

**WORKING PAPER:  
Delivering “Safe Rates”  
in Today’s Road Transport  
Supply Chains**

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## **WORKING PAPER: Delivering “Safe Rates” in Today’s Road Transport Supply Chains**

### **ABSTRACT**

The demands of effective business controllers at the apex of the supply chain contribute to hazardous workplace practices and poor road safety outcomes. The commercial decisions of these supply chain actors can determine the parameters within which matters such as driver remuneration, delivery schedule and working hours are determined. In turn, those matters, operate to increase the pressure placed on RT workers to engage in hazardous work practices which lead to poor safety outcomes. The objective of the “Safe Rates” model is to ensure the health/safety of transport workers and the general travelling public by imposing mandatory enforceable legal obligations upon all business firms operating throughout road transport supply chains. This document explores the key features of the “Safe Rates” model and provides a number of international examples of how “Safe Rates” have been introduced in various jurisdictions today.

### **INTRODUCTION**

The road transport (RT) sector rates amongst the worst industries for occupational health and safety outcomes internationally. The workplace for road transport workers consists largely of public roadways - the same roads used by commuters, school buses and other commercial vehicles. Each year, 1.25 million people lose their lives on the world’s roads and another 20 to 50 million are seriously injured making road transport one of the deadliest industries (1). Up to a third of all road traffic accidents are work-related (2). For example, in Australia truck drivers are killed on the job at more than 15 times the rate of the average occupation (3). Commercial pressures passed down road transport supply chains can lead to reductions in truck driver pay, which in turn can encourage hazardous on-road practices leading to poor safety outcomes. Results indicate that pay increases influence safety by positively modifying the road safety behaviour of current drivers. The data indicates that drivers’ crash records improved following pay increases.

The objective of Safe rates is to ensure the health/safety of the general travelling public as well as of the RT workers who spend so much of their working lives driving on the same roads. A “Safe Rates” model involves the imposition of mandatory enforceable legal obligations upon all business firms operating throughout road transport supply chains. These obligations apply to all businesses from the level of consignors (and consignees) down through the supply chains to the level of road transport businesses (such as trucking companies) which directly hire the services of RT drivers.

“Safe Rates” mandatory legal obligations are designed to ensure that all RT

drivers receive no less than the same minimum work protections – in the form of equivalent occupational health and safety protections, the same minimum working conditions, as well as the same minimum pay rates. These “Safe Rates” obligations require the buyers of road transport services to structure their contracting practices (and other operations) in such a manner as to proactively assist the relevant regulators to monitor the work outcomes for all RT drivers – and, in particular, to enforce prompt payment of these protective minimum rates to all these drivers.

“Safe Rates” mandatory legal obligations require all buyers of RT services to enable these regulators to track the flow of all road transport work orders throughout each RT supply chain. Additional “Safe Rates” obligations apply to those buyers who exercise significant influence over the flow of RT work orders at strategic control points within RT supply chains. (These “gate keepers” of the strategic control points are obliged to contract in relation to the provision of RT services in a manner which assists the regulators to ensure the delivery of minimum working conditions to all RT drivers in the supply chains.) Further, additional “Safe Rates” obligations apply to those “gate keeper” businesses who exercise effective business control (as “lead firms” or “economic employers”) over entire RT supply chains, such as large principal client consignors (and consignees) who (among the various buyers of RT services) act as the ultimate customers for those road transport services. (These effective business controllers are required to actively guarantee the timely prompt delivery of “Safe Rates” to all RT drivers in their RT supply chains.)

“Safe Rates” have been introduced in varying versions (within other countries) by legislation (in conjunction with related executive and judicial decisions).

- › Key features of the “Safe Rates” system have operated in Australia for 40 years to protect relevant RT drivers regardless of their employment status - with “Safe Rates” mandatory legal obligations imposed on RT businesses at strategic control points for more than a decade (including obligations imposed in the context of a major intermodal transportation hub operating at Port Botany).
- › For more than half a decade, the Canadian province of British Columbia has operated a more fully developed regime of those “Safe Rates” obligations applicable to “gate keepers” (of strategic control points), in the context of a major intermodal transportation hub operating at the Metro Vancouver Container Terminal Port.

- › The USA has separately legislated a number of the key features of the “Safe Rates” model – both within (a number of separate) state (i.e. provincial) jurisdictions, and also in the federal (i.e. national) jurisdiction. At the level of state jurisdictions, the most developed version of the “Safe Rates” approach is to be found in the US state of California, as the result of a combination of legislative governmental instruments and authoritative precedent judicial decisions. (Separately, in New York City, a proposed governmental instrument will require the delivery of “Safe Rates” to online gig economy RT workers by business controllers of those online digital platforms – and their associated apps – which are involved in connecting these RT drivers with other buyers of RT services.)
- › For more than four years, the Netherlands has operated a more fully developed regime of almost the entire range of “Safe Rates” obligations applicable to **all** businesses within relevant RT supply chains – aimed at the delivery of “Safe Rates” to **all** relevant RT employee drivers.
- › The “Safe Rates” system has now been introduced nationwide in the Republic of Korea by a combination of legislative and executive governmental instruments. The Korean approach to the Safe Rates system imposes landmark mandatory client obligations (which regulate the minimum rates of contract payments to be paid by principal client consignors/consignees to their direct RT suppliers) and protects relevant RT owner drivers (even though these drivers are **not** the employees of RT intermediaries, such as transport operators).
- › Together with the Netherlands, both Korea and U.S. jurisdictions (such as California) impose stringent “Safe Rates” mandatory legal obligations upon effective business controllers who exercise predominant commercial influence (as “lead firms” or “economic employers”) over the performance of RT work throughout entire RT supply chains – even though these particular business controllers may have had no direct dealings at all with the relevant RT drivers (who ultimately perform the RT work which these particular business controllers require).

