



SUBMISSION

ON THE ROAD SAFETY REMUNERATION BILL 2011
TO THE HOUSE OF REPRESENTATIVES INFRASTRUCTURE
AND COMMUNICATIONS COMMITTEE

JANUARY 2012

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THIS SUBMISSION HAS BEEN PREPARED WITH THE
ASSISTANCE OF KM CORKE AND ASSOCIATES, CANBERRA.

PO Box 20 DEAKIN WEST ACT 2600
P: +61 2 6273 0744 F: +61 2 6273 3073 E: admin@austlogistics.com.au
www.austlogistics.com.au

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CONTENTS

SUMMARY OF RECOMMENDATIONS	2
BACKGROUND ON THE AUSTRALIAN LOGISTICS COUNCIL	3
SUMMARY	4
SUBMISSION ON THE ROAD SAFETY REMUNERATION BILL 2011 TO THE HOUSE OF REPRESENTATIVES INFRASTRUCTURE AND COMMUNICATIONS COMMITTEE	5
INTRODUCTION	5
THE 'MISSING LINK' BETWEEN REMUNERATION LEVELS AND SAFETY OUTCOMES	6
JURISDICTION OF TRIBUNAL	11

SUMMARY OF RECOMMENDATIONS

1. ALC opposes the Road Safety Remuneration Bill 2011 and holds the view that there is insufficient evidence to support a definitive link between remuneration levels and safety outcomes in the heavy vehicle industry. It therefore believes the establishment of a Road Safety Remuneration Tribunal is premature.
2. In this absence of such a link, ALC requests that the Committee recommends that the Bill is not introduced into the House of Representatives until a link between remuneration and road safety is proved
3. Instead of introducing a new body in the form of the Road Safety Remuneration Tribunal to regulate operations of the heavy vehicle sector, the Government should encourage the National Heavy Vehicle Regulator, due to come into effect on 1 January 2013, to continue to identify ways to increase road safety.
4. If the Bill is to proceed, it should be amended to satisfy a number of industry concerns:
 - » The Tribunal's work is restricted to matters relating only to remuneration and that the research it commissions is subject to stakeholder review
 - » The only matters the Tribunal is able to make Road Safety Remuneration Orders on are matters on the Tribunal's work plan
 - » The Tribunal should be under a mandatory duty to provide reasons as to why an existing instrument (including a modern award under Fair Work Australia) does not adequately cover the subject matter of a proposed Road Safety Remuneration Order
 - » The Tribunal should be required to estimate the costs involved in implementing an order, including the compliance costs involved in having to adhere with different statutory schemes
 - » If the ambit of the Tribunal is not amended, the Bill should be renamed the 'Road Transport Regulation Bill' and orders described as 'Road Transport Regulation Orders'.
 - » The Bill only covers remuneration issues relating to long distance operations
 - » The Bill is the only legislation that deals with remuneration issues relating to heavy vehicle drivers to the exclusion of state laws currently in place
 - » The Bill adopts provisions from Victorian legislation whereby independent contractors are provided with information to enable them to make informed business decisions.

Background on the Australian Logistics Council

The Australian Logistics Council is the peak national body representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Vision

To be the lead advocacy organisation to all levels of Government and industry on freight transport and logistics supply chain regulation and infrastructure issues.

Mission

To influence national transport and infrastructure regulation and policy to ensure Australia has safe, secure, reliable, sustainable and internationally competitive supply chains.

2011 – 2013 Strategic Intent

To establish the Australian Logistics Council as the 'go to' organisation representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Objectives:

1. Be the nationally recognised voice of Australia's freight transport and logistics supply chain.
2. Be the leading advocate of appropriate national regulation and infrastructure to ensure Australia enjoys the full benefits of freight transport and logistics policy development and reform.
3. Promote and encourage greater recognition by Government and the community of the importance of the freight transport and logistics industry's contribution to Australia's economy.

ALC Members are major and national companies participating in the Australian freight transport and logistics supply chain. ALC also has a number of Associate Members, which include associations, organisations, government agencies and companies participating in the Australian freight transport and logistics supply chain.

