



Articles

Road Transport Regulation, Safety and Prospects for the ‘Gig Economy’

David Peetz*

The road transport industry has long experienced high rates of contractor work (by ‘owner-drivers’) and been characterised by low pay, incentives to drive fast and skip breaks, driver fatigue, use of drugs and stimulants, overloading, long working hours, poor safety, and insolvencies. Long hours in the industry are linked to poor general health, severe psychological distress and near-misses. In recent years two models of regulation of road transport have gained attention: the short-lived federal Road Safety Remuneration Tribunal (RSRT) and the long-lived (and still surviving) Chapter 6 of the Industrial Relations Act 1996 (NSW). This article explores the impact of Chapter 6 regulation on road safety in the trucking industry in New South Wales. It outlines the industry’s safety problem and its brief experience with the RSRT; discusses the theoretical considerations relevant to the regulation of pay in the road transport industry; examines the history leading up to the introduction of Chapter 6; and discusses how the NSW Industrial Relations Commission regulates minimum standards and plays other roles in the industry such as conciliation and dispute resolution. Most importantly, it investigates the impact of Chapter 6 regulation, in particular on safety, through quantitative analysis of road fatality statistics over three decades. It concludes with consideration of the theoretical implications of these experiments for the concept of ‘directed devolution’, and the potential practical implications for the regulation of the platform or ‘gig’ economy for independent courier drivers and riders. In concluding, it also touches on the question as to why the Chapter 6 and RSRT models differed so much in their longevity.

I Legislative Context

Safety

The heavy vehicle road transport industry is dogged by serious health and safety problems. Low incomes for owner-drivers (independent contractors who own their own trucks)¹ have contributed to the industry having the longest working hours and the most deaths — especially bystander deaths — of any industry.² Long hours in the industry are linked to poor general health,

* Emeritus Professor, Griffith University.

1 M Quinlan, *Report of Inquiry into Safety in the Long Haul Trucking Industry*, Motor Accidents Authority of New South Wales, Sydney, 2001 (*Long Haul Trucking Report*).

2 M Quinlan, ‘FactCheck: Do Better Pay Rates for Truck Drivers Improve Safety?’, *The Conversation*, 13 April 2016; Australian Bureau of Statistics, *Employee Earnings and Hours, Australia*, Cat No 6306.0, ABS, Canberra, 2018; Safe Work Australia, *Notifiable Fatalities Monthly Report*, Safe Work Australia, 2015; Quinlan, *Long Haul Trucking Report*, above n 1.

severe psychological distress and near-misses.³ Over the period 2016–20, the road transport industry had the highest fatality rate per 100,000 workers of any Australian industry — higher even than agriculture, construction or mining.⁴ Safety problems are evident in other aspects of road transport now relevant to contractor employment. In Sydney, for example, five independent courier riders (not subject to regulation under Chapter 6 of the Industrial Relations Act 1996 (NSW) (IR Act)) died at work within three months in 2020.⁵ A further two died in Melbourne within two months in late 2020.⁶

Internationally, broadly two, non-exclusive types of approaches have emerged in response to this safety problem. One is to attempt to directly regulate the driving hours, vehicle speed or other factors that might directly influence truck crashes or to require various safety-enhancing technologies. Examples include radar traps, speed-limiting devices, lane departure warning systems, autonomous emergency braking systems, fatigue warning systems and tyre monitoring systems.⁷ Yet there are limitations to how far this direct regulation can go, and they are not just technological. Even though a lead transport firm may be creating conditions that encourage unsafe behaviour by its workers — and even though, under Australian health and safety legislation, a person conducting a business or undertaking is responsible for the safety of the workers under their direction⁸ — the first prosecution for breaches of the chain of responsibility duties in the *Heavy Vehicle National Law*, alleging that it breached its fatigue management duties, was only in 2020.⁹ It is easier to litigate a dangerous factory than a pay structure and schedule that facilitates risk-taking.

The second type of approach, then, is to attempt to change the incentives drivers face through their payment systems. If drivers have to travel excess speeds over long distances to achieve acceptable pay (to cover family living costs and debt repayments), then changing those payment systems may

3 Monash Insurance Work and Health Group, *Driving Health Study Report No 6: Survey of the Physical and Mental Health of Australian Professional Drivers*, Monash University, Melbourne, 2020.

4 Safe Work Australia, *Work-Related Traumatic Injury Fatalities, Australia 2020*, Safe Work Australia, Canberra, 2021.

5 K Palu, 'Food Delivery Rider Hit by Truck Becomes Fifth Death in Three Months', *Yahoo News Australia*, 23 November 2020.

6 N Bonyhady, 'DoorDash Reveals Second Courier Died in Two-Month Span', *Sydney Morning Herald*, 10 September 2021.

7 G Chen and R N Warburton, 'Do Speed Cameras Produce Net Benefits? Evidence from British Columbia, Canada', (2006) 25 *JPAM* 661; L Budd and S V Newstead, *Potential Safety Benefits of Emerging Crash Avoidance Technologies in Australasian Heavy Vehicles*, Report No 342, Monash University Accident Research Centre, Melbourne, 2014; Safe to Work, *TMSystems Mandate in EU for All Heavy Vehicles and Trailers*, 5 August 2022, at <<https://safetowork.com.au/tmsystems-mandate-in-eu-for-all-heavy-vehicles-and-trailers/>> (accessed 13 September 2022).

8 Safe Work Australia, *Duties of a PCBU*, Safe Work Australia, 2022, at <<https://www.safeworkaustralia.gov.au/law-and-regulation/duties-under-whs-laws/duties-pcbu>> (accessed 13 September 2022).

9 S Ratu and A Hetherington, *First Prosecution for Breach of New Heavy Vehicle National Law Chain of Responsibility Duties*, Allens Linklaters, 1 April 2020, at <<https://www.allens.com.au/insights-news/insights/2020/03/first-prosecution-for-breach-of-new-heavy-vehicle-national-law-chain-of-responsibility-duties/>> (accessed 13 September 2022).

change client and driver behaviour.¹⁰ There are a number of studies, mostly involving drivers in the United States, showing significant associations between pay rates or incentives and safety outcomes, supporting this approach.¹¹ In Australia, even amongst employees, truck drivers have the longest paid full-time working hours of the 97 occupations for which data were published by the Australian Bureau of Statistics, and one fifth higher than the average.¹² Yet hourly employee earnings were one fifth *below* the average.¹³ This was matched by low owner-driver incomes, and hence high debt amongst the owner-drivers, and insolvencies were common in the sector. Low pay rates create incentives on drivers to drive fast or skip breaks, as margins are generally low. They also encourage other risk-taking behaviour including use of drugs or stimulants, driving while fatigued, and overloading of trucks. Several studies have suggested a positive link between drivers' incomes and aspects of road safety.¹⁴

Both the short-lived Road Safety Remuneration Tribunal (RSRT) in the federal jurisdiction and the long-lived (and still surviving) Chapter 6 in New South Wales have focused on this second approach, attempting to regulate to alter the incentives facing drivers (and those for whom they work). This regulation is not done by a health and safety authority, but by an authority nominally charged with regulating pay and conditions of workers — normally of employees, but in this case extending to independent contractors.

