3

Evidence on details of the bill

Introduction

3.1 This chapter reviews particular clauses of the bill where issues were raised throughout the inquiry. The Committee received useful written and oral evidence that directly addressed the legislation and the potential effects of the legislation, and outlines a representation of those views below.

Object

3.2 Clause 3 sets out the object of the bill, as follows:

> The object of this Act is to promote safety and fairness in the road transport industry by doing the following:
>
> (a) ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner;
>
> (b) removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices;
>
> (c) ensuring that road transport drivers are paid for their work, including loading or unloading their vehicles or waiting for someone else to load or unload their vehicles;
>
> (d) developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers;

(e) ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards;

(f) facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

3.3 The ARTIO submitted that the bill should be amended to mandate safety as the overriding factor that must be considered by the Tribunal in exercising any of its functions.[1] The ALC suggested that clause 3 should be amended to make clear that the Tribunal should deal with remuneration matters only, and not related conditions.[2] NatRoad suggested that the object be amended to allow the Tribunal to impose obligations on drivers.[3]

3.4 The AIG was concerned that the Tribunal would be required to make a RSRO without the applicant in the matter having to prove the causal link between remuneration and safety.[4]

3.5 Mr Ingram was concerned as to how the objects of the bill, as outlined in clause 3, were to be implemented and at whose cost. For Mr Ingram, as for some other inquiry participants, a major concern was the chain of responsibility—what would happen when delays occurred that may be 'the fault of the unloaders and/or the distribution centres'.[5] Similarly, CCF was concerned that obligations through the supply chain were extensive and wide ranging, and it could mean that civil contractors could incur responsibilities to third parties that they did not directly hire or over whom they had no direct control.[6] The CCF suggested that further clarification was necessary as to how far the obligations were intended to apply.[7]

3.6 The POAAL stated that the object of the bill would only have limited application to mail contractors, as there was little ability for them to reduce their delivery time through dangerous driving practices.[8]

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1 Australian Road Transport Industrial Organisation (ARTIO), *Submission 10*, p. 5.

2 ALC, *Submission 21*, p. 10.

3 NatRoad, *Supplementary Submission 14.1*, p. 11.

4 AIG, *Submission 17*, p. 38.

5 Bonaccord Freight Lines Pty Ltd, *Submission 26*, p. [3].

6 CCF, *Submission 23*, p. 12.

7 CCF, *Submission 23*, p. 12.

8 POAAL, *Submission 20*, pp. 3-4.

Definitions

Road transport industry

3.7 The bill has a wide-ranging definition of the 'road transport industry'.

3.8 The AIG submitted that the definition of 'road transport industry' should be limited to long distance operations in the private transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2010.[9] The ALC argued that the bill should only cover remuneration issues related to long distance operations.[10]

Waiting time and distribution centre

3.9 The ARTIO suggested that the definitions of 'waiting time' and 'distribution centre' should be included in the bill.[11] Mr Paul Ryan, National Industrial Advisor of the ARTIO, suggested that a threshold issue arose in respect of the definition of 'waiting time':

> If I drive a truck or someone behind me drives a truck and they go to the Coles distribution centre, park their truck and go and sit in the canteen and read the newspaper for an hour and a half, that is not waiting time—that is rest time. But, if they are in a queue and they have to maintain control of that vehicle because the queue is inching forward or whatever it might be, there is a prima facie case that they should be paid. Is the transport company being paid? It is the threshold issue that one must ask about.[12]

3.10 The Committee notes that, whilst 'distribution centre' itself is not defined in the bill, an operator of premises for loading and unloading is defined—in subclauses 9(6)-(8)—in certain circumstances to be a 'participant in the supply chain' for the purposes of the bill.

3.11 NatRoad further suggested that the definitions of a participant in the supply chain at subclause 9(6) should be expanded to include owners or operators of premises for loading and unloading.[13] This goes to the broader argument of NatRoad that the bill should be applied to all parties

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9 AIG, *Submission 17*, pp. 17-18 and 42.

10 ALC, *Submission 21*, p. 11.

11 Mr Paul Ryan, National Industrial Advisor, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 10.

12 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 10.

