

# **Economic Forces in Motor Carrier Safety: Regulatory Change in Australia**

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# Competition as a key latent safety factor

- Distinguish this from a direct cause
    - Brakes failed
    - Driver fell asleep
  - Freight and passenger transport is a business activity
    - Cannot separate fatigue management from work and business process
    - Do not focus on the technology but rather on industrial organization
    - Focusing on technology and engineering ignores economic forces — and competition — driving the work process
  - Competitors will do whatever they must to make a profit
    - Without regulatory limits to competition:
      - Shippers will make carriers do whatever it takes to be lowest cost providers
      - Carriers will make operators do whatever it takes to reduce cost
    - With regulatory limits
      - Carriers can compete on safety and service
      - Safety management can become a strategic advantage
  - Risk-shifting and subcontracting to least powerful people pushes competition to the bottom of the food chain
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# Original U.S. Regulation

- “Cutthroat competition” in trucking began in the 1920s and led to serious safety problems
    - State and local authorities could not cope with growing safety problems created by inter-state trucking
  - Motor Carrier Act of 1935 limited competition and improved safety
    - Enforcement originally rested with Interstate Commerce Commission (ICC) but shifted to U.S. Department of Transportation (DOT) in the 1960s
    - Unionization grew from less than 10% in the early 1930s to 60-90% in the 1970s and has returned to less than 10%
    - Collective bargaining brought order to a fragmented industry and compensation to middle-class standards
    - Worker protections at unionized carriers spilled over to protect non-union workers at non-union firms and in exempt sectors
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# U.S. Regulatory Liberalization

- Administrative deregulation in 1977 increased market competition
  - Motor Carrier Act of 1980 removed most existing economic regulation of inter-state trucking
    - Market entry eased; transparency ended
    - MCA of 1980 favored rate discrimination; shippers gain bargaining power
    - Collective ratemaking ended; cutthroat pricing returns
  - Intra-state deregulation mandated in 1995; ICC closed
  - Federal Motor Carrier Safety Administration (FMCSA) of the DOT now is the major regulatory barrier to cutthroat competition
    - Hours of work (which limits labor market competition)
    - Truck and driver health and safety standards
    - Motor carrier safety regulation
  - DOT doesn't want this job
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# Carriers Now Compete on Price

- **Primary determinant of freight transport pricing is cost**
- Carriers must continuously reduce cost
  - Shippers view freight transport as a commodity - a “cost-center”
    - Shippers’ goal is to keep cost low
  - Cost caused industry to restructure completely in 3 years
    - Lower trucking cost enabled increased trade and longer supply chains
- **Rapid change in cost factors changed industrial organization**
  - Trucking rapidly segmented based on shipment size
    - Truckload carriers need no consolidation terminals
    - Truckload carriers need no local pickup and delivery networks
  - A few common carriers survived as less-than-truckload carriers; the rest failed
  - Non-union specialized and contract carriers created booming truckload sector
- Probably 1/4 of cost-savings came from restructuring
- Probably 3/4 of cost-savings came from lower compensation
- **Does low compensation lead to safety management problem?**



# Economic Forces Drive Safety

- Nobody drives a CMV for fun
    - This is an industry
    - Operations must make money
    - Deregulation has made all operations competitive
  - All studies show that economic competition underlies commercial vehicle safety
    - This effect is latent
    - Applies to trucking, motor coach intercity bus, airlines, as well as transit
    - Fatigue, lack of maintenance, overwork, bad judgment (driver/pilot error), design flaws are proximate causes but not common cause
  - No solution will last that does not deal with economic forces
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# First Evidentiary Base

## 2001 Quinlan Trucking Safety Inquiry

### Role of commercial practices on truck safety

- Divergence between trucking's poor safety record, which did not match improved road safety generally
- Linked poor safety and health (e.g. drug use linked to wkg time)
- Shipper/client pressure led to low margins & extensive subcontracting
- Subcontracting & low margins led to compromised safety via incentive pay, long work hours, speeding, drug use, overloading, less maintenance, delays at warehouses, tight schedules



# Quinlan 2001 Safety Inquiry Recommendations & Policy Effects

- Recommended mandatory “Chain of Responsibility” code
    - Greater role for OHS law
    - Trip/pay record to replace logbooks
    - Minimum rates for all drivers
  - Policy issues
    - Implemented COR based fatigue regulations (especially NSW)
    - Reinforced parallel shifts in other jurisdictions
    - Minimum compensation rates required federal action
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# Political Campaign – 2001 to Present

- TWU campaigned against hostile fed IR laws (“Work Choices”)
  - Retain contract determinations for short-haul
  - Retain contract determinations for owner/drivers
- TWU ran safety test case in 2007 in NSW IR tribunal
  - Evidence from Quinlan, Williamson, Belzer
  - Mutual responsibility decision OHS clauses in award
- Pushed federal Labour Party for inquiry to examine evidence on safe rates law
- Labour Party defeated Liberals in 2007, repealed “WorkChoices” Act of 2005 and replaced with “Fair Work Australia” Act



# Second evidentiary base

## 2008 NTC review of pay/safety link

- Williamson's large surveys (1991/1998) linked trip-based pay to fatigue and drug use
- Williamson study (2007) reinforced pay/safety link
- Hensher et al. studies of pay, scheduling & hazardous practices
- Mayhew & Quinlan (2006) study of occupational violence & psychological distress
  - GHQ scores higher for ODs and those on competitive routes
- Belzer et al. 2002 FMCSA study
- Rodriguez et al. 2003; 2006



# NTC review of pay: Recommendations and Impact

- Recommended
  - Establish tribunal to set minimum safe rates
- Impact
  - Wright/ Quinlan report recommended safe rates
  - November 2011 Labour Party introduced bill establishing special tribunal
  - Expected to pass early 2012
  - Expected to implement July 2012



# Features of 'safe rates' legislation

- New Road Safety Remuneration Tribunal to promote safety and fairness in road transport
- Tribunal complements existing federal IR laws & state/federal OHS & transport safety laws
- Tribunal to ensure
  - Drivers do not have pay-related incentives and pressures to work in an unsafe manner
  - Drivers paid for work, including loading & unloading or waiting for others to load and unload•



# Tribunal responsibilities defined

- Develop & apply reasonable & enforceable standards throughout road transport industry
- Develop mechanism to ensure all participants in supply chain take responsibility for implementing/maintaining standards
- Inquire into sectors, issues & practices
  - Determine mandatory minimum rates and related conditions for employed & self-employed drivers
  - Consider safety issues that impact on both employee & owner drivers, such as waiting times



# Tribunal 'safe rates' regulations

- Determinations (Road Safety Remuneration Orders)
  - Additional existing rights of employed drivers (under industrial instruments) and owner drivers (under their contracts)
  - Evidence-based approach can use mediation, conciliation, consent, or arbitration
- Tribunal can grant 'safe remuneration approvals' in collective agreements between hirer and all self-employed driver contracts
- Tribunal can resolve remuneration disputes between parties in supply chain if they provide incentives to work in an unsafe manner



# Web URL to the Bill

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4733%22>



# US Policy Suggestions

- Engage the US DOT and the US Department of Labor to work together
    - DOT cannot regulate compensation and employment relationships, but DOL can
    - DOL cannot regulate transportation safety per se, though it could regulate working time
  - Chain of responsibility regulation to make everyone in the supply chain jointly responsible for safety
  - Look more closely at subcontracting and subcontractors
    - Worker misclassification as contractors is destroying the employment relationship
    - Misclassification denies workers protection and leads to widespread tax shortages
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# Further Resources Available by Request

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