The following paragraphs will provide an analysis of each of these “Safe Rates” systems around the world today and in doing so, seek to build on the key features of a “Safe Rates” model. The first section will provide a brief overview of a typical road transport journey, including the process by which transport services are contracted, delivered and the key actors involved in those operations. The second section, will provide an overview of the “Safe Rates” regulatory model. The key features of the “Safe Rates” model presented here will include mandatory enforceable legal obligations, the extension of these obligations to all supply chain actors (including ‘lead firms’ and ‘gate keepers’) and the provision of mechanisms to enforce these obligations (such as the use of strategic chokepoints in supply chains). The third section, will provide a range of international examples of “Safe Rates” in practice today. These will include those summarised above namely, those “Safe Rates” systems in Australia, USA, Canada, Korea & the Netherlands.

## **SECTION 1 – THE ROAD TRANSPORT CHAIN & ACTORS**

While every RT transport journey will ultimately be a unique mix of a varying number of actors and contractual relationships, it is nevertheless possible to identify the core components of a RT journey. For the purposes of this paper, the following schema of typical road transport journey is provided in this section.

### **1.1 The Physical Context of a Road Transport (RT) Journey**

Each RT journey begins at its point of origin **(O)** [where the relevant transportable item **(TI)** is loaded onto the relevant carrier vehicle] and the vehicle then proceeds [under the control of the relevant RT workers] to the first (if any) interim stopping point – where the RT workers take a rest break OR any additional TI’s are loaded OR any portion of the original TI is unloaded OR the TI is transferred to another carrier vehicle (OR on to a different mode of transport) – after which the journey resumes (via any additional interim stopping points) to the final point of destination **(D)**.

The relevant TI can either be a human being (in the case of passenger transport) or else a physical product or goods (as in the case of long haul – and short haul – road transportation).

### **1.2 The Contractual Context of Each RT Journey**

Delivering the TI from points O to D is a RT service which can be purchased. The buyers of RT services can be the owners of the TI (in the case of products or goods) – including the owners at point O and also the owners who purchase the TI at point D (after successful delivery of the TI).

Thus, the buyers of RT services can be consignors (and consignees) of goods – such as manufacturers, retailers and government agencies – as well as intermediaries who arrange (or otherwise facilitate) the provision of the RT services – such as transport operators, freight forwarders and agents (as well as the business controllers of online digital platforms – and of associated apps).

These types of intermediaries can directly employ RT workers to perform RT driving services and can also otherwise contract with RT workers for the performance of such driving work.

As a result, the network of contracts required to deliver a TI from O to D can include contracts between (on the one hand) principal client consignors/ consignees and (on the other hand) RT intermediaries, in addition to contracts between each of these buyers (of RT services) and the RT drivers themselves.

## **SECTION 2 – SAFE RATES MODEL FOR BEST PRACTICE**

### **2.1 The Objective of Safe Rates**

The main objective of the Safe Rates Model is to ensure the health/safety of the general travelling public as well as of the RT workers who spend so much of their working lives driving on the same roads.

Principal client consignors (and consignees) can dictate the key parameters of RT work – especially the time to be taken and the money to be paid - in their contracting arrangements with RT suppliers. (All other levels of the RT supply chain must conform to these set parameters, or else forego the opportunity to perform the RT work demanded by the principal clients.)

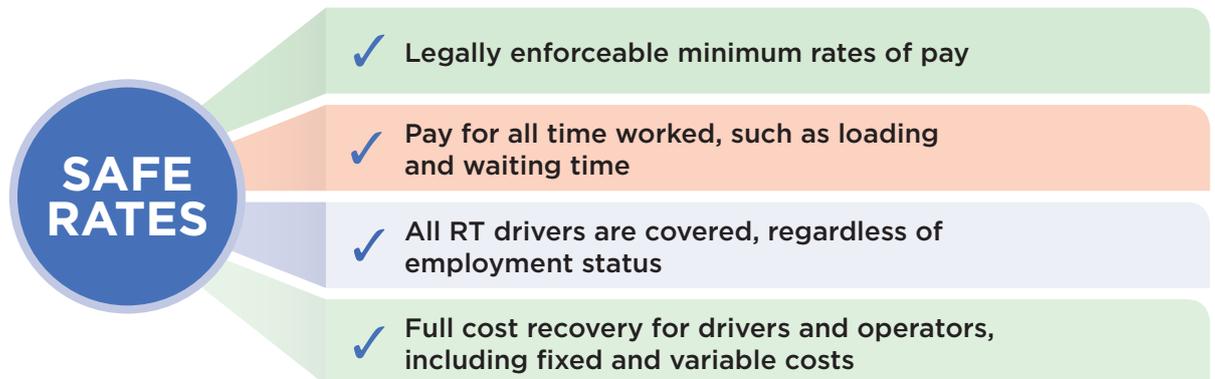
In this way, cost reductions imposed by principal clients are passed down to the level of the RT truck drivers. Commercial pressures passed down road transport supply chains can lead to reductions in truck driver pay, which in turn can encourage hazardous on-road practices leading to poor safety outcomes (4). [By contrast, results indicate that pay increases influence safety by positively modifying the road safety behaviour of current drivers. The data indicate that drivers’ crash records improved following pay increases (5).]