The federal Road Safety Remuneration Tribunal

One experiment linking driver remuneration to safety in Australia was the RSRT. Using the corporations power in the Australian Constitution,¹⁵ and following examples in the apparel industry in Australia and internationally,¹⁶ the RSRT was established in 2012 and empowered to set minimum pay rates for designated distances and hours of owner-drivers. This tribunal was, in part, an attempt to apply what were in effect minimum wage standards to contractors, specifically owner-drivers of trucks. The RSRT sought to

10 Quinlan, *Long Haul Trucking Report*, above n 1.

11 M H Belzer, D Rodriguez and S A Sedo, *Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety*, United States Department of Transportation, Federal Motor Carrier Safety Administration, Washington, DC, 2002; M H Belzer and S A Sedo, 'Why Do Long Distance Truck Drivers Work Extremely Long Hours?' (2018) 29 *ELRR* 59; T Kudo and M H Belzer, 'The Association between Truck Driver Compensation and Safety Performance' (2019) 120 *Safety Science* 447; D A Rodriguez, F Targa and M H Belzer, 'Pay Incentives and Truck Driver Safety: A Case Study' (2006) 59 *ILRR* 205.

12 Australian Bureau of Statistics (ABS), *Employee Earnings and Hours, Australia, May 2018*, in Cat No 6306.0, ABS, Canberra, 2019, Table 13.

13 *Ibid.*

14 Belzer, Rodriguez and Sedo, above n 11; Rodriguez, Targa and Belzer, above n 11; K Monaco and E Williams, 'Assessing the Determinants of Safety in the Trucking Industry' (2000) 3 *JT&S* 69; Belzer and Sedo, above n 11; Kudo and Belzer, above n 11.

15 Australian Constitution s 51(xx).

16 S Kaine and C Brigden, 'Union Responses to Regulatory Change: Strategies of Protective Layering' (2015) 26 *ELRR* 614; J Reinecke and J Donaghey, 'After Rana Plaza: Building Coalitional Power for Labour Rights between Unions and (Consumption-Based) Social Movement Organisations' (2015) 22 *Organization* 720.

establish minimum piece rates for long-distance truck drivers delivering freight between varying locations. The rates took into account the time normally taken to drive such distances, thereby seeking both to achieve the equivalent of minimum hourly pay for contractor truck drivers and to increase incentives for safe practices (the rates of pay being described by unions as ‘safe rates’). It heard evidence from competing parties over a long period.

In 2012, when legislation establishing the RSRT was introduced by a Labor government, it was opposed by the Liberal and National Party Coalition, their portfolio spokesman Senator Eric Abetz describing it as ‘another grab for power by trade union bosses’ that was based on ‘flawed and unsubstantiated thinking’ as there was ‘no logical basis to link remuneration with road safety’.¹⁷ The Coalition’s opposition was also reported in the media at the time.¹⁸ In its 2013 federal election policy, the Coalition promised to ‘urgently review’ the RSRT as there was ‘no evidence’ that it was necessary.¹⁹

In 2013, after the Coalition won the election, Minister Abetz announced the review, referring to industry claims of ‘onerous and unnecessary compliance burdens’.²⁰ He commissioned a report on the Road Safety Remuneration System (RSRS) from ‘Jaguar Consulting’, a firm whose web page features an image of scissors cutting through red tape.²¹ On 26 March 2014 the Government then held a ‘Repeal Day’, with a website <www.cuttingredtape.gov.au>, celebrating the ‘Coalition’s deregulation initiatives’ and listing the RSRT review as a one of the ‘Government reviews with a deregulation focus’.²² As expected, Jaguar Consulting reported in 2014 that ‘the safety record of the Australian heavy vehicle industry is ... relatively good’, that ‘there must be significant doubt as to the potential for regulation along the lines of the RSRS to yield substantial safety benefits in any context’, that ‘there is not an industry-wide issue of low remuneration’ and that there was ‘no evidence of the effectiveness of a model consistent with the RSRS in improving safety in other jurisdictions’.²³

A follow-up report was sought from management consultants Pricewaterhouse Coopers (PwC). It generated a cost-benefit analysis favourable to the Government’s opposition to the RSRT.²⁴ Errors in the PwC report were then heavily critiqued by Michael H Belzer, whose research had been cited in the report.²⁵ This critique argued, amongst other things, that the PwC report greatly inflated the cost of the RSRT system. (PwC, unlike Jaguar

17 Commonwealth, *Parliamentary Debates*, Senate, 20 March 2012, at 2336 (E Abetz).

18 P Freebairn, ‘Business Wants Say on Truckers’, *Australian Financial Review*, 20 March 2012.

19 Liberal Party of Australia, *Improving the Fair Work Laws*, Canberra, 2013.

20 E Abetz, ‘Review of the Road Safety Remuneration System’, Media Release, 21 November 2013.

21 Jaguar Consulting Pty Ltd, at <<http://www.jaguarconsulting.com.au/>> (accessed 15 October 2022).

22 Australian Government, *Autumn Repeal Day*, Canberra, 26 March 2014.

23 R D Smith, *Review of the Road Safety Remuneration System*, Jaguar Consulting Pty Ltd, Melbourne, 2014, at pp 161, 163–4.

24 PricewaterhouseCoopers (PwC), *Review of the Road Safety Remuneration System: Final Report*, PwC, 2016.

25 M H Belzer, ‘Evaluating the PwC “Review of the Road Safety Remuneration System”’, 15 April 2016, at <<http://dx.doi.org/10.13140/RG.2.2.23448.96000>>.

Consulting, accepted the existence of safety gains from it.) Despite their shortcomings, these reports were an integral part of the new government's strategy to abolish the RSRT. As former Minister Abetz later disclosed:

Given the Senate with which we were blessed after the 2013 election, nothing could be rushed ... [W]hen Senators Lazarus, Muir and Lambie were absolutely opposed to the abolition of the Road Safety Remuneration Tribunal, we decided not to advance legislation to abolish it and instead developed two reports in anticipation that the RSRT would ultimately over reach (which it did) and present the evidence needed.²⁶

The RSRT faced a concerted campaign by a conservative national government and by the core corporations that benefited from low-cost owner-driving.²⁷ It met resistance from the top of the supply chain, where profits were threatened; small fleet owners, for whom many owner-drivers worked, and who reportedly threatened to withhold work from owner-drivers if the RSRT system was continued;²⁸ and some owner-drivers, who faced a loss of income from withheld fleet-work or empty 'backloads'.²⁹ The campaign was assisted by opposition from many owner-drivers themselves, the intended beneficiaries.³⁰ The 'safe rates', while adequately compensating for the major long-distance hauls, did not allow for the situation of the much smaller 'backloads' that drivers would take back to their home base at cheaper rates, but which were important to their financial viability.³¹ It was essential for the RSRT to take these local circumstances fully into account, but it did not have time to correct early shortcomings and devise a system that would do so before it was disestablished.

