

**Subject:** Road Safety Remuneration Bill Inquiry: further evidence provided by the TWU  
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**Attachments:** TWU HOR Committee - RSRBill Submissions.pdf  
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Dear House Standing Committee on Infrastructure and Communications  
Secretary

Thank you for providing the Transport Workers' Union of Australia (TWU) with the opportunity to attend and present evidence at the hearing that was held on Wednesday (February 15 2012).

At the hearing, the Committee requested that the TWU provide two further materials to the Committee. Please accept the following :

1. Given time constraints, the Committee accepted the TWU's offer to provide, in written form, it's opening submission. The TWU points the Committee's attention in particular to that part of the written submissions dealing with each of the objections raised by the AIG, which the TWU did not have time to traverse orally at the hearing. Please find the TWU's opening submission, in written form, *attached* to this email.

2. At the hearing, in a follow up question to a matter raised by Mr Fletcher to the effect that drivers would continue to work long hours if their rates were increased, Mr Jones asked the TWU to provide advice as to the way section 27 of the *Road Safety Remuneration Bill* would operate. The answer is twofold:

**First**, there is empirical evidence (Belzer et al.) that an increase in rates to driver will result in lowering of crash rates **and** a reduction in the time a driver will choose to spend on the road: Belzer, 'The Economics of Safety : How Compensation Affects Commercial Motor Vehicle Driver Safety' (provided to Committee at the hearing).

**Second**, the questions itself misses the main issue confronting drivers in terms of their remuneration and related conditions. That main issue is that drivers (whether employees or owner drivers) are not currently paid for every hour they work, every kilometre they drive and every cost they incur. Through unpaid waiting time (employees and owner drivers), inappropriate application of kilometre rates (employees and owner drivers) and failure to contract (owner drivers; small fleets) on the basis of cost recovery - income levels are corrupted. To address this the tribunal **need**

**not necessarily raise rates** - although that will be necessary in some circumstances.

Section 27 would allow this threshold issue of payment for all work to be addressed and would also allow provisions to ensure that supply chain participants play their part in ensuring that happens. This might include non-monetary solutions such as client accountability for safe driving plans so that the work is planned to be performed in a legal **and** safe manner (including ensuring payment for all work performed) before the driver gets behind the wheel.

We again would like to thank the House Stand Committee on Infrastructure and Communications for the opportunity to attend and present evidence at the hearing. Please do not hesitate to be in contact if we can be of further assistance.

Regards

**Tony Sheldon**  
**National Secretary**

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**Opening – HOR Committee Inquiry – Road Safety Remuneration Bill**

Jim to introduce.

1. Acknowledge limited time. The position of the TWU is set out in its submission. Happy to answer questions but propose to take that as read.
2. Tony / drivers to give direct evidence re constant state of **crisis** – the death and injury statistics are before you - I intend to focus on the substance of the bill and in particular, deal with assertions and comments made against it;

First, though some brief but critical background - the root **Cause** of this ongoing crisis – the economics of the industry was first noted coherently in *Beyond the Midnight Oil Report* – **hand up, quote reference** – the committee will be aware that the Deputy Chair was the Chair of the Midnight Oil committee. Specifically Midnight Oil highlighted the effects of the commercial practices in the supply chain –

In the interests of time I simply note page 93 of the report which identifies clearly the supply chain pressures which are the root cause of the problem. Importantly, the committee’s words were prophetic in the sense that they seemed to predict deterioration due to this pressure – on that page after noting increasing customer pressure they say:

*“...the industry has been made more efficient and increased competition has resulted in lower transport costs for consumers. But there is a growing body of evidence indicating that we are fast approaching the point where best practice efficiency is jeopardising best practice safety.”*

– we’ve all heard of the supply chain bullying of Coles in recent times, trouble is that when it occurs in transport supply chains people die – and not just truckies but the Australian families with whom they interface every minute they are on the road – certainly that “fast approaching” point spoken about back in the Midnight Oil has well and truly been reached and passed.

3. Now on to the evidence. There has been suggestion in some quarters that there is a lack of evidence to support the bill. Most notably, Warren Truss put this position towards the end of last year. We visited Mr Truss and provided him with a sample of the overwhelming evidence. We now do the same for the committee.

