

Joint Departmental

Submission

to the

House of Representatives Infrastructure and Communications Committee

**Inquiry into the Road Safety Remuneration Bill 2011  
and the Road Safety Remuneration (Consequential  
Amendments and Related Provisions) Bill 2011**

from

**The Department of Education, Employment and Workplace Relations, and  
The Department of Infrastructure and Transport**

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# **ROAD SAFETY REMUNERATION BILL 2011 AND ROAD SAFETY REMUNERATION (CONSEQUENTIAL AMENDMENTS AND RELATED PROVISIONS) BILL 2011**

## **INTRODUCTION**

The Australian Government has committed to improving safety outcomes for truck drivers, while ensuring the long term viability of the road transport industry.

Around 250 people are killed and over 1000 people suffer serious injuries on Australian roads each year in accidents involving trucks.<sup>1</sup> Truck driving continues to be the industry with the highest incidence of fatal injuries with 25 deaths per 100,000 workers in 2008-09 – ten times the average for all industries.<sup>2</sup>

As announced on 22 November 2011 by the Hon Anthony Albanese MP, Minister for Infrastructure and Transport and Senator the Hon Chris Evans, the former Minister for Tertiary Education, Skills, Jobs and Workplace Relations, the Government will establish a new national road safety system to tackle speed, fatigue and dangerous work practices in the trucking industry - to make Australia's roads safer for all drivers.

The announcement indicated that the new system will save lives by ensuring that truck drivers are paid reasonably for the work they do, removing the economic incentive for drivers to take unacceptable risks on our roads. Truck drivers should not have to speed, overload their trucks, drive excessive hours or cut back on vehicle maintenance just to make a decent living.

Research by the National Transport Commission (NTC) found a conclusive link between low rates of pay and risky work practices by drivers. These risky practices include speeding, excessive hours and using illicit substances.

The Departments of Education, Employment and Workplace Relations (DEEWR) and the Department of Infrastructure and Transport draw the attention of the House Standing Committee on Infrastructure and Communications (the Committee) to the following documents relevant to the Road Safety Remuneration Bills:

1. National Transport Commission Report, *Safe Payments: Addressing the underlying causes of unsafe practices in the road transport industry* (NTC Report), November 2008;
2. *Safe Rates, Safe Roads* Directions Paper (Directions Paper).

## **OVERVIEW**

The November 2008 NTC Report found that payment rates and methods for owner drivers and employees create incentives to drive unsafely. The NTC Report recommended that this link

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<sup>1</sup> Based on data collected by the Bureau of Infrastructure, Transport and Regional Economics (BITRE).

<sup>2</sup> *Work-related Traumatic Injury Fatalities 2008-09*, Safe Work Australia 2011

between pay and safety be addressed through regulatory intervention at the national level, by the establishment of a Tribunal.<sup>3</sup>

The Australian Transport Council, made up of Commonwealth, state, territory and New Zealand Ministers responsible for transport, commissioned the NTC Report and following consideration of the findings agreed that there was a case for investigating a whole of government regulatory approach to address the link between payment and safe driving practices.<sup>4</sup>

In December 2009, to assist in responding to the NTC Report, the then Minister for Workplace Relations, the Hon Julia Gillard MP, established the Safe Rates Advisory Group (SRAG), which included industry and safety experts.

The SRAG assisted DEEWR in developing the Directions paper, which set out practical options for implementing a tribunal approach, as recommended in the NTC Report. These options were: a specialist tribunal with power to make orders regarding pay and conditions in the industry; a panel within Fair Work Australia (FWA), with those same powers; and the option to extend the *Fair Work Act 2009* to owner drivers.

Senator the Hon Jacinta Collins, Parliamentary Secretary for School Education and Workplace Relations, released the Directions Paper in November 2010 for a three month public consultation period and 45 parties made submissions.

Submissions expressed various views, with some strongly supporting and others strongly opposing a tribunal system. For example, if a decision to establish 'safe rates' was taken, Australian Chamber of Commerce and Industry indicated that consideration should be given to the establishment of an independent body outside the FW Act that only deals with owner drivers and limited to the heavy vehicle transport industry; Woolworths Limited supported a tribunal within FWA; the South Australian Freight Council advocated for a specialist transport tribunal; the National Road Transport Operators Association supported a tribunal limited to pay and conditions matters; and the Cement Concrete Aggregates Australia supported a tribunal without dispute resolution powers. Drivers and driver group submissions supported a tribunal model, with some specifying the a specialist tribunal or a 'Safe Rates Panel' within FWA as their preferred tribunal type.

