



Transport Workers' Union

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Tony Sheldon National Secretary

Ms Sharon Bird MP
 Chair, House Standing Committee on Infrastructure and Communications
 C/- House of Representatives
 PO Box 6021
 Parliament House
 Canberra ACT 2600

Dear Ms Bird MP,

The Transport Workers' Union of Australia (TWUA) welcomes the opportunity to provide feedback to the House Standing Committee on Infrastructure and Communications inquiry into the *Road Safety Remuneration Bill 2011*. Please find attached our submission to the inquiry, 'Make Our Roads Safer For All Australians'.

This submission complements previous TWUA papers presented to other inquiries; including the Department of Education, Employment and Workplace Relations 'Safe Rates, Safe Roads' Directions Paper, the 'Wright/Quinlan - National Transport Commission's Safe Payments Inquiry', the 'Beyond the Midnight Oil' Parliamentary Inquiry and the 2001 landmark NSW Government 'Inquiry into Safety in the Long Haul Trucking Industry.'

Yours sincerely,

National Secretary
 Transport Workers' Union of Australia



NSW State Secretary
 Wayne Forno

Vic/Tas State Secretary
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 Peter Biagini

WA State Secretary
 Jim McGiveron

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Make Our Roads Safer For All Australians

Submission to the House
Standing Committee
on Infrastructure and
Communications with
regard to the Road Safety
Remuneration Bill 2011



Transport Workers' Union of Australia

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ABOUT THE TRANSPORT WORKERS' UNION OF AUSTRALIA

The Transport Workers' Union of Australia ("TWUA") represents 90,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries. With over 100 years experience in conducting Australia's freight task, the TWUA has been proactive in establishing efficient industry standards that improve the lives and safety of transport workers, their families and the road using public.

The TWUA welcomes the opportunity to provide feedback to the House Standing Committee on Infrastructure and Communications inquiry into the *Road Safety Remuneration Bill 2011*. This submission complements previous TWUA papers presented to other inquiries; including the Department of Education, Employment and Workplace Relations 'Safe Rates, Safe Roads' Directions Paper, the 'Wright/Quinlan - National Transport Commission's Safe Payments Inquiry', the 'Beyond the Midnight Oil' Parliamentary Inquiry and the 2001 landmark NSW Government 'Inquiry into Safety in the Long Haul Trucking Industry.'

This Submission is made on behalf of the TWUA and is supported by all TWUA State Branches.



EXECUTIVE SUMMARY

The Safety Crisis in the Road Transport Industry

- The *Road Safety Remuneration Bill 2011* ("the Bill") will, if enacted, lead to safer roads for all Australians.
- For too long, the Australian road transport industry has been Australia's most dangerous industry. No other industry is responsible for 330 deaths in a year.¹ No other industry injures 5,350 people per year at the rate of 31 per day.² This is an industry in the midst of a severe crisis in safety.
- Sadly, the crisis threatens to get worse. In the three years to March 2010, fatal crashes involving heavy rigid trucks increased by an average of 0.3% per year.³ In the year before the Wright/Quinlan Inquiry, the number of deaths in articulated heavy vehicle incidents increased by 5.4% when compared to the previous year.⁴ And the injuries, maiming and deaths are not confined to any one sector of the industry, with a recent study highlighting horrific injury and fatigue rates in short-haul and metropolitan markets.⁵
- Each road death costs approximately \$1.7 million. Each injury in an incident costs \$408,000.⁶ When the non-monetised social cost of road deaths, injuries and illness, family breakdown, pain and suffering is included in the measurement of what road deaths and injuries cost the community, the damages bill is immeasurable, and the need for immediate action is clear.
- The Bill will not only increase the safety of members of the TWUA involved in the road transport industry; it will lead to safer roads for all Australian road users.

Crisis Causes

- The report prepared by the Honourable Lance Wright QC and Professor Michael Quinlan for the National Transport Commission ("NTC") attributes the cause of the road transport safety crisis to economic factors; namely the low level of driver remuneration and their methods of payment.

1 National Transport Commission Inquiry, *'Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry'*, October 2008, p.5.

2 Transport Workers' Union of Australia submission to the National Transport Commission's *'Safe Payments Inquiry'*, *'Towards a Safe & Sustainable Transport Industry'*: "In 2004-2005, 5 350 people suffered serious injuries at work in the transport industry, at a rate of 31 per day".

3 *Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin*.

4 *Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin (October – December 2007)*, Department of Infrastructure, Transport, Regional Development and Local Government.

5 Findings extract from Williamson, Boyle, Quinlan and Kennedy – *'Short Trips and Long Days: Safety and Health in Short-Haul Trucking, 2009'*: "And these effects are not confined to any one sector of the industry. A recent short haul study found close to one-third of drivers (29 per cent) reported having a chronic injury from truck driving. Nearly one-third of drivers (29.5 per cent) reported having filed a workers' compensation claim in the past five years. Injuries are also statistically more likely to happen the longer you are in the industry: for every one year increase in truck driving experience, the odds of injury increases by 6 per cent."

6 *Road Crash Costs in Australia*, Report 102, Bureau of Transport Economics. All figures in 1996 dollars. Accounting for inflation, this figure is considerably higher today.

- The same body of academic, judicial and coronial evidence that confirms the relationship between remuneration and safety outcomes also confirms that the root cause of unsafe remuneration systems is the power imbalance between transport purchasers ("clients") and transport suppliers.
- As made clear in the NTC Report, the high level of control exercised by clients over price, timing, destination and route causes operators to bear the costs that, ordinarily, are borne by customers. Denied a proper return, let alone a margin that exceeds the cost of capital, operators undercut each other, bid the price of transport down, and attempt to recoup the losses caused by clients from drivers by not paying them for all work performed; and by paying them through incentive rates.
- Because employment is too often conditional on strict compliance with operators' direction and client deadlines, drivers are prone to drive while fatigued, speed, take drugs, and skimp on maintenance.

Life in the Cab

- A survey conducted in 2011 by the TWUA illustrated the dangerous on-road behaviours that drivers are currently forced to engage in as a result of the economic pressures that they are put under every day. The survey results showed that:
 - 48 per cent of drivers report almost one day a week in unpaid waiting time. For delivery drivers, it is more than 10 hours a week.
 - 56 per cent of owner-drivers have had to forgo vehicle maintenance because of economic pressure, the need to keep working or the high cost of repairs.
 - 27 per cent felt they had to drive too fast, and nearly 40% feel pressured to drive longer than legally allowed; many saying that the pressure comes directly or indirectly from the client.
- Tom, a 40-year-old driver from the Central Coast of New South Wales, completed the survey and summed up some of the pressures and dangers in the industry:

“ I am doing 24 hours in unpaid waiting times a week. With trailers being pre-loaded by (CLIENT NAME SUPPRESSED), I cannot afford to wait another hour or so unpaid while they unload and reload a set of trailers to get the legal weight. I carry overweight regularly and I don't have a choice. ”

- When his vehicle is eventually loaded, Tom has been effectively working for four to six hours without pay. Disturbingly, his work day has only just started and he will be driving – on our highways, in our cities and through our suburbs – for the next 12 hours, or until the load is done.
- Tom's story is just one of many, and illustrates why the external intervention that is urgently needed in the road transport industry must involve full and proper recognition of the relationship between methods of the remuneration of drivers and the poor safety practices that plague the industry and cause intolerably high levels of deaths, maiming and injuries.

Improving Industry Conditions & Safety Practices: The Urgent Need to Implement a Safe Rates system

- Once the need for external intervention in the transport market is accepted, the only conclusion, other than allowing the continuation of horrendous practices, is to establish an effective and enforceable framework for maintaining safe rates and conditions. The Bill provides this framework.
- Academic advice over many years, the Wright/Quinlan Inquiry, the NTC report and 'real world' driver experiences strongly indicate that four key principles must be incorporated into the design of a Safe Rates system for it to effectively reduce the numbers of persons killed or injured by the road transport industry.
- A 'Safe Rates system' is a system of safe payments and industry practices that would apply across road transport sectors. A Safe Rates system is not about taking competition out of what will always be a highly competitive industry, but putting safety into the industry. The almost countless government reports, coronial inquiries, judicial determinations and academic study have indicated that this is achievable through the enactment of legislation giving effect to four key principles:
 - The universal application of a Safe Rates system to all supply chain participants, including client accountability for safe performance/planning and Safe Rates;
 - Safe Rates and related conditions for long & short-haul employees and owner-drivers determined by an independent tribunal;
 - The capacity to make binding determinations and resolve disputes amongst supply chain participants; and
 - An appropriate and adequate enforcement regime.
- As this submission will illustrate, the Bill incorporates these four key principles of a Safe Rates system and, if enacted, will make substantial progress towards ending the destruction and carnage currently occurring on Australian roads. The TWUA is committed to working with all Governments, industry bodies, regulators, transport operators and clients to ensure that our roads are made safer for all Australians.



THE SAFETY CRISIS IN THE ROAD TRANSPORT INDUSTRY

1. For too long, the Australian road transport industry has been Australia's most dangerous industry. No other industry causes as many deaths, injuries and maiming as the road transport industry. This appalling safety record has led the Australian Safety and Compensation Council to dub road transport as amongst 'the most dangerous industries to work in.'⁷

**Excerpt From National Transport Commission Report -
"Safe Payments. Addressing the Underlying Causes of
Unsafe Practices in the Road Transport Industry"⁸**

Around 330 people are killed each year in crashes involving a heavy vehicle. Around 16 per cent or 52 of those killed are the drivers of the heavy vehicle.

