

Inspection and supply chains: the Australian experience

The growth of supply chains, which often entail elaborate national and international networks of subcontracting, have posed significant challenges for controlled occupational health and safety (OHS) hazards. This includes the growth of dependent forms of self-employed subcontracted work, temporary agency work, franchising and other non-employment work arrangements. There is also a growing informal sector (in agriculture and construction) relying on temporary or undocumented migrants.

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Progressive legislation allowing action to be taken against violations of transport workers' right to safety has been abolished following a neoliberal counteroffensive by the Australian Government.
Image: © Belga



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1. Walters D. *et al.* (2011) *Regulating work risks: a comparative study of inspection regimes in times of change*, Edward Elgar Cheltenham, UK.

2. For more details, read: Quinlan M. (2012) "Road haulage in Australia: keeping vulnerable workers safe and sound", *HesaMag*, 6, 48-51.

3. Australasia is a region of Oceania comprising Australia, New Zealand, the island of New Guinea and neighbouring islands in the Pacific Ocean.

material/standards, targeted inspection and the enforcement of labour standards in subcontracting chains and agency work in industries like construction, road transport, mining and clothing manufacturing. Research indicated inspectors were also devoting more attention to supply chain and upstream duty-holder issues, such as agencies providing forklift drivers with inadequate skillsets or flawed equipment. At the same time, addressing supply chain issues is often logistically demanding and inspectors have also encountered difficulties where the service or goods were provided from outside their jurisdiction (interstate or overseas).¹

At the federal level, the national WHS Agency, Safe Work Australia, issued a discussion paper on supply chains and also made this topic a key element of its forward strategy. In 2012 there were also important regulatory initiatives to protect home-based clothing workers, heavy vehicle operators and particularly self-employed truck drivers, who were engaged in elaborate subcontracting arrangements that diminished working conditions and induced unsafe practices, including excessive working hours, speeding, cuts to maintenance and drug use (to combat fatigue). These practices threatened not only truck drivers but other road users too.

An industrial tribunal to secure truckers' rights

Critically, in road transport a federal industrial tribunal – the Road Safety Remuneration Tribunal (RSRT) – was established to set minimum rates for owner drivers, essentially mirroring the minimum payment regime that applies to employee drivers.²

This meant major shippers/clients or transport companies could not use subcontracted drivers to cut costs by reducing payments, not paying for waiting time and the like. The tribunal was the culmination of a prolonged (over 10 years) industrial, community and political campaign, as well as two government inquiries that established a clear link between economic pressures, subcontracting chains, low pay and hazardous work practices.

By removing the cost-advantage of elaborate subcontracting networks – with sometimes as many as six or seven steps between the client and the truck driver actually undertaking the task – the RSRT targeted the root cause of measures designed to evade mandated community labour standards. It set an important global precedent in several respects.

First, it provided a model for intervention and one that demonstrated that the most effective strategy to counter regulatory evasion by capital is to remove the financial benefits accruing to those devising and implementing these devices (i.e. those parties at the top of the supply chain). When the RSRT made a major determination in December 2015, major transport companies began to reconsider their preference for self-employed drivers over employee drivers. It also highlighted the importance of the principle that minimum labour standards should apply to all workers irrespective of the contractual arrangements they are engaged under. These moves would not have eliminated owner drivers but probably would have reduced their numbers and would have ensured that all truck drivers receive a minimum payment irrespective of how they were engaged.

Second, the intervention highlighted the connection between workers' pay and safety. This connection has been found to be significant across a range of industries (including garment making, agriculture/harvesting and construction) but requires regulatory interventions and union involvement which are anathema to neoliberal policymakers.

Third, as with the Fairwear and associated campaigns in Europe, North America and Australasia³, the campaign highlighted the importance of union/community alliances in securing crucial reforms and measures that protect not only workers but the wider community. These bodies also have a keen interest in ensuring that regulations are

Like Germany and the USA, Australia has a federal political structure with OHS laws operating at both state and federal level. As in the EU, these OHS laws contain general duty provisions establishing obligations not only on employers but on other parties too, including contractors, suppliers, designers, importers and manufacturers. In principle, this means that the laws cover supply chains or at least those within their jurisdiction. Indeed, in 2011 the legislative framework was enhanced in this regard under the model workplace health and safety (WHS) law, which replaced the terms "employment" and "employee" with the wider concepts of "work" and "workers". Rather than referring to specific duty-holders like "employers", "suppliers" and the like, the model legislation duties refer to "persons conducting a business or undertaking", which is wider in scope and essentially encompasses any person or organisation that influences WHS.