Three months before the next federal election in 2016, the Coalition Government demonised the RSRT,³² greeted and addressed protesters at a 'convoy to Canberra', and then abolished the RSRT.³³ Although the Labor Party opposed its abolition, the issue did not feature prominently in the subsequent election campaign itself, and the government was re-elected anyway.

26 E Abetz, Speech delivered to the *HR Nicholls Society Annual Dinner*, Melbourne, 22 October 2016.

27 See, eg, B Kruger, 'RSRT: Abolish Tribunal and Enforce the Rules', *Australian Financial Review*, 18 April 2016.

28 M Rawling, R Johnstone and I Nossar, 'Compromising Road Transport Supply Chain Regulation: The Abolition of the Road Safety Remuneration Tribunal' (2017) 39 *SLR* 303.

29 Backloads, on the return legs of trips, are usually considerably smaller than the main loads that generate most income for owner-drivers; these are important income supplements, but cannot attract the same compensation as full loads.

30 B Ruddick, 'North-West Truck Drivers Join the Fight to Abolish the RSRT', *The Advocate*, 13 April 2016; J Massola, 'Former TWU Official Blasts Safe Rates Created to "Destroy" Owner-Drivers', *Sydney Morning Herald*, 10 April 2016.

31 E J Boughen, 'Glad to See RSRT Truck Off', *The Courier-Mail*, 21 April 2016; M&S Transport, 'What's Happening with the RSRT?', M&S Transport, 2016, at <<https://mstransport.com.au/whats-happening-rsrt/>> (accessed 13 September 2022).

32 Interview with Michaelia Cash: 'Convoy to Canberra', R Greenwood, 2GB, Sydney, 7 April 2016, at <<https://www.2gb.com/podcast/ross-greenwood-michaelia-cash-convoy-to-canberra/>>.

33 Retail Council, 'Statement on the Abolition of the RSRT', Media Release, 19 April 2016, at <<https://www.safetytruck.com.au/media/media-releases/victory-owner-drivers-rsrt-abolition/>> (accessed 23 November 2022).

The RSRT only operated for a short time — too short for any proper evaluation of its impact to be made. This is especially the case given the substantial annual variation (shown in Figures 1 and 2 below) in the fatality rate from road accidents involving heavy vehicles. Those evaluations that were undertaken were commissioned with a political focus (to facilitate the abolition of the scheme) and have serious weaknesses that render them of little value.³⁴ A much clearer assessment can be made of the second experiment, one restricted to the NSW jurisdiction but which was established much earlier and remains in place.

Directed devolution and regulation

Underlying the difficulty of regulating for safety in road transport is the presence of a model of economic organisation that can be described as ‘not-there employment’,³⁵ in which core capital devolves responsibility to another entity (peripheral capital) for directly providing labour. In this case, peripheral capital comprises the independent contractor firms that are the owner-drivers of the trucks used to transport the goods that core capital needs to move. It is a model in which top firms avoid accountability for pay, conditions, and health and safety, but retain control and extract profit, making collective organisation hard, transferring risk to workers (and contractors) at the end of the supply chain, and concentrating profits at the core. It is a variant of the models used in franchising, contract cleaning and labour hire in manufacturing and mining, and supply chain outsourcing in apparel manufacture. A variant of this model is also used in the modern ‘gig economy’, in which workers are routinely classed as independent contractors and managed through algorithms that make use of consumer ratings, location tracking and other aspects of digital technology.

Some forms of the not-there employment model (such as the gig economy)³⁶ are new, but others (such as owner-drivers in road transport)³⁷ have a long history, even if their numbers have waxed and waned over time. Indeed, many trade unions founded in the 19th century in Australia had been collectives of self-employed workers, leading unions to diverse forms of organisation and action, though over the next century corporations found it easier to manage workers through the employment relationship and unions found it easier to organise employees than contractors.³⁸ Indeed, the term ‘gig economy’ is a modern construct, referring to workers who are called to work through an app (normally on their smartphone) and who are usually given the status of independent contractors. But, setting aside the role of the app, this model of employment is as old as capitalism. The term ‘gig’ has long been used to describe short engagements of musicians who have no ongoing

34 Belzer, above n 25.

35 D Peetz, *The Realities and Futures of Work*, Australian National University Press, Canberra, 2019.

36 Ibid.

37 M Bray and M Rimmer, *Delivering the Goods: A History of the NSW Transport Workers Union 1888–1986*, Allen & Unwin, Sydney, 1987; B Bowden, *Driving Force: The History of the Transport Workers' Union of Australia 1883–1992*, Allen & Unwin, Sydney, 1993.

38 M Quinlan and H Maxwell-Stewart, ‘Inequality, Worker Mobilisation and Lessons from History: Australia 1788–1900’ (2022) *Lab Ind* 1.

employment contract, a mode of work that even pre-dates capitalism. A trip to drive a loaded truck from Sydney to Albury could easily be called a ‘gig’, but that is not the term used in the industry. The modern form of the ‘gig economy’ is better referred to as the ‘platform economy’³⁹ (after the apps or platforms that engagements centre around) but, consistent with common parlance, the term ‘gig economy’ is used here to describe it.

Again, broadly two, non-exclusive approaches are available to regulate pay and conditions under ‘not-there employment’. One is to try to redefine contractors as employees (or as some ‘third category’⁴⁰ of workers). This approach, which has become especially important in dealing with the gig economy, has had mixed results internationally, with legislators or members of tribunals or the judiciary in some jurisdictions acknowledging employee status, and others rejecting it.⁴¹ In Australia, case law has been on the ‘rejection’ side.⁴² The High Court’s recent statements that the parties’ own written contracts determine whether a worker enjoys employment status is likely to disadvantage platform-based gig workers,⁴³ leading the Fair Work Commission to observe that, even where circumstances would lead it to conclude a worker was an employee, ‘we must close our eyes to these matters’.⁴⁴

A second approach is to continue to acknowledge the contractor status of workers but develop systems of regulation of pay and conditions built around that status. Of particular relevance here is the concept of ‘directed devolution’, whereby a central authority defines minimum standards that apply to standard employees and then a series of agencies of detail (which could be part of the central agency) apply those standards to specific non-standard contexts (such as a particular industry or type of work).⁴⁵ They might, for example, create piece rates equivalent to the time rates that apply to standard employees, or establish particular minimums that are relevant only to that type of work. The Chapter 6 regulation of owner-drivers in New South Wales more closely approximates this model, as no attempt is made to turn contractors into

39 J Drahokoupil and K Vandaele, *A Modern Guide to Labour and the Platform Economy*, Edward Elgar, Cheltenham, 2021.

40 In the UK, s 230(3) of the Employment Rights Act 1996 (UK) provides for such a ‘third category’. The UK Supreme Court has found that this applies to Uber drivers: *Uber BV v Aslam* [2021] ICR 657; 4 All ER 209; [2021] UKSC 5, on appeal from *Uber BV v Aslam* [2019] ICR 845; 3 All ER 489; [2018] EWCA Civ 2748.

