

12 March 2015

Workplace Relations Framework
Productivity Commission
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Productivity Commission Inquiry into Workplace Relations Framework

The Australian Logistics Council would like to make a brief submission to the Commission's inquiry into the workplace relations framework, with particular reference to discussions contained in Paper 5: *Other Workplace Relations Issues*.

By way of background, the Australian Logistics Council is the peak national body representing the major and national companies participating in the freight logistics industry. ALC has a whole of supply chain focus with membership spanning the major logistics customers, providers, infrastructure owners and suppliers.

As the Commission points out in box 5.1 of Paper 5 (page 2), the Road Safety Remuneration Tribunal (the Tribunal) was established by the Road Safety Remuneration Tribunal Act 2012 (the Act).

Despite the title of the legislation, ALC notes that a Road Safety Remuneration Order (an Order) made under the Act can not only determine remuneration matters, but also related conditions.

It would therefore be open for the Tribunal (effectively a division of Fair Work Australia) to make a decision relating to, for instance, how trucks should be loaded and unloaded as well as managing fatigue, without necessarily referring to remuneration.

At the same time, the Heavy Vehicle National Law (HVNL) has also commenced operation in all jurisdictions except Western Australia and the Northern Territory. It specifically manages speeding and fatigue management – the areas of greatest safety concern in the sector.

Generally applicable workplace health and safety law also requires a person conducting a business or undertaking to take all reasonably practicable steps to protect the safety of workers.

ALC has strongly argued that safety issues are best dealt with by specialist laws – in the case of heavy vehicles the HVNL, administered by specialist regulators in the newly established National Heavy Vehicle Regulator.

ALC has always been concerned that there can be some overlap between instruments that are (ostensibly) workplace relation instruments with the provisions of the HVNL.

For example, clause 10.6 of the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 prescriptively sets out what should be contained in what is called a safe driving plan, which is designed to be a mechanism to ensure driver safety.

This obligation broadly conflicts with the HVNL, which places an obligation on road operators to take all reasonable steps to ensure that drivers do not drive in a fatigued state or need to speed to meet operational deadlines.

However, the HVNL does so in a manner that allows operators to identify the most efficient manner to give effect to the safety outcomes prescribed in law. See Chapters 5 and 6 of the HVNL.

Subdivision A of Division 3 of Part 1 of the Act is drafted in a manner so that Orders override all other legislative instruments (including Acts of Parliament).

This means a road operator would have to follow any Order made by the Tribunal rather than obligations set out in nationally consistent heavy vehicle and WHS/OHS laws.

This duplication of statutory obligation is a recipe for inefficiency likely to impact on productivity and not improve safety outcomes. This is a significant possibility given that the contents of road safety remuneration orders are not tested by any form of cost benefit analysis or through the preparation of a regulatory impact statement.¹

This is particularly important, given the views of former Deputy President McCarthy given to the Commission in this review and reported in the *Australian Financial Review* of 10 March 2015 that Fair Work Commission members generally came from a legal, public administration, union or employer organisation background and do not possess core understanding of the workings of the economy, or of economics generally or how enterprises work.²

This is also true of the Road Safety Remuneration Tribunal.

More relevant to the Commission's inquiry, ALC notes that the Act is designed to, as far as practicable, treat independent contractors as if they were employees.

ALC notes the Competition and Consumer Act 2010 permits ACCC to authorise collective bargaining with larger operators, while bona fide independent contractors are capable of having unfair contracts reviewed by the Federal Circuit Court under the Independent Contractors Act 2006³. It follows there are federal mechanisms that are reasonably convenient that an independent contractor may access to deal with remuneration related issues.

Moreover, Fair Work Australia can and has made instruments to cover employees who drive heavy vehicles. An example of such an instrument is the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014.

These instruments cover all employees of all forms of legal entities operating heavy vehicles.

¹ No instrument similar to a regulatory impact statement is prepared for the purposes of the development of a Road Safety Remuneration Order. This issue is discussed in the ALC submission to the road safety remuneration system review attached to this letter.

² Fair Work 'doesn't understand economy' *Australian Financial Review* 10 March 2015, p.1,7. See p.7

³ To the extent there is any need for remedial legislation to assist any perceived information asymmetry affecting the capacity of independent contracting is to make informed business decisions, ALC believes that consideration could be given to inserting into relevant laws provisions requiring the publication of an information booklet similar to that required by part 2 of the Owner Drivers and Forestry Contractors Act 2005 (Vic).

This is because the states and territories have referred powers to the Commonwealth to enable Fair Work Australia to make decisions that impact on the employee employer relationship irrespective of the legal entity of the employer. This is in express distinction to the Road Safety Remuneration Tribunal, which only has coverage over constitutional corporations.

This means that due to constitutional limitations, the Tribunal only covers approximately 80% of employees and 60% of owner drivers⁴.

This further example of duplication could be avoided through the abolition of the Tribunal-the view of the majority of the members of ALC.

The views of ALC in this area are discussed in greater length in its January 2014 submission on the road safety remuneration system, and its attachments, which is attached to this letter.

Please contact me on 0418 627 995 or at Michael.kilgariff@austlogistics.com.au should you wish to discuss this matter further.

Yours sincerely



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⁴ House of Representatives Standing Committee on Infrastructure and Communications Advisory report on Bills referred 24 November 2011 paragraph 2.37
http://www.apf.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ic/24nov/report.htm See also <http://www.fairwork.gov.au/about-us/the-fair-work-system/road-safety-remuneration-tribunal/supply-chain-participants/am-i-covered-by-the-system>