**Hand up bundle** and refer to the committee **footnotes 43 and 44 on page 30** of the TWU's submission. So the evidence not only exists – it is overwhelming. Importantly, you will see the document outside of the bundle a report entitled the “Economics of Safety.” Professor Mike Belzer, its author sets out empirical evidence of the link between rates of pay on the one hand and crash outcomes on the other finding that there is a direct relationship and that as pay increases, crashes decrease. This is backed up by the Regulatory Impact Statement accompanying the bill page xli

Setting a safety-related remuneration rate and/or related remuneration related conditions for either the entire heavy vehicle sector or specific sub-sectors may improve safety outcomes in those sectors by reducing the incentive to speed, drive fatigued, use drugs, not maintain vehicles, or drive overloaded vehicles. It would therefore be reasonable to expect that improved safety outcomes would result in fewer road transport fatalities and injuries, which would lessen the impacts for the driver involved in any crashes, their families, the industry and the community. *This would include the benefits of avoided property damage as modelled in the CBA. These improved safety outcomes would also result in savings to Government from health service costs for people who are seriously injured in truck crashes, although these savings are not included in the scenario modelling.*

4. And in amongst all this the committee should note the number of significant government or judicial inquiries into these issues that have taken place over the last decade – each of which has echoed the view that client pressure is the root cause of fatally dangerous symptoms such as fatigue, the use of illicit or artificial substances to combat the effects of fatigue, manipulation of log books, dipping under safety cams and speeding.

2000 – Beyond the Midnight Oil – Neville MP Chair

2001 – Quinlan Inquiry

2005/2006 Mutual Responsibility for Road Safety Full Bench Case

2008 – Wright/Quinlan inquiry

2008 – National Transport Commission Safe Payments Report

2010 – Safe Rates Advisory Group Report

5. We have set out in some detail the way in which the bill implements the 4 basic principles identified by that body of evidence as required solutions, and ultimately distilled by the National Transport Commission and the Safe Rates Advisory Group. The Bill, in our view, practically and effectively incorporates the four principles and we fully support it.
  
6. Before I hand over to Tony and the drivers though, I will briefly deal with both the character and content of other submissions made to this committee.
  
7. Of submitting organisations that could be even loosely termed as having an interest in the industry, there is an overwhelming majority that recognises the problem and/or the potential value of the Bill as against a minority reflecting a political or ideological opposition to the Bill. Let me just run through those quickly.

<b>Acknowledge Problem and/or the Potential Value of Bill</b>	<b>Ideological Opposition</b>
ARTIO	Australian Logistics Council ( <b>post 2010</b> )
ARTIO NSW	AIG/ ATA (NSW)
NatRoad (submission 2)	ACCI (no transport operator membership)
Long Haul Drivers Association	Independent Contractors Australia/POAAL (Ken Phillips behind both organisations)
ALDODA	
Livestockers	
Civil Contractors Association (longstanding support for NSW Ch6 provisions)	
National Road Freighters Association (includes several individual submissions; Fanning; Brookfields; AJ&T Bradley; Martin; Wilkie)	

TWU	
Australian Logistics Council ( <b>pre 2010</b> )	
Bannacord Transport	

8. There is not time to take the committee through each of the submissions to make this point but there here are a couple of examples. There are organisations that expressly support the Bill such as ARTIO and the Livestockers. There is then another group that although raising reservations about the bill at the same time acknowledging the problems the bill has been designed to address– Aldoda, nfra, long haul drivers association.

NATROAD – often quoted in the industry media as being opposed to the proposal – fall into this group as well – in its second submission (**hand up**) NaTRoad has made 25 recommendations to this committee, 19 of which would actually broaden scope and powers of the tribunal. **Take committee to NATROAD recommendations** calling for the expansion of Bill scope vs first “public” submission – use NATROAD recommendations 20 and 26 as examples.

9. By contrast there are only really 4 groups of submitters (state them) that appear to be against the bill. My final minute or 2 we would like to contextualise this opposition.

