

**SUBMISSION TO THE STANDING COMMITTEE ON
INFRASTRUCTURE AND COMMUNICATIONS WITH REGARD
TO THE INQUIRY INTO THE ROAD SAFETY REMUNERATION
BILL 2011 AND THE ROAD SAFETY (CONSEQUENTIAL
AMENDMENTS AND RELATED PROVISIONS) BILL 2011**

Professor Michael Garry Quinlan, B.Ec (hons), PhD, FSIA

**School of Organisation and Management, University of New South
Wales, Sydney**

**Honorary Professor Work, Health and Ageing Research Unit, Faculty
of Health Sciences, University of Sydney**

Adjunct Professor, Business School, Middlesex University, London

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Executive Summary

- There is substantial and compelling evidence that driver remuneration (and commercial practices related to this) significantly affects OHS in long haul trucking. Evidence on this connection can be traced to the 1990s (if not before), it was persuasive when I undertook a safety review for the NSW government in 2001 and if anything the evidence has become more compelling since then.
- The connection underpins serious safety and health issues such as fatigue as well as systemic evasion of existing regulatory requirements (not only breaches by drivers but by operators, clients and others in the transport supply chain). Establishing safe rates for owner drivers together with effective enforcement of this the rates applying to employee drivers will not only directly address this problem (by removing the incentive to cut corners on safety) it will complement and enhance other regulatory initiatives (notably chain of responsibility based regulation and proactive enforcement).
- By way of contrast, the alternative measures repeatedly proposed such as voluntary codes of practice, unfair contract provisions, business education and the like have failed (some repeatedly) to affect a change. They may be useful as adjunct activity but they are not an alternative to dealing with the root problem – one that recognises the vulnerable and weak bargaining position of owner drivers. Providing support for small operators and owner/ drivers from exploitation that endangers themselves and the public should be seen as a necessary measure to avoid socially harmful externalities and setting a level playing field for business in an industry that will still remain intensely competitive.
- The tribunal to be established under the proposed legislation is required to be evidence driven and is given the tasks/functions and capacities essential to addressing the problems identified. There are existing models that prove this approach can work in road transport. I strongly urge that the parliament should take this historic opportunity to address a long standing and very serious problem – action that will be to the greater benefit of the Australian community.

Background and Expertise

I am a professor in the School of Organisation and Management at University of New South Wales (since 1994) and hold posts at two other universities (one in Australia and the other in the UK) as well as being a Fellow of the largest occupational health and safety (OHS) professional body in Australia (Safety Institute of Australia). I have been involved in research into occupational health and safety for over 30 years as well as teaching OHS at university level and giving regular talks to industry and professional gatherings (for example in 2001 I was an invited speaker at four OHS conferences run by the Australian Industry Group).

I have authored or edited of six books on OHS (including three editions of a text widely used in universities and by OHS professionals) as well as over 60 refereed articles in Australian and international scientific journals. My research has focused on how work organisation (such as incentive payment systems, subcontracting and employment status) affects OHS, as well as OHS management systems and regulation. This research has been widely cited in the Australian and international scientific literature and in government reports.

My expertise in OHS and capacity to address policy issues in the area has been recognised by governments in Australia and elsewhere. For example, in 2004-5 I was appointed as an expert to the NSW Mine Safety Review (chaired by Neville Wran), in 2006-7 I was appointed to the independent investigation to the fatal rock-fall at the Beaconsfield gold mine in Tasmania and I was subsequently engaged by Workplace Standards Tasmania to undertake audits of the Tasmanian mines inspectorate in 2010 and 2012. In 2008 I was one of three principals involved in reviewing ComCare for the federal government (subcontracted to actuaries Taylor Fry). In 2011 I was engaged by the New Zealand Department of Labour to prepare three reports in connection with the Pike River Mine disaster and was also an international expert on a European Commission project examining how European labour inspectorates were responding to emerging risks at work (such as those linked to supply chains and the increased use of contingent work arrangements).

I have also appeared as an expert witness in a number of court cases/tribunal proceedings (several of which concerned long haul trucking) as well as preparing an expert brief for an OHS prosecution.

With regard to road transport I have long maintained an interest in the area partly sparked by the fact my father and both grandfathers worked in this industry (though not long haul trucking) and contact with the industry, including widows of long-haul drivers. I have published research on OHS in the trucking industry (mostly long haul but also short-haul) since 1997. In 2000-1 I undertook an inquiry into safety in the long haul trucking industry for the Motor Accidents Authority of New South Wales on behalf of the NSW government. In 2008, together with the honourable Lance Wright (former President of the NSW Industrial Relations Commission, I undertook a review of the evidence linking pay and safety in the long haul trucking industry for the National Transport Commission on behalf of the Federal Government.

