



SUBMISSION TO THE
NATIONAL TRANSPORT COMMISSION

IN REGARDS TO THE
SAFE PAYMENTS INQUIRY

SEPTEMBER 2008

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1. INTRODUCTION

The National Transport Commission (NTC) has asked for public submissions from interested parties on this issue by 5 September 2008. Due to the extremely short timeframe we have sought and been granted an extension of time for our submission on this very important matter. As the trucking industry's peak national body, we have had to consult with a wide range of industry representatives, including state and sector industry associations from around the country, the Transport Workers' Union (TWU) and the small fleet owners and owner-driver representatives on the ATA Council. We appreciate this accommodation by the NTC, and we commend what we understand to be the intention of the NTC to take an evidence-based approach to this review. Our submission is necessarily less than a full presentation of the facts and evidence due to the brevity of the response time, but we will be happy to provide further information should this matter proceed to a second stage.

There is broad agreement within the ATA on many of the issues raised in this matter, but there are also some significant and important differences of view on some issues and some differences in emphasis. In particular, the entire ATA community, including the TWU and the Owner-Driver representative, are in full agreement that safety is of paramount importance and that the key objective must be to resolve the safety issues and that the Chain Of Responsibility (COR) and Fatigue and Speed management reforms will play a core role in addressing these issues.

The key and most important divergence of views between the TWU/Owner-Driver representatives and the broader consensus of the ATA Council is in relation to the:

- The existence and strength of a causal link between rates of pay and safety; and
- The appropriateness and effectiveness of using a "Safe Rates" regime to improve road safety involving Heavy Vehicles.

The TWU and Owner/Driver representative believes there is a proven causal link and that a "Safe Rates" regime would be the principal mechanism and an important and effective addition to current and impending COR and Driving Hours and Fatigue Management reforms and other reforms, including speed management and roadworthiness. The balance of this ATA submission should be read with this alternate view clearly in mind.

The Broader ATA Council view is that a "Safe Rates" regime would not be an efficient and effective solution and that, to the extent that there is any link between rates and safety, a "Safe Rates" regime will not improve or resolve the behavioural and operational issues which need to be addressed if the improved safety outcomes are to be achieved.

The ATA's views as outlined in this submission should not be construed as arguing or implying that the current rates of pay, for employees and/or contractors, are appropriate or sufficient. This submission is focused entirely upon the issue of whether or not the adoption of a "Safe Rates" regime is necessary and/or would be effective in resolving the important and acknowledged safety issues.

However, the ATA acknowledges that some businesses and sectors of the industry are "doing it tough" at the moment and some clients' practices exacerbate this. We therefore see merit in providing guidance and support, such as knowledge, skills and tools both to clients and to operators to assist them in dealing with these issues in addition to enforcing effectively the chain of responsibility. This should involve the development of more effective partnerships and networks between the industry groups, peak customer sector bodies and government.

Before responding specifically to the questions raised in the Review Paper, we think it is critical that we set out some fundamental threshold issues and principles, and we ask that the NTC and the Review team then read our specific responses to the questions within the framework established by these principles.

2. THRESHOLD ISSUES, PRINCIPLES AND THE ATA'S CORE POSITION

The ATA considers that the base premise of the "Safe Rates" proposal, that there is a strong and inextricable link between rates of pay and Heavy Vehicle road safety outcomes, whilst understandable, is far from being a substantiated fact. We accept that the Full Bench of the NSW Industrial Relations Commission came to a view in 2006 that there is such a link. We do not agree, however, that there is or has been, a clear, demonstrable and significant link between rates of pay and road safety outcomes that would warrant the establishment of a "Safe Rates" scheme such as that under consideration by the Review. Moreover, regardless of the existence and strength of any such link, the real issue is how best to improve road safety outcomes.

The ATA fundamentally agrees that road safety is paramount. Indeed ensuring the best safety outcomes is in the best interests of the industry, for social, political and economic reasons. That is precisely why the ATA and its members have collectively worked so hard and consistently over the past decade to address road safety issues in a wide range of ways. In particular, and perhaps most notably in the context of this Review, it has taken some eight years to arrive where we are today, less than one month away from the implementation of the most far-reaching and comprehensive heavy vehicle road safety reforms for decades – the Driving Hours and Fatigue Management (DHF) reforms which commence in most states on 29 September 2008.

