

# **STANDING COMMITTEE ON PUBLIC ADMINISTRATION**

## **INQUIRY INTO WORKSAFE**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 27 NOVEMBER 2017**

### **SESSION ONE**

#### **Members**

**Hon Adele Farina (Chair)  
Hon Jacqui Boydell (Deputy Chair)  
Hon Ken Baston  
Hon Kyle McGinn  
Hon Darren West**

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**Hearing commenced at 10.31 am**

**Mr TIMOTHY DAWSON**

**Branch Secretary, Transport Workers' Union of Australia, sworn and examined:**

**Mr MICHAEL KNOWLES**

**Senior Organiser, Transport Workers' Union of Australia, sworn and examined:**

**The CHAIR:** On behalf of the committee, I welcome you to the meeting. Before we begin, I must ask you to take either the oath or the affirmation.

[Witnesses took the affirmation.]

**The CHAIR:** You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

**The WITNESSES:** Yes.

**The CHAIR:** These proceedings are being recorded by Hansard and broadcast on the internet. A transcript of your evidence will be provided to you after the hearing. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of the hearing. Please be aware of the microphones, try to talk into them and try not to cover the microphones with paper or make noise next to them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing and that part of the hearing will not be broadcast on the internet. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Tim, would you like to make an opening statement to the committee?

**Mr DAWSON:** Yes, I would, thanks. I will make an opening statement and then we can go through documents later, is that it?

**The CHAIR:** Yes, and I have lots of questions.

**Mr DAWSON:** That is fine, thank you. First, I want to thank everyone for inviting me along and being able to put my own and other evidence forward, and also for the Transport Workers' Union and its members to make the roads safer. I suppose, in the first part of the statement I want to pose a question. Why would truck drivers put themselves at risk by driving unsafe hours or unsafe trucks? What can be done by this Parliament to make the most dangerous industry in Australia safer? It is not only the roads that the transport industry operates on, it being the most dangerous industry in Australia, but also transport yards are very dangerous workplaces. In saying that, the majority of transport workers, truck drivers, are professional and operate safely. They want to go to work and come home safely. They want to be able to operate on the road safely and make sure that the general public is not injured as well.

What I would say is that you must give WorkSafe the resources to properly investigate workplace injuries, accidents and workplace deaths to ensure that all workers go to work and come home

safely, and that all people who travel on WA roads are safe. WorkSafe must appoint special inspectors who have the resources and expertise to investigate alleged breaches of fatigue management regulations and load restraint regulations, and WorkSafe must have a special road safety unit that works with Main Roads and the police department in conjunction with the Road Safety Commission to ensure that transport companies are abiding by all regulations that they have to work and act under. That applies to load restraint and maintenance of the trucks especially, because not only is there a risk to trucks if they are not safe, but there is a risk of the loads falling off and injuring or killing people out there.

Crashes involving heavy trucks result in more serious road trauma outcomes in part because when a heavy truck is involved in a crash, their vehicle mass elevates the crash forces involved and hence increases the severity of the crash. You need to make sure that the chain-of-responsibility legislation is used to make Western Australian roads safer coming down on those companies in the supply chain, making sure they are held accountable for putting unrealistic times on drivers, forcing them to drive unsafe hours and not being able to maintain their trucks because the rates are so low. The act must reflect the unique nature of the transport industry, when you have big heavy trucks hurtling down the road. Training is not only for truck drivers, but also for people who drive cars; it must be improved for the dangers of fatigue, truck drivers running the risk of unsafe work practices and their responsibility under the chain of legislation. Car drivers should have a course on interacting with heavy vehicles.

I will go through some statistics later, but any number of statistics show that the WorkSafe act must be changed to stop truck drivers dying on WA roads. I will go through some national and Western Australian statistics as we go further through and then the recommendations of the Western Australian state association.

**The CHAIR:** Tim, the committee has heard evidence that WorkSafe only investigate road accident facilities when someone, usually the police, identify that there is a WorkSafe fatality and contacts WorkSafe. Is that your understanding?

**Mr DAWSON:** That is my understanding.

**The CHAIR:** The committee has heard evidence that in the case of road fatalities in the course of employment, by the time WorkSafe are notified, it is usually too late for WorkSafe to attend the site and investigate the cause of the fatality because the vehicles have been moved off the road and everything's been cleared to enable traffic to use the road. Is that your understanding?

**Mr DAWSON:** That is my understanding. With the tyranny of distance—overwhelmingly, accidents usually happen on regional highways, so naturally WorkSafe are not in those areas and by the time the police have dealt with it, yes, you are correct, the trucks have moved off the road and to a compound where the police have impounded them if they believe they want to check the truck, so, yes, that is my understanding.

**The CHAIR:** Does that restrict WorkSafe's ability to investigate road traffic fatalities?

**Mr DAWSON:** I believe it does. With all the goodwill from WorkSafe inspectors, at the end of the day if he is not there within a reasonable period of time or he does not actually see what has happened with the accident, then it is very difficult for him to be able to fully investigate that death. I think they are the challenges that WorkSafe and the Parliament will have and how you deal with that. One way may be to have a full investigation, with the coroner involved in more of these, if not all accidents that are caused by trucks. The majority of accidents are actually caused by cars. I think 93 per cent of accidents are actually caused by cars, not by trucks, so we can understand that

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WorkSafe then will not have a role to play in a number of those accidents, because they will not be classed as workplace accidents.

[10.40 am]

I am not saying that every accident that is involved with a truck should be investigated by the coroner. I understand the difficulty of that, but I think the overwhelming majority—especially when a truck driver has lost his life—should be investigated by the coroner to see what has happened; hence why I say people in cars need better training. It may not be WorkSafe or this Parliament's decision to make that through WorkSafe, but I think that Parliament or the Department of Transport or wherever needs to make sure that our young people, when they get licences, have a better understanding of not only what it is like to operate around heavy vehicles, but also, when they go on long trips, how to manage fatigue, because if you have a look, the overwhelming number of accidents on country roads are fatigue related. The young people out there are dying because they do not have the experience, and we need to educate them of that experience.

**The CHAIR:** The OSH act places an obligation on employers to report certain injuries resulting in death of an employee, which would include a road accident fatality. Is there a specified time frame within which employers should report a fatality or serious injury to WorkSafe?

**Mr DAWSON:** There should be no time frame; it should be immediate—within reason, I suppose you would need to say. Within reason, I think they should be reported. As stated earlier, the longer we do not report an accident, an injury or a death, or even an incident, the longer that it takes, the less chance you have of having a thorough investigation or even the remedy to make sure it does not happen again—that you can investigate it and make sure that does not happen. So I think that it needs to be really as soon as reasonably possible that they should all be reported.

**The CHAIR:** So, Tim, as I understand it, even if WorkSafe are not able to get to a road traffic accident within time before they clear the road, they are able to check the logs for fatigue management issues, they are able to inspect the vehicle in case there is any fault with the vehicle due to poor maintenance, and they should be able to access any witness statements prepared by the police as a result of that accident. So there is nothing that would prevent WorkSafe from investigating a road traffic accident, even if they are not able to access the sites immediately. They would be then reliant on the police information, but they would still be able to undertake an investigation.

**Mr DAWSON:** Yes, I believe that. I would say that would be correct. I mean, my understanding is WorkSafe can do all that. It is a matter of, I suppose, the resources of WorkSafe to do it adequately. I would question that. WorkSafe would rely on reports, I would say, for whether there are any mechanical faults of a vehicle from the Department of Transport or Main Roads—whichever one did that. I do not believe WorkSafe do the checks themselves. They may well request that it be done. But I would understand they can inspect driver records of fatigue, the fatigue management systems. Yes, so they have that. But I think one of the areas is: do they have the resources to do that? And I would question that. I think they have, you know, some fairly competent inspectors there who understand the transport industry. So, it is, I suppose, about the resources and the length it takes to actually investigate some incidents and accidents, really. There needs to be something done. That, more than likely, hopefully, is a resource issue. I do not think there should be a cost on investigating someone dying at work. I do not think there should be a cost on someone seriously injured being investigated and there should not be a cost on making sure that it does not happen again.

**The CHAIR:** Is it the view of the union that WorkSafe have a tendency to leave road traffic fatalities of employees to the police to investigate, rather than investigate them themselves under the OSH act?

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**Mr DAWSON:** Mick might be able to answer that one better, I think.

**Mr KNOWLES:** As an example, I have an incident here which I am willing to share. It was a report on the internet relating to a vehicle smash on 16 May 2016 on Kwinana Freeway. It involved a rigid truck from Capel Transport, which operate out of the south west, in the middle of the afternoon. I will share these documents.

**The CHAIR:** Margaret, could you please collect those documents from Michael and distribute them amongst committee members?

Could you just identify the document by its full name and the publisher?