I believe my background and expertise place me in position to make an informed submission to the Committee.

Commercial Practices, Safety and Health and the Remuneration Tribunal

I am strongly supportive of the establishment of a federal Road Safety Remuneration Tribunal to set minimum rates and deal with other remuneration related safety and health issues in the industry. Indeed, I have advocated such as measure over a number of years. This position arises from my involvement in examining safety in the industry together with my broader knowledge of OHS. Perhaps the best way of supporting this is to describe my involvement and assessment of the evidence as it evolved.

Since the mid 1990s with colleagues I have been examining how changes in work organisation especially the growth of subcontracting networks and payment systems related to this were impacting on OHS in a range of industries, including construction, transport and home-based garment making.¹ This research, and subsequent reviews of international research I undertook indicated that subcontracting tended to have significant negative effects on injury rates and other OHS outcomes (such as exposure to hazardous substances).²

In 2000 I was engaged by Motor Accidents Authority/Government of NSW to undertake a review of safety in the long haul trucking industry in response to concerns raised by insurers, the Transport Workers' Union (TWU) and other about the poor performance in the industry. In particular I was asked to examine whether commercial practices (including elaborate subcontracting of tasks, schedule incentives and penalties, unpaid waiting time and pressure from clients) affected safety. While commercial pressures on an already competitive industry compromising safety had been raised as an issue over a number of years

¹ Mayhew, C. & Quinlan, M. (1997) Trucking Tragedies: Why OHS Outcomes are Worse for Subcontract Workers in the Road Transport Industry, UNSW School of Industrial Relations and Organisational Behaviour Working Paper Series, No.114. Mayhew, M. Quinlan, M. & Ferris, R. (1997) The Effects of Subcontracting/Outsourcing on Occupational Health and Safety: Survey Evidence from Four Australian Industries, *Safety Science* 25(1-3):163-78; Mayhew, C. & Quinlan, M. (1997) Subcontracting and Occupational Health and Safety in Residential Building, *Industrial Relations Journal* September 28(3):192-205; Mayhew, M. & Quinlan, M. (1999) The effects of outsourcing on OHS: A comparative study of factory-based and outworkers in the garment industry, *International Journal of Health Services* 29(1):83-107.

² Quinlan, M. & Bohle, P. (2008) Under pressure, out of control or home alone? Reviewing research and policy debates on the OHS effects of outsourcing and home-based work, *International Journal of Health Services*, 38(3): 489-525.

(including in a federal government inquiry undertaken in 1984 which raised the notion of operator licensing³) it had not been subject to rigorous scrutiny. Although the inquiry originated in NSW given the interstate nature of the industry the inquiry process and report was based on an Australia wide investigation of conditions (including interstate visits and submissions from government, industry organisations and individuals in virtually every state). My 353 page report undertook a detailed examination of safety performance in the industry and influence of commercial practices on this drawing on extensive written (over 50) and verbal submissions (representing 60 individuals and organisations) from a wide range of parties (including insurers, operators, employer organisations, client bodies, the TWU, both employee and owner drivers, police, transport and OHS regulators, driver families, roadhouse operators and community groups) documentary evidence (including statistics and reports from government, industry and other parties; published research, and inquiries undertaken in Australia, New Zealand, the UK and elsewhere).

⁴ The report also drew on expert legal opinion of Professor Richard Johnstone (Law School, Griffith University) and an independent survey of 300 truck-drivers (both employee and owner-drivers) undertaken by Dr Claire Mayhew. Finally, the inquiry also received evidence from trucking industry expert Dr Michael Belzer (then with the Trucking Research Centre at the University of Michigan and now a professor at Wayne State University), who had just completed a study of the link between pay and safety in the US trucking industry.

In evaluating the evidence I was conscious both of the array of different sources (including the opinions of particular stakeholders) and the quality of the evidence itself (in terms of corroboration or its scientific basis). I found an array of studies on the OHS consequences of driver scheduling and payment, including a number of persuasive studies undertaken in Australia by Hensher and colleagues⁵ and Williamson

³ May, T., Mills, G. and Scully, J., (1984), National Road Freight Industry Inquiry, Report of Inquiry to the Minister for Transport, Commonwealth of Australia, Canberra.

⁴ Quinlan, M. (2001) Report of Inquiry into Safety in the Long Haul Trucking Industry, Motor Accidents Authority of New South Wales, Sydney.