Thus, there are a number of hazardous RT work practices and outcomes which threaten the health/safety of RT workers (and thus the health/safety of other road users) – most notably, driver fatigue and the commercial penalization of safe, economically sustainable driver behaviour (along with commercial incentives to speed or otherwise breach compliance with road safety rules). In order to eliminate material incentives which promote such hazardous work practices and outcomes, the “Safe Rates” model imposes mandatory legal obligations designed to ensure that all RT drivers (regardless of their formal employment status) receive **no less than** the same minimum work protections – in the form of the same minimum occupational health and safety protections, the same basic minimum working conditions, and the same minimum pay rates.

### **2.2 Enforceable minimum levels of protection for all RT drivers**

The “Safe Rates” mandatory legal obligations particularly regulate the systems (and levels) of remuneration for RT drivers to ensure that all drivers receive no less than the correct minimum payments for all of the time which they have worked – including loading times and unloading times and waiting times – to eliminate material incentives which drive RT workers to “cut corners” (on complying with road safety requirements) and to illegally undercut their legally compliant competitors. (It is important to note that compliance with these obligations prevents any undercutting of these legal minimum prices for direct hire of **all** RT drivers – whether or not these drivers are legally classified as employees – but these obligations do **not prevent** the payment – to these drivers – of price remuneration **in excess of** the legal minimum standards.)

A Safe Rates model means enforceable minimum level of protection which includes:



### 2.3 Guaranteeing the delivery of these minimum levels of protection to all RT drivers

Successful enforcement of these minimum working protections for all RT drivers depends crucially upon the regulators knowing the location of these RT drivers during their work, and also key details of their working conditions (including payment rates and hours of work) under which these RT drivers labour.

Successful enforcement is also fundamentally dependent upon the regulators having enforceable powers to inspect all work locations between points O and D, along with all relevant work records, as well as the various contracts – between the consignors/consignees, and the intermediaries, and the RT drivers – which together control the overall parameters (such as price, delivery time and speed) within which this RT work is performed.

As a result, the “Safe Rates” model involves the imposition of mandatory enforceable legal obligations upon all business firms operating throughout RT contract networks (such as supply chains). In particular, the “Safe Rates” model mandatory legal obligations empower the regulators to track the flow of all RT work throughout RT supply chains, so that the regulators can identify all RT drivers in each RT supply chain and can also locate exactly where these drivers perform the RT work. [These particular obligations require all business firms operating (throughout RT supply chains) to proactively notify the regulators about **where** the RT work is going (by notifying – to the regulators – the identity and contact details of each party with whom the firm is contracting for the performance of RT work) and then also inform the regulators **under what conditions** the RT work is to be performed.] These “Safe Rates” obligations also enable the regulators to convert payment rates for individual “trips” (and for one-off “gigs”) into the equivalent of hourly payment rates (which can then be compared with the legal minimum remuneration standards).

A Safe Rates model relies on mandatory obligations on RT businesses to disclose to regulators information on all of their RT contracts.

**EXISTING EXAMPLES:**

1. The Netherlands	2. Australia	3. Australia
		
<p>Every link in the RT supply chain is obliged to disclose the name and address of:</p> <ul style="list-style-type: none"> <li>✓ the next lower link</li> <li>✓ the next higher link</li> <li>✓ the principal client</li> </ul>	<p>Key RT operators, such as Toll, must proactively and regularly disclose to the union regulator details of all fleet operators they engage, including:</p> <ul style="list-style-type: none"> <li>✓ fleet operator name and site address</li> <li>✓ number of drivers employed by fleet operator</li> </ul>	<p>For long-haul owner-drivers within a major state jurisdiction:</p> <ul style="list-style-type: none"> <li>✓ the driver must be covered by a safe driving plan for every journey</li> <li>✓ each link in the supply chain must have a copy of each journey’s safe driving plan</li> <li>✓ each safe driving plan must be disclosed to the union regulator</li> </ul>

## **2.4 Gate Keeper Obligations**

In addition, the “Safe Rates” model imposes particular obligations upon those private business (and public government) bodies which each exercise substantial influence over strategic control points – those various locations (distributed throughout RT supply chains) where these (business and government) bodies hold sway over the flow of RT work. Specifically, these “gate keepers” of such strategic control points are required to proactively exercise that influence to reinforce **both** the protective outcomes for RT drivers **and also** the capacity of regulators to monitor - and enforce - implementation of those protective outcomes. [These “gate keepers” of strategic control points include maritime port authorities and airport authorities, as well as consignors (and consignees) whose role as clients (for the provision of RT services) confers on them effective business control over entire RT supply chains (along with the business controllers of online digital platforms – and of associated apps – which connect other buyers with RT drivers).]

