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Subject: Submission, John May

Poor Accounting Allows The Heavy Transport Industry to Escape Responsibility for Thousands of Industrial Fatalities

Submission to: Inquiry into National Frameworks for Workers' Compensation and Occupational Health & Safety

By: John May, NSW

Basic Submission

In 2001 the NSW Roads and Traffic Authority (RTA) records that there were 77 fatal truck accidents in NSW. In these accidents, 92 people were killed. Of these 92 people, 12 were 'controllers' (drivers). The other 80 people killed were, presumably, uninvolved third parties, or if you like, people whose involvement with the industry commenced with the industry killing them.

In the year 2000-2001, the NSW WorkCover Authority statistics hotline informed me that there were 139 workplace fatalities in NSW. Of these only 15 are recorded as being associated with transport and storage (truck accidents). Since 92 people are recorded as being killed in truck accidents by the RTA, ***what happened to the other 76 bodies?***

To get this into perspective, the missing 76 dead people constitute almost 15% of the 2001 road toll, and would have represented almost 55% of the recorded industrial fatalities of that year.

The answer is, if information recently provided to me by senior WorkCover Authority personnel was correct and is still current, that you can be run over and killed by a truck in NSW, a truck being driven by a driver engaged in his usual employment, but unless you are an occupant of the cabin of the truck at the time of the accident, you are not counted as an industrial casualty. At first glance this may seem more than a little unfair. On closer examination of the NSW Occupational Health And Safety Act 2000, (the administration and enforcement of which is the statutory responsibility of the WorkCover Authority), it appears to be starkly illegal, in terms of the explicit wording of this Act.

The end result is that in NSW, the industry which causes by far the greatest number of deaths, of which almost nine out of ten are not involved in the industry, the industrial landscape of, blends unseen into the background. The costs of the industry in death and injury are to a large extent passed on to the general community.

In the light of your section "Cost sharing and cost shifting" in your publication "National Workers Compensation and Occupational Health & Safety Frameworks" (ppl2-13), it would seem crucial to the fulfillment of your terms of reference that this question be examined closely and thoroughly.

Expanded Submission

Consider the following: You are driving along a highway in NSW, sitting on the speed limit. You are overtaken by a heavy vehicle, the driver of which is obviously "at work". This, I suggest, is a common experience in everyday motoring. Is this an example of an unsafe work practice? Have you just witnessed a violation of the Occupational Health And Safety Act?

A few years ago I became concerned that in the vicinity of my home, the majority of heavy vehicles were being driven in excess of the posted speed limits. This precipitated a more widespread program of amateur research, which threw up the preliminary result that a heavy vehicle on the road belonged to a population about which the prediction that it was being driven in excess of the speed limit would be almost a certainty (in the formal statistical sense).

After some consideration of the phenomenon, I came to the conclusion that there were three bureaucratic bodies in NSW who shared responsibility, and I identified these bodies as the Police Service, The Roads and Traffic Authority, and the WorkCover Authority.

My initial attempts to have the problem rectified met with the response that the Police were not being provided with the resources to do the job, (also a statement from a very senior policeman that I had to understand that he was 'under intense political pressure not to enforce speed limits'). RTA personnel informed me more than once that 'the RTA has no role in enforcement'. This left the WorkCover Authority.

My continued enquiries led me to Jenny Thomas (Team Manager, Retail, Wholesale, Transport and Storage Team, NSW WorkCover Authority), who claims to be the authority on policy. She explicitly assured me that:

A. for the purposes of the NSW Occupational Health And Safety Act, the workplace is defined as extending to the limits of the inside of the cabin of the truck which is being driven.

B. That a person who sustains an injury in an accident involving a truck who is not in the cabin of that truck is not considered to be a workplace casualty, and is thus not counted as an occupational casualty of that particular industry.

C. That investigation of injuries and fatalities on the road due to the transport industry are not even investigated by WorkCover Authority investigators, (which would be the norm in any other industry). The tortured reasoning behind this situation is that because the police have the job of enforcing the Motor Traffic Act it 'falls within their jurisdiction'. What explicit role the Police have in the enforcement of The Occupational Health And Safety Act has never been made clear. That their role in enforcing the Motor Traffic Act should be used as a rationale for to suggesting that they somehow supplant the WorkCover Authority's role in enforcing the Occupational Health And Safety Act is a hard argument to follow.

