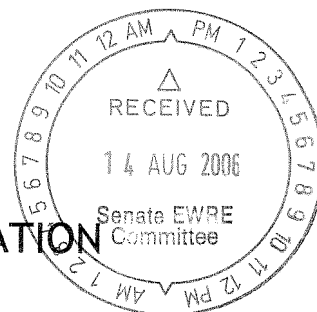


NSW ROAD TRANSPORT ASSOCIATION INC.

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hm1711/06
11 August 2006

Mr John Carter
Committee Secretary
Senate Employment, Workplace Relations and Education Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Carter

Re: Supplementary Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the *Independent Contractors Bill 2006*.

The New South Wales Road Transport Association appeared before the Senate Committee on Thursday, 3 August 2006. Mr Hugh McMaster, Corporate Relations Manager, NSWRTA and Mr Bob Mackenzie, TNT Australia Pty Ltd, a NSWRTA Member were requested by the Committee to provide further written comment, which is provided below:-

- 1) NSWRTA and its Members support the Bill in recognising that independent contractor relationships should be governed by a commercial contract. However NSWRTA considers that the current NSW legislation is complex and is inconsistent with existing arrangements operating in all other states. NSWRTA believes that Commonwealth legislation should prevail and common approaches in all states are appropriate.

The NSW legislation in its application allows for a complex comparison of remuneration as if the independent contract owner was engaged as an employee against the relevant industrial award. The legislation allows for a retrospective change to the contract arrangements based on a complex analysis and comparison of both the contractual arrangements and employee award entitlements. The 'unfair contracts' provision can operate retrospectively and can significantly change the commercial contracts initially agreed between the principal contractor and the sub contractor which could have operated over many years and been subject to variation.

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There is general acceptance that the commercial arrangements between the independent contractor and the principal should be subject to Federal Unfair Contract reviews and such review should be nationally consistent. Accordingly, NSWRTA and its Members do not support the retention of Chapter 6 of *NSW Industrial Relations Act 1996*.

- 2.) Senator Sterle (ALP, WA) commented on his experience with attempting to negotiate a collective agreement for sub contractors engaged by TNT Express in Western Australia.

TNT Express has advised NSWRTA that at the time had a small number of Contractors engaged on individual contract arrangements and TNT considered there was no commercial benefit in moving to a collective agreement to cover the contractors.

- 3) Senator Hutchins (ALP NSW) asked whether NSWRTA was currently involved in any matter before the New South Wales Industrial Relations Commission relating to the Transport Industry – Car Carriers Contract Determination.

In response, NSWRTA advises that it is currently involved in such a determination. NSWRTA will continue to participate in matters before the NSWIRC while it continues to have responsibility for hearing such matters. NSWRTA distinguishes this involvement from its involvement in matters of policy such as whether the NSWIRC should continue to have a role in adjudicating matters under Chapter 6 of *NSW Industrial Relations Act 1996*.

- 4) NSWRTA was also asked to elaborate on why it should be mandatory for sub contractors to be incorporated.

To a significant degree, current legislation governing sub contractors in road transport in New South Wales creates unnecessary uncertainty. The entity operates as a business for the purposes of taxation, vehicle registration and some types of insurance. However, that same entity has remuneration usually determined in a hybrid fashion by the NSWIRC and, to the extent that it is desirable, by the market (hopefully without compromising the legislative obligations imposed by Chapter 6 of *NSW Industrial Relations Act 1996*). That same entity also has workers compensation insurance paid by the principal contractor as if the individual covered by this insurance is an employee.

In summary, some arms of government treat sub contractors as businesses while others treat sub contractors as employees.

It is a fact that sub contractors in the road transport industry are in business. Therefore, NSWRTA argues that sub contractors should be required to accept certain responsibilities in return for the opportunity to make a profit and not earn a wage or salary.

Incorporation is preferred as a business model over an unincorporated business because such a business is more likely to have a structure that meets basic legal requirements in relation to directorships, insurance, taxation and other commercial and legal matters. By supporting the mandating of incorporated sub contractors, NSWRTA is confirming that they are in business and, therefore, should become part of the institutional and legal framework that governs businesses in Australia.

Please contact me if further assistance is required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H McMaster', with a long, sweeping flourish extending to the right.

Hugh McMaster
Corporate Relations Manager