COMMONWEALTH OF AUSTRALIA

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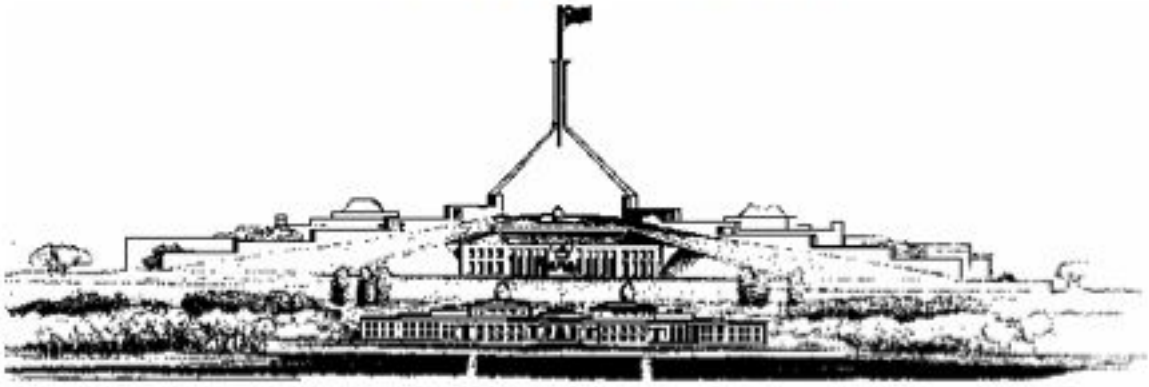

HOUSE OF REPRESENTATIVES

BILLS

Road Safety Remuneration Bill 2011, Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

Second Reading

SPEECH

Tuesday, 13 March 2012

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	Billson, Bruce, MP	**Question No.**	

Mr BILLSON (Dunkley) (17:01): Today we are talking about the Road Safety Remuneration Bill 2011 and the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011. I have listened with interest to contributions from all sides of the parliament about the measures contained in these bills. It is interesting that what was presented to this parliament as a transport matter has now morphed its way into being an issue of concern for the employment minister. I think in some respects that highlights what is actually happening with this bill.

This legislation has been discussed in terms of its claimed contribution to road safety—to the care of motorists and families using Australia's roads and to the too-high work accident statistics relating to drivers of heavy vehicles. That is the starting position, but what sits behind that is a proposition to create a new tribunal that plonks itself fairly and squarely between truck drivers and their customers, and that includes independent contractors. There are even claims to have it extended to the courier industry and a range of other areas. So in effect it is becoming an award structure for a sector that really has not sought to have such a constraint on the way in which it does business and the way in which owner-drivers, in particular, offer their services and the terms they negotiate with their clients and customers.

But these bills seek to change that. The bills seek to create a road safety remuneration tribunal that will set rates under broad powers to investigate and establish those rates and conditions for any segment of the heavy vehicle industry. Under that broad distinction, this legislation covers road transport, the distribution industry, a number of long-distance operators, the cash-in-transit industry, the waste management industry, transport owner-drivers and independent contractors. And, as I mentioned, more recently there has been a push to get into the courier space. For those who are interested, this measure will not cover everyone in that space, but it aims to cover many—about 80 per cent of employee drivers and about 60 per cent of owner-operators—reflecting the reach of the corporations power under which this measure is being instigated and also the fact that it deals with interstate activities and does not seek to deal with intrastate activities. That is important, because intrastate transport arrangements already have, in a number of jurisdictions, something equivalent to a tribunal operating in New South Wales, Victoria and Western Australia, as I understand it.

So we already have something happening at a state level. Now there is a proposition that started as a road safety measure and that has morphed into an employment issue, to apply to some of the traffic across Australian roads. It is interesting that this body will comprise industry members and members of Fair Work Australia but will actually have powers beyond those that Fair Work Australia has available to it. It will have the power to prepare a work plan with a view to making road safety remuneration orders, RSROs, and then setting those orders to deal with remuneration and related conditions. The tribunal can do that on its own initiative or when it is urged to do so by industry participants and industry associations. So this is a very powerful body. This is a body that injects itself into the commerce, the transactions and the supply of transport services between businesses and that seeks to say that it knows best—and it does so in the name of claiming to create safer roads and safer work conditions for drivers.

It is interesting to listen to members opposite. They seem to airbrush out any of the criticism of these bills—and there has been quite a lot of criticism. This is not, as the member for Blair characterised it, a measure that is 'universally endorsed'. That is quite far from the point. In fact, a number of concerns have been raised through the committee inquiry process that led the dissenting report to conclude that there is no compelling evidence, that no causal link has been established between this measure, the tribunal it seeks to establish, the powers that that tribunal would exercise and the consequences for road safety—either for other road users or for truck drivers in particular.

The coalition members on that committee, having heard and considered all of the evidence, said that they were unconvinced that safe rates will lead to an improvement in road safety outcomes. The coalition members, to their credit, pointed to and were fully supportive of the need for a multifaceted approach to reduce accident

rates in the transport industry. It was interesting that the member for Blair in his contribution talked about road investment as an example whereby if the road infrastructure continues to be improved then we would hope to see improvements in road safety, and therefore significant reductions in fatalities of general road users and truck drivers in particular.

That evidence of a causal link that has been claimed and asserted over and over again is not available. It is not presented. In fact, many would say it is counterintuitive, because all of the powers that are available to make sure inappropriate demands are not placed on truck drivers are already there. There are mechanisms under state laws and, in some cases, federal laws to take action where drivers are forced to do things they should not do in the name of road safety that breach the constraints that are imposed on them that deal with safety requirements, antifatigue measures and rest measures, the pace at which their vehicles can travel and the duration of their driving sessions. Recently, we have seen some high-profile examples with Lennons Transport, and Scott's in South Australia, as evidence of the toolkit that is available now.

