

# **Fair Work Legislation Amendment (Closing Loopholes) Bill 2023:**

## **Road Transport Reform - Submission from the TWU to Senate Standing Committees on Education and Employment**

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## ABOUT THE TWU

The Transport Workers' Union of Australia (**TWU**) represents 70,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.

With well over one hundred years' experience, the TWU has been active in establishing industry standards that improve the lives and safety of transport workers, their families and the wider community.

This work has included a long history of establishing innovative regulatory systems which have, among many things, helped to ensure that all road transport workers, including those in non-standard forms of work (i.e. owner-drivers) have access to fair, safe and sustainable working conditions.

The TWU also represents workers in the transport sector of the emerging 'gig-economy' which include on-demand rideshare, food delivery and parcel delivery workers. Since 2018, the TWU has led a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

## EXECUTIVE SUMMARY

1. The TWU thanks the committee for the opportunity to contribute to the inquiry into the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*. The TWU would like to acknowledge and thank the committee secretariat for its work over the course of this inquiry.
2. The TWU welcomes the Closing Loopholes Bill. This submission will focus on the ‘Road Transport’ reforms in the Closing Loopholes Bill. The TWU recognises the importance of all other reforms contained in the Bill and in relation to those reforms supports the submission of the Australian Council of Trade Unions (**ACTU**) to this inquiry in full.
3. Even though many of the substantive provisions do not come into force until the 1<sup>st</sup> of July 2024, *the fact* that they *will* come into force will have immediate and positive effects on industry behaviours. This is because the moment the Bill is passed, industry participants would be on notice that the FWC will from the 1<sup>st</sup> of July 2024, commence its task of ensuring that the road transport industry is safe, sustainable and viable. Industry participants will know – from the day this Bill is passed - that very soon it will no longer be possible to: impose deadly contracting practices on transport operators; exploit loopholes that permit workers to be placed outside of basic protections such as minimum pay; issue unreasonable work directions; subject industry participants to arbitrary unjust or unfair termination of contract; and pay small businesses and road transport employers less than cost recovery to perform the transport task. Accordingly, industry participants who value an ongoing viable and reputable business will immediately start to modify behaviour – modification that will begin to lift the commercial pressures that have been long and exhaustively been identified as placing transport workers in mortal danger.
4. Passing this Bill through the Parliament as soon as possible is, therefore, literally a matter of life or death. By delaying the reporting date of this inquiry to the 1<sup>st</sup> of February 2024, we will be delaying the activation of the remedial actions that quicker passage of the bill trigger. Remedial effects that are likely to save lives. As it stands, we hold the horrific but well-founded expectation that at least 16 truck drivers and 52 other Australians will have lost their lives in truck-related crashes prior to the publication of the report.<sup>1</sup> Hundreds

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<sup>1</sup> This figure is calculated based on the number of truck-related fatalities reported by various Australian media sources and collated by the TWU. At the time of writing, an average of 17 people have been killed in truck

more Australians are likely to lose their lives in work-related vehicle crashes involving light commercial vehicles such as vans, passenger cars, motorcycles, and bicycles.<sup>2</sup> It is likely that gig workers will also die performing their work during this period - workers like Akshay Doultani and Adil Abbas who were killed in Sydney just weeks ago. In the short four months ahead, hundreds of road transport workers and road users will be killed. We do not know the names of these victims yet. We do not know where their fatal crashes will occur. We do not know which companies they will be working for at the time of their deaths, or whether there will be other Australians who become connected with the road transport industry only *through* their death – ripped away from family and community in the most sudden tragedy. Starting the process of modifying deadly industry behaviour by passing the Bill as soon as possible will save lives.

5. Decades of academic research, judicial decisions, coronial inquests, and Government inquiries have conclusively demonstrated that a major cause of road transport deaths is the unsustainable economic pressures that are placed on transport workers and the transport companies which engage them.<sup>3</sup> These economic pressures, which include unsustainably low rates and standards, force road transport workers and businesses to cut corners and take risks to remain commercially viable. Too often, people in our industry are faced with a deadly trade-off between endangering their lives or facing financial ruin.
6. The road transport industry is Australia’s deadliest industry to work in with a fatality rate of more than 13 times that of any other.<sup>4</sup> At the same time, the

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related crashes per month in 2023. Regular updates on these statistics are published on the TWU website at <https://www.twu.com.au/press/>.

<sup>2</sup> Current national crash datasets do not record data on whether a crash fatality involved a person working in the road transport industry at the time of the crash. Data is instead limited to a delineation of vehicle types, which includes ‘heavy and light commercial vehicles’ which are involved in fatal crashes (See Department of Infrastructure, Transport, Regional Development, Communications, and the Arts, (2021), “National Crash Dashboard”, <https://www.bitre.gov.au/dashboards>).

The vehicle type delineation does not enable the identification of road transport industry deaths among workers using passenger or two-wheeled vehicles (for example those who perform work in the gig transport sectors). Given the high-rates of fatal-crashes among these vehicle types and survey data presented in the preceding sections of this submission which demonstrate poor safety outcomes, it would be reasonable to expect an overrepresentation of these workers in these fatal crash statistics as well (as is the case for commercial vehicle types).

<sup>3</sup> A list containing the decades of the conclusive evidence which demonstrates the impact of these commercial pressures (including unsustainable rates of pay), the source of these pressures and their dangerous relationship to road fatalities and other safety outcomes is provided in Annexure A of this submission.

<sup>4</sup> Work-related Traumatic Injury Fatalities, Safe Work Australia, (2019), <https://www.safeworkaustralia.gov.au/sites/default/files/2020-11/Work-related%20traumatic%20injury%20fatalities%20Australia%202019.pdf>

road transport industry has one of the highest rates of business insolvency.<sup>5</sup> 367 transport companies filed for bankruptcy in the last financial year.<sup>6</sup> 170 Australians have lost their lives in truck-related fatalities this year alone.<sup>7</sup> 73% of food delivery workers fear being seriously hurt or killed every time they start work.<sup>8</sup>

7. In a moment of unprecedented consensus calling for urgent change, the TWU has come together with a broad coalition of employers and business representatives in the road transport industry. Guided by the work of three recent State and Federal Government inquiries<sup>9</sup>, the road transport industry is unified in a vision for a 'Safe, Sustainable and Viable' road transport industry delivered through the reforms contained in this proposed legislation.
8. This submission will seek to assist the committee's deliberations in the following three ways:
  - a. Part 1 of this submission will discuss the severity of the safety crisis afflicting the transport industry, its underlying causes and the human and economic costs associated with this crisis. This section will conclude by highlighting the broad support that has developed among road transport employers, businesses, workers, academics, policy makers and industry experts in both recognising these issues and supporting the reforms contained in this Bill.

<sup>5</sup> Australian Securities and Investment Commission, Insolvency Statistics, 2019, <https://asic.gov.au/regulatory-resources/find-a-document/statistics/insolvency-statistics/insolvency-statistics-series-1a-companies-entering-external-administration-by-industry/>

<sup>6</sup> Ibid

<sup>7</sup> Truck-related fatalities are monitored and collated by the TWU based on media reporting of truck crashes. Regular updates on these statistics are published on the TWU website at <https://www.twu.com.au/press/>.

<sup>8</sup> Food Delivery Rider/Driver Survey, TWU, (2020), <https://www.twu.com.au/wp-content/uploads/2020/09/Delivery-rider-survey-infographic.pdf>

<sup>9</sup> See for example Fourth Interim Report of the Senate Select Committee on Job Security, *The Job Insecurity Report*, (2022), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024780/toc\\_pdf/Thejobinsecurityreport.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024780/toc_pdf/Thejobinsecurityreport.pdf;fileType=application%2Fpdf); Report No.1 of the NSW Parliament Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in NSW, (2022), <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>; Report of the Inquiry into the Victorian On-Demand Workforce, (2020), <https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid306880.pdf>

<sup>9</sup> See for example Rural and Regional Affairs and Transport References Committee: *Without Trucks Australia Stops: the development of a viable, safe, sustainable and efficient road transport industry*, (2021), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024376/toc\\_pdf/WithoutTrucksAustraliaStopsthedevelopmentofaviable,safe,sustainableandefficientroadtransportindustry.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024376/toc_pdf/WithoutTrucksAustraliaStopsthedevelopmentofaviable,safe,sustainableandefficientroadtransportindustry.pdf;fileType=application%2Fpdf)

- b. Part 2 will discuss how this Bill (notwithstanding the need for further amendments to ensure the policy objective can be met), will help to ensure a safe, sustainable and viable road transport industry. The section will conclude by cautioning against any amendments which would undermine the efficacy of the proposed reforms. This notably includes the temptation to limit the scope of the reforms to only parts of the road transport industry (i.e. by excluding ‘gig transport’ from the remit of the proposed ‘Expert Panel’).
- c. Part 3 will turn to outline the need for further amendments. Among noting the importance of seven amendments in total, the submission will focus on the need to ensure:
  - i. The remit of the Expert Panel to provide contract chain standards is prescribed in the Fair Work Act, rather than contained within future regulation.
  - ii. The presently elongated notice periods for ‘Standards Orders’ in the Bill are moderated to ensure there are no unnecessary delays to the Expert Panel’s ability to create life-saving standards.
9. The TWU requests that the committee focuses attention on Annexure B to this submission which is a powerful joint ‘Road Transport Industry Position Statement’. The position statement was prepared in conjunction with the peak road transport employers’ association (ARTIO) and other genuine industry bodies (NRFA & NatRoad). The position statement demonstrates broad and strong road transport industry support for the proposed road transport reforms in the Bill and advances agreed industry amendments to enable the policy intention of ensuring that the road transport industry is safe, sustainable and viable is realised.

## PART 1 – TRANSPORT REFORM: THE CASE FOR CHANGE

10. The road transport industry and the dangerous pressures that are placed on industry participants, have been the subject of extensive research and reporting over decades. The following section will provide a summary of this evidence to highlight the urgent need for reform. The section will also highlight the broad industry support for reform and the extensive amount of consultation that has occurred with all industry stakeholders to date.

### THE ROAD TRANSPORT SAFETY CRISIS

11. The Australian Road Transport industry is gripped in a safety crisis. At the time of writing this submission, 170 people have been killed in truck-related crashes this year.<sup>10</sup> Transport workers remain 13 times more likely than any other worker to be killed at work.<sup>11</sup> In the 5 years between 2017-2022, 983 Australians lost their lives in crashes involving either a heavy or light commercial vehicle.<sup>12</sup> Not included in these statistics are those gig transport workers whose deaths in the road transport industry have not been identified or recorded as work-related fatalities. Personal injury among gig transport workers is endemic but hidden by the lack of workplace reporting, with a third of food delivery workers reporting being seriously hurt or injured at work.<sup>13</sup>

12. Industry death and injury carries with it insufferable human costs from which there is often no recovery. In addition, the economic and flow on social costs are significant and cannot be ignored. Heavy vehicles crashes alone account for \$1.5 billion AUD each year.<sup>14</sup> This figure does not include the costs associated with other commercial vehicle crashes. This is also not to mention the immeasurable pain and suffering wrought on families and communities who are affected by road injuries and deaths.

