

Industrial Relations and Other Legislation Amendment Bill 2022

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Submission to the Queensland Parliamentary
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Inquiry into the Industrial Relations and Other
Legislation Amendment Bill 2022.

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About the Transport Workers' Union

The Transport Workers' Union ('TWU') represents over 70,000 men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicle and freight logistic industries. Of those transport workers represented, approximately 20,000 of those workers are owner drivers.

With over one hundred years' experience in conducting Australia's passenger and freight task, the TWU has been active in establishing industry standards that improve the lives and safety of transport workers, their families and the community. This work has included a long history of establishing innovative regulatory systems. These systems have helped to ensure that owner drivers, also often referred to as contractors, and all other transport workers have access to fair rights and entitlements in their workplaces.

The TWU also represents workers in the transport sector of the emerging 'gig economy' which includes rideshare, food delivery and more recently, parcel delivery couriers. Since 2018, the TWU has been leading a campaign to ensure that transport workers in the gig-economy are provided access to safe, fair and ethical work standards.

Introduction

The TWU welcomes the opportunity to contribute to the Queensland Parliamentary Education, Employment and Training Committee ('the Committee') Inquiry on the Industrial Relations and Other Legislation Amendment Bill ('the Bill').

The focus of the TWU's submission will be in relation to the new provisions that will empower the QIRC to set minimum standards for independent courier drivers in the road transport sector.

The TWU would like to take this opportunity to thank the reviewers of the Five Year Review of the Industrial Relations Act 2016, Mr John Thompson and The Hon Linda Lavarch for their commitment to understanding the issues facing transport operators and their expertise and thoroughness in conducting the review.

The TWU would also like to thank the Queensland Cabinet for their endorsement of the recommendations, and specifically to Minister Grace Grace MP and the Office of Industrial Relations for their efforts throughout the process.

The TWU supports the other elements of the Bill that will protect against sexual harassment, improve pay equity, modernise leave entitlements under the State system and importantly, clarify the role of registered organisations to protect against misrepresentation and to support the industrial organisations that operate within the legal framework designed for registered trade unions.

For the purpose of the inquiry, we endorse the QCU submission to the Committee and their recommendations.

Executive Summary

The proposed Chapter 10A of the Industrial Relations Act 2016 (QLD) as reflected in the Bill will be a ground-breaking piece of legislation that will afford long overdue protections and enforceable minimum standards and conditions to all Queensland based transport family businesses, owner-drivers and independent couriers.

Currently, the only enforceable standards and protections in Australia that owner-drivers enjoy are contained in Chapter 6 of the New South Wales Industrial Relations Act 1996, legislation that has had bi-partisan support for over 40 years in New South Wales due to its balanced protection of small business and contribution to a sustainable transport industry.

On an overall level the Chapter 10A provisions of the Bill have taken the key elements of Chapter 6 while improving on components that require changes after over 40 years of operation, factoring in changes to the transport industry and technological developments.

This legislation will help address the crisis in road transport that has resulted in record insolvency for small business, an unsustainable and horrific mortality rate in the transport industry and will help end the cycle of exploitation for many low paid operators. The TWU and our members wish to thank the Queensland Government for their commitment to improving the lives of transport workers and taking a stand against the deadly exploitation in the transport industry.

Our submission will provide an overview of the current state of the transport sector that will demonstrate the dire need for this legislation and focus on a number of improvements that could be made to improve the sustainable operation and achieve the legislative intent of the Bill. This includes:

- Incorporating the definition of ‘agent’ to ensure that technology companies do not attempt to avoid the definition of principal contractor.
- Incorporating Ch9 of the Queensland Industrial Relations Act as an applied provision within the Ch10A component of the Bill, specifically for registered industrial organisations to access Right of Entry and Record Inspection provisions, the absence of which will significantly hinder the ability for registered industrial organisations to ensure compliance with registered agreements and which exists in the New South Wales system.
- The insertion of a broad definition of ‘goods’ to provide certainty and combat avoidance by principal contractors.

The Crisis in Road Transport and the Need for Reform

The Safety Crisis

The introduction of this Bill is critical to addressing the crisis in road transport and combating the safety and insolvency issues and the race to the bottom that is currently occurring in transport.

The rise of insecure forms of work, supply chain and contracting pressures and a lack of appropriate regulatory safety nets for drivers and operators has led to increased competition

and dangerous work practices for the over 648,000 workers employed or engaged in the Australian transport industry.