These additional “Safe Rates” mandatory legal obligations - for “gate keepers” (of strategic control points) - require the systems of contracting and remuneration to reinforce (rather than undermine) the protection of RT drivers’ occupational safety and health. Towards this end, the “Safe Rates” model imposes parallel mandatory legal obligations - on buyers of road transport services, as well

as “gate keepers” (of strategic control points) in general - regulating their contracting practices. These parallel mandatory obligations especially require these businesses to structure their contracts (and other operations) in such a manner as to proactively assist the relevant regulators to monitor all payments for RT work - and thus to enforce the delivery of (no less than) the minimum working protections for all RT drivers.

Further, additional “Safe Rates” obligations apply to those “gate keeper” businesses who exercise effective business control (as “lead firms” or “economic employers”) over entire RT supply chains, such as large principal client consignors (and consignees) who (among the various buyers of RT services) act as the ultimate customers for those road transport services. Where these buyers exercise such predominant influence over the relevant supply chains, the “Safe Rates” model requires these buyers to take active measures designed to guarantee the payment (and provision) of (at least) the minimum working protections to the relevant RT drivers who ultimately perform the RT work which these buyers require. Active measures of this type include the provision (by client consignors/ consignees) of sufficient monies in their RT services contract payments to ensure that all of the relevant RT drivers can receive their minimum legal entitlements. Such measures also include these clients proactively structuring their RT services contracts to ensure that these clients can readily intervene at all levels of the relevant RT supply chain to enforce **prompt** payment of minimum pay rates to all RT drivers. (The focus of the “Safe Rates” model on timely provision of minimum working conditions to all RT drivers leads to the imposition of additional key remedy/penalty features of the model which create powerful incentives to commercially dissuade rogue businesses from withholding any amount of the full minimum pay rates owed to RT drivers - with this regulatory dissuasion designed to impose substantial commercial risks upon rogue businesses and their ongoing profits, as well as significant potential personal liability for the operators of such rogue businesses.) Such active measures further include the structuring of RT services contracts by clients to ensure that the regulators can track the flow of RT work throughout all levels of the relevant RT supply chain.

## **2.5 Dispute Resolution**

In addition, the “Safe Rates” model establishes mechanisms for effective (and inexpensive) resolution of disputes between any RT workers and the buyers whose RT work is performed by those workers.

The “Safe Rates” model also empowers all RT workers to form collective organizations (such as unions) to represent those RT workers - whereby those collective organizations can campaign for their interests and can collectively bargain on behalf of those workers, and can also exercise regulatory oversight (throughout entire RT supply chains) to ensure buyer compliance with minimum working protections for those workers.

The “Safe Rates” approach to regulating RT contract networks can be implemented by legislation and by governmental decree and can also be embodied within collectively bargained agreements. The “Safe Rates” approach can also govern the design (and structure) of commercial contracting arrangements adopted throughout RT contract networks. To be most effective, the “Safe Rates” approach should be built into all key contracts throughout RT supply chains – including the contracts between RT workers and businesses involved in the provision of RT services (such as transport operators and labour hire firms, as well as ride share digital platform controllers). This approach requires that clients are obligated to make their RT contracting practices transparent to regulators.

“Safe Rates” regulation of RT supply chains can be powerfully aided by enforceable agreements between (on the one hand) regulators – including trade union regulators – and (on the other hand) the most influential businesses in those supply chains. [“Safe Rates” commercial contracting arrangements (including enforceable agreements with regulators) can be readily designed to achieve cross-jurisdictional outcomes across borders.]

Importantly, the “Safe Rates” approach can be adopted in all RT industry sectors, and in all regulatory jurisdictions around the world.

## **SECTION 3 - INTERNATIONAL EXAMPLES OF “SAFE RATES” APPROACHES**

### **3.1 Australia**

The “Safe Rates” model has been in place in at least one **state** (i.e. provincial) jurisdiction for more than a decade. In New South Wales, there have been enforceable minimum rates for all (single vehicle) RT drivers – whether employee drivers or owner drivers – for the last 40 years (9), and much of the “Safe Rates” model has been in place for all long haul RT drivers (in the form of “safe driving plan” obligations and powers) in a period following 2006 (10).