These reforms were developed in direct response to the safety issues identified in the landmark 2001 Report by Professor Quinlan on Safety in the long haul trucking industry. The reforms, which were only relatively recently approved by ministers and which will come into effect on 29 September 2008, address the core safety heavy vehicle issue:

- The Maximum Hours of Work and Minimum Hours of Rest of truck drivers.

These reforms go well beyond the driver and even the truck owner as they extend very strong absolute liability and personal and corporate responsibilities all the way up to the boards and chairpersons of major corporate customers of the trucking industry and virtually everyone in between the consignor and the consignee. The objective, and unavoidable consequence, of which is to:

- Control and limit the working hours of truck drivers to safe levels; and
- Eliminate the pressures previously imposed on truck drivers from within the industry and from customers and other third parties.

These impending reforms are the principal and the most appropriate and effective response to the past road safety issues within the trucking industry. The ATA and the industry at large are fully supportive of the reforms, notwithstanding some relatively minor aspects. If governments and ministers do not think that these reforms will be effective then they have no place or credibility in approving them, let alone implementing them.

By way of an example of the relative effectiveness of the DHF reforms and the proposal for "Safe Rates", it is worth considering one of the long-standing safety-related issues in the industry: the previously intractable problem of HV drivers being kept waiting for loading/unloading in customers' depots for hours on end. Much of this time, especially for the long distance drivers, is unpaid: as the Transport Workers (Long Distance Drivers) Award 2000 pay structure pays for driving and loading/unloading time only. The truck operator/employer is also not paid for this time.

- The "Safe Rates" argument is that somehow the introduction of "Safe Rates" will fix this problem, perhaps by adding to the cost and providing an incentive to reduce the waiting times. The ATA considers that this is a simplistic view that denies the reality of the tough

- commercial world in which level playing fields, even at higher wages costs, are not a problem. If all customers pay their transport suppliers for this type and they in turn pay the drivers, the queues and waiting times will not diminish significantly.
- On the other hand, under the impending DHFM reforms, customers and operators who fail to take effective and all reasonable steps to eliminate and minimise the waiting time and resultant fatigue issues, will face very substantial fines at a personal and corporate level. The potential frequency and severity of these fines are intentionally pitched so as to force the change in behaviour, which it is already evident months before the new laws commence.
 - Clearly the distinction is between providing compensation through “Safe Rates” for what would remain an ongoing queue-driven fatigue problem or eradicating that problem through the more effective DHFM reforms which, if the real objective is improved safety outcomes, is clearly the preferred course.

The Driving Hours and Fatigue Management reforms will be underpinned by the most comprehensive and heavily revised law enforcement strategy which has been broadly agreed nationally. The DHFM reforms by their very nature, coupled with effective enforcement, are already producing major safety improvements within the industry and in its logistics and operational arrangements with the customer base.

The ATA is of the view that the DHFM reforms will deal most effectively with the on road safety performance of that sector of the industry and those third parties who hitherto habitually or frequently breached safe working limits and the law, with impunity. As such we consider that it is now a false argument to propose that adopting “Safe Rates” is either necessary or that it would be effective in improving road safety outcomes within the trucking industry, regardless of whether or not any substantive causal link has ever existed between rates and safety.

By definition, any so-called “Safe Rates” would result in a significant increase in rates, unless the supporters of such a scheme are arguing that drivers are electing to put their own safety and that of others at risk for only a minor financial gain and that that they would cease this if they secured only a minor increase in their rates. It is nonsense to argue that any such minor increase in rates would result in any significant, let alone widespread and sustainable, improvement in on-road behaviour by that portion of the industry at the root cause of the problem. The evidence for this claim is at best anecdotal and unsubstantiated in any empirical and defensible way.

The decision that we understand is to be made in Stage One of the possible two staged Review, is whether or not a Safe Rates system or mechanism should be adopted and that if the answer to that question is “Yes” then a Second Stage of the Review would look at the mechanics and structure of any such system.