The transport industry accounts for more workplace fatalities than any other industry. In 2019, a third of all worker fatalities that occurred were within the Transport, Postal and Warehousing sector.¹ More disturbingly, this sector has experienced a 16% increase in the fatality rate over the previous 5-year average. 72% of all worker fatalities in Australia were related to vehicles, with worker fatalities resulting from vehicle collision increasing 79% between 2018-2019.²

In 2019, heavy vehicle fatalities accounted for 56% of all fatalities as a result of a vehicle collision. Road transport workers remain the most likely to be killed at work, with a fatality rate 9.4 times higher than the average across all industries. In the past 10 years, 1,896 transport workers and members of the general public have been killed as a result of collisions with heavy vehicles alone.³ These levels of mortality would not be tolerated in any other industry, yet few jurisdictions have acted to address the root causes of many of these fatalities. We are pleased to see the Queensland Government acting on this crisis and taking necessary action to ease the pressure on these workers.

Underlying Factors

Economic and contracting pressures through transport supply chains are the key and overwhelming determinant of this safety crisis. As these pressures have increased in recent years, transport companies, owner-drivers and workers have been forced to adopt unsustainable and dangerous practices with deadly consequences. This trend has been exacerbated by a combination of factors including the highly competitive nature of the road transport industry, a high prevalence of non-standard forms of employment (dependent contracting), market fragmentation and a lack of client accountability.

The road transport industry is a highly competitive industry where a plethora of owner-drivers and transport operators are 'price-takers', without the economic and market power to set or negotiate their own terms and conditions. These prices, terms and conditions are instead set at the apex of transport supply chains by major transport clients who are not accountable for the conditions they set when awarding transport contracts. In recent decades, this has led to transport clients having caused, through intensely competitive tendering cycles, reduced prices to unsustainable levels in the broader industry.

Further down the supply chain, many road transport operators are being constantly pushed to breaking point – forced to cut corners and reduce standards to sustain themselves or face becoming insolvent. In many cases this results in the delay or abandonment of maintenance and safety improvements to vehicles. For this reason, the TWU is strongly encouraged by the Bill's proposal to factor in cost-recovery for contract determinations to address this issue.

It is for the above reason that the road transport industry has one of the highest rates of insolvency of any industry and, at the same time, one of the highest rates of workplace

¹ Department of Jobs and Small Business, Australian Jobs, 2019, <https://docs.employment.gov.au/system/files/doc/other/australianjobs2019.pdf>

² Department of Infrastructure, Transport, Regional Development and Communications. Australia Road Deaths Database, https://www.bitre.gov.au/statistics/safety/fatal_road_crash_database, 2019

³ Work-related Traumatic Injury Fatalities, Australia, Safe Work Australia, 2019

fatalities. Transport workers and operators are being increasingly compelled to work harder and faster to sustain themselves – and this has created an environment where risk-taking behaviour has become the only competitively viable option for businesses.

Australian and international research has long substantiated the link between such economic pressures, risk-taking behaviour and poor safety outcomes. Decades of detailed research and evidence clearly demonstrates the relationship between such pressures and factors such as high numbers of death and injury, chronic fatigue, overloading, speeding, falsification of logbooks/work diaries, excessive hours of work, poor vehicle maintenance and high rates of insolvency.⁴

The effects of these pressures are further exacerbated in the road transport industry given the particular vulnerability of owner drivers and independent couriers who make up approximately 50% of the road transport industry. Owner drivers are self-employed and classified as independent contractors. This leaves these workers with no access to the rights and protections enshrined under industrial law (which only assigns rights and protections to employees). Yet at the same time, owner drivers are often engaged in highly dependent work arrangements in the road transport industry and they are generally unable to set conditions or bargain due to their price-taker status. Without any industrial safety-net owner-drivers are subsequently forced to bear the full brunt of those economic pressures set at the apex of supply chains. This is borne out in the tragic safety statistics which show that owner drivers have a fatality rate almost 27% higher than those engaged as employees.⁵

These considerable issues in the industry are continuing to increase with the emergence of the so-called gig economy in the traditional road transport industry. Gig transport companies are fast eroding already unsustainably low standards for transport workers in the ridesharing (Uber, Didi, Ola), food delivery (Deliveroo, UberEats, Menulog, Doordash) and more recently, the parcel delivery (Amazon Flex) sectors. While transport clients continue to exert unrelenting pressure from the top of supply chains, gig transport operators have opened a new front by unfairly competing with transport operators through highly exploitative work practices.

This market shift that further undermines the conditions for owner-drivers and independent couriers have intensified what was already a pre-existing safety crisis in the transport industry. A Centre for WHS study found that earnings and time pressures were the two most important factors compounding safety in the food delivery industry.⁶ 70% of food delivery workers are now worried about being seriously hurt or killed at work. The tragic reality of this situation has become all too apparent following the deaths of five food delivery workers in the space of just a few weeks in 2020.