41 J Moylan, ‘Bike Courier Wins “Gig” Economy Employment Rights Case’, *BBC News*, 7 January 2017; J Grierson and R Davies, ‘Pimlico Plumbers Loses Appeal against Self-employed Status’, *The Guardian*, 11 February 2017; G Gall, ‘Is Uber Ruling the Beginning of the End for Bogus Self-Employment?’, *The Conversation*, 5 November 2016; ‘Uber Employee Question Not Settled: Expert’, *Workplace Express*, 9 February 2018, referring to *Kaseris v Rasier Pacific VOF* (2017) 272 IR 289; [2017] FWC 6610 (*Kaseris*).

42 *Gupta v Portier Pacific Pty Ltd* (2020) 296 IR 246; [2020] FWC 1698; *Kaseris*, above n 41; *Pallage v Rasier Pacific Pty Ltd* [2018] FWC 2579; *Suliman v Rasier Pacific Pty Ltd* [2019] FWC 4807.

43 *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 96 ALJR 89; [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* (2022) 96 ALJR 144; [2022] HCA 2.

44 *Deliveroo Australia Pty Ltd v Franco* [2022] FWC 156.

45 D Peetz, ‘Institutional Experimentation, Directed Devolution and the Search for Policy Innovation’ (2021) 76 *Relations Industrielles* 69.

employees, but the effect of the regulation is to create minimum standards that are broadly equivalent in cost to those that would apply under the award if the workers were employees. This is not specified in the legislation but it is the practice of the tribunal and the parties, as Chapter 6 has ensured that employees and owner-drivers are comparable in terms of price so one model does not undercut the other.⁴⁶ This latter aspect has been achieved by linking the adjustment to the labour rate component of owner-driver rates to the adjustment to the federal Modern Award⁴⁷ and then building cost recovery on top.

Historical context of NSW road legislation

The Chapter 6 provisions of the IR Act are an attempt to regulate the pay and conditions of independent contractors — including owner-drivers of large trucks — in response, in part, to pressure from the relevant union, the NSW branch of the Transport Workers Union of Australia (TWU). This is not, however, the union's first involvement in independent contractor issues. Indeed, the union originated in the formation of the Federated Carters and Drivers' Industrial Union, which was registered in 1906 and mainly comprised self-employed carters. Contracting and owner-drivers have always been a feature of road transport in Australia.⁴⁸ The Federated Carters and Drivers' Industrial Union went through numerous mergers and expansion over decades after its formation, and the majority of the union's membership came to be employees, though it always sought to include owner-drivers in its membership.⁴⁹ By the 1970s, the TWU was one of the most powerful unions in Australia, as illustrated by its role in setting the pace in wage increases in the 1973–74 wages 'explosion'.⁵⁰ The TWU was organised along federal lines, with the NSW branch the largest.

The success of the TWU in raising wages and working conditions for employee truck drivers in turn encouraged firms seeking to minimise costs to switch from use of employees to owner-drivers. The industry developed into a type of 'not-there employment' characterised by major wholesale, retail and logistics firms that are the 'core' capital in the industry, using owner-drivers as well as employees of both core capital and peripheral firms (contract distribution or 'fleet' firms) to transport goods within and outside the state.⁵¹

This phenomenon was not restricted to Australia — the US trucking industry is characterised by a predominance of contractors, many of them misclassified as employees, in a process that began in the early 1980s, and, partly as a result, the Teamsters Union is a shadow of its former self.⁵²

The consequences of this system in Australia have been poor safety amongst truck drivers, including a high occupational fatality rate (with

46 Communication with TWU official, 7 October 2021.

47 *Road Transport (Long Distance Operations) Award 2020 [MA000039]*.

48 Quinlan, *Long Haul Trucking Report*, above n 1.

49 Bray and Rimmer, above n 37.

50 E G Whitlam, *The Whitlam Government, 1972–1975*, Viking, Melbourne, 1985, at 200.

51 S Kaine and M Rawling, "'Comprehensive Campaigning' in the NSW Transport Industry: Bridging the Divide between Regulation and Union Organizing" (2010) 52 *JIR* 183.

52 H Meyerson, 'Why Trucking Can't Deliver the Goods' (2022) 33 *American Prospect* 34.

negative externality effects for other road users).⁵³ Yet regulation was made difficult, first by the contractor status of many workers, and second by Australia's federal system of industrial relations regulation.⁵⁴ Interstate transport was covered by the federal tribunal (then the Australian Conciliation and Arbitration Commission) as an 'interstate industrial dispute' could be said to exist, but intra-state transport employees were usually within state industrial relations systems.

Up to the 1970s, there was extensive regulation of wages and conditions of employees in the industry, that is, of employee truck drivers, through awards regulated by the NSW Industrial Relations Commission (IRC) and its federal counterpart. However, this existed alongside non-regulation (aside from some limited safety standards) for owner-drivers of trucks. So truck drivers who were employees were subject to regulation of wages and conditions, as therefore were the firms that employed them, while safety regulation was targeted at road users generally or specific classes of road users.

By 1979, the TWU had been able to persuade a state Labor government that the large number of owner-drivers in New South Wales were vulnerable and warranted regulation. The form of regulation that was decided was aimed at improving the pay and conditions, and the safety, of owner-drivers who were not otherwise covered by awards because they were not employees. The union had a long history of campaigning on safety issues and it mobilised support from owner-drivers and used research and advocacy to advance its case.⁵⁵

How Chapter 6 regulates

The legislation enables the NSW IRC to issue 'contract determinations' that specify minimum standards for covered workers.⁵⁶ These are analogous to 'awards' in labour regulation. For example, the *General Carriers Contract Determination 2017*,⁵⁷ which supplemented or replaced 30 existing company-specific contract determinations, establishes, for various types of truck owner-drivers:

- minimum rates of remuneration, comprising a per-kilometre rate, an hourly rate (both varying by truck size and type), allowances and a minimum earnings guarantee, and formulas for adjustment of these;
- entitlements to annual leave and rest breaks;

53 Quinlan, 'FactCheck', above n 2; Safe Work Australia, *Notifiable Fatalities Monthly Report*, above n 2; Quinlan, *Long Haul Trucking Report*, above n 1. See also Belzer, Rodriguez and Sedo, above n 11; Belzer and Sedo, above n 11; Kudo and Belzer, above n 11; Rodriguez, Targe and Belzer, above n 11.

54 The federal system is discussed in several older texts and in A Frazer, *The Federal Conciliation and Arbitration Power: From Cradle to the Grave?*, Research Paper No 15 2001–02, Department of the Parliamentary Library, Canberra, 2002.

55 Kaine and Rawling, above n 51.

56 Industrial Relations Act 1996 (NSW) (IR Act) s 316.

57 NSW Industrial Relations Commission, *Transport Industry — General Carriers Contract Determination 2017* (C9112, 24 April 2020), which should be read alongside the NSW Industrial Relations Commission, *Transport Industry — Courier and Taxi Truck Contract Determination* (C0609, 9 November 2001).

