Review of the Road Safety Remuneration System

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<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>ACCC</td>
<td>Australian Competition and Consumer Commission</td>
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<tr>
<td>ACCI</td>
<td>Australian Chamber of Commerce and Industry</td>
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<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<td>AFEI</td>
<td>Australian Federation of Employers and Industries</td>
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<td>Ai Group</td>
<td>Australian industry Group</td>
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<td>ALC</td>
<td>Australian Logistics Council</td>
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<td>ALRTA</td>
<td>Australian Livestock and Rural Transporters Association</td>
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<td>ANRA</td>
<td>Australian National Retailers Association</td>
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<td>ARTIO</td>
<td>Australian Road Transport Industrial Organisation</td>
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<td>ATSB</td>
<td>Australian Transport Safety Bureau</td>
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<tr>
<td>BITRE</td>
<td>Bureau of Infrastructure, Transport and Regional Economics</td>
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<tr>
<td>CC Act</td>
<td><em>Competition and Consumer Act 2010</em> (Cth)</td>
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<td>COAG</td>
<td>Council of Australian Governments</td>
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<td>CoR</td>
<td>Chain of Responsibility</td>
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<td>CPI</td>
<td>Consumer Price Index</td>
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<td>Cth</td>
<td>Commonwealth</td>
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<td>EWD</td>
<td>Electronic Work Diary</td>
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<td>FMCSA</td>
<td>Federal Motor Carrier Safety Administration (US)</td>
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<td>FORS</td>
<td>Federal Office of Road Safety</td>
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<td>FW Act</td>
<td><em>Fair Work Act 2009</em> (Cth)</td>
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<td>FWC</td>
<td>Fair Work Commission</td>
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<td>FWO</td>
<td>Fair Work Ombudsman</td>
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<td>GPS</td>
<td>Global Positioning System</td>
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<td>HVNL</td>
<td>Heavy Vehicle National Law</td>
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<td>HVSPP</td>
<td>Heavy Vehicle Safety and Productivity Programme</td>
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<td>IAP</td>
<td>Intelligent Access Program</td>
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<tr>
<td>IC Act</td>
<td><em>Independent Contractors Act 2006</em> (Cth)</td>
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<td>IRU</td>
<td>International Road Transport Union</td>
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<td>LDO Award</td>
<td><em>Road Transport (Long Distance Operations) Award 2010</em></td>
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<td>MBA</td>
<td>Master Builders Association</td>
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<td>MDL</td>
<td>Mass, Dimension and Loading</td>
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<td>Acronym</td>
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<td>NES</td>
<td>National Employment Standards</td>
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<td>NFF</td>
<td>National Farmers Federation</td>
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<td>NHVR</td>
<td>National Heavy vehicle Regulator</td>
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<td>NPV</td>
<td>Net Present Value</td>
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<td>NSW IRC</td>
<td>NSW Industrial Relations Commission</td>
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<td>NTARC</td>
<td>National Truck Accident Research Centre</td>
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<tr>
<td>NTI</td>
<td>National Transport Insurance</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>Order</td>
<td>The Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014</td>
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<tr>
<td>PCBU</td>
<td>Person Conducting a Business or Undertaking</td>
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<td>PPI</td>
<td>Producer Price Index</td>
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<td>RIS</td>
<td>Regulation Impact Statement</td>
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<td>RMS</td>
<td>Roads and Maritime Services NSW</td>
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<td>RSR Act</td>
<td>Road Safety Remuneration Act 2012 (Cth)</td>
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<td>RSRO</td>
<td>Road Safety Remuneration Order</td>
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<tr>
<td>RSRS</td>
<td>Road Safety Remuneration System (comprising the Road Safety Remuneration Act 2012 and the Road Safety Remuneration Tribunal)</td>
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<tr>
<td>RTD Award</td>
<td>Road Transport and Distribution Award 2010</td>
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<tr>
<td>SCOTI</td>
<td>Standing Council on Transport and Infrastructure</td>
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<tr>
<td>TIC</td>
<td>Transport and Infrastructure Council</td>
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<tr>
<td>Tribunal</td>
<td>Road Safety Remuneration Tribunal</td>
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<tr>
<td>TWU</td>
<td>Transport Workers’ Union</td>
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<tr>
<td>Victorian Act</td>
<td>Owner Drivers and Forestry Contractors Act 2005 (Vic)</td>
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<td>VSL</td>
<td>Value of a Statistical Life</td>
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<td>WA</td>
<td>Western Australia</td>
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<td>WA Act</td>
<td>Owner drivers (Contracts and Disputes) Act 2007 (WA)</td>
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<td>WHS</td>
<td>Work Health and Safety</td>
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Executive Summary

The Road Safety Remuneration Tribunal (the Tribunal) is empowered to undertake an unusually strong form of regulatory intervention - i.e. minimum price regulation. Price regulation necessarily entails the potential to generate significant economic distortions and is, consequently, rarely used in modern market economies. Indeed, a significant element of the history of economic reform in Australia, as in other market economies, has been the removal of price regulation across a range of industries. This implies that strong evidence is needed to justify the need for this highly interventionist regulatory approach, including a need to establish that other, less potentially distorting regulatory approaches, are insufficient to achieve the desired objective.

In order to assess whether the Road Safety Remuneration System (RSRS) constitutes an appropriate means of improving safety outcomes in the road transport industry, as required by its Terms of Reference, the Review has investigated three key issues. These are:

- the nature and extent of the evidence for a substantial link between driver remuneration and safety performance;
- the available evidence on current remuneration levels in the Australian road freight sector; and
- the potential for a tribunal equipped with powers to make binding remuneration orders to be effective in improving observed safety performance.

In addition, it has investigated the broader context for the operation of the RSRS by assessing the safety performance of the heavy vehicle sector over time and via international comparisons, and by reviewing the recent history of regulatory reform in the field and assessing a range of initiatives currently in train.

Concerns that low levels of remuneration would compromise safety performance in the road freight industry were first expressed more than three decades ago. The economic deregulation of the United States road freight industry, commencing in the early 1980s, gave rise to relatively widespread concerns that road safety would suffer as a result of increased competition pushing down freight rates and consequently reducing profit rates and remuneration levels in the industry. However, subsequent research indicated that industry safety performance had been maintained and improved, even as real freight prices fell substantially following economic deregulation. Other Organisation for Economic Cooperation and Development (OECD) countries subsequently followed the United States lead, removing a range of economic regulation in the road freight industry and leading to a situation in which, by the late 1990s, price regulation had been eliminated.

Subsequent research on potential links between remuneration and safety has investigated a wide range of relationships, with variables assessed including firm-level financial performance (including both revenue and profit) and driver remuneration, firm size and employment basis and both indirect indicators of safety (e.g. speeding, fatigue, excessive driving hours) and actual accident involvement. Within this broader literature, a small number of studies have identified statistically significant
relationships between driver remuneration and accident involvement. In particular, Belzer et al,1 Rodriguez et al,2 Nafukho et al3 and Monaco and Williams4 have identified such relationships.

While all four of these studies find a statistically significant link between remuneration and safety performance, the nature and extent of the identified links differ widely, in ways that are highly significant from a policy perspective. While Belzer et al5 and Rodriguez et al6 both concluded that remuneration has a strong impact on safety, the latter finds that the direction of the correlation reverses at higher levels of remuneration, so that remuneration levels that are too high are likely to be associated with safety performance as poor as those that are too low. This raises the issue of whether, and how, it would be possible for a regulatory body to identify ‘optimal’ remuneration levels from a safety perspective. Conversely, Nafukho et al7 found that, while a significant correlation exists, the size of the impact is small, with 3.2 per cent of the total variance in accident involvement being explained by a total of six remuneration-related variables. Monaco and Williams8 also found a small coefficient for the impact of driver remuneration, with firm financial performance being found to be substantially more important.

Reviews of the literature on this issue have generally assessed the overall quality of the evidence in favour of a link between pay rates and road safety as being weak. For example, the United States Federal Motor Carrier Safety Administration (FMCSA) stated in 2007:

"... a number of studies purport to draw a relationship between driver compensation and safety outcomes, for example, that increased pay is associated with a reduction in crashes. The reviewers offer a cautionary note to these assertions: generally, it is not possible to understand the true nature of the relationship between these two factors. Specifically, it may be unclear whether cash bonuses for safe driving are responsible for higher pay, or that offering better pay at a company improves its ability to recruit and hire greater numbers of quality drivers."9

The most recent literature review on safety management for the heavy vehicle industry (Mooren et al)10 found four studies demonstrating statistically significant relationships between pay systems and

5 Belzer et al (2002), op cit
6 Rodriguez et al (2006), op cit
7 Nafukho et al (2007), op cit
8 Monaco and Williams (2000), op cit
rates and safety performance and concluded that there was significantly stronger evidence for the importance of other factors as determinants of safety outcomes, including safety training, management commitment and work scheduling/journey planning.

The Road Safety Remuneration Act 2012 (RSR Act) was adopted despite explicit acknowledgement of the lack of a strong evidence base for the purported link between remuneration and safety performance. The Regulatory Impact Statement (RIS) that was published in November 2011 in respect of the Road Safety Remuneration Bill stated that:

"There is some research to suggest that the remuneration for drivers is a factor in safety outcomes, however data at this point in time is limited and being definitive around the causal link between rates and safety is difficult."

Moreover, the RIS ultimately concluded that the Bill would yield a negative net present value; that is, that it would impose costs greater than the benefits it would confer.

Evidence on current remuneration levels among heavy vehicle drivers is limited and mixed. At an aggregate level, Australian Bureau of Statistics (ABS) data shows that average truck driver wages in Australia are approximately equal to average weekly earnings, while comparison with other official data sources show that truck drivers in Australia are better paid than in either the United States or the United Kingdom, with average truck driver wages falling short of average earnings in both of these countries. This aggregate data, together with the existence of a comprehensive award system in Australia suggests that it is unlikely that many employee drivers suffer from very low levels of remuneration.

However, owner drivers do not have access to award protections and some data suggests that many in this group earn low levels of remuneration. While this data is limited and largely dated, other indicators suggest that low levels of remuneration may persist in this sector. The historical focus of policy concerns in relation to heavy vehicle driver remuneration has largely been on this sector, as demonstrated most obviously by the fact that those states that have adopted legislation to address remuneration issues for heavy vehicle drivers - i.e. Victoria, Western Australia and NSW - have focused specifically on the owner driver sector. Of note, however, is that while the experience of low remuneration seems likely to be largely concentrated in this sector, research on the relationship between employment type and accident involvement consistently shows that owner drivers have either lower levels of accident involvement or, at worst, similar accident involvement levels to employee drivers.

In sum, the evidence for the existence of linkages between remuneration levels and road safety performance is relatively limited, while there are difficulties in interpreting the specific nature and significance of any such links. In any case, employee drivers in Australia are relatively well remunerated and, while often less well remunerated, owner drivers do not appear to have poorer safety performance than employee drivers, and may even have superior safety performance.

It is also apparent that the task of setting appropriate minimum rates for the industry is an extremely challenging one. An indicator of the extent of this difficulty is provided by the fact that the simple statement contained in the Tribunal’s published draft of its first Road Safety Remuneration Order (RSRO) to the effect that a hirer must pay an owner driver "a reasonable amount for work" was removed from the final Order due to substantial concerns being raised by a range of stakeholders. More generally, comparison of a range of rates either proposed or currently in place shows that experts in the field have reached widely differing conclusions as to appropriate minimum rates. Significant differences exist between the guideline rates published under the Western Australian and Victorian legislation, the rates contained in various determinations of the NSW Industrial Relations Commission and the rates proposed to the Tribunal by parties including the Transport Workers’ Union.

Moreover, several stakeholders highlighted the multi-faceted nature of the industry and the highly sector-specific nature of both service requirements and remuneration arrangements as factors that would render decision-making by the Tribunal on remuneration issues exceptionally complex and challenging. As noted above, there is potential for regulated minimum rates that are set inappropriately to yield significant economic costs, or even to have negative safety impacts (as proposed by Rodriguez et al), while the widely varying rate scales currently in the public domain must give rise to considerable concern on this issue.

The current safety performance of the industry and the regulatory and other initiatives that have contributed to it constitute important elements of context for consideration of the appropriateness of the RSRS as a regulatory model. In general terms, a highly interventionist regulatory approach is most likely to be appropriate where less intrusive regulatory and policy initiatives have proven ineffective and the current performance of the regulated industry is poor. However, while this has been asserted to be the position in some submissions to the Review, and in some of the material published in the lead-up to the adoption of the current legislation, the available data do not support these propositions.

The actual safety performance of the heavy vehicle sector in Australia has been reviewed in detail in relation to both the safety performance of the road transport sector as a whole and to the safety performance of the heavy vehicle sector in other, comparable countries. The performance of the heavy vehicle sector is generally favourable when measured against both of these benchmarks. Thus, fatality rates (i.e. fatalities in accidents involving heavy vehicles per 100 million vehicle kilometres) fell by 76 per cent between 1988 and 2012, a reduction that was slightly larger than the 70 per cent reduction achieved across the road transport fleet as a whole over the same period. While international comparative data are scarce, data published OECD in 2011 (the most recent available) shows that fatality rates in Australia improved in the period 2001-2007 relative to those of several other countries with which comparisons were made and that Australia’s safety performance is a relatively strong one, albeit that it is not the best performer in this area. Moreover, in reviewing Australia’s relative international performance, the National Transport Commission (NTC)

12 Rodriguez et al (2006), op cit
has previously highlighted differences in road infrastructure quality, rather than regulatory issues, as the key factors explaining the gap between Australia’s performance and then-current best practice.