The SRAG met again in October and November 2011. Feedback received at these meetings has been considered in the development of the Road Safety Remuneration Bill 2011 and the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill (the Bills).

In addition, DEEWR commissioned a Regulatory Impact Statement (RIS) in order to provide information on the potential impacts of the Road Safety Remuneration System (the System). The RIS was approved by the Office of Best Practice Regulation on 27 October 2011.

The options considered in the RIS relate to the Government's response to the NTC Report and examined the impacts of a mandatory tribunal model, a voluntary approach and the 'status quo' option. The RIS concluded that the tribunal approach set out in the Bills is preferred because establishing a tribunal, with the discretion to set pay and/or related conditions for truck drivers based on evidence, in sectors where it is necessary to improve safety outcomes, can more

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<sup>3</sup> <http://www.ntc.gov.au/filemedia/Reports/SafePaymentsFinalReportNov08.pdf>

<sup>4</sup> <http://www.atcouncil.gov.au/communique/20081107.aspx>

effectively address current unacceptable numbers of deaths and injuries and potential market failures than a voluntary approach.

For a summary of the Regulatory Impact Statement see Attachment A.

## **SUMMARY OF PROVISIONS**

The Bills establish a Road Safety Remuneration Tribunal (the Tribunal), with objects to promote safety and fairness in the road transport industry.

The Tribunal will be empowered to inquire into sectors, issues and practices within the road transport industry and, where appropriate, determine mandatory minimum rates of pay and related conditions for employees and owner drivers. These determinations, to be known as Road Safety Remuneration Orders (RSROs), will operate in addition to any existing rights employee drivers have under industrial instruments/contracts of employment and self-employed (independent contractor) drivers have under their contracts for services.

When performing its functions, the Tribunal would be required to take into account a range of criteria, including the likely impact on business; the special circumstances of areas that are particularly reliant on the road transport industry; and the likely impact on the national economy and the effect on the movement of freight across the nation. Sub clause 20 (1) of the Road Safety Remuneration Bill 2011 states that:

*In deciding whether to make a road safety remuneration order, the Tribunal must have regard to the following matters:*

- (a) the need to apply fair, reasonable and enforceable standards in the road transport industry to ensure the safety and fair treatment of road transport drivers;*
- (b) the likely impact of any order on the viability of businesses in the road transport industry;*
- (c) the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas;*
- (d) the likely impact of any order on the national economy and on the movement of freight across the nation;*
- (e) orders and determinations made by the Minimum Wage Panel of Fair Work Australia in annual wage reviews and the reasons for those orders and determinations;*
- (f) any modern awards relevant to the road transport industry (see subsection (2)) and the reasons for those awards;*
- (g) the need to avoid unnecessary overlap with the Fair Work Act 2009 and any other laws prescribed for the purposes of this paragraph;*
- (h) the need to reduce complexity and for any order to be simple and easy to understand;*
- (i) the need to minimise the compliance burden on the road transport industry;*
- (j) any other matter prescribed by the regulations for the purposes of this paragraph.*

RSROs may be made by the Tribunal on its own initiative or on application. Before making an RSRO, the Tribunal would be required to take into account a range of criteria, including existing state and territory transport regulations, such as the National Heavy Vehicle Regulator, as well as the likely impact on business; the special circumstances of areas that are particularly reliant on the road transport industry; and the likely impact on the national economy and the effect on the movement of freight across the nation.

The Tribunal will, in consultation with industry, prepare and publish an annual work program and publish its research. Before making an RSRO, the Tribunal will prepare and release a draft order for the purposes of consultation and will be required to give affected persons or bodies a reasonable opportunity to make written submissions to the Tribunal for its consideration in relation to the draft order.

The Tribunal will also be empowered to grant ‘safe remuneration approvals’ in relation to pay and related conditions contained in a road transport collective agreement between a hirer and all self-employed (independent contractor) drivers with whom the hirer proposes to contract.

Finally, the Tribunal will be empowered to resolve disputes between drivers, their hirers or employers and participants in the road transport industry supply chain about remuneration and related conditions in so far as they provide incentives to work in an unsafe manner. This is intended to be an accessible dispute resolution service, particularly for owner drivers. The Tribunal can also deal with disputes arising from the termination of a road transport contract, in cases where the termination is thought to be a result of incentives within that contract to drive unsafely. The Tribunal may deal with a dispute as it considers appropriate, including by:

- mediation or conciliation;
- making a recommendation or expressing an opinion;
- arbitration with the consent of the parties.

The Tribunal will be made up of both FWA members and expert members with experience relevant to the road transport industry. The Tribunal secretariat will be provided by the General Manager of FWA.