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<sup>10</sup> Truck-related fatalities are monitored and collated by the TWU based on media reporting of truck crashes. Regular updates on these statistics are published on the TWU website at <https://www.twu.com.au/press/>.

<sup>11</sup> Work-related Traumatic Injury Fatalities, Safe Work Australia, (2019), <https://www.safeworkaustralia.gov.au/sites/default/files/2020-11/Work-related%20traumatic%20injury%20fatalities%20Australia%202019.pdf>

<sup>12</sup> Department of Infrastructure, Transport, Regional Development, Communications, and the Arts, (2021), “National Crash Dashboard”, <https://www.bitre.gov.au/dashboards>.

<sup>13</sup> See pg.10 of TWU, (2021), <https://www.aph.gov.au/DocumentStore.ashx?id=c7b25fe4-97ca-4c5d-a5f0-8edaf761206f&subId=706183>

<sup>14</sup> See pg.5, Department of Infrastructure, Transport, Regional Development and Communications, (2022), <https://www.infrastructure.gov.au/sites/default/files/documents/consultation-ris-ldws.pdf>



13. The ongoing safety crisis in the road transport industry is caused by economic pressures that either erode safe and sustainable industry standards or prevent them from arising in the first place. For instance, pressures arising from unsustainably low rates or untenable contracting requirements set in transport supply chains, force transport companies and workers to cut corners, take risks and reduce safety standards to remain commercially viable. Underpinning this dynamic is the large power imbalance between industry participants. Transport operators and drivers in the industry are price takers, forced to accept rates, terms and conditions in order to ‘keep the wheels rolling’, even where such acceptance does not cover costs. With low barriers to entry and a high-number of sole-proprietors in the industry, competition for work leads to an “acceptance of non-viable rates, excessive and illegal working hours and stressed and chronically fatigued drivers”.<sup>15</sup> The avoidably tragic outcome of these deadly pressures are the hundreds of lives lost each year.
14. The relationship between these economic pressures and safety outcomes in the road transport industry has been proven by an overwhelming body of evidence, collected over decades, involving hundreds of experts, academic studies, coronial inquests and Government inquiries. This research has for example, demonstrated a clear correlation between rates of pay, payment structures and the prevalence of risk-taking practices such as forgoing vehicle and fleet maintenance, speeding, artificial stimulant use, and fatigued driving. Annexure A of this submission contains a non-exhaustive reference list of this evidence citing 138 sources from 1970-2023.
15. A few of the findings referenced in Annexure A include:
  - a. *Beyond the Midnight Oil: An inquiry into managing fatigue in transport, (2000), House of Representatives Standing Committee on Communications, Transport and the Arts (pg. 33)*
    - i. This Government report found that increasingly unsustainable levels of economic pressure originating from contract chains was one of the key causes of driver fatigue.
  - b. *Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety, (2002), US Department of Transportation (pg. 13)*
    - i. This study found that driver pay had a strong effect on safety outcomes and that higher pay produced superior safety performance for trucking firms and drivers.
  - c. *Economic pressure, multi-tiered subcontracting and occupational health and safety in Australian long-haul trucking, (2006), Employee Relations Journal 28(3), (pg. 225)*

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<sup>15</sup> Mayhew, Claire and Quinlan, Michael, (2006), *Economic pressure, multi-tiered subcontracting and occupational health and safety in Australian long-haul trucking*, *Employee Relations*, Vol. 28 No. 3, pg. 225

- i. This study found that the intense economic pressures in the industry resulted in drivers accepting non-viable freight rates, taking on excessive and illegal working hours, and being chronically fatigued; all of which was found to result in higher incidences of truck crashes.
- d. Remuneration and Safety in the Australian Heavy Vehicle Industry: A review undertaken for the National Transport Commission, (2008), National Transport Commission, (pg. 49)
  - i. This NTC review found there was strong evidence which supported the claim that commercial pressures in the road transport industry directly affected the incidence of crashes and hazards. It also noted that whilst this link had been established for more than 15 years at the time of the review, that the link had largely been ignored by policymakers.
- e. An examination of the relationship between financial performance and safety factors in the heavy trucking industry, (2023), Safety Science 164
  - i. This research paper found that financial pressures on trucking firms led to decreased investment into safety and led to the adoption of payment structures for truck drivers, that effectively pressured drivers to work harder and longer hours. The paper also found that good financial performance of trucking firms was a strong indicator of positive safety performance, with the converse also being true.
- f. Report of Inquiry into Safety in the Long-Haul Trucking Industry: Motor Accidents Authority of New South Wales, (2001)180
  - i. The Inquiry found that financial pressures incentivized trucking firms and truck drivers alike to push the margins of safety in order to survive in the highly competitive transport industry. The Inquiry linked these financial pressures as emanating from the unrealistic demands of transport customers at the top of the supply chain, who wield the largest amount of bargaining power.
- g. Supply Chains and Networks: Safe Work Australia, (2011)
  - i. This research report found that economic pressures in the transport industry were most acutely felt by those at the bottom of the supply chain, namely the trucking firms and their drivers. It attributed this pressure as one of the main causes of health and safety compromises.
- h. Safe Payments addressing the underlying causes of unsafe practices in the road transport industry: The National Transport Commission, (2008)
  - i. This report found that the imbalance of market power translated to those in the bottom of the supply chain, trucking firms and

drivers, being put under such immense economic pressure that it negatively impacted driver's on-road behaviour and off-road investment into safety. This was seen to directly lead to a degradation in safety outcomes.

- i. Effects of Truck Driver Wages and Working Conditions on Highway Safety: Case Study, (2003), National Academies: Transportation Research Record
  - i. This research paper found that, all else being equal, that higher pay rates are related to lower truck crash counts and a higher probability of no crashes occurring.

16. In 2021, a TWU survey of 1,100 drivers provided an alarming account of the impact which these industry pressures were having on unsafe road transport industry outcomes.<sup>16</sup> The survey found:

- a. 25% truck drivers have been involved in a crash while working.
- b. 55% of owner drivers delayed truck maintenance due to financial pressures.
- c. 30% of drivers knew another driver who took stimulants to stay awake with 1/8 knowing of employers who offer these stimulants to drivers.
- d. 25% of employee drivers pressured to drive past legal hours and skip rest breaks. A further 20% are pressured speed to meet deadlines.
- e. 41% of drivers know someone killed at work.

17. The unsustainable intensification of economic pressures is also undermining the viability of businesses and in turn, the resilience of transport supply chains. The road transport industry has one of the highest rates of insolvency in Australia.<sup>17</sup> In the last financial year, 367 companies went insolvent. Most recently, two major road transport companies Rivet Mining Services and Scott's Refrigerated Logistics, who together employed 2,000 workers went into liquidation.<sup>18</sup> Transport companies are on the brink of collapse and are ultimately pushed into insolvency because of the absence of a principle of cost recovery. These companies in turn bid for work on an unsustainable and often dangerous basis. Transport workers are then forced to undertake work in dangerous circumstances. The industry is being forced to cut corners to cover costs, including by risking lives on our roads, or face the prospect of going bankrupt.

<sup>16</sup> TWU, 2021, Survey of over 1000 truck drivers reveals horrific statistic, [twu.com.au/trucking/survey-of-over-1000-truck-drivers-reveals-horrific-statistics/](https://www.twu.com.au/trucking/survey-of-over-1000-truck-drivers-reveals-horrific-statistics/)

<sup>17</sup> Australian Securities and Investment Commission, Insolvency Statistics, 2019, <https://asic.gov.au/regulatory-resources/find-a-document/statistics/insolvency-statistics/insolvency-statistics-series-1a-companies-entering-external-administration-by-industry/>

<sup>18</sup> Transport Reform Urgent As Another Operators Collapses From Cost Pressures, TWU, (2023), <https://www.twu.com.au/press/transport-reform-urgent-as-another-operator-collapses-from-cost-pressures/>

18. There are two major sources of these deadly pressures in the road transport industry. The first major source is those imposed by contract chain actors in the transport industry, such as major transport clients. In the context of a hyper-fragmented transport markets with low barriers to entry, major transport clients have unchecked market power to determine prices and therefore standards throughout their contractual chains. Transport companies tendering for the work of these major clients are increasingly pressured to undercut standards to compete for contracts through cyclical tendering cycles. As price-takers, transport businesses operate on low margins and the effect this has throughout the industry is destructive. The high level of control exercised by clients over the price, timing, destination, route and other general terms and conditions under which transport services are performed cause operators to bear the costs that ordinarily are borne out by customers. As a result, unsustainable contracts, often below cost, are frequently awarded to companies which cannot profitably or safely provide the service. This in turn leads to pressures on those companies to further contract-out part or all of the work that is commercially unviable. The result is a deadly downward spiral of standards that undermines industry and public safety.
19. The second source of commercial pressure on the road transport industry is the wave of market pressure being exerted by the rise of transport companies operating in the so-called ‘gig economy.’ Gig transport operations have deliberately exploited loopholes in the current workplace system by directly engaging workers outside of the existing suite of critical employee protections and instead, placing them on piecemeal rates often accessible only after slabs of unpaid waiting time. This leads to exploitation in the form of pay, that is often well below the minimum wage, and intensely dangerous work practices as workers attempt to make a living and avoid arbitrary and unchallengeable “deactivation”.
20. The erosion of gig transport standards is alarming. A recent 2023 survey by the McKell Institute of over 1,000 gig transport workers in the rideshare, food delivery and parcel delivery sectors found that:<sup>19</sup>
- a. 81% of gig transport workers are highly dependent on the money they earn to pay bills and survive.
  - b. Based on conservative estimates, at least 45% of gig transport workers earn below the Australian minimum wage.

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<sup>19</sup> Tough Gig: Worker Perspectives on The Gig Economy, The McKell Institute, (2023), <https://mckellinstitute.org.au/wp-content/uploads/2023/03/McKell-Tough-Gig-Report.pdf>

- c. 74% of workers reported having to work long hours to make enough money.
  - d. 51% had felt pressured to rush or take risks to make enough money or protect their job.
  - e. 36% have been injured at work.
21. Gig transport companies treat workers as independent contractors even though they are almost entirely reliant on the company that engages them. The gig transport company: provides the technology; dictates when and where the work is to be performed; dictates the pay rates; dictates how quickly the work must be performed; and can fire workers at will. The sum total of these arrangements is not only that workers are in danger and often exploited but that gig transport companies get a significant competitive advantage – estimated at around 30% lower cost base - over transport operators engaging employees and providing appropriate and safer worker pay and protections.<sup>20</sup> This “Amazon Effect” of undercutting the market on the basis of exploitative practices is resulting in a rapid expansion of gig transport arrangements and placing intense downward pressure on a transport market already collapsing under the burden of the commercial squeeze from the top of transport contract chains.
22. The impact for gig transport workers has borne out yet again in the well-evidenced deadly correlation between industry pressures and safety outcomes. 45% or approximately 90,000 on-demand transport workers in rideshare, food delivery and parcel delivery sectors earn *below* the Australian national minimum wage.<sup>21</sup> At the same time, 51% of all on-demand transport workers have felt pressured to take risks to make enough money or protect their jobs.<sup>22</sup> A Centre for WHS study also found that earnings and time pressures were the two most important factors influencing safety in the food delivery industry.<sup>23</sup> A third of food delivery workers report being seriously hurt or injured and a third of rideshare drivers are involved in a serious road crash<sup>24</sup>.

