



22 February 2012

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Secretary
House of Representatives Standing Committee
On Infrastructure and Communications
Parliament House
CANBERRA ACT 2600

Dear Secretary,

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

At the hearing on 15 February 2012, Ai Group undertook to provide further information to the House of Representatives Committee on the following two issues:

1. Ai Group's submissions into the ABCC legislation and whether Ai Group supports separate laws for the building and construction industry, and
2. The amount of time required to allow for the 'bedding down' of other recently introduced safety initiatives and legislative provisions to determine whether these proposals are capable of having a meaningful impact on improving road safety in the transport industry.

In addition, through correspondence received from the Secretary dated 20 February 2012 and opportunity was provided to "*amplify or amend any of your answers given at the hearing*" through the making of a supplementary written submission.

Below is the additional information in response to questions taken on notice (numbered items 1 and 2). Furthermore, we also seek to amplify a number of key matters responded to by Ai Group during the hearing. These are detailed under individual sub-headings.

1. Ai Group's submissions in relation to the ABCC legislation

Ai Group believes that the *Building and Construction Industry Improvement Act 2005* ('BCII Act') and Office of the Australian Building and Construction Commissioner ('ABCC'), with all its current powers, must be retained if the very positive outcomes from the Royal Commission into the Building and Construction Industry are to be retained. The BCII Act introduced important reforms to address the unlawful and inappropriate conduct that permeated the industry and which cost project owners (including Governments), employers and the Australian community vast sums.

Whilst behaviour has changed significantly since the ABCC was introduced, there are many indications that the industrial environment is deteriorating in the industry. Watering down protections for the industry and the community, at this time, would send entirely the wrong message to those who engage in unlawful or inappropriate behaviour.

The industrial laws arising from the Royal Commission into the construction industry treat employers and employees in the construction industry differently than those in other sectors. The different approach reflects the fact that behaviour in the construction industry was so far removed from the standards in other industries, that strong measures were required. At some point in the future the special provisions applying to employers and employees in the construction industry may be able to be removed – but not until the conduct in the industry reflects the standards of contemporary Australian society.

An important distinction however between the terms of the BCII Act and the *Road Safety Remuneration Bill 2011* (“The Bill”) is that the BCII Act does not seek to specifically address remuneration and related conditions for employees within an industry. Rather, it targets inappropriate and unlawful conduct by industry participants, in particular conduct which disregards existing workplace relations laws. The BCII Act is no way analogous to the types of reforms contemplate by the Bill.

2. Time required to enable assessment of the positive effects of other safety initiatives in the road transport industry

For the purpose of context it is noted that the question followed evidence indicating that there were a number of laws which had recently been introduced in various Australian jurisdictions which could impact upon safety and which should be given an opportunity to work before coming to a conclusion that current approaches to addressing safety in the road transport industry were not resulting in improvements. The examples of such laws were specifically stated to include relatively recently enacted chain of responsibility laws as well as the nationally harmonized workplace health and safety laws. We note also that establishment of the National Heavy Vehicle Regulator and the proposed National Heavy Vehicle Law, which is intended to commence operation on 1 January 2013, should similarly be provided the opportunity to address such safety issues by providing greater national uniformity to the regulation of matters including fatigue and speed, as well as the monitoring and enforcement of such laws.

For clarity we would add that if it is accepted that there is any connection between remuneration and safety then the recently enacted Fair Work Laws would also fall within the category of laws which could impact upon safety and which should be bedded down before an entirely different regulatory approach is adopted. Important in this regard is the upcoming review of all modern awards which is to be undertaken by Fair Work Australia in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. The Road Safety Remuneration Bill will have application to employees and will create mechanisms which will override and potentially undermine key elements of the Fair Work reforms.

The number of years which should be afforded to the bedding down of such laws should cover a period of time that is sufficient to enable all those subject to the abovementioned laws and regulatory initiatives to come to terms with such provisions and to implement associated changes in their practices. It is unrealistic to expect that problems with fatigue or speed can be completely resolved overnight.

It is difficult in precise terms to articulate the length of time that should be given for the '*bedding down*' of such laws before their effectiveness is considered given that, as outlined above, there are **numerous new regulatory responses** to addressing safety. Further, the necessary time frame would also be subject to variables such as the level of government support for educating and enforcing these schemes. It would also be somewhat premature to state a time given that the enactment of some of these laws is still being finalised.