**Mr KNOWLES:** “Traffic Delays: Truck Crash Closes Kwinana Freeway South of Perth”. Now, this incident, as it is reported off the site on the internet—there was a news channel report—relates to the rigid truck that crashed into a parked four-wheel drive on the Kwinana Freeway. The vehicle was parked there; the two people who were in the vehicle decided to get out and stretch their legs and moments later this rigid truck has driven and crashed straight into that parked vehicle. I am also part of the heavy vehicle fatigue reference committee with WorkSafe, Main Roads, police and a number of other organisations that meet, basically, every three months. I raised this incident as a matter of reference to the problems that I see that happen with reporting. This was a major incident, as you can see. It blocked the freeway. Police attended and I questioned the police that were representative at the committee as to the outcome, given that some time has passed since that incident, as to whether the investigation of that incident brought it back to being fatigue related. The answer I got from the police at the time was no. Was it actually reported as a fatigue incident? They not necessarily would report it to WorkSafe either. The nature of the way that you look at the photos and how the vehicle is so straight in the lane tells you one factor, which I will go back to, which is in the related excerpt on page 2 there about the description of the incident. It actually states that the actual truck driver, after the collision, has reportedly jumped out and checked and run around to make sure no-one was injured. That tells me he did not have a medical heart attack or anything like that that would have caused that incident. I would say that it is more to do with fatigue related, given how straight the vehicle is in the lane and straight in the middle of the afternoon he has crashed into this vehicle. So, what was referred to back at that committee meeting by the police was that every likelihood was it was never referred to WorkSafe and it never would have been possibly contemplated to investigate it as a fatigue-related matter.

**The CHAIR:** So there appears to be a problem there in terms of the police actually identifying traffic incidents as workplace accidents and reporting them to WorkSafe.

**Mr KNOWLES:** Yes. At this committee which I am part of, which was formed, I think, in August last year, 2016, this has been discussed a number of times through this committee: the reporting or the lack of experience on the part of police to actually identify an incident as a fatigue-related incident and what is required as for gathering the evidence at the scene and/or referring it on to WorkSafe to be investigated as a fatigue-related incident.

[10.50 am]

**The CHAIR:** Michael, do you know whether the employer referred that accident to WorkSafe? They would not have been required to do so under the act, because there was no injury.

**Mr KNOWLES:** That is right. Another part of the reply from the police was that their main focus would have been clearing the freeway and getting the traffic moving, and given the fact that there were no serious injuries or fatalities out of it, they would have just moved on to the next job.

**Hon KYLE McGINN:** Obviously, there is a clear example there. Is this obviously quite common? One of the things that I am sort of struggling to understand is that a truck driver can be within a yard

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operating forklifts or moving a truck, and if they were to have an accident within that yard, WorkSafe would have jurisdiction, but as soon the truck driver leaves the yard and comes onto the road, any incident that takes place is not under WorkSafe's jurisdiction and it is not recorded as a workplace incident?

**Mr KNOWLES:** That is correct.

**Hon KYLE McGINN:** So, KPIs for safety officers et cetera are not touched, even if there are fatalities or injuries on the roads during work hours?

**Mr KNOWLES:** That is right, and these road fatalities are not reported as workplace deaths or injuries.

**Mr DAWSON:** A company may report it if a bloke does not turn up to work for whatever reason. They will class that as a company KPI. But that is a different thing.

**Hon KYLE McGINN:** So it would not be classed as an LTI if they were injured in a road accident?

**Mr DAWSON:** More than likely it would be.

**Hon KYLE McGINN:** If it was then classed as an LTI, would that not be reportable under the act to WorkSafe?

**Mr DAWSON:** It should be.

**Hon KYLE McGINN:** Has that happened? Have any employers that you are aware of reported LTIs?

**Mr DAWSON:** I do not have any evidence of that, no. It is a bit of a grey area.

**Hon DARREN WEST:** On a similar vein, just so we have got this right, WorkSafe has jurisdiction in the yard, but it does not have jurisdiction out of the yard. What about inspection of vehicles beforehand? I have a B-double up there, and we go through all the rigmarole, and from time to time we get stopped by Heavy Vehicles to check her over and make sure everything is sweet. Do you ever have incidents of WorkSafe inspectors inspecting actual trucks?

**Mr DAWSON:** No. I will hand these to you. I will actually quote some Road Safety Commission words on that. It is on page 4.

**The CHAIR:** Tim, can you just identify the document, please?

**Mr DAWSON:** This is a memorandum from the Government of Western Australia Road Safety Commission to the Heavy Vehicle Fatigue Reference Group, and it is re: "Road Safety Policy Proposal: Heavy Vehicle Industry and Fatigue Management".

**The CHAIR:** Thank you, and it is dated 17 May 2017?

**Mr DAWSON:** Yes. If you go to page 4, "Policy gap", it states —

Heavy vehicle fatigue-management: A key finding within the Report was WorkSafe's limited capacity to enforce regulation due to its 'lack of authority to stop vehicle operators for inspection' ... To date, government has not been taken any significant steps to address this issue. Consequently, WorkSafe remains reliant on joint operations to carry out inspections of driver log books and contribute to the shared responsibility across agencies for fatigue-management.

I think that sums it up.

**Hon DARREN WEST:** Yes, thanks, that does cover it, because we have to keep a log and everything of what we are doing, and we rarely come across—we have never seen WorkSafe looking at the truck.

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**The CHAIR:** I have some more questions along that line. Tim, at the bottom of page 4 of the TWU submission, it states that between January and March 2017, there have been 19 transport worker deaths out of a total of 51 workplace deaths. Do you know how many of those 19 were Western Australian?

**Mr DAWSON:** This is a Western Australian submission, so they would all be Western Australian. We can go through some national stuff and I think you would be horrified to understand where it is nationally. I have got some statistics here to show you.

**The CHAIR:** Do you want to go through those statistics now?

**Mr DAWSON:** Yes, we can. I will give you a couple of documents. I will get rid of my submission. You probably do not need that.

**The CHAIR:** Would you mind identifying those documents?

**Mr DAWSON:** One is the Australian Government Department of Infrastructure and Regional Development Bureau of Infrastructure, Transport and Regional Economics' "Fatal heavy vehicle crashes Australia quarterly bulletin Jul–Sep 2017". The other document is a Macquarie University report—it is not the full report; I took this off the web—headed "Report Reveals Overworked Truck Drivers Fear Raising Safety Concerns".

**The CHAIR:** Tim, do you want to talk to both of those?

**Mr DAWSON:** Yes. I will go first to the fatal heavy vehicle crashes July–September 2017. These are national figures, and they have WA figures in them as well. If you go to page 2—these are Western Australian—the heading is "Fatal crashes involving articulated trucks by State/Territory". The figures for Western Australia from 2012 to 2016 are seven, eight, six, 11 and nine respectively, and then on page 3, "Deaths from crashes involving articulated trucks by State/Territory", and it has Western Australia there as well. If you look at nationally on the other side —

**The CHAIR:** Just for the record, Tim, for the 12 months ending September 2016, there were 11 deaths in Western Australia, and for the 12 months ending September 2017, there were eight?

**Mr DAWSON:** Yes, correct.

**The CHAIR:** Sorry to interrupt, Tim.

**Mr DAWSON:** That is all right. If you look at nationally, there is quite a substantial number of crashes involving articulated vehicles.

**The CHAIR:** So, for the record, for the 12 months ending September 2016, nationally there are 109 fatalities, and in the 12 months ending September 2017, there were 121 fatalities?

**Mr DAWSON:** Yes.

**The CHAIR:** Where are these statistics obtained from? If WorkSafe is not keeping these stats, where are you getting these stats from?

**Mr DAWSON:** They would gather these statistics from a number of avenues. Police departments around Australia would probably be the main area; some departments within other jurisdictions—their equivalent to Main Roads—may well collate some of that information; and some departments similar to WorkSafe would collate it. They would use a number of areas.

**The CHAIR:** And possibly insurance companies?

**Mr DAWSON:** Yes, NTI. I have got some NTI stuff here that I can share with you, if you like. They are the biggest truck insurance company in Australia. It is only their figures, but they show a fair bit of alarming statistics.

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**The CHAIR:** But those figures would be included in this document?

**Mr DAWSON:** I would have thought so, yes. It is done by the bureau of infrastructure, which would be part of, I would say, the Bureau of Statistics.

**Hon DARREN WEST:** Tim, those figures coincide with the abolition of the Road Safety Remuneration Tribunal, do you see that as a factor? Have you noticed any change, whilst it is not specifically WorkSafe, to driving conditions and things like that since the abolition of the Road Safety Remuneration Tribunal?

**Mr DAWSON:** Yes, we have, and there are some figures that show that. This document from Macquarie University actually in the preamble at the start says that. It says —

The report criticises a lack of training and a “critical gap” since the Government a abolished the Road Safety Remuneration Tribunal “that can eliminate existing incentives for overly tight scheduling, unpaid work, and rates that effectively are below cost recovery”.