The relevant enforceable legislative instrument (which still remains in effect today) requires all relevant transport operators to prepare a safe driving plan (for each relevant long-haul RT owner driver). More specifically, this delegated legislative instrument involves relevant “consignors” in the surveillance (and notification) of any breaches of protective minimum working conditions for any relevant truck driver – and also empowers these businesses to remedy any such breaches by use of their commercial power. [While these obligations (and powers) require that the initiating client consignors must be involved in this particular regulatory regime (8), the (New South Wales state) “safe driving plan” laws do not include a strict requirement that buyers who exercise effective business control over the whole RT supply chain must guarantee the payment (and provision) of minimum working protections to the relevant RT drivers (who ultimately perform the RT work which these buyers require).]

Rather, in relation to the requirement that buyers in effective business control of RT supply chains must guarantee at least the legal minimum payments to all RT drivers (throughout the supply chain), this particular feature of the “Safe Rates” model is embedded within enforceable **national** agreements signed at the level of the major transport operator and the union regulator, such as the collective agreement between the TWU and the Toll Group (7). [Comparable commitments by (effective business controller) client buyers can also be found in parallel charter (or MOU) arrangements between the TWU union regulator and most firms in the supermarket retail oligopoly (12).]

The enforceable obligations (and additional commitments) created by these agreements reflect the key focus of the “Safe Rates” model on ensuring timely provision of minimum working conditions to all RT drivers. In particular, this Australian “Safe Rates” system adopts commercial remedy/penalty mechanisms aimed at commercially dissuading rogue supplier businesses from withholding any amount of the full legal minimum pay rates owed to the RT drivers who have been hired by these supplier businesses – with the remedy for breaches (committed by such rogue businesses) being exercised by the effective business controllers (of the RT supply chains) through their capacity to imperil the rogue businesses’ ongoing profits.

For example, the Toll EBA compels the effective business controller of the relevant RT supply chain to penalise recalcitrant intermediaries (who fail to pay legal minimum rates to RT drivers) by that effective business controller terminating their RT services contract with any offending intermediary, once

the union regulator has notified that effective business controller about the continuing failure (by the relevant intermediary) to pay these minimum rates (7). Analogous provisions in the relevant NSW “safe driving plan” legislative obligations and powers also authorize this type of contract termination as an outcome of the union regulator notifying the relevant “consignor” about a continuing failure (by the relevant intermediary) to pay these minimum rates (13). These agreements and the parallel legislative instrument specifically empower the relative union regulator with rights of inspection and access to records – which enable the union regulator to track the flow of RT work orders throughout the respective RT supply chains.

A forthcoming amendment to a separate state legislative instrument (in the separate state jurisdiction of Victoria) foreshadows further Australian opportunities to potentially regulate the legal minimum working conditions of RT workers who obtain RT work via online digital platforms – and their associated apps – in situations where these RT workers are **not necessarily** (formally) employed by the business controllers of those platforms (and apps).

This Victorian legislative instrument promotes specified model contract provisions as templates for commercial contracting arrangements – involving RT workers who are **not** employees of intermediaries – in specific RT industry sectors (14). The definition (in this Victorian statute) of a “freight broker” intermediary (who is subject to this Victorian instrument’s mandatory obligations) is being amended to include any “person who provides an online platform that facilitates the engagement of contractors by hirers” (15).

Of course, the opportunity to apply a full and complete national “Safe Rates” model across Australia – so as to effectively regulate all levels of RT supply chains across all RT industry sectors – had previously existed for almost half a decade, following the enactment (in March 2012) of the Road Safety Remuneration Act 2012 (RSR Act) by the Federal Parliament. The RSR Act created a legislative method to consider remuneration and related conditions for all RT drivers by establishing a Road Safety Remuneration Tribunal to set minimum rates of pay for employees and contract drivers through Road Safety Remuneration Orders (16). During its existence, the RSR Tribunal had exercised considerable scope to both shape supply chain accountability as well as overseeing a dispute resolution mechanism which dealt with issues of the minimum rates of remuneration and other entitlements, conditions of work, and practices that contribute to unsafe work outcomes. (The broad scope of its legislative powers potentially enabled the RSR Tribunal to regulate the rates of contract payments paid at all levels of RT supply chains. In particular, the scope of the RSR Tribunal’s regulatory powers potentially extended to establishing minimum contract sums to be paid by principal client consignors/consignees to their direct RT suppliers. The establishment of such minimum transport rates to be paid by principal clients would have served as a powerful regulatory tool for ensuring the ultimate payment of – at least – legal minimum pay rates to all RT drivers in Australia). The RSR Tribunal issued two orders reflecting key aspects of its power.

The RSR Act 2012 was repealed by the Road Safety Remuneration Repeal Act in April 2016. This dissolved the RSR Tribunal and its orders (17). By the time of its abolition, the RSR Tribunal had already developed well advanced plans to effectively regulate an impressive number of key RT industry sectors – ranging from the transport of oil, fuel and gas through to the operation of intermodal hubs (such as maritime ports) and including the transport of both cash (and valuables) and waste.

An example of obligations upon “gate keepers” (of strategic control points) was established in the *Port Botany Landside Improvement Strategy (PBLIS)* initiative (led and coordinated by the Sydney Ports), which came into effect about a decade ago. That initiative has acted at the Port Botany Container terminals to reduce key factors underlying truck driver fatigue (such as truck turnaround times and peak period congestion) as well as steadily increasing the number of trucks arriving on time – achieved by means of the systematic imposition (by the relevant port authority) of rigorous financial penalties on key buyers in the relevant intermodal transport supply chains (including road carrier businesses and stevedores) (18).