The new harmonized Workplace Health & Safety laws are only partly in place. In many jurisdictions the new laws have only commenced operation this year and are subject to various transitional arrangements. Other jurisdictions around Australia are still to pass the laws, although it is expected that this will occur without significant further delay. COAG has recommended that a review of the laws take place after they have been in operation for five years. Similarly, given the National Heavy Vehicle law is still being implemented it is difficult to be precise about the number of years such laws should be given to be 'bedded down'. At the very least, any review of the effects of the existing laws should not occur prior to 2018. This will allow any COAG review of the nationally harmonized Workplace Health and Safety laws to occur, and provide a period of five years for the National Heavy Vehicle Law to operate.

The Ai Group strongly believes that the Parliament should not pre-empt the opportunities presented by the abovementioned initiatives by the introduction of new regulation aimed at addressing safety through a narrow focus on the remuneration of drivers in the road transport industry. Such an approach would likely distract both governments and industry from efforts to improve safety in the industry. Despite the often cited rhetoric and the numerous inquiries that considered the issue, there is simply no definitive evidence that paying drivers more or differently will make them safer.

The Ai Group was asked questions by Mr Stephen Jones regarding the Ai Group's views regarding the causes Truck driving accidents and the causal connection between remuneration and accidents involving the road transport industry.

In response the Ai Group provided evidence to the effect that the causes of road accidents were multifaceted. We also indicated that, consistent with the independent analysis of the Regulatory Impact Statement accompanying the Bill, we did not believe the connection between remuneration and safety had been definitively established. We did not believe that altering remuneration will rectify unsatisfactory road safety outcomes.

We provide the following supplementary submissions in order to amplify this evidence.

Causes of Accidents Involving Road Transport Drivers

Driving on Australian roads is an inherently dangerous activity. Given the role of road transport drivers principally involves this activity they are inevitably exposed to such risks on an ongoing basis. The Ai Group regards the assumption that these risks can be controlled or avoided through a narrow focus on altering the method or amount of remuneration as misconceived.

Ai Group reiterates its view that the causes of unsafe outcomes in the road transport industry are multifaceted. There are almost limitless ranges of variables that can

contribute to unsafe outcomes in individual circumstances. Factors contributing to road accidents can include issues such as deficiencies in the road network and associated infrastructure, failures to enforce regulation directly addressing road safety and road rules, deficiencies in vehicles involved the incidence and, of course, human error. We also recognise that fatigue and inappropriate speeding can play a role.

If the causes of road accidents are being considered with a view to identifying appropriate strategies to facilitate improvements in road safety, it is crucial that neither the frequency of incidents involving heavy vehicle drivers or the extent to which they are attributable to the actions of a road transport driver are overstated. There are many unsatisfactory road safety outcomes that do not involve any road transport industry participants. That is, there are many road accidents which simply do not involve truck drivers. Similarly, of the minority of accidents that do involve a heavy vehicle many are not caused by the actions of the driver. Ai Group supports the following recent assessment of the National Transport Commission;

“A major focus in commercial road safety has been on heavy vehicles, particularly those involved in road freight operations. However, they represent about only one-fifth of serious road crashes, in many of which a significant or causative factor was the actions of other vehicles or road users.”¹

Altering the remuneration of road transport drivers will not influence the actions of other vehicles or road users which in many cases are the cause of the incident.

The Causal Connection between Road Accidents and Remuneration

It is often asserted that there have been numerous inquiries into the connection between road safety and remuneration. Nonetheless, the Regulatory Impact Statement accompanying the Bill recognizes that a causal connection between road safety and remuneration has not been definitively established. Ai Group agrees with this assessment.

Moreover, even if the assumption that there is a connection between remuneration and safety is accepted, the nature of that connection is highly uncertain. That is, there is uncertainty around the extent to which remuneration could be argued to contribute to problems of fatigue or inappropriate speeding.

There are a range of variable that could contribute to driver fatigue. For example, the personal circumstances or individual choices they make regarding the activities they engage in during their non-work time may directly impact upon their level of fatigue whilst driving. If a driver does not obtain sufficient sleep during a rest period as a result of participation in social engagements or as a result of family commitments such as caring for young children they may suffer from fatigue. Paying a driver differently cannot address these issues.

It must also be acknowledged that many States already have systems in place which regulate the engagement of owner drivers. There is no evidence to suggest improved safety outcomes in those states have resulted. Relevantly, in NSW there has been a legislative regime in place for several decades which has enabled and provided for the regulation of contract driver rates. If such an approach were capable of effectively improving safety it would be reasonable to expect significant improved outcomes in NSW. Ai Group is unaware of any such statistics. The absence of such

¹ National Transport Commission, A Corporate Approach to Road Safety, page V

evidence provides a strong counterpoint to the assertion that altering driver remuneration is capable of improving safety outcomes.

Yours sincerely

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