<sup>20</sup> See for example Amazon Brokerage Rates reported at Amazon launches digital freight brokerage site, SupplyChainDriver, (2019), <https://www.supplychaindive.com/news/amazon-digital-freight-brokerage/553661/>

<sup>21</sup> McKell Institute, 2023, Tough Gig: Worker Perspectives on the Gig Economy, <https://mckellinstitute.org.au/research/reports/tough-gig-worker-perspectives-on-the-gig-economy/>

<sup>22</sup> Ibid

<sup>23</sup> Centre for WHS, 2020, *Work health and safety of food delivery workers in the gig economy*, (Sydney: NSW Government, 2020), [Work-health-and-safety-of-food-delivery-workers-in-the-gig-economy..pdf \(nsw.gov.au\)](https://www.nsw.gov.au/work-health-and-safety-of-food-delivery-workers-in-the-gig-economy..pdf) p.26.

<sup>24</sup> TWU, 2020, SURVEY SHOWS \$10 PAY FOR FOOD DELIVERY WORKERS AS NSW POLITICIANS PUSH FOR MORE RIGHTS, <https://www.twu.com.au/press/survey-shows-10-pay-for-food-delivery-workers-as-nsw-politicians-push-for-more-rights/>

23. An impending wave of these gig pressures is starting to extend into the freight and trucking industry in Australia. Since 2020, gig transport platforms such as ‘Ofload’ have steadily increased their footprint in the Australian trucking industry and now claim to work with over 1,600 carriers and deliver 10,000 shipments per month.<sup>25</sup> ‘Uber Freight’ and ‘Amazon Freight Partners’ have expanded rapidly in the US and other foreign markets and should be expected to arrive Australian shores in the coming years.<sup>26</sup> Overseas trends suggest the implications for working conditions and safety will be just as catastrophic for truck drivers as they have been for other transport workers in Australia today.
24. The expansion of the gig economy into trucking and general freight will expand the negative effects on transport workers beyond those already effected in other gig transport sectors to date. In 2021, there were 109,100 truck drivers, 36,700 couriers and postal drivers and 33,800 delivery drivers.<sup>27</sup> These workers, who are already under intense pressure given the existing failings to address issues surrounding contract chain pressures, stand to have these pressures compounded by the ongoing expansion of the gig economy. The implications for worker and public safety are more concerning yet.
25. There is a long history of well-intentioned but flawed policies that have failed to deal with the underlying root causes of these safety issues. Such policies have generally focused on targeting the symptoms of these pressures (i.e. speeding, drug-use, log-book violations), often through punitive measures aimed at low-leveraged workers and transport companies, rather than the deadly industry pressures which underly these safety outcomes. The root causes of these pressures can only be addressed by ensuring the creation and enforcement of certain proactive standards through contract chains and for all transport industry workers.

#### INDUSTRY SUPPORT FOR TRANSPORT REFORM

26. Unsafe industry pressures, their adverse impacts on safety and the urgent need for transport reform, have all been the subject of extensive research, industry consultation and expert analysis undertaken over decades. As a

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<sup>25</sup> See About Us, Ofload, (2023), <https://www.ofload.com.au/about-us>

<sup>26</sup> Amazon has been quietly running an ‘Uber for trucking’ service since last year, CNBC, (2019), <https://www.cnbc.com/2019/04/30/amazon-freight-uber-for-trucking-service-running-since-last-year.html>

<sup>27</sup> Australian Jobs 2021: Transport, Postal and Warehousing, National Skills Commission, (2021), <https://www.nationalskillscommission.gov.au/reports/australian-jobs-2021/jobs-industry/transport-postal-and-warehousing>

result, today there is unprecedented consensus amongst road transport industry employers, businesses, workers and the TWU in recognising these structural problems and the policies required to resolve them.

27. Between 2018-2023, there have been three inquiries which have investigated these road transport industry pressures and provided recommendations which support these reforms.<sup>28</sup> For example, in 2019, the Senate established an inquiry into the “Importance of a viable, safe, sustainable and efficient road transport industry” chaired by the former truck driver, Senator Glenn Sterle.<sup>29</sup> The committee held hearings over 11 days, collected 128 public submissions and heard from 154 witnesses from all parts of the road transport industry across Australia. Those who gave evidence included frontline workers through road transport sectors as diverse as waste, cash-in-transit, construction, long-haul transport, couriers, agriculture and the gig transport sectors. Also represented were academics, transport companies, employer associations, small business associations, groups representing owner drivers and the TWU.
28. The testimony and evidence across the industry was terrifying in its almost unanimous findings that unsustainable industry pressures were killing road transport workers and users, destroying transport businesses and undermining the ability of the road transport industry to improve productivity. After three years of deliberations, the committee handed down its final report which included 10 recommendations, with Recommendations 1, 3 and 10 calling on the Government to:
- a. Establish an independent body which could set and enforce binding industry standards, including with respect to rates of pay, to ensure that “safe performance of work and eliminate unsafe contracting pressures”.
  - b. Ensure these standards could apply to “all road transport supply chain participants” regardless of the classification of worker, type of road

<sup>28</sup> See for example Fourth Interim Report of the Senate Select Committee on Job Security, *The Job Insecurity Report*, (2022), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024780/toc\\_pdf/Thejobinsecurityreport.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024780/toc_pdf/Thejobinsecurityreport.pdf;fileType=application%2Fpdf); Report No.1 of the NSW Parliament Select Committee on the Impact of Technological and Other Change on the Future of Work and Workers in NSW, (2022), <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2591/Report%20No%201%20-%20Select%20Committee%20-%20The%20gig%20economy%20-%20First%20report.pdf>; Report of the Inquiry into the Victorian On-Demand Workforce, (2020), <https://apo.org.au/sites/default/files/resource-files/2020-07/apo-nid306880.pdf>

<sup>29</sup> See for example Rural and Regional Affairs and Transport References Committee: *Without Trucks Australia Stops: the development of a viable, safe, sustainable and efficient road transport industry*, (2021), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024376/toc\\_pdf/WithoutTrucksAustraliaStopsthedevelopmentofaviable,safe,sustainableandefficientroadtransportindustry.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024376/toc_pdf/WithoutTrucksAustraliaStopsthedevelopmentofaviable,safe,sustainableandefficientroadtransportindustry.pdf;fileType=application%2Fpdf)

transport actor and with explicit reference to ‘online/on-demand operations’ in the gig economy.

- c. Ensure effective dispute resolution that is ‘comprehensive’ and ‘binding’ and could address all disputes in relation to standards through contract supply chains.
- d. Establish a ‘Transport Advisory Group’ consisting of road transport industry members and the union that would provide crucial guidance to policy makers.

29. Between 2022 to 2023, the TWU signed charters with a number for major gig transport companies which also confirmed their support for these industry reforms. These charters, which were signed with Uber, Doordash and Menulog, recognised the need for Government regulation to ensure safety, rights and minimum standards for gig transport workers in Australia.<sup>30</sup> All these agreements supported the need to have an independent body with the power to establish minimum enforceable standards.

30. On the 29<sup>th</sup> of August 2022, an unprecedented delegation of major representatives from all parts of the road transport industry presented the Minister for Industrial Relations, the Hon. Tony Burke, with a shared set of principles calling for reform to set enforceable standards across the transport industry.<sup>31</sup> The road transport delegation included major road transport clients (Coles & Woolworths), the peak road transport employer’s association (ARTIO), major transport and logistics operators (Linfox, Toll Global Express, FBT Transwest and ACFS), representatives of small owner-driver operators (the National Road Freighters’ Association), gig transport companies (Uber and Doordash) and the TWU.

31. In a joint statement, this broad coalition called on the Government to adopt and implement the full recommendations of the “Senate Rural and Regional Affairs and Transport References Committee Without Trucks Australia Stops: the development of a viable, safe, sustainable and efficient road transport

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<sup>30</sup> See Uber – Transport Workers’ Union of Australia: Statement of Principles and Commitments for Workers in the On-Demand Economy, (28 June 2022), <https://www.twu.com.au/wp-content/uploads/2022/06/Statement-of-Principles-28-June-2022.pdf>;

Doordash, TWU Ink New Charter On How To Deliver Rights, Safety to All Transport Workers, (2022) <https://www.twu.com.au/press/doordash-twu-ink-new-charter-on-how-to-deliver-rights-safety-to-all-transport-workers/>; And

Menulog – Transport Workers’ Union of Australia Charter of Principles and Ongoing Commitments to Ensure Safety and Fairness for On-Demand Delivery Couriers, (2023), <https://www.twu.com.au/wp-content/uploads/2023/03/Charter-of-Principles-TWU-Menulog-signed.pdf>

<sup>31</sup> Road safety pay tribunal back on agenda after unions, industry, Uber agreement, SMH, (2022), <https://www.smh.com.au/politics/federal/road-safety-pay-tribunal-back-on-agenda-after-unions-industry-uber-agreement-20220829-p5bdk9.html>



industry”.<sup>32</sup> The joint statement also called for the establishment of a body with specialist expertise in the road transport industry, to set enforceable standards for all transport contract chain participants and for all road transport workers. Explicit references were provided to the rapid expansion of gig transportation and the need to include ‘on-demand delivery and rideshare platform work’ in these reforms.<sup>33</sup>

32. Following this statement, in August 2022, Minister Burke announced his intention empower the Fair Work Commission (**FWC**) to deliver a ‘Safe, Sustainable and Viable’ road transport industry as one of the outcomes of the Jobs and Skills Summit. Since this time, the Minister and the Department of Employment and Workplace Relations (**DEWR**), has consulted further with the road transport industry through a substantive series of meetings, consultation papers and written submissions to further consider how these reforms should be structured and implemented.
  
33. The outcome of the decades of inquiries, research, policy analysis, academic studies, and Government-led consultations was the tabling on the Closing Loopholes Bill on the 4<sup>th</sup> of September 2023. While tabling this Bill, Minister Burke acknowledged and thanked the contributions of the road transport workers, employers, businesses, and gig transport workers. All of whom sat in the gallery of Parliament House and joined together once more in welcoming the introduction of these life-saving transport reforms.