Australia’s strong overall safety performance has occurred in the context of a substantial program of regulatory reform, as well as other policy initiatives including significant programs of expenditure on road upgrades. This conjunction invites the conclusion that the regulatory reforms pursued have been important contributors to the observed major improvements in safety performance.

The foundation of the regulatory reform program pursued is one of inter-governmental co-operation and consequent regulatory harmonisation. The then National Road Transport Commission (NTRC) (subsequently NTC) was established in 1991 through agreement between the Commonwealth, state and territory governments and has pursued both the adoption of regulatory innovation and best practice and the harmonisation of regulation across jurisdictions. This has included reforms in areas including mass, dimension and loading limits (MDL), fatigue management and compliance and enforcement - the latter including changes to sanctions arrangements. Importantly, reform has included the adoption of the chain of responsibility (CoR) concept, which seeks to ensure that parties other than drivers are held accountable where their actions encourage the adoption of unsafe on-road behaviours.

Further reforms are currently in train. Importantly, the Heavy Vehicle National Law (HVNL) is currently being operationalised, while the National Heavy Vehicle Regulator (NHVR) has only very recently commenced operations. Further, a review of CoR provisions in the HVNL is currently underway and is widely expected to lead to further reform in this area, while the road freight industry has been identified as a major area of focus for the national Work Health and Safety Strategy 2012-2022. These changes, occurring at both institutional and regulatory levels, can be expected to drive further improvement in safety performance.

A notable aspect of the international comparisons compiled by the OECD is that there is a high level of agreement between leading countries on regulatory and other policy directions and priorities in relation to the heavy vehicle sector, which Australia has generally acted in accordance with. By contrast, legislation based on the safe rates concept appears to be unique to Australia, with a recent OECD document noting the establishment of the RSRS but drawing no parallels with any other current or foreshadowed policy initiatives.

Numerous stakeholders, including both industry groups and state governments, have raised concerns regarding what is perceived to be a substantial degree of actual and potential overlap between the RSRS and a range of pre-existing regulatory provisions, while the assessment of relevant legislation undertaken by the Review highlights a number of areas of apparently substantial overlap and/or duplication. As noted by several stakeholders, much of the Tribunal’s first RSRO relates to matters that appear, at least arguably, not to be directly remuneration-related: indeed, the RSRO barely addresses remuneration per se. The broad range of matters that the RSR Act empowers the Tribunal to regulate and the Tribunal’s apparent willingness to exercise these powers in respect of a wide range of safety-related matters suggests that future orders in respect of ‘remuneration-related’ conditions are likely to expand the extent of overlap between its determinations and other regulatory provisions over time.
This raises the issue of whether the Tribunal will be able to marshal a comparable level of expertise in safety-related matters. Early indications are that the Tribunal is adopting a different regulatory approach from that embraced in key heavy vehicle safety legislation. Many stakeholders pointed out that key elements of the first RSRO, including the Safe Driving Plan requirements, are highly prescriptive in approach. By contrast, the regulatory reform program pursued by the NTC and its state and territory equivalents in recent years has led to a substantial move away from detailed, prescriptive approaches and toward the use of more flexible, performance based and process-oriented regulation.

The Terms of Reference for this Review require it to examine any available evidence of the impacts of the RSRS on road safety. Given that the Review is being concluded within two years of the commencement of the RSR Act and the Tribunal's first RSRO has yet to take effect, it is not possible to identify any direct impacts of the Tribunal's work to date on road safety. Moreover, since mandatory minimum remuneration levels are not set in the first RSRO and will, instead, potentially be the subject of a future order, it is likely that a significant further period will elapse before it would be possible to observe any safety impacts due to the Tribunal's remuneration-related activities.

As noted above, road safety remuneration legislation appears to be unique to Australia. Thus, international experience can provide no clear guidance as to the likely impact in practice of the future specification of mandatory minimum remuneration rates. Within Australia, only NSW currently has mandatory rate-setting provisions in place. However, this system has now been in operation for several decades. The Review sought to determine whether there is evidence of a positive safety impact due to the operation of these arrangements in NSW. The NSW Industrial Relations Commission (IRC) has not been able to supply any direct evidence of this type. However, review of comparative data on heavy vehicle-related fatality rates suggests that NSW's rate is above the national average and that there has been no obvious trend in this regard (i.e. change in the relative fatality rates) in recent years. Thus, it is not possible to conclude with confidence that the operation of a mandatory rate-setting system in NSW has achieved substantive safety benefits.

Submissions to the Review indicate that the RSRS currently enjoys limited stakeholder support, with 11 of 26 submissions received calling for its abolition, a further 10 submissions calling for substantial reform and only 5 submissions being wholly or largely supportive of the current model. Consultation did suggest the existence of a somewhat higher level of support for the lighter-handed legislative initiatives adopted in recent years in Victoria and Western Australia. This legislation can be regarded as more targeted in nature, both in that it:

- focuses on owner drivers, the group which is widely considered to be of major concern in relation to issues of inadequate remuneration; and
- adopts a range of provisions that specifically target identified characteristics of this group and thereby attempts to improve the efficiency of the market for contractor services.

In particular, this includes the specification of disclosure requirements to be met by hirers, the provision of a range of information to owner drivers, including rate and cost schedules, and the provision of low-cost dispute resolution mechanisms.
As neither of the Victorian or Western Australian legislative interventions have yet been reviewed,\textsuperscript{14} no firm conclusions can be drawn as to their effectiveness. However, some industry stakeholders expressed the view that they had the potential to address specific problems without giving rise to the risk of significant distortions or imposing unduly complex and costly regulatory compliance burdens.

This gives rise to the possibility of replacing the current RSRS with a lighter-handed and more targeted system along the lines of those currently in place in Victoria and Western Australia. Should the Government wish to consider such an approach, assessments of the effectiveness of these existing legislative arrangements should first be undertaken and further stakeholder consultation on this issue conducted.

Such an approach can be seen as consistent with the principle of minimum necessary legislation, while facilitating the collection of appropriate data to inform future decisions as to whether any more interventionist approach is required and as to the most appropriate approach to adopt in such circumstances. However, it would be crucial for consultation to be conducted with the relevant state and territory governments to ensure that a single, national approach could be agreed and the duplication of existing arrangements avoided.

\textsuperscript{14} It is noted that a review of the Western Australian legislation has already commenced and will be completed after this Review.
Summary of Recommendations

Recommendation 1. That the Road Safety Remuneration System should not continue in its current form.

Recommendation 2. That, accordingly, the provisions of the Road Safety Remuneration Act 2012 authorising the Tribunal to set mandatory rates should be repealed.

Recommendation 3. That, should the Government determine that mandatory price setting powers should be retained, the scope of these powers should be narrowed to encompass only contractor-drivers.

Recommendation 4. That, should the Road Safety Remuneration Act 2012 be retained, it should be amended to ensure that the scope of the Tribunal’s operations is limited to remuneration and to matters that are directly remuneration-related.

Recommendation 5. That, should the Road Safety Remuneration Act 2012 be retained, the Tribunal should enter into a formal memorandum of understanding with the National Heavy Vehicle Regulator to ensure that a shared understanding of the respective roles of these bodies is developed, co-operation is encouraged where relevant and overlap and duplication are minimised.

Recommendation 6. That, should the Government decide to retain legislation addressing heavy vehicle driver remuneration issues, it should consult with State and Territory governments with a view to enabling a single, national scheme to operate.

Recommendation 7. That, should a single national system addressing remuneration issues be agreed, as per Recommendation 6, consideration should be given as to the most appropriate institutional arrangements to implement the system.

The full text of the recommendations and accompanying reasoning is included in Chapter 10.
1 Introduction

This Review commenced on 20 November 2013 and responds to Terms of Reference provided by the Minister for Employment, Senator the Hon Eric Abetz. The purpose of the Review is to assess the operation of the Road Safety Remuneration Act 2012 and the Road Safety Remuneration Tribunal (together the “Road Safety Remuneration System”) and advise Government on whether this system represents an effective and appropriate means of addressing safety concerns in the road transport industry.

The Terms of Reference for the Review require it to:

- assess the regulatory and economic burden of the Road Safety Remuneration System on participants in the road transport industry and the Australian economy generally;
- examine whether other Commonwealth, state and territory regulations and initiatives provide a more appropriate means of improving safety outcomes in the road transport industry;
- examine any available evidence about the impacts of the Road Safety Remuneration System on improving road safety (e.g. accident data);
- assess the operation and conduct of the Tribunal and the extent to which it has achieved its aim and objectives;
- consult relevant stakeholders as necessary; and
- make recommendations to Government, based on the evidence and assessment above.

The Terms of Reference also require the Review to be guided by the following principles:

- Eliminate duplication of regulation.
- Ensure that regulations and policies for improving safety performance in the road transport industry are based on credible evidence.

The complete Terms of Reference for the Review are reproduced as Appendix 1.

The Review was conducted by Mr Rex Deighton-Smith, of Jaguar Consulting. The Review Report was prepared by Mr Deighton-Smith with assistance from Department of Employment staff, who also provided secretariat services to the Review.
2 Background

Key Points

- The issue of whether, and to what extent, remuneration issues affect safety performance in the heavy vehicle industry has been the subject of a number of parliamentary and government reports over the past decade.
- Following the NTC Safe Payments report in 2008 and the subsequent release of the Safe Rates, Safe Roads: Directions Paper by the then government in 2010, the then Australian Government determined to adopt legislation enabling minimum rates to be mandated.
- The Road Safety Remuneration Act 2012 commenced on 1 July 2012 and established the Road Safety Remuneration Tribunal, which also began operation on that date. The object of the Act is to promote safety and fairness in the road transport industry.
- The Tribunal’s work to date has consisted of its first annual work program, publication of the first Road Safety Remuneration Order and adoption of a second annual work program.
- The Government’s pre-election Policy to Improve the Fair Work Laws (May 2013) included a commitment to review the operation of the Road Safety Remuneration Tribunal as a matter of urgency.

The Road Safety Remuneration System (RSRS) was established under the Road Safety Remuneration Act 2012 (Cth) (RSR Act), which commenced on 1 July 2012, and is supported by the Road Safety Remuneration Regulation 2012 (Cth). It comprises the Road Safety Remuneration Tribunal (the Tribunal) and a separate education and compliance framework administered by the Fair Work Ombudsman (FWO).

The legislation was enacted in response to the National Transport Commission’s (NTC) 2008 report Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry,15 which found that market failures and payment rates and methods in the road transport industry encourage unsafe driving behaviours that contribute to poor safety outcomes on the nation’s roads.

The aim of the RSRS is to improve the safety performance of the road transport industry for the benefit of both road transport drivers and other road users, by removing pay-related incentives and economic pressures on drivers that encourage unsafe work practices.

2.1 Reasons for the Review

Section 120 of the RSR Act requires that a review of the legislation must be commenced by 1 July 2015 and completed by 31 December 2015. However, the Coalition Government’s pre-election Policy to Improve the Fair Work Laws (May 2013) included a commitment to urgently review the operation of the RSRS and the need for a further level of regulation.

As noted above, the Government seeks advice on whether the RSRS represents an effective and appropriate means of addressing safety concerns in the road transport industry. The Terms of Reference highlight questions as to the size of the economic and regulatory burden likely to be imposed by the RSRS and the nature and extent of regulatory duplication that may result from the operation of the system.

2.2 Lead-up to the establishment of the Road Safety Remuneration System

As noted, the RSRS was established following the publication by the NTC of the 2008 ‘Safe Payments’ report\(^\text{16}\) and the subsequent publication by the former Department of Education, Employment and Workplace Relations (DEEWR) (now the Department of Employment) of the Safe Rates, Safe Roads: Directions Paper\(^\text{17}\) at the direction of the then government in 2010. More generally, the issue of whether, and to what extent, remuneration issues affected safety performance in the road transport industry, particularly in relation to heavy vehicles, had been the subject of a number of parliamentary and government reports over the previous decade. Of note are the:

- report of the House of Representatives Standing Committee on Communication, Transport and the Arts inquiry (October 2000) - *Beyond the Midnight Oil: An inquiry into managing fatigue in transport*;
- paper *Freight Rates and Safety Performance in the Road Freight Industry* prepared by ACIL-Tasman for a Working Group of the Council of Australian Governments' (COAG) Standing Council on Transport and Infrastructure (SCOTI) (April 2003); and
- subsequent Discussion Paper *Heavy Vehicle Safety and Sustainable Rates for Owner-Drivers*, released by the SCOTI Working Group.

While the SCOTI Discussion Paper concluded that "...evidence does not present a compelling road safety-based case for Governments to consider introducing a minimum rates regime for owner drivers", the NTC’s Safe Payments report\(^\text{18}\) reached a different conclusion, finding that there was a link between driver remuneration and safety outcomes in the road transport industry. It recommended that the Australian Transport Commission endorse the establishment of a national scheme for setting minimum safe rates covering both employee and owner drivers in the road transport industry.

In response to the NTC’s report, in December 2010 the former DEEWR sought to consult with road transport industry stakeholders to develop possible models for reform through the establishment of a Safe Rates Advisory Group to provide expert road transport industry advice to DEEWR on policy options for national reform. This resulted in the Safe Rates, Safe Roads: Directions Paper,\(^\text{19}\) which outlined options for national legislation involving the establishment of a national tribunal that would be empowered to make orders regarding safe rates and related terms in the road transport industry.

\(^{16}\) ibid
\(^{18}\) National Transport Commission, October 2008, op cit.
\(^{19}\) Department of Education, Employment and Workplace Relations (2010), op cit
This process also included the engagement of PricewaterhouseCoopers (PwC) to prepare a Regulatory Impact Statement (RIS) including a cost benefit analysis for establishing a road safety remuneration tribunal for employee and owner drivers in the road transport industry.\textsuperscript{20} The RIS was finalised in November 2011 and found that:

"Based on conventional economic measures and the assumptions used in this RIS, both options generate a BCR below one and a negative NPV [Net Present Value]. That is, the additional costs associated with increased remuneration exceed the additional road safety benefits expected,"\textsuperscript{21}

In fact, the RIS found that the expected costs of the system were approximately twice as large as the benefits under the two ‘base options’ considered.\textsuperscript{22} The Bill was introduced to Parliament despite this advice that it would not improve societal welfare.

