

**Report of the Standing Committee on Public Administration**

**Report 28: Inquiry into Worksafe – Terms of Reference**

**Submission by Tim Dawson, Branch Secretary**

**Transport Workers' Union – WA Branch**

**27 July 2017**

## Executive Summary:

The Transport Workers Union WA Branch ("TWU") is the collective voice for the men and women working in the Australian transport industry and has been for more than 120 years.

The TWU represents members who work across a variety of industries including aviation, mining, oil and gas, road transportation and freight logistics, public transport and waste management.

Our goal is to make sure that transport workers in Australia get a fair go, with equal entitlements and safe working conditions for an industry that is increasingly dangerous.

The TWU welcomes the opportunity to make a submission in relation to the *Standing Committee on Public Administration Report 28: Inquiry into WorkSafe*.

The TWU understands that the Standing Committee's functions are to:

- a) Inquire into and report on –
    - i) the structure, efficiency and effectiveness of the system of public administration;
    - ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;
    - iii) the existence, adequacy or availability, of merit and judicial review of administrative acts or decisions;
    - iv) any Bill or other matter relating to the foregoing functions referred by the Council;
- and,
- b) Consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

The TWU respects and supports the functions of the Standing Committee and has prepared a report pertaining to the Transport Industry's involvement with WorkSafe and how the function of WorkSafe is currently inadequate in responding to primary objectives.

We include examples of recent incidents relating to the terms of reference and where WorkSafe has demonstrated inaction or a lack of resources to adequately give timely recommendations.

The report concludes with a series of recommendations to WorkSafe from a Transport industry perspective, and foresees a stronger and safer industry with their implementation.

## Terms of Reference

### **Inquiry pursuant to Standing Order 179**

1.1 At a regularly conducted meeting of the Standing Committee on Public Administration held on 21 June 2017, the Committee resolved to inquire into and report on WorkSafe, with the following terms of reference:

- a) WorkSafe's performance against the objects of the Occupational Health and Safety Act 1984
- b) Funding and resourcing of WorkSafe
- c) Adequacy of WorkSafe's training, oversight and accountability processes
- d) Adequacy of administrative processes, including complaints, investigations and prosecution processes
- e) Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training
- f) Timely implementation and public education of coronial inquest recommendations arising from a workplace death
- g) Legislative and jurisdictional issues
- h) Any other relevant matter.

## Discussion

a) WorkSafe's performance against the objects of the Occupational Health and Safety Act 1984

The objects of the Occupational Health and Safety Act 1984 ("OH&S") are contained in Section 5 of the Act are:

- (i) to promote and secure the safety and health of persons at work;
- (ii) to protect persons at work against hazards;
- (iii) to assist in securing safe and hygienic work environments;
- (iv) to reduce, eliminate and control the hazards to which persons are exposed at work;
- (v) to foster cooperation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;
- (vi) to provide for formulation of policies and for the coordination of the administration of laws relating to occupational safety and health;
- (vii) to promote education and community awareness on matters relating to occupational safety and health.

**Recourse** – the Government must give WorkSafe the resources to properly investigate workplace injuries, accidents and workplace deaths; something that has not occurred over the last 8 years. We believe workplace fatalities in the transport industry (or any industry) must be investigated to the satisfaction of the families of those workers.

It must be acknowledged that the transport industry is a unique industry. No other industry puts vehicles weighing in excess of 150 tonnes on the road. In both regional areas and on metropolitan roads the vehicles may weigh up to 90 tonnes, sharing the road with other suburban road users.

There are far too many on road deaths in the transport industry. In this year so far (Jan-March 2017) almost 40% of all workplace deaths nationally have involved transport workers, with 19 transport worker deaths out of a total of 51 workplace deaths<sup>1</sup>. It is incumbent on WorkSafe to make sure that the transport industry's workplaces and our roads are as safe as possible.

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<sup>1</sup> Australian Government Department of Infrastructure and Regional Development Fatal Heavy Vehicle Crashes Quarterly Bulletins: [https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin\\_Mar\\_2017.pdf](https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin_Mar_2017.pdf)

Western Australian transport workers and their families deserve a safe place at work, furthermore the family of someone that has lost their life at work or been seriously injured must be satisfied that a thorough and proper investigation has been carried out.