- various minimum standards of work by the owner-driver (such as to work as directed, keep records, maintain the vehicle, demonstrate medical fitness, accept alcohol testing) and obligations on the ‘principal contractor’, including transparency of work allocation;
- specific arrangements for full-time, full-year (50 hours per week x 50 weeks) workers; and
- union representation rights, where sought by workers.

The *Car Carriers Contract Determination 2008*⁵⁸ sets out various obligations on both parties as well as minimum rates of remuneration for semi-trailers carrying cars, with rates varying according to such factors as the number of cars carried, the locations involved, and whether the owner-driver supplies more than just the prime mover. The NSW IRC can also approve ‘contract agreements’,⁵⁹ which are analogous to ‘collective agreements’ in labour regulation, but between owner-drivers and firms. These contract agreements are exempt from competition law restrictions.⁶⁰ This experiment led to a new area of coverage for industrial regulation. An institution that had previously only regulated employees now was regulating the work of owner-drivers as well.

The legislation appealed to the ‘small business’ ethos of many policy-makers. Hence the Chapter 6 system was augmented over time. In 1994, for example, its scope was extended beyond ‘motor lorries’ to encompass owner-drivers utilising other vehicles (including bicycles).⁶¹ A Liberal government introduced the Contract of Carriage Tribunal.⁶² Chapter 6 has persisted through changes of government in New South Wales and sustained periods of conservative rule from 1988–95, and again from 2011 until the present.⁶³ It has also persisted through the conservative federal government’s takeover of industrial relations in 2006 and (via a formal exclusion) circumvented that government’s passage of the Independent Contractors Act 2006 (Cth), which otherwise excluded independent contractors from most regulation by courts, tribunals and state parliaments.⁶⁴

The system operates in many ways like the traditional award adjustment mechanism. The parties (TWU, firms and employer bodies) prepare submissions to the NSW IRC on issues as they arise. They seek agreement on some matters but do not agree on others, leading to arbitration. Once a contract determination is issued, the parties maintain it (for example, in applying the formula to keep the minimum remuneration up to date).

58 NSW Industrial Relations Commission, *Transport Industry — Car Carriers (NSW) Contract Determination 2008* (C6604, 10 July 2008).

59 IR Act, s 325.

60 Ibid, s 310A (exempts actions under the Act from Pt IV of the Competition and Consumer Act 2010 (Cth) and the Competition Code (NSW)).

61 Ibid, s 305.

62 Ibid, s 347.

63 Kaine and Rawling, above n 51.

64 Ibid.

However, adjustment is less frequent than with awards, and there would be (and has been) strong opposition to applying regulation of remuneration of owner-drivers in other jurisdictions.⁶⁵

The Contract of Carriage Tribunal has issued determinations which bind employer bodies (for example, Australian Industries Group); major firms in wholesale, retail, construction (for example, Boral) and logistics (for example, Linfox, Mayne, TNT); and some government bodies (for example, Penrith City Council).⁶⁶ The labour rate was originally linked to the *Transport Industry (State) Award* that covered all drivers in New South Wales. This continued to be the case even after the WorkChoices takeover of most of the state system, as this state Award provided a higher rate than the federal Modern Award and continued to rise every year through the State Wage Case. However, the union abandoned this in 2016–17 in order to link to the Modern Award given this was now more relevant.⁶⁷ For firms, there is value in this approach, as they do not need to change business models when the relative costs of forms of engagement change, since the two systems over time have broadly comparable cost structures. This reduces the chance of a 'race to the bottom' and has also prevented existing operators from being substantially undercut by new entrants to the market.

The legislation envisages attempts to artificially move out of the system. For example, ss 309(2)–(3) of the IR Act specifically deal with situations where companies try to call something a franchise when it would otherwise fall under the section. The NSW IRC has a wide discretion to classify something to be a contract of carriage, to prevent avoidance of the Act's intent. The union on behalf of a contract carrier or group of carriers can apply to the NSW IRC to have something declared a contract of carriage and if so that contract falls within Chapter 6.

The system is not without its vulnerabilities. Food delivery has been excluded from the legislation, but at the time of writing a union campaign was underway to reverse that. Furthermore, while parcel-pickup drivers in small trucks and courier workers have been prevalent users of the system, they have been facing a challenge from emerging app-based firms operating under a more modern gig economy model that is akin to Uber Eats for parcels. In February 2022, the NSW IRC by consent extended a ruling to cover drivers of vehicles of below three tonnes, resulting in it covering workers hired through apps as contractors, those using light vehicles, and those working for Amazon Flex, as well as taxi-truck drivers and bicycle couriers.⁶⁸ This led to an increase in hourly pay of around 40% for many workers, and was described by a union leader as making NSW Amazon Flex drivers the first in the world 'to have enforceable rates of pay along with rights to dispute resolution, union representation and collective bargaining'.⁶⁹

65 Communication with TWU official, 7 October 2021.

66 See, eg, *Re Transport Industry — General Carriers Contract Determination* (2016) 257 IR 294; [2016] NSWIRComm 3; NSW IRC, *Transport Industry — Penrith City Council Contract Determination* (B9891, 14 June 2002).

67 Communication with TWU official, 7 October 2021.

68 *Transport Industry — Courier and Taxi Truck Contract Determination* [2022] NSWIRComm 1003.

69 S McManus, quoted in 'NSW IRC Owner-Driver Ruling Extends to Amazon Flex: TWU'.

The model has influenced policy-makers elsewhere. In Queensland, a review of the Industrial Relations Act 2016 (Qld) in 2021 proposed to apply the Chapter 6 model to independent courier drivers in that state.⁷⁰ The Queensland Government announced that it would adopt this recommendation, ultimately leading to legislation.⁷¹ At the federal level, the Labor party while in opposition committed to applying something like this to road transport elsewhere.⁷² There had already been iterations of owner-driver legislation in Victoria and Western Australia, but these were entirely different systems that had not created a capacity for owner-drivers to effectively bargain or provided for enforceable rates.⁷³ It is the NSW framework that provided the model for policy elsewhere. Hence the idea of addressing road safety through pay regulation remained on the national political agenda in Australia, with the Senate Standing Committees on Rural and Regional Affairs and Transport recommending in August 2021 establishment of an independent body to set universal, binding standards (including on pay) to ensure the safe performance of work, eliminate unsafe economic and contracting practices, and that apply to all road transport supply chain participants.⁷⁴

Perceived intermediate effects

If the ultimate aim of Chapter 6 regulation is to improve safety, then it must do so through some combination of effects on earnings, hours or employee or employer behaviour. Before the hard evidence on the safety impact is presented in Part II of this article, this section briefly discusses perceptions of practitioners as reported by union officials, on these intermediate effects.⁷⁵

While there has been no change in the employment status of self-employed owner drivers, it is believed that their income security has improved. Risk, which had been shifted onto workers as owner-drivers, is transferred by this system away from them. Some risk is borne by the large firms but they still have the capacity to shift much of it onto smaller, peripheral firms. As a result of the determinations, firms are required to pay more than they otherwise would for transporting goods, and they are required to meet certain obligations. No independent, sufficiently disaggregated data on earnings are available, but determinations have set minimums which we would expect would increase pay. There has very likely been an increase in worker incomes amongst owner-drivers. Participants in the industry also believe there has been

Workplace Express, 18 February 2022.