That is Macquarie University, not the Transport Workers’ Union, saying that. That has come out of Macquarie University’s report. It states halfway down that page —

A survey of truck drivers, which forms part of the report shows:

**The CHAIR:** Can you read that in?

**Mr DAWSON:** Yes, thank you. It states —

- Over 80% of truck driver work more than 50 hours a week; 10% work over 80 hours
- One in six drivers who own their own trucks do not believe they can refuse an unsafe load
- Almost one in five owner drivers said they would not report being pressured to falsify a work diary. Of this 42% said the reason for not reporting would be fear of losing their job

It is fear and intimidation in the transport industry at times that can cause a number of these accidents.

[11.00 am]

**Hon DARREN WEST:** Have you noticed any increased activity from WorkSafe since the abolition of the Road Safety Remuneration Tribunal in these sort of areas?

**Mr DAWSON:** No; I do not think there has been any extra activity that we can see. I think over a number of years they have continued to do what they can and the best they can. But I could not say that there has been any noticeable increase in any activity.

**Hon DARREN WEST:** And from heavy vehicles—like the heavy vehicles section of Main Roads—have you noticed any change? What I am getting at here is: has there been any sort of compensation for the fact that the Road Safety Remuneration Tribunal has been lost?

**Mr DAWSON:** No, not that we have seen. Just to follow on from your earlier question, in this report on page 2—I will not read it all, but I will read in the second paragraph, about halfway through—it states —

Worksafe does not have any statutory authority to commence the enforcement as it does not have the authority to stop heavy vehicles. Consequently, Worksafe is reliant on Main Roads WA ... to stop vehicles prior to any enforcement activity resulting in joint and large scale operations. According to Department of Commerce’s Annual Report 2015/17:

- 6 joint operations being undertaken in 2015/16; and
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- zero of the four targeted AUSTRAN operations completed.

There were no AUSTRANS operations done at all.

**The CHAIR:** An AUSTRANS operation is —

**Mr DAWSON:** That is a national body in conjunction with Western Australia.

**The CHAIR:** Tim, do you have any idea why governments of both political persuasions have not addressed the issue of WorkSafe being able to stop a truck on the road to undertake a random inspection?

**Mr DAWSON:** I figured there was a flaw in the act when the act was originally written. It does talk about 12 years ago, on page 4, about halfway down. It states —

Interestingly, in their discussions with the Auditor General in 2005, Worksafe did not believe that this “has hindered —

The lack of statutory authority we talk about here, so to your question —

their ability to fully enforce the regulations.” Notwithstanding, given the 12-year time lapse since this comment was made, Worksafe may no longer hold the same view.

I would dare say I do not hold the same view as WorkSafe did then, that not having statutory requirements or being able to, with authority, actually do their job. I mean, to give a department some authority but not give them the tools to actually enforce that authority makes it very difficult, I would have thought.

**The CHAIR:** If WorkSafe were to say, “But we’re able to visit the workplace and inspect the trucks before they go on the road”, what would your response be to that? Are the trucks kept at workplaces?

**Mr DAWSON:** They can do that. I think they can do it at a workplace. They cannot do it on the road.

**The CHAIR:** But would all trucks be kept at a workplace? For example, a lot of them are subcontractors, are they not, or owner-drivers?

**Mr DAWSON:** Yes. There would be a number of vehicles that would not be kept at a workplace, yes.

**Hon KYLE McGINN:** It is my understanding under the act that WorkSafe would have the ability to inspect any of the plant operations inside the workplace, which in the case that the chair referred to of a subbie who has come in to pick up a load at a certain workplace, I would be very surprised if WorkSafe would not have the ability under the act to inspect the truck whilst inside the yard. I am sort of a bit perplexed by the comments that they have not inspected trucks, because I am of the opinion from the act that they have the ability to perform inspections within the yards. Are you saying that WorkSafe has not and does not inspect vehicles inside their workplaces?

**Mr DAWSON:** No. I might not have spoken clearly enough or —

**Hon KYLE McGINN:** I might have misinterpreted.

**Mr DAWSON:** My understanding is that they do have the ability and will inspect vehicles if they become aware of unsafe vehicles. That would be right, Mick, is it not?

**Mr KNOWLES:** They only restrict it if they are in the yard. If it is an operation outside the yard, they have no jurisdiction unless they are working in conjunction with a road block, which they do from time to time, with Main Roads, police and themselves. But they would have to use the other authorities to actually pull over the vehicles before they can access and start review on the fatigue issues.

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**Hon KYLE McGINN:** Would you be any aware of any proactive unannounced inspections done by WorkSafe on trucks at workplaces?

**Mr KNOWLES:** No, not aware of any.

**Mr DAWSON:** Not saying they do not.

**The CHAIR:** Let us just remember what Tim said earlier. Not all trucks are kept at workplaces.

**Hon KYLE McGINN:** I also mean from day to day. When a truck enters a workplace, that becomes —

**The CHAIR:** That would require a fair bit of timing and coordination.

**Mr DAWSON:** When a vehicle is on the road—I mean, the road is its workplace, but when it has left a workplace, Main Roads are predominantly who check vehicles. WorkSafe will be there to check a number of other WorkSafe related issues such as their fatigue logbooks, because Main Roads does not have the authority to do that. Main Roads cannot inspect a logbook; they cannot inspect somebody's required hours that they worked. They have to have a WorkSafe inspector when they do that, if they want to do that as part of their onside road checks. There is a gap in a number of acts in that respect, or whether the WorkSafe commissioner wants to give any power to Main Roads, it would be an easy way of doing it. They would not need to go and rewrite the Main Roads Act or the traffic act. The commissioner could just give that authority themselves—to the police department as well, if they wish to. Police cannot check fatigue books either; it is not under their jurisdiction.

**The CHAIR:** Tim, can I just seek clarification from you on that point? Where there is an owner–driver subcontracting for a company, who keeps the fatigue management logbooks? Is it the company or the owner–driver?

**Mr DAWSON:** The requirement is on the owner-driver to keep his logbooks. A number of companies will—if they are a captured subbie who only works for one company, which is normally the case, then that company may run them under their fatigue management, and then they will fill out a fatigue management as requested by that company, which will look exactly the same as what a company's fatigue management would look like. If they are ad hoc subcontractors, which there are a number of them out there, then the requirement is that they keep their own records.

**Hon KYLE McGINN:** Just to clarify also, once the truck has left the workplace and it is on the road, no-one has the ability to inspect the logbooks.

**Mr DAWSON:** WorkSafe does, but WorkSafe does not have the authority to pull the truck up. The WorkSafe inspector could follow the bloke all day until he gets somewhere he can pull him up, if he wished, but he does not have the authority to stop the truck and do it.

**Hon KYLE McGINN:** And there is no-one else with the jurisdiction to facilitate the inspection of the logbook?

**Mr DAWSON:** Yes. Comical, if it was not true

**Mr KNOWLES:** Sorry; it is not actually a logbook; it is their fatigue records for the day because they do not have logbooks in WA.

**Mr DAWSON:** But the same principle.

[11.10 am]

**Hon DARREN WEST:** What about auditors? Every year you have to get your —

**Mr DAWSON:** Heavy vehicle accreditation.

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**Hon DARREN WEST:** — accreditation for orders. I know that does not apply to all trucks but for permit vehicles and the like. Do they have any capacity to pass on information? Do auditors have the capacity to pass on information to relevant authorities over —

**Mr DAWSON:** It is a request that they do. When they audit someone, if they see a breach of an order, then they breach the order. You are right; to cut it under fatigue management, first you have to be over four—you do not have to be over four and a half tonne, but you need to have worked 10 hours. There is a requirement to do it, because we have had some tonnages that thought they were not.

**Hon DARREN WEST:** As of right vehicles do not need to be fatigued to audit it. Yes, that is right.

**Mr DAWSON:** They meet a few definitions to be covered under fatigue management, which is then covered under accreditation. An auditor who audits books on a number of areas, whether it be fatigue, maintenance, if they see any breach, then they are required to report that breach.

**Hon DARREN WEST:** What change would you recommend on behalf of your members to legislation? What would be the best outcome to alleviate the issue you have just raised with us? Would it be, as you said, to give that authority to police and to heavy vehicle inspectors, or do you think WorkSafe would be better off having the capacity to stop and inspect vehicles on the workplace that is the road?

**Mr DAWSON:** All of the above. WorkSafe has the capacity, police if they suspect somebody, and Main Roads—especially Main Roads; they do on-road checks. My concern is not so much about individual drivers out there. As I stated earlier, why would someone go to work and work unsafe hours and drive an unsafe truck? They do it because of the pressure that is put on them. They do it because of their rates or the pressure to get the job done. A big retailer or a mining company says, “We want this bit of freight here now”, and they have to take risks to get it delivered. This is what happens. They are the things. The chain of responsibility that we have needs to be policed a lot more and the people who force them to do that—the big retailers, the economic powers out there that force people to take risks—need to be punished. There needs to be something done about it. The chain of responsibility legislation is a good bit of legislation. It just needs the teeth to be able to do it.

