

## ***INTERCAPITAL***

*TRANSPORT CONSULTANCY & PARA- LEGAL*

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### **Addendum**

to previous submission

The solutions required to be debated by this enquiry ;

1/Australia is a sovereign country and democratically ruled by the constitution and the rule of law, well that's what we would like to believe, however if you believe that you have a problem .

2/It has to be the responsibility of the federal government on behalf of all Australians to ensure that the transport industry remains a safe, viable industry and use all its powers to assist, as we found out in 1979 this country will stop if the industry collapses .

3/It is my concern that the industry is about to implode if proper common-sense governance is not done, and soon

4/It is a priority that all supply chain and industries outside of transport be compelled by law to share the responsibility of a safe transport system across all Australia and if that means the cost of using transport makes costs increase, so be it.

5/It is my hope that this senate enquiry will recommend to government that all the issues put to by industry members are debated and enacted as soon as possible .

6/Full cost recovery for all parties will save lives and is a must for survival of an industry

7/ The NHVA is an entity to where the federal government has abrogated its responsibility on transport laws and enforcement.

8/But where the NHVA and its laws are not in the interest of the people or industry it must revert back to the federal government to instruct changes.

9/When Queensland legislate law that is unfair to members of the industry the federal government must over ride it.

10/It is a federal government entity adopting and enforcing transport law framed and legislated by the state of Queensland with some states making state legislation to adopt that NHVL law and where the soul of the legislation, as written by the Queensland government, is revenue for the state, and that has been adopted by the adopting states

11/ The federal government must enforce under s109 that the NHVA and NHVL applies across Australia to every state and every part of transport law policy and Policing must be based on actual risk to the public and driver

12/I would like to first discuss and get rid of the elephant in the room, RSRT and the Act, to do that I would like read a part of a press release that I made from the repeal of the RSRT

Monday the 18/4/16 would be remembered as a day of infamy in Australia politics ,when a governments duty under the constitution to act for all Australians equally was ignored, a day of a miscarriage of justice, a day of the utmost hypocrisy ,when the government demanded the senate vote to bring a bill to make an independent watch dog for corruption of the building industry, and at the same repeal an act and an independent tribunal put in place protect the transport industry from corruption and road safety who made a decision on evidence ,and held , that this industry has unsafe practices and is an unsafe workplace across the whole of Australia and the full bench of the Federal Court has agreed .

A day when the majority of the industry protected by the tribunal were denied procedural fairness ,natural justice and due process ,”a right to be heard “ A BASIC HUMAN RIGHT , on the grounds of retaining the tribunal and the Act, a day when the government acted for its re election supporters and other industry groups who used a minority of the less fortunate of our industry as pawns to get the RSRA repealed ,without knowing ,or requiring, all the facts .

A day when the sitting government have put themselves above the law .  
This must never happen again

13/We are all bound to the black letter law of statute law as was president Acton on the tribunal

14/I was an applicant to the RSRT safe rates enquiry, where, it was agreed by most parties, it could have been a good law, but the act was badly drafted and framed by the TWU, however by rewording, it could be reused

15/By removing the following words owner driver and safe rates, inserting prime contractor and independent contractor, we make the act inclusive of all industry, by calling it cost recovery for all transport industry, companies, and entities, gives fairness

16/What no prime contractor company would give to the tribunal was their cost to operate a vehicle so we don't know that, what we do know is what is cost for an independent contractor to operate his vehicle

17/The tribunal industry representative Mr Tim Squires has a computer-generated

cost models for most vehicle combination that was supported by every transport representative at the tribunal, but not by the supply chain representatives ,which unfortunately caused the tribunal to get their own cost model done ,and I recommend the enquiry make contact of Tim Squires for them .

18/What few members of the industry know is at this time, new law, COR, Primary duty and common law precedent, make it illegal to contract a rate that is not a cost recovery for that contract journey if it puts the public at risk .

19/And these contracts would be prosecutable by an independent contractor at any time, all he needs is the payable rate and the distance of the journey to make his case, in my opinion.

#### **Competitive pressure leading to death**

20/Who is to blame ? ,but more important how do we reduce it permanently  
We start by making sure that operators are paid the full entitlements for multi combinations currently penalised 30% in rates .