⁵ Hensher, David A., Helen C. Batellino, Julie L. Gee, and Rhonda F. Daniels. 1991. "Long Distance Truck Drivers On-road Performance and Economic Reward". Sydney, NSW, Australia: Research and Analysis Report. Institute of Transport Studies, Graduate School of Management & Public Policy. December. pp. 190, including appendix; Hensher, David A., Helen C. Batellino, and Julie Young. 1989. "Long Distance Truck Drivers - A Pilot Survey: On-road Performance and Economic Reward". Dept. of Transport and Communications Federal Office of Road Safety. November. pp. 91; Hensher, David

and colleagues.⁶ Their findings were also, in large part, consistent with the overwhelming weight of submissions from drivers, operators, police, regulators, insurers and the union. A valuable independent study had also been prepared on the economics of the industry which also supported in general terms the picture painted.⁷

In the end the report was able to draw a number of conclusions that may be summarised as follows:

- Despite a significant improvement in safety following major crashes in the late 1980s OHS performance in long haul trucking (as measured by fatalities and fatal crashes) had failed to match the ongoing improvement in road safety more generally and also compared unfavourable to truck safety in the USA and UK. A substantial number of those killed in crashes involving heavy vehicles were not truck drivers but other road users and pedestrians. Driver and non-driver fatalities, as well as non-fatal injuries, entailed significant economic, social and human costs.
- Aside from crash related death and fatalities long haul truck drivers experienced a number of other safety and health problems including significant levels of chronic injury (like back strain); fatigue/cumulative sleep deprivation (which has both safety and long term health consequences); the short and long-term effects of stimulant drug use (used to combat fatigue); poor work/family balance, poor diet and sleeping disorders; exposure to noise, dust, diesel fumes and particulates; and a comparatively high level of psychological distress (as measured by the General Health Questionnaire – especially amongst owner drivers and those working on more competitive routes).
- Commercial practices made a significant contribution to hazardous work practices as well as undermining existing regulatory controls and enforcement measures. Under client

A., Rhonda F. Daniels, and Helen C. Battellino. 1992. "Safety and Productivity in the Long Distance Trucking Industry". Paper read at Proceedings, 16TH ARRB Conference, November 1992, at Perth, Western Australia.

⁶ Williamson, A., Feyer, A., Friswell, R. and Saduri, S. (2000), Driver fatigue: A survey of professional heavy drivers in Australia, draft of report prepared for the National Road Transport Commission; Williamson, A., Feyer, A., Friswell, R. and Finlay-Brown, S. (2000a), Development of Measures of Fatigue: Using an Alcohol Comparison to Validate the Effects of Fatigue on Performance, Road Safety Research Report CR 189, Australian Transport Safety Bureau, Canberra.

⁷ Croke, D. (1998). *1998 Road Transport Viability Report*, Monash Consultancy Services Ltd.

pressure in an already competitive industry an elaborate subcontracting network (of progressively smaller operators, including country firms, at the bottom doing the actual task) was used by large operators to reduce their costs. The evidence suggested that small firms and many owner/ drivers at the bottom of the supply chain were operating a level that did not cover long term business costs/provide sustainable earnings and that employee drivers too (especially those working for small operators) had their wages effectively cut through incentive systems (such as a tendency to kilometre or trip/load-based payment). Low earnings helped to explain why bankruptcies were common (and family break-ups and suicide not uncommon). It was clear too that this was not simply the product of poor business decision-making (though this occurred) but the inability of owner-drivers to bargain with the more powerful parties that engaged them (both clients and large operators) in order to make their business more sustainable. Any savings/earning benefit made by moving to larger trucks (notably B-Doubles) was lost as clients demanded commensurate reduced freight rates in consequence of this efficiency gain. Some clients set unrealistic delivery schedules knowing full well any breach of safety laws would fall on the driver (or less likely the operator) but not them (the same applied to the practices of some freight-forwarder, brokers and others).