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<sup>32</sup> See Road Transport Roundtable 29 August 2022: Agreed Principles for a Safe, Sustainable & Fair Road Transport Industry, <https://www.twu.com.au/wp-content/uploads/2022/08/Transport-Roundtable-Principles.pdf>

<sup>33</sup> Ibid

## PART 2 – STRENGTHS OF THE PROPOSED ROAD TRANSPORT REFORMS IN THEIR CURRENT FORM

34. This section will describe the nature of the transport reforms required to ensure a safe, sustainable and viable road transport industry. After doing so, the section will move to consider the extent to which the transport reforms within the Closing Loopholes Bill deliver on what is required. This section will outline the various strengths of the draft Bill and the importance of protecting its current provisions whilst noting the need for further amendments.

### THREE PILLARS FOR TRANSPORT REFORM

35. The transport reforms that are being sought by the road transport industry and have been described in the previous section, can be conceptualised as being built upon three interdependent pillars. These three pillars have been developed based on decades of research, consultation and expert analysis and today, form the basis of the broad consensus for reform. These pillars are:

- a. Pillar 1 – A body is empowered to set binding standards in the road transport industry and *through contract chains*.
- b. Pillar 2 – Road transport parties are provided access to *effective dispute resolution*, including with respect to arbitrary unjust or unfair termination of contracts, to ensure the compliance with standards.
- c. Pillar 3 – Guardrails, including industry consultation and the requirement to consider the impact of standards holistically, are provided to ensure sustainability and avoid adverse impacts.

36. *Pillar 1* – A body is empowered to set binding standards in the road transport industry and *through contract chains*.

37. With respect to the first pillar, a body must have the *broad* remit to establish the standards required to meet the objectives of safety, sustainability and viability. Placing restrictions on the types of standards which could be established to achieve this objective will limit the ability of the body to ensure a holistic approach to restoring industry balance and a fair playing field for competition.

38. The body must also have the capacity to apply across the range of *contract chain actors* in the road industry. This is necessary to ensure that chain actors which, through their market power, determine standards are held accountable

for maintaining them. This requires contract chain provisions that allow standards to be established and maintained throughout contracting chains.

39. Finally, the body must also be able to establish and maintain such standards horizontally, that is, through what are often interchangeable transport models and transport workers. The movement of freight or people in the road transport industry today is performed by interchangeable substitute transport workers (i.e. gig transport, traditional owner drivers and employed drivers). Establishing protective standards for one and not others will lead to these interchangeable modes being put in intense destructive competition with each other, further fuelling the race to the bottom to the transportation system with the lowest level of standards.
40. *Pillar 2 – Effective dispute resolution, including with respect to arbitrary unjust or unfair termination of contracts, to ensure the compliance with standards.*
41. Once standards have been established, the body must then have the capacity to ensure these standards are complied with. This is achieved by ensuring (1) an effective capacity to resolve disputes, and (2) protections from arbitrary unjust or unfair termination of contracts for all road transport parties.
42. The body must have the capacity to consider and determine transport industry disputes including *but not limited to* disputes relating to non-compliance with established standards. These dispute resolution powers must enable the participation of any party having a bearing on the dispute include contract chain actors.
43. Ensuring protections from arbitrary unjust or unfair termination of contracts is also required to ensure protection while industry standards are being pursued and to ensure that any standards that are established are not rendered useless. No participant in the industry should be reluctant to report poor or unsafe industry behaviours or non-compliance with obligations for fear of contract reprisals. Neither should any participant be subject to potential *arbitrary*, that is, unexplained, unjustified termination of contract. Such reprisal or arbitrary termination is, at present, a permissible ever-present threat for many owner drivers and gig transport workers (who can be “deactivated” without recourse) and is contributing to the downward spiral of standards. Ensuring that transport workers can go about their work without knowing that there is protection of such capricious conduct is an important element in stabilising the industry by providing certainty of contract. Without

such certainty, active pursuit of better industry standards or ongoing access to established standards cannot be achieved.

44. *Pillar 3 – Guardrails, including industry consultation and the requirement to consider the impact of standards holistically, are provided to ensure sustainability and avoid adverse impacts.*
45. Years of unchecked commercial pressure from the top of road transport contract chains, and now the emergence and infiltration of gig transport into transport markets have resulted in a highly fragmented market. As noted, this market is broken. It is marked by interchangeable forms of worker engagement that are played off against each other in an ever-intensifying downward spiral of standards. It is marked by elongated supply chains fuelled by the commercial necessity to contract out ever-increasing chunks of unviable work. In all, this fuels poor safety outcomes including horrific death statistics amongst workers and the general road using community. In order to deal with this complex dysfunctional market and restore balance through giving effect to the policy objective, the establishment of standards must occur in a manner which acknowledges the complexity and takes into consideration all relevant factors and the flow-on consequences of remedial action.
46. Accordingly, the first guardrail pertains to the need to ensure standards are established in conjunction with the road transport industry. Prior to establishing any standards, the body must be required to consult extensively with all relevant parties from the road transport industry. Finally, decision-makers on the body must have adequate industry knowledge or experience.
47. Second, explicit objectives must guide the decisions made by the body to ensure that standards are not established in a way which might undermine the viability of one party with respect to another. When making decisions, the body must be explicitly required to consider the impacts which any standards may have on competition and business viability within a given transport sector. The body must not be allowed to establish standards for one group or area of the industry without having regard for interchangeable business models or substitute workers.

REPORT CARD: CURRENT DRAFT LEGISLATION

48. The TWU welcomes the efforts of the Government and the Department for Employment and Workplace Relations (DEWR) on the first draft of the Closing Loopholes Bill. The Bill in its current form, notwithstanding the need

for amendments, substantially delivers the reforms that have been requested by the road transport industry and supported by academic and industry experts for years.

49. Notwithstanding this, amendments are required to ensure that the proposed ‘Expert Panel’ for the road transport industry can meet the policy objective of ensuring that that road transport industry is safe, sustainable and viable. Most importantly, these amendments include addressing the dangerous commercial pressures in the road transport industry at their source by *enhancing the existing contract chain provisions* and avoiding any unintended consequences on the competitiveness or viability of industry participants.
50. Table 1 (see below) provides an assessment of the draft Bill against the ‘three pillars’ of transport reform. As set out in the preceding sections, these three pillars have been developed based on decades of research, consultation and expert analysis and today, form the basis of the broad consensus for reform being sought by the road transport industry.

*Table 1 – Closing Loopholes Road Transport Report Card*

Transport Reform		Closing Loopholes Bill
<b>Pillar 1 – Standard Setting Body</b>	Empowering a body to set standards for safety, viability & sustainability	✓ ‘Expert Panel’ of the FWC empowered to set standards to ensure safety, viability, sustainability. <i>See s 40D, ss 582, ss 617(10A-E), ss 620 (1D)</i>
	Broad scope for standards to deliver objectives (safety, sustainability, viability)	✓ ‘Expert Panel’ has sufficient remit to establish standards through ‘Minimum Standards Orders’ that may include rates, working time, insurance, representation, dispute resolution and other standards as required to meet the road transport objective. <i>See ss 536KG-KN.</i>
	Capacity to cover all of road transport (interchangeable workers and	✓ Broad definitions for ‘Road Transport Business’ and ‘Road Transport Contractor’ which cover road transport industry. ✓ ‘Digital platforms’ (which would include a large and growing section of road transport

	business models) and contract chain parties	industry) are captured by the capacity of the President to refer ‘employee-like’ matters to Expert Panel, where such are part of ‘Road Transport Industry’. <i>See s 10D</i> . <b>X Contract chain powers are not specified in the Act, but <i>may</i> be set out in future regulations (<i>see s 40J</i>).</b>
<b>Pillar 2 – Disputes and Security of Contracts (Enforcement)</b>	Dispute resolution throughout contract chains and for all parties	✓ Disputes are able to be lodged for the enforcement of Orders. <b>X Dispute resolution within contract chains is not provided in the Act, but <i>may</i> be set out in future regulations (<i>see s 40J</i>).</b>
	Protections from arbitrary unjust and unfair contract terminations	✓ Protection from ‘Unfair Terminations’ and ‘Unfair Deactivations’ to cover to all ‘Regulated Workers’ in the road transport industry. <i>See ss.536LD-LE</i> .
<b>Pillar 3 – Guardrails for Sustainability</b>	Industry consultation	✓ ‘Road Transport Advisory Group’ with targeted consultative ‘subcommittees’ must be consulted prior to the setting of standards. <i>See s 40E, 40G, 40F, ss.536KA-KF</i> .
	Due consideration to fair-playing field and competitive impacts	✓ Road transport order objectives require Expert Panel to provide explicit regard to the ‘commercial realities of the road transport industry’ and that such orders will not ‘unduly affect the viability of competitiveness of owner drivers or other similar persons’. <i>See ss 536KA(2) and ss.536JX(c)</i> .

51. As Table 1 above demonstrates, the draft Bill in its current form *does not* include all the essential components needed to ensure a safe, viable and sustainable industry. Before moving to the next section to consider the required amendments in greater detail (particularly those highlighted in red

above), a few points will be made about the importance of protecting key existing provisions within the draft Bill.

52. All the elements listed in Table 1 are interdependent components of the three pillars that are required to ensure the efficacy of the system as a whole. Undermining any single part will have implications for the entire system and risk rendering these transport reforms ineffective.
53. The first point to be made with respect to these risks, relates to the need to ensure that the remit of the Expert Panel continues to cover ‘digital platforms’ and their gig transport workers in the road transport industry. Currently the draft Bill provides a capacity for the President to identify and refer ‘employee-like’ matters that effect the road transport industry to the Expert Panel. This is critical to enabling the Expert Panel to take a holistic approach to its standard-setting functions across interchangeable transport modes and business models.
54. As noted in earlier parts of these submissions, there are three categories of workers which all are direct substitutes in the road transport industry. These include road transport workers engaged as employees, owner drivers and gig transport workers. The ready substitution of these workers in existing transport supply chains is evidenced throughout the industry today. For example, Amazon Flex currently engages a combination of fleet operators with employed drivers, owner drivers and gig transport workers (Flex Drivers) to fulfil to complete its last-mile delivery tasks.<sup>34</sup> Similarly, Fedex is now restructuring its logistics operations to incorporate its own gig transport workforce as substitutes to its existing employees and owner drivers.<sup>35</sup> In this context, a failure to consider and, where necessary, establish minimum standards for gig transport workers with interchangeable substitutes would only render other transport workers unviable while shifting unsafe and unsustainable market pressures to gig transport workers. That holistic approach to standard-setting cannot be achieved through the normal operation of the Act. The discrete road transport Expert Panel must be required to consider these matters holistically while being guided by objectives to ensure no adverse impacts on the competitiveness of one group against another.

