



Incorporated in Victoria No A0050004U
ABN: 54 403 453 626

Why the Road Safety Remuneration Bill 2011 should be rejected.

Submission to the House Committee inquiry into the Road Safety Remuneration Bills

Independent Contractors Australia opposes the Road Safety Remuneration Bill 2011. The Bill will have a competition-corrupting outcome within the road transport sector in Australia and will damage the rights of self-employed owner-drivers. The Bill will do nothing to further the cause of road safety in the trucking sector in Australia.

The fundamental premise of the Bill is wrong

The proponents of the Bill claim that truckies are not being paid enough and that, due to financial pressure, truckies break speed limits, take drugs while driving, overload vehicles and generally drive dangerously, causing crashes, injuries and deaths. This is an argument that has been pushed by the Transport Workers Unions for years. The TWU has on many occasions commissioned and promoted reports that claim to prove this.

Independent Contractors Australia rejects those reports. There is no proven link between pay rates and the incidence of road transport safety. There is, however, a direct link between driver behaviour and road safety.

In presenting this Bill, however, the Gillard government is siding with the arguments of the TWU. What the government is saying, in effect, is that blame for dangerous and illegal driving does not rest with the few bad truckies who behave badly, but rather with the people who pay them. This proposition is itself dangerous and sends a dangerous signal to the general driving community.

Australia's road laws demand and require of all road users that they drive in a safe manner. No excuse is tolerated for any individual's personal circumstances. Drunk drivers and drivers on drugs, for example, are not excused because they are on the dole or other, similar reasons. Our society expects safe driving no matter what a person's financial or other situation might be.

By presenting this Bill, however, the government is creating a special category of driver and is arguing that those drivers can be excused for driving dangerously simply on the basis of what they are being paid.

Has this been done before? Yes, in New South Wales. Has it improved safety?
No!

ICA contends that this new federal Bill is modelled on the New South Wales owner-driver legislation that has been in place for many years but which is a complete failure.

In NSW, remuneration rates are imposed on self-employed owner-drivers by the NSW Industrial Relations Commission. The TWU has enforcement powers under the laws. The effect of the laws is as follows:

- Drivers who are efficient and good at their job should earn more than drivers who are not so good. The NSW laws force companies to take work away from the good drivers and give it to the poor drivers. This encourages bad drivers to stay in the sector and forces down the incomes of the good drivers. Productivity is pushed down. The cost of road transport is pushed up. Good drivers miss out.

Has this system improved driver safety in NSW? No! There is no demonstrable difference in trucking safety in NSW when compared with the rest of Australia. The government has not produced any such evidence. The TWU has not produced any such evidence.

ICA conducted a detailed assessment of the NSW owner-driver laws in 2006. It is available here. <http://www.ownerdrivers.com.au/papers/PDF/ICA-ownerdrivers-discussion.pdf>

What will be the effect of this Bill?

There will be several negative outcomes:

- The Bill is anti-competitive, breaching competition principles and usurping the powers of the Australian Consumer and Competition Commission to prevent price-fixing.
- The Bill confuses and usurps the powers of the Fair Work Authority and the functioning of the *Fair Work Act*.
- The Bill strips independent contractor owner-drivers of their basic right to be small business operators. It usurps the powers of the *Independent Contractors Act*.
- The Bill creates opportunity for graft and corruption in the transport sector.

The new Tribunal which is part of the proposed legislation will have the power to set wage and remuneration rates for all truckies, including employees and self-employed drivers. This is a recipe for complete confusion, and a bureaucratic shambles, with overlapping authorities trying to work out what's going on. It is a prime example of a government's creating systems and structures of layered and confusing business red-tape that will impact most heavily on small business people.

Anti-competitive

The Bill gives the new Tribunal the power to set pay rates for owner-drivers—that is, the power to impose prices under commercial contracts. Owner-drivers—that is, self-employed people who run their own business—operate under commercial law and the *Trade Practices Act*. Those laws protect the community from price collusion and price-fixing. The ACCC is the body that oversees and enforces those laws. It is a

significant breach of competition laws and the powers of the ACCC to establish a new Tribunal that can impose price controls and effectively sanction price collusion under commercial contracts.