On 23 November 2011, the former Minister for Infrastructure and Transport, the Honourable Anthony Albanese, introduced two bills establishing the RSRS:

- the Road Safety Remuneration Bill 2011 (the Bill); and
- the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011 (the Consequential Amendments Bill).

On 24 November 2011, the Parliamentary Selection Committee referred the two bills, which would together establish the RSRS, to the House of Representatives Standing Committee on Infrastructure and Communications for inquiry and advisory report. The subsequent Advisory Report, handed down in February 2012, recommended that the House of Representatives should consider and pass the bills. The Road Safety Remuneration Bill 2012 and the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2012 were subsequently passed in both Houses on 20 March 2012. The RSR Act commenced on 1 July 2012 and established the Tribunal, which also began operation on that date.

2.3 Overview of the Road Safety Remuneration Act 2012

Section 3 of the RSR Act sets out its objectives, as follows:

3 Object

The object of this Act is to promote safety and fairness in the road transport industry by doing the following:

(a) ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner;

\textsuperscript{20} PricewaterhouseCoopers (2011), op cit
\textsuperscript{21} ibid, p.47
\textsuperscript{22} ibid, p.49. The base options included “maintaining the existing Commonwealth and state-based legislation for employee drivers and owner drivers (where applicable)” and “introducing a voluntary system of payments for owner drivers and chain of responsibility arrangements.”
(b) removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices;

(c) ensuring that road transport drivers are paid for their work; including loading or unloading their vehicles or waiting for someone else to load or unload their vehicles;

(d) developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers;

(e) ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards;

(f) facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

The RSR Act establishes the Tribunal to enquire into sectors, issues and practices within the road transport industry and, where appropriate, determine mandatory minimum rates of pay and related conditions for employed and self-employed drivers (i.e. independent contractor/owner drivers). These determinations, to be known as a Road Safety Remuneration Order (RSRO), operate in addition to any existing rights that employee drivers have under industrial instruments and that owner drivers have under their contracts for services. That is, Tribunal rulings will supplement existing entitlements. Thus:

1. In the case of employee drivers, RSRO or other Tribunal rulings will not override modern awards, enterprise agreements, Fair Work Commission (FWC) orders and transitional instruments. However, any order made by the Tribunal would override a particular term of these industrial instruments to the extent that it was more beneficial to the driver. To the extent that these industrial instruments provide remuneration and related terms that are less beneficial to drivers, they will be of no effect.

2. In the case of owner drivers, a RSRO will prevail over any inconsistent terms in a road transport contract only to the extent that they are more beneficial to the driver.

Section 18 of the RSR Act provides that the Tribunal must prepare an annual work program identifying the matters the Tribunal proposes to inquire into with a view to making a RSRO in relation to any or all of those matters. The matters identified may be any or all of:

- a sector or sectors of the road transport industry;
- issues for the road transport industry or a sector of it; and
- practices affecting the road transport industry or sector of it.

However, section 19(3) provides that RSROs made on application are not to be restricted in their content to matters contained within the Tribunal’s published work program.

Section 20 of the RSR Act sets out the matters to which the Tribunal is required to have regard in making an RSRO, as follows:

(a) the need to apply fair, reasonable and enforceable standards in the road transport industry to ensure the safety and fair treatment of road transport drivers;
(b) the likely impact of any order on the viability of businesses in the road transport industry;

(c) the special circumstances of areas that are particularly reliant on the road transport industry, such as rural, regional and other isolated areas;

(d) the likely impact of any order on the national economy and on the movement of freight across the nation;

(e) orders and determinations made by an Expert Panel of the Fair Work Commission in annual wage reviews and the reasons for those orders and determinations;

(f) any modern awards relevant to the road transport industry (see subsection (2)) and the reasons for those awards;

(g) the need to avoid unnecessary overlap with the Fair Work Act 2009 and any other laws prescribed for the purposes of this paragraph;

(h) the need to reduce complexity and for any order to be simple and easy to understand;

(i) the need to minimise the compliance burden on the road transport industry;

(j) any other matter prescribed by the regulations for the purposes of this paragraph.

Collective bargaining by a hirer and those owner drivers covered by a RSRO is exempt from the operation of the Competition and Consumer Act 2010 (CC Act) (see Section 6.3.3 of this Report for further discussion regarding the CC Act). The Tribunal is empowered to grant approvals for ‘Road Transport Collective Agreements’ that result from such bargaining.

The Tribunal is also empowered to resolve disputes between drivers, their hirers or employers and participants in the road transport industry supply chain about remuneration and related conditions, in so far as the remuneration and related conditions in dispute could provide incentives to work in an unsafe manner. The Tribunal may make recommendations or express opinions, undertake mediation or conciliation or, with the consent of the parties, undertake arbitration when resolving such disputes.

The RSR Act also establishes a compliance regime for the enforcement of RSROs made by the Tribunal, Road Transport Collective Agreements and any arbitration orders arising out of a dispute. These compliance functions are performed by the FWO. In addition, the FWO provides education, assistance and advice to owner drivers, employees and the industry.

2.4 Overview of the Road Safety Remuneration Tribunal

The Tribunal is a specialist tribunal, established by the RSR Act. It is an independent body with functions set out in section 80 of the RSR Act, relating to:

- making RSROs;
- approving Road Transport Collective Agreements;
• dealing with certain disputes relating to road transport drivers, their employers or hirers and participants in the supply chain;
• conducting research into remuneration-related matters that may affect safety in the road transport industry;
• any other functions prescribed by the regulations; and
• any other functions conferred on the Tribunal by another law of the Commonwealth.

The Tribunal comprises both FWC members (who are dual appointed members of the FWC) and road transport industry specialists. Members of the Tribunal are appointed by the Governor-General under section 97 of the RSR Act, and include:

• Dual-appointee members, who are members of both the Tribunal and the FWC:
  o The Hon Jennifer Acton, President
  o Senior Deputy President Lea Drake
  o Deputy President Ingrid Asbury
  o Commissioner Peter Hampton

• Industry members, who hold office on a part-time basis:
  o Mr Steve Hutchins
  o Mr Paul Ryan
  o Mr Tim Squires
  o Professor Ann Williamson

The work of the Tribunal is carried out by members, with the support of FWC administrative staff.
3 Work of the Tribunal to date

Key points

- The Tribunal inquired into the retail, livestock, bulk grain, interstate long distance and intrastate long distance sectors in its first annual work program. It then issued a draft Road Safety Remuneration Order covering road transport drivers operating in those sectors, before publishing its first RSRO on 17 December 2013.
- The RSRO is due to take effect from 1 May 2014. It does not set rates of remuneration but does address a number of safety issues which the Tribunal has determined are remuneration-related.
- The Tribunal is currently undertaking work pursuant to its second annual work program and has invited stakeholders to submit proposals dealing with payment rates for road transport drivers and associated issues.
- Given that the first RSRO is not yet operational, the work of the Tribunal to date has necessarily had little impact on remuneration or safety.

The Tribunal published its first annual work program on 10 December 2012 following two rounds of consultations, including a hearing, with interested persons on the matters that should be included in the program. This program identified the retail, livestock, bulk grain, interstate long distance and intrastate long distance sectors of the road transport industry as sectors the Tribunal proposed to inquire into with a view to making a RSRO.

On 12 July 2013, the Tribunal published its first draft RSRO. The draft RSRO applied to all sectors of the road transport industry identified in the Tribunal’s first annual work program (i.e. the retail, livestock, bulk grain, interstate long distance and intrastate long distance sectors).

The draft RSRO set out minimum entitlements and requirements for the road transport drivers in the identified sectors, their employers or hirers, and participants in the supply chain in relation to them. The draft RSRO included clauses regarding:

- safe driving plans;
- payment time;
- contracts;
- work payments;
- clothing provision or reimbursement;
- drug and alcohol policies;
- training;
- whistle-blower protection; and
- dispute resolution.

Following further consultation on the content of the draft RSRO, the Tribunal published its first RSRO on 17 December 2013, the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 (the 2014 Order). The 2014 Order will take effect from 1 May 2014 and applies to a road transport driver employed or engaged in:

- The road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2010 as in force on 1 July 2012, in respect of the provision by the road
transport driver of a road transport service wholly or substantially in relation to goods, wares, merchandise, material or anything whatsoever destined for sale or hire by a supermarket chain; or

- Long distance operations in the private transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2010 as in force on 1 July 2012.

The Tribunal published its second annual work program on 18 December 2013. In its second annual work program, as well as continuing to consider those sectors identified in the first annual work program, the Tribunal intends to also inquire into:

- the road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2010 as in force on 1 July 2012, in respect of the provision by a road transport driver of a road transport service wholly or substantially in relation to goods, wares, merchandise, material or anything whatsoever destined for sale or hire by a supermarket chain; and

- the sectors in long distance operations in the private transport industry within the meaning on the Road Transport (Long Distance Operations) Award 2010 as in force on 1 July 2012; and

- the sectors in the cash-in-transit industry within the meaning of the Transport (Cash-in-Transit) Award 2010 as in force on 1 July 2012.

In addition to publishing two annual work programs and a draft and final RSRO the Tribunal has collected a range of remuneration related data, which has been published on its website.

As the 2014 Order is yet to take effect, its impact to date is presumably very limited, however, the following discusses the content of the Order.

### 3.1 Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014

The 2014 Order is due to take effect from 1 May 2014 and to expire on 30 April 2018. A notable feature of the Order is that it does not set remuneration rates. While the draft RSRO published in July 2013 proposed the inclusion of a simple provision stating that "A hirer must pay a contractor driver engaged by them a reasonable amount for work", this provision was removed from the 2014 Order following considerable feedback from stakeholders which indicated that both the terms ‘reasonable’ and ‘work’ were considered controversial. The Tribunal therefore proposed instead to convene a conference of interested parties on the issue of rates of payment, with a view to potentially varying the 2014 Order at some future time to deal with payment rates.23 A hearing was subsequently held on 11 February 2014. The Tribunal also invited proposed RSROs on payments for road transport drivers and associated issues to be submitted by 20 March 2014. Seven submissions were received. The Tribunal is yet to make a decision on rates or publish further steps in its timetable under its second annual work program.

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Thus, the only element of the 2014 Order that deals directly with remuneration is Part 4, which relates to ‘payment related matters’ and specifies requirements including a 30 day payment term for invoices issued by owner drivers and limitations on required payments or deductions.

The remainder of the 2014 Order focuses on other safety-related matters. Specifically, it imposes requirements on employers or hirers of road transport drivers and participants in the supply chain in relation to those drivers regarding:

- Safe driving plans;
- Contracts;
- Work payments;
- Drug and alcohol policies;
- Training;
- Adverse conduct protections; and
- Dispute resolution procedures.
4 Safety performance of the road transport industry

Key points

- Heavy vehicle safety is a significant policy issue in all developed countries. The Organisation for Economic Cooperation and Development (OECD) notes that the challenge for governments is to ensure that regulatory intervention allows the road transport industry to be efficient and responsive to freight needs, while at the same time improving the health, safety and quality of life outcomes expected by the broader community.

- Intrusive forms of regulation such as price regulation, which have the potential to distort market outcomes, are only appropriate where a major policy problem is being addressed and evident that less intrusive forms of regulation are ineffective.

- Some major stakeholders have argued that the safety performance of the Australian road transport industry is poor, that regulatory approaches adopted to date have thus failed and that the RSRS is the necessary response.

- Given these factors, a clear understanding of the safety performance of the road transport industry is fundamental to considering the merits of the RSRS.

- Road safety performance in Australia has improved substantially in recent decades. Available data show that the heavy vehicle sector has enjoyed a similar level of improvement in its safety performance. Indeed, fatality rates per vehicle kilometre have fallen further in the articulated truck sector than in the road fleet as a whole in the period 1988–2012.

- While limited, available international comparative data indicates that Australia’s performance relative to other comparable countries improved noticeably during the last decade. Australia is shown in a 2011 OECD report to be one of the better-performing countries among those studied in terms of heavy vehicle safety. However the lack of very recent data implies that there is necessarily some uncertainty as to current comparative performance.

- Data on heavy vehicle accident precursors suggest that speed and fatigue remain substantial issues for the road transport industry, but that policy actions taken over the past several years have been effective in reducing the extent of both issues.

- Heavy vehicles are overrepresented in total road fatalities in Australia as in all countries. However, evidence indicates that factors beyond the control of the industry largely account for the over-representation of heavy vehicles in fatality data. Heavy vehicle accident rates are generally below those of light vehicles, while only a minority of multiple vehicle accidents involving heavy vehicles are due to the fault of the heavy vehicle driver. However, the survivability of accidents involving heavy vehicles is low.

- OECD research indicates that a large proportion of the most effective interventions in relation to heavy vehicle safety are those that are generally applicable to all vehicle types. Conversely, the single most effective means of reducing heavy vehicle occupant fatalities is to increase driver seatbelt wearing to the levels found among light vehicle occupants.

4.1 Introduction

A sound understanding of the nature and extent of the policy problem to be addressed is fundamental to ensuring that any regulatory intervention is soundly based and that the best policy
options are chosen. This is a core principle of regulatory policy, as set out by the Organisation for Economic Cooperation and Development (OECD),\textsuperscript{24} and is also reflected in the Australian Government’s Regulatory Impact Analysis requirements,\textsuperscript{25} to which all substantive legislative instruments are subject.