### **3.2 Republic of Korea**

The “Safe Rates” model has now been introduced nationwide in the Republic of Korea. By a combination of legislative and executive governmental instruments, (at least) minimum legal rates will have to be paid to all relevant RT truck owner drivers (even though these drivers are **not** the employees of RT intermediaries, such as transport operators). In particular, these minimum legal pay rates will apply in relation to all RT work which these drivers perform, initially in the trial RT industrial sectors of “export-import container” transport and also the transportation of “cement” (19). (Within these two trial sectors, minimum pay rates are being set for all RT owner drivers of those special vehicles which have been legislatively specified in relation to the transport of containers – such as tractor trailers, as opposed to rigid vehicles – and bulk cement.) Such minimum rates are being decided by the Road Safety Freight Rates Committee (RSRC) by reference to a model which calculates cost recovery for fixed and variable costs (of the drivers RT operations), and which also includes calculations for return on driver investment (in the vehicle) and adequate driver income (in accordance with different alternative standards currently under consideration) (20).

The RSRC is currently developing two different categories of minimum legal rates of remuneration (for all relevant RT truck drivers) required to be paid by (respectively) two different levels of the relevant RT supply chains. One of these two categories of minimum legal rates (termed “Road Safety **Contract Rates**”) are required to be paid (to the relevant RT drivers) by “trucking transport services” intermediaries (21). The second of these two categories of minimum legal rates (termed “Road Safety **Transport Rates**”) are required to be paid by the relevant consignor/consignee “clients”, who are required to pay these “Road Safety Transport Rates” both to the “trucking transport services” – and also to those RT drivers who are directly engaged by these consignor/consignee “clients” (22).

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This Korean “Safe Rates” regulatory system features mandated legal regulation of contract structuring by both the relevant intermediaries and clients whereby “[r]ates set in [RT services] contracts at amounts that fall short of the [mandated] safe rates are declared null and void and will be understood to mean the payment of rates equivalent to the safe rates” (23). This legislative feature of the Korean “Safe Rates” system provides effective compensation rights for relevant RT truck drivers who are thereby entitled to recover any underpayments, without any onus of proof (resting upon those RT workers) to establish the applicable rate of compensation payment.

This system of safe rates obligations - imposed upon clients and intermediaries - is underpinned by substantial criminal penalties where businesses engage in bribes (in the form of ostensible “rebates”) for the purpose of violating safe rates minimum standards, with such offending risking a prison sentence of (up to) two years or a monetary fine of (up to) KRW 20,000,000 (24). In addition to these potential criminal sanctions, offenders face the option of substantial administrative fines (up to a maximum KRW 5,000,000) for each instance of rates paid short of the mandated minimum safe rates (25).

### **3.3 USA**

The USA has separately legislated a number of the key features of the “Safe Rates” model - both within (a number of separate) state (i.e. provincial) jurisdictions, and also in the federal (i.e. national) jurisdiction. At the level of state jurisdictions, the most developed version of the “Safe Rates” approach is to be found in the US state of California.

The Supreme Court of California has recently ruled that a worker hired (by a “hiring entity”) to perform work is presumed to be an employee unless the hiring entity demonstrates both that the worker:

- › is free from the control and direction of the hiring entity in connection with the performance of the work, and

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- › performs work that is outside the usual course of the hiring entity’s business, and also
- › is customarily engaged in an independently established trade, occupation or business (26).

As a response to this judicial ruling, the California State legislature has added a new provision to the California Labor Code. This new provision in the California Labor Code codifies the presumptive test for employment status expounded in the California Supreme Court ruling and authoritatively extends its application to the vast majority of occupations (27) – including those of most RT truck drivers, thereby guaranteeing them the legal entitlement to (at least) set minimum rates of pay. This approach reflects the adamant refusal of regulators to accept any misclassification of employee status for workers – including for RT drivers operating across USA.

