

Senator Glenn Sterle
Shadow Assistant Minister of Road Safety
Western Australia

17th September, 2019

Senate Inquiry into the Road Transport Industry in Australia

Wage theft and Mental Health in Road Transport.

Good morning Senator,

Thank you for the opportunity to present the work I have undertaken in the Road Transport Industry over the past several years.
We can provide evidence where pressure applied in the lowering of freight rates often results in Wage Theft in order to compete in the marketplace.

Wages are only one factor, but has exponential implications for the economy. We believe that most Long Distance truck drivers are unpaid for 20+hrs work per week and this assumes the drivers are receiving the minimum wage payments in the first place. These unpaid wages impact taxation, payroll taxes, workers compensation programs and the less money into the broader economy in general. Plus it applies operating pressures to companies wanting to compete fairly in the marketplace. Undercutting of freight rates can be directly linked to wage theft.
Having a set minimum freight rate (Safe Rate) does not guarantee employee's will be paid correctly, but properly enforcing the existing legislation and ensuring the current laws are strictly adhered to, will apply pressure on create a more level playing field.....

This all started when some fellow drivers were being underpaid by their employer and we sort assistance from the Fair Work Ombudsman (FWO) . We contacted the FWO to seek assistance and we were quickly advised that the drivers would have to make individual claims and be formally identified to the Employer. The drivers knew by being identified the Employer would take the retaliatory action. Once these drivers found alternate work, they engaged me personally to recover their unpaid wages. In total we did recover over \$80,000 for 4 drivers, with the balance of the current employed drivers of this company refusing to "rock the boat" and make their claims. The major issue with this case was;
Km rate was being paid "Inclusive" of Travel Allowance, when the relevant Award clearly stated Allowances must be "in addition to".
This is a common Wage Theft mechanism.

During this process, I contacted the FWO to discover the FWO doesn't have much legislative power. They claim to be an "impartial mediator" and cannot act for anyone else, except the Individual requesting assistance. They refused to acknowledge their "campaigns department" does indeed have the power to investigate an Employer without a formal complaint being made.
If there is an issue which affects the entire payroll, the current FWO system requires employee's to make individual requests, which means multiple investigations with the same employer and wasting resources.
This approach alienates the employee's who complain and unfairly exposes these employee's to adverse action. Once evidence is collected, there is no reason why the FWO cant gain "right of

entry" under the FWAct2009 and audit the entire payroll of this target company. This way, they can use a sniper-like approach, instead of the current shotgun approach hoping to hit something... I have provided at least 10 evidence backed targets. No action taken..

When trying to correct this problem, the FWO advised me that the Legislation is the issue. I contacted the Office of the Minister of Employment, Senator Cash's team advised me that the power lies in the Office of the Fair Work Ombudsman and round and round we went, hand-balling the issue from office to office. I even contacted the State Revenue office in Qld to discuss wage theft and the impact to Payroll taxes and WorkCover premiums. Again the State hand-balled me to the FWO to look at this issue.

Nobody is paying attention!

Another investigation I referred to the FWO for underpaid wages, resulted in the Employer refusing to engage with the FWO. This investigation was then closed as the FWO claimed they cant force an Employer to mediate with an aggrieved employee. This employer operates some 50 trucks and all employee's are pay as Casuals on Km Rate. This rate paid is as per the Road Transport (long distance operations) Award 2010 [MA000039, but rate actual rate paid is Inclusive of all allowances and NOT exclusive. So effectively the Employee was paying their own Travel Allowance, RDO's and Public Holidays. The Award clearly states these allowances must be paid "in addition to" the minimum km rate... Several years later, this Employer is still underpaying the wages.

In another instance, a company was using an Enterprise Bargaining Agreement which had expired. All long distance drivers were being paid a km rate. This rate was 1 cent higher than the minimum km rate as per the Award. However, further down in another clause of the EBA, this rate was Inclusive of all load/unloading, travel allowance, RDO's and Public Holidays.

1 cent per km travelled would equate to approx. \$60 per week (6000kms x \$0.01) to cover all these entitlements and allowances. To add insult to injury, the employer claimed also paid \$90 per night for travel allowance. This allowance was then deducted from the Gross Weekly Wage to reduce the withholding tax and then added back on after the tax was calculated.

We estimated with each long distance truck driver, the Employer was saving some \$16,000 per year in wages, PAYG and other obligations. The FWO reported back that "whilst the EBA was morally bankrupt, it was totally legal until an employee terminated it"

The drivers I worked with simply went to another employer and failed to terminate the EBA.

A third example would be when a long distance driver wasn't being paid Sick Leave.

The employer retaliated and the employee went to the FWO.