13 NatRoad, *Supplementary Submission 14.1*, p. 10.

in the supply chain with an ability to influence rates or safety outcomes, as closely as possible reflecting the chain of responsibility provisions of the National Heavy Vehicle laws and the *Workplace Health and Safety Act 2011* (Cth).[14]

3.12 The Department further elaborated on the issue of these definitions of waiting time and distribution centre, and why they might not have been included in the bill, stating that:

> Quite often the sorts of issues around waiting time might depend on the facts of a particular matter, and quite often it might be that there is a matter that is left to the discretion of a tribunal to deal with rather than it being specifically defined.[15]

3.13 The Committee accepts this explanation by DEEWR, and that issues such as waiting times may differ for different parts of the industry, and may be interpreted differently in different circumstances. The Committee therefore accepts that the Tribunal may consider such matters on a case by case basis.

Road Safety Remuneration Orders

3.14 Part 2 of the bill contains provisions about the making of RSROs.

Work program

3.15 Subclause 18(3) of the bill provides that in preparing its work program for a year, the Tribunal must consult with industry. The ALC argued that the Tribunal should only be allowed to make RSROs with respect to matters in its work program, and that subclauses 19(3)-(6)—allowing the Tribunal to make RSROs upon application and to refuse to consider applications—should therefore be removed.[16] NatRoad similarly argued that the Tribunal should only hear applications outside its work program in exceptional circumstances.[17]

14 NatRoad, *Supplementary Submission 14.1*, pp. 8 and 25.

15 Mr Kovacic, DEEWR, *Committee Hansard*, Canberra, 15 February 2012, p. 23.

16 ALC, *Submission 21*, p. 10.

17 NatRoad, *Supplementary Submission 14.1*, p. 12.

Power to make a Road Safety Remuneration Order

3.16 The Tribunal may make a RSRO on its own initiative or on application by specified parties, if it is consistent with the object of the bill.

3.17 Paragraph 19(5)(b) provides that the Tribunal may refuse to consider an application for a RSRO for any reason.

3.18 The AIG suggested that the Tribunal should have the power to refuse to consider an application if a causal connection between remuneration and safety is not established,[18] therefore not just for any reason.

3.19 The AIG also strongly opposed what it saw as an inequitable restriction imposed under paragraph 19(3)(e), on the rights of industrial associations to make applications for RSROs, in comparison to the rights of registered employee associations under paragraph 19(3)(d).[19] Mr Ryan raised a similar concern, stating that:

> At the moment, the way the bill is worded … in our view gives a free kick to a registered employee organisation. But, for a registered employer organisation, the powers granted to it are slightly different. There must be consistency.[20]

3.20 NatRoad recommended that the Tribunal should be required to inform applicants of the reasons for a refusal to consider an application as part of the requirement for notification at subclause 19(6).[21]

Matters the Tribunal must have regard to

3.21 Clause 20 provides for the matters that the Tribunal must have regard to in deciding whether to make a RSRO. Paragraph 20(1)(j) states that any other matter may be prescribed by the regulations. It is not yet clear what the regulations may stipulate.

3.22 NatRoad suggested that the matters set out at clause 20 are incomplete, and that, among other suggestions, the following matters should be included:

> Considerations relating to safety including:
>
> - Prevailing trends in safety improvement;
> - The reliability of available safety data;

18 AIG, *Submission 17*, pp. 55-56.

19 AIG, *Submission 17*, p. 54.

20 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 9.

21 NatRoad, *Supplementary Submission 14.1*, p. 11.

- The quantum of any proposed safety improvements and whether or not actual improvements are likely to be measurable;
- Current safety measures, in place or under development that may address the problem;
- Compliance levels with existing safety measures and whether these can be improved through improved enforcement or other measures; and
- Alternative non-regulatory measures that could be pursued.[22]

3.23 Many submitters complained about the possible confusion of regulation and differences between regulations in different States. This issue is dealt with in clause 20 of the bill, which states, among other things, that in deciding whether to make a RSRO, the Tribunal must have regard to matters such as:

- the need to avoid any unnecessary overlap with the Fair Work Act and laws that will be prescribed in future, such as the National Heavy Vehicle laws when they are enacted; and
- the need to reduce complexity and for any order to be simple and easy to understand, the intention being to ensure that either the existing complexity in road transport regulation is not increased, or that it is reduced.[23]

3.24 The Committee is satisfied that the legislation will allow the Tribunal to take these matters into account in each case that it deals with, and ultimately in any decision that it makes.