In summary, it is our considered view that, for the reasons set out above and below:

- Adoption of a “Safer Rates” scheme would not be an effective solution and would be largely un-enforced and unenforceable;
- The impending Driving Hours and Fatigue Management Reforms have overtaken and replaced any genuine “Safe Rates” argument that may have existed and these reforms will prove to be the most effective solution and they must be allowed time to do so;
- Imposing a “Safe Rates” regime, whilst ineffective and unnecessary, would by definition impose substantial additional costs without any real prospect of delivering the necessary demonstrable return through increased safety;
- This would in-turn impact adversely on the wider economy and the export markets which road transport fundamentally underpins;
- The solution in relation to rates of pay for employees, as distinct from self-employed contractors, to the extent that it is of any relevance, is to ensure that the existing Industrial Relations system and structures are implemented and enforced effectively and remain

part of the wider IR system. There is no merit in the suggestion of drawing employee payment issues into the road safety or “Safe Rates” debate. The impending DHFM reforms will deal equally well with employees’ on-road safety issues as it will with contractors’;

- Accordingly, the case for the adoption of a “Safe Rates” regime is not sufficient to warrant such a regime and to risk or justify the significant economic impacts, particularly given that the current and impending COR, fatigue management and other reforms are already driving improved safety and are expected to deliver the safety outcomes that are agreed by all parties to be necessary; and
- It is critical, however, that any reforms aimed at improving safety outcomes are underpinned by effective and highly publicised enforcement that is properly resourced and sustained.

This view is consistent with and broadly supported by the findings of the 2004 SCOT Working Group on Heavy Vehicle Safety and Sustainable Rates for Owner Drivers.

In relation to the questions raised in the NTC’s Review paper, the ATA’s comments are as follows:

3. THE CURRENT SITUATION

The Australian road transport freight task is conducted by a wide range of operators and truck drivers many of whom do not consider themselves to be truck operators. The NTC earlier work shows:

- In Australia ancillary operators, whose prime business is in other than trucking own the majority of trucks (2/3), although the quantum of the task they conducted is less¹.

The hire and reward sector is only about 20% of the fleet used in Australian transport. Articulated trucks and longer journeys tend to be associated with the hire and reward fleets. Most fleets in the hire and reward sector operate as single truck or two truck fleets. Large fleets are a small portion of the overall national fleet. Long distance fleets comprise about one quarter of all hire and reward fleets.

One of the most significant factors that must be considered very carefully when assessing the scope for adopting concepts like “Safe Rates” is the highly variable nature of the freight tasks and the logistics operations required to meet them. For example, moving 100 tonne of dry goods, or 100 tonne of dangerous goods or a 100 tonne indivisible load are three very different tasks and depending upon where they are performed, at which time of the year and over what distance and type of terrain, and with what configuration of heavy vehicle and trailers, the cost structures are almost infinitely variable.

In addition, there is a considerable difference between operating fleets of new vehicles under substantial finance arrangements and the alternative model of operating older vehicles with lower or non-existence finance but higher maintenance costs. Then of course the further complicating factor of the influence of supply and demand and market forces must be considered.

No centralised rate-fixing system can possibly deal adequately and fairly with this wide variation without imposing a substantial risk of major distortion and counter-productive and unsustainable economic outcomes. Commercial operations must operate on a profit basis and they must have the freedom and flexibility to innovate and evolve in a rapidly changing operational and commercial environment and set their own rates according to the specific needs of their operation and business. There is also the cost of operating such a scheme to be considered.

¹ “Who carries what where” NTC 1999

The only alternative is a state run transport sector as there is no sustainable halfway house.

A typical operator is nothing more than an academic myth and seeking to set a “Safe Rate” is fraught with danger. Opting for the lowest common denominator or the highest common denominator or anywhere in between would invariably disadvantage as many as it may advantage and lead to excessive and unjustifiable profits in some operations and catastrophic losses in others.

The major loser would be the Australian economy because road transport is a central and underpinning plank of almost all industries and manufacturing and primary producing sectors. transport costs are a significant proportion of these sectors’ costs and their market sustainability is highly price-sensitive to transport costs.

The payment methods applicable to the widely-ranging circumstances and cost structures clearly vary, and any attempt to regulate them would have to meticulously address and assess the impact in each of these areas right through the logistics chain to the end markets.

Rather than seeking to set “Safe Rates”, one area where useful gains may be made available is through assisting operators to adopt better contracts that are based upon sustainable policies and practices and in which both parties recognise that each has a right to a fair return on investment whilst each is complying with the relevant laws. The progressive development of accreditation schemes and improved safety and compliance practices which meet both parties’ responsibilities under the Compliance & Enforcement laws and the impending DHFM reforms, is increasingly promoting and rewarding higher safety standards and greater efficiencies throughout the industry.

