

Inquiry into the Fair Work Bill 2008

SUBMISSIONS OF THE TRANSPORT WORKERS' UNION

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Introduction

1. The TWU welcomes the introduction of the Fair Work Bill. We broadly endorse and adopt the submissions of the ACTU and Unions NSW in relation to the general aspects of the Bill. These submissions are directed to transport-specific issues.
2. Part 1 of the submission, 'Safe Rates', provides some background to an industry in crisis and describes the government's response in commissioning a review into safe payments in the industry. The Part summarises the review's findings (essentially that the link between rates of pay, methods of pay, and safety in the transport industry is well established) and lists the recommendations of the National Transport Commission for reform (that an independent body be established to set and enforce safe rates and conditions in the industry).
3. Part 2, 'The Fair Work Bill', refers to some specific areas of concern with the Bill and its potentially negative effect on safety in the industry.
4. Part 3 sets out the TWU's recommendations to the Committee.

Part 1: Safe rates

5. The transport industry is unique in that rates of pay in the industry directly influence the safety of both transport workers and the community generally. Appropriate rates and conditions in the industry are important not only as a matter of fairness but also public safety. This fact has been recognised at a governmental level through the commission of an inquiry into safe rates in the heavy vehicle industry.

1.1 Ministerial commission of an inquiry into safe payment systems

6. Attached at **TWU1** is a copy of a press release jointly issued by the Ministers for Education, Employment and Workplace Relations; Infrastructure, Transport, Regional Development; and Local Government and Small Business, Independent Contractors and the Service Economy. The press release announced that the National Transport Commission (**NTC**), an intergovernmental body tasked with transport law reform, would

...examine how current methods and rates of pay for heavy vehicle drivers contribute to poor road safety outcomes, and [...] identify options for implementing a system of safe rates for both employees and owner-drivers...

1.2 Background – safety crisis in the transport industry

7. The NTC report was commissioned in the context of an industry in crisis. The transport industry consistently accounts for the highest number of fatalities in any given year of any industry. In the year to April 2008, 275 people died in heavy vehicle incidents nationally – almost 10% more than the previous twelve months. In 2004-2005, 5,350 transport workers, or 31 per day, suffered serious injuries at work. Australia's heavy vehicle safety record is significantly worse than both the US and the UK¹.
8. The Ministers' release (at **TWU1**) pointed out that

From 2000-2004, one in five road deaths involved heavy vehicles, with speed and fatigue widely acknowledged to be significant factors. During recent years several reports have also linked unsafe work practices in the trucking industry to road accidents.

9. The human misery caused by this injury and loss of life is incalculable. In financial terms, each death is estimated to cost the community \$1.7 million and each injury \$408,000. In addition, the loss of quality of life for many workers in the industry who are forced to work

¹See for example Quinlan and Wright, *Remuneration and Safety in the Australian Heavy Vehicle Industry: A Review Undertaken for the National Transport Commission*, National Transport Commission, October 2008 at page 1 and the sources cited there.

excessive hours, use stimulants or otherwise work unsafely, is immense. Consider the sworn evidence of drivers in the *Mutual Responsibility Case*²

My driving experiences left me very scarred emotionally and physically. I would wake up in bed sitting bolt upright to grab the steering wheel and not be able to go back to sleep for hours... I couldn't drive vehicles any more.

When I started driving I was 6' 1". When I stopped I was 5' 10"... It turned out all the joints in my spine had compressed...

I had to go on anti-depressants to reverse the chemical imbalance that drugs had caused in my body.

When I was required to perform excessive hours I would sometimes experience a state of mind that I can only described as hallucinations, which I considered to be due to sleep deprivation. I would 'see' trees turning into machinery which would lift my truck off the road. I saw myself run over motorcycles, cars and people.

1.3 The Review

10. The NTC was assisted by experts Professor Michael Quinlan, of the University of NSW, and the Hon Lance Wright QC, former president of the NSW Industrial Relations Commission. Their report, titled "*Remuneration and Safety in the Australian Heavy Vehicle Industry: A Review undertaken for the National Transport Commission*" (**Review**) was published in October 2008.

11. A large number of parties made submissions to the inquiry preceding the Review. The TWU's submission is annexed at **TWU2**. The Review itself is attached at **TWU3**.

1.3.1 The findings

12. The Review found that the link between levels of pay and conditions, and systems of pay, on the one hand, and safety outcomes in the industry on the other, is well established, and that the immense client power in the industry contributes to negative safety outcomes.

