

Road haulage in Australia: keeping vulnerable workers safe and sound

[Despite the dominance of neoliberal ideology and policies, organised labour can mount campaigns to confront their adverse effects on the safety, health and wellbeing of workers, especially those in precarious work arrangements. A campaign by the Australian transport workers' union shows that it is possible to regulate supply chains.](#)

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Australian unions aim to cut road haulage accidents through enhanced customer responsibility.

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1. Australasia is a region of Oceania comprising Australia, New Zealand, the island of New Guinea, and neighbouring islands in the Pacific Ocean.

2. Quinlan M. (2001) *Report of Inquiry into Safety in the Long Haul Trucking Industry*, Motor Accidents Authority of New South Wales, Sydney. Downloadable at <http://eprints.mdx.ac.uk/7234>

3. OHS legislation in Australia remains largely a matter for the states.

In Europe, North America and Australasia¹ the road transport industry is marked by intense competition and powerful client pressures on drivers and operators that have resulted in cost-cutting practices such as elaborate subcontracting chains and evasion of regulatory requirements (relating to pay, hours of work and safety).

The resulting combination of low pay and long hours for both employee and self-employed drivers – often competing for the same jobs, has had serious negative consequences on the health and safety of drivers but also other road users.

Truck driving remains one of the most dangerous occupations in terms of work-related fatalities – both in terms of overall numbers and incidence/frequency. The industry is marked by unhealthy and dangerous practices such as excessive hours of work, speeding to meet tight schedules, drug use to combat fatigue, overloading and inadequate maintenance. For example, legally permissible working hours for truck drivers in many countries are around 72 hours per week, about double that of most other workers and often exceeded by drivers in practice.

Traditionally, regulation of the industry has focused on road safety and fatigue provisions. In Australia and many other countries, the maximum hours apply to all drivers irrespective of employment status, but where this isn't the case self-employed drivers can be used to undermine the effectiveness of working/driving hour regimes.

Importantly, the traditional regulation of truck driver safety based on transport legislation focuses on driver behaviour rather than the power structures that shape it. It fails to adopt a more comprehensive approach to occupational health and safety (OHS) that recognises the supply chains and commercial practices underpinning driving risks.

It has also been difficult for unions to address these issues because many drivers, especially self-employed drivers, do not belong to unions and neoliberal policies undermine efforts to set minimum standards at national level and essentially result in a race to the bottom.

In Australia, the Transport Workers Union of Australia (TWUA) and community groups (most notably a national body representing the families of truck drivers) have waged a long-term campaign to address these issues at both the industrial and political level. This campaign has gained traction and provides a model for addressing poor OHS arising from supply chains not only in trucking but elsewhere.

Recognising the powerful interest groups it would confront, the union adopted a strategic and long-term approach to securing change.

The "chain of responsibility"

In 2001 it secured a government inquiry into safety in the long haul trucking industry that examined whether commercial pressures from clients/shippers and use of subcontracting were undermining safety. The inquiry confirmed this association, arguing that these pressures drove unsafe practices as well as undermining the efforts of regulators to address hazards such as fatigue/excessive hours of work.

The Inquiry report² recommended a regulatory approach which made parties higher up the supply chain (including clients) responsible for the safety implications of the conditions their contracts with transport operators imposed. The report also recommended the establishment of minimum "safe rates" of remuneration to apply to both employee and self-employed drivers to prevent payment levels and systems (such as kilometre-based pay rates) undercutting safety.

Central to these recommendations was the notion of "chain of responsibility" (COR). What this means is that supply chains were not meant to be just ways for a more powerful party to obtain a good or service at the expense of less powerful ones without assuming some responsibility for the health and safety consequences of these contractual arrangements.

In Australia, COR was gaining traction at state and federal level, being incorporated into road transport standards and laws governing issues like fatigue/driving-hours, speeding and overloading.

Government agencies responsible for OHS in most Australian states³ also took a more active role in road transport safety in response to union and other pressures. Like many EU countries, OHS laws in Australia have supply chain provisions because they impose duties on parties other than employers, like suppliers.

The largest Australian state – New South Wales – introduced a road transport fatigue regulation into its OHS legislation in 2005 that imposed explicit responsibilities on clients, brokers and other parties in the transport supply chain.

The TWUA was also able to extend supply chain provisions through a claim to the New South Wales Industrial Relations Commission in 2006 that resulted in a mandated set of working conditions (called awards) for drivers. In other words, it secured supply chain provisions through collective 'bargaining' for long haul drivers (a similar set of award provisions was established for armoured-car cash-in-transit drivers who had also been contracted out).

The TWUA had also secured minimum payments regimes for owner/drivers in short

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haul trucking in some states as well as supply chain provisions in an award governing armoured car drivers engaged in cash delivery. In both cases this was a response to the widespread subcontracting of transport activities including the 'conversion' of employee drivers into self-employed drivers to evade regulatory protections applying to the former.

Remuneration and safety

Given the interstate nature of much long haul truck driving, covering similar distances to the USA and comparable if not longer distances than across Europe, the remuneration issue raised in the 2001 safety inquiry could only be dealt with at federal level.

In 2008 the recently elected federal Labor government had the National Transport Commission – the federal transport body responsible for coordinating safety – to review the evidence linking remuneration to safety in the heavy vehicle industry.

Drawing on evidence from Australia, the US and other countries, the review found strong evidence that both low remuneration and payment by results (i.e., trip- or kilometre-based pay rates) resulted in poorer OHS outcomes in the heavy vehicle industry. It was recommended that a legislative framework should be established with a tribunal to set minimum "safe rates" of remuneration to cover all truck drivers – whether they be employees or self-employed.