Heavy vehicle safety is a significant policy issue in all developed countries. A 2011 report prepared by the OECD International Transport Forum (the OECD Report (2011)) highlights the need for governments to establish regulatory conditions that improve "road transport efficiency, safety and sustainability" and explains the rationale for intervention in the following terms:

\textit{"The overall aim of government policies towards transport is to maximise socio-economic welfare. External costs, such as congestion, air pollution, greenhouse gas emissions and safety, require regulatory or pricing intervention to reduce them to acceptable levels."}\textsuperscript{26}

However:

\textit{"The challenge for governments is to establish the right framework conditions for minimising the external impacts of freight transport whilst allowing the trucking industry to provide efficient transport services... Regulatory solutions must respond to freight needs whilst meeting community expectations for improved health, safety and quality of life."}\textsuperscript{27}

This focus on efficient and effective regulatory interventions is clearly important from the perspective of regulatory policy generally, but is particularly crucial given the extensive nature of government regulatory intervention in the road transport industry, particularly regarding heavy vehicles. Such intervention includes regulation of vehicle mass, dimension and loading (MDL), technical characteristics and access to the road network, as well as driver licensing and behaviour and the practices of transport operators.

The RSR Act authorises a particularly intrusive form of regulation that is rarely used in the Australian economy and almost never in the context of a competitive market (i.e. price regulation - in this case, regulation of minimum prices). The rarity of this type of intervention reflects the fact that it has significant potential to distort market outcomes and is contrary to the basic presumptions of a market economy. Such a form of regulation is therefore only appropriate where a very substantial policy problem is being addressed and where other, less intrusive forms of regulation are shown to be unable to address the policy problem effectively.

\textsuperscript{27} ibid
4.2 Rationale for intervention

As noted above, heavy vehicle safety is indeed regarded as a very substantial public policy issue internationally and in Australia. At a fundamental level, it is a major aspect of the larger issue of road safety in general. Road trauma is one of the most significant external (i.e. non-disease related) causes of death in developed countries. According to Australian Bureau of Statistics (ABS) data, transport accidents accounted for one sixth, or 1,522 of the total of 9,123 deaths due to non-disease related causes in Australia in 2011.\(^\text{28}\) Heavy vehicle related fatalities accounted for 18.9 per cent of the total number of road deaths in Australia in 2012\(^\text{29}\) and averaged 16.8 per cent of all road deaths in the five years to 2012. Internationally, heavy vehicle related deaths account for approximately 10 per cent to 25 per cent of all road deaths.\(^\text{30}\)

The submissions of the Transport Workers' Union (TWU) to this Review and to previous inquiries relating to the establishment of the Tribunal also argue that heavy vehicles constitute a workplace and that, considered in this context, the job of a heavy vehicle driver is one of the most dangerous in the economy:

> "Indeed, Safe Work Australia estimates that road transport workers are 15 times more likely to be killed while at work, than any other worker."\(^\text{31}\)

A part of the specific context for the adoption of the RSR Act was the argument of some major stakeholders that the current safety performance of the Australian road transport industry is poor and that this demonstrates the failure of the policy approaches adopted to date in pursuit of the objective of improving safety. This is a key proposition given that, as Chapter 6.2 demonstrates, there has been ongoing policy and regulatory reform in this area in Australia over the past 15 to 20 years. The need for an intervention as potentially far-reaching as price regulation is therefore predicated on the purported failure, or at least the limited success, of the reform program undertaken to date.

A key example of this perspective is provided by the submissions to both the Parliamentary Committee inquiry into the Road Safety Remuneration Bill and to this Review by the TWU. Both submissions refer to "the safety crisis in the road transport industry", while the former also refers to the industry's "appalling safety record" and argues that safety performance in the industry appears to be declining.\(^\text{32}\) The TWU submissions also repeatedly cite the Quinlan and Wright Report prepared

\(^{28}\) Australian Bureau of Statistics (2013), *Causes of Death, Australia, 2012* (Cat. 3303.0), ABS, Canberra.

\(^{29}\) Final 2013 Fatality data was unavailable from the BITRE Road Deaths Australia Database at the time of writing. In 2012, there were 246 heavy vehicle fatalities (148 articulated, 98 rigids) of a total 1303 total road deaths.

\(^{30}\) OECD (2011), op cit

\(^{31}\) TWU submission to this Review, p 3.

for the NTC in 2008. This report, which appears to have been highly influential in the decision to establish the Tribunal, also presents a picture of an industry with poor safety performance that has failed to improve over time. For example, it states:

"In Australia there has been no significant shift in the annual number of fatalities resulting from crashes involving articulated trucks between the early 1990s and 2007 despite an overall decline in the annual road toll."

This assessment clearly indicates a view that the performance of the heavy vehicle sector in recent years has been poor relative to that of the road transport industry as a whole. Moreover, given improving road safety performance in all developed countries over the past two decades, it also suggests a conclusion that the Australian heavy vehicle sector has performed poorly relative to its counterparts in other countries. Indeed, this latter suggestion is also made explicit in the report:

"While it is difficult to make comparisons across countries available data for the late 1990s heavy truck crash-related fatalities per 100 million kilometers travelled indicate that Australia’s record was significant [sic] worse than that of both the USA and UK."

These observations clearly constitute a significant part of the Quinlan and Wright Report’s rationale for recommending that the safe rates proposal be adopted into legislation.

Additionally, some stakeholders have argued that the structure of the road freight industry gives rise to significant economic distortions and inefficiencies and that regulation of remuneration and related matters constitutes the only viable response to these underlying industry dynamics. Specifically, the market for road freight services is said to be characterised by elements of monopsony power in that a small number of large scale purchasers of services face large numbers of small sellers. Long contacting chains exist in many cases with those at the lower end of these chains having little control over their working conditions due to their very limited bargaining power.

For example, the TWU states in their submission to this Review that major retailers are extremely significant players within the road transport industry, as are large, integrated, transport businesses that exhibit market dominance. They cite the Full Bench of the NSW Industrial Relations Commission (IRC) in support of this view, quoting in particular the judgement in the Mutual Responsibility for Road Safety (State) Contract Determination Case as follows:

“(g) Commercial pressures, most notably from major retailers, have intensified, resulting in the major transport companies tendering for contracts at very low rates and leading to the result that they subcontract out any work that they cannot perform profitably. Commercial
pressures exercised by major retailers are in the form of directed delivery schedules placing stress, and at time, unrealistic expectations on the driver actually performing the work.  

This view has, however, been contested by other stakeholders who highlight the existence of several large-scale providers of freight services and, conversely, emphasise the range of sectors contributing the overall demand for freight services. For example, the submission to the Review received from Coles Supermarkets included a commissioned market analysis completed by Deloitte Access Economics which emphasises these points, noting that several different industries are large users of road freight services (with manufacturing accounting for 27 per cent of the total by revenue, followed by the retail (19 per cent), wholesale (13 per cent) and construction (12 per cent) sectors) and emphasising the complex structure of the industry, reflecting the widely varying requirements of businesses and their supply chains.

It is thus important to address the current and historical performance of the Australian road transport industry carefully in order to determine to what extent the above views of key stakeholders are supported by available data and, more generally, whether a strongly interventionist regulatory approach such as minimum price regulation can be seen as potentially merited in the current context.

4.3 Data summary and analysis: Safety performance of the Australian heavy vehicle sector

The following presents a detailed overview of the evidence on the safety performance of the Australian heavy vehicle sector. Safety performance can be assessed via time-series and cross-sectional analysis - that is, relative to road transport in Australia generally and relative to the heavy vehicle sector in comparable countries. The following considers each of these forms of analysis in turn. A large part of the analysis focuses specifically on articulated trucks. This reflects the need to assess the performance of the industry over the long term, combined with the fact that relevant data in respect of rigid trucks has been reported only since 2004. The available data on rigid trucks is discussed subsequently.

4.3.1 Time-series analysis – Heavy vehicle related fatalities

4.3.1.1 Articulated trucks

Graph 4.1 is drawn from Bureau of Industry, Transport and Regional Economics (BITRE) data and shows changes in the number of road fatalities since 1986, the first year for which fatalities data for articulated trucks are included in the Australian Transport Safety Bureau (ATSB) statistical summary. The graph compares changes in the total number of road fatalities with changes in road fatalities involving articulated trucks.\(^{38}\) In each case, fatalities in a given year are expressed as a percentage of their 1986 level.

\(^{37}\) Transport Industry – Mutual Reasonability for Road Safety (State) Award and Contract Determination (no.2), Re [2006] NSW IRC 328.

\(^{38}\) As indicated below, separate data on rigid trucks has not been published until relatively recently. Thus, in order to obtain useable long-term data, it is necessary to focus on articulated trucks. While there appear to be
Graph 4.1: Total road fatalities vs those involving articulated trucks, 1986-2012

Graph 4.1 shows that fatalities involving articulated trucks have declined broadly in line with the decline in overall road fatalities since 1986. While the percentage reduction against the 1986 base year is somewhat less over most of the period, the graph suggests that a divergence occurred in the late 1980s and that the rate of improvement in safety performance of the articulated truck sector has since been similar to the overall rate of improvement on Australian roads. Graph 4.2, which takes 1990 as the base year for the same comparison, demonstrates that this is the case.

Source: BITRE, Australian Road Deaths Database.

Some differences between these two subsets of the heavy vehicle sector, it should be noted that articulated trucks account for a majority of the total freight task (i.e. in the vicinity of 80% of total tonne-kilometres.)
Graph 4.2: Total road fatalities vs those involving articulated trucks, 1990-2012

Source: BITRE, *Australian Road Deaths Database*.

Graph 4.2 shows that the proportionate decline in fatalities involving articulated trucks has been essentially identical to the proportionate decline in all road fatalities in the period 1990-2012. Closer examination indicates that the performance of the articulated truck sector has been relatively better than that of road transport industry as a whole throughout most of the period, but that a number of transient ‘spikes’ in fatality numbers have seen the two series intersect at several points including the most recent years (i.e. 2011 and 2012). The smaller absolute number of fatalities involving articulated trucks is, unsurprisingly, associated with a greater degree of year to year volatility in the data.

Graph 4.3 below plots articulated truck-related fatalities as a percentage of total fatalities since 1986.

---

39 Vis-a-vis the road transport fleet as a whole.
Graph 4.3: Articulated truck-related fatalities as a percentage of total fatalities, 1986-2012

![Graph showing articulated truck-related fatalities as a percentage of total fatalities, 1986-2012.]

Source: BITRE, Australian Road Deaths Database.

Graph 4.3 shows that, while some volatility is again evident, articulated truck-related fatalities have represented around 9 per cent to 12 per cent of total road fatalities since 1986, with no significant trend being evident over this period. This would suggest a priori that the effectiveness of policy initiatives taken to improve road safety have been approximately equally effective in the heavy vehicle sector as in road transport as a whole.

Importantly however, the number of vehicle kilometres travelled by heavy vehicles has increased at a greater rate than the number of vehicle kilometres travelled by the total fleet over this time. This implies that the above comparisons will under-state the relative safety performance of the heavy vehicle sector. This issue is discussed further below.

4.3.1.2 Fatalities per vehicle kilometre travelled

Data based on the raw numbers of fatalities is widely used, in part because of its ready availability. However, the more meaningful metric is the fatality (or injury, or crash) rate. This can be measured in terms of fatalities/injuries/crashes per vehicle kilometre travelled, or per tonne-kilometre. The latter measure is of particular importance, as it captures the impact of changes in the composition of the vehicle fleet on overall safety performance.

Graph 4.4, below, uses BITRE data together with data from the OECD Report (2011) on the heavy vehicle sector to compare the proportionate change in the number of fatal accidents involving heavy vehicles and changes in the number of fatal accidents involving heavy vehicles per 100 million km travelled. That is, it compares the raw number of fatal accidents with the accident rate. In both cases, the data are presented in terms of percentages of the base year (2002) figure.
Graph 4.4: Trends in fatal accident rates vs trend in total fatal accident numbers involving heavy vehicles 2002-2007 (as a percentage of 2002)

Sources: BITRE (2009), OECD Report (2011)

Due to data limitations, the graph covers only a six-year period. However, it shows that there was a significantly larger decline in heavy vehicle related crashes per 100 million kilometres travelled between 2002 and 2007 than in the raw number of heavy vehicle related fatal crashes. Thus, while the number of fatal accidents fell by approximately 15 per cent, the number of fatal accidents per 100 million vehicle kilometres travelled fell by almost 40 per cent over the same period. This reflects the significant rise in the number of vehicle kilometres travelled over the relevant period.

Graph 4.5, below, compares the safety performance of the articulated truck sector in Australia with that of the road vehicle fleet as a whole on the basis of changes in fatality rates over time. It covers the period 1988 to 2012, however the graphed line is incomplete due to the unavailability of published data for some years.  

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Graph 4.5: Fatalities per 100 million vehicle km 1988-2012 (as a percentage of 1988)

Source: ABS, Survey of Motor Vehicle Use (ABS 9208.0) - various editions

Graph 4.5 shows the comparative fatality rates measured against a 1988 base year. It shows that there have been substantial declines in fatality numbers per vehicle kilometre travelled across both the road vehicle fleet as a whole and the articulated truck sector over the period. The overall decline in fatality rates across the period has been somewhat larger for the articulated truck sector than for the vehicle fleet as a whole: the graph shows that the 2012 fatality rate for all road vehicles was 30.0 per cent of its 1988 level, while the rate for articulated trucks was 24.0 per cent of its 1988 level. Moreover, the graph shows that the relative fatality rate has been lower for articulated trucks throughout the period in question.