The heavy transport industry occupies a unique place in the Australian industrial landscape. It could be responsible for more death and injury than all other industries put together. If this is not the case, it is certainly not far off it. The other notable characteristic of the heavy transport industry is the proportion of third parties who constitute casualties of this industry. These are mostly drivers or occupants of passenger vehicles, or pedestrians. At the commencement of my research I enquired of the NSW RTA, and found that heavy vehicle accidents in 1987 accounted for around 15% of the road toll, somewhere in the order of 100 people.

The NSW Occupational Health And Safety Act contains a very broad definition of 'workplace'. When this is taken in the context of the stated objectives of the Act, especially in

relation to the Interpretations Act, it is quite obvious that the intention of the Act is to include, rather than exclude any people who may be seen to be casualties of the activities of any industry.

In relation to the practice of delegating the primary investigation of industrial accidents in the transport industry to the police, I can recount the following. It was only last week that I spoke to a policeman who was investigating a collision between a semi-trailor and a light van in which the van driver was killed. He volunteered to me that in his opinion the average speed of trucks along the 100kph limited Pacific Highway was in excess of 110kph. When I suggested that this might be worthy of inclusion in his general reporting of truck accidents, he assured me that he was constrained to stick strictly to the provable facts of each individual case because of the possibility of litigation consequences. This is an important step in the filtration process by which the WorkCover Authority shields itself from vital information. A second important step is implied in the enthusiasm with which the police officer concurred with my proposition that every truck driver carries a well rehearsed litany of stories which are presented should they have an accident. I have personal knowledge of some clear examples of this, including one in which a fatality occurred, and one which involved a major environmental catastrophe.

I submit that the foregoing falls clearly within the ambit of your heading 9(a), p3 of your Issues Paper: ***"The Commission should identify and report on.... a consistent definition of workplace and work-related injury/illness.."***

I note also that your 'Background' section (Par 6 p2-3) canvasses the ***"need to consider any alternative systems to existing arrangements ... appropriate to support. ... others who may suffer a workplace injury..."*** in the context of the ***"general community"***. I submit that in the case outlined above there is a desperate need to improve the "existing arrangements".

I also note that on page 7 it is stated that the Commission will be required to ***"have an understanding of the strengths and weaknesses of existingState...compensation and OHS arrangements"***. I submit that an arrangement which eliminates a major cohort of industrial casualties from accounting is a substantial weakness, and should be comprehensively understood in all its effects

This brings me to the major point of my submission, which relates to the following, noted under the heading "Cost Sharing and cost shifting" on p12: ***"Differences in access, coverage and structure of compensation across the various workers' compensation schemes have the potential to affect the way in which the costs of injury and illness sustained by workers are shared among employers, employees and their families and governments. A challenge facing the design of national worker's compensation and OHS frameworks is to ensure that the interaction of worker's compensation and other government programs provides for an appropriate sharing of those costs. For example, if the medical costs of a work related injury are paid by medicare rather than via worker's compensation, the cost of such an injury is borne by the wider community rather than those involved in the individual activity in which the injury occurred. This in turn may lessen the incentives for preventing such incidents and for the effective rehabilitation of injured workers."***

... To the extent that the current coverage of workers under the various workers' compensation schemes results in work-related costs being borne by other government programs, are changes required?" (My underline).

In relation to this comment, I comment that the first paragraph appears to be restrictive in that while it initially concerns itself with "costs of injury and illness sustained by workers", avoiding the issue of non-workers who may be casualties of an [activity](#), it moves on to whether such costs are "borne by the wider community rather than those involved in the individual activity in which the

injury occurred" and wonders whether this process "may ***lessen the incentives for preventing such incidents***". By the second paragraph, of the extract, the discussion appears to have been broadened to the general topic of where work related costs are borne.

I submit that in the case of the transport industry in NSW, a major transfer of costs away from the industry has been accomplished. This must have an impact on incentive, and in my opinion would certainly require changes. It could go a long way to explaining why it is characteristic of this industry that operators are habitually ignoring a crucial safety requirement (compliance with speed limits).

My contacts with relevant OHS personnel in NSW suggest that their approach to this situation is consistent with global approaches, so I have no reason for believing that this distortion does not exist throughout the States and Territories of Australia. It is therefore possible that situation may have to be rectified on a national scale, which would appear to correspond with the priorities of your terms of reference as I understand them.