The review rejected employer and supplier arguments that fatigue provisions

should be the sole focus of regulatory intervention, arguing that it was essential to address the underlying causes of work practices that led to fatigue and that payment systems were critical in this regard. It also rejected reliance on unfair contract provisions as these were based on individual complaints, risked discriminatory responses (such as blacklisting of drivers) and failed to set a wide-ranging standard.

A tripartite committee was established to consider the best mechanism for introducing the regime. Following this and intense lobbying by the union and public demonstrations, federal legislation – the Road Safety Remuneration Act – was enacted in March 2012.

The legislation established a new industrial tribunal for road transport which effectively extended the coverage of the existing federal industrial relations tribunal, Fair Work Australia, which can both set minimum wages and conditions and also ratify collective agreements between employers and unions, to include remuneration-related issues affecting both employee and self-employed drivers of heavy vehicles. The tribunal will include a number of industry members and is to commence operations from 1 July 2012.

Remuneration is defined widely: it includes not only direct payment for driving but reimbursement for other transport-related activities such as costs imposed on a driver as a result of being kept waiting for an unreasonable time in order to load or unload at a warehouse.

The role of the tribunal is to ensure that drivers do not have pay-related incentives or pressures to work in an unsafe manner,

including being paid for waiting time. The tribunal can develop and apply enforceable standards (including sector specific standards like livestock and agricultural produce for example) throughout the transport supply chain to ensure the safety of drivers. It is also to ensure that all participants in the supply chain take responsibility for maintaining those standards. The tribunal can inquire into particular sectors or issues and can also resolve disputes between parties in the supply chain about remuneration-related safety.

While the tribunal can consider urgent issues from July 2012 onwards, its main activities will commence in January 2013. Under the Fair Work Australia legislation, inspectors will be able to ensure compliance with tribunal determinations. Union officials also have the right to enter workplaces to identify suspected breaches of determinations (they have the same rights with regard to OHS legislation).

The TWUA is currently preparing a log of claims to go before the Road Safety Remuneration Tribunal. In some areas such as waiting times sector-wide determinations agreed to by industry associations are possible. Some employers and industry associations have supported the legislation though bodies like the Australian Trucking Association and the Australian Logistics Council (which represent transport clients) remain implacably opposed.

The union is also continuing to mount a public campaign regarding the impact of supply chains on driver health and safety, pressing regulators to prosecute major clients/shippers (under OHS legislation) for placing transport operators and drivers under undue pressure (and in breach of their general duty obligations under OHS laws).

It is important to note that in addition to the Road Safety Remuneration Act, the Australian government also recently enacted similar supply chain legislation to protect predominantly immigrant women working at home or in small workplaces in the clothing industry. The federal government's OHS agency SafeWork Australia has also identified supply chains as a key element in its strategic agenda.

The review showed that it was essential to address the underlying causes of work practices that led to fatigue and that payment systems were critical in this regard.

In Europe and elsewhere

Given the rapid changes in work organisation and business practices, government OHS agencies in Europe and elsewhere should recognise that they must target supply chains or risk critical OHS standards simply being bypassed.

Labour inspectorates in Europe are not unaware of the problems posed by changes in work organisation but, like their counterparts elsewhere, are often hamstrung by a combination of limited resources and the difficulty of taking actions that may be viewed as inconsistent with the dominant neoliberal policy discourse. In 2010-11, at the behest of the body representing chief labour inspectors in Europe, the European Commission funded a report into how inspectorates were meeting the challenges of new and emergent risks at work. This report focused heavily on changes to work organisation as the prime driver of new and emergent risks.

Both the European Occupational Safety and Health Agency and the Foundation for the Improvement of Living and Working Conditions have addressed changes in work organisation though not specifically supply chains. The connection between subcontracting/supply chains and safety has not received detailed consideration from the European Transport Safety Council.

It is critical that the recent road transport regulatory developments in Australia should not remain isolated. The TWUA and several other transport unions are pushing, with some success, for the International Transport Federation (ITF) to see supply chains as a critical safety issue in road transport as is already the case with maritime transport. Thus, for example, supply chain regulation was one of the issues addressed at an ITF conference on commercial driver OHS held in San Francisco in November 2011. The next step will be to initiate active campaigns on the issue. In the USA, the Teamsters Union has recently secured legislation in the state of Illinois making public safety a critical element in tendering for school bus contracts.

Taken as a whole, the Australian development in road transport raises four important points:

- 1. Safe remuneration** for all drivers irrespective of their employment status is an essential part of a strategic response to unsafe and exploitive practices in the transport supply chain.
- 2. Worker and public safety** can be a significant mobilising point for unions as it matters to their members, other workers and the community at large.
- 3. The "safe rates"** initiative can be seen as part of a broader effort to develop effective social protection responses to the regulatory

4. Like the anti-sweating campaigns relating to exploited clothing workers in sweatshops or working from home.

evasion practices of corporate business. The succession of contracts upon which supply chains are based need to incorporate parallel sets of minimum labour standards and contractual tracking devices so they cannot be used to evade minimum community standards. In policy terms it can also be portrayed as the logical response to liberalized markets in transport and elsewhere because it does not prevent competition amongst transport operators but does establish a floor of substantive conditions to protect workers and the community from exploitive, dangerous/health diminishing, unsustainable and socially corrosive practices.

4. Over 100 years ago union and community mobilisations in Europe, North America and Australasia on behalf of **vulnerable workers**⁴ helped to initiate minimum wage and more effective OHS laws. There was widespread legislative 'borrowing' where even gains in remote countries like Australia and New Zealand could exert a wider influence. There are important lessons here for the current context. The campaign on behalf of vulnerable truck drivers and the resulting supply chain regulation should be viewed in this light. ●

Further reading

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