My understanding is that there have been a number of prosecutions—I think around 200 prosecutions—over the last few years. There is no publication of that. We are about to start publishing that. We are about to find out what that is so we can make people aware. People take a risk model to run their businesses sometimes. That is that “I’ll do it for this price; if I get caught, well, the fine is very minimal.” Right now, most people do not think they will get caught under the chain of responsibility, WorkSafe or Main Roads, because there are not a lot of inspections or they do not think there are, so they take that risk. The departments need to publicise when they are actually having success with any prosecutions so people out there stop taking risks, because the risk of doing the wrong thing outweighs the risk of doing the wrong thing. That is why we need to make sure that they are publicised, that we have the laws. For too long, truck drivers, owner–drivers and employed truck drivers have been the people who have taken the brunt of these problems. They are the ones who have been fined. They are the ones who lose their licence. As I stated earlier, the statistics out of Macquarie University study showed that. I can quote some even more alarming statistics, if you do not mind. On the second page at 2, it states —

Evidence of pressure

A Safe Work Australia report in July 2015 showed

31% of employers say workers ignore safety rules to get the job done

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That is their bosses saying that, so you can imagine how many probably do it —

20% accept dangerous behaviour, compared to less than 2% in other industries.

20% of transport industry employers break safety rules to meet deadlines—this compares with just 6% of employers in other industries.

That is employers. People do not do this because they want to do it—not the overwhelming percentage of them. They do it because of the pressure that is put on them to get the job done because of the pressures put on them because their rates are so low. Our industry is, you take it; you do not go and quote for a job and say, “This is what I want.” You go and quote for a job and then they say, “This is what we’re going to give you” and then that is what they do the job for. People are under pressure; their houses are mortgaged if they are owner–drivers, so they have to do the job. We need to make it safer. That means we need to make sure that the regulators, parliamentarians and Parliaments around Australia—we can only talk about Western Australia today—need to legislate and make sure that the economic powers are accountable for what they do to force people to take risk.

**The CHAIR:** Tim, is it the position of the union that all truck driver deaths arising from a road accident should be treated as a workplace fatality?

**Mr DAWSON:** Yes, I think it should be. If a car runs into a truck and the occupant of that car is deceased, I suppose it is questionable whether that is a workplace accident or not, which is about 93 per cent of accidents with trucks are. But I think they should be dealt with in a different way and we say, “How do we stop that; how do we train people?” Those statistics should be gathered in, I suppose, the industry and governments need to say, “These are alarming statistics. What do we do with them when we see them to make sure that people who are driving on roads get home and get to the end of their trip?” I got a phone call Thursday morning about the terrible accident down in the south west from that company. The boss from over east rings me to say, “We’ve just had a fatality.” We too regularly get those phone calls. We know those people. We need to do something about it. They are not just statistics.

**The CHAIR:** Tim, I am really trying to get an understanding that if we were to change the legislation so that WorkSafe had jurisdiction over the roads, is there then an expectation that they investigate every road traffic accident resulting in a fatality that involves a truck?

**Mr DAWSON:** Yes, they should.

**The CHAIR:** Regardless of whether —

**Mr DAWSON:** Regardless, they should investigate it, yes. I do not know whether WorkSafe needs to be the jurisdiction that does all road, I suppose, enforcement. We have very professional people at Main Roads; we have a police force that is more than professional in what it does. I think it is more that the changes to the WorkSafe act should be to give the WorkSafe inspectors the authority to do more than what they do, but also, in conjunction with the other departments, and maybe through the Road Safety Commission or whatever it may be, that they have more ability to work together so that they do it. Currently, if our three departments want to do a really thorough inspection of vehicles, they have to have three departments actually work together to try to coordinate that. More powers to WorkSafe in that respect so that its inspectors have the power to enforce some of it might mean that they need to do that with only one other department. So there might need to be only two departments at a time. If some of the changes to the acts or the commissioner handing over some powers means that, at times, you would need only two departments coordinating any type of inspections instead of three, which makes it very difficult, I think that would go a long way to actually having the roads safer.

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**The CHAIR:** Michael, you mentioned earlier a discussion with police officers in relation to the papers you tabled about a road traffic accident involving a truck. Do you know whether it is their policy position that if a truck driver is injured or dies, they then will report it to WorkSafe?

[11.20 am]

**Mr KNOWLES:** Not necessarily. Unless it is something specific that they have—sorry, I will go back a step. It comes back to the training of the police that attend at the time as to whether they recognise that it may be fatigue related and then to actually follow up and go through the chain, through recording or passing it on to WorkSafe themselves. Most times they will go unreported, which is part of that issue that has been referred to many times in that fatigue reference group. Another big problem, too, is a lot of the fatigue incidents out on the highways away from Perth in the rural areas are cleaned up by the companies well before police are even notified or whatever. They will get the trucks and trailers back off the road and not even record it. The only way that we hear about it is passing truck drivers might mention such and such ran off the road, “I’ve seen one of their trucks in the trees or in the bushes the other day.” But you check with police or WorkSafe and they are unaware of it, and this is recognised by that committee—the fatigue reference group that they are a part of—as a big problem as well in the industry.

**The CHAIR:** At page 9, recommendation 1 states that WorkSafe should appoint inspectors with powers to investigate breaches of fatigue management regulations, occupational health and safety, load restraint and other breaches relating to warehousing and logistics. Can you step through that and tell me who currently has responsibility to investigate each of those matters? We have heard that WorkSafe has the authority to investigate the fatigue management regs but cannot actually stop a truck to do so. Who has responsibility for investigating load restraint?

**Mr DAWSON:** That is from our recommendations?

**The CHAIR:** Yes, at page 9 of your recommendations. You have gone through and listed a whole lot of powers that inspectors should have. I am trying to get clear in my mind who currently undertakes those inspections. We know that fatigue management regs is WorkSafe’s responsibility but they do not have the power to stop a truck.

**Mr DAWSON:** What number was that on page 9, sorry?

**The CHAIR:** Page 9, recommendation 1.

**Mr KNOWLES:** When it comes to load restraint, it would be part of the charter for WorkSafe as it is now if they visually inspect something within a yard before it left the yard. But once it is out on the road, that would normally fall to Main Roads’ enforcement with heavy vehicle inspectors and the like and/or police, particularly if something is oversize, it is not permanent or restrained properly while the driver will be hit with an enforcement fine and the like and/or grounded until it was fixed there on the side of the road. I do not think WorkSafe has those powers in respect to that, other than within a workplace itself.

**Hon KYLE McGINN:** Just to follow up on that, obviously they have the powers within the workplace as you state. Are you aware of that being common for WorkSafe to pull people up for load restraints prior to departing workplaces?

**Mr KNOWLES:** I do not know how many times they would have picked that up. I do not have that information. There are only limited inspectors within the state and there are thousands of transport operators.

**Mr DAWSON:** But I cannot say that I have had anyone say to me that they have been into a yard doing load restraint inspections.

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**Hon KYLE McGINN:** Would you agree that Main Roads performs load restraints testing on the road?

**Mr KNOWLES:** Yes.

**Mr DAWSON:** Yes.

**Hon KYLE McGINN:** Would you also agree that if WorkSafe was to be enforcing road restraints prior to departing workplaces with the regime happening from Main Roads, that this would help reduce breaches of load restraints on the road?

**Mr DAWSON:** Yes.

**The CHAIR:** The other item you have raised in recommendation 1 is warehousing and logistic breaches. Is that currently the jurisdiction of WorkSafe?

**Mr KNOWLES:** Yes.

**The CHAIR:** And police and Main Roads would not have jurisdiction over that?

**Mr KNOWLES:** Not within the workplace, no. That would only be WorkSafe.

**The CHAIR:** On page 9, recommendation 2 states that —

**Mr DAWSON:** Sorry, I believe Main Roads can follow a vehicle into their workplace and check that vehicle. Sometimes they do it because it is a safer thing to do. They might go past, but they can follow a vehicle into a workplace and check it for weight, load restraint or any other things.

**Hon KYLE McGINN:** But WorkSafe cannot follow a vehicle out of a workplace and do the same thing?

**Mr DAWSON:** No—that is right. They have got to get them while they are in there!

**The CHAIR:** Recommendation 2, also on page 9, states that the WorkSafe commissioner should delegate powers to Main Roads and WA police to investigate and enforce fatigue management regulations and chain of responsibility laws. Do they not already have this power under the heavy vehicle national law?