Australia's freight task is estimated to triple by 2050 – from 503 billion tonne kilometres to 1,540 billion tonne kilometres, with local demand for total freight movements increasing by as much as 60% by 2020.

The Transport and Logistics Industry is a critical part of the Australian economy, generating 14.5% of Australia's GDP and providing more than 1 million jobs across 165,000 companies. ALC estimates that every 1% increase in efficiency will save Australia around \$1.5 billion a year.

SUMMARY

ALC opposes the Road Safety Remuneration Bill 2011. It believes the introduction of another layer of regulation and the establishment of a pay setting entity will generate duplication, confusion, cost and result in reduced viability of smaller operators and increased costs to consumers without achieving a commensurate improvement in safety outcomes.

ALC notes the Regulatory Impact Statement (RIS) accompanying the Bill **does not** support a definitive link between remuneration levels and safety outcomes and so it is premature for the Road Safety Remuneration Tribunal to be established in the absence of such a link.

ALC therefore requests that the Committee recommend that the Bill is not introduced into the House of Representatives until a link between remuneration and road safety is proved, and that the Government encourage the proposed National Heavy Vehicle Regulator to commence operation on 1 January 2013 to draw on its experience gained in regulating the heavy vehicle sector and its own research, to continue to identify ways to increase road safety.

ALC is concerned the proposed Road Safety Remuneration Tribunal can make orders that may conflict with requirements imposed by workplace health and safety and heavy vehicle laws.

If the Tribunal is to exist, its work program should be formulated with industry participation, with the work program being strictly limited to remuneration matters relating to long distance operations.

It should also be placed under a mandatory duty to provide reasons as to why any other existing instrument (including a Modern Award made under the FWA) or law (such as the Heavy Vehicle National law or model workplace health and safety legislation) does not adequately cover the subject matter of a proposed Road Safety Remuneration Order.

It should also be required to estimate the costs involved in implementing an order, including the compliance costs involved in having to adhere with different statutory schemes.

However, if the ambit of the Tribunal is not amended, the Committee should recommend the Bill be renamed the Road Transport Regulation Bill and orders described as 'Road Transport Regulation Orders'.

To the extent that the Bill deals with independent contractors, ALC requests the Committee to consider the insertion of provisions requiring the publication of an information booklet contained in Part 2 of the *Owner Drivers and Forestry Contractors Act 2005* (Vic), which requires the provision of information to independent contractors so they can make an informed business decision.

Finally, the Bill preserves by and large the effect of legislation in force in NSW, Victoria and WA, with the Bill only prevailing where there is inconsistency.

Given the NSW and Commonwealth legislation can regulate the hirer/independent contractor relationship, there is a possibility of 'forum shopping', with relevant parties 'gaming' the system and utilising the legislative scheme that may provide (from their perspective) the most favourable outcome.

It follows that given the ambit of the unamended Bill (complete with the involvement of Fair Work Australia in the development of orders and subsequent enforcement), it is equally appropriate for this industry sector to have its industrial relationship regulated the same throughout Australia.

If the Bill is to proceed, it should be amended so that it is the legislation that deals, as far as constitutionally possible, with remuneration issues relating to heavy vehicle drivers to the exclusion of state laws currently in place.

SUBMISSION ON THE ROAD SAFETY REMUNERATION BILL 2011 TO THE HOUSE OF REPRESENTATIVES INFRASTRUCTURE AND COMMUNICATIONS COMMITTEE

The Australian Logistics Council (ALC) welcomes the opportunity to make a submission on the Road Safety Remuneration Bill 2011 (the Bill) and makes the following observations.

Introduction

The concept of the Australian Government legislating for 'safe rates' for the long haul industry has been a subject for consideration for a number of years.

The ALC position on the Bill is that the introduction of a new layer of regulation and the establishment of a pay setting entity will generate duplication, confusion, cost and will result in reduced viability of smaller operators and increased costs to consumers without a commensurate improvement in safety outcomes.

These views are consistent with the comments ALC provided on the *Safe Rates Safe Roads* discussion paper in February 2011.