The road transport sector is amongst the most dangerous industries to work in. The Australian Safety and Compensation Council reports the transport and storage industry has the largest number of compensated fatalities of any industry at 41 fatalities. This is followed by the construction industry with 33 fatalities, manufacturing with 28 fatalities and property and business services industries with 27 fatalities.

In summary, the road transport industry is amongst the industry sectors with the worst safety record of industry sectors in Australia and safety outcomes in the industry remain at unacceptable levels, to both drivers and the broader community.

2. Sadly, the crisis threatens to get worse. In the three years to March 2010 fatal crashes involving heavy rigid trucks has increased by average of 0.3% per year.⁹ In the year before the Wright/Quinlan Inquiry, the number of deaths in articulated heavy vehicle incidents increased by 5.4% when compared to the previous year.¹⁰ Each road death costs approximately \$1.7 million.¹¹ Each injury in an incident costs \$408,000.¹² When the non-monetised social cost of road deaths, injuries and illness, family breakdown, pain and suffering is included in the measurement of what road deaths and injuries costs the community, the damages bill is immeasurable.
3. 'Real world' driver accounts go some way to detailing the social costs of this industry

7 *Compendium of Workers' Compensation Statistics Australia*, Australian Safety and Compensation Council, 2005-2006.

8 "Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry", p. 5.

9 *Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin*.

10 *Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin (October – December 2007)*, Department of Infrastructure, Transport, Regional Development and Local Government.

11 *Road Crash Costs in Australia*, Bureau of Transport Economics, 2006.

12 *Road Crash Costs in Australia*, Report 102, Bureau of Transport Economics. All figures in 1996 dollars. Accounting for inflation, this figure is considerably higher today.

crisis. The following was a statement made by Robert Ireland before the Industrial Relations Commission of New South Wales for the Mutual Responsibility Award, in light of 14 years of driving trucks.

When I started driving, I was 6 foot 1 inch tall. When I stopped, I was 5 foot 10 inches. One day, I stood up from playing with my daughter on the couch and collapsed from the sudden agony. I could not move the bottom half of my body. It turned out that all the joints in my spine had compressed. My doctors informed me that this was most likely caused by me spending so long in a seated position. I was required to lie flat on my back to allow my spine to slowly return to normal. It took many weeks before I got any feeling back in my legs and I was not able to walk for many months. I had to go on anti-depressants to reverse the chemical imbalance that drugs had caused in my body.

Before the back injury I had to have an operation to remove one of my testicles. This was because of bad circulation from sitting down in the vehicle for long periods at a time in the vehicle. It took me almost 2 years to return to normal from those physical traumas. I have only just started to get close to my children over the past 18 months.

Crisis Causes

4. The report prepared by the Honourable Lance Wright QC and Professor Michael Quinlan for the National Transport Commission attributes the cause of the road transport safety crisis to economic factors; namely the low level of driver remuneration and their methods of payment.

Excerpt From Wright/Quinlan Report¹³

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

13 Wright/Quinlan, "Remuneration & Safety in the Australian Heavy Vehicle Industry: A Review Undertaken for the National Transport Commission," The National Transport Commission, 2008, p.49.

5. The report prepared by Wright and Quinlan succeeds numerous judicial and coronial determinations, academic studies, and government-commissioned inquiries that have explained how systems of remuneration that result in low rates of pay cause inappropriate industry practices.
6. This link between rates of pay and safety in the transport industry has been known for some time. As early as 1991, the Federal Department of Transport and Communications (Commonwealth) study into on-road performance and economic reward found:

It is the rate per se which acts to stimulate road practices in various forms in order that an acceptable level of total earnings (net of truck-related expenses) is obtained. Any deviation from a fixed salary tends to encourage practices designed to increase economic reward which are not synergetic with reducing exposure to risk.¹⁴

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

As long as driver payments are based on a (low) rate per kilometre there will always be an incentive for drivers to maximise the hours they drive, not because they are greedy but simply to earn a decent wage.¹⁵

8. The existence of the link between payment methods and safety has widespread acceptance in the transport industry. In cross-examination in the NSW Industrial Relations Commission Mutual Responsibility For Road Safety case, officers of the NSW Road Transport Association gave this evidence:

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

A. That's right, I agree with that.¹⁶

And later, when asked by Counsel to explicitly accept the link between lower prices and poor safety outcomes:

By and large I do yes. It's not as simple as that but I think there certainly is a connection between low price and lower safety standards.¹⁷

9. The evidence of the NSW RTA officers received further validation by the sworn and accepted evidence, in the same case, of Associate Professor Michael Belzer of Wayne State University & Research Scientist Institute of Labor and Industrial Relations, University of Michigan. He established through an extensive driver survey, a strong relationship between the rate of remuneration, hours worked and safety practices.

14 *'Long Distance Truck Drivers: On road performance and economic reward'*, December 1991, at p.102.

15 State Coroner's Summation & Finding in Relation to Anthony Forsythe, Barry Supple & Timothy John Walsh, (2003).

16 *Mutual Responsibility for Road Safety Case 2006*, Transcript [458].

17 Ibid.

Referring to the results of this survey, he stated:

Our measurement supports the hypothesis that drivers have target earnings and drivers paid lower than average seek to achieve [target] earnings by increasing their hours, in confirmation of the "sweatshop" hypothesis.

This can be explained by the idea that once drivers are paid a high enough rate and are already working long hours, further increases in the mileage rate are used to 'buy' more time off rather than purchase more goods and services. This also may be explained by joint decisions of drivers and firms at higher or lower rates of pay: firms that pay a high rate of pay may systematically prefer that their drivers obey the hours-of-service regulations, while firms that pay a low rate of pay may recognize that their drivers cannot make a living working no more hours than the regulations allow, and may encourage or coerce them to work more hours and drive more miles. The point estimates indicate that if the mileage rate were to increase to \$0.37 per mile, drivers would reduce their weekly hours to be in compliance with the current regulations. At this rate, drivers are being compensated at a rate sufficient for them to be able to satisfy their income requirements without being induced to work in excess of those mandated by law.¹⁸

Belzer also examined the effects of unpaid or underpaid time on safety:

Another compensation issue that can influence driver behavior is the common practice to either underpay or not pay at all for non-driving time. This is particularly true for time spent loading and unloading, which represents a significant proportion of working time, according to results from the UMTIP (sample) Drivers Survey. When drivers are not paid or are underpaid for loading and unloading, there is an incentive to underreport this unpaid time in order to drive for more hours... This incentive exists even if there is some compensation for loading time, as long as it is less than the amount paid for driving.¹⁹

10. There is also research demonstrating that higher rates of pay for truck drivers lead to a lower frequency of accidents. One such study from North America found that "higher rates of pay and pay raises are related to lower expected crash counts and to a higher probability of zero crash counts, all else held equal".²⁰ Another case study found that:

the pay increase influenced safety by modifying the behaviour of current drivers. The data indicates that drivers had better crash records after the pay increase, when the analysis controls for demographic, occupational, and human capital characteristics.²¹

11. The Full Bench in the *Mutual Responsibility Case* heard this evidence from Professor Belzer and found that:

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

18 *Mutual Responsibility for Road Safety Case 2006: Evidence of Michael Belzer.*

19 *Mutual Responsibility for Road Safety Case 2006: Evidence of Michael Belzer.*

20 Rodriguez, Daniel A., Marta Rocha, Asad Khattak, and Michael H. Belzer (2003), *The Effects of Truck Driver Wages and Working Conditions on Highway Safety: A Case Study*, Transportation Research Record, Vol. 1883, pp. 95-102.

21 Rodriguez, Daniel A., Marta Rocha, Asad Khattak, and Michael H. Belzer (2003), *The Effects of Truck Driver Wages and Working Conditions on Highway Safety: A Case Study*, Industrial and Labor Relations Review, Vol. 59, Issue 2, pp. 205-225.

And:

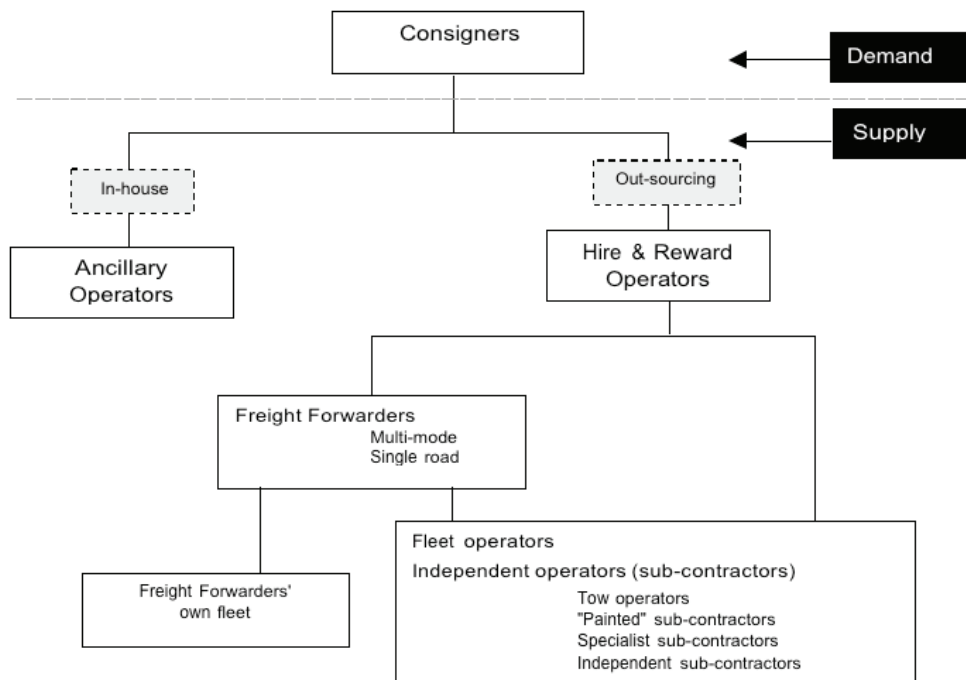
"...Every 10% more that drivers earn in pay rate is associated with an 18.7% lower probability of crash, and for every 10% more paid days off the probability of driver crashes declines 6.3%."²²

12. Simply stated, unsafe rates, unsafe payment methods, and/or unpaid or underpaid time pressures drivers into making the shocking choice of either risking their road safety, and the road safety of the community, or bearing the burden of severe economic loss.