Gig transport companies are now moving into more traditional forms of transport including heavy freight and the parcel delivery sector and in doing so, threatening to extend these worrying effects to new frontiers. Uber Freight and Amazon's online freight system is now

⁴ See TWU Submission to “Senate Standing Committees On Rural And Regional Affairs And Transport Re: Inquiry On The Importance Of A Viable, Safe, Sustainable And Efficient Road Transport Industry”, 2021, <https://www.aph.gov.au/DocumentStore.ashx?id=e31aa983-4eb8-45a5-9fac-45dd76a3b21d&subId=706584>

⁵ Safe Work Australia (2013) Work-Related Traumatic Injury Fatalities Australia 2013. <https://www.safeworkaustralia.gov.au/system/files/documents/1702/traumatic-injury-fatalities-report-2013.pdf>

⁶ Centre for WHS, 2020, Work health and safety of food delivery workers in the gig economy, (Sydney: NSW Government, 2020), http://www.centreforwhs.nsw.gov.au/__data/assets/pdf_file/0007/932677/Work-health-and-safety-of-food-delivery-workers-in-the-gig-economy..pdf

well established in the US with worldwide expansion plans including Australia. Standards are already being pushed down in jurisdictions where these systems operate, and traditional service providers are being dangerously undercut as a result. The implications for good Australian employers and companies in the industry, as well as the countless owner-drivers and workers who depend on them, will be catastrophic unless steps are taken by regulators to address this imbalance.

Therefore, the TWU is pleased that the Queensland State Government has introduced a Bill that will seek to provide an industrial safety-net for these owner-drivers and independent couriers. Whilst the TWU acknowledges that significant reforms are needed at a Commonwealth level, the Chapter 10A provisions will provide an ability for these workers to achieve rates and minimum standards that accurately reflect the cost-recovery they require to survive. These reforms will not only stabilise the system and address the race to the bottom in the road transport sector, they will save lives.

Additional Improvements to the Bill

The Queensland Government has made a number of key modernisations to the NSW Chapter 6 model. The TWU appreciates the efforts of the State Government in responding to the new challenges and developments that have occurred in the industry since the original drafting of the New South Wales legislation over 40 years ago.

However, there are a number of changes that could be made to further strengthen the system.

Definition of ‘Goods’

A definition of ‘Goods’, which is referred to throughout, should be added to avoid doubt. In previous litigation where a definition has been absent it has been argued that certain items are not included in goods, most recently by ‘gig economy’ companies arguing that food delivery is not included in the definition of ‘Goods’. In order to avoid this argument, the below definition should be inserted which is taken from the *Road Transport and Distribution Modern Award* with the addition of foodstock, consumables, meals, mail and packages:

goods includes wares, merchandise, material, meals, foodstuffs, consumables, mail, packages, or anything whatsoever whether in its raw or natural state, wholly or partly manufactured state, or of a solid or liquid or gaseous nature and/or otherwise, and/or livestock.

Agency

It is important that the proposed definition of Principal Contractor in 406C cannot be avoided by operators seeking to operate outside of the proposed Bill. In previous litigation delivery companies have attempted to argue that they act as some form of ‘agent’ and that this agency relationship means that the real contractual relationship is between the business utilising the delivery and an independent courier with the company who allocates the work sitting outside this arrangement. To overcome this, a further definition of Principal Contractor must be added to 406C as below:

(2) A **principal contractor** also includes a person who is the agent of an independent courier in circumstances where—

- (a) a courier service contract is made by acceptance by an agent of the independent courier of an offer to enter into a courier services contract not directed specifically to the independent courier; and
- (b) the agent accepted the offer in the course of a business of acting as agent for the receipt and acceptance, on behalf of 2 or more prospective independent couriers, of offers to enter into courier service contracts; and
- (c) the agent is able to allocate the offer to an independent courier on whose behalf an offer received in the course of that business will be accepted by the agent.

Enforcement of Contract Determinations

The transport industry is rife with exploitation of independent courier drivers. Accordingly, the Ch10A component of the Bill should incorporate Chapter 9 of the Act through applied provisions (as occurs in the NSW Chapter 6) so that registered industrial organisations can utilise Right of Entry and Inspections of Records.

Under the current Bill, registered industrial organisations will not have access to Right of Entry and without the inspection elements contained in Chapter 9 it will be much harder to enforce any Contract Instruments made. This will lead to a situation where despite an instrument being made to provide certain rates, the registered industrial organisation will have limited ability to obtain evidence of exploitation, non-compliance and underpayments.

This provision in the NSW legislation operates effectively and has resulted in significant success by registered industrial organisations securing payments for underpaid independent courier drivers who would otherwise have limited recourse or risk termination of their contract by approaching the principal contractor. It is essential for the operation of this system that appropriate records can be obtained and that organisations have the ability to access these workers.

Thank you for the opportunity to provide this submission. The TWU's members and officials are happy to provide any additional information necessary for the committee's deliberations.

Authorised by:



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