As the executive summary of the ALC submission said:

The Australian road transport sector is as diverse as it is large. It employs approximately 250,000 people in entities that range from an individual owner driver operating a single rigid vehicle within a local or regional area to major multinational corporations, employing thousands of people and subcontractors and moving freight – from parcels to containers to bulk minerals and construction materials – between all points of the country.

The differing business models, priorities and purposes employed by transport operators have been a key feature and driver of the success and growth of the sector. Australia's future economic growth will depend heavily on the sector's ability to achieve further improvements in efficiency, productivity and safety.

Participants in the Australian road transport sector have long recognised the importance of safety and been willing to work with Governments and other road transport users to improve safety outcomes. As acknowledged by the Directions Paper, a number of safety risks are beyond the scope of industry, such as road conditions and the behaviour of other road

users. However, for those risks that do fall within the scope of industry control, numerous initiatives have been identified and introduced to ensure safety is a key consideration in decision making, in addition to commercial and industrial objectives.

Today, industry driven Codes of Conduct provide a framework for organisations to operate both safely and commercially. Numerous regulations and legislation exist at national and state levels to ensure and enforce behaviours aimed at increasing safety outcomes, including Chain of Responsibility legislation, Independent Contractor legislation, Workplace Health and Safety legislation and the ALC National Safety Codes.

Results to date of these initiatives, as well as significant investment in roads and new vehicles and technology, have been significant and should not be underestimated. Equally as important is that they have been broadly adopted and accepted as 'part of doing business'.

Increasing industry concern about the complex regulatory environment that presently exists has been partially allayed by the Council of Australian Government's decision to establish the National Heavy Vehicle Regulator (NHVR) from 2013. Consolidating legislation under one national banner represents a powerful and effective model for the delivery of further safety improvements.

For these reasons ALC believes that the establishment of a tribunal, as proposed in the Directions Paper, is a step against the positive momentum currently being experienced. Rather than improve safety outcomes, ALC believes the introduction of a new layer of regulation and another entity will generate duplication, confusion and cost, resulting in reduced viability of smaller operators and increased costs to consumers without achieving a commensurate improvement in safety outcomes.

ALC vehemently opposes the imposition of statutory provisions duplicating other obligations imposed by law that do not tangibly add to industry participant safety.

As stated earlier, Industry has already proactively introduced self regulating mechanisms to increase safety.

ALC has worked closely with its members to develop the ALC Safe Payments Systems Statement and the National Logistics Safety Code. ALC is committed to further developing the Code with industry and the appropriate regulating bodies to increase its scope, as well as broaden its application.

Codes that focus on measurement and outcomes enable individual organisations to operate under their own business model while achieving “accepted” safety outcomes.

In an industry of this level of diversity and disparity, it is a much more sustainable, efficient and effective model than attempting to have one central entity, staffed by a small numbers of regulators and government representatives, develop and enforce rates of pay that will suit each and every one of the tens of thousands of organisations delivering road transport services.

It should also be noted that the freight transport and logistics industry has devoted considerable time and resources developing the National Transport Commission *Guidelines for Managing Heavy Vehicle Driver Fatigue*¹ which assists fatigue management within industry that will be used as a source for the Heavy Vehicle National Law (HVNL) and model work health and safety laws.

It follows that ALC is disappointed that the Government has elected to proceed with the Bill, which effectively introduces an ‘industrial arbitration’ model of dealing with remuneration and safety reforms rather than allowing the mechanisms that are available to operate.

This is particularly the case where the link between remuneration levels and safety outcomes has not been proved.

The ‘missing link’ between remuneration levels and safety outcomes

The regulatory impact statement (**RIS**) accompanying the Bill does not support a definitive link between remuneration levels and safety outcomes and so it is premature for a tribunal such as the Road Safety Remuneration Tribunal to be established in the absence of such a link.

The RIS says that:

The Australian road transport industry generally has a strong safety performance and key safety initiatives, such as CoR and fatigue management laws which are being bedded down, so further improvements in road safety can be expected to continue. Important initiatives including the NHVR and the National Road Safety Strategy should have a positive effect on road safety. Governments are also continuing to invest in road infrastructure, including quality rest stops, divided roads and improved freight corridors, which the NTC put forward as major catalysts for a safer road transport industry.