First, the **Australian Logistics Council** – briefing note; 2008 quote (**hand up safe rates summit document**) vs 2012; change of leadership; TWU and other unions off the board; mouthpiece of coles and the major retailers. When you accept that this is the ALC’s constituency and that a key focus of the bill is to ensure the responsibility of supply chain participants such as the major retailers, the opposition is given its proper context.

One the ALC’s quoted members against the bill is Toll. The ALC deputy chair is also Toll’s group corporate affairs director. In direct contrast to the Toll/ALC political

position, last year Toll entered into a 2 and a half year “safe rates” agreement with the TWU last year – **hand up copy and explain**. That document has at its core, safe rates provisions regarding supply chain and other issues, fully endorsed by Toll,

10. AIG - as background please note that AIG represents very few transport operators to the best of our knowledge. It does however, represent industry clients, whose practices have been identified as the root cause of the symptoms leading to fatalities. Once again, this proper context should inform the weight given by the committee to its submission and evidence. The one large transport operator that is a member of AIG, StarTrack, has also recently signed a “safe rates” agreement with the TWU – hand up.

Committee to contrast lack of referencing in ALC and AIG submissions compared to TWU. Point out the number of unreferenced assertions.

11. The content of the ALC, AIG and ACCI submissions, can be distilled into 7 basic objections. These objections have been examined and dealt with at length in the Wright/Quinlan inquiry of 2008, the NTC report of 2008 and in the advice provided by the Safe Rates Advisory Group – The TWU has also provided detailed responses to objections in our submission at pp 27 and forward but we provide the following further assistance to the committee regarding matters raised by AIG in its submission summary:

- (i) The first objection is quite bizarre - that this safety tribunal would divert attention from safety measures such as: risk identification and control; improved roads; fatigue management; education and training; drug and alcohol policies; use of technology; and strong compliance and enforcement mechanisms.

It is trite to say that all in the industry agree with the importance of these elements. 2 main points – it is just as valid and arguably based in much more common sense to assert that the tribunal will *focus* attention and resources on these matters – after all many of these elements, fatigue, substance use,

risk – have all been identified as symptoms of the root cause, the economics of the industry – that the bill is designed to address. Because they are symptoms, all of the evidence has said that until the root cause is addressed, even the most meritorious initiatives in these areas will not be effective because the pressures fostering the symptoms still exist.

- (ii) Objection 2: The bill will increase costs – another bare assertion with no evidence. Draw attention of committee to objections section – read out – also point to efficiencies that can be created, a concrete example of which is a pilot at port botany that tony will mention, that is evidence, and the evidence there is of greater efficiency and less cost, not more. The committee should note that the bill does not compel the tribunal to make any order whatsoever, - while of course, we will be working to put before the tribunal sub standard arrangements and ensure that the clients of the industry pay their fair share, in the end the tribunal, after hearing from all parties – including supply chain participants – may simply conclude that no order is needed, or that the orders that are needed are not to do with the direct remuneration received – an example of this would be uniform safe driving plans to ensure that the work is planned to be performed legally and safely before the driver gets behind the wheel and that supply chain participants are responsible for ensuring that.
  
- (iii) Objection 3. That the scope of the Bill if passed should be confined to the long distance sector. Again, no evidence of why this should be the case. By contrast we provide to the committee 2 further reports (**Hand up short haul evidence**) specifically focussed on the short haul sector the reported effects of fatigue and economic pressures are the same as, and at some points in the daily delivery cycle, exceed that of drivers performing work over longer distances. A prime example is the courier industry – the same character of client pressure exists, particularly in an environment where there is a tendency for companies to act as 3pl providers to likes of major corporates such as apple, dell and the like. Tony will shortly touch on examples in the Waste (change of council contracts – Campbell Newman Brisbane example)



and Cash-in-Transit (power of banks to determine rates and delivery practices) sectors showing the urgent need for the bill to apply. Again, the committee should draw comfort from the fact that the issue of appropriate industry coverage has been dealt with intensely in the inquiries of during the last 4 years.