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<sup>34</sup> Amazon launches Uber-esque delivery service in Australia, amid safety and pay criticism in the US, Smart Company, (2020), <https://www.smartcompany.com.au/industries/retail/amazon-flex-australia/>

<sup>35</sup> FedEx moves to bring in new gig workforce, AFR, (2022), <https://www.afr.com/work-and-careers/workplace/fedex-moves-to-bring-in-new-gig-workforce-20220726-p5b4pp>

55. Similarly, any attempts to limit the remit of the body to set standards must be resisted. Currently, the draft Bill provides the Expert Panel with sufficient remit to establish the types of standards that are needed to deliver a fair-playing field between various transport modes, while meeting the broader objectives of the division. These standards are contained in a carefully selected and suitable non-exhaustive list of ‘terms’ which may be incorporated in ‘Minimum Standards Orders.’ Limiting the terms of these Orders would inhibit the ability of the Expert Panel to achieve its objectives.
56. Another temptation may be to limit the scope of the protections against arbitrary unjust and unfair terminations. Again, doing so would undermine the interdependent components of these transport reforms. A failure to ensure these protections for road transport industry participants would result in unfair terminations being used to circumvent any standards that are set by the Expert Panel. For example, where standards were being illegally circumvented, road transport participants would be reluctant to report these and seek compliance for fear of having their contracts terminated. This threat is real and the failure to raise safety disputes is evidenced among a recent survey of owner drivers that found that 42% didn’t raise a safety issue for fear of financial repercussions.<sup>36</sup>
57. In closing, the elements of the draft Bill, and particularly those elements set out in Table 1, are essential to ensure these life-saving transport reforms meet their desired objectives. These must be maintained and supplemented by further amendments as set out below.

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<sup>36</sup> TWU Trucking Survey, (2021), <https://www.twu.com.au/wp-content/uploads/2021/10/TWU-Trucking-Survey-Infographic.pdf>



### PART 3 – THE NEED FOR FURTHER AMENDMENTS

58. The Road Transport Industry Position Statement (*see Annexure B*) sets out Amendments 1-7 which are supported by the TWU in conjunction with the peak road transport employers' association (ARTIO), representatives for owner drivers (NRFA) and other road transport business representatives (NatRoad). Each of these amendments is important if the policy objective is to be met.
59. Without discounting the importance of each of all seven amendments moved in the Road Transport Industry Position Statement, the TWU will focus on two here:
- a. Amendment 1 – Contract Chain Provisions
  - b. Amendment 4 – Operation of Orders (Notice Period Requirements)
60. *Amendment 1 – Contract Chain Provisions.*
61. As this submission has emphasised, the policy objective cannot be met unless contract chain actors - not just transport employers and workers – are accountable for proactive change. The Bill as drafted relegates contract chain provisions to future, unspecified and uncertain regulation (s 40H). This creates the risk that the Expert Panel will not have the powers and functions that are essential to ensuring industry standards can be lifted within contract chains.
62. As noted, unsafe and unsustainable industry pressures, originate from contract chain actors who possess the unchecked market power to determine standards. Such actors dictate prices, contractual terms and conditions for the rest of the road transport industry through their tendering practices and control of contract networks. Establishing standards for transport companies or workers, without coverage of contract chains, will prevent any standards established by the FWC from being realised. Put another way, the FWC must have the clear and express power *from the outset of the system* to require contract chain actors to play their part in ensuring that the standards established are actually realised.
63. Acknowledging these pressures and their own influence over standards in contract chains, major transport retail clients such as Woolworths and Coles

have signed bi-lateral agreements with the TWU to help manage such pressures.<sup>37</sup> However, the capacity of these contract chain actors to operate safe transport standards is undermined by competitive pressures they face from other chain actors and competitors. Aldi, for example, refuses to make similar contract chain commitments. It is for these reasons that Coles and Woolworths were among the signatories to the Road Transport Industry Roundtable Statement presented to Minister Burke in 2022 that called for these reforms and included reference to contract chain provisions being required.

64. In short, a vital component of the Expert Panel's remit must be to address unsafe and unsustainable pressures at their source. To do this, the contract chain powers and functions of the Expert Panel must be enshrined in the Act, as set out under Amendment 1 (*see Annexure B*).

#### Amendment 4 – Operation of Orders (Notice Period Requirements)

65. The current procedure set out in the draft Bill to establish standards imposes unnecessary delays to the operation of what will be life-saving Road Transport Orders (RT Orders).
66. The process set out in the bill means that the establishment of RT orders can take years. The first step requires an application to be submitted to the Expert Panel which is then followed by a considerable and unprecedented degree industry consultation including through the RTAG and its subcommittees (see S 536JZ, s 536KA and s 536 KD). Following this, the Expert Panel would issue a notice of intent which carries with it a *24-month* period before any such RT Order would take effect. During this period, the operation of RT Orders can be delayed further by overly cautious review mechanisms. During this period, should an RT Order be modified significantly, an additional 12-month notice period is again required prior to operation of RT Orders (s 536KG). Taken together, the creation of standards could take 4-5 years or even longer.
67. Based on the number of Australians lost in truck-related fatalities in Australia this year, 400 people will die in the next 24 months alone. The need for these reforms to address dangerous industry pressures both now and as they arise in the future in a *timely* manner is critical to preventing unnecessary deaths.

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<sup>37</sup> Coles and TWU Sign Agreement to Ensure Safety & Fairness in The Coles Supply Chain and On-Demand Economy, (2018), <https://www.twu.com.au/press/coles-twu-sign-agreement-to-ensure-safety-fairness-in-the-coles-supply-chain-and-on-demand-economy/>

68. To do this, the various notice periods must be limited and/or removed where appropriate, as set out under Amendment 4 (*see Annexure B*).

## ANNEXURE A – EVIDENCE FOR REFORM REFERENCE LIST

### A Snapshot of Decades of Research, Industry Initiatives, Media and Reports: The Case for Safe Rates

No.	Name of Document	Author	Type of Document	Date of Publication
1.	Report to the Honourable E.A. Willis Minister for Labour and Industry on Section 88E of the Industrial Arbitration Act, 1940-1968 in so far as it concerns Drivers of Taxicabs, Private Hire Cars, Motor Omnibuses, Public Motor Vehicles and Lorry-Owner Drivers	NSW Industrial Relations Commission	Report	23 February 1970
2.	Long-distance trucking: why do truckies speed?	David Hensher & Helen Battellino	Working Paper	1990
3.	Long Distance Truck Drivers On-Road Performance and Economic Reward	D. Hensher, H, Battellino, J. Gee & R. Daniels – Institute of Transport Studies, Sydney University	Research Paper	December 1991
4.	Efficiency of the Interface between Seaports and Land Transport	House of Representatives Standing Committee on Transport, Communications and Infrastructure	Report	April 1995
5.	Warehouse to Wharf Final Report	House of Representatives Standing Committee on Transport, Communications and Infrastructure	Report	November 1995
6.	Strategies to Combat Fatigue in the Long-Distance Road Transport Industry: Stage 2 Evaluation of Two-up Operations	A. Freyer, A. Williamson & R. Friswell	Research Report	December 1995

7.	The Effects of Subcontracting/ Outsourcing on Occupational Health and Safety: Survey Evidence from Four Australian Industries	C. Mayhew, M. Quinlan & R. Ferris – UNSW- Safety Science Journal	Journal Article	1997
8.	Reference by the Minister for Industrial Relations Pursuant to s. 345(4) of the Industrial Relations Act 1991 Regarding the Transport and Delivery of Cash and Other Valuables Industry (Peterson Report)	Peterson J	Report to the Minister	28 February 1997
9.	Work Arrangements in Stevedoring	Productivity Commission	Research Report	April 1998
10.	Regulating Private Security in Australia	Tim Prenzler & Rick Sarre – Australian institute of Criminology	Trends and Issues paper	November 1998
11.	\$2.7M Heist Mystery – Armoured Van Driver Hijacked	P. Doneman, N. Maynard, A. White & S. Bradford – Courier Mail	Media Article	10 March 1999
12.	Sweatshops on Wheels: Winners and Losers in Trucking Deregulation	Belzer M - New York: Oxford University Press	Book	January 2000
13.	Development of measures of Fatigue: Using an Alcohol Comparison to Validate the Effects of Fatigue on Performance	A. Williamson, A. Freyer, R. Friswell & S. Finlay-Brown	Research Paper	July 2000
14.	Beyond the Midnight Oil: An inquiry into managing fatigue in transport	House of Representatives standing Committee on Communications, Transport and the Arts	Report on Inquiry	October 2000
15.	Cash Transportation (Non-Armoured Vehicles) Interim Award	-	Industrial Instrument	2001
16.	Report of Inquiry into Safety in the Long-Haul	M Quinlan - <i>Motor Accidents Authority</i>	Report	January 2001

	Trucking Industry, Motor Accidents Authority of New South Wales	of <i>NSW</i> , (pp 117, 124, 130, 152–53, 162, 164, 180)		
17.	Occupational Violence in Long Distance Road Transport: a study of 300 Australia Truck Drivers	Claire Mayhew and Michael Quinlan – Current Issues in Criminal Justice	Chapter in Book	July 2001
18.	Driver Fatigue: A Survey of Professional Long Distance Heavy Vehicle Drivers in Australia	A. Williamson, A. Freyer, M. Friswell & S. Sadural – National Transport Commission	Information Paper	September 2001
19.	Guidelines for the Security Industry in South Australia	Work Cover Corporation SA	Guideline	October 2001
20.	Cash in Transit Code of Practice	Work Cover NSW	Code of Practice	2002
21.	Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety	Belzer M., Rodriguez R., Sedo S - United States Department of Transportation, Federal Motor Carrier Safety Administration	Research Paper	January 2002
22.	The Legal Framework for Regulating Road Transport Safety: Chains of Responsibility, Compliance and Enforcement	Richard Johnstone – National Research Centre for Occupational Health and Safety Regulation	Working Paper – Transportation Research Record: Journal of the Transportation Research Board	March 2002
23.	The effects of truck driver wages and working conditions on highway safety: A case study	D. Rodriguez, M. Rocha, A. Khattak & M. Belzer	Journal Paper -	January 2003
24.	Supply Chain Rationalization: Retailer Dominance and Labour Flexibility in the Australian Food and Grocery Industry	Wright C., Lund J - 17 Work, Employment and Society 137 at 142–51	Journal Article	March 2003
25.	Truck Driver Occupational Safety and Health: 2003 Conference Report and Selective Literature Review	GM Saltzman., MH Belzer -U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute	Research Paper	April 2003

		for Occupational Safety and Health		
26.	Legal Implications of Fatigue in the Australian Transportation Industries	C. Jones, J. Dorrian & D. Dawson – The Journal of Industrial Relations	Journal Article	September 2003
27.	Fatigue and Performance in Heavy Truck Drivers Working Day Shift, Night Shift or Rotating Shifts	National Transport Commission	Research Report	December 2004
28.	Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 No 221 (NSW) under the Occupational Health and Safety Act 2000 (NSW)	NSW Government	Regulatory Amendment	2005
29.	Toward a Sustainable Transport Industry: Submission to ‘Safe Payments Inquiry’, National Transport Commission	Transport Workers’ Union	Submission to the National Transport Commission	2005
30.	Report of Inquiry: Owner Drivers and Forestry Contractors	Industrial Relations Victoria – Department of Innovation, Industry and Development	Volume 1: Report and Recommendations	February 2005
31.	Work-related Traffic Crashes – A Record Linkage Study	Soufie Boufous and Ann Williamson	Journal Article – Accident Analysis and Prevention	15 June 2005
32.	Pay Incentives and Truck Drivers Safety: A case Study	D. Rodriguez, F. Targa & M. Belzer	Journal Article – Industrial and Labor Relations Review	January 2006
33.	Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (No. 2) Re [2006] NSWIRComm 328	Industrial Relations Commission of New South Wales	Decision	February 2006
34.	Economic pressure, multi-tiered subcontracting and occupational health and safety in Australian long-haul trucking	Claire Mayhew & Michael Quinlan – Employee Relations Journal	Research Report/Journal	May, 2006