However, as the current system does not address the link between remuneration and safety, no action may mean that the financial incentive to engage in practices which are often a factor in heavy vehicle crashes - speeding, working long hours and using illicit substances - would remain and potentially undermine these other Government investments. Improvements in road transport laws are underway but the current system is reported in stakeholder submissions to lack consistency and uniformity and is complex at the state level, especially for owner drivers.

¹ National Transport Commission Guidelines For Managing Heavy Vehicle Driver Fatigue
www.ntc.gov.au/filemedia/bulletins/Guidelines_Fatigue_August07.pdf

Despite the developments outlined earlier, it would appear that the investigation of further reforms may be warranted in relation to low remuneration and inappropriate payment systems for owner drivers, which are antecedent factors to fatigue and speeding.²

It also says:

The road safety benefits assessed in this RIS are also considered very conservative based on the assumptions used. The road safety elasticities used in this RIS are sourced from a limited number of international studies. Further empirical work is required to validate these results for the Australian case. It may be the case that the elasticities would differ by road freight segment, resulting in a higher weighted elasticity across the industry. Moreover, the incremental safety benefits are net of the savings expected from non-remuneration related safety programs currently in place..... The possible uplift in road safety associated with adding remuneration related safety programs to the current suite of approaches has not been investigated. While the RIS assumes that there will be different levels of risk in each segment (proxied by the number of crashes), it assumes that drivers' risk profiles do not vary across segment. This is a simplifying assumption given incomplete and uncertain data.³

And also states:

Speed and fatigue are often identified as the primary cause for a crash but it is a much harder task to prove that drivers were speeding because of the manner or quantum of their remuneration. There is some research to suggest that the remuneration for drivers is a factor in safety outcomes, however data at this point in time is limited and being definitive around the causal link between rates and safety is difficult.⁴

whilst page 19 of the 2008 National Transport Commission report *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry* – the publication that formed the basis for these changes, said:

While it cannot be shown that low rates of pay and methods of payments *directly* cause truck crashes, a point argued by several submissions, it can be shown that low rates of pay and performance based payment systems do create an incentive for, or encourage, other on-road behaviours which lead to poor safety outcomes.

It is finally noted the Parliamentary Library Bills Digest records that the RIS which forms part of the Explanatory Memorandum does not provide unqualified support for instituting the Tribunal.⁵

It would therefore appear premature to establish a tribunal such as the Road Safety Remuneration Tribunal as if the link has been proved.

ALC therefore requests that the Committee recommend that the Bill is not introduced into the House of Representatives until a link between remuneration and road safety is proved.

ALC has strongly argued that safety issues are best dealt with through the operation of industry specific legislation enforced by a specialist regulator.

The COAG process has led to the development of the HVNL currently before the Queensland Parliament, that will bring a high degree of uniformity of laws relating to the safe operation of heavy vehicles.

It is also proposed that the HVNL will be regulated by a specialist administrative body - the NHVR.

The national scheme is due to commence on 1 January 2013.

One of the objectives of the HVNL is to promote public safety⁶, whilst the functions of the NHVR include the identification and promotion of best practice methods for managing the risks to public safety arising from the use of heavy vehicles on roads, as well as encouraging and promoting safe and productive business practices of people involved in the road transport of goods or passengers.⁷

2 RIS p.xxvi

3 RIS p.xlviii

4 RIS p.iv

5 *Bills Digest* No.88 2011-12 Road Safety Remuneration Bill p.23

6 Clause 3(a) of the HVNL

7 Paragraphs 600(2)(j) and (k) of the HVNL

Rather than add an additional body with the capacity to regulate the operations of the heavy vehicle sector, the Committee should recommend the Australian Government encourage the new NHVR to draw on its experience gained in regulating the heavy vehicle sector as well as its own research, to continue to identify ways to increase road safety.

However, if the Bill is to proceed, ALC requests the Committee to make amendments to the Bill, as discussed below:

What should the Road Safety Remuneration Tribunal do?

The Bill is described as being a 'road safety remuneration Bill'.

However, it is far more than that.