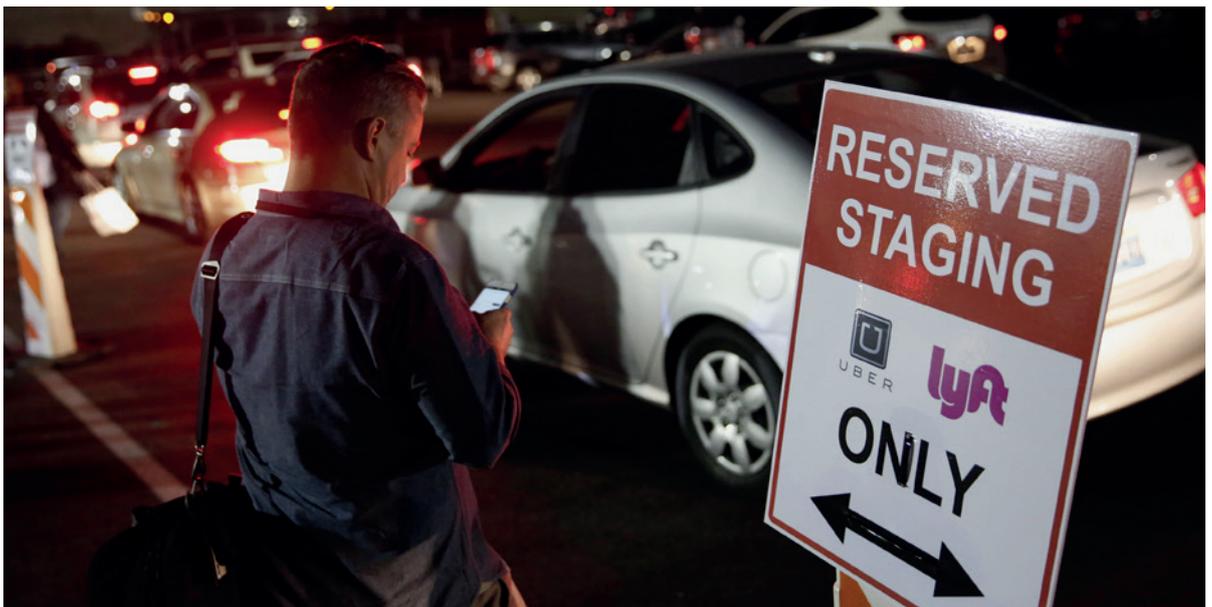


Consequently, much of the “Safe Rates” model has now been in place in relation to all California port RT drivers – given the stringent legislative obligations imposed earlier by the California State legislature upon client consignor/consignee “customers” (of California port RT services). In particular, these obligations create an innovative commercial remedy to potentially penalise those larger client “customers” who exercise such predominant influence over the relevant RT supply chains transiting through California ports. This regulatory approach creates a powerful incentive to commercially dissuade those “customers” from utilising the RT services of transport operators whose business model fundamentally relies on their systematic refusal to pay legal minimum rates to their RT drivers.

This powerful commercial disincentive has been created by the California legislatures’ earlier addition of a separate new provision to the California Labor Code. This (earlier) new provision in the California Labor Code imposed joint and several civil legal liability – upon those larger client “customers” – for any failure by their transport operator RT supplier to pay the required legal

minimum rate to their RT drivers operating at California ports, in the event that the client “customers” have contracted the RT services (which the “customers” require) to any transport operator identified on a list of legally non compliant RT intermediaries compiled – and updated regularly – by the California Division of Labor Standards Enforcement (and posted on the Divisions’ Internet Web site). In so doing, these client “customer” regulatory obligations deter both “customer” – and transport operator – businesses from undercutting competitor businesses which insist upon the prompt payment of (at least) legal minimum rates to all RT drivers operating in their supply chains (28). Interestingly, the imposition of these “customer” liability obligations has led a number of larger consignors/consignees to seek advice from regulators (in particular, from trade union regulators in California) as to which RT transport operators (operating at the California ports) are reliably compliant in relation to the provision of (at least) minimum legal working conditions for all relevant RT drivers – and thus might be preferred as tenderers of intermediary RT transport services.

### **3.4 New York City**



The minimum working conditions for rideshare passenger transportation services in New York City have been regulated by an agency which has been developing an innovative regime of “Safe Rates” obligations applicable to contemporary “gate keepers” (of strategic control points) in the provision of rideshare services. In particular, this regulatory agency has pioneered a potentially fruitful model for regulating the business controllers of online digital platforms – and of associated apps – which connect other buyers with RT rideshare drivers. Such high profile platforms include Uber and Lyft, among others.

“The app-based segment of the for-hire vehicle (FHV) transportation system in New York City consists of companies and drivers who utilize matching algorithms and leverage broad-band smartphone technology to connect drivers and passengers ... In New York City today, ... a majority of [these] app-based drivers are full-time workers who undertook risky capital investments in the vehicles

they acquired for driving passengers. These [rideshare] drivers, many of whom cannot obtain better paying job options elsewhere in the New York economy, face difficult economic circumstances. Their low pay has persisted despite the rapid growth of the industry, the major benefits it has provided to consumers, and the high returns it has generated for the companies and their external investors ... the app business model works only if it keeps driver utilization low, which then keeps drivers’ hourly pay low as well ...

To address driver pay, the [relevant regulatory agency] has ... developed a three-part driver pay standard. The first two parts consist of an amount per mile to cover driving costs, and an amount per minute to cover net driver pay after expenses. These components are divided by each company’s specific utilization rate in the previous quarter. (The utilization rate measures the amount of time drivers have passengers in their vehicle.) By incentivizing companies to dispatch more trips to the existing driver pool, this standard would [commercially penalise digital platform controllers for underutilization of these rideshare drivers. (The utilization rate is important because rideshare drivers are working, even when they do not have passengers in their motor vehicle. After all, driver working time is measured by the time drivers are available to carry passengers, whether there are actually carrying passengers or not). The smaller the utilisation rate, the larger the minimum rates that have to be paid by digital platform controllers to rideshare drivers. This system would incentivize digital platform controllers to increase the utilisation rate of their drivers, and thus] increase driver hourly pay, increase the efficiency of the industry and provide a major channel through which the [app-based] companies would absorb the costs of the pay standard. The third component of the policy standard consists of a fixed pick-up bonus for shared rides. This component is intended to reward drivers who have multiple fares in their vehicles during any trip [so that fewer vehicles will be needed on the roads]. The policy also sets separate compensation levels for drivers of wheelchair accessible vehicles ...