**Mr DAWSON:** No, we do not work under the heavy regulator.

**The CHAIR:** Western Australia has not signed on to that?

**Mr DAWSON:** No. We would not be advocating that either.

**The CHAIR:** Can you put it on the record why not, Tim, so that we are clear on that?

**Mr DAWSON:** Western Australia's fatigue management is managed better. In the eastern states, it is a lot more mandatory. I think just having pure mandatory rest breaks is not always the safest. Yes, you must make sure we police rest breaks and we must make sure that drivers have their rest breaks, but to say to someone when they are not tired, "You've got to pull up and have a break", does not always mean that he is not going to be tired later in the day when he needs to turn the wheel and make a dollar. That is what happens. I think that we can strengthen ours here a little bit but we are not in favour of the heavy vehicle regulator coming into Western Australia for a number of reasons. There can be some improvements, there is no doubt—that is why we are sitting here today. Our fatigue is much different. Western Australia is a big state and sometimes our fatigue management needs to be managed within that. I am not saying that it probably cannot be improved in some areas, but they are the reasons why. Not just the Transport Workers' Union but the industry itself is not in favour of the heavy vehicle regulator coming to WA.

**The CHAIR:** At page 5 of your submission you state that WorkSafe must appoint special investigators that have the expertise to investigate alleged breaches of fatigue management regs. Is it the union's view that WorkSafe inspectors do not have the expertise to investigate these breaches currently?

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**Mr KNOWLES:** I think what has happened with the code of practice and that since it was implemented back in 2004, in different discussions I have had with different inspectors over the time and past inspectors who have moved on, is that—I have sort of a bit of a brief here that may be referred to in relation to that. I will ask if that could be handed around. I suppose what I am trying to say is that the code of practice, when it was put together and implemented back in 2004, the main thrust of the document was around long distance road train operation. But given the nature of the transport industry with regards to fatigue management, which is what Tim touched on earlier, basically if someone operating a commercial vehicle is doing more than 10 hours' work a day in a week, it triggers them to be covered under the fatigue code of practice. But in respect to the examples within the code of practice itself and how that operates with regards to break times—short break time, non-driving time, non-driving time duties and their actual regimented breaks, like breaks for minimum seven hours and the like—you are trying to relate that to how the metro area operates in many circumstances. An example I have used in here is one of the concrete operators here in Perth. They start their drivers and their pneumatic tankers and tippers at all sorts of hours depending on when the big pour is on at a specific building or whatever. The way that those guys work, they do not know until the evening before through an instruction from Queensland as to what time they are starting the next morning. As long as they have their seven hours between when they are notified and when they are expected to start, that complies with the code, but they may well be going out at 1.30 to two o'clock in the morning, work their 12 or 14-hour day, and through that the company itself does not give them—they actually pay them to work through their required award. Talking about the award, there is a requirement for an unpaid 30-minute lunchbreak.

[11.30 am]

They pay them to work through that break, but require them to meet only the fatigue management, short break time so that they have a minimum 20-minute break within every five hours of being at work. That minimum 20 minutes may be broken down into two 10-minute lots, and in that can be counted anything from being out of the truck just to load, unload, pour the concrete, waiting to load, discharging, tarping, fuelling, completing paperwork and the like. It is not so much for having time to have a meal and/or to get a drink and go to the toilet and actually have a proper break, so it is a long day in that sense.

To take that further, there have been a huge number of studies on how an ordinary working day is conducted within the rail and aviation industries, but none of that study has been put into commercial vehicle drivers over here. One of the main things that seems to be coming through is that with all this new technology and automation, you can have tipper drivers, for example, who do not have to get out of their seats at all. The only time they probably get out of the truck is when they are actually at a weighbridge and they have to get out of the truck to walk to the weighbridge to get the weighbridge docket off the weighbridge guy and get back in the truck and drive. Everything is automated—the tarps on the truck, the tipping, the whole thing.

**Mr DAWSON:** The tailgate.

**Mr KNOWLES:** The tailgate is all automatic, so they spend long periods of time just sitting, and there are health effects with bowel cancer and all those other bits and pieces. These are the sorts of things that WorkSafe needs to be able to have implemented or within legislative requirements for companies to comply with—what are the safety benefits for their employees if they are going to move down the road of automation and for WorkSafe to be able to go through and implement and check on those types of things? So there are a broad brush of issues within the industry that are not even touched with in the way the current code of practice of fatigue management is written.

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**The CHAIR:** Whose responsibility is it to continually update the code of practice for industry to ensure that it is actually current and it takes these matters into consideration?

**Mr KNOWLES:** There is the heavy vehicle reference group that I spoke about earlier, and I think it has lost a little bit in the direction it was headed. That was one of the main thrusts of where we were this time last year and it seems to have waned in recent months. I have put that on the agenda as something for the next reference group, because that was part of why I presented that document earlier.

**The CHAIR:** Which is?

**Mr KNOWLES:** Which is the document on the traffic delays on the Kwinana Freeway due to that incident. I raised that issue at the time because I wanted a response from police with respect to what investigation, if any, was conducted and what were the outcomes of that and did it relate to the company being pursued for breaches of fatigue and the like, because everything about that just seemed to be fatigue related. For somebody to drive into a vehicle at that time of the day, it looked like he was just driving down the lane half asleep. That is just my inference.

But I think we need to cover more on recognising that the time has evolved. There is so much more technology there, with cameras, GPSs, and the loading. As I said, that particular transport company operates all its directions from Queensland to everywhere here in Western Australia and the other states. Technology needs to be referred to. How that technology comes back and falls back on the actual driver, we need some direction and legislation that WorkSafe can enact for the betterment of everybody on the road.

**Hon KYLE McGINN:** It is interesting listening to your comments about the breaks. Is there anywhere, you are aware of, either in the code of practice or under the act, that defines the break—gives a definition—and, if so, do you believe the definition is being adhered to within the industry?

**Mr KNOWLES:** Can I jump to that, please, because I am quite passionate about this. The code of practice itself, right in the—I did not bring the document.

**Mr DAWSON:** The answer to that question is yes. There is a definition and there are some scales that say what breaks you can have, whether a single driver or a two-up driver—so the answer is yes. Is it adhered to? Not in all cases, I would say, or we would not be sitting here talking about some of the terrible fatigue accidents that have happened over the years.

**Mr KNOWLES:** But there is a bit of a contradiction in how the code is applied as to even how—and I have some examples here.

**Hon KYLE McGINN:** I am interested in whether you can give the committee a bit of an idea of what the definition of a “break” should be.

**Mr KNOWLES:** If you refer to the code of practice itself, one, which is the purpose of the code—down the bottom it goes on about the importance and emphasis on regulations and importance of sleep and time at work and rest in the industry for operating standards. But further down it goes to the fact that in a day a driver can expect to work up to 17 hours with a 10-hour break, and then it comes back and there is a sliding scale—as long as he does not breach the 168 hours in the 14-day period, as is mandatory, to 24-hour periods off in that. They work big days. This is also taking into context the work. I mean, that was for addressing one-offs, but the industry itself has taken it to the point in excess of the purpose of this code in paragraph 4, halfway through, where it says —

This should not be taken as support for regularly setting schedules at the upper limits of the regulations.

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But many, many companies out there use this as the maximum hours to the max, so it does not allow any time for breakdowns, tyres and the like, but they expect their drivers to be using the upper echelon of all available hours while they are working. But in that, they also spend many, many hours in the seat, not being able to get out—and there is bowel cancer and all of that sort of thing, which comes back to spending long periods sitting in the seat, inactivity and all the rest. They are not being addressed.

If we go to the document I have just given you—that is, that particular concrete company I was talking about earlier—if you see down the bottom where I have highlighted the issue around the breaks that are required, that is pretty much how it is written in the code itself. But if you go over the page, there is an example from one of the particular drivers to an inspector. The inspector has given his understanding of how the fatigue management memo from the company should be understood. But if you go to the last page, which is off their own website, it contradicts what the inspector is relating to, and that is another issue.

**Hon DARREN WEST:** What you do for fatigue management—that is not right.

**Mr KNOWLES:** No. If you look at the way the code is written, this code here—I refer to the fact that it is written for long distance road train operations. There are examples in there of a driver doing a trip and/or a run, it refers to his break times and even gives him a 30-minute lunchbreak and two 10-minute fatigue breaks within the five hours.

**The CHAIR:** We do not have a copy of that.

**Mr KNOWLES:** Sorry, I do not have that document.

**The CHAIR:** Can we take that as question on notice 1, for you to provide us with a copy of that at a later time so that we have a copy of what you have just referred to.

We are having a lot of feedback from the mics, which Hansard is finding very difficult, and so am I. We have called for a technician to come have a look at the mics, but I suggest that we take a five-minute adjournment for a bit of a comfort break—for a bit of a rest, glass of water, whatever—and hopefully we will get the mics sorted in that time. We will be back at, say, a quarter to 12.

#### **Proceedings suspended from 11.39 to 11.51 am**

**The CHAIR:** We are just resuming the hearing with the Transport Workers' Union of Australia. We have lowered the volume on the mics, so hopefully there will not be that feedback that we were constantly hearing earlier.