- Other commercial practices affecting drivers' remuneration and rest patterns exacerbated the situation including bonus/penalty delivery time payments and large amounts of unpaid time spent queuing at warehouses/ distribution centres (and not using a tag system so drivers could rest while waiting). In other cases I identified other serious externalities including driver transfer arrangements that took no account of fatigue (and where there was no financial incentive to do so). I found these practices were at the root of systemic hazardous practices such as speeding (trying to maximise otherwise low earnings by making an additional delivery, meeting a bonus requirement, beating the queue at a warehouse etc), excessive hours of work, stimulant drug use (to combat fatigue), short-cuts on vehicle maintenance not to mention poor work/life balance (times with family) and the general stress levels associated with these sorts of work pressures.
- The regulatory framework and its enforcement at the time failed to effectively address these commercial pressures. Enforcement was

driver-focused (based on road transport legislation) rather than dealing with those further up the supply chain that actually made the critical commercial decisions that shaped driver behaviour. I was repeatedly told that given a choice between financial survival and breaking the law, drivers would choose the latter. Police and other regulators pointed to widespread and systemic breaches of road transport (and OHS) legislation rather than the behaviour of a few 'cowboys' (though the latter also certainly existed). Existing enforcement measures (such as Safe-T-Cams in NSW and drug testing and roadhouse raids by police) were having limited effects as were efforts to establish voluntary codes by the industry itself (such as TruckSafe). There was a growing recognition that there was a need for OHS regulators to get more involved and there were the first steps towards introducing chain of responsibility provisions into state and federal road transport legislation (but at the time of the inquiry this was both limited in scope and virtually absent with regard to enforcement). Finally, but by no means least, there were no minimum rates set for owner/drivers and those with regard to employee drivers were poorly enforced (and widely evaded because employee and owner/drivers essentially competed for the same work – a 'race to the bottom' scenario).

Drawing on this the inquiry report made a number of recommendations, notably:

- Establishment of a mandatory OHS code for the long haul trucking industry that included a 'safe driving plan' or pay/trip document signed by all key parties (including clients) to replace the widely abused logbook system. The pay trip document would effectively require clients to acknowledge their responsibility in the transport supply chain (in schedule timing, payment and paying for waiting time at their warehouse) and provide a contractual tracking mechanism that could be used in enforcement.
- Trucks were workplaces and OHS regulators needed to take a stronger role in protecting the health and safety of drivers (using the supply chain aspects of existing general duty provisions) and coordinating strategic enforcement with other regulatory authorities (road transport and the police). Enforcement of relevant transport and OHS laws needed to be more proactive, strategic and focused higher up the transport supply chain.

- A minimum 'safe' rate needed to be established for owner/ drivers so commercial pressures did not induce them to compromise safety to the detriment of themselves, their families, employee drivers, other road users and the community in general. Minimum rates applying to employee drivers also needed to be effectively enforced. Given the interstate nature of most long-haul trucking it was recognised that this recommendation really required action at federal level.

The NSW government adopted a number of recommendations, including introducing a fatigue regulation under OHS legislation in 2005 that explicitly addressed supply chain issues in terms of the array parties made responsible (including freight forwarders and clients). The OHS regulator also became more actively involved in enforcement, including launching several significant and successful prosecutions (such as that following the fatigue related death of driver Derri Haynes which made direct reference to payment structure in the industry⁸). I do not want to exaggerate the importance of my report in this regard. In many respects it served to reinforce the need for policy shifts already under way. For example, WorkCover NSW's increasing involvement in long haul trucking mirrored a trend that was already underway in other jurisdictions (such as Victoria and Western Australia which actually preceded NSW in this regard with the latter introducing a fatigue code some years earlier and also appointed two experienced transport operators as OHS inspectors). Similarly, Queensland, NSW and other states, as well as the National Transport Commission, have all progressively extended chain of responsibility provisions in road transport (as far as I am aware prosecutions of clients [as opposed to operators] remains exceptional although this doesn't include investigations that may have been carried out which can also have a 'persuasion' effect). The electronic diary system currently under consideration has the potential to incorporate critical elements of the pay/trip document I recommended.

Following the report I presented the findings to a number of industry/government and academic conferences in Australia, Europe

⁸ *WorkCover Authority of New South Wales v Hitchcock* (2004) 135 IR 377 and *WorkCover Authority of New South Wales v Hitchcock* (2005) 139 IR 439.

and North America⁹ (a summary of the proceedings on one of these conferences was subsequently published by the National Institute for Occupational Safety and Health – the US federal OHS research agency¹⁰) as well as publishing a number of articles in academic journals (primarily though not entirely based on the independent driver survey results).¹¹ The report itself was cited in government reports, coronial inquests and academic research literature (not counting those publications I derived from the report). For example in January 2003 the NSW Deputy State Coroner Dorelle Pinch issued a supplement to her findings in relation to the death of three truck drivers (Barry Supple, Timothy Walsh and Anthony Forsyth) who had died in a variety of circumstances including truck crash and a drug induced cardiac arrest at a truck stop. In her supplementary report the Coroner identified a number of common factors in the deaths including fatigue, drugs, falsified logbooks, pressure for deliveries, operator viability and the absence of any medical testing of driver health – with the exception of the latter all of these factors had been dealt with in some depth by the NSW Trucking Safety Report (and makes direct reference to the report as identifying the underlying causes of poor safety outcomes as well as ways of remedying this). In her observations the Coroner emphasized the need to deal with the underlying problem rather than symptoms and stated (at page 4: emphasis in original) “*As long as driver payments are*