35.	Trucking Tragedies: The Hidden Disaster of Mass Death in the Long-Haul Road Transport Industry	Quinlan M., Johnstone R., Mayhew C., Tucker E - Working Disasters the politics of recognition and response, Baywood, New York, (pp 19 - 63)	Journal Article	June, 2006
36.	The Scope for Appropriate Cross-Jurisdictional Regulation of International Contract Networks (such as supply chains) – Recent developments in Australia and their supranational implications	Igor Nossar	Research Paper	2007
37.	The Regulation of Outwork and the Federal Takeover of Labour Law	Michael Rawling – Australian National University	Research Paper	2007
38.	A Generic Model of Regulating Supply Chain Outsourcing	Michael Rawling – Australian National University	Research Paper	April 2007
39.	Regulating Supply Chains to Improve Health and Safety	James P., Johnstone R., Quinlan M., Walters D - 36(2) Industrial Law Journal 163 at 175-176	Journal Article	June, 2007
40.	Predictors of Psychostimulant Use by Long-Distance Truck Drivers	Ann Williamson	Research Paper	August 2007
41.	Submission on Safe Payments Review for National Transport Commission	Ann Williamson	Submission	1 September 2008
42.	Freight rates in Australia 1964-65 to 2007-08	T. Risbey, M. Cregan & D. Mitchell – Bureau of Infrastructure, Transport and Regional Economics	Information Sheet	October 2008
43.	Remuneration and Safety in the Australian Heavy Vehicle Industry: A	Michael Quinlan and The Hon. Lance Wright	Report	October 2008



	Review undertaken for the National Transport Commission			
44.	Safe payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry	National Transport Commission	Report	October 2008
45.	Submission for the National Review into Model Occupational Health & Safety Laws in Relation to OHS within the Context of Contract Networks	TCFUA	Submission	31 October, 2008
46.	New South Wales Workers Compensation Statistical Bulletin 2007/08	Work Cover	Bulletin	2009
47.	National Waste Overview	Environment Protection and Heritage Council	Report	2009
48.	Armed Robbery in Australia: 2006 National Armed Robbery Monitoring Program Annual Report	Lance Smith & Erin Louis – Australian Institute of Criminology	Monitoring Report	2009
49.	Occupational Health and Safety in the Banking Industry	Anna Bunn and Robert Gutherie	Paper - Curtin University of Technology	2009
50.	Report of Analysis: Truck Crashes and Work-Related Factors Associated with Drivers and Motor Carriers, Large Truck Crash Causation Study Analysis.	Belzer M - Federal Motor Carrier Safety Administration (FMCSA)	Report	February, 2009
51.	Short Trips and Long Days: Safety and Health in Short-Haul Trucking	A. Williamson, P. Bohle, M. Quinlan & D. Kennedy	Journal Article – Industrial and Labor Relations Review	April 2009
52.	Safe Rates Safe Roads	Commonwealth of Australia	Directions Paper	2010
53.	The Heavy Vehicle Study – a case-control study investigating risk factors for crash in long-distance heavy vehicle drivers in Australia	M. Stevenson, L. Sharwood, K. Wong, J. Elkington, L. Meuleners, R. Ivers, R. Grunstein, A. Williamson, N. Haworth & R. Norton	Research Paper	2010

54.	Port Botany Landslide Improvement Strategy: Reforms are on the Way	Sydney Ports	Information Sheet	2010
55.	Armed Robbery in Australia: 2007 National Armed Robbery Monitoring Program Annual Report	Lance Smith & Erin Louis – Australian Institute of Criminology	Monitoring Report	2010
56.	Kink in the Chain: Interorganizational Relations in the Intermodal Supply-Chain	David Jaffee – Department of Sociology and Anthropology, University of North Florida	Research Report	June 2010
57.	Guard shot dead in raid in money van	A. Drummond & M. Godfrey - Mercury	Media Report	8 June 2010
58.	Cash in transit armed robbery in Australia	Lance Smith & Erin Louis – Australian Institute of Criminology	Trends and Issues Paper	July 2010
59.	Final Report: External Influence on health and safety outcomes in NSW long distance trucking	Transport Workers' Union of Australia & A. Williamson & R. Friswell	Research Report	August 2010
60.	Analyses of stevedoring productivity in Australia's five major container ports	G. Lubulwa, A. Lightfoot & A. Malarz – Australasian Transport Research Forum	Research Paper	October 2010
61.	National Ports Strategy	Infrastructure Australia and the National Transport Commission	Background Paper	December 2010
62.	Cash in Transit Code of Practice Queensland	Workplace Health and Safety Queensland	Code of Practice	2011
63.	Road Safety Remuneration Bill 2011- Regulatory Impact Statement	Department of Employment and Workplace Relations and Price Waterhouse Coopers	Report	2011

64.	Beyond the employment relationship: Collective bargaining and supply chain coordination	Wright C - British Trade Union Congress	Report	2011
65.	Safe Rates Submission DEEWR	The Transport Workers' Union of Australia	Submission	11 February 2011
66.	Follow occupational health and safety procedures	Industry Skills Council	Educative Paper	20 July 2011
67.	What motivates employers to establish preventive management arrangements within supply chains?	Walters D., James P - 49 Safety Science 988	Journal Article	August, 2011
68.	Supply Chains and Networks	Michael Quinlan – Safe Work Australia	Research Paper	July 2011
69.	The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety	Michael Belzer	Safe Rates Summit Discussion Paper	November 2011
70.	Coroner's Report into deaths of Jordan Bridge, Makeely Bridge, David Bridge and David Carolan	Magistrate C. Forbes – Bateman's Bay Local Court	Coroner's Report	17 November 2011
71.	Road Haulage in Australia: keeping vulnerable workers safe and sound	Michael Quinlan – School of Organisation and Management UNSW	Media Update	2012
72.	Improving Safety and Fairness for Road Transport & Distribution Workers	Transport Workers' Union of Australia	Submission	2012
73.	Regulating supply chains to provide a safe rate for road transport workers	Michael Rawling and Sarah Kaine -	Journal Article – Australian Journal of Labour Law	2012
74.	Cash in Transit	Comcare – Australian Government	Fact Sheet	January 2012
75.	Port Botany Landside Improvement Strategy	Sydney Ports	Industry Update	February 2012
76.	Australia's Bulk Ports: Report 135	Department of Infrastructure and Transport	Report	2013
77.	Australian Sea Freight 2011-12	Department of Infrastructure and Transport	Statistical Report	2013

78.	The Heavy Vehicle Study – Final Report	Jane Elkington & Mark Stevenson	Report	February 2013
79.	Drayage Owner-Operators: Understanding Container Drayage Owner-Operators in Metro Vancouver	Asia Pacific Gateway Skills Table	Summary Report	July 2013
80.	Report for Transport Workers’ Union (Federal) Costings to Create a System of Safe, Fair and Sustainable Rates for Employed and Self-Employed Drivers in the Road Freight Industry of Australia (An Extract)	TransEco Pty Ltd	Research Paper	1 August 2013
81.	Letter to Duncan Gay	Nic Moulis – Australian Convenience and Petrol Marketers Association	Correspondence	22 October 2013
82.	Obesity and Other Risk Factors: The national Survey of U.S Long-Haul Truck Driver Health and Injury	W. Siber, C. Robinson, J. Birdsey, G. Chen, E. Hitchcock, J. Lincoln, A. Nakata and M. Sweeney – American Journal of Industrial Medicine	Report on Empirical Study	November 2013
83.	Cootes Compliance Operation Sees Another Truck Grounded	Duncan Gay – Minister Roads and Ports	Media Release	5 December 2013
84.	Response to Press re Cootes Transport	Rohan Abeyewardene – McAleese Group (Cootes)	Press Release	6 December 2013
85.	Ports: job generation in the context of regional development	Department of Infrastructure and Regional Development	Information Sheet	2014
86.	Containerised and non-containerised trade through Australian ports to 2032-33: Report 138	Department of Infrastructure and Regional Development	Research Report	2014
87.	Safety management for heavy vehicle transport: A review of the literature	Mooren L., Grzebieta A., Williamson A.,	Journal Article	February 2014

		Olivier J., Friswell R - 62 Safety Science (p.79)		
88.	More Defects Found in Cootes Fleet	Duncan Gay – Minister Roads and Ports	Media Release	7 February 2014
89.	Cootes Tankers Called in for Full Compliance Inspections in NSW	Duncan Gay – Minister Roads and Ports	Media Release	10 February 2014
90.	The explosive risk	Ann Arnold – ABC Radio National	Media Report	16 February 2014
91.	Associations Between Heavy-Vehicle Driver Compensation Methods, Fatigue-Related Driving Behaviour and Sleepiness	J. Thompson & M. Stevenson – Monash University Accident Research Centre	Research Paper	May 2014
92.	Work-Related Fatalities Involving Trucks, Australia, 2003 to 20112	Safe Work Australia	Report	May 2014
93.	What are the differences in management between characteristics of heavy vehicle operators with high insurance claims versus low insurance claims?	L. Mooren, A. Williamson, R. Friswell, J. Olivier, R. Grzebieta & F. Magableh	Journal Article – Safety Science	10 July 2014
94.	Cash in Transit Code of Practice	Australian Security Industry Association Limited	Code of Practice	August 2014
95.	Australian Code for the Transport of Dangerous Goods by Road and Rail (Edition 7.3)	National Transport Commission	Code of Practice	August 2014
96.	Attitudes towards risk taking and rule breaking in Australian workplaces	Safe Work Australia	Research Report	December 2014
97.	Interim report of the inquiry into the sectors in the cash in transit industry	S. Hutchins & P. Ryan – Road Safety Remuneration Tribunal	Interim Report	19 December 2014
98.	Report on Conferences in Relation to Party Proposed RSRO	Deputy President Asbury – Road Safety Remuneration Tribunal	Final Report	22 December 2014