**Mr DAWSON:** I might have been a bit close to it; I might have been a bit too keen!

**The CHAIR:** I am just noting that we are fast running out of time. This hearing is scheduled to finish at 12.30; we have another private hearing to start at 12.30 so we will get through as many questions as we can and then the committee will consider whether we will call you back or just submit to you questions in writing for an answer.

**Hon JACQUI BOYDELL:** I just want to go back to the incident you tabled to the committee about this accident on the Kwinana Freeway. I think the issue of fatigue is widely reported as being a big issue for truck drivers in particular. We have heard evidence from other unions that they have, on behalf of their members, lodged incidents with WorkSafe for their investigation. Has the TWU done that, and what has been the response from WorkSafe? If you could comment on that. In this incident in particular, where you have highlighted it is probably an issue of fatigue, is the TWU in a place to be able to say to WorkSafe, "We want you to investigate this issue, because these are our concerns"?

**Mr KNOWLES:** I do not think we are in a position to, given the time line of how long ago that incident was, because I think it was back in 2016. As I said at the heavy vehicle fatigue reference committee

that I was on, the police at the time were unaware of this incident and he was not willing to go into it any further than, “That has happened”, but because of the fact that no-one was injured or killed in that incident, they would have just cleared the road and moved on, so all that evidence that might have been obtained on the day may have been changed or whatever with that particular company to cover their tracks. That happened in the afternoon. The truck came up from the south west and he has obviously returned back to Capel that afternoon; who knows what hours he had already done that week.

One of the other things that also is an issue with fatigue management that WorkSafe—through discussions I have had with different inspectors over time, there is another problem that I have identified with them, but how we capture it is dependent on when a load is ready or trailers are available and loaded as to when a line haul driver or a truck driver doing local deliveries is able to go and do his run, as such, are those hours being recorded as when he first arrives at the job; it could be four, five or six hours before he actually leaves, whether it is from Kewdale or Hazelmere, or one of the other major transport hubs, to do his line haul run to the north west, is that time actually being recorded? These are other problems that have been identified that we have talked about with WorkSafe. Yes, when I become aware of incidents, I have referred to WorkSafe. I have to put the complaint through the actual WorkSafe hotline and get the reference number, but I also speak to inspectors directly as well, and they will try to grab that particular job by giving the background on it.

Just as a different aspect of fatigue management and working with WorkSafe, there was an incident earlier this year with a member of ours working for a company based in Welshpool as a forklift driver. He came to me with complaints about the extraordinary amount of hours the company was making him work—up to 18 hours a day, loading trailers for this particular company that was supplying the mining industry. It got to the point in March this year that he went to his GP. He was rapidly losing a lot of weight and everything else. He was under stress from the hours and the abuse he was copping from management on the site, because when he requested to go home, they ridiculed him and threatened him with his job and the like. He went to his doctor and explained everything that was going on, and his GP actually gave him a letter which he supplied to the company, suggesting that he should do no more than 10 hours a day, so that he could get proper rest. He was chastised by the company. What happened was that he went and clocked off after a 10-hour day—10 hours, instead of working through to whenever the job was done—and he was put into disciplinary action. That is when he called me and I actually got on to WorkSafe about that and they went out and put prohibition notices on the company in respect of when they had done their investigations on how they conduct their operations with the forklift loaders. It was not just this particular member; there were others in the yard as well who were under duress and working extraordinary hours. This is a company that is heavy vehicle accredited, yet was doing everything it could to breach all that responsibility, chain of responsibility, and all those other factors that go with it in their workplace. That fellow is still off work now. He is on workers’ comp and is having issues mentally from the duress and there is a very strong claim going through for him in the way that he has been abused in the workplace. WorkSafe have done what they needed to do in that respect.

**Hon JACQUI BOYDELL:** In that instance the WorkSafe response, with you working with them, has been a good one.

**Mr KNOWLES:** That was a good outcome, yes.

**Mr DAWSON:** The WorkSafe inspectors, I think, when they have the opportunity, if they are given the information, will go and do what they can. It is just getting into all the workplaces and having the resources. Unfortunately, that gentleman we just spoke about is not a truck driver, so he will not come under the regulations of fatigue management.

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**Mr KNOWLES:** But it is just an instance of how a company that has been heavy vehicle accredited worked their employees in their yard, without the commonsense to relate to OH&S in the workplace and the actual abuse of their employees.

**Mr DAWSON:** We have one more witness, so I will try to hurry it on if I can. This document is from National Transport Insurance. I will just go through a couple. This is from 2011–2017, any accident over \$5 000. It is numbered, so if you go to page 4.

**The CHAIR:** Titled, “WA Crash 2011–2017”?

**Mr DAWSON:** Yes, so this is Western Australian —

**The CHAIR:** No, page 4—is that the one titled “WA Crash 2011–2017”?

**Mr DAWSON:** Yes, that one.

**The CHAIR:** The document is titled “nti NTARC Western Australia: The AUSTRALIAN States Series (2) 2011–2017”.

[12 noon]

**Mr DAWSON:** Yes, thank you; sorry for that. If you just look at some of those statistics, one in 3.6 truck crashes are on highway networks, so they are long distance. It has the different months and days which they are on and the times. I will not go through it all but I think you may well want to have a look at some of the statistics when you have an opportunity.

**The CHAIR:** Let us just read them into the record. The worst months are November and March. Eighty-four per cent occur Monday to Friday; 31.4 per cent of losses were off-road; and 10.00 am to 2.00 pm is the worst time of the day, with 29.3 per cent of incidences, which I would not have expected, so that is very interesting. WA’s most prominent highways are the Great Northern and North West Coastal and regarding the distance from point of departure, 64.7 per cent of incidents are within 100 kilometres and 26 per cent are over 250 kilometres.

**Mr DAWSON:** If you turn over four more pages to “Research 2011–17: Summary of findings” and the “Direction of Travel Analysis” you will notice 60 per cent of incidents occur on the outbound leg, that means when they have first started work.

**Hon DARREN WEST:** Is there any reason—is that when they are more likely to be loaded?

**Mr DAWSON:** I have asked this question of a number of people because it is a surprising statistic for myself. I suppose the question may well be: have people prepared themselves properly for work and are they still fatigued?

**Hon DARREN WEST:** Do think it is more likely that the truck is loaded on the outgoing leg and that means —

**Mr DAWSON:** Yes, that could be part of it; the truck could be loaded and heavier but some blokes will tell you that a bit of weight on it is better than no weight, too, so they travel a bit better.

**Hon DARREN WEST:** Not if you have to pull up.

**Mr DAWSON:** Yes, it is an interesting statistic that I think —

**The CHAIR:** It warrants further investigation.

**Mr DAWSON:** Yes, further investigation. I will go through the others. It is not in here and I will try and find that statistic for you but an interesting statistic is that in the lifespan of a truck driver, their most dangerous time is at five years’ experience of driving a truck, where they have had their licence for five years.

**The CHAIR:** Is that when they become a little complacent?

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**Mr DAWSON:** It could be. It may be a bit of pre-education, or whatever, but that is a very interesting statistic. Yes, I think that needs a bit more investigation as well. I think they are two very interesting statistics: one is that 60 per cent are on the outbound and that at five years is when a truck driver has more incidents during their career. They are two very surprising statistics.

**The CHAIR:** Tim, are there any other documents that you would like to formally table?

**Mr DAWSON:** No. I was going to quote some of them, but they would probably only repeat a number of what we have already said. It was just to emphasise if I needed to table them but I am more than happy to leave them here for you.

**The CHAIR:** Okay, terrific; thank you. We will deal with those after the hearing.

**Hon KYLE McGINN:** Regarding the comments around Jacqui's question, you made complaints to the WorkSafe hotline and you got the receipt number. Did you get contacted back by WorkSafe?

**Mr KNOWLES:** No. In most instances, I have to chase up to find out through the general communication I have with those inspectors that I normally deal with, or liaise with them, but I have never had a call back from WorkSafe in regards to any of the complaints, whether it is fatigue related or other issues within workplaces. I have put reports out and never had a call back or a —

**Hon KYLE McGINN:** So you have never been notified of the status of your complaint—whether it has been closed or whether it is under investigation?

**Mr KNOWLES:** No. It is only through direct conversation, if I pursue the matter with an inspector that I know has dealt with or is dealing with the issue, but I have never had official correspondence back that I can recall.

**Hon KYLE McGINN:** Would you say being able to have a relationship with the inspectors has been critical to you getting feedback on any of the complaints you put in?

**Mr KNOWLES:** Yes.

**The CHAIR:** When you do ask, Michael, do they provide you with the feedback you are seeking in terms of the status of the investigation?

**Mr KNOWLES:** Most times, yes. Sometimes, things may be referred off for prosecution and the like and, of course, that takes an extraordinary amount of time and effort for the inspectors, particularly on breaches of fatigue. I went through a case a few years back against a company, Ontraq Haulage, and that dragged on for two years and more. Just in the instance of one major breach, it took two years to go through and many, many court days to go through it.