70 L Lavarch and J Thompson, *Five-Year Review of Queensland's Industrial Relations Act 2016: Final Report*, Office of Industrial Relations, Brisbane, 2021.

71 Queensland Government, *Five-Year Review of Queensland's Industrial Relations Act 2016 — Final Report Recommendations and the Queensland Government's Response*, Office of Industrial Relations, Brisbane, 2022.

72 Australian Labor Party, *ALP National Platform: As Adopted at the 2021 Special Platform Conference*, ALP, Canberra, 2021, at pp 30, 109–10.

73 Owner Drivers and Forestry Contractors Act 2005 (Vic); Owner-Drivers (Contracts and Disputes) Act 2007 (WA).

74 Senate Standing Committees on Rural and Regional Affairs and Transport, *Without Trucks Australia Stops: The Development of a Viable, Safe, Sustainable and Efficient Road Transport Industry*, Parliament of Australia, Canberra, 2021.

75 Reference to these communications appears in subsequent footnotes.

a reduction in work intensity, and a likely increase in control over working time (both via better rest break and leave provisions, and less pressure to take short-cuts to deliver goods on time), but it is still a long-hours industry.⁷⁶

A ‘Safe Rates’ system, with a number of similarities to that operating in New South Wales, has been introduced in South Korea.⁷⁷ Amongst other effects (such as reduced overloading, price competition and working time) it has seen a reduction in the average number of steps in the subcontracting chain.⁷⁸ It is not clear whether this has also been the case in New South Wales, or whether there has been any movement back to more direct engagement or employment (and if so, by how much). However, there are no suggestions of any observed movement away from direct-hire owner drivers, in order to avoid the system.

The effects supposed above identify plausible pathways through which improved safety outcomes could be achieved. The key issue for this paper, though, is whether there is evidence of improved safety outcomes. For that, we can turn to hard data.

II Effects

This part first outlines the methodology for assessing the ultimate effects and then considers the findings.

Method of analysis

To assess the effects of the system on road safety, we undertook quantitative analysis of administrative data. It is possible to look at national road safety data to compare the experiences of New South Wales and the rest of Australia. For this purpose, the Australian Road Deaths Database (ARDD) on Fatal Crashes was accessed.⁷⁹ The ARDD provides data on each fatal vehicle accident since 1989, collated by the federal Bureau of Infrastructure and Transport Research Economics. At the time of analysis the database contained basic details of 47,419 road transport crash fatalities in Australia, as reported by the police each month to state and territory road safety authorities. It provided data on the circumstances of each crash — for example, the date, location and crash type — up until July 2021. This enabled us to analyse crashes involving articulated trucks in New South Wales and the rest of Australia. Of course, changes in crash rates may reflect a number of factors, including changes in road conditions, road rules and traffic density. Rather than seeking to model the effects of each such factor, we proxy the impact of such changes through the crash rates for other vehicles (that is, other than

⁷⁶ Communications with TWU officials, 7 October 2021 and 9 April 2022.

⁷⁷ Korean Safe Rates Research Group, *Analysis of the Early Impact of the Korean Safe Rates System and Proposals for Sustainable Implementation: Summary of Survey Results*, Korean Public Service and Transport Workers’ Union Cargo Truckers’ Solidarity Division (KPTU-TruckSol), Seoul, 2021, at p 8. At the time of writing, the future of this system was unclear.

⁷⁸ Ibid.

⁷⁹ Australian Government, *Australian Road Deaths Database*, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 2022, at <www.bitre.gov.au/statistics/safety/fatal_road_crash_database.aspx> (accessed 13 September 2022).

articulated trucks, which are the heaviest vehicle on the roads and the group most directly regulated by Chapter 6). Two measures test for the potential effect of Chapter 6 on truck crashes:

- changes in the proportion of fatal crashes in New South Wales that involve articulated trucks, compared to changes in the proportion of fatal crashes in the rest of Australia that involve articulated trucks; and
- changes in the NSW share amongst Australian fatal crashes that involve articulated trucks, compared to changes in that state's share amongst Australian fatal crashes involving other vehicles.

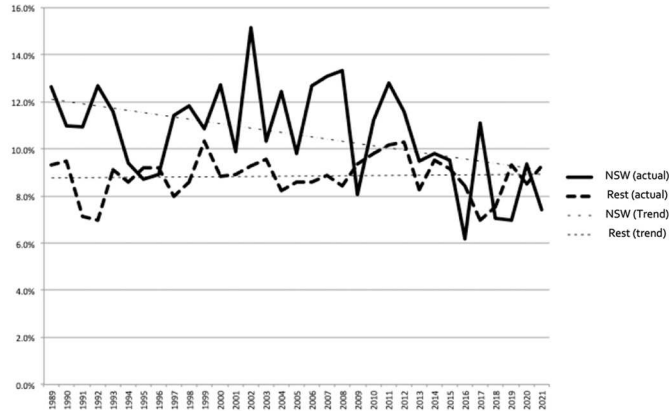
These are imperfect measures of the safety effects of the Chapter 6 reforms. For one thing, many articulated trucks are driven by employees or other people not covered by Chapter 6 (which has quite a narrow definition of 'contract carriers' that it covers). For another thing, many truck drivers covered by Chapter 6 will be driving non-articulated trucks that thereby are defined as 'other vehicles' for the purposes of these data. Both these features will tend to mask any effect from the Chapter 6 provisions, and reduce the chance that a significant difference will be found. In addition, there may be some factors that affect road safety for articulated trucks in New South Wales but not for other road users and not for articulated trucks in other states. Nonetheless, the data assist in assessing the potential relevance to user safety of the Chapter 6 reforms.

Results: Safety effects

Figure 1 shows, for the period 1989–2021, the proportion of fatal crashes each year that involved an articulated truck in New South Wales and the rest of Australia. Ordinary least squares (OLS) trend lines are shown for each series. At the start of the period, a considerably higher proportion of fatal crashes involved articulated trucks in New South Wales than in the rest of Australia (the former was about a third higher than the latter); by the end of the period the proportions were almost identical. Over the period, the proportion in New South Wales fell by close to 0.1 percentage points per annum (as indicated by the slope on the trend line); for the rest of Australia, there was no discernible, consistent change over time.