3.25 A concern was raised by Mr Kilgariff of the ALC in relation to the possible restriction of parties in adopting more efficient and safer practices once a RSRO is made, as follows:

> When an order is made by the Road Safety Remuneration Tribunal in relation to a standard business practice such as fatigue or loading of a truck, a road transport operator will be required to adopt the practices the tribunal imposes. This in effect would mean it would be unlawful for a business to adopt more efficient and safer practices that can and do develop over time … [24]

3.26 The Committee considers that the legislation would allow the Tribunal to manage this issue, whether in the way in which the RSRO is drafted, by the use of its review powers, or by allowing parties to apply to the

22 NatRoad, *Supplementary Submission 14.1*, p. 13.

23 RSR Bill 2011, EM, p. 11.

24 Mr Kilgariff, ALC, *Committee Hansard*, 15 February 2012, p. 16.

Tribunal for review of a RSRO. Whatever the practical operation of the Tribunal, the Committee is cognisant of the fact that the object of bill is to *promote safety and fairness in the road transport industry*. Should the Tribunal make orders which restrict industry's capacity for self-improvement, the object of the bill would be contravened.

3.27 Transport for NSW, a NSW State Government department, in its submission, raised the possibility of a RSRO being made which is inconsistent with the National Heavy Vehicle laws when they are enacted, and that the RSRO would prevail. Transport for NSW therefore requested further consideration of these issues, and in particular, how industry is to respond to the various requirements to ensure compliance.[25]

3.28 Clauses 10 and 11 of the bill indicate that it is intended to operate concurrently with other specified laws (which the EM proposes will include the National Heavy Vehicle laws when they are enacted) but that an enforceable instrument (defined to include a RSRO) will prevail over any inconsistent state or territory law, to the extent of the inconsistency. These are a common form of provisions that appear in Commonwealth legislation. The Committee notes that paragraph 20(1)(g) obliges the Tribunal to have regard to the need to avoid unnecessary overlap with laws prescribed for the purposes of this paragraph (which the EM also proposes will include the National Heavy Vehicle laws when they are enacted), and is satisfied that the proposed legislation will enable the Tribunal to do so.

Making a Road Safety Remuneration Order

3.29 Clause 27 provides for what matters may be covered by a RSRO. It is clear to the Committee that unpaid waiting times, unpaid on-costs, loading and unloading vehicles, and time for payment of invoices are a major source of problems for drivers in the industry. Paragraph 27(2)(c) of the bill explicitly allows for the Tribunal to make RSROs in relation to these matters to address them in favour of drivers.

3.30 Unpaid waiting times were discussed throughout the inquiry as a major problem in the industry. Many individual drivers supported the idea of paid waiting times. The POAAL stated that unreasonable waiting times were a problem, but that they could be addressed in the way of better contracts that address penalties for unpaid waiting times, or an industry code for mail contractors.[26]

25 Transport for NSW, NSW Government, *Submission 29*, p. [1].

26 POAAL, *Submission 20*, p. 5.

3.31 Mr Ian Vaughan, a delegate of the TWUA and a truck driver, gave evidence at the hearing in relation to travelling between distribution centres and country stores:

> From that warehouse to the store you are given a two-hour window time … If you are there before that window, you sit and wait. They will not take it before the time. If you are there after it, they jump up and down and go crook and whinge … I work 72 hours a week. I can be away for 72 hours at a time. And if I get held up it makes my week the pits because I do not know what my family is doing—and you will just cut corners. There is the opportunity there to take risks that you would not normally take.[27]

3.32 Mr Paul Freyer, a Member of the TWUA and truck driver, gave evidence at the hearing in relation to loading and unloading of his vehicle:

> We were carting these liquid dangerous goods from Brisbane to Gladstone. It took an hour to load the truck, it took an hour to unload the truck, and we were running a 14-hour book … the 14-hour book runs on a three-hour break … They have initially used up two hours of my rest. So the other hour is used to make the log book legal … I brought this up with my direct boss—I was working for a subcontract—and with the chemical company involved. I was given the bullet over that.[28]

3.33 Mr Frank Black, a Member of the TWUA and truck driver, gave evidence at the hearing that ' … the idea is that you need to be able to earn your living within your sustainable time—sustainable hours.'[29]

3.34 The AIG stated that the power to make RSROs is extremely broad.[30] The ALC said that it is highly undesirable that the Tribunal can make decisions about loading trucks and managing fatigue as this will override any obligations on operators under Work Health and Safety laws and the National Heavy Vehicle laws, and further stated that the power to make RSROs in relation to 'related conditions' should be removed.[31]

3.35 NatRoad suggested that orders issued by the Tribunal must be specific for either employee or sub-contract drivers and must reflect the unique considerations required for each.[32]

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27 Mr Ian Vaughan, Delegate, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 4.