**Mr DAWSON:** I think from a union's point of view, the relationship that we should have with WorkSafe should be that if we make a complaint on behalf of one of our members or about a company that we see is breaching the WorkSafe act, then there should be an official response back to that union of what they have done. It does not have to be the whole investigation, but even a dot point that they have inspected it and if we have misled them, then that should come back as well. That is not what we do. We just think that with the role we play in the employment relationship with companies and the role we play in driving safety in the workplace, which all unions do and we generally do, I think that WorkSafe should report back to the unions that do that to let us know what has happened to that investigation and whether it has been followed through with. It would also make our job have more of a requirement on us to do the right thing and we will learn from how we report as well and how there is a result in it. I think that two-way communication could only be good for WorkSafe safety.

**The CHAIR:** Agreed.

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**Hon KYLE McGINN:** Are you aware of members making complaints to the hotline and if they are receiving feedback?

**Mr KNOWLES:** I am not aware; I do not think so.

**The CHAIR:** Going back to page 9 of the submission, recommendation 3, and also at the bottom of page 5, it states that the government must establish a special road safety unit comprising WorkSafe, Main Roads and WA Police to ensure transport companies are adhering to fatigue management regs and chain of responsibility legislation. Can you just explain why this is needed if the three agencies are coming together to undertake inspections? Is that not happening regularly enough?

**Mr DAWSON:** I do not think it happens regularly enough. I mean, you only have to look at I think the submission by the Road Safety Commission. The memorandum was given that said there was only six joint operations in, I gather that would be the financial year, 2015–16, or it could have been two calendar years; I am not too sure. No AUSTRANS operations were completed. There were six inspections when I think we have approximately—I should table one of these because it has the numbers in it; I will leave it here—15 000 articulated vehicles and 35 000 heavy rigid vehicles on the road. Those numbers might not be 100 per cent right, I apologise if they are not, but they are pretty close to it. I will leave a copy there for you to have a look at and I will mark it up before I go so you know what page they are on; I will find it. If you look at that, they say they were six inspections last year. That goes a long way short of inspecting and making sure companies are doing the right thing. This is not about attacking drivers because, as I said, the overwhelming majority of drivers, whether they be under drivers or employed drivers, do the right thing—they want to do the right thing—but there are a lot of companies out there, as was said in a number of these articles earlier in regard to the Macquarie University one and that, about the pressure they are put under. Even companies are saying that 31 per cent of their employees will take a risk, which is a substantial amount of people. If that amount of drivers—31 per cent—are taking risks because of the pressure they are put under, it means that something needs to be done and they need to be inspected more often. They need to be worried that they will be inspected; six inspections does not worry companies out there that they will be inspected. It does not even get close to it.

**The CHAIR:** Tim, would it suffice the union's concern if the department held more of those inspections or do you see some particular benefit with this special unit being established?

[12.10 pm]

**Mr DAWSON:** Probably a bit of both, really. I think more effective, I suppose, auditing of companies—I do not know whether that is being done appropriately. I think there should be a review of how the auditing system is going. I think that would be one thing; then we can all be comfortable, whether it is or it is not. I cannot comment really on that; I do not have enough knowledge to know whether it is or it is not, but we need a review of that. It has been in place for a number of years now, and I think a good review of that. I would think that proper, coordinated inspections to make sure that companies are doing the right thing would go a long way to do that. Then if the separate departments had the powers to do—as you said earlier, WorkSafe cannot stop a trucker to check their logbook or check their work diary. It is hard to comment on something; it is their legislation, and they cannot police it. The legislation is to check diaries, and they cannot go and check the person who is driving up the road who is filling out the diary. It is nonsensical, is it not, that that is part of it? I think a bit of both would go a long way to hopefully prevent 10 or 11 people from dying on the road. I think in Western Australia, around 80 or 90 people are hospitalised every year because of heavy vehicle accidents, so with some of that, we can go a long way to making that less—zero if possible. We should be aiming for zero.

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**The CHAIR:** On page 6 of the submission, the union states that there is no oversight by WorkSafe and that the chain of responsibility legislation is not being enforced by WorkSafe. Is that again going back to the lack of a power to stop a vehicle when it is on the road?

**Mr DAWSON:** Yes, and since we put this submission in—I think I might have been a bit harsh on the legislation on chain of responsibility—I have found out that there has been a number of—so I would like to correct that for the people who police that, if they feel aggrieved by those comments. Since then, I have been made aware that they are, and that is why I said, “You’ll need to acknowledge that by informing everyone that you’re actually prosecuting people”, because if I am in my role and I do not understand and do not know about it, then not many other people out there do, because we follow that fairly thoroughly.

**The CHAIR:** When I was doing some research before this hearing, I was interested to learn that there are changes to the chain of responsibility legislation that are proposed to come in in mid-2018, and I knew nothing about those until I happened to come across it on a website.

**Mr DAWSON:** If you do not inform the industry, then people will be prosecuted because they do not know that they have got to do something and go and get the knowledge and inform their workplace and their workers and train them up to do it. So I think better education and information is definitely something, maybe not under the WorkSafe act, that needs to be somewhere, maybe under the chain of responsibility, that we are better educated and we understand what is happening.

**The CHAIR:** At page 8 of the submission, it states that Main Roads and WA Police cannot enforce and issue infringements to drivers for breach of fatigue management. This is something we have covered in some detail today. Can you just explain why we need three government agencies with enforcement powers for breaches of fatigue management regulations? Is that because WorkSafe cannot actually stop a vehicle on the road?

**Mr DAWSON:** While I think that WorkSafe should have the ability to do that, I just think that the tyranny of distance in Western Australia makes it very difficult to actually—lack of resources makes it difficult, too, for government. We can employ another 20 WorkSafe inspectors in the transport industry tomorrow, which might go a way towards doing that, but that is not going to happen. As much as we would like it to happen, we do not see that happening. If resources are used, I suppose, better for a better weight and turn, then the ability to make sure that people are not breaching and companies are not putting the pressure on them, as we said earlier, because that is what happens, then hopefully it would go to having safer roads and more people can be aware that they will be checked if they run the rabbit.

**The CHAIR:** Is there a capacity currently to issue an infringement for a breach of fatigue management regulations?

**Mr DAWSON:** By?

**The CHAIR:** By anyone.

**Mr DAWSON:** My understanding is WorkSafe have the only ability to actually write out an infringement, but they would have to be accompanied by the police to do it. If Main Roads pull somebody up for a vehicle check, then they could do it then, but they do not have the ability to say to a truck, “Stop here”, because they can just walk up to the bloke and he can just drive off.

**Mr KNOWLES:** Can I just jump in on that? In these combined roadblocks that they do from time to time, if there is something identified with a particular driver in regard to breaches of fatigue, WorkSafe would then refer back to their private contractor or employer and then go out and request

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those time records for that employee and then follow through from that. That is normally how it is done.

**The CHAIR:** Who is prosecuted or infringed for the breach? Is it the driver or is it the employer?

**Mr KNOWLES:** And/or both, depending on the situation. I think most times it goes to the employer, because their responsibility is to ensure their employee or contractor is abiding by the requirements of the code, but if there are blatant breaches there of an employee or a contractor, I expect WorkSafe would have the ability to pursue them as well.

**The CHAIR:** At page 9, recommendation 5 states that WA Police should be educated to recognise and understand fatigue management regulations to ensure compliance with the regs. Is it the union's view that WA Police do not understand fatigue management regs?

**Mr KNOWLES:** Can I answer that? In regards to that heavy vehicle fatigue reference committee, that has come up a number of times, whereas a country copper in an outback town somewhere may not be across what is required for an investigation or the information that might need to be collected or investigation to be followed up by WorkSafe, if it was going to be reported through them. That is where that statement or requests come from.

**Mr DAWSON:** For a driver to do his online fatigue management certificate, it is an online course. It is just understanding what the regs and what the requirements are. That is pretty much what it would be.

**The CHAIR:** Have there been any discussions with WA Police to include this as a unit in the training of police officers?

**Mr DAWSON:** I have had a discussion with somebody within the police department, and they see merits in it.

**The CHAIR:** But nothing has actually happened?

**Mr DAWSON:** No, but it is probably at a level of someone who believes that it has merits, but I think we will probably have to go maybe through the ministerial office, or at least the commissioner anyway.

**The CHAIR:** At page 8 of the submission, it states that the division between Main Roads, WA Police and WorkSafe needs to be closed to provide a comprehensive approach to reducing workplace fatalities in the transport industries. Can you just explain to the committee what you mean by this division, and how can the division be closed? Is this through the establishment of that safety unit?