⁹ Quinlan, M. & Mayhew, C. (2001) Microeconomic Reform, Precarious Employment and Occupational Health and Safety in the Long Haul Trucking Industry, IIRA 6th European Congress, Oslo, 25-29 June; Quinlan, M. *Trucking reforms in NSW – the long distance trucking inquiry findings and recommendations*, NSW Road Transport Association Annual Convention Terrigal, 22 March 2002; Quinlan, M. (2003), Stopping the race to the bottom: Reforming safety in Australian Trucking, Transportation Research Board Annual Meeting, Washington 12-16 January; Quinlan, M. (2003) Safety and Health in Trucking: An Australian and European Perspective, invited paper Truck Driver Occupational Safety and Health Conference, Detroit, Michigan 24-25 April (also presented a paper on the inquiry I conducted into trucking safety to the same conference); Quinlan, M. *OHS and Fatigue management in long haul trucking: New regulations and future developments*, Paper presented to Deacons fatigue management in transport seminar 10 August 2005; Quinlan, M. *OHS and Fatigue management in long haul trucking: New regulations and future developments*, Paper presented to NatRoad Annual Conference, Rydges Lakeside Canberra, 5 August 2006; Quinlan, M. *OHS Chain of Responsibility: Regulatory Responses* Paper presented to Federal Council Meeting of Transport Workers Union, Adelaide 15 May 2007.

¹⁰ Saltzman, G. and Belzer, M., (2006), *Truck Driver Safety and Health: A Conference Report and Literature Review*, National Institute for Occupational Safety and Health, Cincinnati.

¹¹ Notably, Mayhew, C. & Quinlan, M. (2001), Occupational Violence in the Long Distance Transport Industry: A Case Study of 300 Truck Drivers, *Current Issues in Criminal Justice*, 13(1):36-46; Mayhew, C. & Quinlan, M. (2006) Economic pressure, multi-tiered subcontracting and occupational health and safety in the Australian long haul trucking industry *Employee Relations*, 28(3): 212-229; and Quinlan, M. Johnstone, R. & Mayhew, C. (2006) Trucking Tragedies: The Hidden Disaster of Mass Death in the Long Haul Road Transport Industry in Eric Tucker ed. *Working Disasters*, Baywood, New York, 19-64.

based on a (low) rate per kilometer there will always been an incentive for drivers to maximise the hours they drive, not because they are greedy but simply to earn a decent wage. I anticipate that this incentive will remain an overriding concern for drivers irrespective of legal and safety considerations.”¹²

The NSW Trucking Safety Report’s findings on commercial pressures were also used to inform later reports such as a report into forestry contractors and drivers in Victoria. The Victorian report, the precursor to special legislation dealing with transport contracts (see below) acknowledged that my report had dealt with the issue of commercial practices and low freight rates in a very comprehensive fashion.¹³ The NSW report’s findings and recommendations were also cited in overseas reports, including a recent European Union report on tackling fatigue amongst heavy vehicle drivers.¹⁴

In 2002-3 the question of a sustainable minimum ‘safety’ rate did receive some consideration at federal level. In 2002 the Australian Transport Council (ATC) established a Standing Committee On Transport (SCOT) working group to investigate the issue of safe sustainable rates for owner drivers (consistent with one of the major recommendations of the NSW Trucking Safety Inquiry). The working group issued a discussion paper in May 2003.¹⁵ A consultant report commissioned by the working group confirmed the very low rates of earnings amongst owner operators. Unfortunately, as far as I am aware the working group did not commission independent research to specifically investigate the link between low returns and safety (and the ATC’s consideration of this matter appeared to have lapsed in 2004). The May 2003 discussion paper summarized existing research, the overwhelming bulk of which was dealt with in the 2001 NSW Trucking Safety Inquiry. Unlike the Victorian forestry contractors and driver report I do not recollect being approached by the SCOT working group. The Discussion Paper argued

¹² Pinch, D. (2003), ‘Supplement to the Findings into the Deaths of Barry Supple, Timothy Walsh and Anthony Forsyth’, Report of Deputy State Coroner of NSW, Sydney.