By paying all multi combinations drivers for risk and ability currently underpaid up to 60% due to the agreements between the TWU and transport associations .

By not compelling drivers to drive more hours than is required for them to make a reasonable income .

#### **21/Road deaths with heavy vehicles**

since1981 until june2019, 9074 people have died in track crashes, conservatively 564 since2016, 2006- 2010, 1450 ,2011 -2016, 1236 ,it is the duty of this federal government to do whatever is required to prevent this from continuing

22/I have survived 60 years of driving and I did it by doing it my way, sleep when tired ,drive when not

#### **Fatigue management law Work diary**

23/We have a fatigue management law that corrupts drivers and is breaches the rule law in its drafting and enforcement

24/The current work diary compels driver to drive while fatigued to comply and the law is complicit in many fatal accidents. It compels every diary user to commit indictable offences every day in compliance of the act s246 s247 s293, s325, s632, s702, and the crimes act of each state and finally breaches the commonwealth criminal code

25/It denies drivers of democratic rights under the rule of law of self-incrimination, discrimination, human rights

26/Denies human rights to drivers, abets, condones, and enables the state governments, and their courts and the NHVA, a commonwealth entity, in contravening Australian constitution of separation of powers in prosecutions denying drivers to

have alleged infringements heard in the jurisdiction they were committed if required instead compelling state courts to use territorial jurisdiction common law to prosecute alleged offenses out of their true jurisdiction .

27/Explicitly denies drivers and employers due process of law and natural justice and defence of, was there intent and or mens rea for any actions they take

28/Penalties for academic breaches of the work diary is discriminatory and unfair of 100 000 transport drivers and compared to 12 million other workers in their normal work practices who commit similia things daily with no penalty,

29/The following must be repealed from the offences of the act because they impose no risk to the public good

In particular, the 11 gotya offenses of the fatigue act that have nothing to do with risk to the public, only revenue

1/failing to sign work diary pages

2/failing to write mileage every stop, it needs to done on first and last entry of the day

3/failing to total daily hours, for work and or rest, which breaches statute law if done

4/failing to spell words correct

5/failing to rest at specific rest stops

6/failing to nominate what time regime the driver is working under

7/not allowing mistakes to be corrected by the driver

8/not allowing the driver to ensure the dairy is up to date, and complete the work diary if required, before obeying a command to produce a work diary which will prevent a driver committing an indictable offence

9/failing to give diary copies to their employer's record keeper in a statutory time

10/writing wrong dates or day on the page

11/Prosecutions for offences found by inspectors going backwards in the work diary more than 7 days when they are no longer a risk to the public or at a compromise at the most 28 days .

### **Hrs driving law defies common sense of the ordinary person**

30/Standard Prescriptive driving hours must change to a system driver will accept such as maximum 4 hrs continuous rest each 24 hrs starting midnight to midnight

2 x5 hours continuous driving in 24hours other rest times per 24 hours open to driver's discretion

Bfm driving would allow drivers 2 hrs in 26 hrs for related manual work

31/AFM the most dangerous provision of fatigue law must be repealed now, it puts drivers and the general public lives at risk every day

And is only necessary for the greed of the supply chain participants of the industry

32/How many so-called fatigue experts, transport personnel can prove they have driven vehicles excess of 20hrs per day to have a genuine opinion on safety

How many know in 16 hr driving you can go through a stage of memory loss of your current driving, this never mentioned by the fatigue experts

33/Insurance companies 35 years ago told us the most dangerous time for truck accident is within 1 hour from their home or the end of their journey, how many people know why.

**What is risk**

34/acceptable, residual, foreseeable, unforeseeable, intrinsic or inherent in the industry

penalties on drivers and owners is draconian and does not fit the summary crime of the fatigue management act ,s97 s 98, s99 s100, and it must be based on risk to drivers and the general public not revenue  
the penalty must suit the crime

35/The NTC as federal government body and the NHVA must make clear to the transport industry, what is the soul of the legislation they are enforcing is it a record of the hours of driving and work to show driver safety ,is it intended to save lives or is it an act for revenue?