This is made clear by clause 90 of the explanatory memorandum, which says:

90. The Tribunal can make orders in relation to any of the following:

- » conditions about minimum remuneration and other entitlements for road transport drivers who are employees, additional to those set out in any modern award relevant to the road transport industry. The relevant modern awards are those referred to in the definition of 'road transport industry';
- » conditions about minimum rates of remuneration and conditions of engagement for road transport drivers who are independent contractors;
- » conditions about industry practices for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods;
- » ways of reducing or removing remuneration-related incentives, pressures, and practices (including practices of participants in the supply chain) that contribute unsafe work practices (for example, speeding or excessive working hours).

This describes the ambit of clause 27, which reads:

1. If the Tribunal decides to make a road safety remuneration order, the Tribunal may make any provision in the order that the Tribunal considers appropriate in relation to remuneration and related conditions for road transport drivers to whom the order applies.

2. Without limiting subsection (1), the Tribunal may make provision in the order in relation to any of the following:
 - a. conditions about minimum remuneration and other entitlements for road transport drivers who are employees, additional to those set out in any modern award relevant to the road transport industry (see subsection 20(2));
 - b. conditions about minimum rates of remuneration and conditions of engagement for road transport drivers who are independent contractors;
 - c. conditions for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods;
 - d. ways of reducing or removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.

It is therefore appropriate for paragraphs 87 and 88 of the explanatory memorandum to note:

87. Subclause 27(1) provides that the Tribunal may make any provision in the order it considers appropriate in relation to remuneration and related conditions for road transport drivers.
88. Subclause 27(2) provides that the Tribunal can make orders in relation to matters listed in this subclause. It should be noted that this list is also referred to in the definition of 'related conditions' as including 'matters of a kind referred to in subclause 27(2)'. The definition is intended to identify the broad scope of 'related conditions', without unduly limiting what the Tribunal may find necessary to make orders about. Also, the beginning of subclause 27(2) specifically notes that the list is not intended

The net effect is that a full bench of the Road Safety Remuneration Tribunal (constituting the Tribunal President, a Fair Work Australia member and an industry member) are contingently capable of making decisions about loading trucks and managing fatigue.

This is highly undesirable.

ALC members are committed to the general duty imposed by the workplace health and safety model law that commenced operation in some Australian jurisdictions on 1 January 2012 which requires a person undertaking a business undertaking to ensure that workplace risks are as low as reasonably practicable (**ALARP**).

This necessarily includes responsibility towards independent contractors engaged by operators.

There is a direct collision between the philosophy of this Bill, which raises the spectre of inserting command/control regulation in an areas where other laws require the application of ALARP principles - which in one way places greater burdens on operators as ALARP implicitly requires implementation of 'best practice' and continuous improvement.

It should also be noted the HVNL will specifically manage speeding and fatigue management in the Australian road long haul sector to ensure there is a more national approach to achieving positive safety outcomes.

Operators face prosecution if they fail to take all reasonable steps to ensure the HVNL is not been breached – see in particular chapters 5 and 6 of the HVNL, as introduced into the Queensland Parliament in December 2011.

Paragraph 20(1) (g) of the Bill states that the Tribunal must have regard to the need to avoid 'unnecessary' overlap with the *Fair Work Act 2009* or any other law prescribed.

However, the need to *avoid* unnecessary overlap must mean that *some* overlap is anticipated.

It is particularly noted that Subdivision A of Division 3 of Part 1 of the Bill provides that the Bill prevails over (amongst other things) state laws.

That would mean that a road operator would have to follow any road safety remuneration order made by the Road Safety Remuneration Tribunal that specifically deals with (for instance) truck loading or fatigue, notwithstanding the obligations of operators under proposed nationally consistent heavy vehicle and WHS/OHS laws.⁸

If an order is made with respect to (for example) the loading of goods, one possible outcome could be that operators will be obliged to adopt the practices in vogue at the time the instrument is made..

This means that it will be unlawful for operators to adopt more efficient and safer practices that can and do develop dynamically with improvements in technology etc - something that a reasonable observer would have thought that an operator in an ALARP safety environment would have been obliged to do.

This 'direct collision' between different statutory schemes is highly undesirable as it leads to uncertainty in the law, as well as reducing safety outcomes.