*Note: this is the [proposed]minimum pay standard (for a non-shared ride), not the passenger fare, and the company and the driver can always agree that driver pay for any trip should be higher.* The driver pay standard ensures that the driver can cover vehicle expenses as well as get paid at least the independent contractor equivalent of ...” (29) the legal minimum pay rate (for all time worked) required to be paid to RT employee rideshare drivers in New York City. [In particular, the proposed driver standard would result in the payment of \$17.22 per hour - which is \$0.287 per minute (\$17.22 divided by 60 minutes) - to those rideshare drivers who are not employees, equivalent to the New York City employee minimum pay rate of \$15 per hour, plus an allocation of cost recovery for the drivers’ fixed and variable costs in performing their RT operations]. This particular calculational approach enables the ready comparison of actual driver payments against a minimum driver pay standard (incorporating minimum hourly payment rates - for all time worked - along with additional cost recovery for operational expenses).

### 3.5 Canada



For more than half a decade, the Canadian province of British Columbia has operated a more fully developed regime of those “Safe Rates” obligations applicable to “gate keepers” (of strategic control points), in the context of a major intermodal transportation hub operating at the Metro Vancouver Container Terminal **Port**. The relevant provincial legislation applies to all RT intermediaries (in the business of “carry[ing] out prescribed container trucking services”) who wish to access container terminals on VFPA (Vancouver Fraser Port Authority) property. [In other words, the relevant legislation only imposes obligations upon client consignors/consignees when these clients “carry out prescribed container trucking services ... on [whose] behalf” RT drivers transport containers].

Under the scheme, trucking companies must hold a licence issued by the Commissioner (appointed by the B.C. provincial government). In conjunction with the terms of the licence, the relevant provincial legislation constitutes the scheme by which rates (and remuneration) for all relevant RT drivers are regulated and enforced (along with specific licensee practices). Importantly, a licensee must at least pay - to each of its RT drivers - the minimum regulated rates (established by the Commissioner) for all container trucking services (on and off-dock) performed by those RT drivers (whether those drivers are independent contractors or employees) (30).

### **3.6 Netherlands**

For almost half a decade, the Netherlands has imposed perhaps the most fully developed regime of “Safe Rates” obligations upon the effective business controllers of entire RT supply chains (in relation to the payment of – at least – the legal minimum pay rate owed to each RT employee driver labouring within those supply chains). Under this regulatory approach, in certain specified circumstances, these “Safe Rates” obligations impose joint and several civil legal liability upon each of these principal clients (acting as “lead firms” or “economic employers” in their respective supply chains) for any failure by any intermediary RT supplier to pay the required legal minimum rate to the RT employee drivers operating within their supply chains.



These far reaching obligations - imposed upon principal clients (acting as the effective business controllers of entire RT supply chains) - are powerfully complemented by mandatory disclosure obligations on all RT businesses operating in those supply chains. These disclosure obligations compel RT businesses throughout all levels of RT supply chains to disclose information which permits the tracking of the flow of RT work throughout those chains. More specifically, every link in the RT supply chain is obliged to make known the name and address details of the next lower link (in that supply chain), the next higher link and the principal client (31).

It should be noted that regulators in the Netherlands are strongly dedicated to ensuring the timely delivery of legally specified minimum pay rates to as many RT drivers as possible, given their adamant refusal to accept misclassification of employee status for RT drivers operating in the Netherlands.

### **CONCLUDING REMARKS**

The supply chain pressures in the road transport industry have contributed to poor safety outcomes for RT drivers at the bottom of their respective supply chains. Economic globalisation and the entry of digital disruptors in the transport sector look set to only magnify these supply chain pressures. Without adequate regulation, road safety outcomes for road transport workers and other road users will likely worsen in the coming years.

As this paper illustrates, the “Safe Rates” model is an effective means of curtailing supply chain pressures in order to secure safety outcomes. The “Safe Rates” model imposes mandatory legal obligations upon all business firms operating throughout the RT supply chains to ensure that all RT drivers (regardless of their formal employment status) receive no less than the same minimum work protections – in the form of the same minimum occupational health and safety protections, the same basic minimum working conditions, and the same minimum pay rates.

This paper has described how the “Safe Rates” approach can be adopted in the RT industry, and in all regulatory jurisdictions around the world to address those supply chain pressures. In fact, key features of the “Safe Rates” system have operated, in different ways, in Australia for 40 years, for more than half a decade in the Canadian province of British Columbia, in the USA, in the Netherlands for more than four years and soon in the Republic of Korea.

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