The many arrangements and structures of freight rates include rates that are:

- incorporated within the other business costs where the truck driver is the operator of a non-trucking business such a builder, farmer or metal fabrication;
- billed on fixed terms with drivers paid hourly rates – retail home goods store delivery;
- paid for set runs;
- paid per hour;
- paid per tonne;
- paid on volume;
- paid per kilometre;
- paid per leg;
- paid per head/beast;
- tendered or quoted for a specific move;
- paid on back loading rates;
- offered and accepted on terms from client/load agent;
- based on one of the above and adjusted periodically for costs that move within the life of contracts such a fuel; or
- be “mates rates” due to range of other non-commercial circumstances.

The “May Report” addressed some of the variables that would have to be considered in designing any scheme for rate regulations; see Figure 5.2 at page 100 of the Report². Since that time, the industry has become more diverse and the task more complex, with a consequential increase the range of variables that would need to be considered.

If the Review determines in this initial Stage that a “Safe Rates” mechanism or system ought be developed or that the idea ought be further explored, the ATA would make further substantial

² The 1984 National Road Freight Industry Inquiry report by Thomas May, Professor Gordon Mill and Jim Scully

comments and submissions on the details at that time. Our focus at this stage is to deal with the principal issue of whether or not such a system is required and/or practicable and sustainable.

What systems are currently in place to recover genuine increases in heavy vehicle operating costs (eg: fuel levies) and are they effective?

Just as the basic rates options are many and varied the solutions to provide an ability to pass on quickly changing costs are equally varied and complex. The key to this process is to ensure that the pricing arrangement includes factors that can be adjusted to account for cost changes. Fuel levies are but one method. There is no universal answer nor should there be, but the problem is essentially simple: as a service industry road transport has no option if it is to be viable but to pass on fluctuating costs such as fuel which is out of the hands of the industry and individuals within the industry. Clients who do not realise this will soon find a difficulty in securing transport providers. Education of operators, clients, and the community that freight rates must follow the cost pressures is a responsibility of all stakeholders interested in a sustainable road transport industry and a sustainable economy. As noted above, model contracts may assist many small operators.

The Review would be aware of the current arrangements for Owner-Drivers in New South Wales. The **Industrial Relations Act 1996 (NSW)** Chapter 6 regulates engagement of contract carriers engaged in a range of road transport industry sectors in NSW. It allows for the establishment of regulatory instruments in the form of contract determinations and contract agreements.

The arrangement developed from a NSW Commission of Inquiry in the 1960s which found that:

“Owner-drivers have been in the past exploited as to rates and subjected to oppressive and unreasonable working conditions. The truth is that an owner-driver with one vehicle (on which there is a heavy debt load) and no certainty of work is in a weak bargaining position and the transport industry is not lacking in operators prepared to take the fullest advantage of his vulnerability” (Industrial Relations Commission of NSW 1970 at paragraph 30.17).

Chapter 6 of the Industrial Relations Act 1996 (NSW) is, at least in theory, characterised by the following:

- Enforceable, minimum standards providing the certainty of at least cost recovery;
- The prevention of unfair or destructive competition by preventing undercutting (below the cost recovery minima) across a site or industry sector;
- The capacity for incentive systems to flourish above the minima, either on an individual or enterprise level;
- Protection against arbitrary termination of the contract;
- Quick, no cost access to the Industrial Relations Commission for the resolution of disputes about goodwill (amongst other matters), including the frequent successful oversight of contract transfer upon changeover of head contract to which the work relates; and
- The capacity to recover goodwill where termination of the contract has resulted in that goodwill being unfairly extinguished (a provision enacted under a state Liberal government).

The arrangements and underpinning structure provide for a regular adjustment mechanism to reflect the cost of providing the services.

Whilst the Chapter 6 arrangement in NSW has its supporters, the ATA makes the following comments:

- The environment today and in particular the new Compliance and Enforcement laws and the impending Driving Hours and fatigue Management reforms, is vastly different from that of the 1960's.
- The Chapter 6 process has little credibility within the ATA and the most broadly held view is that it is an ineffective solution which has failed to deliver the required safety gains, as evidenced by the very existence of this Review. The ATA does not broadly believe that the Chapter 6 process is effective in resolving safety issues or rates issues, other than on a limited case-by-case basis.

Is the industry able to negotiate fair cost recovery?

