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President Gerardine (Ged) Kearney
Secretary Jeff Lawrence

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The Secretary
House Committee on Infrastructure and Communications
PO Box 6021
Parliament House
CANBERRA ACT 2600

Road Safety Remuneration Bill 2012

Dear Secretary

The ACTU welcomes the opportunity to comment on the above Bill.

We have consulted our affiliate, the Transport Workers' Union of Australia (TWU), in relation to the Bill. We have had the opportunity to view the TWU submission prior to it being lodged with the Committee. We fully support the comments made in the TWU submission.

The Bill is the product of lengthy thorough policy development and consultation process. The well researched and documented behavioural connection between economic pressures in the road transport industry and unacceptable safety outcomes was the subject of a detailed report by the National Transport Commission (NTC) in late 2008. That report accepted that the link between driver remuneration and poor safety outcomes in the industry was one that required a regulatory response.

Whilst a number of models were proposed by the NTC, its preferred option involved the establishment of a specialist body under federal legislation that would:

- Establish and maintain enforceable safe payments for employees;
- Establish and maintain enforceable safe payments for owner drivers;
- Settle disputes in a low cost, accessible manner;
- Consider and, if necessary, bestow rights and obligations regarding safe payments on other parties in the transport supply chain; and
- Consider and, if necessary, bestow and impose obligations with respect to enforcement of safe payments.

Following from the NTC report, DEWR (in consultation with the Safe Rates Advisory Group) prepared a Directions Paper which proposed three models which could give effect to the NTC's preferred option of specialist body. Those options, briefly, involved:

- Creating a new Specialist Tribunal;
- Creating a "Safe Rates Panel" within the Industrial Relations Tribunal, Fair Work Australia

- Amending the *Fair Work Act* to treat owner drivers in a similar way to outworkers in the Textile, Clothing and Footwear Industry (with “Safe Rates terms” being the equivalent of “outworker terms”; and road transport industry participants being the equivalent of “outworker entities”).

As is evident from the Bill, the first option was that which was ultimately pursued. We supported this option in our submissions made to DEEWR regarding the Directions Paper and we remain of the view that it is the most appropriate response. Further, we are of the view the Bill as drafted is consistent with the recommendation of the NTC, referred to above.

In our submission concerning the Directions Paper, we endorsed the TWU position that four key principles were essential to the design of the regulatory response to the issues raised in the NTC report. We are of the view that those principles are expressed in the major features of the Bill as follows:

The universal application of a safe rates system to all supply chain participants, including client accountability for safe performance/planning and safe rates.

- The Bill permits the Tribunal to make “Road Safety Remuneration Orders” (RSROs) that apply to any “participant in the supply chain”, within constitutional limitations. The reach of an RSRO is at the Tribunal’s discretion, allowing it to be responsive to the chain of responsibility as manifested in any sector or in relation to any particular issue or practice that is the subject of the Tribunal’s consideration;
- An RSRO can apply to road transport drivers whether they are employees or independent contractors.

Safe rates and related conditions for long & short haul employees and owner drivers determined by an Independent Tribunal.

- The Tribunal is required to make its RSROs in relation to “remuneration and related conditions” for road transport drivers. The RSROs must be consistent with objects including “ensuring that road transport drivers do not have remuneration related incentives to work in an unsafe manner” and “removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices”.
- The Tribunal can make separate RSROs for the long and short haul sectors should it chose to do so, or make separate orders based on some other sectoral division it considers appropriate.
- The Tribunal can approve remuneration and related conditions based on the sectors that the industry establishes itself, through ‘Safe Remuneration Approvals’;
- The Tribunal has powers appropriate to its function and the participation in its processes is encouraged by the less formal processes envisaged by the Bill, including the requirement for professional legal representation only with the permission of the Tribunal.

The capacity to make binding determinations and resolve disputes among supply chain participants.

- The broad dispute resolution powers provided to the Tribunal will ensure that road transport drivers have access to an informal and inexpensive means to resolve remuneration or related matters that could impact on safety, including with the assistance of their union.
- There is scope for binding arbitration of these disputes, but only where the parties to the dispute agree on that course.

An appropriate and adequate enforcement regime.

- Contravention of the requirement to comply with a 'Road Safety Remuneration Order', a 'Safe Remuneration Approval' or an arbitrated order following dispute resolution constitutes a civil penalty in the order of 60 penalty units. This is in line with contraventions of industrial instruments under the *Fair Work Act*.
- In addition to ordering the payment of pecuniary penalties, the Federal Court and the Federal Magistrates' Court are empowered to make remedial orders including injunctive, compensatory or any other orders considered to be appropriate in the circumstances. This provides those courts with the greater flexibility to give effect to the objects of the legislation.
- The availability of a small claims procedure, along with rights given to industrial associations to bring proceedings and the suspension of the usual cost rules, should encourage road transport drivers to assert their rights in the event of a contravention.
- In cases where road transport drivers do not assert their rights, the Fair Work Ombudsman will be able to prosecute contraventions, investigate, educate and drive reform and compliance in the industry.
- The general framework of civil liability (e.g. civil double jeopardy and accessorial liability) is based on that in the industrial jurisdiction and is appropriate.

The ACTU recognises that there are other measures underway and in development that will contribute to safety in the road transport industry, including through the National Heavy Vehicle Project Office and through investment as part of the Nation Building Program. However, as is recognised in the Regulatory Analysis that accompanied the Bill, the Bill represents the only initiative that is specifically targeted at the industry's economic factors that influence and incentivise drivers to take risks.

We are thankful for the considerable effort put towards all stages of the policy development process including the drafting of the Bill. We are confident that the initiatives contained in the Bill will improve the safety of Australian roads and make relationships between participants in the road transport industry more fair and sustainable. We fully support the Bill.

Yours sincerely

Tim Lyons
ASSISTANT SECRETARY