

Saturday, 28 March 2015

**Workplace Relations Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601**

**NatRoad Submission to the Productivity Commission Inquiry into the workplace relations
framework**

Thank you for your invitation to the National Road Transport Association (NatRoad) inviting our participation in to the inquiry into the workplace relations framework.

NatRoad is Australia's leading national road transport operator's industry association representing the interests of individual road freight operators across Australia, ranging from owner drivers through to multinational logistics providers. With over 1,100 corporate members, our members span the country with the majority operating trucks that cross all State and Territory borders every day.

NatRoad has identified those issues within the inquiry that its members perceive have an effect on the operation and competitiveness of their businesses and make the following brief initial comments in the order that they appear in the inquiry issues papers.

3.1 - Bargaining and Industrial disputes

For the transport industry, enterprise agreements are a necessary means of dealing with the individual operational requirements that are most often not able to be achieved if the award(s) conditions are strictly adhered to.

However the current system of bargaining for enterprise agreements is too complex to allow small to medium businesses to have an enterprise agreement with their employees that does not require an excessive amount of effort to achieve.

The present system can, and is often easily disrupted by a union acting on behalf of a single employee in an enterprise where a majority of employees are not members of a union.

Simplifying the enterprise bargaining process will assist small to medium size businesses in particular to be able to provide benefits to both employees and employers that are tailored to their personal or operational and administrative needs to make an enterprise more productive.

3.4 – Individual arrangements outside enterprise agreements

Enterprises should be allowed the flexibility to enter into agreements with individual employees that are still required to meet a form of Better Off Overall Test under the Fair Work Act. An individual agreement may also take into account matters that are not necessarily able to be considered under the Fair Work Act in its present form e.g. family friendly or personal arrangements that suit an individual rather than a minimum number of employees.

The present individual flexibility agreements allowable under the Fair Work Act do not allow for flexibility outside of the five headings provided for in Awards and enterprise agreements.

4.2 - Unfair Dismissal

It is appreciated that the present unfair dismissal regime that negates the need for formal hearings in favour of conciliated conferences at the early stages of proceedings is preferable to the former regime. It is however abundantly clear from the number of claims received, that the Act allows low cost access by employees to the system with limited, if any, scrutiny of the merits of a claim before proceeding. Applications once received are immediately listed for conciliation which commences a process for the employer that immediately impinges upon the costs and effective operation of the business.

In a majority of instances conciliators go to great pains during the process to point out that if the matter is not settled during the conciliation then employers and to a more limited extent employees will incur the significant costs of a formal hearing whether represented or not. Accordingly, a substantial number of claims are not settled on merit but rather by payment to the employee of an amount of 'go away' money to avoid the further costs to the employer of justifying a dismissal at a formal hearing.

Consideration of a pre-conference examination of the merits of an application and jurisdiction should be instigated before even a conference is listed. With appropriate training conciliators should be given the responsibility for merit examination of applications with safeguards to allow genuine claims to proceed in an efficient manner.

5.3 - Compliance costs – a ‘bog of technicalities’

The transport industry is amongst the most highly regulated of Australian industries with the associated compliance costs bogging down the ability to maintain let alone increase industry productivity.

The passing of the Road Safety Remuneration Act 2012 (RSRA) by the previous Government is an example of an additional level of compliance that is unwarranted in terms of its ability to influence heavy vehicle road safety outcomes. The RSRA is an Act that intrudes on the operation of the Fair Work Act 2009, and Work Health and Safety and other Acts covering the transport industry.

The Road Safety Remuneration Tribunal (Tribunal) has issued Orders that are unworkable with a majority of the industry identified as being unable to comply with the first Order let alone those that are in the pipeline.

The Government reviewed the operation of the Tribunal in 2014 however the results of the Jaguar Consulting Review have yet to be released or tabled in the Parliament. The release of the review is viewed by the industry as a key measure in any effort to reduce compliance costs that are bogging down the industry.

NatRoad like many industry associations is unfortunately not in a position to resource the major review that would be required to identify the plethora of Federal, State and Territory legislation that contribute to industry compliance costs. The ongoing Red Tape review should increase its focus on the transport sector.

5.4 - Is competitions law a neglected limb of the WR system?

It is an unfortunate facet of the transport industry that a significant portion of the transport task is undertaken through a series of cascading contracts or agreements that allow those at

the top of the supply chain to deny control of the reasonable cost recovery, profitability and eventually the viability of second or third tier transport operators.

Market dominant companies at the top end of the supply chain are able to pursue a regime of downward cost pressure through a significant inequality in bargaining power that flows through to one or more levels of the transport industry. The inequality of bargaining power at the first and second levels of the supply chain results in those lower level transport operators with limited bargaining power having to accept contracts or agreements that are marginal at best.

A significant Input into the downward pressure from those at the top of the supply chain arises from the industrial activity of unions. Unions have been successful in obtaining increases in driver rates of pay or conditions of employment that are clearly unsustainable. The price of industrial peace for large operators is resting on their ability to use the inequality of bargaining power to apply pressure to the already bottomed cost structures of smaller transport operators.

Member feed back to the association in recent months has indicated that the top end of the supply chain has applied pressure on operators to reduce their charges below sustainable levels and previous year pricing.

The unnecessary entrance into the industrial relations landscape of the Road Safety Remuneration Tribunal as briefly mentioned at point 5.3 has served only to exacerbate the difficulty of smaller operators to manage transport industry cost and compliance measures.

5.6 – Alternative forms of employment

The present Road Transport (Long Distance Operations) Award 2010 prohibition on the employment of part time employees is affecting the ability of the industry to utilise a large sector of the available work force.

At a time when the Government is seeking to have older persons work beyond the standard retirement age there are a pool of drivers who wish to work part time that are being denied this opportunity. Support for the inclusion of part time work under the award would be welcomed during the 4 yearly Modern Award Review proceedings that are now under way.

NatRoad on behalf of its members would be pleased to be given the opportunity to expand on the initial brief submissions requested by the inquiry at the appropriate time.

NatRoad's contact person for the Inquiry will be Arthur Spottiswood, Manager Industrial Relations.

Kind Regards,

Warwick Ragg

Chief Executive Officer