In sum, raw fatality data suggest that articulated truck-related fatalities have declined at approximately the same rate as road vehicle fatalities as a whole over the past quarter century. However, when changes in distances travelled are taken into account, the safety performance of the articulated truck sector has shown a somewhat greater improvement than that of the road vehicle fleet as a whole. Thus, assertions to the effect that safety-related policies applied in the heavy vehicle context have been less effective than those applied to the road transport sector more generally are not supported by long-term fatality data.

4.3.1.3 Heavy rigid trucks

The above discussion relates specifically to articulated trucks. As noted, this reflects the fact that long-term data are available for articulated trucks. By contrast, BITRE has only collected data on the involvement of rigid trucks in fatal accidents since 2002, while complete data are available only from
2004.\textsuperscript{41} Given that only 9 years of data exist\textsuperscript{42} and that the absolute number of fatalities involved are somewhat smaller than for articulated trucks, as rigid trucks account for a minority of the freight transport task, any trend analysis in relation to rigid trucks is likely to demonstrate lesser reliability. However, Graph 4.6 presents the available data, mapping trends in rigid truck-related fatalities against the road transport fleet as a whole since 2004.

Graph 4.6: Heavy rigid truck related fatalities vs total road fatalities as percentage of 2004.

\begin{center}
\includegraphics[width=\textwidth]{graph4.6.png}
\end{center}

Source: Bureau of Industry, Transport and Regional Economics. \textit{Road Deaths Australia Database}.\textsuperscript{43}

Graph 4.6 shows that the decline in rigid truck related fatalities since 2004 has generally been proportionately greater than that of the road vehicle fleet as a whole, albeit that a significant single-year increase in fatalities in 2012, means that the relative decline in fatalities over the whole period is lower than for the road vehicle fleet as a whole. Thus, the available data suggest that the long-term trend of strong improvement in safety performance in the articulated truck sector, graphed above, may also have been observed for rigid vehicles.

However, as noted above, caution is required in interpreting short-term trends based on volatile data. Thus, while the above graph paints a positive picture in terms of the safety performance of the rigid truck sector, discussions with the National Heavy Vehicle Regulator (NHVR), the national body responsible for national road transport legislation (see Section 6.2.1), indicated that there were specific concerns related to this sector, particularly in relation to the growing use of ‘truck and dog’ configurations and that the sector has, accordingly, been identified as an area of future policy focus. Moreover, the NTI/NTARC Major Accident Investigation Report series also notes a particular concern with heavy rigid vehicles in their truck and dog configuration. According to the 2013 Major Accident Investigation Report,\textsuperscript{44} rigid vehicles with trailing equipment were responsible for 24.2 per cent of major accidents analysed from the NTI database. The report suggests that possible factors include truck and dog combinations undertaking an increasing share of the freight task, lesser average levels

\textsuperscript{41}i.e. some jurisdictions did not commence reporting on rigid truck involvement in fatal accidents until 2004.

\textsuperscript{42}At the time of writing, final 2013 data were not available from the BITRE Australian Road Deaths Database.

\textsuperscript{43}Accessed 30 January 2014.

\textsuperscript{44}National Truck Accident Research Centre (2013), \textit{2013 Major Accident Investigation Report}, National Transport Insurance.
of skill and experience among heavy rigid drivers than articulated truck drivers\textsuperscript{45} and less enforcement in this sector than in line haul driving.

In sum, while the limited aggregate data available from the BITRE suggests that the rigid truck sector appears to demonstrate a similar trend of improved safety performance as the articulated truck sector, some safety concerns that are specific to this sector have been identified by experts in the field.

4.3.1.4 Safety impact of changes in fleet composition

As discussed in the OECD Report (2011),\textsuperscript{46} changing the composition of the heavy vehicle fleet can have a substantial impact on overall safety performance. As a general rule, historical data indicate that a given freight task is likely to be completed with better safety outcomes if the proportion of heavier trucks is increased. This reflects the fact that, while the fatality rate associated with heavy vehicles tends to be higher on a per kilometre travelled basis, the number of vehicle kilometres travelled is substantially smaller where heavier vehicles are substituted. Graphs 4.7 and 4.8, below, highlight this point by comparing fatality rates associated with the use of rigid and articulated vehicles on a per kilometre travelled basis (Graph 4.7) and a per tonne kilometre basis (Graph 4.8).

Graph 4.7: Fatalities per 100 million kilometres - rigid and articulated trucks, 2004-2012 (missing 2008, 2008 and 2011 data)

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{graph4.7}
\caption{Fatalities per 100 million kilometres - rigid and articulated trucks, 2004-2012 (missing 2008, 2008 and 2011 data)}
\end{figure}

\textbf{Source:} ABS, \textit{Survey of Motor Vehicle Use} (ABS 9208.0) - various editions

\textsuperscript{45} For major loss incidents involving rigid with dog and or trailers analysed by NTI, 31% of drivers had less than 5 years’ experience.

\textsuperscript{46} OECD (2011), op cit
Graph 4.8: Fatalities per 100 million tonne kilometres - rigid and articulated trucks, 2004-2012 (missing 2008, 2008 and 2011 data)

Source: ABS, Survey of Motor Vehicle Use (ABS 9208.0) - various editions

Graph 4.7 shows that the fatality rate for articulated trucks is significantly higher than for rigid trucks when considered on a per vehicle kilometre basis. For example, in 2012, the rate was almost twice as high. This is likely to reflect, in large part, the basic physics involved, in which a collision with a much heavier articulated vehicle is less survivable than one with a lighter vehicle.

However, Graph 4.8 shows that, on a per tonne kilometre basis, substantially fewer fatalities are associated with articulated trucks than rigid trucks. For example, in 2012, the fatality rate for articulated trucks was about one third of that of rigid trucks. This reflects the fact that significantly fewer vehicle kilometres must be travelled to complete a given freight task using heavier trucks.

As noted above, the number of kilometres travelled by rigid and articulated trucks in Australia has grown at a similar rate in the past decade, with slightly faster growth in the articulated sector. However, the composition of the articulated fleet has changed over this period, with increased use of B-doubles and other larger format vehicles. This appears to have been an important factor in the improvements in safety performance identified above.

4.3.2 Cross-sectional analysis

The above summarises the safety performance of the Australian heavy vehicle sector over time and in comparison with the performance of the Australian road transport fleet as a whole. It concludes that there have been improvements in the safety performance of the road transport fleet as a whole and that these improvements appear to be slightly greater in the heavy vehicle sector than in the wider road transport fleet, when measured in terms of the preferred metric of fatality rates. However, it is also important to benchmark Australian performance against that of other comparable countries. This benchmarking should consider both the current relative performance of the Australian sector and relative trends in safety performance. That is, it should seek to answer the following questions:

- How well does Australia’s heavy freight vehicle road safety performance compare with that of appropriate comparator countries?
• How has the rate of improvement of Australia’s performance compared with that of other countries?

4.3.2.1 The Truck Safety Benchmarking Study (2002)

The then National Road Transport Commission (NRTC) received a commissioned report in 2002 which examined Australia’s heavy vehicle safety record in an international context, using data from the 1990s. The report compared Australia’s performance with that of seven broadly comparable countries - New Zealand, Great Britain, France, Germany, Sweden, Canada and the United States. It found that Australia’s heavy vehicle fatality rate, in fatalities per vehicle kilometres travelled, was approximately in the middle of the range of the countries chosen for comparison. Fatality rates were found to be:

• 47 per cent higher than those of the United States and 39 per cent higher than those of Great Britain;
• comparable with Canada and Germany; and
• 45 per cent below France and 55 per cent below New Zealand.

The study considered the reasons for Australia’s apparently poor performance relative to the United States and Great Britain. It concluded that the higher truck fatality rates on Australian roads could largely be explained by the lower proportion of truck travel on divided and limited access roads, with truck speed limits possibly also being a factor. Problems of low freight rates having an adverse impact on safety were not mentioned in this paper.

4.3.2.2 Potter (2008)

Dr Jeff Potter of the NTC presented a comparison of Australia’s heavy vehicle fatality rate with that of four other countries at a 2008 International Symposium on Heavy Vehicle Transport Technology. This comparison used data from 2001 to 2005. Graph 4.9, below, is reproduced from this presentation. It shows that Australia’s fatality rate was below that of Denmark but above that of the other three countries compared (Belgium, France and the United States).

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Graph 4.9: International Comparisons of Heavy Vehicle Fatality Rates per 100 million kilometres travelled


4.3.2.3 OECD Report (2011)

The most recent international comparative data is found in the OECD Report (2011). This report includes data from 2001 to 2007 and shows that truck fatality rates declined in most, but not all, countries over this period. Graph 4.10 and Table 4.1 below are reproduced from this report. They provide data for nine countries, including Australia. The data shows that Switzerland has a substantially lower fatality rate than any of the other countries included, while South Africa and, to a much lesser extent, Denmark have substantially higher rates. The majority of the remaining countries appear to have broadly similar fatality rates.

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48 OECD (2011), op cit
49 Note that the data for South Africa are divided by 10 for plotting on the graph.
Graph 4.10: Fatal truck crashes per 100 million km travelled - 2001 to 2007

Source: OECD (2011), op cit, p.174. Note figures for South Africa are divided by 10 for plotting on the graph (see Table 4.1 for true data).

Table 4.1, below, contains the data on which Graph 4.10 is based. The data shows that for 2005, the last year for which fatality rates for all nine countries are provided, Australia's rate of 1.50 fatalities per 100 million km travelled was the third lowest, behind Switzerland (0.81) and the United States (1.27), approximately equal to the United Kingdom (1.52) and below France, Canada, Belgium and Denmark. While data for 2007 are available for fewer countries, it appears that Australia made limited further improvement over the subsequent two years. However, given the volatility of the data, little can be read into this observation. More salient is the longer-term trend visible via comparison between this data and that contained in the 2002 Truck Safety Benchmarking Study (see Section 4.2.2 above). Where Australia’s fatality rates were 39 per cent higher than those of the United Kingdom in the late 1990s, a decade later they were approximately equal. Similarly, while Australian fatality rates were 47 per cent higher than those of the United States, they were 15 per cent higher by 2005.
Table 4.1: Fatal truck crashes per 100 million km travelled, 2001 - 2007\textsuperscript{50}

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Not available</td>
<td>2.31</td>
<td>1.59</td>
<td>1.68</td>
<td>1.50</td>
<td>1.51</td>
<td>1.43</td>
</tr>
<tr>
<td>Belgium</td>
<td>2.19</td>
<td>1.88</td>
<td>1.54</td>
<td>1.61</td>
<td>1.67</td>
<td>1.41</td>
<td>1.49</td>
</tr>
<tr>
<td>Canada</td>
<td>1.76</td>
<td>1.94</td>
<td>1.92</td>
<td>1.63</td>
<td>1.64</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>Denmark</td>
<td>Not available</td>
<td>3.27</td>
<td>2.56</td>
<td>2.8</td>
<td>3.42</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>France</td>
<td>Not available</td>
<td>2.43</td>
<td>1.92</td>
<td>1.79</td>
<td>1.86</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>Great Britain</td>
<td>1.92</td>
<td>1.73</td>
<td>1.70</td>
<td>1.44</td>
<td>1.52</td>
<td>1.33</td>
<td>1.34</td>
</tr>
<tr>
<td>South Africa</td>
<td>Not available</td>
<td>Not available</td>
<td>10.29</td>
<td>9.95</td>
<td>9.12</td>
<td>9.08</td>
<td>8.44</td>
</tr>
<tr>
<td>United States</td>
<td>1.32</td>
<td>1.22</td>
<td>1.24</td>
<td>1.26</td>
<td>1.27</td>
<td>1.21</td>
<td>1.15</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1.13</td>
<td>0.88</td>
<td>0.84</td>
<td>0.93</td>
<td>0.81</td>
<td>0.56</td>
<td>0.58</td>
</tr>
</tbody>
</table>


Graph 4.11, below, is also taken from the OECD Report (2011) and compares countries’ relative performance in reducing the number of fatality accidents in which an articulated truck was involved between 2002 and 2007. It shows that Australia’s rate of improvement was the most favourable recorded over the period, with the rate of reduction being greater than in Canada, the United States and Great Britain.

\textsuperscript{50} Note: For this report, considerable effort was made to update Table 4.1 to compare Australia’s recent safety performance in the trucking industry with other OECD countries. The initial table was based on data provided in 2011 by member countries of the International Transport Forum, an intergovernmental organisation at the OECD, for the preparation of the one-off OECD Report (2011), Moving Freight with Better Trucks: Improving Safety, Productivity and Sustainability (op cit). To update the table, data needed to be based on a uniform measure, namely fatal truck crashes per million kilometres travelled. While Canada was able to provide this data, the European Commission was only able to provide datasets from which fatal truck crashes per tonne kilometres travelled could be calculated, which is a distinctly different measure of safety performance. Further, the Australian data beyond 2007 could only be updated for years 2010 and 2012 as the ABS survey of motor vehicle usage was only undertaken in those years. Therefore, for Australia, it was not possible to calculate the fatalities associated with heavy trucks as a function of vehicle kilometres travelled for the years 2008, 2009 and 2011. Moreover, data comparability may have also been limited by countries having different definitions of ‘fatality’ and ‘heavy vehicle’, as well as varying methodologies for determining aggregate motor vehicle usage. It is surmised that the OECD would have considered these comparability issues and made necessary adjustments for the preparation of Table 4.1. However, given the absence of detailed information on the procedures followed, as well as data limitations, it was determined that the table could not be updated for the current report.
A further comparison provided by the OECD Report (2011) is the contribution of heavy vehicle related fatalities to overall road fatality numbers. The report states that the impact of truck crashes on the overall toll of road fatalities varies substantially between countries, from a low 9.1 per cent in Poland to 24.9 per cent in New Zealand. As noted above, Australia’s rate averaged 16.8 in the five years to 2012, suggesting that the relative contribution of heavy vehicles to overall road fatalities is about in the middle of the range of other countries studied.