The Cause of Poor Payment Practices - Client Power

13. The same body of academic, judicial and coronial evidence that confirms the relationship between remuneration and safety outcomes also confirms that the root cause of unsafe remuneration systems is the power imbalance between transport purchasers ("clients") and transport suppliers. Pictorially, below, the Bureau of Transport, Infrastructure and Regional Economics ("BITRE") portray their relationship as:

**Excerpt From BITRE Working Paper 60,
 An Overview of the Australian Road Freight Industry²³**



14. In reality, there is no power equality between those who demand transport services and those who provide it. Decisions over price, timing, destination and route is almost exclusively a prerogative that belongs to the client. The true nature of modern supply chains was accurately described by the Full Bench of the Industrial Relations Commission of New South Wales:

²² Mutual Responsibility for Road Safety Case 2006: Evidence of Michael Belzer.

²³ "Working Paper 60, an Overview of the Australian Road Freight Industry," Bureau of Infrastructure, Transport & Regional Economics, 2003, p.3.

**Excerpts From Mutual Responsibility for Road Safety Case,
Full Bench of the Industrial Relations Commission of New South Wales²⁴**

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

...

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

...

it is not uncommon for transport companies, which themselves would not engage in conduct in breach of industrial instruments, to subcontract work of marginal viability to other transport companies, which are prepared to breach industrial instruments in order to make a profit;

...

labour costs are the most significant component of transport costs and there is an inherent incentive to achieve savings through non-compliance with industrial instruments or through the engagement of owner drivers or small fleet owners who are prepared to do what it takes to make the work profitable;

...

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

15. The power of clients over price has been attested to by the Australian Trucking Association:

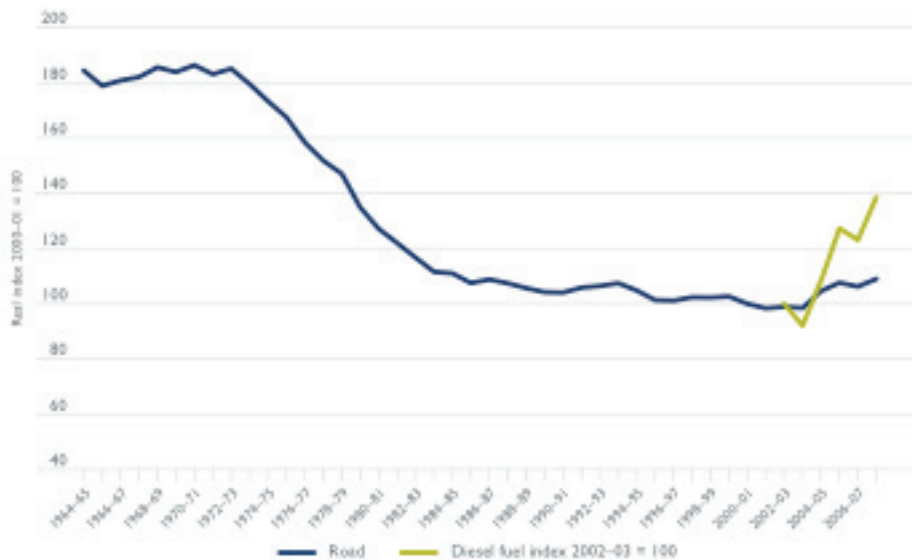
“Economically powerful industry clients have the commercial influence to determine the price of transport services and, in many circumstances, key conditions relating to the performance of transport work. Successive instances of contracting out to small fleet operators and owner-drivers can exacerbate this phenomenon, particularly in the long distance sector.”²⁵

16. The consequence of client power on transport pricing over forty years has been documented by the BITRE:

24 *Mutual Responsibility for Road Safety Case.*

25 Coonan, D., “Australian Trucking Association Submission to NTC Safe Payments Inquiry,” Australian Trucking Association, 2008.

Excerpt from BITRE Information Sheet 28: Freight Rates in Australia 1964-2007-2008²⁶



17. Most remarkably, the 41% fall in price between 1964 and 2007 occurred in the midst of an explosion in demand for transport. Over the same period growth in the supply of transport did not keep pace with demand. In an ordinary functioning market, the price for transport would rise, not fall by 41%. That the opposite occurred confirms the NTC's determination that the road transport industry is a "price taker" not a "price maker."²⁷

18. Transport companies are indeed price takers. They compete for a limited amount of work, and price is the main determining factor in deciding whether they win or lose contracts. Competition for work in the transport industry is so strong that there is an "acceptance of non-viable rates, excessive and illegal working hours, and stressed and chronically fatigued drivers."²⁸ Transport operators all face the same bundle of costs, costs such as vehicle maintenance, real estate, fuel and wages. To be successful, companies competing for work from major clients cut their profit margins and then, when those margins become too thin, find other ways to reduce their costs.

19. Ian, a 60-year-old driver responding to the Safe Rates Survey 2011, interviewed in Ballarat, summed up the economic reality for drivers working for major clients:

“The company I work for has no knowledge of what is legally required by them or me. To tell you the truth, I don't think they want to know. If I don't do the work they will get another owner-driver to do the work.”

20. Following the flow of money through the contracting chain is the only way for transport workers to receive redress from these pressures, since:

26 Bureau of Infrastructure, Transport and Regional Economics, Sheet 28.
 27 "Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry," ed. National Transport Commission (2008), p.32.
 28 Mayhew, Caire 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, p.225.

In the road transport industry there is a close association between freight rates and the level and type of payments made to truck drivers. The association operates at a number of levels. First, and most obviously, for owner/drivers the freight rate represent their 'pay' or at least the gross return that will determine earnings once operating and fixed costs (such as truck finance repayments) are deducted. Second, given the high labour cost component in road transport and since owner-drivers directly compete with operators using employee drivers for available work if owner drivers are prepared to accept rates that effectively translate into below award wages this places pressure on companies paying award wages.²⁹

21. The attainment of safe rates and conditions for employees and owner-drivers is contingent on clients making sufficient payment to their contracted transport companies to cover costs. In *Regina v Randall John Harm* (unreported, 26 August 2005) His Honour Justice Graham, in sentencing a driver, said:

In the present matter, the statement of facts refers to safety cams and log books. Restrictions on the maximum speed of heavy vehicles have also been implemented. Despite those measures, heavy vehicle truck drivers are still placed under what is, clearly, intolerable pressure in order to get produce to the markets or goods to their destination within a time fixed, not by any rational consideration of the risks involved in too tight a timetable, but by the dictates of the marketplace. Or, to put it bluntly, sheer greed on the part of the end users of these transport services.³⁰

22. In the year 2000, the House of Representatives Standing Committee on Communication, Transport and the Arts found that:

risks are compounded by the commercial imperative on transport operators to maximise the return on their investment, the demands of customers and by the pressure this places on transport workers to undertake longer hours with fewer rest breaks.³¹

23. And in Professor Quinlan's 2001 study:

customer and consignor requirements on price, schedules and loading / unloading and freight contracts more generally, in conjunction with the atomistic and

29 Professor Michael Quinlan, *Report of Inquiry into Safety in the Long-Haul Trucking Industry, 2001*, Motor Accidents Authority of New South Wales, p.138.

30 Full extract *Regina v Randall John Harm* (unreported, 26 August 2005) His Honour Justice Graham: 'In the present matter, the statement of facts refers to safety cams and log books. Restrictions on the maximum speed of heavy vehicles have also been implemented. Despite those measures, heavy vehicle truck drivers are still placed under what is, clearly, intolerable pressure in order to get produce to the markets or goods to their destination within a time fixed, not by any rational consideration of the risks involved in too tight a timetable, but by the dictates of the marketplace. Or, to put it bluntly, sheer greed on the part of the end users of these transport services. The time has come when those who are the beneficiaries of the interstate transport industry must take some blame for what happens at the sharp end of the interstate transport industry. The drivers are put under intolerable pressure. They drive when they are too tired, and when that becomes too difficult, they take drugs to try and prolong the state of awakening, albeit with risks that it can impede their concentration and actually make things worse. When a collision occurs, such as happened here, who ends up in the dock? Who ends up behind bars? Not the operators. Not the transport companies. Not the big corporations who are the people who use those transport services. But the driver. It's the driver who goes to gaol. The companies still make the profits. The drivers become another casualty of the heavy transport industry. Their lives are ruined, in many ways just as badly as many of the victims lives are ruined, by the imperative of greed which lies at the heart of the interstate transport industry. Case after case in the Courts demonstrates the inadequacy of the government's response to these problems and the inadequacy of the transport industry's own response to these problems.'