There are varied views on this but on any reasonable view, a range of negotiation power positions exist in different transport industry market segments and between different industry participants and their respective clients. Arrangements differ from genuinely independent business arrangements which determine their own priorities and have some market power through to arrangements like the owner-driver model, which although providing tangible productivity and efficiency benefits, is capable of becoming an exploitable dependency.

On the whole, the hire and reward sector is steadily improving its business skills capacity. There are industry-led programs like TruckSafe that assist small business operators to think about their costs and risks. Truck industry associations and unions often provide truck business cost models to assist members in determining appropriate rates and where applicable rate adjustment factors. More could and should be done to assist the small operators to undertake more balanced and effective negotiations with their customers. Understanding their individual set up and operating costs is critical for any owner-driver to be able to negotiate with clients. At the end of the day the only realistic answer to a client attempting to impose a rate below the driver's costs in providing the service on any journey must be to decline that job. Hence, assisting owner-drivers with knowledge and skill in these areas would appear to be a sound area for government assistance in providing industry businesses training.

Customers are becoming aware of the Chain Of Responsibility (COR) legislation and its implications for contracts and their obligations to work with transport providers to be viable and compliant. It is not in a client's best interests to be exposed under the COR due to short-term profit taking from road transport operations, especially where that leads to, encourages or allows breaches of the Mass, Dimension, Load Restraint of Driving Hours and Speed laws; in other words in circumstances that lead to poor safety outcomes.

Historically owner-drivers have been viewed by some customers and prime contractors as a discrete category of small business, vulnerable to exploitation because of the dependent nature of the contractual relationships pursuant to which they perform work. This, however, is rapidly changing with the advent of the COR and DHFM laws. The introduction of the GST caused a major shake out of operators, large and small, who had failed to address their business fundamentals and ensure effective cash flow and the current reforms, combined with the commercial rigors of the large fluctuations in fuel prices, are having a similar effect in focusing small operators' attention on their business costs and pricing structures.

A further difficulty has long been the relative ease of entry into the trucking industry via financing arrangements for high-cost capital equipment that the finance institutions can readily reposes. This can lead to high levels of debt and encourage some owner-drivers to establish and/or maintain highly dependent relationships with principals for whom they work necessarily hard in order to service debt and attempt to establish or maximise a financial return on their business. This relationship can place an irresponsible principal contractor in a powerful position but again,

the advent of the COR and DHFM laws is rapidly overcoming any safety-related problems that may previously have arisen in such a relationship.

There is scope to improve the requirements of financial institutions in assessing finance applications from Owner-Operators, rather than treating them as potential cash-cows. Seeking to set "Safe Rates" that would make what are otherwise patently non-viable finance arrangements sustainable, would be a dangerous and serious mistake.

It is in the area of remuneration and related conditions that the power relationships within the transport and logistics supply chain are most clearly seen. Economically powerful industry clients have the commercial influence to determine the price of transport services and, in many circumstances, key conditions relating to the performance of transport work. Successive instances of contracting out to small fleet operators and owner-drivers can exacerbate this phenomenon, particularly in the long distance sector.

The question however is how best to deal with this. The overall view of the ATA is that it is best dealt with through the COR and Driving Hours and Fatigue Management laws which are driving those errant corporate customers to review their practices and policies to ensure compliance and safety outcomes are achieved. In addition, assistance for Owner-Operators in understanding their own cost structures more thoroughly and being able to decide the tipping point at which they simply must walk away, would be more useful and effective than seeking to set up an unsustainable "Safe Rates" system.

There is a view expressed by some that:

- driver-selection and recruitment can be impacted by cost recovery issues;
- that many road transport operators report difficulty in recruiting drivers because of remuneration on offer in other industries;
- that operators further report that competitive pressures in road transport mean that they are unable to increase driver remuneration to attract new entrants; and
- that this has a related safety impact as rigorous driver selection methods preferred by some road transport operators are being foregone in order to engage labour.

The ATA acknowledges this view but on balance disagrees and considers that:

- the reality is that the Industrial Award system establishes the wage rates that must by law be paid, as a minimum, to employees in the industry;
- compliance levels with the Award rates is high in the vast majority of the industry but that the Award system ought to be properly enforced by governments in each jurisdiction to ensure compliance across the board.

There is nothing stopping employers from paying higher rates of pay if they are having difficulty in attracting and retaining good drivers.