**Mass weights**

36/Currently the laws drafted on truck mass are misleading and deceive so authorities can support unfair penalties for over loading  
The 100% rule is deceptive in its prosecutions intent

**Roadworthy vehicles**

37/ Governments have a duty under the constitution to make laws for the good of the people, unroadworthy vehicles put lives at risk

38/The federal government must in the interests of road safety for all Australians do what the states refuse to do, legislate bi annual heavy vehicle roadworthy for all commercial vehicles over 4.5 tonne across Australia.

Bi annual will be adopted by S.A from 2019, where currently they show 60% fail rate on used vehicles

However, bi annual including primary producer vehicles, and extend it to all commercial vehicle over 2 tonne is a must across Australia to protect the general public and drivers.

39/However, we should use the testing methods as instructed by VIC roads and by the batman tafe instructors in Victoria, a roadworthy testing system where the national heavy vehicle roadworthy law if followed. takes 4 hrs approximately to complete a heavy vehicle roadworthy

Vic roads currently is retesting all heavy vehicle testers under the NHVL guidelines

40/S.A intend to put a price of 295 dollars on the test which means it will not be a proper test because of the time it takes to do the test, it would not be a viable cost so short cuts will be done .

41/This based on our company heavy vehicle roadworthy division who on average

takes 70 photos of the points being checked for our own primary duty protection and compliance of the law .our pass rate is 1 in 20

**Driver training** is state based but it must be federal based

42/What a new heavy vehicle driver needs to be competent at should be based on industry standards set by industry members and every heavy vehicle instructor must be competent to teach the following final ability test before a licence is given.

a/Every heavy vehicle driver needs to show his is competent to drive a heavy vehicle over 4.5 tonnes using a manual gearbox

b/Every heavy-duty driver must be able to reverse a bdouble combination 3 times its length and finish in with combination at right angles to how it started

c/Every multi trailer combination learner driver should competent at reversing a type 1 road train 3 times its length and finishing at right angles to how it started

43/ There must be a new licence category for multi trailer combinations other than a bdouble

44/It is ludicrous to give an inexperienced driver a bdouble license today that enables him to apply and get a job driving multi trailer combinations the same day  
What knowledge is needed must be decided by the industry not by unelected government officials or the association for licence testers.

**45/Compliance**

compliance of NHVL and Australian road rules must be uniform across all states, this must include, mass, dimension, fatigue, load restraint .

Trivial offences prosecution and or infringement should be ceased immediately all infringements based on risk to the public

**Licensing of the industry**

46/This is the best manner to enforce road transport law on all transport companies across Australia,

And to do so is to use part 5 of the recently repealed interstate transport act, it should be reinstated for convenience and adopted

**Parking bays**

47/Is definitely the federal government responsibility, 2 examples of how many are needed

Every driver needs to have the same opportunity to rest

950 trucks a day travel the Newel highway at Coonabarabran NSW, although the daily figures for heavy vehicle at each end , between Brisbane to Narrabri and Melb to Dubbo probably double that, so there needs to be at least 950 parking bays total, so all trucks can stop for rest at any time between Brisbane an Melb.

48/ 3550 trucks travel the Hume Highway per day so the Hume needs 3550 parking bays or rest stops total so every vehicle on the Hume can stop for rest at any time between Sydney and Melbourne

49/This simple calculation should be used on roads and highways in Australia  
And bear I mind it is a breach of law to park in towns more than an hour

**Road user charges**

50/We must have registration charges collected by a charge on fuel for a equal playing field where user pays,.

It can't be a money grab by government,

51/Remove all commercial vehicle registration charges from state governments and a user pays impost on fuel to collect the same amount of money ,including from primary producers ,will be a system that will make those who do the most damage pay

**Sleeper cabins on long distance vehicles**

52/We must revisit the overall length law to enable extra length sleeper cabins to be fitted to conventional vehicles this is a road safety issue and also mandatory cabin refrigeration on all long distance vehicles .

The industry now must rely on this senate enquiry getting the support it needs to take this industry forward combined with the current NTC/NHVA enquiry into the transport law, some of it mentioned in this submission this industry we might save the industry

Thank you for the opportunity to have input into this conversation

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