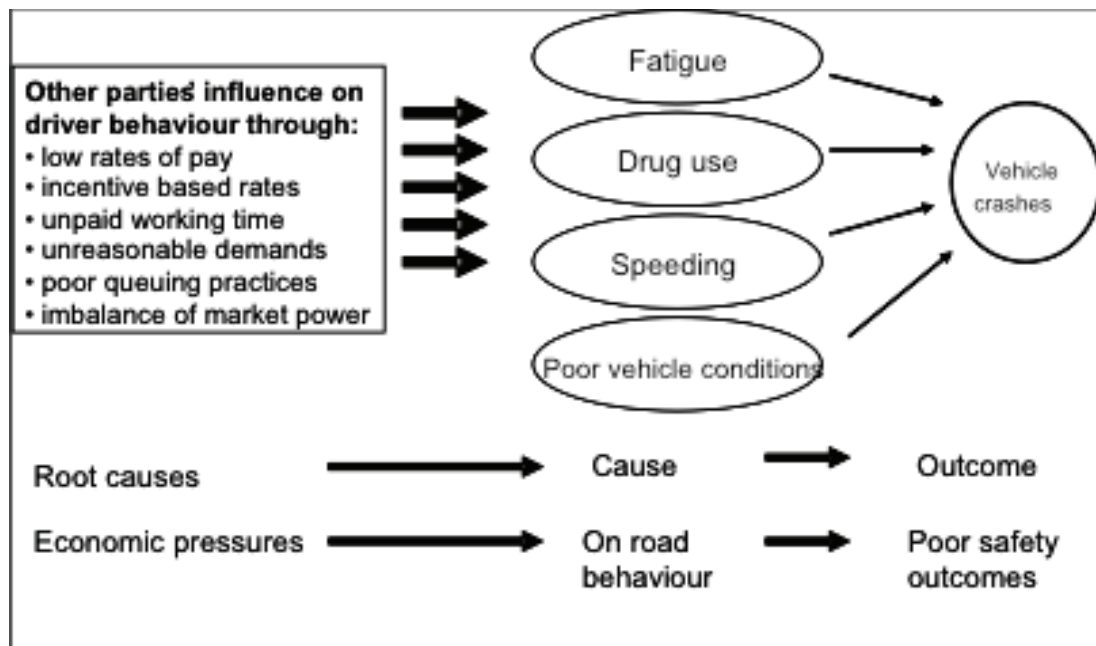
31 *Beyond the Midnight Oil: An inquiry into managing fatigue in transport* (October 2000), House of Representatives Standing Committee on Communication, Transport and the Arts, p.1.

*intensely competitive nature of the industry, encourage problematic tendering practices, unsustainable freight rates and dangerous work practices.*³²

24. Economically powerful industry clients, like the major retailers, have the commercial influence to determine the price of transport services and, in many circumstances, key conditions relating to the performance of transport work. Successive instances of contracting out, combined with unpaid waiting time at a clients' premises, further exacerbate the harm caused by their excessive control of the transport market.³³
25. As a consequence of power, drivers, who are obviously the very last link in the transport supply chain, in that they perform the work, have the weakest concentration of market power and must often take the wage/rate given to them or fail to receive work.

The Relationship Between Client Power, Low Remuneration and Poor Safety Practices

26. The causal link that explains how client pressure causes poor remuneration practices, which in turn lead to the systemic flourishing of illegal and immoral practices, has been pictorially displayed in the NTC report. It is reproduced below:



32 Professor Michael Quinlan, *Report of inquiry into safety in the long haul trucking industry* (2001) Motor Accidents Authority of New South Wales, p. 20.

33 In the *Mutual Responsibility for Road Safety Case*, the Full Bench of the Industrial Relations Commission of New South Wales noted, amongst others, the following relevant characteristics of the industry [emphasis added]:

- (a) there is widespread non-compliance with award and contract determination provisions and in particular underpayment of wages (a view supported by the Executive Director of the NSW Road Transport Association Martin Iffland)
- (b) it is not uncommon for transport companies which themselves would not engage in conduct in breach of industrial instruments to subcontract work of marginal viability to other transport companies which are prepared to breach industrial instruments in order to make a profit
- (c) labour costs are the most significant component of transportation costs and there is an inherent incentive to achieve savings through non-compliance with industrial instruments or through the engagement of owner drivers or small fleet owners who are prepared to do what it takes to make the work profitable
- (d) the competitive pressures in the long distance sector have resulted in a situation where the major transport operators perform only a fraction of the work in the industry with the rest being contracted out
- (e) most companies performing long distance work resist enterprise bargaining because of the likelihood that an enterprise bargaining arrangement will price them out of the market by requiring the payment of labour costs measured against yardsticks other than that of financial viability
- (f) there is a link between remuneration and safety issues such as excessive hours of work
- (g) commercial pressures most notably from major retailers have intensified resulting in the major transport companies tendering for contracts at very low rates and leading to the result that they subcontract out any work that they cannot perform profitably. Commercial pressure is also exercised by major retailers in the form of directed delivery schedules placing stress and at times unrealistic expectations on the driver actually performing the work
- (h) major retailers refuse to take responsibility for the consequences of the time restrictions that their delivery systems impose on subcontractors and major transport operators themselves contract out responsibility for the work and yet resist being called to account when things go wrong further down the chain
- (i) the transport industry is characterised by chains of successive contracting out of work with commercial power decreasing with each successive step; and
- (j) those higher up the chain often contract out work for the express reason of transferring responsibility for the safe performance of the work to others.

27. As made clear in the NTC Report, the high level of control exercised by clients over price, timing, destination and route causes operators to bear the costs that ordinarily are borne by customers. Denied a proper return, let alone a margin that exceeds the cost of capital, operators undercut each other, bid the price of transport down, and attempt to recoup the losses caused by clients from drivers not paying them for all work performed; and by paying them through incentive rates. Because employment is too often conditional on strict compliance with an operator's direction and client deadlines, drivers are prone to drive, while fatigued, speed, take drugs, and skimp on maintenance.³⁴
28. The full bench of the Industrial Relations Commission of New South Wales cited the casual chain to record key findings regarding fatigue, drug usage, excessive hours of work, log book offenses and speeding. They are reproduced below:

**Excerpts from Mutual Responsibility for Road Safety Case,
Full Bench of the Industrial Relations Commission of New South Wales**

Fatigue

Associate Professor Anne Williamson was the Deputy Director of the NSW Injury Risk Management Research Centre at the University of New South Wales. Associate Professor Williamson gave evidence in the Hitchcock matter, and she also gave evidence during the proceedings as to the various studies which have compared the effects of sleep deprivation and fatigue with those of alcohol. She deposed that the problem for road safety of fatigue is of a similar magnitude to drink driving and that long-distance drivers who may be awake for long periods are likely to be at high risk of fatigue affecting their performance. We accept Professor Williamson's evidence.

Drug Usage

Two national surveys in 1991 and 1998 recorded that the use of 'stay awake' or stimulant drugs was cited by drivers as one of the two most helpful strategies for managing fatigue. Professor Quinlan's inquiry found that while the precise level of drug use in the long-distance trucking industry was unknown, the evidence led to a firm conclusion that it was widespread. He noted that prolonged sleep deprivation/fatigue and drug use may not only increase the risk of truck crashes but also will have long- term health effects on the drivers affected.

Of the 13 driver witnesses, a number openly admitted using stimulants to help them work; others gave evidence of having conversations with other drivers about the use of illicit drugs while working; three drivers spoke of management knowing or encouraging the use of drugs during the course of performing their work.

Excessive hours of work

All drivers gave evidence that they had breached the maximum number of hours drivers are allowed to work. It was conceded that this occurred on a regular and systematic basis. Drivers reported working between 80-100

³⁴ "Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry," ed. National Transport Commission (2008), p.23-25.

hours each week, sometimes working 14-20 hours a day without breaks. One driver described his normal week as follows:

All up, I usually worked around 18 to 19 hours each day. I worked five or six days per week, doing five or six full return trips each fortnight, depending on whether or not they could get me loaded on Saturday. Usually, I would leave home on Sunday afternoon and travel overnight to Brisbane, load all day Monday and travel back to Sydney Monday night. I would repeat this twice more before getting home Saturday morning. Sometimes, I would not get home until the Monday after that. I would not get home at all mid-week.

Some drivers gave examples of extreme breaches of driving hours: 85 hours in a 120 hour period, 20.5 hours in 24 hours, 30 hours in a 32 hour period and 53 hours without a break.

When taking breaks, the drivers' evidence was that it was often too short or taken in situations where the driver was deprived of a proper opportunity to rest. Other factors referred to as inhibiting proper rest were lack of heat and space in sleeper cabins and interruptions during rest time where rest was taken in the depot while waiting for more work.

Speeding

The evidence disclosed that speeding is a regular part of the job for long-distance truck drivers and drivers found ways of avoiding detection such as the use of radar detectors, distorting number plates, turning off lights, or "tailgating" other trucks to avoid detection by cameras.

The effects of these driving practices on the health, safety and well-being of drivers was described both in expert evidence and directly in the evidence of the drivers. Drivers reported the effects of long hours as akin to hallucinating or being drunk. The effects of the widespread use of illicit drugs are self-evident. Drivers reported traumatic health problems and pressure on families and personal relationships.