- seeking to set "Safe Rates" of pay as a means of competing with other industries for the available employee pool would be a ridiculous approach as this is an issue which the industry must resolve itself, as it will inevitably as market forces come to play and customers find that they simply must pay more to ensure that their transport suppliers are available and of the appropriate standards.

4. DO PAYMENT METHODS AFFECT SAFETY?

The broad nature of the industry representational groups which make up the Australian Trucking Association means that there is a range of views concerning whether or not there is a link between rates and safety and nature of any such link, as well as on appropriate mechanisms to continue the improvement in the industry's safety performance. The consensus, however, is that rates of return may have an effect on safety and that client responsibility is essential in changing the safety culture of road transport. Where views differ is to the effectiveness of a rates regulatory regime versus other initiatives such as the COR regime and the potential resultant effects on rates for supply chain participants.

As outlined above, the consensus view of the ATA is that the most effective and appropriate way to further improve the industry's on-road safety performance is to implement and enforce the impending Driving Hours and Fatigue Management effectively and that establishing a "Safe Rates" regime is unnecessary and would be ineffective and unsustainable.

A fundamental issue in the approach of seeking to establish so-called "Safe Rates" that must be addressed is: the necessary precursor of irrefutable evidence that increased "Safe Rates" will actually produce a definite change in on-road behaviour by the drivers whom it is intended to make safer. The argument needs to be fully tested and challenged in peer review as there is potential for a serious and costly mistake.

Any significant increase in rates would clearly add substantially to costs and so we'd need to ensure that a real and substantial benefit that justifies that cost impact. Higher costs without a definite and adequate safety dividend would be unacceptable because of the inflationary and adverse impacts.

This raises a very fundamental issue. Unless governments can and actually do ensure that they effectively enforce any mandatory minimum "Safe Rates" so as to ensure that non-complying operators and customers are identified and prosecuted, the system will fail to the great commercial disadvantage of the complying operators and the economy. Hence, such a system would collapse. So the question is, just how would governments achieve effective enforcement?

Is there evidence of a link between driver payment methods (eg: kilometre rates), remuneration, and safety outcomes in the road freight industry?

Whilst there have been several reports over the past decade that have pointed to an apparent link, these have been largely based on unsworn evidence/statements and anecdotal evidence. The ATA has not been able to identify any reports that establish any such link through empirical evidence that has been rigorously tested. On the surface it may well seem that there is a link or that there may be a link between driver payment methods and safety outcomes and the ATA does not rule this out entirely.

On balance, however, the ATA is firmly of the view, based upon wide consultation within the trucking industry, including within the peak state and sector industry associations that collectively represent a substantial and representative proportion of the industry of all fleet sizes and operational types, that any such link that may exist is not significant.

Moreover, the ATA considers that any such link would be more of a correlation than a causal link because would be more about the mindset and attitude of the individuals concerned than it is about real economic impacts.

5. ROLE OF GOVERNMENT

Is there a role for government to intervene in payment systems for transport operators?

Two key issues need to be addressed here:

1. As a matter of principle, should governments intervene in such a way; and
2. If so, what precursor requirements must be met to justify such intervention.

Governments have learnt from hard experience that they are not well placed or qualified to interfere in the commercial operations of the highly dynamic private sector and so they ought only ever do so where there has been a clear and significant market failure and where there is a clear and demonstrable requirement to do so due to the absence of any alternative effective solution to an issue which must be resolved in the public interest. In this case, demonstrable, substantial and sustained on-road safety improvements would have to be achieved to justify any such intervention. The principal precursor which must be met is the need for a comprehensive and transparent cost-benefit analysis and Regulatory Impact Statement, each of which must result in a strong positive over-all benefit for the community.

Thirdly, any intervention by government must be minimal in its impact on the free market and be as short-lived as possible to ensure that the free-market principles and concept are sustained.

If regulatory intervention is required and what form should this take?

The ATA considers that it is inappropriate at this stage to enter into conjecture about the form of any intervention when our clear view is that intervention would be ineffective and inappropriate. The ATA is not aware of any form of intervention by government in the context of setting “Safe Rates” that would be effective.

We have indicated in several sections of this submission however that it would be useful to develop appropriate advice and support for Owner-Drivers and small operators to enable them to:

- Have a firm understanding of their business and their cost structure;
- Be aware of the ways in which they could better manage their costs and their business; and
- Be more effective negotiators, including knowing when to walk away and refuse to work for non-viable rates.