¹³ Industrial Relations Victoria, (2005), *Report of Inquiry Owner Drivers and Forestry Contractors*, Department of Innovation, Industry and Regional Development, Melbourne, 14-17.

¹⁴ European Transport Safety Council, (2011), *Tackling Fatigue: EU Social Rules and Heavy Goods Vehicle Drivers*, Report No.7, especially page 35.

¹⁵ Standing Committee On Transport Working Group, (2003), *Heavy Vehicle Safety and Safe Sustainable Rates for Owner-Drivers*, Discussion Paper.

that the evidence linking financial pressure and road safety as 'mixed and inconclusive'.¹⁶ I think this conclusion seriously misinterpreted the evidence (for example it only examined the evidence on crashes and ignored other important health and safety indices) and identified a series of limitations in this regard in the report I prepared for the National Transport Council in 2008 (discussed below).¹⁷

About three years after the SCOT report I was asked to present expert evidence (by submitted statement and under cross examination) to an 'test case' application by the Transport Workers Union to establish a mutual responsibility safety based award before the NSW Industrial Relations Commission. My evidence (and the cross examination of my evidence) was largely focused on how remuneration (both the low level and incentive system) affected safety. As such I had to review how the evidence had evolved since 2001 and my conclusion remained the same – that is there was a significant connection between pay and safety. Others to provide expert evidence were Professor Ann Williamson (a fatigue and trucking expert and also a key witness in the Derri Haynes case referred to earlier) and Professor Michael Belzer from the USA. Historically, industrial tribunals have been reluctant to make rulings dealing with safety unless they are persuaded that there is a serious gap in existing OHS regulatory requirements. The NSW IRC was persuaded by this and other evidence and in November 2006 issued the *NSW Transport Industry – Mutual Responsibility for Road Transport (State) Award*, entailing provisions on safe driving plans, training and drug/alcohol policy.

In 2008 together with former NSW Industrial Relations Commission president, the honourable Lance Wright QC, I was asked to prepare a report evaluating the evidence linking pay/remuneration and safety for the National Transport Commission and federal government. To do this we

- Asked for submissions from interested parties (via the NTC – with 24 submissions being received from operators, drivers, industry bodies, clients, the union and regulators – including OHS

¹⁶ Standing Committee On Transport Working Group, (2003), *Heavy Vehicle Safety and Safe Sustainable Rates for Owner-Drivers*, Discussion Paper, 6.

¹⁷ Quinlan, M. & Wright, L. (2008), *Remuneration and safety in the Australian Heavy Vehicle Industry: A Review Undertaken for the National Transport Commission*, Melbourne, 21-23.

regulators - from all corners of Australia) and 48 consultations with drivers (both employee and owner drivers), operators, client representatives, regulators and academics) across three states.

- Reviewed existing materials and any relevant government reports, coronial inquests, court proceedings subsequent to the 2001 NSW Trucking Safety Report.
- Reviewed existing academic research and any relevant research completed/published since 2001.

The interviews/consultations (including several with persons I had interviewed in 2000) and submissions indicated that, despite some changes, the overall situation had not improved with regard to the impact of commercial practices on OHS. The pay/safety connection was emphasised by a number of submissions from government agencies such as Safework South Australia. WorkSafe Victoria had also undertaken a survey of the road transport industry (drivers and operators), the results of which were consistent with the weight of views expressed in consultations. One new dimension of the problem to emerge was reference to the difficulty of recruiting young persons into an industry marked by long hours (almost double a standard full-time working week in other industries) and low pay (and with a fast ageing workforce). This is another issue of sustainability warranting urgent consideration that could have long term safety implications (both due to older drivers staying on too long and the danger posed by accelerated or 'rush' recruitment of inexperienced and inadequately trained drivers [including temporary immigrants] that seems to have occurred in the USA and Europe). Wherever possible we asked those we spoke to provide evidence supporting their contentions. What was striking was that the minority who either denied there was a connection between pay and safety or said it might exist but it should not be the focus of an intervention were largely unable to provide any supporting evidence and often chose to argue in a priori terms.

Consideration of more recent government reviews, coronial inquests, court cases (where evidence is given under oath and then tested via cross examination) also tended to reinforce my earlier (2001) assessment of this material in 2001. If anything, coroners, judges and policy makers were more likely to make an explicit connection between remuneration and safety in long haul trucking. There was recognition that this

connection was a root cause of other problems such as fatigue, drug use and dangerous driving practices.