**Mr DAWSON:** I do not think it is a deliberate division. It is not that they go out there and have a division; I think it is more a division of what we have spoken about here today—that there needs to be a better coordination of how they do it. There needs to be the resources and there probably needs to be some shared enforcement powers that they can use. That is more the division, not that they do not talk. I think they talk as often as they can. They do what they can, but we have got limited resources. A lot of times you have got to get three departments to be able to coordinate to do one thing, and getting three people to coordinate sometimes is hard enough, never mind three departments that may have several people that they have got to have on each one of these actions. That is probably more closing that division.

**The CHAIR:** And at the time when they are all experiencing budget cuts, it might be difficult to get three departments to all have resources to do that.

**Mr DAWSON:** Yes, and I think in conjunction with the Road Safety Commission, because any discussions I have had with them, they have a real will to want to make the roads safer. That is what they are, the Road Safety Commission, but they really have a will to make heavy vehicles safer, and

do what they can to do that. I would like to see them have some more education in that space, like educating people how to interact with heavy vehicles. I think they should have an advertising campaign there, but I suppose that is for another place and another time, but I think that would have some merit.

[12.20 pm]

**The CHAIR:** At page 9, recommendation 6 states that there is a need to restrict WorkSafe inspectors from giving advance notice to employers ahead of workplace inspections. WorkSafe have told the committee that it is not their practice to give advance notice of inspections, and that employers are only contacted when appointments need to be made—for example, to obtain a witness statement—but, otherwise, it is their general practice not to provide advance warning. We have had other evidence before the committee suggesting otherwise, so does that statement by WorkSafe to the committee surprise you?

**Mr DAWSON:** I suppose we have anecdotal evidence that WorkSafe, at times, you know, does inform people that they are coming out to their sites, and it may be, as you stated, what they say is for some reasons they do. I think they genuinely try to do the right thing and surprise them, but we have been told at times that all of a sudden the boss is cleaning up because WorkSafe is coming out there. I do not think WorkSafe deliberately do it for that reason. There might be other reasons why they do it. If you believe someone is doing the wrong thing and you are going to tell them you are coming out, they are going to fix it, aren't they? That is just what happens.

**Hon KYLE McGINN:** I am just curious. Would you say that you hear quite often from your membership that all of sudden they are told, "We need to do a clean-up" and then an inspector arrives, or is it a rare thing? I am just trying to get an idea of how frequently it is happening.

**Mr DAWSON:** It happens. It probably happens more regularly than we think it should happen. A lot of times our members do not even know WorkSafe has been on the site. They are truck drivers so they are out on the road driving, a lot of them, and so if WorkSafe comes in—it might be for some other thing such as a fatigue breach. WorkSafe might come in to check their records on fatigue and they might not need that individual driver's daily records. So there are occasions when they will not even have known that WorkSafe have come, unless they inform them, which they do not always do.

**Hon KYLE McGINN:** Do you have HSRs?

**Mr DAWSON:** Yes.

**Hon KYLE McGINN:** Would there be HSRs within the truck driver workgroups?

**Mr DAWSON:** Yes. We attempt to get as many as we can —

**Hon KYLE McGINN:** Would you say that when a WorkSafe inspector has attended the site and either delivered a notice or an order, are the HSRs being made aware that WorkSafe has been on site by management or by WorkSafe?

**Mr KNOWLES:** No, they are not.

**Mr DAWSON:** Not on all occasions, no, which I think should be a minimum requirement.

**Hon KYLE McGINN:** I am quite shocked.

**The CHAIR:** At page 9, recommendation 7 states that WorkSafe must include truck driver deaths as part of workplace death statistics. Does the union have any evidence that employers are not reporting truck driver deaths to WorkSafe?

**Mr DAWSON:** No, probably not. So, no physical evidence, but even Main Roads have told us that they do not always get reflected in WorkSafe deaths.

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**The CHAIR:** So how do we address this issue? If WA Police are not automatically contacting WorkSafe when there is a truck driver involved in an accident and we do not know whether employers are advising WorkSafe of a truck driver's death, how do we actually get these statistics improved to make sure that they are actually telling us what they should be telling us?

**Mr DAWSON:** I think it should be a requirement. That is all I can say.

**The CHAIR:** So legislative change to make that a requirement?

**Mr DAWSON:** Yes, or a request from the commissioner or the minister that flows down that this is what happens. But, whichever way, I mean, yes, legislation always makes sure that they adhere to it, doesn't it? But, yes.

**The CHAIR:** Now on page 5 of your submission, the TWU has said that WorkSafe has not investigated complaints thoroughly or simply dismissed the complaints. Can you provide the committee with examples—just general complaints? It is page 5 of your submission.

**Mr DAWSON:** Which part? How far down are we?

**The CHAIR:** I am just trying to find it. I am having the same problem. At (b) —

Funding and resourcing of WorkSafe

**Complaints** — for too long WorkSafe has not investigated complaints thoroughly or just dismissed them outright.

**Mr DAWSON:** I suppose it is that question of our members saying that they rang up and they have not been contacted back from WorkSafe. All they do is ring up and get a reference number, so they have to ring up themselves and sometimes they are not told what the outcome was or whether anyone inspected it. So from that we say, "Have they or haven't they been inspected?" So that is why I believe that a thorough reporting back system to whoever makes the complaint; that way we will be comfortable that the complaints are being investigated. But, yes, I suppose any direct proof of that happening may be—we could probably find some if we really needed to.

**The CHAIR:** Can we just take that as question on notice 2. If you know of instances where complaints have just been dismissed or not thoroughly investigated and you want to provide that evidence to the committee, it would be most welcome.

**Mr DAWSON:** No worries. We will do that.

**The CHAIR:** When WorkSafe tell one of your members that they have decided not to investigate a complaint, do they actually explain the reasons why they have made that decision, or when the union has lodged a complaint?

**Mr KNOWLES:** I think any feedback that I have ever had about a complaint, they have tried to cover it off as best they can or within the framework of what they are allowed to discuss. I think they have cited privacy and that in the past as well, and more often than not, too, if something has been referred off for prosecution, obviously you cannot get any information on that until it has gone its full course. But, in general, I do not have any great complaint with WorkSafe over how I get that feedback.

**The CHAIR:** Have you ever been told that you need to lodge a freedom of information application to obtain information?

**Mr KNOWLES:** Myself? No.

**Hon KYLE McGINN:** Just in regard to the receipt and the hotline, are you aware of members calling up with the receipt number and asking for feedback and being denied feedback?

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**Mr DAWSON:** No, I cannot say that I have had anyone say that they have denied it. I suppose their major frustration is that sometimes it will be, as Mick said, that, “For privacy reasons, we can’t give you an answer”, or there’s sometimes a reason why they cannot give an answer. That is what frustrates people, because they think, “I have made a complaint; I should be entitled to hear whatever the answer is from that.” I just think if it was clearer about how they report back, when and how the information went back to the people who made the complaint, then we would all feel more comfortable. Sometimes people may well complain to a safety issue that they feel very strongly about the safety issue, but WorkSafe go out there and they find the company just needs to manage it better or they might only need a few minor changes and that does it, and the person who makes the complaint might not see that that has happened. If you do not get that report back, you think, “Well, jeez, they haven’t done nothing about it.” So that is probably more the concern and the frustration the people we deal with have, and I think if it was a lot clearer and that feedback was a lot more thorough, then I think WorkSafe would be in a better place too, because people would not be frustrated if they are doing their job of them thinking they are not doing their job.

[12.30 pm]

**The CHAIR:** Noting the time, I think we need to bring this hearing to a conclusion for today. There are still a number of questions that I had hoped to ask that I have not got through, so the committee will consider whether we invite you back for another hearing or simply provide the questions to you in writing, so you will be notified in due course—no doubt Margaret will contact you to let you know what the committee has decided to do. I would like to thank you very much for your attendance before the committee today and for the evidence that you have provided the committee. I just remind you that the transcript of the hearing will be forwarded to you for correction, so if there are any typographical or transcription errors, you can correct them on the copy that you are provided with and return it to Margaret, and that way the committee can consider those. There were two questions taken on notice and the committee requests that you provide your answers when you return the corrected transcripts of evidence, but in relation to question or notice 2, it might take you more time to get a reply about, so I am quite comfortable with you taking a couple of weeks—two to three weeks to get that back to us.

**Mr DAWSON:** The second one was about whether anyone had —

**The CHAIR:** Any evidence that you have about complaints not being investigated properly or at all by WorkSafe. The letter that we send you, Tim, and the transcript will have all of those questions on notice easily identifiable in that transcript. If you want to provide additional information to the committee, you are always welcome to do so. Although I had hoped that we would bring this inquiry to a conclusion by the end of year, that is just not going to be possible, so, you know, it will be running into next year. If at some time you have got some additional information you want to present to the committee, just let us know. Tim, you have got some additional documents that you indicated you would like to table. I might just ask that you go outside with Margaret and you provide those to her and then we will get them formally recorded. I thank you both for your attendance.

**Mr DAWSON:** Thank you very much. I appreciate your time and your concern about road safety.

**Hearing concluded at 12.31 pm**

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