99.	Final report of the inquiry into the sectors in the cash in transit industry	S. Hutchins & P. Ryan – Road Safety Remuneration Tribunal	Final Report	2 March 2015
100.	Transport Workers’ Union of Australia to the Waste Management Inquiry	Transport Workers’ Union of Australia	Submission	20 March 2015
101.	Research project on minimum payments for road transport contractor drivers: KPMG guidance material – Cost model outputs (per hour and per kilometer)	KPMG	Research Paper	April 2015
102.	Research project on minimum payments for road transport contractor drivers: KPMG guidance material – Cost model outputs (single hourly rate)	KPMG	Research Paper	April 2015
103.	Research project on minimum payments for road transport contractor drivers: KPMG detailed guidance material	KPMG	Research Paper	April 2015
104.	Transport Workers’ Union of Australia to the Inquiry into the Wharf and Ports Sector of the Road Transport Industry	Transport Workers’ Union of Australia	Submission	1 April 2015
105.	Suicide among male road and rail drivers in Australia: a retrospective mortality study	Milner A., Page K., LaMontagne A – Road and Transport Research 24(2)	Journal Article	June 2015
106.	Regulating Supply Chains to Protect Road Transport Workers: An Early Assessment of the Road Safety Remuneration Tribunal	1. Johnstone R., Nossar I., Rawling M - Federal Law Review, 43(3) (pp. 397 – 421).	Journal Article	September 2015
107.	Report in Conferences Regarding Matters RTD2014/2 & RTO2014/2	Hon Lea Drake & Paul Ryan	Report	14 December 2015

108.	Panel on Research Methodologies and Statistical Approaches to Understanding Driver Fatigue Factors in Motor Carrier Safety and Driver Health	Federal Motor Carrier Safety Administration (FMCSA) - Commercial Motor Vehicle Driver Fatigue, Long-Term Health, and Highway Safety: Research Needs.	Report	2016
109.	Interim Report – Inquiry into the sectors in the waste management industry	S. Hutchins & P. Ryan – Road Safety Remuneration Tribunal	Interim Report	18 February 2016
110.	Compromising Road Transport Supply Chain Regulation – The Abolition of the Road Safety Remuneration Tribunal	Michael Rawling, Richard Johnstone & Igor Nossar	Sydney Law Review Published Article	Volume 39 - 2017
111.	The Cost of Road Crashes in Australia 2016: An overview of safety strategies	Litchfield F	Report	May 2017
112.	Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis	Federal Motor Carrier Safety Administration (FMCSA) -Office of the Inspector General (U.S. Department of Transportation) - Report No. ST2018019	Report	January 2018
113.	Why do Long Distance Truck Drivers Work Extremely Long Hours	M Belzer., Sedo - Economic and Labour Relations Review 29(1) (pp 59–79)	Journal Article	March 2018
114.	Driving Health Report, No 2: Work-related injury and disease in Australian truck drivers	Xia, T., Iles, R., Newnam. S., Lubman, D., & Collie, A – Monash University	Research Paper	May 2018
115.	Work-stress factors associated with truck crashes: An exploratory analysis	M Belzer - Economic and Labour Relations Review 29(3) (pp 289–307)	Journal Article	September 2018

116.	Evaluating the Regulation of WHS through Supply Chain Codes of Conduct in the Retail Transport and Logistics Industry.	L Thornthwaite - Centre for Workforce Futures, Macquarie University.	Research Report	January 2019
117.	Returns to Compensation in Trucking: Does Safety Pay?	M Faulkner and M Belzer - Economic and Labor Relations Review 30(2), (pp 262-284)	Journal Article	March 2019
118.	Submission to the Inquiry on the Importance of a Viable, Safe, Sustainable and Efficient Road Transport Industry - Senate Standing Committees on Rural and Regional Affairs and Transport	Transport Workers' Union of Australia	Senate Committee Submission	November 2019
119.	Management of heavy truck driver queuing and waiting for loading and unloading at road transport customers' depots	R Friswell, A Williamson - Safety Science, Issue 120, (pp 194-205)	Journal Article	December 2019
120.	Safe Rates and Unpaid Labour: Non-Driving Pay and Truck Driver Work Hours	T Kudo., M Belzer - Economic and Labour Relations Review, 30(4) (pp 532-548)	Journal Article	December 2019
121.	The association between truck driver compensation and safety performance	T Kudo., M Belzer - Safety Science 120 (pp 447-455)	Journal Article	December 2019
122.	Protecting Gig Workers through Regulatory Innovation	I Nossar, The Regulation and Management of Workplace Health and Safety	Book	2020
123.	Economic Liberalisation of Road Freight Transport in the EU and the USA	M Belzer., A Thörnquist - The Regulation and Management of Workplace Health and Safety: Historical and Emerging Trends. New York:	Journal Article	June 2020



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124.	Associations of heavy vehicle driver employment type and payment methods with crash involvement in Australia	W Soro., N Haworth., J Edwards., A Debnath., D Wishart., M Stevenson - Safety Science, Issue 127	Journal Article	July 2020
125.	Submission to the Select Committee on the impact of technological and other change on the future of work and workers in New South Wales	Transport Workers' Union of Australia	Report	October 2020
126.	Work health and safety of food delivery workers in the gig economy	Dr Convery E., Dr Morse A., Dr Fung B., Wodak S., Powell Z., Dr Quinn V., Dr Taylor M., Dr Searle B., Vårhammar A – NSW Government, Centre for WHS, The Behavioural Insights Team, Macquarie University	Report	November 2020
127.	Proposal for legal protections of on-demand gig workers in the road transport industry	Rawling M., Riley J – Transport Education Audit Compliance and Health Organisation (TEACHO)	Report	January 2021

128.	Truck driver reported unrealistically tight delivery schedules linked to their opinions of maximum speed limits and hours-of-service rules and their compliance with these safety laws and regulations	G Chen., K Sieber., J Collins., E Hitchcock., J Lincoln., S Pratt., M Sweeney - Safety Science, Issue 133	Journal Article	January 2021
129.	Economic Incentives and Market Pressure: Why Markets Require “Safe Rates” Regulation	M Belzer – Evidence before the Senate Rural and Regional Affairs and Transport References Committee Senate Standing Committee on Rural and Regional Affairs and Transport	Senate Submission	April 2021
130.	Without Trucks Australia Stops: the development of a viable, safe, sustainable and efficient road transport industry.	Senate Standing Committees on Rural and Regional Affairs and Transport - Inquiry on the Importance of a Viable, Safe, Sustainable and Efficient Road Transport Industry	Senate Committee Final Report	August 2021
131.	Submission to the Select Committee on Job Security + Supplementary Submissions	Transport Workers’ Union of Australia	Senate Committee Submission	April 2021 – October 2021
132.	Road Transport Regulation, Safety and Prospects for the ‘Gig Economy’	Peetz D - Australian Journal of Labour Law 35(3) (pp165 - 184)	Journal Article	2022
133.	Fourth Interim Report: The Job Insecurity Report	Joint Select Committee on Job Security - Australian Senate	Report	February 2022
134.	Constraining the Uber Powerful Digital Platforms: A Proposal for a New form of Regulation of On-Demand Road Transport Work	Rawling M., Riley J - University of New South Wales Law Journal 45(1) (pp7 - 34)	Journal Article	April 2022

135.	Impact of technological and other change on the future of work and workers in New South Wales - Final report - Workplace surveillance and automation	Select Committee on the impact of technological and other change on the future of work and workers in New South Wales	Report	November 2022
136.	Compensation and Crash Incidence: Evidence from the National Survey of Driver Wages	W Ryley., M Belzer - The Economic and Labour Relations Review, 34(1).	Journal Article	March 2023
137.	Tough Gig: Worker Perspectives on the Gig Economy	Mawhinney S., Reinhard J., Lefebvre M – McKell Institute Queensland	Report	April 2023
138.	An examination of the relationship between financial performance and safety factors in the heavy trucking industry	W Soro., N Haworth., A Debnath., D Wishart – Safety Science, Issue 164	Journal Article	June 2023

## ANNEXURE B – ROAD TRANSPORT INDUSTRY POSITION STATEMENT

*SEE FOLLOWING PAGE FOR THE ROAD TRANSPORT INDUSTRY STATEMENT*

29 SEPTEMBER 2023

# ROAD TRANSPORT INDUSTRY POSITION STATEMENT: CLOSING LOOPHOLES ROAD TRANSPORT REFORMS



This statement is written on behalf of the thousands of road transport industry businesses & workers which keep Australia moving. Represented in this statement are the peak representatives for transport employers, businesses and workers which include the Australian Road Transport Industrial Organisation (ARTIO), the Transport Workers Union (TWU), National Road Transport Association (NatRoad), and the National Road Freighters Association (NRFA).

Together, we represent over 575 transport companies, 30,000 owner drivers and small businesses, and 650,000 transport workers across Australia. As an industry, we welcome the opportunity to contribute to the Senate Committee inquiry into the "Fair Work Legislation Amendment (Closing Loopholes) Bill 2023" and specifically, the road transport provisions of the draft Bill. We tender this joint statement to provide the Government and all members of Parliament with our strong support for these road transport reforms, while advancing a number of important amendments.

## NEED FOR SAFETY, SUSTAINABILITY AND VIABILITY



The road transport industry is vital to Australia. It accounts for between 4-5% of GDP, supports over 650,000 transport workers and is integral to the functioning all other industries. In recent years, the pandemic, natural disasters—such as floods shutting down key supply routes through the centre of the country— and global supply chain disruptions have made abundantly clear the importance of a smooth-running and efficient transport industry for our economy, our society and regional Australia. Ensuring a safe, sustainable and viable road transport industry is thereby central to all aspects of Australian life.

Without reform, the industry is in crisis.

Industry standards have been eroded by unsustainable commercial pressures arising from unregulated industry contractual chains, the structure of transport markets, and the rapid development of gig transportation models which are exploitative by nature under Australia's outdated system. This has caused a race to the bottom, leading to poor safety outcomes, razor-thin margins, and fragile transport supply chains. These pressures manifest through various sectors and transport modes in complex ways, however, their impact is the same.

Transport businesses are collapsing at an alarming rate – with 347 insolvencies in the last financial year. Decades of research has demonstrated the link between low pay and poor safety outcomes. Operators and drivers are pushed to the limit with no safety net of industry standards to fall back on. In 2022, this led to 185 truck-related fatalities, including 44 truck drivers.

Regulation that does exist in transport is disproportionately applied to those with the lowest commercial power, being transport operators and truck drivers. Those with the most commercial power – the clients at the top of contractual chains – are not bound by any regulatory obligations to ensure their freight can be moved safely and sustainably. Responsible clients wanting to do the right thing are at risk in an unregulated market where others squeeze transport to boost profits and gain competitive advantage.

The erosion of transport industry standards is also limiting the ability to respond to future challenges. These challenges include ensuring a just transition to net zero in an industry which accounts for approximately 7% of Australia’s total greenhouse gas emissions, expanding our workforce to address skill shortages and meet growing demand, and investing in new technologies to increase productivity and deliver a more dynamic transport system.

These issues have been examined in detail through an in-depth inquiry from the Senate Select Committee on Rural and Regional Affairs and Transport. The recommendations of the Senate report included reform such as that which has been tabled under the Closing the Loopholes Bill.

Enacting this reform would provide for a transport industry that is safer, fairer and more sustainable for all industry participants, road users and the communities that rely on this essential industry to survive.