As mentioned previously, ALC has strongly argued that safety issues are best dealt with by a specialist regulator – in the case of heavy vehicles the HVNL, regulated by a specialist law – in the case of heavy vehicles the NHVR.

This is so regulators with specific expertise in a subject area will be making decisions in areas where they possess a greater background in the relevant area of regulation, lessening the possibility of regulatory failure.

This regulatory regime should be the primary method used to ensure driver safety.

If the Tribunal is to exist, it should be restricted to matters directly pertaining to remuneration.

It should also be placed under a mandatory duty to provide reasons as to why any other existing instrument (including a Modern Award made under the FWA) or law (such as the HVNL or workplace health and safety legislation) does not adequately cover the subject matter of a proposed road safety remuneration order.

It should finally be required to estimate the costs involved in implementing an order, including the compliance costs involved in having to adhere with different statutory schemes.

⁸ The proposed Heavy Vehicle National Law and the Workplace Health and Safety Law are applied national schemes or models. That means whilst generally nationally consistent, they remain state laws. This means to the extent the terms of these laws are inconsistent with a *determination by the Tribunal* the determination prevails by force of clause 10 of the Bill

Emphasising the importance of evidence based decision making

The Bill states that the Tribunal may make a road safety remuneration order with respect to 'remuneration and related conditions':

- a. on its own initiative if it is in relation to a matter identified in its work program; or
- b. at its discretion, on application from (effectively) an industry participant or an industrial association with respect to something that is, **or is capable of** being included, in the Tribunal's work plan.

One of the positive features of the Bill is to require the Tribunal to prepare a work program with industry participation.

It is therefore disappointing that a contingent capacity exists to allow an industry participant to make an application for a road safety remuneration order if it relates to a matter that is 'capable of' being included in the work program.

If the Tribunal is to make remuneration decisions that will override other instruments (such as contracts with independent contractors or Fair Work Australia Modern Awards), decisions must be evidence based and made in a careful manner.

That means decisions should only be made on the basis of research programs agreed with industry.

It will also mean the capacity for 'forum shopping' will be reduced.

The only matters that the Road Safety Remuneration Tribunal should be able to make a Road Safety Remuneration Order on are those matters on the Tribunal work plan.

Honesty in legislation

Finally, it is important there is transparency in the law.

Paying drivers sufficient remuneration to ensure that safety risks are avoided is of course important.

However, if the Road Safety Remuneration Tribunal is to make decisions on matters other than the remuneration paid by drivers dealt with by other laws (thus raising the spectre of forum shopping), statutory tags contained in legislation should properly describe the true ambit of the legislation.

To do otherwise would be dishonest.

ALC requests the Committee to recommend that if the Bill is to proceed, its ambit should be restricted to remuneration matters.

Therefore:

- » clause 3 (the objects clause) should be amended to make clear that the Tribunal should deal with remuneration matters;
- » clause 27 should be amended so that the concept of 'related conditions' should be removed from the Bill
- » subclauses 19(3) – (6) should be removed so that the Tribunal can only make orders with respect to matters on the Tribunal work plan; and
- » if the ambit of the Tribunal is not amended, the Committee should recommend the Bill be renamed the Road Transport Regulation Bill and orders described as road transport regulation orders.

Jurisdiction of Tribunal

Application to long distance operations only

The Bill is capable of regulating the broadly defined 'road transport industry', which includes the road transport and distribution, long distance operations, cash in transit and waste management industries (as they are described in the relevant modern industry awards), as well as all road transport drivers, including independent contractors.

It is noted that the research relating to driver safety revolves around long distance operations.

It is respectfully submitted that extending the coverage of the Bill to couriers and cash in transit industries is an exercise in jurisdictional creep.

The Modern Award system and the standard occupational health and safety laws adequately deal with these market sectors.

ALC requests the Committee to ask the Government to explain why these sectors should be regulated under the terms of the Bill.

The Bill should be amended so it only covers remuneration issues relating to long distance operations.

Independent contractors

The Bill clearly intends to create a safety net scheme of regulation for these road transport drivers, and effectively creates a 'third class' of worker who will be entitled to a similar safety net system as an employee under the *Fair Work Act* yet for all other purposes (i.e. taxation, superannuation or workers' compensation) may continue to be treated as an independent contractor.