I advised the employee to do a Spreadsheet of all driving and other work for the past 3 years and match this to payslips and Work diaries. 1000 lines of data was presented to the FWO which demonstrated the underpayment... This data seemed to confuse the FWO and they decided to only use a small portion of the data which didn't really reflect the true "averaging" of the work performed.

The employee was told that long distance drivers do not fit into the FWO wage model, so they processed a randomly selected period of time.

Basically the FWO botched the investigation and the employee got nothing for her efforts, despite this particular Employer being well known for pushing and rorting their long distance drivers.

This example clearly confirms to me, the FWO does not understand Transport and how the wage theft actually occurs.

These examples evidence how the Transport Industry is engaging in wage theft to compete in the contracting process. We had hoped that the Road Safety Remunerations Tribunal (RSRT) would have identified this wage theft and be corrected during any investigations undertaken by the FWO in conjunction with the Contractors payments complaint.

We have identified ambiguities within the Award that nobody has addressed. I have contacted the TWU legal team with this matter and whilst they listened, no action was taken.

I am a TWU member and I am being disadvantaged by the structure of my relevant Award, yet no action was taken. These ambiguities still remain today which these loopholes are allowing the exploitation of drivers and enables undercutting of rates, which disadvantages the quality transport operators.

Impacts on Mental Health from the truck drivers Environment.

Wage theft means working harder to make ends meet and often means Truck drivers are away from home for a large portion of the year. The Australian Design Rules encompassing vehicle design has been an ongoing struggle for many drivers.

Australian truck drivers deserve to have suitable vehicles to complete these tasks.

As profit margins reduce, the upwards pressure on freight movement efficiencies increase.

Drivers are being expected to drive smaller trucks with larger trailer capacities.

This presents increased pressures on Fatigue and mental health.

Bigger trucks means less places to park and rest... less access to quality food and services.

Drivers are now using trucks with small kitchenettes, due to cost of food on the road and access to parking..

Work hour restrictions may mean parking out of town.

Bigger freight capacity means small trucks and small sleeper berths to comply with Australian Design Rules. Fatigue regulations then come into play, where drivers MUST not drive more than prescribed hours and must rest if fatigued.

American truck drivers get to enjoy larger sleeper berths for their living quarters.

In Australia, the pressures seems to be reducing sleeper berths to nothing more than a Childs bed with some poorly designed storage...

Truck stops do not provide the necessary environment for quality rest and recuperation, therefore many drivers rely on the sleeper berth to minimise fatigue.

When work hours have been maximised, drivers must stop for 24hrs. This can often be away from home. Truck drivers deserve a proper truck cab in order to balance these pressures out.

It is not suitable to have drivers couped up in trucks with small sleeper berths that are only suitable for day shift workers.....

A company I worked for investigated using small sleeper berth trucks, that would see the drivers go home after each shift. Upon discussing this with the drivers, it was rejected for "driver fatigue" reasons. The drivers felt they would get less sleep using the "express shuttle" model. Given I live 60minutes from my Workplace, I would suffer the same effects.

Manufacturers like PACCAR, MACK and Volvo have large format sleeper berths trucks available in the USA and can be easily inserted into the Australian market. But the ADRs need to be modified in order to facilitate both the drivers comfort and the requirement for freight capacity..

Only a truck driver can describe the mental pressure that these issues impose on an individual.

Large companies may be able to deal with these issues, but smaller operators do not have the flexibility or the business infrastructure to manage these pressures effectively.....

Government regulations may appear appropriate for lawmakers who do not have to live by them. But we, as long distance Truck drivers suffer the consequences of rules made by people who do not appear to understand...

To Identify the key issues for the Inquiry would be;

- 1/ The ROAD TRANSPORT Awards need overhauling to reflect the all performance of work undertaken by Road Transport workers.
- 2/ The ATO needs to clarify ambiguities within the Superannuation legislation to clearly define what Superannuation MUST be paid. Also to ensure the SGS is actually paid into the Employee's account and not used or risked as Operating Capital for the business.
- 3/ Both the ATO and the State revenue collections agencies needs to support changes to the above to ensure Taxation and Workers compensation systems are working as intended.
- 4/ The FWO needs further refinements in legislative powers to enable proper enforcement of the relevant Awards and additional funding to ensure proper training is undertaken and for thorough investigations of wage theft.
- 5/ The NHVR and the State Road Managers need to formulate general access routes in order for large Interstate vehicles to access the local networks... the ADRs or the Road managers need to allow for general access by these larger 20m and 27.5m heavy vehicles.

I Intend to address and expand on these issues to the Inquiry panel if required.

Yours Faithfully,

Trevor Warner
Long Distance Truck Driver and drivers advocate.

National Road Freighters Association member
Transport Workers Union member