29. Critically, the Commission made its findings regarding the relationship between poor remuneration methods and fatigue, drug usage, excessive hours of work and speeding for both owner-drivers and employees. It found that no matter a person's legal status, they were equally likely to be afflicted by the outcome of client pressure and poor remuneration methods.
30. The financial power of clients in the transport industry makes their involvement in a system of safe rates and conditions essential. Their stranglehold on price, however, is not the only means by which clients control the way in which goods are delivered. Clients, particularly the major retailers, regularly dictate delivery times and scheduling and impose penalties on transport companies for failing to meet those requirements. The effect of these punishments were described in an Industrial Relations Victoria report in 2005:

There is compelling evidence of an association between tight schedules, delivery time bonus/penalties and performance-based payment systems (e.g. kilometre-

based rates) and both chronic injury and the propensity of drivers to engage in dangerous practices (such as speeding and excessive hours).³⁵

Industry Statements of Support for a System of Safe Payments and Industry Practices

31. Key participants across the transport industry have been supportive of implementing a system of safe payments and industry practices that recognises the relationship between client power, low remuneration and poor safety practices. All industry participants want a safe and sustainable transport industry, as is reflected in the statements set out below:

Michael Byrne, Linfox CEO, in signing the 2011 Enterprise Bargaining Agreement:

"But we would like to see the same commitment throughout the road transport industry, and we support the introduction of safe rates."

TNT-TWU Fair Work Agreement 2011-2013, extract:

"Company, the Employees and the TWU will work cooperatively in ensuring a safe and sustainable transport industry – clause 19.3."

Tim Squires, Tothag Transport, Safe Rates Direction Paper Submission 2011:

"My preferred option for a Tribunal would be option (b) defined in the paper as 'A safe rates panel within Fair Work Australia with the power to make orders regarding safe rates and related terms in the road transport industry'."

Phil Level, Victorian Transport Association:

"Safe Rates has to apply to every vehicle in the supply chain – otherwise it cannot work."

Australian Livestock Transporters Association submission to 'Safe Rates, Safe Roads Directions Paper', Safe Rates Advisory Group, 2011:

"Assuming an overdraft interest rate of 11%, delays in payment of 90 days will reduce an operator's earnings by around 3%. For many operators, these interest costs will substantially reduce their operating profit, typically by up to one half. Uncertainty and delays in payment therefore pose a significant business costs and risk... All these waiting times, as well as time spent loading and unloading, will typically not be charged against the customers' accounts, nor is there any recourse to the manager of the port, saleyard, or silo... ALTA would expect a successfully implemented reform initiative to improve safety."

³⁵ Report of Inquiry: Owner Drivers and Forestry Contractors (February 2005) Industrial Relations Victoria, Department of Innovation, Industry and Development, p. 16.

NatRoad submission to the 'Safe Rates, Safe Roads Directions Paper', Safe Rates Advisory Group, 2011:

"NatRoad considers that there may be some merit in mandating the payment of demurrage, including chain of responsibility arrangements."

Australian Road Transport Industrial Organisation (ARTIO) submission to the 'Safe Rates, Safe Roads Directions Paper', Safe Rates Advisory Group, 2011:

"The Tribunal should be given broad powers which allow it to 'vary' contracts in such a way that makes them 'safe' and such matters could only be determined by a panel involving industry representatives. Some examples of variations which the Tribunal could make include:

- An order that demurrage be paid,
- A higher rate be paid,
- That certain practices be altered or ceased,
- That a client change their supply chain practices to ensure the transport task can be more safely carried out, or
- That a client who has had the benefit of work being done by the transport company make good any outstanding payments due within an agreed or specified time frame.

There needs to be a recognition that transport companies have been 'hung out to dry' by clients who withhold payments for 90, or even 120 days, to fund their own cashflow.

The Tribunal would be able to:

- exercise compulsory arbitration powers to resolve disputes,
- make industry determinations, or hold inquiries into work practices in the industry with initial emphasis on "safety in the linehaul/long distance sector" but with an understanding over time, that all elements and sectors of the industry would be subject to review to ensure safety is paramount."

National Road Freighters Association submission to the 'Safe Rates Safe Roads Directions Paper', Safe Rates Advisory Group, 2011:

"Members of the NRFA across Australia are voicing their concerns about the diminishing freight volumes and even lower rates, the increased level of competition is allowing the people controlling the freight to drive the rates down further as desperation sets in, for many the move to fix the problem will come too late, if at all."

Australian Logistics Council submission to the National Transport Commission's Review on Safe Payments 2008:

Benefits of Safe Rates of Pay:

- *Certainty of income for employees and owner-drivers,*
- *Safe and sustainable rates of pay are not undercut in the highly*

- competitive market,
- Operators compliance with fatigue and speed regulations may increase with a shift from payments based 'per-trip' basis to payments based on time taken,
 - Customers are unable to use bargaining power to drive costs down to unsafe levels,
 - Demurrage, or payment for time spent waiting in queues for loading/unloading, may encourage more efficient distribution and dispatch systems.

Real World Driver Accounts

32. 'Real world' accounts tell the story of the pressures that drivers themselves are under and the risks that they are forced to take as a result of 'root cause' economic pressures from clients and employers. The pressures lead directly to dangerous on-road behaviours such as using drugs, speeding, driving while fatigued and foregoing maintenance.

Response from NAME SUPRESSED, South Australia, Safe Rates Survey 2011, concerning drugs:

I have been supplied drugs by my employer in order to miss my breaks and make the (retail) client's unreasonable time slot.

Response from Tom, 36-years-old, Safe Rates Survey 2011, surveyed in Tarcutta, concerning waiting times and speeding:

Due to a large increase in unpaid waiting times, I feel pressured to break driving hours and I don't include loading and unloading in my schedule – it can't be classed as rest. This also is evident when it comes to speeding. We spend enough unpaid time already waiting to load or unload and doing all the paperwork unpaid, or even delays with night road-works, it means that in order to make your time slot you either need to have less fatigue breaks or break the speed limit. There is no other way.

Statement from Andrew Villis, former driver, Evidence to the NSW Industrial Relations Commission, concerning fatigue:

When I was required to perform excessive hours I would sometimes experience a state of mind that I can only describe as hallucinations, which I considered to be due to sleep deprivation. I would 'see' trees turning into machinery, which would lift my truck off the road. I 'saw'

myself run over motorcycles, cars and people. On one occasion I held up the highway at Grafton while waiting for a truck which was not their to do a three point turn (I was radioed by drivers behind me asking why I had stopped). I estimate that I had experiences like these roughly every second day. They were not an uncommon thing for me.

Robert, driver of 22 years, Safe Rates Survey 2011, interviewed at Warnervale, concerning maintenance:

I have been sacked for refusing to perform a load on a b-double, which would have made the load illegal and oversize. I had asked the same client for two weeks off to have my steer tyres replaced and to do other work on the truck. They said no but then I had the drivers' side steer-tyre blow at 100km/hr when I was fully loaded. It is sheer luck nobody was killed.

33. The fact that people can be left to labour under dangerous conditions so powerful clients can minimise their costs is outrageous. Without the urgent implementation of a system of safe payments and industry practices that comprehensively addresses the relationship between remuneration and safety, as is incorporated in the *Road Safety Remuneration Bill 2011*, drivers and other road users will continue to be the victims of a safety crisis which is entirely preventable.
34. Applying the responsibility for safe rates throughout the contracting chain would better recognise the reality of the transport industry and the change that is needed:

While truck drivers have legal responsibilities that must be met, focusing enforcement activities at the driver fails to address the root cause of many serious safety problems, presumes this action can alter behaviour (when there are strong pressures to evade), and represents a 'bottom of the chain' mentality. Evidence presented to the Inquiry makes it clear that even those involved in on-road enforcement, such as highway police, are only too aware of this limitation.³⁶



³⁶ Professor Michael Quinlan, *Report of inquiry into safety in the long haul trucking industry* (2001) Motor Accidents Authority of New South Wales, pp. 23, 24.

KEY PRINCIPLES

35. Once the need for external intervention in the transport market is accepted, the only conclusion, other than allowing the continuation of horrendous practices, is to establish a comprehensive framework for maintaining safe rates and conditions.
36. In providing its report to the Australian Transport Council of Ministers, the NTC considered what the objectives of a Safe Rates system should be:

Excerpt from National Transport Commission Report – “Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry”³⁷

In developing these options for a regulatory response for safe payments, the NTC considered submissions received from industry, drivers and unions. It is also considered the need to ensure a safe, efficient and productive transport industry for Australia's future economic growth. More specific policy objectives include:

- the need to provide an adequate safety net of safe payments for both employees and owner-drivers;
- the provision of appropriate safeguard through chain of responsibility and enforcement of safe payments;
- addressing the imbalance of market power faced by drivers at the bottom of the supply chain;
- protecting the choice and genuine independence of parties who have chosen to become independent contractors; and
- continuing to encourage productivity and efficiency gains in the road transport industry.

37. To achieve these objectives, Coronial inquests, academic advice, the Wright/Quinlan Inquiry, the NTC report and ‘real world’ driver experiences strongly indicate that four key principles must be incorporated into the design of a Safe Rates system for it to effectively reduce the numbers of persons killed or injured by the road transport industry. They are:

- a. The Universal Application Of A Safe Rates System To All Supply Chain Participants, Including Client Accountability For Safe Performance / Planning and Safe Rates:

A Safe Rates System should draw on the successful ‘Chain of Responsibility’ approach (“the COR”) implemented in some existing occupational health and safety instruments, and some existing road safety laws. In this approach all participants in the contractual chain, up to and including the ultimate client, are accountable for the safe and legal performance of road transport work; and the payment of safe and reasonable rates of remuneration. The degree of responsibility is determined by reference to the participant’s power over the supply chain as a whole.