The Bill will also establish a compliance regime for the enforcement of RSROs, safe remuneration approvals and any orders arising out of the arbitration (by consent) of a dispute. Compliance functions will be performed by the Fair Work Ombudsman.

The Bill complements existing Federal legislation such as the *Fair Work Act 2009* and the *Independent Contractors Act 2006*; current State-based schemes dealing with owner-driver contracts; and proposed state and territory-based national heavy vehicle laws.

## **POLICY OBJECTIVES OF THE BILL**

### **The Problem**

As noted above, around 250 people are killed and over 1000 people suffer serious injuries on Australian roads each year in accidents involving trucks. Truck driving continues to be the industry with the highest incidence of fatal injuries with 25 deaths per 100,000 workers in 2008-09 – ten times the average for all industries.

The total cost of heavy vehicle related accidents involving fatalities and/or serious injuries in 2010 was estimated to be \$2.7 billion.<sup>5</sup>

Australia's freight task is expected to grow by 80 per cent over the next 20 years.<sup>6</sup>

According to 2006 census data, around 29 per cent of owner drivers were underpaid, using the Award rate of pay for truck drivers as the benchmark.

Despite significant regulatory reforms in the industry, led by both the Government and industry, a national approach to remuneration and related conditions has not been taken to date.

## **Impact**

If the Tribunal chose to set a mandatory rate of pay for drivers in the road transport industry or a particular sector, the impact arising from this decision would depend on the coverage of the legislation establishing the Tribunal and the compliance rate of owner drivers and supply chain businesses with that rate.

Due to constitutional limitations, the legislation will initially cover approximately 80 per cent of employees and 60 per cent of owner drivers. However, the Government has indicated its intention to expand coverage by exploring the possibility of referrals of power from state governments to enable expansion of the scheme to employees and owner drivers not within Commonwealth legislative power.

The RIS had to adopt a wide range of assumptions in the face of incomplete and uncertain data. While the Cost Benefit Analysis results indicate that the costs outweigh the benefits of establishing a Tribunal, the results are sensitive to the assumptions used. For example, changing the central assumption that existing remuneration is economically 'efficient' would have a significant impact and could result in benefits without any economic cost.

Owner drivers, many of whom are small businesses, may benefit from increased remuneration and consequential reductions in accidents. A mandatory rate will benefit those owner drivers who are currently not being compensated for the efficient cost of transporting goods. For example, according to the RIS, mandatory payment to owner drivers for every one hour of waiting time could, in a best case scenario, result in economic transfer to owner drivers, with possible efficiency gains of up to \$155 million.

Any decisions made by the Tribunal are intended to complement and not exclude or limit the operation of any other Commonwealth or State/Territory law, including State legislation dealing with owner driver contracts, the *Fair Work Act 2009*, the *Independent Contractors Act 2006* and transport laws.

The System complements existing and new initiatives in the road transport industry, such as the National Heavy Vehicle Regulator. The role of the Road Safety Remuneration Tribunal will be limited to pay and pay related conditions, which are not within the scope of the National Heavy Vehicle Regulator. Further information on the regulatory impacts can be found at [Attachment A](#).

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<sup>5</sup> Based on unpublished 2006 data prepared for the Department in August 2011

<sup>6</sup> *Twice the Task: A review of Australia's freight transport tasks*, National Transport Commission, 2006

**ATTACHMENT A**

**SUMMARY OF REGULATORY IMPACT STATEMENT**

PricewaterhouseCoopers (PwC) was engaged by the Department of Education, Employment and Workplace Relations (DEEWR) to prepare a Regulation Impact Statement (RIS), including a Cost Benefit Analysis (CBA), for establishing a Road Safety Remuneration Tribunal (Tribunal) for employee and owner drivers in the road transport industry. The Tribunal's approach to setting pay and/or pay related conditions would be research focused and evidence based. The Tribunal would have discretion to set rates of pay and/or pay related conditions for drivers operating in sectors of the road transport industry, where necessary to improve safety outcomes.

The Tribunal would also have discretion not to set a rate or remuneration related conditions. The Tribunal may also decide to only set remuneration related conditions, which may place an obligation on hirers, employers and the supply chain to pay for any waiting, loading or unloading time, for example. The obligation may also require owner drivers to be paid within a set time period, such as 14 or 30 days. The Tribunal would also have a range of other functions, including dispute resolution.

When performing its functions, the Tribunal would be required to take into account a range of criteria, including the likely impact on business; the special circumstances of areas that are particularly reliant on the road transport industry; and the likely impact on the national economy and the effect on the movement of freight across the nation.