This is an outcome that could confuse both operators and owner/drivers.

Moreover, limiting the capacity for operators to efficiently manage the peaks and troughs of freight volumes by impeding their ability to engage independent contractors could impinge the efficient management of the freight effort as well as increasing costs throughout the freight chain.

ALC finally notes that *bona fide* independent contractors are capable of having unfair contracts reviewed by the Federal Magistrates' Court under the *Independent Contractors Act 2006* and that the *Competition and Consumer Act 2010* permits ACCC can authorise collective bargaining with larger operators.

It follows there are federal mechanisms that are reasonably convenient that an independent contractor may access to deal with remuneration related issues.

That said, ALC notes the RIS operates on the assumption there is a link between poor remuneration and accidents and that the national minimum wage is an 'economically efficient remuneration level', carrying a clear implication that many operators are yielding less than the minimum wage.

The RIS also suggests that one reason for this is a failure by small operators to factor into the costs of operating a business. Another reason suggested is the fact that many contracts specify payment on the basis of distance without factoring in waiting and loading time.

A possible alternative model (discussed in the RIS) is to adopt some of the elements of existing Victorian legislation requiring the provision of information to independent contractors so they can make an informed business decision without the undue interference from an arbitral body.

To the extent that the Bill deals with independent contractors, ALC requests the Committee to consider the insertion of provisions requiring the publication of an information booklet contained in Part 2 of the *Owner Drivers and Forestry Contractors Act 2005 (Vic)*, which requires the provision of information to independent contractors so they can make an informed business decision.

Adoption of this recommendation would help to ensure information consistency between independent contractor and operator, allowing both parties to negotiate arrangements that mutually support the business model freely adopted by each party.

***Repeal of state based regulation dealing
with the same issue***

Finally, the Bill preserves by and large the effect of legislation in force in NSW, Victoria and WA, with the Bill only prevailing where there is inconsistency.

Given the NSW and Commonwealth legislation can regulate the hirer/independent contractor relationship, there is a possibility of 'forum shopping', with relevant parties gaming the system and utilising the legislative scheme that may provide (from their perspective) the most favourable outcome.

This on its face is inefficient and imposes unreasonable administrative costs on companies who may be required to comply with up to four different legislative schemes dealing with the hirer/independent contractor relationship.

Put another way, ALC previously described this Bill as creating an 'industrial arbitration' model of regulating the driver/operator relationship.

The Commonwealth has exercised its constitutional capacity to effectively 'cover the field' with respect to workplace relations.

It follows that given the ambit of the unamended Bill (complete with the involvement of Fair Work Australia in the development of orders and subsequent enforcement) it is equally appropriate for this industry sector to have its industrial relationship regulated the same way throughout Australia.

If the Bill is to proceed, it should be amended so that it is the legislation that deals, as far as constitutionally possible, with remuneration issues relating to heavy vehicle drivers to the exclusion of state laws currently in place.



MEMBERS



ASSOCIATE MEMBERS

- | | | |
|---|--|---|
| » Agility Logistics | » Department of Transport VIC | » Sydney Port Corporation |
| » Allied Express | » Department of Transport and Main Roads QLD | » Telstra |
| » Australian Air Express | » GS1 Australia Limited | » TNT Australia Pty Ltd |
| » Australian Food and Grocery Council | » John Swire & Sons Pty Ltd | » Transport & Logistics Industry Skills Council |
| » Australian Livestock and Rural Transporters Association | » Metcash Ltd | » Transport Certification Australia |
| » BlueScope Steel | » OneSteel | » Victorian Freight & Logistics Council |
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HONORARY FELLOWS

Paul Little AO – February 2011
Peter Gunn – February 2011
Ivan Backman – May 2010
David Williams OAM – May 2010

PO Box 20 DEAKIN WEST, ACT, 2600
17b National Press Club Building, 16 National Circuit, Barton, ACT, 2600
P: +61 2 6273 0744 F: +61 2 6273 307 E: admin@austlogistics.com.au
www.austlogistics.com.au