Since the 2001 landmark Quinlan Report, this COR approach has been the

³⁷ National Transport Commission, ‘Safe Payments. Addressing the underlying causes of unsafe practices in the road transport industry’, October 2008, at 5.2.

theoretical underpinning for all strategies to combat safety hazards in the road transport industry. By vertically mapping the organisation of supply chain movements, the COR approach lets the power of any one participant to be measured relative to the power of any other. The absolute duty to transport freight safely using proper and legal remuneration methods can then be apportioned amongst parties according to their power over the chain as a whole. A party with more power has more legal responsibilities than a party with less power.

b. Safe Rates and Related Conditions for Long & Short Haul Employees and Owner-Drivers Determined by An Independent Tribunal:

A Safe Rates system should utilise an Independent Tribunal, accessible to all supply chain participants, to determine enforceable rates of remuneration and related conditions for employed truck drivers and self-employed truck owner-drivers which are "safe." That is, which, by reason of quantum or structure of payment, do not compel or encourage unsafe driving practices to counter unsafe competition in the industry.

To determine and apply rates and conditions that are safe, the Tribunal requires a broad array of powers that enable it to attach requirements on a supply chain participant that match their role and function in organising a freight movement. These powers should include power regarding rates, conditions, trip planning & information capture, occupational & public health and safety, training & education and cost recovery. The Tribunal should also be able to rapidly respond to changes in external variables (e.g. oil prices) that affect safety outcomes and standards in the road transport industry.

In exercising its power, the Tribunal needs to be able to exercise discretion to account for differing sectoral and geographic requirements. It should be able to make determinations for both the long and short haul sectors as the safety crisis does not distinguish between the two. It should also be armed with the ability to ratify single company agreements if it is satisfied that the agreement leaves affected drivers 'safer off overall.'

Armed with these powers, the Tribunal would be to account for the complexity and diversity of the Australian freight task. It could 'scale' its determinations and adjust its decisions as the volume of freight moved fluctuates. With the number of Australian freight movements expected to double by 2020, these heads of power would guarantee the system's future relevance.

c. The Capacity To Make Binding Determinations and Resolve Disputes Amongst Supply Chain Participants

Noting the differences between judicial and arbitral power, a Safe Rates system should be able to mediate and conciliate disputes that arise from time to time amongst supply chain participants.

To the extent that agreement cannot be reached, the Tribunal should have the capacity to test competing views with the power to make binding decisions resulting in the establishment and ongoing maintenance of those rates and conditions.

The dispute settlement function should be a cost free jurisdiction. Parties should have access to protections against vexatious claims.

d. Appropriate and Adequate Enforcement Regime

A Safe Rates system should be supported by a strong enforcement regime that is a catalyst for industry-wide change. The system should properly adapt the existing enforcement powers and rights currently available to registered industrial organisations so they are suitable to a supply chain context.

The system should also be able to recognise any industry scheme, such as a code or accreditation scheme, that meets Safe Rates standards for remuneration and accompanying conditions; and is endorsed by registered industrial organisations and supported widely across industry.

38. The *Road Safety Remuneration Bill 2011* incorporates these key principles and, if enacted, will lead to safer roads for all Australians.



THE NEED FOR REGULATION

39. In determining if any Australian jurisdiction currently includes the features of a Safe Rates system, it is apt to recall the findings of the Wright/Quinlan Inquiry:

Excerpt from Wright/Quinlan Report³⁸

Consideration of the current legislative frameworks indicates that they do not successfully or adequately address the present issue. There is no issue that the safety problems identified in the inquiry apply equally to employees and owner/ drivers in the industry who relevantly perform the same work. Indeed there are many references in the material provided to us to both categories operating in "a single market" (a proposition with which we agree).

However, the current frameworks deal separately with employee/drivers and owner/ drivers. Employee/drivers are dealt with by a variety of federal and state industrial awards, in the case of state instruments apparently covering both long haul and short haul drivers

As to owner/drivers, there is a marked difference between the various regimes. There are no specific regulatory systems that deal with owner/drivers in Queensland, South Australia, the Australian Capital Territory, the Northern Territory and Tasmania. New South Wales has had a long history of regulation of owner/drivers since the 1960s but under the legislation there is (significantly) no scope for liability for breaches of contract determinations to be imposed on anyone other than principal contractors and owner/drivers.

....

Notwithstanding the important step taken in Victoria, and as earlier noted, it does not address the often fundamental bargaining power imbalance between owner/ drivers and those engaging them. As such, it fails to address the problem at the centre of this Review; nor was any evidence presented to the Review that indicated it had resulted in substantial changes in rates paid to owner/drivers.

40. No current Australian jurisdiction includes all the features proposed for inclusion in a Safe Rates system. Federally, the system to determine minimum standards of remuneration and conditions for employees is provided in the *Fair Work Act 2009*. By definition it does not cover owner-drivers (no law in the Federal jurisdiction provides Safe Rates like standards for owner-drivers). Nor does it provide for conditions to be attached to entities not directly party to the employer-employee relationship, like clients.
41. In so far as the *Fair Work Act* does create minimum standards for employees, they are general in nature. The establishment and maintenance of safe rates and conditions, and planning for the legal performance of the work and client responsibility are not matters that may be dealt with by modern awards. This fact is not altered by pointing to the obligation upon the Commission to have regard for the safety, health and welfare of employees when making modern awards. That mandatory obligation is

38 Quinlan, "Remuneration & Safety in the Australian Heavy Vehicle Industry: A Review Undertaken for the National Transport Commission." pp 52-60.

referable solely to the requirements of the Act and does not operate to expand the category of matters to which the obligation applies.

42. At a State level, New South Wales, Victoria and Western Australia are the only jurisdictions to have systems of regulation for owner-drivers. None of these systems can attach obligations to clients. Only New South Wales allows for the creation of proactive enforceable standards that allows cost recovery. Western Australia's and Victoria's systems almost exclusively focus on unfair business practices in contract setting. Even then, both can only be used *after* a breach has occurred. Unlike New South Wales, neither has a mechanism to resolve disputes when the parties fail to agree.



OBJECTIONS

43. While interacting with a few industry participants and operators, some objections and concerns have been flagged with the Safe Rates principles discussed earlier and the *Road Safety Remuneration Bill 2011* ("the Bill"). What follows is an examination of the merits of these arguments and a determination of what, if any, affect they have on the design of a Safe Rates system and the Bill.

Objection One - The (Proposed) National Heavy Vehicle Regulator Is Sufficient

44. Some organisations posit that the proposed National Heavy Vehicle Regulator ("the NHVR") can single handedly address the entire safety crisis in the road transport industry. This argument is erroneous. It fails to properly explain the role and function of the NHVR or account for the NHVR's inability to address the relationship between pay and safety. It should be considered a back-door argument to do nothing.
45. The role and function of the NHVR is to provide nationally consistent regulation of the heavy vehicle industry. It is to be hoped that such consistency will aid explicit road safety initiatives, but nothing in the NHVR is directed towards addressing the matters identified by the large and growing body of evidence as necessary to address the economic factors causing inappropriate practices, nor to the documented problems across all other sectors of the industry. In addition, as is often the case when a primary focus of legislative designers is to remove inter-jurisdictional differences from 16 separate sets of laws, there are often significant areas in which standards drop, not rise.
46. No part of the NHVR's work programme relates to the relationship between remuneration and safety. No proposed head of power would allow the Regulator to address the relationship between remuneration and safety. Those who argue that the NHVR can single handedly address the safety crisis in road safety are arguing that the safety crisis in the road transport industry can be addressed *without* addressing the relationship between remuneration and safety.
47. This argument was considered by the National Transport Commission ("NTC"). It found the current regulatory framework, which the NHVR is consolidating, does not sufficiently address the safety crisis in road transport. 'Further reforms are needed to address the underlying economic factors which create an incentive for, or encourage, unsafe on-road practices.'
48. We need a package of reforms that work together to attack the problems in the road transport industry at their root. The Bill and the NHVR will work together to make our roads and highways safer for all Australians.

Objection Two - A Safe Rates System Would Increase the Consumer's Cost Of Living

49. Some organisations say that to address the relationship between pay and safety is to cause the consumer's cost of living to increase. This view does not account for the fact that under the status quo, consumers are currently paying for poor practices

within the supply chains. Nor does this view acknowledge that concerns about price gouging can be addressed through the strong anti-gouging powers within current competition laws.

50. As mentioned earlier, each road death costs approximately \$1.7 million. Each injury in an incident costs \$408,000. Assuming 330 people needlessly die each year, the cost from death alone totals \$561million. Enforcement costs are also high. Each year road regulators incur approximately \$110.2 million in heavy vehicle enforcement costs; of which only a small portion are recovered from heavy vehicle owners through registration fees.³⁹ No enforcement related costs are recovered from clients. No estimate exists on how much money is expended by other regulators and Police on the heavy vehicle industry.
51. All of these externalities are currently borne by persons and consumers who do not cause accidents, or are otherwise involved, in the trucking industry. Such persons and consumers are already paying the price for externalities through higher insurance premiums, higher registration charges, higher taxes and higher consumer prices. Insofar as a Safe Rates system reduces deaths, injuries and accidents, the 'safety dividend' should be shared with consumers. These urgent reforms will not only save lives, but will make sure that people who aren't paying their fair share for safe transport - powerful transport clients - can no longer pass the buck to Australian consumers and working families.⁴⁰
52. Furthermore if any unscrupulous client or operator does use the introduction of a Safe Rates system as an excuse to unnecessarily hike prices, they should be subject to tough penalties and fines. In addition, Fair Work Australia and/or the Australian Competition and Consumer Commission should be mandated to proactively investigate and prosecute price gougers. Collectively, these measures should deter clients and operators from gouging, while reassuring consumers that they won't be the victims of unscrupulous clients and operators.