- (iv) Another matter extensively covered recent public inquiries is that of ensuring that all drivers, employees and owner-drivers alike, benefit from the provisions of the bill. Objection 4: AIG says that employees should not be covered, citing modern Awards and NES as adequate protections. But modern awards cannot deal with the suite of matters required to make a difference for employees and that was determined by the AIRC and then FWA in the modern award process, when that body rejected submissions regarding the inclusion of provisions such as safe driving plans and protective provisions in cash-in-transit. The obvious point to make is that **no provision in any modern award has been made by reference to or in response to the problems that the evidence has identified.** Most important in this question is that need to ensure that there is an appropriate balance in the market between employee and the owner-driver model. The tribunal will have the power to look at employees and owner drivers concurrently – this has been noted as critical to ensure balance in the market – otherwise one mode is played off against the other inducing or perpetuating a downward rates spiral.
- (v) Objection 5: AIG says the stated objectives are unbalanced – this sounds like a political statement and it is not supported by any evidence. The key response here is that, given the magnitude of the crisis and the implications of not acting, the objectives are entirely appropriate. In terms of ensuring that the tribunal has regard to effects on the economy both locally and nationally of its action, well that is already given effect by sections 20 (b), (c), (d) and (i) of the Bill.

- (vi) Objection 6: AIG says inconsistent state laws should be ousted to ensure certainty – but ousting the laws is the surest path to uncertainty. The Bill gets the balance right by expressly preserving existing state provisions until such time as the tribunal makes a decision (remembering the industry consultation that must occur around any decision) to make national provisions in which case the orders *may*, but need not, override state provisions to the extent of inconsistency. AIG’s proposal is to abolish state systems some of which have existed over 4 decades and upon which parties have negotiated and entered contracts sometimes of 10 years duration. That is a recipe for uncertainty. The Howard Government saw this – by taking a similar approach to this bill when it maintained state owner driver protections when it enacted the independent contractors act – that was a sensible approach, AIG’s is not.
- (vii) Objection 7: AIG says the tribunal should only be able to act where it is established that orders would result in safer outcomes. The bill proceeds on the basis that the economic and safety link is established by the 20 years of inquiries that precede it. AIG’s proposal is simply another manifestation of its denial of that evidence – it would require the tribunal to relitigate the question of the effects of the economics of the industry as the root cause of pressure on each and every occasion it intended to act. **No one has put any evidence to contradict this link – not to this committee and not in any of the inquiries of the last 12 years.** In any event, the objectives of the bill and the powers of the tribunal clearly articulate the safety nexus of tribunal action. – see section 3
12. **Ken Phillips** . Before I hand over to Tony I draw the committee’s attention to the submission of Independent contractors Australia to ensure that members are fully informed in circumstances that they were minded to rely on anything in that submission. In the 2005 hearings into the independent contractors bill – Ken Phillips, the head of ICA, submitted that the longstanding owner driver provisions in NSW should be abolished. The senate committee rejected that proposition because the Howard government agreed that owner driver protections were necessary and

that the vulnerable economic position of drivers required consideration of more regulation not less.

Ken Phillip's is a self proclaimed ideologue – (Official Committee Hansard, Senate Employment, Workplace Relations and Education Legislation Committee – Friday 4 August 2006, Canberra – p 17. "No, I refer to it as the non-industrial relations field. I have a commercial focus." **Hand up**) ; He also revealed how unrepresentative he was – pp 15-19 – (I ask the committee to compare that with the 100 year representation of the TWU for owner drivers – because we represent 20000 owner driver members we can legitimately claim that no organisation in the country represents more small businesses. Ken Phillips has a handful of members that he does not even verify are owner drivers. Ken Phillips also reveals – reference – his close association with POOAL, so it is open to the committee to draw the conclusion POOAL submission is written or influenced by Ken Phillips.

13. The final point to be made about these 4 objectors is that their concerns are devoid of acknowledgment that there is a problem to be addressed – they either directly or by implication support maintenance of the *status quo* – each of the other submitters, although varying at times in terms of the solution to be applied are agreed that there is a problem that needs to be solved – As the regulatory impact statement accompanying the bill concludes at page 26 – in response to arguments that current regulation is enough:

*.... as the current system does not address the link between remuneration and safety, no action may mean that the financial incentive to engage in practices which are often a factor in heavy vehicle crashes - speeding, working long hours and using illicit substances - would remain and potentially undermine these other Government investments.*

We hope that one matter that we can all agree on is that the *status quo* is unacceptable – people are dying.

Over to Tony