4.3.2.3.1 Relative fatality rates

Much of the discussion surrounding the safe rates issue has focused on the fact that the fatality rate for the heavy vehicle sector is substantially higher than that for the road vehicle fleet as a whole. Hence, it is important to also assess this aspect of the safety performance of the industry in international terms, benchmarking the Australian industry against that of other, relevant countries.

The OECD Report (2011) points out that the fatality rate in the heavy vehicle sector is higher than that of the road transport fleet as a whole in all of the countries included in its analysis. However, the extent of this difference varies widely. Table 4.2 below is reproduced from the OECD Report

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51 OECD (2011), op cit
52 ibid, p.172
53 Includes fatalities involving both articulated and rigid trucks - a total of 173 fatalities involving heavy vehicles, compared with 1,193 total road fatalities.
54 Neither specific country by country data nor average rates are provided in the report. Hence, this conclusion is somewhat speculative.
55 OECD (2011), op cit
(2011) and compares twelve countries in terms of the ratio between the heavy vehicle fatality rate (per 10,000 vehicles registered) and that for the all vehicles, using 2005 data.

Table 4.2: Ratio of fatality rates: Persons killed in truck crashes per 10,000 vehicles registered vs persons killed in any accident per 10,000 vehicles registered, 2005

<table>
<thead>
<tr>
<th>Country</th>
<th>Trucks - Fatalities per 10,000 registered vehicles</th>
<th>All Vehicles - Fatalities per 10,000 registered vehicles</th>
<th>Ratio of fatality rates for fatal crashes involving trucks: All fatal crashes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Switzerland</td>
<td>1.5</td>
<td>0.8</td>
<td>1.9</td>
</tr>
<tr>
<td>South Africa</td>
<td>52.4</td>
<td>21.0</td>
<td>2.5</td>
</tr>
<tr>
<td>Germany</td>
<td>3.1</td>
<td>1.0</td>
<td>3.1</td>
</tr>
<tr>
<td>United States</td>
<td>6.2</td>
<td>1.8</td>
<td>3.4</td>
</tr>
<tr>
<td>Australia</td>
<td>5.6</td>
<td>1.2</td>
<td>4.6</td>
</tr>
<tr>
<td>Canada</td>
<td>8.8</td>
<td>1.5</td>
<td>5.9</td>
</tr>
<tr>
<td>Netherlands</td>
<td>7.1</td>
<td>0.9</td>
<td>7.9</td>
</tr>
<tr>
<td>France</td>
<td>12.1</td>
<td>1.4</td>
<td>8.7</td>
</tr>
<tr>
<td>Sweden</td>
<td>8.1</td>
<td>0.9</td>
<td>9.0</td>
</tr>
<tr>
<td>Great Britain</td>
<td>11.2</td>
<td>1.0</td>
<td>11.5</td>
</tr>
<tr>
<td>Denmark</td>
<td>18.1</td>
<td>1.3</td>
<td>13.9</td>
</tr>
<tr>
<td>Belgium</td>
<td>34.0</td>
<td>1.8</td>
<td>18.9</td>
</tr>
</tbody>
</table>


Table 4.2 above shows that the ratios reported for the 12 countries vary by an order of magnitude, from a low of 1.9:1 to a high of 18.9:1. Australia ranks fifth lowest of the 12 countries included in the table, with a ratio of 4.6:1. This implies that the relative safety performance of Australia's heavy vehicle industry is poorer than that of the United States (3.4:1), better than that of Canada (5.9:1) and clearly superior to that of Great Britain (11.5:1).

The OECD Report (2011) highlights the fact that the differences in truck fatality rates are substantially larger than those for all vehicles. For example, while Australia and Denmark have similar overall fatality rates, Denmark has a much higher truck fatality rate. The OECD suggests that differences in the number of vehicle kilometres travelled are likely to constitute a significant part of the explanation for these differences and presents an additional table, in which the fatality rates are calculated on a per 100 million vehicle kilometre travelled basis. This is reproduced below as Table 4.3.

\[ 56 \text{ ibid} \]
### Table 4.3: Ratio of fatality rates: Persons killed in truck crashes per 100 million vehicles kilometres vs persons killed in any accident per 100 million vehicle kilometres, 2005

<table>
<thead>
<tr>
<th>Country</th>
<th>Trucks - Fatalities per 100 million vehicle kilometres travelled</th>
<th>All Vehicles - Fatalities per 100 million vehicle kilometres travelled</th>
<th>Ratio of fatality rates for fatal crashes involving trucks: All fatal crashes</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa</td>
<td>12.5</td>
<td>11.3</td>
<td>1.1</td>
</tr>
<tr>
<td>Switzerland</td>
<td>0.8</td>
<td>0.7</td>
<td>1.2</td>
</tr>
<tr>
<td>Belgium</td>
<td>1.9</td>
<td>1.2</td>
<td>1.5</td>
</tr>
<tr>
<td>United States</td>
<td>1.5</td>
<td>0.9</td>
<td>1.6</td>
</tr>
<tr>
<td>France</td>
<td>2.0</td>
<td>1.0</td>
<td>2.0</td>
</tr>
<tr>
<td>Germany</td>
<td>1.5</td>
<td>0.7</td>
<td>2.1</td>
</tr>
<tr>
<td>Australia</td>
<td>1.7</td>
<td>0.8</td>
<td>2.2</td>
</tr>
<tr>
<td>Canada</td>
<td>2.0</td>
<td>0.9</td>
<td>2.2</td>
</tr>
<tr>
<td>Sweden</td>
<td>1.6</td>
<td>0.6</td>
<td>2.7</td>
</tr>
<tr>
<td>Great Britain</td>
<td>1.7</td>
<td>0.6</td>
<td>2.8</td>
</tr>
<tr>
<td>Denmark</td>
<td>3.0</td>
<td>0.8</td>
<td>3.8</td>
</tr>
</tbody>
</table>

**Source:** OECD (2011), op cit, p.176.

Table 4.3 above shows a significantly smaller variation in the fatality ratios than Table 4.2, confirming the hypothesis that differences in exposure (i.e. in distances travelled by the truck fleet) account for a significant proportion of the variation seen in Table 4.2.

Table 4.3 also shows that Australia’s fatality ratio is the fifth highest, when considered on this metric, being slightly above France and Germany and equal to Canada, but remaining below that of Denmark, Great Britain and Sweden. Conversely, Australia’s ratio of 2.2 is in the lower half of the observed range of 1.1 - 3.8.

Table 4.4 below compares these results with those of a similar analysis published in 2011, using earlier data, in order to assess changes in the fatality ratio over time. Equivalent data are available for only seven of the 11 countries included in the above tables.
### Table 4.4: Comparison of fatality rates and ratios, 2005 vs 1998

<table>
<thead>
<tr>
<th>Country</th>
<th>Trucks - Fatalities per 100 million vehicle kilometres travelled, 2005</th>
<th>Trucks - Fatalities per 100 million vehicle kilometres travelled, 1998</th>
<th>All Vehicles - Fatalities per 100 million vehicle kilometres travelled, 2005</th>
<th>All Vehicles - Fatalities per 100 million vehicle kilometres travelled, 1998</th>
<th>Ratio of fatality rates for fatal crashes involving trucks: All fatal crashes, 2005</th>
<th>Ratio of fatality rates for fatal crashes involving trucks: All fatal crashes, 1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>1.7</td>
<td>2.5 (1996)</td>
<td>0.8</td>
<td>1.2 (1995)</td>
<td>2.1</td>
<td>2.1</td>
</tr>
<tr>
<td>Canada</td>
<td>2.1</td>
<td>2.1</td>
<td>0.9</td>
<td>0.94</td>
<td>2.3</td>
<td>2.2</td>
</tr>
<tr>
<td>United States</td>
<td>1.5</td>
<td>1.7</td>
<td>0.9</td>
<td>0.98</td>
<td>1.6</td>
<td>1.7</td>
</tr>
<tr>
<td>Germany</td>
<td>1.5 (2006)</td>
<td>2.2</td>
<td>0.8</td>
<td>1.24</td>
<td>1.9</td>
<td>1.8</td>
</tr>
<tr>
<td>Great Britain</td>
<td>1.7</td>
<td>2.1</td>
<td>0.6</td>
<td>0.7</td>
<td>2.6</td>
<td>2.8</td>
</tr>
<tr>
<td>Sweden</td>
<td>1.6</td>
<td>3.1</td>
<td>0.6</td>
<td>0.8</td>
<td>2.7</td>
<td>3.9</td>
</tr>
</tbody>
</table>


Table 4.4 above shows a generally high level of stability in the fatality ratios, with two of the seven countries having significantly different ratios: Sweden, which significantly lowered its ratio and France, which saw its ratio increase substantially, despite its actual truck fatality rate decreasing by a large proportion. The OECD makes the following comments in interpreting these results:

“It would appear that for most countries, the measures which have led to the differences in overall crash rates over this period have been similarly effective for both heavy and light vehicles.”

And, in the case of Sweden and France, which saw the largest reductions in heavy vehicle fatalities, the OECD attributes these major improvements in performance to:

“...road safety measures of proven effectiveness that were implemented in places where heavy truck traffic volumes, and hence heavy truck crashes, were high, rather than through specific actions targeting heavy trucks.”

An important caveat is also introduced to the discussion, as follows:

“It is worthy of note that the above analysis, being based on fatal crashes, is not necessarily indicative of the much more numerous non-fatal crashes in which trucks are involved. Data on non-fatal crashes is not as readily obtainable as fatal crash data, but consideration of the data available from the United States suggests that the relative risk of crash involvement

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57 ibid, p.177
58 ibid
may be significantly different for nonfatal crashes, with trucks showing a lower relative crash risk in these less-severe crashes (Figure 6.5a and 6.5b). This suggests that trucks are less likely to become involved in a crash compared with other vehicle types but, once involved in a crash, it is more likely to be fatal.⁵⁹ (emphasis added)

The United States data referred to in the OECD Report (2011) show that, while heavy trucks had a fatal accident rate about 1.6 times that of all vehicles in the relevant period (2001-2007), they had an injury accident rate of around 0.6 times that of all vehicles over the same period. That is, trucks were 40 per cent less likely than the road fleet average to be involved in an injury accident.

Australian data clearly suggest the same pattern. Injury data published by the Australian Institute of Health and Welfare in 2012 show that, in 2008-09, around 4.0 per cent of serious traffic injuries result from accidents in which heavy vehicles are involved,⁶⁰ whereas heavy vehicles accounted for 8.4 per cent of total vehicle kilometres driven.⁶¹

The distinction drawn is important because it suggests that the apparently poorer safety record of the heavy vehicle industry is a product of the fact that safety performance is, unsurprisingly, largely measured in terms of fatalities. However, the accident rate of heavy vehicles appears to be significantly below that of the road transport fleet as a whole. This implies that the higher fatality rate observed in relation to heavy vehicles, which exists in all countries as shown above, is not a product of less safe driving practices leading to higher accident involvement, since overall accident involvement rates for heavy vehicles appear to be lower than those of light vehicles. Rather, the explanation for overall higher fatality rates appears to lie with the physics of large vehicles and the much greater inertia they bring to an accident, which leads to lesser survivability.

4.3.3 Accident causation

Figure 4.1, below, is reproduced from the OECD Report (2011) and provides a breakdown of the cause of heavy vehicle collisions. It reports the results of the International Road Transport Union (IRU) European Truck Accident Causation Study, published in 2007.

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⁵⁹ ibid
⁶⁰ Australian Institute of Health and Welfare (2012), Serious Injury Due to Land Transport Accidents Australia 2008-09, p 15, (1,438 injuries were recorded, including 863 in cases where the other vehicle was a heavy vehicle and 517 for heavy vehicle occupants. Total serious injuries for the year were 34,116.
⁶¹ See ABS 9208.0 Survey of Motor Vehicle Use, ABS, Canberra, p.13. Data for 2011-12 used, as no edition of this document was published containing 2008-09 data. Data for 2012 compiled by the Review show a similar picture, with Victorian data showing 6.3 serious injuries per 100m vehicle km in the heavy vehicle sector compared with 8.5 serious injuries per 100m vehicle km for the road fleet as a whole and New South Wales data showing total injury rates of 29 per 100 million vehicle kilometres for heavy vehicles vs 34 per 100 million vehicle kilometres for the road transport fleet as a whole. Note that states’ crash and injury data are not comparable.
Figure 4.1: Main causes of accidents involving heavy vehicles

![Diagram of accident causes: 85% human factors, 5% technical failure, 5% infrastructure conditions, 5% weather conditions, and 21% human factors due to truck drivers, and 4% human factors (others).]


Figure 4.1 shows that human factors are responsible for around 85 per cent of accidents involving heavy vehicles, but that the heavy vehicle driver is at fault in around one quarter of these cases, or in 21 per cent of total accidents. A similar conclusion was reached in the Australian context by ACIL-Tasman, which found that in 82 per cent of motor vehicle accidents involving a heavy vehicle, the driver of the heavy vehicle was not at fault.62 More recently, the 2013 Major Accident Investigation Report63 reported that, in the fatal accidents analysed, the driver of the lighter vehicle was at fault in every case, while the data presented in the 2011 edition of this report showed that the truck driver was at fault in 18 per cent of cases.64

The OECD highlights the range of specific contributors to the 85 per cent of accidents caused by human factors. These are:

- Recognition errors (attention and perception);
- Decision errors (mainly risky and aggressive driving); and
- Performance and non-performance errors.