Transport Companies are flaunting these laws by forcing drivers to work long hours putting not only these drivers at risk but also the general public.

Western Australians must be satisfied that their elected representatives have done everything possible to ensure that all workers go to work and come home safely and that all people who travel on WA roads are safe.

This is why we need to take a fresh look at how we police the safety of the transport industry.

#### b) Funding and resourcing of WorkSafe

**Complaints** – For too long WorkSafe has not investigated complaints thoroughly or just dismissed them outright. WorkSafe must appoint special inspectors that have the resources and expertise to investigate alleged breaches of Fatigue Management Regulations (“FMR”). These inspections should include workplace accidents and load restraint breaches. Only then will the transport industry, and the broader community be safer.

Road safety must not be compromised due to funding and resourcing constraints. All the resources of the government should be used to ensure that WA roads are safe and the community is safe on our roads.

This was evident in the recent MinesWest Registered Training Organisations (“RTO”) case, whereby 326 Heavy Vehicle Competency Based Assessments (HVCBA) were completed and licenses were granted by the RTO without proper assessment of the drivers<sup>2</sup>. Trucks can become lethal weapons if the driver has not been properly trained.

#### c) Adequacy of WorkSafe’s training, oversight and accountability processes

**Fatigue Management** – must be policed not only by WorkSafe but alongside Main Roads, and the Police Department. There is a clear need for these departments to work closely in conjunction with the Road Safety Commission (“RSC”).

The Government must have a special road safety unit that works together with WorkSafe, Main Roads and the Police Department to ensure that transport companies are adhering especially to FMR and in conjunction with the RSC’s Chain of Responsibility Legislation (“COR”).

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<sup>2</sup> ‘Fake Licences issued by Northern Suburbs RTO’ <http://www.watoday.com.au/wa-news/fortunately-nobody-killed-more-than-300-fake-truckie-licenses-in-wa-20170705-gx4xxv.html>

WorkSafe has been given sufficient powers to oversee training of FMR and COR legislation, but these powers must be more effectively utilised and expanded. The WA community must have a safe road network and making the transport industry safer will go a long way towards achieving this objective.

The current system is broken with no oversight by WorkSafe towards a safer transport industry. COR must be enforced; COR came into effect in April 2015 and since that time we have seen very few cases prosecuted.

FMR is paid lip-service by many transport companies and operators whom either do not understand the legislation and/or flout their obligations. The legislations' intention has failed, the industry continues to appear to reward rogue operators and unsafe work practices. It is a case of 'the more you cheat the system, the more work you get'. Overloading vehicles, short cuts on load restraint, excessive working hours, and inadequate vehicle maintenance are all factors that put transport workers and the broader community at risk.

Many of these rogue operators are safe in the knowledge that they are unlikely to be prosecuted, and even if they are prosecuted – the penalties are relatively minor. The State Parliament enacted COR legislation to make WA roads safer, it is now time for WorkSafe and Main Roads to adequately enforce COR.

Police should be trained to understand fatigue management regulations (commencing with Regional Police) so that the WorkSafe commissioner has the ability to delegate the power to Main Roads and the Police Department to ensure compliance with regulations.

d) Adequacy of administrative processes, including complaints, investigations and prosecution processes

WorkSafe should have the ability to request a coronial inquest into all truck driver deaths as the coroner has powers to request unlimited information to investigate why a driver was killed in their workplace.

We are also aware that WorkSafe inspectors often contact employers ahead of workplace inspections, this practice of giving advanced warning allows ample time for employers to quickly remedy OH&S safety breaches with 'band-aid' solutions, or remove plant and infrastructure which may be in breach of safety regulations.

Further, truck driver deaths must be counted as workplace deaths not as just another road fatality, this practice not only dilutes accurate statistics of workplace fatalities, and it also lessens the impact of these individual tragedies.

e) Adequacy of WorkSafe's audits of training providers delivering occupational health and safety training

As we have seen in the MinesWest RTO case, WorkSafe's auditing processes of training providers is not working adequately in its current state. What other training providers have been missed by these audits, how many people are working in the Transport Industry without proper assessment or training?