This legislation is really about implementing a Transport Workers Union agenda to impose their influence, their demands and their requirements on a sector where independent contractors and self-employed people are at present freer to negotiate the terms and conditions of the services they supply to their customers. This is about union control. This is about undermining independent contracting and self-employed as a legitimate business structure with responsibilities not only to their own business but to their customers and the requirements to uphold the legal obligations on them currently passed by state and federal law. That is what this bill is actually about.

If you look through the material that has been presented, you will see the hesitation from many substantial industry players in the way they have reacted to the unsubstantiated assertions that this legislation will improve road safety —for example, the submissions from the Australian Logistics Council and the Australian Industry Group. They pointed out that they do not believe there is a link between road safety remuneration rates, and it certainly has not been proven. A similar opinion was presented by the Independent Contractors Association and the National Road Transport Operators Association (NatRoad), as well as the Toll Group, who are quite active in this space.

It is right that the government can cherry-pick particular advocates who say this is a good thing and it is not surprising that some of those interests that are being drawn from to provide evidence that this will somehow be good for the industry have their own interests at heart. I have talked about the TWU and their interest is understandable. They want more union members, more control, more influence and more capacity to exercise power and to pursue their agenda within the sector. That is understandable and for a union that is quite a legitimate ambition. That does not mean it is good public policy. Some other, larger transport groups have been cited as being supportive of it.

It has been known for decades that some of the larger transport companies undertake discussions and negotiations with the TWU to get peace and tranquillity in their workforce on certain terms and conditions, only then to happily and, in some cases, actively see those same terms and conditions pushed throughout the sector so that they are at no commercial disadvantage but can benefit from the industrial peace that they have negotiated. One would argue that that is a cunning business strategy, but that does not mean it is good public policy. It pushes up cost structures. The argument being put is that it is about the remuneration available to truck drivers.

My friend and colleague the member for Flinders made the point about the increasing cost burden that will be imposed on this sector as a result of the carbon tax. There are great burdens on operating transport vehicles at a time when customers and, in some cases, big customers are disinclined to pay more for the service. That does not mean you set to one side the restrictions currently on transport operators. That does not mean you can all of a sudden ignore questions of fatigue, slotting of rest breaks or speed. They are not put to one side; they continue to be there. It is wrong of the government to just reject the link between the increased cost burdens that it is imposing on transport operators and come into this chamber and claim that this is somehow a remuneration issue without taking into account the impacts on the cost of operating these businesses.

There is also an issue about the independent contractor being able to offer his or her skills and services at a price that they are happy to negotiate with their customers. There is a legitimate concern within the sector with regard to this tribunal setting what it claims will be a minimum price. That will actually set a benchmark price and there will be no capacity for people to negotiate and offer other advantages for contracting with them because a new norm will be set, a new default payment rate—one that does not take account of those other measures that I talked about that have a direct and clear evidence based link with road safety and heavy vehicle use.

The other thing that is worth reflecting on is if there is a toolkit that ensures transport operators are not being forced, cajoled or encouraged to do things they should not do, and there is contractual relationship between them and their customer, I remain bewildered to this day why the government do not provide protections in relation to the contract itself. I have described a range of state and federal laws that apply that limit and guide behaviour and conduct to ensure heavy transport driving is safer. But in terms of the contract itself, the government continually refuse to pick up a policy that the coalition have been advocating—that is, extending the unfair contract terms protections. Such protections are available to consumers and we believe those protections should be extended to small business. If a small business is confronted with a 'take it or leave it' standard contract from a big customer who is completely disinclined to adjust or adapt, or hear from the small business about their concerns, then there is an avenue for redress through extending the unfair contract terms protections that are available for consumers

Why doesn't the government deal with that? If it claims there is an imbalance in the contractual relationship between a big business and an owner-driver, for instance, why not tackle that contractual relationship rather than contrive this area of injecting more union control into the commercial relationships between people in this country?

This also draws out the issue that, as I understand it, 50 per cent of all vehicle accidents involving heavy transport vehicles are the fault of someone else, so you can see how spurious that argument is when you look at the crash record. As you look at what is happening across the country and at the statistics dealing with heavy transport accidents, bear in mind that there are at least three jurisdictions that have something that looks like, sounds like, walks like and squawks like this tribunal. If that is the answer, why are we seeing some of the trends we are seeing in heavy vehicle accidents? Why are we also not dealing with the simple fact that half of all those heavy vehicle accidents are not caused or instigated by the heavy vehicle driver but by someone else?

These are the facts. The idea being asserted here is that this will make our roads safer, yet no conclusive evidence has been presented to back up that case. There are other remedies available to address the mischief, the problems and the issues that the bill seeks to address, but those other remedies do not empower the Transport Workers Union and the union movement more generally to inject themselves further into the Australian economy. Those other remedies do not have the problem of undermining a legitimate business model, that being an independent contractor or a self-employed owner-driver, a very important part of the small business community which has faced hostility at every turn from this government despite assurances from the Minister for Employment and Workplace Relations, Mr Shorten, when he was Assistant Treasurer, that the government would take no action to make life more difficult for independent contractors. This measure does. It is another broken promise and it is something that goes against the assurances that have been given.

Finally, when we are talking about making our roads safer, that is an ambition we all share. But, as the coalition pointed out, not only for those using roads and those drivers and the families of people who want to see loved ones come home, a multifaceted approach is required to reduce the accident rate, not some sham tribunal that injects unionism— *(Time expired)*