It highlights the different relative prevalence of these error types among heavy and light vehicle drivers, preparing Graph 4.12 below from data in the United States Large Truck Crash Causation Study (LTCCS), undertaken by the Federal Motor Carrier Safety Administration (FMCSA) in 2007.65

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63 National Truck Accident Research Centre (2013), op cit.

64 National Truck Accident Research Centre (2011), *2011 Major Accident Investigation Report*, National Transport Insurance

Graph 4.12: Driver errors in the Large Truck Crash Causation Study (LTCCS)


Graph 4.12 shows that recognition and decision errors are of primary significance for heavy vehicle drivers, while light vehicle drivers are much more prone to performance and non-performance errors. Within the categories of recognition and decision errors, fatigue is likely to be a contributor to both error types, but predominantly affects recognition errors, while inappropriate speed is the key element of decision errors.

In relation to fatigue, the LTCCS reported that:

“In crashes between trucks and passenger vehicles, driving too fast for conditions and fatigue were important factors cited for both drivers. However, fatigue was coded twice as often for passenger vehicle drivers, and speeding more often for truck drivers”.

That is, while fatigue was found to be one of several important contributors to accident causation, the fatigue issue was identified as being significantly more likely to be the cause of an error made by a passenger vehicle driver, leading to an accident involving a heavy vehicle, with fatigue on the part of the heavy vehicle driver being less likely to be a causative factor. No equivalent Australian data have been identified, however this United States data provides an important point of context to the discussion of the impact of fatigue as a factor in heavy vehicle accidents.

In the Australian context, the dataset used to produce the NTI/NTARC Major Accident Investigation Report shows that the proportion of accidents found to have been primarily caused by fatigue has

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66 ibid
67 The National Truck Accident Research Centre, established by Australia’s major heavy vehicle insurer, National Transport Insurance, has published a bi-ennial since 2003. The Major Accident Investigation Report investigates the major causative factors in heavy vehicle accidents, using a structured sample of major
more than halved, from 26 per cent in 2003 to 11.9 per cent in 2011. Consistent with this, the majority of accidents were found to occur on the outbound leg of a journey, despite the fact that "...logic would suggest that the driver should be commencing the shift, well rested and fit for duty". In 2011, 70.5 per cent of accidents occurred on the outbound leg. Moreover, by far the majority of accidents occurred within the first four to five hours of the journey, with 68 per cent reported to have occurred within 250 kilometres from departure, 85 per cent within 500 kilometres from departure, and 90.1 per cent of accidents on outbound journeys occur within 250 kilometres of the point of origin.

These observations suggest that the regulatory reforms in relation to fatigue management adopted over the past decade have had significant benefits in practice, notwithstanding that fatigue continues to be an important contributor to accident causation. Conversely, the Major Accident Investigation Report indicates that there has been little change in the role of speed as a causal factor, with speed being the major factor in 25.4 per cent of accidents analysed in 2011, compared with 27.4 per cent in 2007.

4.3.4 Data on accident precursors

The previous sections have focused on fatalities associated with heavy vehicles, both because data is the most readily available and comparable safety-related data, and because it constitutes a direct measure of the most important negative outcome of poor safety practices. However, other indicators can also be used to provide a broader picture of the safety performance of the heavy vehicle sector.

The rationale for the establishment of the Tribunal is that by ensuring that ‘safe rates’ are paid consistently in the industry, incentives for drivers to adopt unsafe behaviours which are likely to be associated with increased accident risk will be diminished. In particular, it has been argued that drivers will not face the same degree of economic pressure to drive at illegal and/or dangerous speeds, and will also have lesser incentives to drive for excessive hours, and hence while fatigued, if safe rates are paid.

In this context, review of recent data on levels of compliance with speed and driving hours regulation is of significant relevance. In general, these reports show that there remains a significant incidence of non-compliance with these regulations, but that there have been substantial reductions in the incidence of non-compliance in recent years.

The NTC's Reform Evaluation in the Road Transport Industry reports, published in September 2013 provide some comparative data on the incidence of infringements for speed and fatigue offences.

accidents - defined as those giving rise to an insurance claim for over $50,000. A total of 461 accidents were analysed for the most recent (2013) report. The 2013 report is based on data from 2011.

68 National Truck Accident Research Centre (2013), op cit, p 25.
69 ibid, p 21.
70 Other unsafe behaviours said to be associated with low rates include reduced maintenance and vehicle overloading. However, the key focus appears to be on speed, working hours and fatigue.
The report on speed\(^\text{71}\) states that 17 per cent of respondent drivers had received an infringement for speeding in 2012, a reduction from the 22 per cent reported in 2005.

Similarly, the report on fatigue\(^\text{72}\) shows that, while reported non-compliance with driving hours regulations remains a substantial problem, reductions in its incidence have occurred since 2006. This is summarised in Figure 4.2 below, which is reproduced from this report. It shows that the incidence of drivers reporting that they breach these regulations on all or most trips remained almost constant, at slightly less than one fifth of the total, the proportion reporting non-compliance on some trips fell by about one third, from 43 per cent to 28 per cent.

**Figure 4.2:** Incidence of non-compliance with working hours regulation by drivers in 2006 and 2012

The need to complete enough trips to earn a living (51 per cent) and ‘tight schedules’ (50 per cent) were both commonly nominated as reasons for non-compliance with working hours regulations.\(^\text{73}\) However, the desire to reach adequate rest facilities or to return home were each nominated by a larger proportion of those reporting non-compliance (76 per cent and 62 per cent respectively).\(^\text{74}\)

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\(^{73}\) ibid

\(^{74}\) ibid
Consistent with the reduction in non-compliance reported, the proportion of drivers stating that they experienced fatigue on at least some journeys was reported to have fallen significantly, albeit from a very high 86 per cent to a still high 72 per cent.\textsuperscript{75}

In summary, the NTC reports suggest that speed and fatigue remain substantial issues for the heavy vehicle sector, but that policy actions taken over the past several years have been somewhat effective in reducing the extent of both issues.

4.4 Policy and regulatory approaches to heavy vehicle safety in OECD countries

The OECD Report (2011)\textsuperscript{76} discusses the regulation of heavy vehicle road safety in terms of measures aimed at managing the kinetic energy of vehicles and human factors. The main factors that contribute to road fatalities in truck crashes are broadly categorised as involving human factors, road factors, truck configuration, speed, and failure to wear seatbelts. Pay level and methods of payments are not considered as potential causation factors.

4.4.1 Safe system approach

In its discussion of measures to improve the safety of trucks, the OECD\textsuperscript{77} refers to the ‘Safe System’ approach, a road safety model which has been adopted by Sweden (Vision Zero), the Netherlands (Sustainable Safety) and Australia (Safe System). In summary, the Safe System approach views the road transport system holistically and considers the interactions between the various parts. The philosophy underpinning the approach is to create a road transport system in which human mistakes do not result in death or serious injury. In a 2008 comprehensive report\textsuperscript{78} on the ‘Safe System’ approach, the OECD International Transport Forum (ITF) recommended that all countries move to ‘Safe Systems’ approach. The OECD/ITF report outlines the following characteristics of a ‘Safe System’ approach:

- It recognises that despite prevention efforts, road users will continue to make errors and crashes will occur.
- It stresses that those involved in the design of the road transport system need to accept and share responsibility for the safety of the system, and those that use the system need to accept responsibility for complying with the rules and constraints of the system.
- It aligns safety management decisions with broader transport and planning decisions that meet wider economic, human and environmental goals.
- It shapes interventions to meet the long-term goal, rather than relying on ‘traditional’ interventions to set the limits of any long-term targets.

\textsuperscript{75} ibid
\textsuperscript{76} OECD (2011), op cit.
\textsuperscript{77} ibid
4.4.2 Safety measures in the trucking industry

Based on contributions by OECD member countries, the measures identified in the OECD Report (2011) to improve the safety of trucks broadly included:

- **Truck design** such as the use of rigid front under-run protection systems which absorb the energy of a crash by deformation of the vehicle, rather than the occupants.
- **Infrastructure and traffic management** such as separating road freight from other road users by operating late at night or early morning or restricting heavy vehicles to certain freight logistic routes. Physical segregation can also be achieved through shoulder sealing, barriers to reduce the risk posed by roadside hazards and audible edge lining. Long term measures include skid resistance treatment, junction layout, and lane widths. The Australian Performance Based Standards Scheme is exemplified as allowing for heavy vehicles to be tested against safety standards and infrastructure standards to ensure compatibility between the performance of the vehicle and the physical constraints of the road network.
- **Driver training and licensing** such as a graduated licence system involving general truck training followed by gaining experience either with an articulated heavy goods vehicle or a non-articulated truck.
- **Vehicle technology** involves driver support and communications systems that can improve safety and/or the efficiency of a vehicle through imminent risk detection, alert and avoidance systems and vehicle tracking and communications systems.

There is no mention of a ‘Safe Rates’ like scheme being a measure adopted by an OECD member country to improve safety in the road transport industry.

4.5 Conclusions on safety performance

The preceding sections have established that the rate of improvement in heavy vehicle safety performance in recent decades has been at least as great as that of the road transport sector as a whole. When considered in terms of the proportionate decline in total fatality numbers, the rate of improvement for articulated trucks has been approximately equal to that of the road fleet as a whole.\(^{80}\) However, when considered in terms of the preferred metric of fatalities per kilometre travelled, which accounts for the larger increase in freight movements relative to total road use, it is clear that the heavy vehicle sector has outperformed the total road vehicle fleet in safety improvement terms.

Moreover, the contribution of the sector to the overall road toll appears to be relatively low by international standards. The Australian heavy vehicle-related fatality rate was previously relatively high by international standards, but appears now to be broadly similar to those of most better-performing countries for which data is available as a result of a strong relative performance in safety improvement in recent years. That said, the paucity of more recent data necessarily implies that some uncertainty exists as to Australia’s current position.

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\(^{79}\) OECD (2011), op cit

\(^{80}\) While the data for rigid trucks suggests that performance in this area may be less positive, the limited time series available yields significant uncertainty on this point, as discussed above.
A small number of countries—notably the United States and Switzerland—can be seen to have clearly superior performance. Previous work for the NTC suggests that the major factors accounting for Australia having higher fatality rates than these countries are road-related - i.e. the lower proportion of truck travel on divided and limited access roads. These factors are likely to remain significant.

As the National Road Safety Strategy 2011-2020\(^{81}\) points out, heavy vehicles remain disproportionately involved in road fatalities, with heavy vehicles being involved in 18 per cent of fatality accidents, while accounting for only 8 per cent of vehicle kilometres travelled. However, the above data indicates that both the overall accident rate of heavy vehicles and the proportion of multi-vehicle accidents in which the heavy vehicle is at fault are below that of light vehicles, as is the representation of heavy vehicles in injury accidents. These facts indicate that the key reason for the over-representation of heavy vehicles in fatality accidents is the lower survivability of accidents involving heavy vehicles. As noted by the NSW Auditor-General, the likelihood of a fatality is around three times as high in accidents in which a heavy vehicle is involved.\(^{82}\)

Taken together, these data suggest that the over-representation of heavy vehicles in fatality accidents is, to a substantial extent, the result of factors beyond the control of the industry. That is, a high proportion of accidents involving heavy vehicles are the fault of the other party, while the size and weight of the heavy vehicle makes fatalities a much more likely consequence of any given collision. This is clearly an important observation in the context of assessment of the extent to which industry practices contribute to observed road safety performance.

That said, the high consequences of an accident involving a heavy vehicle underline the importance of ensuring a high standard of safety performance in the industry. This is recognised in the National Road Safety Strategy 2011 – 2020, however, the strategy also recognises the need to assess the impact of recently introduced reforms. It also highlights, in common with the OECD/ITF, the fact that many of the actions that will be most effective in reducing heavy vehicle accidents are of general application, addressing road safety globally, rather than being heavy vehicle specific.

"The strategy recognises that heavy vehicles are over-represented in crash statistics. A number of national reforms have been introduced over recent years and the impact of these will take some time to assess. There are some initiatives in the strategy that are specific to heavy vehicles, but many of the other actions will also address heavy vehicle safety."\(^{83}\)

4.5.1 Heavy vehicles as a workplace

As noted above, a key perspective offered by the TWU is that heavy vehicles can be considered as a workplace and that, from this perspective, the number of heavy vehicle occupant fatalities makes them one of the most dangerous workplaces in the Australian economy. This perspective is underlined by OECD data showing that, while fatality rates in accidents involving heavy vehicles in

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Australia generally compare favourably in international terms, Australia does have a high rate of heavy vehicle occupant fatalities. This is shown in Table 4.5, below.

Table 4.5:  Truck occupant fatalities per 100 million kilometres travelled, 2005

<table>
<thead>
<tr>
<th>Measure</th>
<th>Australia</th>
<th>Canada</th>
<th>Denmark</th>
<th>France</th>
<th>Great Britain</th>
<th>South Africa</th>
<th>Switzerland</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Truck occupant fatalities per 100 million kilometres travelled</td>
<td>0.5</td>
<td>0.32</td>
<td>0.09</td>
<td>0.26</td>
<td>0.19</td>
<td>3.13</td>
<td>0.04</td>
<td>0.22</td>
</tr>
</tbody>
</table>


Table 4.5 shows that Australia’s truck occupant fatality rate is the second highest of the eight countries for which data are reported, behind only South Africa.

However, while heavy vehicles undoubtedly constitute a ‘workplace’, most policy and regulatory activity approaches heavy vehicle safety as a sub-set of road safety policy. This reflects the fact that a key reason for the policy prominence of this issue lies in the importance of externalities—i.e. the fact that the majority of people killed and injured in heavy vehicle related accidents are not heavy vehicle occupants. In addition, as discussed by the OECD and highlighted above, a large proportion of the most effective interventions in relation to heavy vehicle safety are generally applicable—i.e. they are effective in improving road safety performance for all vehicle types.