²These quotes are extracted from sworn statements made by drivers to the Industrial Relations Commission of NSW during the *Mutual Responsibility Case (Re Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination (No. 2) [2006] NSWIRComm 328*).

13. More specifically, the Review found:

- 13.1.the trucking industry is a very dangerous one which creates risks not only for truck drivers but other road users;
- 13.2.solving the transport safety crisis will requires the government to look beyond symptoms of the problem (such as speeding and driving time infringements) to consider the underlying causes of those behaviours;
- 13.3.there is significant evidence establishing a link between levels of payment and systems of payment and safety, and little if any evidence refuting that link;
- 13.4.small to medium operators and owner drivers are unable to negotiate safe rates with large clients with large economic power;
- 13.5.the commercial pressures generated by competition and client power force operators to dip below acceptable or legal levels of safe behaviour; and once even a small number of operators have done this the pressure will flow on to others;
- 13.6.setting minimum rates for both employees and owner drivers is important because owner drivers and employed drivers do the same work and compete for the same jobs;
- 13.7.until these fundamental issues are addressed, there will be no significant improvement in safety across the industry.

1.3.2 The recommendations

14. The essential recommendations of the Review were that the government should

- 14.1.establish an independent body that is able to set and maintain safe rates and conditions for employees and owner drivers;
- 14.2.introduce chain of responsibility provisions making clients accountable for safe rates and conditions throughout the contracting chain;
- 14.3.create a structure to enforce safe rates.

15. The TWU urges the Committee to call on the Government to respond to the transport industry safety crisis by implementing the recommendations of the Review.

Part 2: The Fair Work Bill

2.1 Generally

16. The TWU notes the submissions of the Australian Council of Trade Unions (**ACTU**) and of Unions NSW and we generally support those submissions. The following points relate to transport industry-specific concerns with aspects of the Bill.

17. Generally speaking, it is crucial that the Fair Work Bill facilitate and complement responses to the recommendations of the NTC and it is unacceptable for any aspect of

the Bill to exacerbate the crisis which the TWU, the NTC and others are working to remedy.

2.2 Modern awards

2.2.1 Allowable matters

18. The first and most fundamental problem with the modern awards system is the restricted number of allowable matters. That restriction, in the context of the unique issues affecting the transport industry, means that modern awards (as contemplated by the Bill) are inadequate to regulate the industry.

19. The system of modern awards as it stands will exclude many important award safety provisions including the *Mutual Responsibility for Road Safety Award* and cash-in-transit safety provisions.

20. Award safety provisions are necessary and valuable. The list of allowable matters in modern transport awards should be expanded to allow them to continue in force.

21. We emphasise that the expansion of allowable matters in transport awards is a necessary but not sufficient prerequisite to improvement of safety outcomes in transport.

2.2.2 Rates and conditions

22. NSW transport awards provide conditions which are superior to federal awards.

23. There have been early indications by the award modernisation Full Bench that it intends to reproduce the provisions of the lead federal transport award and ignore NSW conditions.

24. If this is the case, the Fair Work Bill will have a more devastating impact on the pay and conditions of NSW transport workers than Workchoices.

25. This is a matter of great concern to the TWU and has the potential not only to create enormous unfairness but also to exacerbate the safety crisis (including by creating further unsafe hypercompetitive pressures).

2.3 Union right of entry

26. It is crucial that the TWU be able to access its members and discuss rates of pay, waiting time, client pressures and many other matters linked to safety. It is equally important that the TWU be able to properly investigate safety and other breaches.

27. The Bill retains the requirement for twenty-four hours' notice of intention to enter premises for the purposes of discussions and investigation.

28. In the transport industry it is often impossible to know a day in advance where a particular worker will be at any given time. The twenty-four hour notice requirement therefore restricts our ability to promote safe work.

29. The twenty-four notice requirement restricts the TWU's capacity to address safety and other issues in the transport industry. The requirement should not apply to the transport industry.

Part 3: Recommendations

30. The TWU asks this Committee to recognise the need for action on transport safety and to call on the Government to:

- 30.1. establish an independent safe rates body in accordance with the recommendations of the NTC;
- 30.2. include in the Fair Work Bill any provisions necessary to give effect to the recommendations of the NTC, including provisions which establish client accountability for safe rates and conditions throughout the contracting chain;
- 30.3. expand the list of matters allowable in modern transport awards such that those modern award can provide appropriate safety mechanisms;
- 30.4. remove the twenty-four hour notice period in relation to right of entry for discussion and investigation insofar as it applies to the transport industry.



Tony Sheldon

Federal Secretary

Transport Workers' Union of Australia

January 2009