Objection Three - Voluntary Schemes and Codes Are Sufficient

53. A persistent line run by powerful economic interests in order to maintain the deadly *status quo* whilst appearing to embrace change is that the problem should be addressed voluntary codes and schemes. This view was considered by Wright & Quinlan. They found:

Excerpt from Wright/Quinlan Report⁴¹

Fourth, reference was made to various other schemes affecting heavy vehicle safety such as the ATA's Trucksafe Scheme and the Heavy Vehicle Accreditation scheme. These schemes have existed for some time. They were examined in detail by the NSW Tracking Safety Report (Quinlan, 2001)

39 "2007 Heavy Vehicle Charges Determination Regulatory Impact Statement Volume 1", ed. National Transport Commission (2007), p.27.

40 *IBISWorld Industry Report G5111 "Supermarkets and Other Grocery Stores in Australia"*, May 2011, states that Australia's supermarkets and grocery retailing industry revenue is \$78.3 billion, with profits of \$3.1 billion a year. Coles and Woolworths have over 70% combined market share in Australian supermarkets and grocery retailing industry. Statistically, one in every three trucks on our roads is carrying something for the big retailers – they have the power to drive this change. The Woolworths companies this year had a profit of \$2 billion. Wesfarmers, which owns Coles made \$1.9 billion to allow a truck driver to get full recovery on a tank of fuel is not going to crush these businesses, but the actions a truck driver is forced to take to make ends meet equals death on our roads.

41 "Remuneration & Safety in the Australian Heavy Vehicle Industry: A Review Undertaken for the National Transport Commission", p.48.

where it was found that, while not without effect, voluntary schemes lacked the coverage and influence to bring about an overall change in safety-related work practices in the trucking industry. At the time of the NSW Report, Trucksafe had around 350 members out of around 30,000 for-hire freight operators in long haul transport. The ATA indicated that the scheme now has around 400 members, and while this includes many large operators, it is still by no means setting a pervasive benchmark for the industry.

54. Throughout all of the years that drivers and affected community members have awaited and made the arguments for the changes that the Bill promises, no-one has led data or evidence that suggests that a voluntary scheme would ever achieve the size or scope to have any widespread impact on the industry. Even if such schemes were to be mandated, no scheme in existence has the capacity to address the relationship between remuneration and safety. At best these schemes are complementary measures to the Bill, not substitutes.
55. Fair Work Australia is not equipped to deal with independent contractors, and Safe Work Australia and the NHVR are not equipped to deal with industrial relations. There is no existing body that has the capacity to deal with client accountability and, in this industry, it is the clients who have the economic power to solve this crisis.
56. The Bill is a new strategy that attacks the road transport industry's problems at its roots – otherwise more and more people will be at risk from dying in heavy vehicle incidents. The Bill will enforce that safety and commercial viability are not interchangeable on any sliding schedule. It will ensure that safety, maintenance and equipment are enforceable across the country.

Objection Four - Higher Remuneration and Conditions Does Not Lead To Higher Safety

57. Even in the face of a large body of evidence, some persist with the assertion that no evidence exists that demonstrates how higher remuneration and conditions lead to higher safety. This is factually incorrect. As the NTC noted:

**Excerpt from National Transport Commission Report –
“Safe Payments. Addressing the Underlying Causes of Unsafe
Practices in the Road Transport Industry”⁴²**

Professor Michael Belzer from the University of Michigan has stated that:

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

and:

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

⁴² “Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry”, p.6 & 7.

58. The National Transport Commission report also noted:

**Excerpt from National Transport Commission Report –
“Safe Payments. Addressing the Underlying Causes of Unsafe
Practices in the Road Transport Industry”⁴³**

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

- Low rates of pay; incentive based payment methods (such as per kilometre or per trip);
- Unpaid working time; and
- Other factors include the hyper-competitive nature of the industry and the low bargaining power faced by drivers.

59. Indeed a large body of national and international evidence has confirmed the link between rates of pay and safety in the transport industry, and how systems of remuneration that result in low rates of pay cause inappropriate industry practices. Countless experts, numerous inquiries, major transport companies like Linfox, independent agencies like the National Transport Commission and the Industrial Relations Commission of NSW, major employer organisations like the Victorian Transport Association, the NSW Road Transport Organisation and the Queensland Transport Association all agree that there is a relationship between pay and safety.

60. Inappropriate industry practices include drivers being subject to the pressure to work excessive hours; the pressure to exceed legal speed limits; the pressure to drive through break and sleep times; and, in some circumstances, the professional use of stimulants to combat fatigue.⁴⁴

61. Throughout all of the years that drivers and affected community members have awaited and made the arguments for the changes that the Bill promises, no-one has led any evidence that superior rates of pay and conditions do not make a difference. Importantly, the PricewaterhouseCoopers statement in relation to the Bill concludes that superior rates/conditions will reduce crashes.⁴⁵

Objection Five - Duplication & Overlap

62. Complexity arguments are always the last resort of those resisting change. In this instance, concerns about unnecessary ‘overlap’ between the various laws and jurisdictions are unfounded. The Bill clearly sets out that it is not intended to exclude

⁴³ “Safe Payments. Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry”, p.47.

⁴⁴ Other places where evidence of higher pay leading to higher safety has been adduced include R v Randall John Harm, District Court of New South Wales, per Graham J, 26th August 2005; Long Distance Truck Drivers: On road performance and economic reward, December 1991, Federal Department of Transport and Communications; In Re Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (No 2) [2006] NSWIRComm 328 the Full Bench of the Industrial Relations Commission of NSW said: “We consider that the evidence in the proceedings establishes that there is a direct link between methods of payment and/or rates of pay and safety outcomes”; National Road Freight Industry Inquiry, Report of Inquiry to the Minister for Transport, Commonwealth of Australia, (1984), Canberra; Beyond the Midnight Oil, An Inquiry into the Managing Fatigue in Transport, House of Representatives Standing Committee on Communication, Transport and the Arts, October 2000, Canberra; C. Jones, J. Dorrian and D. Dawson, ‘Legal Implications of Fatigue in the Australian Transportation Industries’, 45 JIR 344 at 351; Professor Michael Quinlan, Report into Safety in the Long Haul Trucking Industry, A report Commissioned by the Motor Accidents Authority of New South Wales, 2001, Sydney; R Johnstone, ‘The Legal Framework for Regulating Road Transport Safety: Chains of Responsibility, Compliance and Enforcement’, March 2002, National Research Centre for OHS Regulation, the ANU; WorkCover Authority of NSW v Hitchcock (2005) 139 IR 439.

⁴⁵ *Regulation Impact Statement*, PricewaterhouseCoopers, p.36.

or limit the operation of state laws dealing with owner-drivers, or overlap or duplicate the provisions in any future NHVR. State laws, including those addressing occupational health and safety, have and must continue to play a critically important role in maintaining and increasing safety in the industry, particularly in relation to owner-drivers. Further, with Comcare, a NHVR and OH&S laws, not to mention Fair Work Australia, the Federal Government has gifted the transport industry a clearer path for national operations and a reduction in regulations never seen before in this country.

63. Furthermore, as is detailed in 'Objection One', the Bill addresses different, and critically pressing, issues from those addressed by current legislation and the proposed NHVR. Of great importance is that the Bill is the only legislation that will address the economic and remuneration issues in the road transport industry – the 'root cause' of the current safety crisis. The importance of this point cannot be overstated; it is only by addressing the root cause of the industry's safety crisis that real improvements will be made, and lives saved.
64. The Tribunal's task is proactive – it will be addressing and reducing the economic behaviour and incentives that lead to the practices and breaches that other agencies (such as the NHVR) are directed towards deterring predominantly through reactive post-breach enforcement activity. Enforcement and post-breach deterrence of road law breaches will always be necessary complementary regulatory tools but this Bill will prevent breaches by alleviating the pressures that lead to them. Deterrence-only regimes have been widely criticised in the criminal law context for not addressing the social causes leading to criminal behaviour. This Bill, if enacted, will ensure that this trap is not fallen into – it delivers proactive change that will save lives and complement streamlined road law enforcement. Accurately characterised then, it is clear that the Bill and existing initiatives perform different and complementary functions and do not overlap.

Objection Six – Road Safety Remuneration Orders May Lead to Industry Inefficiencies

65. It has been posited that Road Safety Remuneration Orders ("Orders") made by the Tribunal may lead to inefficiencies in the road transport industry. The central argument is that practices that are mandated by Orders may become stagnant and therefore unable to advance and evolve with improvements in technology and market practices. But refusing to accept the status quo and the intolerable safety consequences that follow this does not mean that flexibility is compromised, merely that appropriate and safe remuneration and supply change arrangements are established and maintained. Enterprise flexibility enacted by the *Fair Work Act* for employees, and under the Bill for owner drivers, underscore that the role of tribunal Orders is not to undermine specific and efficient arrangements but to ensure that such arrangements are formulated on the basis of sustainable, safe and fair systems and practices.
66. Furthermore, prior to making an Order, the Tribunal will publish a draft Order allowing affected persons and bodies the opportunity to comment on the Order and express any concerns.
67. It is also important to note the level of industry involvement that will be present in the workings of the Tribunal. For instance, when formulating a work plan each year, the Tribunal will consult with industry, again ensuring that relevant considerations and issues can be taken into account. Further, when deciding whether to make an Order,

the Tribunal must, among other matters, have regard to the impact of any Order on the viability of business and the likely impact of any Order on the national economy. Importantly, the Tribunal itself will also be made up of members with knowledge and expertise in the industry.