## STRENGTHS OF THE PROPOSED LEGISLATION

The road transport industry welcomes the transport reforms contained within the draft Bill and commends the Government on its work to date. We note that, notwithstanding the need for some important amendments, these reforms are largely consistent with the recommendations of the three-year Senate Inquiry mentioned above, which inquired into the “Importance of a viable, safe, sustainable and efficient road transport industry” and subsequent calls for reform which have been supported by the road transport industry.

## Oddball Imaging Studio

**In particular, the road transport industry welcomes the provisions contained within the draft Bill which:**

- Establishes an 'Expert Panel', within the Fair Work Commission, with the capacity to set enforceable industry standards to ensure a safe, sustainable and viable road transport industry.
- Ensures the capacity of the Expert Panel to deliver safe, sustainable and viable outcomes is not limited by narrowing the types of standards which can be set (with the exceptions of rostering and overtime arrangements) or by excluding sections of the road transport industry.
- Provides for standards to be set on an industry-wide basis, across what are commonly interchangeable road transport modes (i.e. owner-drivers, employees and gig transport workers) through Modern Awards, Regulated Worker Orders, and Contract Chain Orders.
- Institutionalises industry consultation in the 'Expert Panel' by ensuring that standards cannot be enacted without consultation with industry through a Road Transport Advisory Group and its subcommittees and that Commissioners have industry expertise.
- Recognises the need for a capacity to resolve disputes and enforce standards through the Fair Work Commission.
- Provides protections from Unfair Terminations and Unfair Deactivations to ensure standards are enforced, noting that a failure to do so would lead to workers being terminated for seeking compliance with any standards.
- Provides an accessible unfair contracts jurisdiction, in the Fair Work Commission, to support those who may seek relief where standards do not exist.



These elements, subject to actioning the amendments that are listed below, are fundamental to ensuring that these transport reforms can meet the objectives of safety, sustainability and viability. Any changes which undermine these provisions will otherwise threaten the functioning of the entire system and lead to unintended consequences including more deaths and insolvencies.



## PROPOSED AMENDMENTS

Notwithstanding the strengths of the transport reform provisions noted above, there remain critical amendments which must be made to ensure these reforms meet their objectives. These critical amendments to ensure the integrity of the system are as follows:

### **Amendment 1 - Road Transport Industry Contractual Chain**

#### **Issue**

In order to meet the Road Transport Objective and deal with the current issues in the road transport industry that the draft Bill is designed to address, the Road Transport Industry Contractual Chain Provisions are essential. As it stands the draft Bill only refers to what regulations may do which provides a large degree of uncertainty and is wholly inadequate for its lack of enforceability. Unless every participant in a contractual chain is obliged to meet safe, fair and sustainable standards, regulation will continue to unfairly target operators and drivers and disadvantage responsible clients.

#### **Solution**

The proper approach is to have the powers and functions of the FWC enshrined in legislation based on the following principles:

- The Road Transport Expert Panel (**Expert Panel**) must have the power to make Contractual Chain Orders (**CC Order**) that apply to any and all Contractual Chain Participants as specified in the CC Order and provide for enforceable standards and achieve at least cost recovery;
- The matters that must, may or must not be dealt with should reflect those contained in ss 536KJ-536KN;
- The process of application, consultation and operation should reflect those involved in the making of a Road Transport Minimum Standards Order (**RT Order**) (with relevant amendments as contained below);
- The Expert Panel must have the power to deal with disputes between any contractual chain participants, not only where a CC Order is in place (as currently contained in s 40J(2)(d));
- The ability for the Expert Panel to vary other relevant fair work instruments in line with the making, varying or revoking of a CC Order to ensure they meet the Road Transport Objective;
- There must be the ability for Contractual chain Participants to reach a Contractual Chain Agreement with the process reflecting Part 3A-4 (with relevant amendments as contained below); and

Relevant references to this section to be added to the s 40C Guide, road transport objective, Road Transport Advisory Group (**RTAG**) and the Expert Panel.

### **Amendment 2 - Road Transport Objective**

#### **Issue**

A confusing double reference to 'standards' in s 40D could mean the reference to 'standards' in s 40D(a) is read down and is limited to only 'minimum standards' referred to in stanza above. There is also a lack of contractual chain reference which will be at the heart of this system.

#### **Solution**

Make clear s 40D(a) are 'industry standards.'

Add the following to paragraphs:

- minimum standards for regulated road transport workers and employees in the road transport industry are complied with and enforceable and not undermined by road transport contractual chains; and
- all participants in road transport industry contractual chains take responsibility for implementing and maintaining minimum standards for regulated road transport workers and employees.

### **Amendment 3 – Road Transport Advisory Group (RTAG) Functions**

#### **Issue**

It should be made clear that RTAG has functions beyond Awards, Standards and the prioritisation of work. While it is noted that in s 40E that the RTAG's work is not limited to these functions, it would be useful to include a reference to a broader remit.

#### **Solution**

Include in s 40E(2) 'to provide advice to the FWC in relation to road transport industry matters.'

### **Amendment 4 – Operation of Road Transport (RT) Orders**

#### **Issue**

At s 536JF(3) an RT Order does not come into operation until 24 months after the relevant notice of intent for the order was published.' In order to reach this point the following steps must have taken place:

- An application must be made to the Expert Panel – s 536JZ;
- There must have been genuine engagement with parties to be covered – s 536KA(2)(a);
- The RTAG must have been consulted – s 536KA(2)(b);
- Further consultation must have taken place, including publishing a draft notice of intent and the draft of the proposed Order as well as any affected person being able to make written submissions – ss 536KA(2)(c), 536KB and 536KC; and
- The ability for FWC to hold hearings on the matter – s 536KD.

Once an RT Order is made, there are significant review mechanisms and powers to vary or revoke the RT Order. These include:

- There being a further 12 months prior to operation if FWC makes significant changes - s 536KE(c) (discussed further below);
- the ability for FWC to not make an RT Order at all or set guidelines instead - s 536KG(1)(c) and (d);
- the ability for FWC to vary or revoke an RT Order - s 536KQ; and
- FWC being able to conduct an internal merits review on an RT Order - s 536LA.

Given the process to have an RT Order made and the ability for the FWC to vary or revoke an RT Order, 24 months is far too long a period before an RT Order becomes operational following a relevant notice of intent.

#### **Solution**

There should be a default 12 month period for an RT order to become operational, with the ability for FWC to change this period to 6 months if FWC deems appropriate. There should also be an ability for FWC to make orders applicable in a very short time period where failure to do so would undermine the Road Transport Objective.

#### **Issue**

At s 536KE(c) there is a further 12 month delay in the operation of an RT Order if FWC makes significant changes to an RT Order after the publishing of a notice of intent. Given the consultation process and ability for any decisions to be reviewed as above, this is far too long.

#### **Solution**

FWC should be given discretion as to whether any further delays in the operation of an RT Order are necessary which may include a period of 'up to 6 months'.

#### **Amendment 5 - Ability to Vary Modern Awards**

#### **Issue**

The Road Transport Objective includes 'the need for an appropriate safety net of minimum standards for regulated road transport workers and employees' (emphasis added) and 'the need to avoid unreasonable adverse impacts upon sustainable competition among road transport participants.' In order to achieve these objectives it is necessary to ensure that any minimum standards orders made in the road transport industry are able to be reflected where necessary on employee standards and thus the creation and variation of Modern Awards.

As it stands there are references to the ability of the FWC to make and vary Modern Awards (see ss 40E(2)(a), 582(4A), 617(10B)(a) and (b) and 157(1) Note 4). While s 157(1) Note 4 takes into account the Road Transport Objective, it is unclear how this would interact with s 157(2) in order to achieve the Road Transport Objective.

### **Solution**

To ensure that the Road Transport Objective is able to be achieved, the FWC should only consider the Road Transport Objective in the making, variation or revocation of a road transport industry Modern Award.

### **Amendment 5 - Ability to Vary Modern Awards**

#### **Issue**

The Road Transport Objective includes 'the need for an appropriate safety net of minimum standards for regulated road transport workers and employees' (emphasis added) and 'the need to avoid unreasonable adverse impacts upon... sustainable competition among road transport participants.' In order to achieve these objectives it is necessary to ensure that any minimum standards orders made in the road transport industry are able to be reflected where necessary on employee standards and thus the creation and variation of Modern Awards.

As it stands there are references to the ability of the FWC to make and vary Modern Awards (see ss 40E(2)(a), 582(4A), 617(10B)(a) and (b) and 157(1) Note 4). While s 157(1) Note 4 takes into account the Road Transport Objective, it is unclear how this would interact with s 157(2) in order to achieve the Road Transport Objective.

#### **Solution**

To ensure that the Road Transport Objective is able to be achieved, the FWC should only consider the Road Transport Objective in the making, variation or revocation of a road transport industry Modern Award.

### **Amendment 6 - Protection from Unfair Termination of Contract**

#### **Issue**

There are two issues in s 536LE in relation to when a person is protected from unfair termination. The first is that the section needs to be clarified to include a 'services contract or series of services contracts'. In the road transport industry, each different job can be deemed a separate services contract even if performed with the same road transport business, which would mean no road transport contractor would receive protection in relation to the minimum qualifying period. The second is that the minimum qualifying period of 12 months is too long considering both employee unfair dismissal and unfair deactivation have minimum periods of 6 months.

#### **Solution**

The section should be amended to reflect these changes.

**Issue**

As it stands to be unfairly terminated at s 536LK the termination needs to be both unfair and inconsistent with the Code. In considering whether a termination was unfair at s 536LM the FWC must take into account whether processes in the Code were followed. In making an unfairness assessment at s 536LM it follows that the FWC could find that the Code was complied with in accordance with s 536LM(1)(b) but due to a lack of valid reason at s 536LM(1)(a) and other relevant matters at s 536LM(1)(c) the dismissal was unfair. In these circumstances, a person may not be found to have been 'unfairly terminated' because the Code was complied with at s 536LK(d). The same logic applies in relation to unfair deactivations.

**Solution**

The criteria in s 536LK(d) should be removed to prevent the absurd outcome where persons dismissed for no valid reason and with no other adverse factors are denied protection in the Bill. The provisions in s 536LF(c) should be removed for the same reason.

**Amendment 7 - Collective Agreements**

**Issue**

Only negotiating parties may apply for FWC to deal with a dispute and must contain the consent of the other party in accordance with s 536MP. This broadly reflects the pre-reform position in relation to s 240 of the Fair Work Act 2009, which provides a very narrow avenue with which to seek the assistance of FWC during bargaining. This was addressed by Parliament in the 2022 amendments.

The formulation is even more problematic here given there are no methods under the draft Bill for one party to initiate bargaining (such as a Majority Support Determination), nor any avenue for the taking of Protected Industrial Action in order to support any claims made during the course of bargaining.

**Solution**

While it is understood that the intent of the draft Bill is that collective bargaining is to be light touch and consent based, there should be the ability for either party to refer a dispute to FWC either before or during bargaining under the same parameters as exist in the current s 240 of the Fair Work Act 2009.