When will the next tragedy occur as a result of inadequate workplace training and lax workplace auditing?

f) Timely implementation and public education of coronial inquest recommendations arising from a workplace death

There are too many transport workers dying on the roads or being injured and there are far too many unroadworthy vehicles on our roads.

The current timeliness of WorkSafe investigations and coronial inquest recommendations leaves a lot to be desired.

A tragic example of this is preventable death of Mr Clayton Miller, who passed away in January 2015.

Mr Miller was delivering water tanks to a property 100 kilometres north-west of Meekatharra when his vehicle became bogged on an unsealed private road, he then walked 25 kilometres in the direction of a homestead, but turned back intending to return to his vehicle. Mr Miller was found dead under a small shrub, less than a kilometre from his truck clutching an empty water bottle.

More than 2 years on, the WorkSafe investigation into Mr Miller's workplace death has yet to result in an outcome, it is disappointing that WorkSafe believes - and that the law states - that three years is a "timely" investigation.

Clearly, the recommendations WorkSafe give should be time conscious and time appropriate.

It is our sincere belief that all trucks engaged in linehaul transport and/or transport to remote areas should be required to be fitted with satellite phones, GPS and distress alarms which are monitored and accessible by emergency services.

In this way, many preventable workplace deaths may be avoided for a very small financial cost.

It is the responsibility of the Government to look after its citizens. The previous government failed dismally by not giving WorkSafe the staff or resources to utilise its power to investigate and adequately police workplaces whom are believed to be flouting OH&S, FMR, and COR regulations.

It is time that those who control the economic power in the transport chain are legally held accountable by their action or inaction. Those that contribute to breaches of road safety by using their economic power must be held accountable.

g) Legislative and jurisdictional issues

As it stands currently, Main Roads and the Police Department cannot enforce and issue infringements to drivers for breach of FMR. These powers need to be expanded by the Government and actively monitored by WorkSafe.

The division between these departments needs to be closed in order to allow for a cohesive and comprehensive approach to reducing workplace fatalities in the Transport Industry and the broader community of road users.

h) Any other relevant matter.

We need to get serious about road safety for all road users, as one-third of the traffic on the roads are there for work-related reasons. Of all work-related fatalities, about one-third can be attributed to car accidents where the victim and the vehicle were on the road due to job requirements.

There are some astonishing figures that came out of Safe Work Australia report in July 2015 which showed:

- 31% of employers say workers ignore safety rules to get the job done
- 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.<sup>3</sup>

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<sup>3</sup> A 2015 report by Safe Work Australia: <https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics-industry>



## Recommendations

The Transport Workers Union makes the following recommendations to The Standing Committee's inquiry into WorkSafe.

1. Appoint inspectors who have statutory, investigative and enforcement powers in respect of alleged breaches of FMR, OH&S, load restraint and any other breaches relating to warehousing and logistics. These inspections include workplace accidents and load restraint breaches.
2. WorkSafe Commissioner is empowered to delegate statutory powers to Main Roads and the Police Department to investigate and enforce FMR and COR and any other regulations that are breached by transport companies.
3. Implement a dedicated road safety unit of inspectors comprised of representative of Main Roads, the Police Department and WorkSafe, and that are accountable to the Minister responsible for Workplace Safety.
4. Actively and vigorously enforce COR legislation.
5. Educate Police to recognise and understand fatigue management regulations to ensure compliance with regulations.
6. Restrict WorkSafe inspectors from giving advance notice to employers ahead of workplace inspections. Promote WorkSafe Inspector's right of entry powers without prior notice.
7. Do not understate the significance of a truck drivers' death by condemning them to be just another road fatality statistic. WorkSafe must include truck driver deaths as part of workplace death statistics.
8. WorkSafe to provide timely and adequate reporting and recommendations into incidents no later than 1 year from the date of the incident.

Submitted on behalf of the Transport Workers Union WA Branch

Tim Dawson  
Branch Secretary