Finally but not least, turning to the scientific evidence again the additional research completed since 2001 only served to reinforce the pay/safety connection. Professor Williamson, for example, had continued her research, and published a study linking payment drug use in a leading epidemiological journal.¹⁸ Professor Williams' evidence is especially persuasive in the Australian context because she is an acknowledged international expert in transport safety and fatigue (currently an NHMRC research fellow and professor of aviation at the University of New South Wales) who has been undertaken a series of large and scientifically robust studies of long haul truck drivers since the early 1990s. In her verbal evidence Professor Williamson said she had noted the pay/OHS connection almost immediately (and had raised it with her funders as critical) and as further research was undertaken her views on this connection only strengthened. Professor Belzer, too, had undertaken further research and had also published work demonstrated a clear connection between truck driver pay and safety in the USA.¹⁹ Belzers' research is valuable again because he has undertaken a number of large and rigorous studies that found a strong association between low pay and truck safety in the USA. What should also be noted is that in large measure the scientific research served to confirm the views expressed by truck drivers and others based on their direct work experience.

Other research reviewed also reinforced the connection between commercial pressures and safety. On the other hand, we could not find research explicitly rejecting this connection (which is distinct from studies that do not find a connection because they never test this hypothesis). In my international reviews of research in other areas this is unusual (even when a compelling weight of evidence points in one direction there will tend to be a few studies where the connection is

¹⁸ Williamson, A. (2007), 'Predictors of Psychostimulant Use by Long Distance Truck Drivers' *American Journal of Epidemiology*, 166(11): 1320-1326.

¹⁹ Belzer, M., Rodriguez, D. and Sedo, S. (2003), 'Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety' paper presented to Truck Driver Occupational Health and Safety Conference, Wayne State University Detroit 24-25 April; Rodriguez, D., Targa, F. and Belzer, M., (2006), 'Pay incentives and truck driver safety', *Industrial and Labor Relations Review*, 59(2): 205-225. Belzer, M. and Christopherson, S. (2008), *Freight Transportation and Economic Development: Who Pays? Who Profits?* Urban and Regional Policy and Its Effects, The Brookings Institution, Washington.

tested and not found, or where contrary results are found). Reviewing evidence is more than simply counting the number of studies but also taking their methods and quality into account. However, the combination of strong (in terms of methods and quality) supporting studies and no contrary studies is very persuasive – indeed compelling.²⁰

The review undertaken by the hon. Lance Wright and myself was also asked to examine regulatory responses to dealing with this connection. A number of those opposed to the safe rates concept suggested that existing OHS and road transport laws, especially those dealing with fatigue, were sufficient to deal with the issue or that the Victorian contractor legislation provided a better model or that setting safe rates would prove to be too complicated and unworkable in practice. The 2008 addresses all three points in detail and I do not want to repeat it hear except to make three points. First, we could not accept the first contention, especially as the evidence indicated that fatigue problems related to pay need to be addressed at source (the history of the industry is that treating symptoms rather than their causes is ineffective) and chain of responsibility-based legislation requires both vigorous enforcement (still to occur as far as we could judge despite positive signs) and a baseline of minimum conditions as a reference point (non-existent when it comes to the pay of owner drivers which in turn erodes the conditions of employee drivers). Second, a complaint based unfair contracts provision as used in Victoria (and elsewhere) doesn't set minimum rates, places a heavy burden on the driver (it is time consuming and the driver may fear retribution/lost work), and our examination of data on mediation processes was not reassuring. In short, this sort of law can play a role but is not a substitute for setting minimum rates that apply to all owner drivers. Third, we could not accept the contention that setting safe rates would be unworkable in practice because contract determinations covering short haul owner drivers in range of different subsectors has been undertaken successfully over a considerable period of time (our consultations involved some parties involved in this) in NSW. This system as far as we could judge

²⁰ In time a study (or studies) that tests but cannot find a connection remuneration and safety in long haul trucking may emerge but even if such a study is very robust scientifically this would not be, of itself, sufficient to overthrow the conclusion drawn in the 2008 report. Rather, it would need to be considered as part of re-evaluating the broader body of research.

had worked successfully and had addressed the sorts of complexities that were raised as impractical.