Over the period 1989–2021, there were 1,586 fatal crashes in New South Wales involving articulated trucks. Had the share of articulated trucks in total crashes remained unchanged over this period at 12.0% (the level indicated by the OLS trend equation for the beginning), there would have been 1,757 fatal crashes involving articulated trucks, 171 more than actually occurred. As an average of 1.2 people were killed per crash involving an articulated truck in New South Wales over this period, this difference would be equivalent on average to about 205 lives. As Chapter 6 commenced 10 years before the start of the series, this number likely underestimates the impact of the legislation in reducing loss of life.

Figure 1: Proportion of fatal vehicle crashes involving articulated trucks in New South Wales and in the rest of Australia, 1989–2021

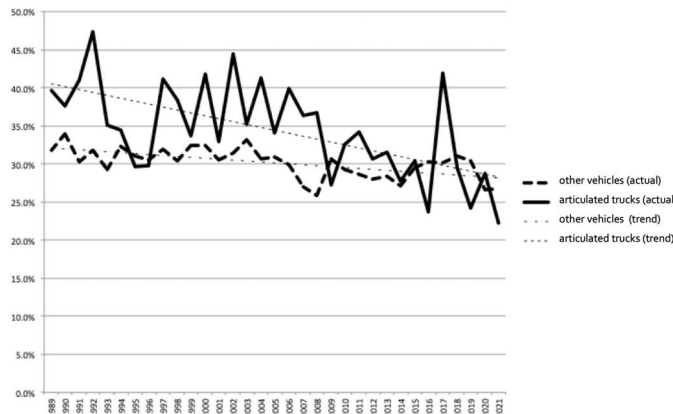


Source: Australian Government, *Australian Road Deaths Database*, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 2022, at <www.bitre.gov.au/statistics/safety/fatal_road_crash_database.asp> (accessed 13 September 2022).

Figure 2 shows the data expressed in a different way: the proportion of fatal vehicle crashes in New South Wales accounted for by articulated trucks and by other vehicles. In both series, the proportion of fatal crashes declines, but for articulated trucks the decline is quite large, about 0.38 percentage points a year according to the trend line, which is over three times the rate of decline for other vehicles, which is about 0.12 percentage points a year.

At the beginning of the period, the share of fatal heavy vehicle crashes is nearly nine percentage points more than the share of crashes of other vehicles; by the end of the period, the proportions are almost identical.

Figure 2: Proportion of fatal crashes accounted for by articulated trucks and by other vehicles in New South Wales, 1989–2021.



Source: Australian Government, *Australian Road Deaths Database*, Department of

Infrastructure, Transport, Regional Development, Communications and the Arts, 2022, at <www.bitre.gov.au/statistics/safety/fatal_road_crash_database.aspx> (accessed 13 September 2022).

While these data cannot be conclusive, because of the presence of non-Chapter 6 drivers amongst articulated truck drivers, the fact that a small proportion of drivers of other vehicles would be covered by Chapter 6 (both factors understating the impact of Chapter 6), and the possibility that other factors affected the safety performance of articulated truck drivers in New South Wales but not that of other road users in that state or of drivers of articulated trucks in other states, the data are nonetheless suggestive of a *prima facie* case that, over time, Chapter 6 improved road safety for truck drivers in New South Wales.

Additional regression analyses were undertaken to examine in greater detail the apparent decline in NSW fatal accidents involving articulated vehicles. For these, the total number of fatal accidents was the key dependent variable. At the outset, it should be noted that fatal accidents have been in long-term decline in Australia, by slightly over 2% per year, since the data were first collected in 1989. So, first, the long-term declines in fatal accident rates were calculated for New South Wales and for the rest of Australia, by whether the accident involved an articulated truck, using OLS regression. The unit of analysis was the month, and the period covered was from January 1989 to December 2020, generating a total of 384 observations. In each equation, time (measured in years) was the explanatory variable and, as the long-term trend over time is the key item of interest, the natural logarithm of the percentage of fatal accidents of that type of accident was the dependent variable. (For zero values, a proxy estimate of 0.01 was substituted to allow the observation to be included).

The resultant estimates of average annual decline are shown in Table 1. They show that the average annual decline in fatal accidents involving articulated trucks in New South Wales was 5.0%, around double the average annual decline in other fatal accidents in New South Wales or in fatal accidents in the rest of Australia.

Table 1: Average annual decline in fatal accidents, 1989–2020.

Type of fatal accident	Location	Average annual change
Involved articulated trucks	NSW	-5.0%
Other vehicles only	NSW	-2.6%
Involved articulated trucks	Rest of Australia	-2.0%
Other vehicles only	Rest of Australia	-2.1%

Table 2 shows regressions predicting the number of fatal vehicle accidents involving articulated trucks in New South Wales over the period 1989–2020. The dependent variable is the number of accidents (not its logarithm), as the number of accidents on one quarter does not build on the number in the previous quarter (unlike in, say, a regression predicting wages or

unemployment), and the numbers can vary substantially between months. Equation (1) shows that there is a significant negative trend over time (confirming the finding in Table 1), while Equation (2) includes other variables representing the number of other fatal accidents in New South Wales, and the number of accidents in the rest of Australia. It shows that, while the number of heavy vehicle accidents in New South Wales tends to fall when the number of other accidents in the state does (reflecting the common effect of some road safety measures), the decline in heavy vehicle accidents is substantial even after this is controlled for in the equation. That is, the long-term decline in articulated truck accidents in New South Wales cannot be explained by any factors that influence general road safety in that state or across the rest of Australia.

Table 2: Regressions predicting number of fatal vehicle accidents involving articulated trucks in New South Wales, 1989–2020.

	Equation (1)	Equation (2)
Constant	6.291 (0.210)	4.74 (1.150)
Time	-0.137** (0.011)	-0.108** (0.022)
Fatal accidents, other vehicles, NSW		0.037* (0.016)
Fatal accidents, rest of Australia		-0.002 (0.010)
N	384	384
adj r ²	0.273	0.280
F	144.808	50.639
F significance	0.000	0.000

(Standard errors in brackets)

* Significant at 5% level

** Significant at 1% level

III Discussion

It seems likely that occupational safety in heavy vehicle road transport improved with the entrenchment of Chapter 6 regulation in New South Wales. Since 1989, the average annual decline in fatal accidents involving articulated trucks in New South Wales was around double the declines in other fatal road accidents in the state or in fatal road accidents in the rest of Australia. Heavy vehicle accidents accounted for a declining share of road deaths in New South Wales but not in the rest of Australia. The steadily declining share of fatal heavy vehicle crashes in New South Wales was far greater than the decline in its share in other fatal crashes. The long-term decline in articulated truck

accidents in the state cannot be explained by any factors that influence general road safety in New South Wales or across the rest of Australia. It is likely that over 205 lives have been saved as a result of Chapter 6.