The options considered in the RIS relate to the Government's response to the 2008 National Transport Commission Report, *Safe Payments: Addressing the underlying causes of unsafe practices in the road transport industry* (the NTC Report).

**The problem**

Truck driving is the occupation/industry with the highest incidence of fatal injuries. When a truck is involved in a safety incident, the general public is also affected. If directly involved, then statistically it is likely that the other party will suffer worse consequences than the truck driver. There are also costs associated with the impact of shared infrastructure and monetised and non-monetised community costs.

According to the Department of Infrastructure and Transport, in the 12 months to December 2010, 232 people were killed in 197 accidents involving heavy trucks. There were 25 deaths per 100,000 workers in the industry in 2008-09 which is ten times the average for all industries.

While transport safety outcomes have improved over the years, there are still an unacceptably high number of truck accidents. The concern is that without further action, the number of accidents will remain high.

Speed and fatigue are often identified as the primary cause for a crash but it is a much harder task to prove that drivers were speeding because of the manner or quantum of their remuneration. There is some research to suggest that the remuneration for drivers is a factor in safety outcomes, however data at this point in time is limited and being definitive around the

causal link between rates and safety is difficult. International research has found a correlation between remuneration and safety performance, particularly where very low levels of remuneration are concerned (Rodriguez *et al* 2006, Nafuko *et al* 2007 and Belzer *et al* 2002). An Australian study found that drivers paid by a ‘payment-by-results’ method were twice as likely to report being fatigued on at least half of their trips than drivers paid an hourly rate (Williamson *et al* 2001).

The NTC report found that market failures and payment rates and methods in the road transport industry create an incentive for, or encourage, unsafe driving behaviours that contribute to poor safety outcomes on the roads.

Moreover, stakeholder feedback has highlighted likely market failures that are leading to concerns with existing remuneration levels for employee and owner drivers in some sectors of the industry. The market failures relate to the low market power of owner drivers, behavioural issues around individual decision making, and the significant barriers to exit from the industry. Remuneration rates for Australian owner drivers appear to be low. According to analysis of 2006 Census data, almost 30 per cent of owner-drivers are paid less than an assumed ‘notional award’ remuneration.

## **Objectives**

The objective of the proposed options is to improve safety performance in the road transport industry, to reduce the number of deaths and injuries for both truck drivers and the general public. The aim of Government action is to put in place measures which can result in a reduction of the financial incentives for employee and owner drivers to drive in ways that increase the risk of death and injuries on the road. Improving equity for owner drivers, in terms of income distribution, has also been acknowledged as a major driver of related state government legislative action in recent years.

## **The options**

The RIS examines potential impacts associated with three options:

1. maintaining the existing federal and state-based legislation for employee drivers and owner drivers (where applicable) - this option is the base case for the RIS
2. introducing a voluntary system of payments for owner drivers and chain of responsibility arrangements
3. establishing the Tribunal, with discretion to set and maintain remuneration rates and/or remuneration related conditions for employees, owner drivers and the supply chain, if safety outcomes would improve as a result of the decision.

## **Impact analysis**

The economic framework in the RIS responds directly to answering the key economic question, namely:

*‘will the societal benefits from improved road safety offset the expected increase in the resource cost and productivity of freight and cost to government from establishing and implementing a road safety remuneration system for owner and employee drivers?’*

Australia's freight task is forecast to continue growing. Heavy vehicles account for the largest proportion of the road freight task in Australia. According to the Bureau of Infrastructure, Transport and Regional Economics (BITRE), in 2007–2008 road transport accounted for approximately 1.7 per cent (\$17,988 million) of Australia's total gross domestic product (GDP) (\$1,037,027 million) and approximately 2.3 per cent (246,100) of total Australian employment (10,673,400).

There are approximately 231,900 truck drivers in the road transport industry, including an estimated 71,000 owner drivers. The industry has an ageing workforce in comparison with other employment sectors, with more than 40 per cent of workers aged 45 years and over.

Critically, the options set out above do not prescribe a specific remuneration level or structure for owner drivers and employees. Therefore, rather than seeking to estimate the net economic benefit of specific pay rates for a specific road transport segment, the economic impacts of the options are assessed in terms of three road transport scenarios, which provide a representative cross-section of the road transport industry.