If small business people (for example, owner-drivers) want to establish common rates under commercial contracts, they already have the capacity to apply to the ACCC for collective bargaining dispensation. For example, groups of owner-drivers have done this and been granted collective bargaining rights under the supervision of the ACCC. This has occurred in Queensland, in particular, where a union (the CFMEU) has operated as the owner-drivers' bargaining agent. Should the TWU believe that owner-drivers in particular situations need to bargain collectively to alter pay rates, the TWU has the ability to organize owner-drivers to make an application to the ACCC.

The new Bill will create instant price-fixing (effectively, sanctioned collusion) without any of the protections afforded to the community by the ACCC. Independent Contractors Australia contends that the outcome will be a reduction in competition, increases in prices and a less efficient and effective transport sector in Australia.

Fair Work Act

Currently, truckies who are employees of transport companies have their wages established under awards and enterprise agreements authorized by the Fair Work Authority through powers under the *Fair Work Act*. If the government and the TWU have concerns about the pay rates of employee drivers, they have existing powers to apply to the FWA for changes to pay rates.

The new Bill will override the powers of the FWA and create inordinate confusion about who sets pay rates for employee drivers. Such confusion works against the interests of the community in general and employee drivers in particular.

Independent contractor drivers rights

The essence of being self-employed is that people earn their incomes through the commercial contract regulated by commercial and competition laws. In other words, self-employed people (owner-drivers in this case) are business people selling their services to clients at prices they determine. Commercial law determines that no-one can tell small business people what price to charge. They decide. It's a fundamental right of being a self-employed business person.

Yet this Bill will override those rights. It will impose prices on owner-driver self-employed people under commercial contract. It effectively takes away the capacity of self-employed people to be business people. This Bill affects only owner-drivers in this respect. But it threatens all self-employed small business people. It is a beachhead of regulatory price control aggression. It is a template which, once achieved in one area, can be rolled out to all self-employed people. It should not proceed. Independent Contractors Australia strongly objects to the Bill.

The *Independent Contractors Act* has as its core function the protection of independent contractors from industrial relations-type regulation. The Road Safety Remuneration Bill is effectively an industrial relations instrument because it imposes price controls upon self-employed people (owner-drivers). The Bill breaches and is in direct conflict with the *Independent Contractors Act*.

Potential for graft and corruption in the road transport sector

The Bill is modelled on the NSW owner-driver laws. Independent Contractors Australia contends that the NSW laws have led to graft and corruption in the road transport sector in NSW. In effect, transport companies make contributions to selected unions to ensure that the unions do not bring the powers available under the owner-driver laws to bear against them. The contributions are always 'legal' because they operate under the mask of the owner-driver laws. ICA contends that the Road Safety Remuneration Bill will have the same outcome. It will create opportunity for (what are, in effect) sanctioned payoffs which, were they subject to the jurisdiction of the ACCC, would probably be deemed illegal.

Are their other laws that protect owner-drivers which also give them a fair go?
Yes!

Victoria introduced owner-driver laws in 2005. These are much more reasonable than those under this new Bill. The Victorian laws require companies that use owner-drivers to supply specified documentation and other information to assist drivers to run their businesses properly. Any disputes are handled by the Small Business Commissioner in Victoria. The focus is on the rights of the owner-drivers. These laws were introduced by a Victorian Labor government. Independent Contractors Australia favours the extension of these sorts of laws to owner-drivers elsewhere in Australia.

In 2010, the federal government introduce unfair contract protection laws for consumers. Originally, the government and opposition had agreed to apply these protections to self-employed small business people as well. If they had been applied, the laws would have offered significant protections to owner-drivers. Yet the federal government 'did the dirty' on small business people and did not give them unfair contract protections. If the federal government were truly serious about protecting the interests of owner-drivers, along with all small business people, they would extend the unfair contract laws to all self-employed people, thus taking in owner drivers. If the unfair contract laws were extended to owner drivers, many of the concerns expressed over the nature of the contracts that owner-drivers have would be resolved.