It is apparent that the consultants hired by the Coalition Government were premature in claiming that there was ‘no evidence of the effectiveness of a model consistent with the RSRS [sic] in improving safety in other jurisdictions’.⁸⁰ Broadly speaking, the Chapter 6 model is consistent with the RSRT approach and yet has clearly delivered more sustained safety outcomes. Still, an obvious question is: why did the Chapter 6 model succeed for so long while the RSRT failed (that is, was abolished) within a short period? The concept of critical junctures may be relevant here.⁸¹ A critical juncture can arise from a substantial strategic move, perhaps a grand new insight of one or more of the participants; or it can come from some pivotal failure of strategy. Either way, it opens up certain directions of change and forecloses others in a way that is likely to shape developments for years to come. A specific set of circumstances at any time shapes public opinion to make particular policies feasible or impossible. Whatever the outcome of a policy contest then (in this case, the outcome was the introduction of Chapter 6), it creates a new equilibrium — a ‘paradigm shift’⁸² — to which the parties adapt and from which major deviation is unlikely until another critical juncture is reached. From that point, legislation is unlikely to be expanded or contracted unless one of the actors makes a successful strategic move (which the union’s shift into gig economy workers may now signal). A more prosaic way of expressing the difference between Chapter 6 and the RSRT could thus be: timing.

One factor behind the different circumstances was the different politics: in New South Wales the union was able to build an alliance of support for the Chapter 6 model, whereas, for the RSRT, well-resourced employer groups, national level corporations and the Liberal-National Coalition all saw advantage in destroying the model, backed up by alleged threats to owner-drivers from small fleet-owners.⁸³ Unionists in New South Wales consider that employer bodies and the Coalition are simply more hard-line at the national level.⁸⁴ Still, it seems unlikely they could have successfully defeated the model if they had not been able to mobilise a significant number of owner-drivers to support them. This relates not just to threats but also to the backload problem discussed earlier, which would probably have required different provisions for complementary legs of a long-haul journey.

The Chapter 6 model has implications for the gig economy. It has shown that there is a way to regulate pay and conditions — and influence safety — for a group of workers who are not employees but contractors, and who wish

80 Smith, above n 23.

81 The term ‘critical juncture’ comes from R B Collier and J D Collier, *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*, Princeton University Press, Princeton, 1991. It is also used by S M Lipset and S Rokkan, ‘Cleavage Structures, Party Systems and Voter Alignments: An Introduction’, in S M Lipset and S Rokkan (Eds), *Party Systems and Voter Alignments: Cross-National Perspectives*, Free Press, New York, 1967, p 67.

82 A term used by R Price and G S Bain, ‘The Comparative Analysis of Union Growth’, paper presented at *Recent Trends in Industrial Relations Studies and Theory*, Brussels, 1989.

83 Rawling, Johnstone and Nossar, above n 28.

84 Communications with TWU official, 7 October 2021 and 9 April 2022.

to remain that way. The principle of identifying a regulatory model that can provide minimum standards for contractors approximately equivalent to those for employees has proved workable, durable and effective. Its applicability to the gig economy is highlighted by its 2022 extension to a group of workers recognised to be part of the modern app-based gig economy — those hired through their smartphones by Amazon Flex for parcel delivery ‘gigs’.⁸⁵ Taking detailed account of the circumstances in a particular sector, as occurs through the process of submission to an independent tribunal, enables (but does not guarantee) sustainable improvements to be made to the pay, conditions, safety and security of people who may otherwise seem impossible to regulate.

The fact that the Queensland Government has decided to apply this model to independent courier drivers is further indication of its relevance to the gig economy. To succeed, it would need (for constitutional reasons) to obtain the acquiescence of the federal government.⁸⁶ Nationally, the Australian Labor Party, which later won federal government at the 2022 election, had promised to ensure ‘that gig economy platforms and other working arrangements are not used to circumvent industrial standards’.⁸⁷

In August 2022 a roundtable of road industry actors, chaired by new Minister Tony Burke and attended by ‘clients, transport operators, on-demand and rideshare platforms, transport associations, transport workers and academics’, called for ‘urgent action to ensure a safe, sustainable, viable and fair road transport industry’ which could include an independent body to establish ‘enforceable standards in relation to both traditional transport operations and on-demand delivery and rideshare platform work’.⁸⁸ This coalition of actors included some who had campaigned against the RSRT. Federal legislation appears likely, in which case the Queensland provisions might never take effect.

At a general level, this model has potential for application to other industries, but that has not yet been considered or advocated. Yet the principles behind it would appear to have support among gig economy workers. The available data are consistent with the idea that, while gig workers believe in being entrepreneurial, they still want protection. In one British survey, gig workers appear to have an ‘optimism bias’⁸⁹ deriving from entrepreneurial self-belief: they are less likely to be ‘living comfortably’ than employees, but more optimistic about their future situation; less likely to be saving for retirement but more confident that they could live comfortably when they stopped working.⁹⁰ Clear majorities of gig workers agreed that gig economy firms were exploiting a lack of regulation and that the government should regulate the gig economy so that all working in it are entitled to receive

85 *Transport Industry — Courier and Taxi Truck Contract Determination* [2022] NSWIRComm 1003.

86 Lavarch and Thompson, above n 70.

87 Australian Labor Party, above n 72.

88 Road Transport Roundtable, *Agreed Principles for a Safe, Sustainable & Fair Road Transport Industry*, 29 August 2022, at <<https://www.twu.com.au/wp-content/uploads/2022/08/Transport-Roundtable-Principles.pdf>> (accessed 23 November 2022).

89 D Kahneman, *Thinking, Fast and Slow*, Farrar, Straus and Giroux, New York, 2011.

90 Chartered Institute of Personnel and Development (CIPD), *To Gig or Not to Gig? Stories from the Modern Economy*, CIPD, London, 2017.

a basic level of rights and benefits. However, only a minority disagreed that people working in the gig economy make a decision to sacrifice job security and workers' benefits for greater flexibility and independence.⁹¹

The particular salience of the Chapter 6 model may derive from its link to safety, and the union's ability to build a campaign around that issue. Many other gig economy workers face issues about safety or that can be portrayed as linked to vulnerability or exploitation. Whatever the politics of the issue, the Chapter 6 model points to fruitful areas for the expansion of labour law into the protection of contractors and other gig economy workers.

The Chapter 6 model would benefit from greater arrangements for supply chain accountability, as the provisions are 'confined to regulating the direct contract worker/hirer arrangement and do not extend to regulate clients at the top of the transport supply chain'.⁹² The absence of such accountability is a weakness in the model, including by comparison with the Korean model. Nonetheless, its success shows that there is real potential for influencing road safety through regulation of driver remuneration and that such effects can persist and even grow over the long term.

The contrasting outcomes from Chapter 6 and the RSRT point to the importance not only of the political juncture but also of being able to take full account of *all* the circumstances that apply in a particular industry. This consideration reinforces the difficulties of any approach that applied broad-brush minimums to non-employees in diverse circumstances. There would be considerable benefits from a 'directed devolution' method that would insist on certain standards for all, but leave the detailed consideration of how to implement those standards to more specialised entities.

91 Ibid.

92 R Johnstone, I Nossar and M Rawling, 'Regulating Supply Chains to Protect Road Transport Workers: An Early Assessment of the Road Safety Remuneration Tribunal' (2015) 43 *FLR* 397.