In sum, the 2008 report by the hon. Lance Wright QC and myself found evidence did find a strong association between remuneration (and commercial practices related to this) and OHS and that would be best addressed by establishing a tribunal to set minimum rates for owner/drivers and which could coordinate its activities with the setting and enforcement of minimum wages for employee drivers. We recommended several options with regard to achieving this. The National Transport Commission drew on my report with the hon. Lance Wright, and other material (for example pertaining to the transport labour market and the low earnings of small operators and owner/drivers), to produce its own report in October 2008 which reached a similar conclusions and made similar recommendations.²¹ In 2009 the federal government established a Safe Rates Advisory Group to examine ways to give effect to the NTC recommendations and this body issued a Directions paper for discussion in 2010.²² In November 2011 the federal government introduced a bill to establish a Road Safety Remuneration Tribunal. I have examined the bill and associated speeches and documentation. In my view the proposed legislation (and the scope and role of the tribunal) most clearly addresses the issues raised by the connection between remuneration and safety and provides an entirely workable mechanism for remedying these problems which have long bedevilled the industry. The tribunal is able to set minimum safe rates for owner drivers and deal with other remuneration related safety issues such as unpaid waiting times. It is my view that once clients are charged for delaying the unloading and loading of long haul trucks this will provide a powerful incentive for more efficient, safer and healthier freight handling practices (it is my understanding this is what occurred in relation the docks at Botany following such a change).

Since 2008 I have periodically reviewed the evidence relating to truck driver health and safety. For example, I am a corresponding member of the Transport Utilities and Warehouse expert research group established by the National Institute of Occupational Safety and Health in the USA

²¹ National Transport Commission with Lance Wright and Michael Quinlan, (2008), *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, Melbourne.

²² Safe Rates Advisory Group, (2010), *Safe Rates Safe Roads Directions Paper*, Commonwealth of Australia, Canberra.

and am also in regular contact with members of the US Transportation Research Board (TRB) interested in truck safety. In 2010 I was on the scientific panel for an international conference on commercial driver health and well-being organised by the TRB in Baltimore and delivered a plenary address to that conference on organisational influences on driver health.²³ I was contacted by persons at the European Transport Safety Council and asked to provide comments on a number of occasions, including reviewing a report being prepared in 2011.

I have also continued to correspond with other researchers in the field such as Professor Ann Williamson (with whom I am currently working on a project examining the safety effects of outsourcing heavy aircraft maintenance). It is my understanding that Professor Williamson undertook a more recent survey of drivers and operators for WorkCover NSW that reinforced her earlier conclusions. As far as I am aware this is yet to be published or made public. I would urge the Committee to interview Professor Williamson on this and other matters pertinent to the proposed legislation. I would also make the same point with regard to Professor Michael Belzer who has just completed a summary of the international and Australian evidence on the economics of safety in road transport²⁴ and who is currently working on further research in the area of remuneration and safety. His international perspective would I think be valuable as to why there is a problem which Australia is now beginning to address (and why other countries like the USA should look to follow this approach).

²³ Quinlan, M, (2010), Organizational Influences of Truck-Driver Health: Reviewing the Evidence, Plenary paper to International Conference on Commercial Driver Health and Wellbeing, Baltimore, 10 November 2010.

²⁴ Belzer, M. (2011), *The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety*, Report prepared for the Safe Rates Summit, Canberra.

Conclusion/Recommendations

Drawing on the foregoing I would make the following observations and recommendations

- There is substantial and compelling evidence that driver remuneration (and commercial practices related to this) significantly affects OHS in long haul trucking. Evidence on this connection can be traced to the 1990s (if not before), it was persuasive when I undertook a safety review for the NSW government in 2001 and if anything the evidence has become more compelling since then.
- The connection underpins serious safety and health issues such as fatigue as well as systemic evasion of existing regulatory requirements (not only breaches by drivers but by operators, clients and others in the transport supply chain). Establishing safe rates for owner drivers together with effective enforcement of this the rates applying to employee drivers will not only directly address this problem (by removing the incentive to cut corners on safety) it will complement and enhance other regulatory initiatives (notably chain of responsibility based regulation and proactive enforcement).
- By way of contrast, the alternative measures repeatedly proposed such as voluntary codes of practice, unfair contract provisions, business education and the like have failed (some repeatedly) to affect a change. They may be useful as adjunct activity but they are not an alternative to dealing with the root problem – one that recognises the vulnerable and weak bargaining position of owner drivers. Providing support for small operators and owner/ drivers from exploitation that endangers themselves and the public should be seen as a necessary measure to avoid socially harmful externalities and setting a level playing field for business in an industry that will still remain intensely competitive.
- The tribunal to be established under the proposed legislation is required to be evidence driven and is given the tasks/functions and capacities essential to addressing the problems identified. There are existing models that prove this approach can work in road transport. I strongly urge that the parliament should take this historic opportunity to address a long standing and very serious

problem – action that will be to the greater benefit of the Australian community.