Should that approach be different for employed or contracted drivers?

Yes, the existing industrial relations and Award-based systems are the appropriate mechanism in relation to employee’s rates of pay. These systems must be retained as part of the broader IR system and not be moved into some separate “Safe Rates” mechanism of regime.

It is illogical to argue that “Safe Rates” will somehow magically be complied with by the very people who presently fail to comply with the existing Award-based system.

What is required, as we have noted above, is more effective enforcement of the existing Awards-based wages system for employees to ensure broad compliance.

Could there be any unintended effects from implementing safe rates?

Yes. Without question, there is a substantial risk of unintended impacts that could arise from implementation of a “Safe Rates” system. In particular:

- Too many customers already assess what the going market rate is and they use this as a ceiling above which they will not go and from which they generally demand a substantial discount.
- A formal government-set “Safe Rate” would provide such customers with an even stronger case which they would seek to use to deny the realities of any given operator’s costs or more importantly, to deny the reality of the costs of the customer’s freight task where they are either ignorant of or chose to ignore the specific logistics differences of their task from the model upon which the “Safe Rates” are based.
- Conversely, competitive pressures may well lead to too many non-complying operators discounting from the “Safe Rate” to win or retain business and this would defeat the whole purpose of establishing the “Safe Rate” system.
- There would be substantial complexities and extraneous issues would be brought in to play if a “Safe Rates” regime were to be considered and reviewed within the broader community’s scale of relativities.
- Such a regime may effectively limit the equipment options for operators in a reverse-engineered outcome where the price is set first and the equipment that can be afforded is bought and used. This would stifle innovation and in all likelihood prevent the industry from successfully meeting the looming demand to handle 100% more freight in a more efficient manner over the next decade.
- Drivers and operators may be forced to run their older trucks for longer to maximise the take from minimum rates. This would be a perverse and negative impact on the environment and on road safety.
- The establishment of higher “Safe Rates” will not, in our view, provide any real incentive for drivers to work less, rather they are most likely to continue with their existing hours so as to make more money, either to secure a greater over-all return or to enable them to retire earlier.
- It may even act as an incentive for too many to drive longer, faster and heavier.
- The better performers, with better equipment and higher costs associated with higher standards of work and compliance may be substantially disadvantaged if the “Safe Rate” is set below their required rate. This would cause them to lower their standards.
- Inadequate modelling of the true costs for each industry micro-sub-sector could adversely affect businesses and industry suppliers.
- Task effects will need to be accounted for. A container shuttle to a port is different from remote livestock haulage for example. Even within in same configurations urban, inter-urban, inter-region and long distance operations all face different circumstances that need to be accounted for but a “Safe Rates” is likely to be too simple and unsophisticated to accommodate this.

6. OTHER COMMENTS

Enforcement mechanisms

As we have argued above, more effective enforcement is essential for the existing Award-base IR regime for employees and the same principle would clearly apply to any “Safe Rates” regime.

We have expressed the view that governments would not be able to enforce a “Safe Rates” regime effectively because they would not commit the required substantial resources to the task. Any notion of simply having a penalty regime in place and the occasional prosecution would be ill-advised as it would inevitably be a failure.

Accordingly, should the inquiry recommend the establishment of a safe rates regime it should be done against the backdrop of a significant increase in the skills and capabilities of the current enforcement regime, preferably in combination with a well-resourced and legislatively equipped national regulator.

The single greatest opportunity for improved road safety in relation to accidents that involve heavy vehicles, is to deal effectively with the cause of most of those accidents – that is the small proportion of motorists who, according to the Office of Road Safety, cause the vast majority of the fatal and serious accidents between light vehicles and trucks. This is where the main scope for large scale on-road safety improvement lies but governments are doing virtually nothing about it. The ATA is trying to make a difference in this area with its mobile education centre “The Road Ahead” which is actively spreading the “Sharing the Road Safely” message.

7. CONCLUSION

The ATA appreciates the opportunity to provide this comment and would be happy to assist the NTC with its consideration of the circumstances and potential recommendations to ministers. The potential impacts of any regulation in the area of safe rates are significant, and therefore rigour is needed in the assessment of need for action and associated regulatory impacts.

The ATA looks forward to further discussions on the issues raised in this submission.