Furthermore, there is evidence that over the past 20 years regulatory agencies have devoted more attention to supply chain issues, including the provision of guidance

4. For a link to a summary of some of this evidence see <https://theconversation.com/factcheck-do-better-pay-rates-for-truck-drivers-improve-safety-57639>

5. <https://www.theguardian.com/world/2016/apr/05/reports-contradict-ministers-claim-of-no-link-between-truckie-pay-and-safety>

6. Quinlan M. (2015) *The effects of non-standard forms of employment on worker health and safety*, Discussion Paper no. 67, International Labour Organisation, Geneva.

enforced, providing an important bulwark for the reforms. The Transport Workers Union of Australia played a pivotal role (even though many drivers were not union members) and promoted an international trade union focus on supply chains.

More recently, however, this increased regulatory activity on supply chains has been weakened by the election of neoliberal state and federal governments and consequent changes to inspectorate policies and resourcing.

Neoliberal counteroffensive

The Road Safety Remuneration Tribunal has been no exception to this. After several interim decisions dealing with issues like unpaid waiting time (trucks may spend hours waiting to load or unload), in December 2015 the RSRT made its first wide-ranging judgement on payments to self-employed drivers, which is due to come into force in April 2016.

This decision should have come as no surprise, as it was for precisely this purpose that the tribunal was established. However, over three months after the decision had been made a number of interest groups, including those representing users of road freight (the Australian Industry Group and the Logistics Council), owner drivers, the Australian Trucking Association, one major transport company and a range of right-wing/neoliberal political interest groups who had always opposed the tribunal, mounted a campaign to abolish it.

In April 2016 a scare campaign was launched, claiming that owner drivers would be forced out of business. This ignored the fact that a similar tribunal doing exactly the same task of making contract

determinations for owner drivers had been operating successfully at state level (New South Wales) for some years without owner drivers disappearing. A number of the most conspicuous campaign leaders also ignored or tried to refute a substantial body of scientific research pointing to an association between truck driver pay and safety.⁴ The connection was even confirmed by two consultants' reports commissioned by the neoliberal federal government elected in 2013.⁵ In the lead-up to the July 2016 federal election, the federal government was able to draw on support from a number of independents in the Senate to abolish the RSRT. The federal Labor opposition (and the Greens too) have pledged to reintroduce the RSRT should they be returned to government.

In a global climate dominated by neoliberal policy discourse, where even the most basic labour standards are under attack, it is hardly surprising that an innovative measure to make regulation of supply chains more effective should attract a significant backlash. Nevertheless, even if it were to prove short-lived, the legislation sets an important precedent. Historically, short-lived or flawed measures have often set the stage for many critical social reforms. Following on from the last point, sector-specific reforms can and have formed a base for more wide-reaching reforms. For example, the first minimum wage laws at the end of the 19th century in the Australian state of Victoria were initially confined to only six industries but became universal in just over a decade.

This being said, the rapid growth of supply chains and their increasingly global character sets especially demanding challenges for regulatory regimes.

In agriculture, for example, harvest work is increasingly undertaken by foreign workers – often temporary or undocumented migrants – whose vulnerability to exploitation is exacerbated by the subcontracting process and the international temporary employment agencies that supply these workers. This includes not just safety risks but exposure to hazardous chemicals.⁶ In aviation, the outsourcing and offshoring of heavy aircraft maintenance – often to countries with poor social protection and labour standard regimes and weak/non-existent unions – has also weakened safety measures for both workers and the travelling public. In the USA for example, offshore/outsourced maintenance was associated with seven serious aviation incidents between 1995 and 2009, including four multiple fatality crashes (resulting in a total of 169 deaths). Yet it is unclear if safety regulators in Australia (or elsewhere for that matter) have learned from these incidents and put more effective regulatory oversight into place. More generally, some provisions in free trade agreements (including that recently signed between Australia and China) essentially contain loopholes to enable Chinese workers to be imported in order to carry out work for Chinese projects at conditions below those pertaining to other workers in Australia.

While inspectorates have responded to the challenges posed by supply chains in Australia, the degree of activity has so far varied widely between different regions and industries. Some important initiatives warrant attention even if, as elsewhere, the combination of supply chain growth and neoliberal policies are creating problems at a speed and scale that is overwhelming current regulatory responses. ●

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