Objection Seven – the Tribunal Should Only Address Matters Concerning Remuneration

68. The body of evidence setting out what is necessary to address the crisis establishes four principles that were enunciated earlier in this submission. The objection that the Tribunal should only address matters concerning remuneration falls into the trap of equating “economic pressures” with “remuneration”. “Economic pressures” is a reference to the virtually untrammelled economic power that clients in the industry exert over transport operators and the drivers they engage to perform the work. It is that untrammelled power that the Tribunal is designed to address. Ultimately that power has had the effect of forcing drivers to work too long or too fast to make a living for themselves and their families. But this could be because of the corruption of rates through slabs of unpaid waiting time at client’s premises or delays in payment. These matters are not capable of being defined as “remuneration” but most certainly have an effect the remuneration paid. That is why the Bill is appropriate and necessary in terms of scope, capturing remuneration and related conditions and supply chain participants.

Objection Eight – the Legislation May Change the Status of Independent Contractors and Override Existing Industrial Instruments

69. The Bill, if enacted, will reinforce the status of owner-drivers as independent contractors because it will codify that status in legislation. The same argument was made over 40 years ago in the establishment of the NSW owner-driver provisions, and owner-drivers covered by those regulatory protections have time and again been reconfirmed as being independent contractors.

70. The Bill leaves untouched existing legislation unless expressly overridden by Tribunal Order. This achieves an appropriate balance. It would be unacceptable for the Tribunal not to have the power to make safe unsafe remuneration or related conditions that had been identified. That would defeat the purpose of the Bill.

Objection Nine – Is the Bill a Practical Response to the Road Safety Crisis?

71. An independent tribunal can bring the industry together quickly and roll out safe driving plans, safe schedules, paid waiting time, strong drug and alcohol policies, and strong truck standards. These measures will save lives because they attack the root of the industry’s problems.

72. For example, in January 2010, a 35 year-old West Australian truck driver, Anthony Bradanovich, took his first trip into the Little Sandy Desert carrying a B-triple loaded with steel mesh for the Jundee Mine. He was travelling without a satellite phone or an emergency position indicating radio beacon when he realised he had missed a turnoff to the mine. Down the road, he attempted to turn the truck around and

became bogged in the sand. On a 2000 kilometre round trip, Mr Bradanovich was found dead, 48 kilometres from his stranded truck as he went to seek help.

73. Anthony Bradanovich was sent on this first trip without a water tank, and without a map. The load he was carrying was contracted by the mine to a major transport company. In turn, that major transport company contracted the work out to a company with questionable credentials. If the major transport company, as the managers of the load Anthony was carrying - or the US company that owned the mine - were to be held responsible for his rate of pay, the training he received and the equipment he had on hand, a lot more care might have been taken.
74. The Bill is as much about safety, and saving lives, as it is rates of pay. It is about making sure that an owner-driver or, as in Anthony's case an employee driver of a contractor, is paid enough to be properly equipped for the task.



HOW THE ROAD SAFETY AND REMUNERATION BILL 2011 WILL SAVE LIVES

75. The Australian road transport task is enormous, accounting for over 1.7 per cent of Australia's total GDP and employing over 246,000 Australians.⁴⁶ Significantly, the freight task has been increasing at a rate of 5.6 per cent and is forecasted to continue growing.⁴⁷ Therefore, having a productive transport industry is in the interests of all Australians.
76. Significantly, productivity and safety are not mutually exclusive – in fact, they are inextricably linked. However, the Australian road transport industry is an industry in the midst of a safety crisis. Moreover, to only assess safety in terms of economic cost would be to overlook the intolerable social cost of the numbers seriously injured, maimed and killed on Australian roads each year.
77. As Minister Albanese outlined in the *Road Safety Remuneration Bill 2011* ("the Bill") second reading speech, in 2010, 1,368 Australians lost their lives on our roads. A further 30,000 were hospitalised. That equates to four people being killed on our roads each day, with another 80 seriously injured.⁴⁸ Most of the injuries, maiming and deaths on our roads do not involve truck drivers but rather the general road using Australian community – mothers, brothers, sisters, fathers, much-loved daughters and sons.
78. In terms of the workforce, the Australian road transport industry is the most dangerous industry in the entire country. There were 25 deaths per 100,000 workers in 2008-09. That is ten times the average for all industries.⁴⁹
79. The economic cost of these figures has been calculated by the Bureau of Infrastructure, Transport and Regional Economics as \$2.7 billion a year.⁵⁰ The social cost is untold.
80. The Bill will work to remedy these costs. If enacted, it will reduce crashes and save lives.
81. As the earlier analysis demonstrated, crashes, fatigue, speeding, breach of log book regulations and use of artificial substances to stay awake are all consequences of the economic pressures that powerful companies at the top of transport supply chains place on the industry, pressures that ultimately result in drivers being forced to work too long or too fast to make a living for themselves and their families.
82. Academic reports, coronial investigations, judicial determinations and political inquiries have over many years identified that it is the root cause that must be addressed and

46 *Road Safety Remuneration Bill 2011*, Second Reading Speech, House of Representatives, Minister Albanese, 23 November 2011.

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid.

that traditional road safety strategies do not work because such strategies have been focused for the most part on post-breach or post accident enforcement, or solely on driver obligations. In other words, traditional strategies make the literally fatal error of being directed towards the *consequences* not the *causes* - as such they can never strike at the heart of the problem.

83. This Bill has all the elements necessary to address the root causes. It addresses the underlying economic factors that create an incentive for, or encourage, unsafe on-road practices. The Bill will ensure that:

- pay and pay related incentives and pressures to work in an unsafe manner are removed, which will encourage drivers to drive safely and manage their hours;
- that drivers are paid for all work they perform, including for loading and unloading and waiting in queues;
- appropriate enforceable standards are developed and applied throughout the transport supply chain to secure the safety of the entire road transport workforce;
- supply chain participants bear their share of responsibility for ensuring that safe rates and standards always apply to drivers;
- disputes be dealt with quickly, efficiently and cheaply;
- owner-driver and employee issues can be dealt with concurrently if necessary;
- standards for owner-driver arrangements are lifted through the capacity to have collective agreements approved; and
- there is in place an effective and efficient enforcement regime.

84. Importantly, the Tribunal established by the Bill will also be able to inquire into sectors, issues and practices within the road transport industry, and ensure that supply chain participants do their part in making the industry safer.



CONCLUSION: THE NEED TO ACT

85. The TWUA has provided evidence that attests to the severe crisis in safety that is currently plaguing the transport industry. In 2010 this crisis claimed 245 people's lives in articulated heavy vehicle and rigid heavy vehicle incidents. Each road death costs \$1.7 million. Each injury in an incident costs \$408,000. When the non-monetised social impact of road deaths, injuries and illness, family breakdown, pain and suffering is included in the measurement of what road deaths and injuries cost the community, the need for regulatory intervention is obvious.
86. The TWUA has demonstrated how judicial and coronial determinations, academic studies, and government-commissioned have recognised that the foundation of this regulatory intervention must be full and proper recognition of the relationship between methods for the remuneration of drivers and the poor safety practices that imperil the transport industry. These practices include drivers being subject to the pressure to work excessive hours; the pressure to exceed legal speed limits; the pressure to drive through break and sleep times; and, in some circumstances, the professional use of illegal stimulants to combat fatigue.
87. The TWUA has also demonstrated that the root cause of unsafe remuneration systems is the commercial dominance of the transport industry's powerful clients - especially the big retailers. Their power to determine industry standards mandates their involvement in a 'safe rates' framework that has four related policy objectives:
- a. Enforceable rates of remuneration and related conditions for employed truck drivers and self-employed truck owner-drivers which are "safe" - that is, which, by reason of quantum or structure of payment, do not compel or encourage unsafe driving practices;
 - b. Enforceable requirements relating to planning for the safe and legal performance of road transport journeys (instead of employees and owner drivers being compelled to perform the work within client parameters established without regard to legal requirements and safety);
 - c. The establishment of a "chain of responsibility" in which all participants in the contractual chain, up to and including the ultimate client, are accountable for the safe and legal performance of road transport work and the payment of safe and reasonable rates of remuneration; and
 - d. An appropriate and adequate enforcement and dispute resolution system.
88. The *Road Safety Remuneration Bill 2011* ("the Bill") incorporates the four key principles of a Safe Rates system. The strengths and absolute necessity for the immediate implementation the Bill and the Road Safety Remuneration Tribunal has been comprehensively set out throughout this submission. The link between safety and safe remuneration is conclusive. The economic cost of our unsafe roads is overwhelming; the social cost is intolerable. We cannot afford an industry that operates on Australian roads and interacts with Australian families each day to be our most dangerous. People are dying – needlessly in many circumstances – and reform is needed. If enacted, the Bill will make substantial progress towards ending the devastation and carnage currently occurring on Australian roads. It will save lives.