28 Mr Paul Freyer, Member, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 4.

29 Mr Frank Black, Member, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 5.

30 AIG, *Submission 17*, p. 62.

31 ALC, *Submission 21*, pp. 8-10.

32 NatRoad, *Supplementary Submission 14.1*, p. 23.

3.36 Mr Darryl Pederson, the National President of the NRFA, was concerned that many members of the NRFA that negotiated their rates in accordance with the work they do would be expected to operate at a lesser rate than they currently do, and that may well force operators out of the industry.[33] Mr Pederson also stated that over regulation and inconsistent regulation would have far more effects on the safety of his members.[34]

Variation of a Road Safety Remuneration Order

3.37 Clause 32 provides that, at any time, the Tribunal may vary a RSRO, on its own initiative or by application of certain parties.

3.38 The ARTIO was concerned that the bill was not clear about the powers of the Tribunal to review a RSRO within the first few months or years of its operation to ensure that it achieved its objectives and continued to do so.[35] Mr Ryan of ARTIO initially raised concerns that as a registered organisation, ARTIO may not be able to apply to the Tribunal to vary a RSRO.[36] The Committee observes that in a supplementary submission ARTIO confirmed that clause 32 *would* achieve that aim.[37]

3.39 The Committee notes that a registered employee association or industrial association is allowed to apply for a RSRO to be varied, but a road transport driver is not allowed to apply in his or her own right. The Committee also notes that a road transport driver is allowed to apply for a RSRO to be made (as in paragraph 19(3)(a)), but is not allowed to apply for a RSRO to be varied.

Dispute resolution

3.40 The Tribunal may deal with disputes about remuneration and related conditions in certain circumstances, reflected in clauses 40-45.

3.41 The ARTIO submitted that there should be a 14 day time limit imposed on a road transport driver to file an application with the Tribunal claiming

33 National Road Freighters Association (NRFA), *Submission 27*, p. [1].

34 NRFA, *Submission 27*, p. [2].

35 ARTIO, *Submission 10*, p. 5.

36 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, pp. 10 and 11.

37 ARTIO, *Supplementary Submission 10.1*, p. [1].

dismissal for refusing to work in an unsafe manner, which is consistent with that currently applying in the Fair Work Act.[38]

3.42 The ARTIO supported compulsory arbitration, with binding orders to resolve disputes, and also argued that other supply chain participants should have access to the Tribunal with all decisions being open to review.[39]

3.43 NatRoad submitted that subclause 43(b) should be amended so that drivers did not necessarily have to be involved in disputes involving participants in the supply chain.[40]

3.44 The POAAL suggested that clause 42 did not provide an effective or appropriate dispute resolution procedure for disputes involving owner drivers, and that a mandatory code would provide greater protection.[41] Further, POAAL commented that the bill was vague on how disputes may be resolved, timeframes involved and division of costs among the parties, and that a mandatory code of conduct, modelled on the Franchising Code of Conduct would provide greater protection to owner drivers.[42]

Review of the Act

3.45 Part 7 of the bill outlines miscellaneous provisions, which include that a review of the Act will be undertaken three years after its commencement; that is, the review should be started by 1 July 2015 and completed by 31 December 2015.[43]

3.46 While the Committee did not receive specific evidence from inquiry participants as to the operations of all miscellaneous provisions, it considers that the future review of the Act will allow the practical operation of the Tribunal to be thoroughly assessed. The Committee expects that the review process will provide a significant opportunity for all stakeholders to ensure that issues raised and considered throughout this report are addressed.

38 ARTIO, *Submission 10*, p. 7.
39 ARTIO, *Submission 10*, p. 7.
40 NatRoad, *Supplementary Submission 14.1*, p. 17.
41 POAAL, *Submission 20*, p. 5.
42 POAAL, *Submission 20*, p. 5.
43 RSR Bill 2011, EM, pp. 47-48.

Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

3.47 The consequential amendments bill makes a consequential amendment to the *Administrative Decisions (Judicial Review) Act 1977* (Cth), to exclude decisions made under the Road Safety Remuneration Bill from the operation of that Act. There were no matters of concern raised in relation to the consequential amendments bill.

Recommendation 1

The Committee recommends that the House should consider and pass the bills.

Ms Sharon Bird MP
Chair
February 2012