a heavy vehicle losing a load or a truck rolling over and the focus is always on the driver and people ask the obvious question why is this happening so often? Don't these drivers know the height of their vehicle or how to secure their loads? Well that is only partly true because the reality is that there are now so many inexperienced, poorly trained drivers flooding into the Industry today that it has seasoned drivers worried for their own safety. One obstacle not being investigated or resolved is immigrant drivers with poor English skills simply not understanding what road signs are telling them ie: Over-height vehicle signs that alert a driver that their vehicle exceeds the height limit for an approaching tunnel. You can't pass the blame onto those drivers as the lax standards and testing regimes are not the fault of the driver as sadly they are lambs to the slaughter. Transport associations have lobbied long and hard for a relaxation of driver testing regimes across the country in order to keep up the fodder for an Industry unwilling to come to terms with failed policies being the outcome that they themselves have fostered, today you only have to attend a registered driver training company in order to upgrade your licence from a car to a Rigid and on to a semi, then to Multi-Combination in less time than it takes to fill in the online forms. It has led to this situation that confronts the Industry every day ie: leave a truck idle or put an inexperienced new driver in it to keep the wheels turning. You reap what you sow is an oft used term to describe the end results of this type of folly but it is certainly an apt description of our current heavy vehicle driver licensing system.

So, where to from here is the question; the answer lies in Government, Regulators and Industry looking long and hard at the evidence that has been provided by the experts, seasoned drivers and history. Clearly that evidence shows overwhelmingly that only focusing on financial expediency over the safety, well being and sustainability of the entire Industry will yield the same tired results we have put up with for 50 years. It is past time that we start to examine the truth of the current state of the transport industry. The latest decline started with the turn of the Century and begins with the push to overhaul Fatigue Management regulations that commenced in the early 2000's when Employers were seeking to extend driver hours to cover the explosion of B-Doubles in the freight task. What we saw happen with B-Doubles was a ticking time bomb that has slowly permeated through the entire transport network, that time bomb is work hours, for you don't need to be a Rhodes Scholar to understand that when we progressed from Semi trailers to Multiple-Combination trailers the time needed by drivers to load, unload, hook up-unhook is a minimum a 20% increase in work time spent attending to the task. Previously drivers were spending around 12 hours a shift driving, loading, unloading and attending to the job requirements. With the uptake of B-Doubles the Industry and Employers still wanted the same turn around times that semi drivers were delivering even though B-Doubles were not being used on Linehaul only, as first envisioned, but were being predominately slotted into the general freight task and expected to run the same overnight routes as the rest of the fleet. When they were first touted as only to be used depot to depot and operated by the cream of the driver pool it soon became the norm for under-skilled drivers to be put in charge of them because the older, wiser drivers refused to work 20% longer for no additional pay. Yes you heard that right a B-Double driver is only paid an extra 1.5c per kilometre, that equates to around \$12 a day extra for all the additional hours worked. We wonder why truck driving is now a taboo subject among young people who see the long hours, the time away from home, loved ones and friends with such poor remuneration as a real turn off. The latest shift to allowing Road Trains unfettered access

to th highway network will no doubt exacerbate this problem two fold, the fruit of this folly will become evident each year as more and more ill-equipped poorly trained driver are thrown int the pool to sink or swim.

Without a transformation in the Industry addressing the long hours for little reward, the constant scrutiny paced on drivers and the overzealous policing the future looks as bleak as it always has in the past..

Brian Turpie.

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