For the purpose of the RIS, the impact analysis has focussed on the following sectors or scenarios:

- long haul road freight - half of the road freight in Australia (tonne kilometre) is classified as 'long distance' freight, with an average trip length of 300-500 kilometres. This segment of the market is expected to account for 60 per cent of road freight by 2030. As such, most of the interstate and part of the intra-state freight task falls within this category.
- short haul quarried - the quarrying industry in Australia is expected to generate revenue of about \$9 billion in 2010/117. Road is the primary mode for moving product between rock quarries, sand and gravel extraction sites, cement production and distribution facilities and concrete batching plants throughout the nation.
- short haul agriculture - this is generally short haulage transport where most of the origins and destinations are located within the same region. This sector accounts for approximately 15 per cent of total road freight volume. The agricultural sector accounts for approximately 50 per cent of heavy vehicles but contributed only 15 per cent of total network tonne volumes.

The direct costs and benefits were identified and monetised for Options 2 and 3 using the three above sectors. The potential second round market responses from the introduction of Options 2 or 3 have not been modelled because of data limitations, in particular a lack of information about supply and demand for owner driver services and uncertainty about the actual number of owner drivers and amount of the freight task they carry. The impacts of potential second round market responses are discussed qualitatively instead.

The CBA focuses on quantifying the direct material impacts of the options, based on an assumption that current wages are efficient. However, there is evidence to suggest that existing owner driver remuneration may not be efficient because of an unpriced safety externality and other market failures facing owner drivers. It is important to note that the scenario modelling results are purely illustrative and are highly sensitive to the assumptions adopted.

In Option 2, owner drivers covered by the legislation may benefit from increased remuneration and reductions in accidents. The community may also benefit from a reduction in accidents but may have to pay a share of the costs of remuneration increases for owner drivers.

Under Option 3, if a Tribunal chose to set a mandatory rate of remuneration for drivers in the road transport industry, or a particular segment of it, the magnitude of direct costs and benefits arising from this decision would depend on the coverage of the legislation establishing the Tribunal and the compliance rate of owner drivers and supply chain businesses with that rate. The scenarios model a range of coverage and compliance rates, to demonstrate the range of potential impacts of any decisions made by the Tribunal.

The CBA results presented in the table below indicate that the costs outweigh the benefits for Option 2 (voluntary system) and Option 3 (mandatory system) CBA model results - Central estimates over 10-year period

	<b>Option 2 – voluntary 10% compliance rate</b>		<b>Option 3 – 60% coverage and 90% compliance rates</b>	
	<b>BCR</b>	<b>NPV</b>	<b>BCR</b>	<b>NPV</b>
<i><b>Overall sector</b></i>	0.49	-\$44.4m	0.51	-\$228.4m

The costs are significantly due to higher remuneration rates, especially for Option 3, which are likely to be passed on in the supply chain and ultimately paid for by consumers. The benefits are derived from improved safety (less road fatalities and injuries) for owner-drivers and other road users and less property damage. The implementation costs for Options 2 and 3 are minor.

Scenario modelling (refer to Appendix E of the RIS) shows that changes in coverage and compliance rates can result in a significant increase in the BCR to that shown above, while changing the assumption on existing remuneration being efficient can result in benefits without any economic cost. This suggests the achievable outcome may be better than the results above, particularly if current remuneration is inefficient and increases in remuneration move it towards and efficient level. The absence of definitive evidence regarding the efficient wage means that, as previously noted, scenario models are highly sensitive to the assumptions adopted. As such, it is arguable as to whether or not the results observed in Appendix E would be achieved.

**Conclusion**

The RIS adopts a wide range of assumptions in the face of incomplete and uncertain data. While the CBA results indicate that the costs outweigh the benefits with both Options 2 and 3, the results are sensitive to the assumptions used. Changing the central assumption that existing remuneration is economically ‘efficient’ would have a significant impact on results for both Options 2 and 3.

There are valid economic grounds for establishing a Tribunal, which is expected to cost about \$5 million per annum. The Tribunal’s approach to setting pay and pay related conditions would be research focused and evidence based. The Tribunal would have discretion to set rates of pay and/or pay related conditions for drivers operating in sectors of the road transport industry, if there was evidence these rates and/or conditions would improve safety outcomes. For example,

the Tribunal may consider to only set remuneration related conditions, such as an obligation on hirers, employers and the supply chain to pay owner-drivers for any waiting, loading or unloading time. Under Option 3, mandatory payment to owner drivers for every one hour of waiting time could, in a best case scenario, result in an economic transfer to owner drivers, with possible efficiency gains, of up to \$155 million.

Option 3 is preferred over Option 2 because establishing a Tribunal with the discretion to set rates of pay and/or pay related conditions for drivers operating in sectors of the road transport industry, where necessary to improve safety outcomes, can more effectively address current unacceptable levels of safety and potential market failures.