That said, research and policy development focusing on the specific issue of truck occupant safety has been, and continues to be, undertaken. A key perspective identified by the OECD in this regard is that the single most important contributor to heavy vehicle occupant fatalities is the low incidence of seatbelt wearing by truck occupants. The importance of this factor is highlighted in Table 4.6, below.
Table 4.6: Truck occupant seat belt wearing rates in fatal and injury accidents

<table>
<thead>
<tr>
<th>Years</th>
<th>Country</th>
<th>Number of Truck Occupants Killed, wearing seat belt</th>
<th>Number of Truck Occupants Killed, not wearing seat belt</th>
<th>Number of Truck Occupants Killed, belt use unknown</th>
<th>Number of truck Occupants Injured, wearing seat belt</th>
<th>Number of truck Occupants Injured, not wearing seat belt</th>
<th>Number of truck Occupants Injured, belt use unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002 and 2004</td>
<td>Australia</td>
<td>11 per cent</td>
<td>47 per cent</td>
<td>43 per cent</td>
<td>11 per cent</td>
<td>46 per cent</td>
<td></td>
</tr>
<tr>
<td>2002-2006</td>
<td>Austria</td>
<td>29 per cent</td>
<td>71 per cent</td>
<td>0 per cent</td>
<td>28 per cent</td>
<td>72 per cent</td>
<td>0 per cent</td>
</tr>
<tr>
<td>2003-mid 2007</td>
<td>Israel</td>
<td>51 per cent</td>
<td>39 per cent</td>
<td>10 per cent</td>
<td>61 per cent</td>
<td>24 per cent</td>
<td>15 per cent</td>
</tr>
<tr>
<td>2002-2005</td>
<td>Japan</td>
<td>44 per cent</td>
<td>49 per cent</td>
<td>7 per cent</td>
<td>88 per cent</td>
<td>15 per cent</td>
<td>2 per cent</td>
</tr>
<tr>
<td>2003-2007</td>
<td>South Africa</td>
<td>2 per cent</td>
<td>49 per cent</td>
<td>50 per cent</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>2002-2006</td>
<td>Great Britain</td>
<td>4 per cent</td>
<td>51 per cent</td>
<td>45 per cent</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
</tr>
</tbody>
</table>


Table 4.6 shows that, of cases where seatbelt wearing status was known (accounting for 58 per cent of the total), around 80 per cent of truck occupants killed in Australia were not wearing seatbelts. Conversely, among truck occupants injured, around 80 per cent were wearing seatbelts (of the 54 per cent of cases where seatbelt wearing status is known). These observations are strongly suggestive of the impact of seatbelt wearing in averting fatalities - an observation that is generally accepted in the road safety literature. The OECD cites Australian research supporting this proposition, as follows:

"A number of field studies have quantified the safety value of seat belts for truck drivers. Campbell and Sullivan (1991) estimated that between 27% and 77% of truck driver fatalities could be prevented by seat belt use. A review of a range of studies by Gibson et al. (2001), together with information from the Crashed Vehicles Study, produced an estimate that 40% to 50% of Australian truck driver fatalities could be prevented by seatbelt use at similar levels to that observed in light vehicles. Knight (2000) predicted that not only would up to 36% of truck occupant fatalities be prevented by use of 3-point seatbelts, but also that this could be increased to a 50% reduction if combined with improved cab crashworthiness."

While this research may be considered slightly dated, Raftery et al. also cites two more recent Australian studies which reach substantially similar conclusions. Lyndall and Elias, reviewing 61

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84 OECD (2011), op cit, pp 189-90
crashes involving heavy vehicle occupant fatalities in Victoria found that in 17 of 25 cases in which seat belt use status was known, the heavy vehicle occupant killed had not been wearing a seatbelt. Similarly, Imberger et al\textsuperscript{87} found, also using Victorian data, that 60 per cent of drivers killed were not wearing a seat belt.

The above indicates that, despite the general conclusion of the OECD and others that generally applicable road safety initiatives also largely constitute the most effective interventions in the heavy vehicle context, there are potentially very effective interventions available that are specific to the heavy vehicle sector and focus on truck occupant safety. Two of the most important of these are addressing the much lower average use of seatbelts in heavy vehicles, compared with private cars and addressing cab crashworthiness. The seatbelt issue has already been recognised in the \textit{National Road Safety Strategy 2011 – 2020}, which lists under ‘future steps’:

"\textit{Examining the use of seatbelt interlocks and other regulatory means to increase seatbelt wearing by heavy vehicle drivers.}"\textsuperscript{88}

\textsuperscript{88} \textit{Road Safety Strategy 2011 – 2020}, op cit, p.93.
5 Remuneration and safety

Key Points

- The establishment of the RSRS largely reflects a view that there is an established link between driver remuneration and safety performance. However, the research literature on this issue is relatively limited in extent, addresses a range of specific relationships and reaches mixed conclusions.

- Some studies consider firm level financial performance, while others focus on driver remuneration. Similarly, some studies assess safety performance directly, by measuring accident involvement rates, while others use indirect measures, notably the incidence of risky behaviours such as speeding and driving while fatigued.

- This means that there are few studies that have found clear links between driver remuneration and the likelihood of accident involvement. Moreover these studies differ widely as to the nature of this link. Of four studies finding a statistically significant link, two find the size of the impact to be very small. Two others find large relationships, but one of these finds a "U shaped" function linking the variables and concludes that remuneration levels above an "optimum" level are associated with poorer safety outcomes.

- These studies also suffer from the limitation of focusing on employee drivers, whereas a large part of the concerns raised in Australia in relation to low driver remuneration relate to owner drivers.

- Studies that have assessed owner driver safety performance specifically have found either that it similar to that of employee drivers or that it is significantly better than that of employee drivers, despite the generally lower levels of remuneration of employee drivers.

- While the overall weight of the evidence examined in the literature suggests the likely existence of some link between remuneration and safety, the nature and extent of any impact on safety performance of a change in driver remuneration is highly uncertain.

Mandatory minimum rate setting can only be shown to constitute a potentially effective means of promoting heavy vehicle safety, if it is demonstrated that:

- there is clear evidence of a substantial relationship between driver remuneration and accident involvement;
- remuneration levels in at least parts of the Australian road transport industry are sufficiently low as to give rise to incentives to adopt unsafe driving behaviours; and
- other regulatory interventions are not able to effectively prevent the adoption of such behaviours.

Section 5.1, below, discusses the available research literature on the link between remuneration and safety, while Section 5.2 sets out available data on remuneration rates in Australia and provides international comparisons where feasible. Section 6, below, discusses heavy vehicle safety regulation currently in place, as well as current initiatives in this area, highlighting regulation that deals with key issues arising in the "safe rates" context, including speed, driving hours and fatigue.

5.1 Review of research literature on remuneration and safety

The RSR Act is predicated on the view that there is an established relationship between remuneration levels in the road transport industry and safety performance. Specifically, it is argued
that when remuneration levels remain very low over a significant period, economic pressures will cause drivers to behave in ways that compromise safety, including driving excessive hours, driving at excessive speed and/or reducing vehicle maintenance expenditures. Given the substantial human and economic cost of road accidents, this represents a potentially major problem. Thus, this section reviews the research literature on this issue in order to weigh the evidence on the general question of the existence, nature and extent of linkages between remuneration and safety.

5.1.1 Economic deregulation of United States trucking and safety performance

Much of the early research on the link between freight rates and safety performance was conducted during the 1980s and early 1990s and focused on the impact on safety of the removal of economic regulation in the United States trucking industry and the subsequent significant decline in freight rates during the 1980s. Research in this field appears to have been prompted by concerns that the removal of entry restrictions and other economic regulation, and the decline in freight rates expected to occur as a consequence, would lead to significant declines in safety performance. These declines did not occur: as reported by Hunter & Mangum, for example, overall accident rates in the heavy vehicle sector declined between 1976 and 1986 - i.e. in the period following the removal of economic regulation of the United States trucking industry. Moreover, some research suggests a degree of positive impact of deregulation on safety performance.

While aware at the outset of their research that overall safety performance had continued to improve post-deregulation, Hunter & Mangum sought to test specific hypotheses linking remuneration levels and safety performance within this broad context of economic deregulation. Thus, it was expected that non-union firms with lower remuneration rates would demonstrate higher rates of accident involvement than unionized firms, as would owner-operators. It was also anticipated that firms with lower revenue per mile would have higher accident rates, as firms under financial stress were hypothesised to be more likely to take short cuts on safety-related matters.

The results of the study failed to show these expected relationships. Instead, a number of apparently perverse statistical relationships were observed: it was found that non-unionised firms had lower accident involvement rates than unionised firms and that there was an unexpected and significant positive correlation between revenues per mile and accident rates among non-union firms. Conversely, however, the authors did find that owner-operators, who suffered significant declines in pre-deregulation incomes, experienced higher accident rates. They state that:

"Owner-operators leased to these firms were required to intensify their work efforts simply to maintain pre-deregulation incomes. These intensified work efforts translated into increased..."

92 Hunter & Mangum (1995), op cit
hours on the road, increased fatigue, and ultimately an increase in preventable accident rates."\(^93\)

However, the extent of the relationship identified - i.e. the size of the relationship between reduced freight rates and increased accident rates - is not made clear in the paper.

In sum, the experience of economic deregulation in the United States trucking industry was that a highly regulated industry with high and regulated freight rates was not associated with better safety performance than an industry characterised by open entry and lower average rates. However, some evidence of reduced safety performance was found in specific areas, relating to certain kinds of poorly remunerated owner driver firms.

5.1.2 Regulatory reform in other OECD countries

OECD research indicates that the majority of its member countries followed a similar regulatory reform path to the United States in relation to the trucking industry in the 1980s and 1990s. The broader context of the history of economy-wide regulatory reform since the late 1970s is one in which price and entry controls have been removed from most of the industries in which it was previously applied and substantial improvements in productivity, together with real price reductions and improvements in customer services have, in most cases resulted. The direction of regulatory change in the road freight industry in OECD countries is consistent with this broad trend. In a 2001 study, the OECD noted that:

“Deregulation has also been extensive in the road freight industry. Even though regulatory barriers were initially less extensive than in other industries, by 1998 barriers to entry and service constraints had been virtually eliminated in all countries for which data are available, while some price controls and state controlled trucking companies still remained in a few.”\(^94\)

The proportion of OECD Member countries applying price control regulations of any form in the road freight industry was reported by the OECD as having fallen from almost 70 per cent in 1975 to around 13 per cent in 1998, while the proportion of OECD Member countries applying a "high level" of price regulation fell from 25 per cent to zero over the same period.\(^95\) The only four countries identified by the OECD as retaining price regulation by 1998 were Spain, Greece, Italy and Japan.

Even in Japan, a traditionally highly regulated country,\(^96\) a 1996 study\(^97\) found that while the government wielded far-reaching powers to set prices in the road freight industry, these had not been used to do anything other than set guideline rates:

“Since 1951 the ministry of transport has been vested with sweeping authority to restrict entry and set prices in commercial trucking. Perhaps it could have used this authority to

\(^93\) Hunter, Natalie, and Stephen Mangum. (1995), op cit, p.63
\(^95\) ibid
\(^96\) See, for example, OECD (1999), Regulatory Reform in Japan.
cartelize the industry. The weight of evidence holds that it did not do so. There is little to suggest that the standard price schedules which the MOT continues to publicize and periodically revise are anything more than suggestions, widely disregarded by commercial trucking firms.\(^98\)

As this summary indicates, the direction of regulatory change in relation to the road freight industry in OECD countries has been toward the removal of price regulation, where it has previously existed. The OECD Report (2011)\(^99\) on the industry makes no mention of any reversal of this trend in any of the countries discussed, despite discussing heavy vehicle safety issues at considerable length. The most recent Annual Report of the OECD International Transport Forum,\(^100\) notes the establishment of the Tribunal in Australia, but includes no discussion of any similar initiatives in other Member countries. Given this, and the fact that the Review has not been able to identify any equivalent initiatives internationally,\(^101\) it appears that the adoption of legislation authorising the re-regulation of minimum prices, as reflected in the RSR Act, is currently unique to Australia.

5.1.3 Indirect indicators of safety performance

A number of relationships have been investigated in the literature on links between remuneration and safety. One strand of the literature focuses on a range of indirect indicators of both remuneration levels and safety performance, rather than seeking to measure these directly. As the Quinlan and Wright Report notes:

“This included detailed research by Hensher and colleagues during the 1990s (Hensher and Battellino, 1990; and Golob, T. and Hensher, 1994) that found a clear and significant link between scheduling pressures, unpaid waiting time, insecure rewards and access to work, and hazardous practices such as speeding, excessive hours and drug use by drivers.”\(^102\)

Research on links between remuneration and unsafe practices differs as to whether it also addresses the question of actual safety performance- i.e. accident involvement. This distinction is significant, in that some research has found links between remuneration and unsafe practices, but has not found poorer resulting safety performance.

For example, ACIL-Tasman\(^103\) reports that Hensher et al\(^104\) found strong evidence of a correlation between owner driver remuneration/freight rates and propensity to speed, with the relationship being statistically significant at the 95 per cent confidence level. However, the link between payment rates and accident involvement was not assessed directly. Rather, the authors measured the

\(^{98}\) ibid

\(^{99}\) OECD (2011), op cit


\(^{101}\) This has included a search of the OECD Joint Transport Research Centre website, which yielded no recent documentation referring to price regulation within the road freight industry.

\(^{102}\) Quinlan & Wright (2008), op cit, p 11

\(^{103}\) ACIL-Tasman (2003), op cit

accident involvement of different types of drivers, distinguishing owner drivers and employee drivers employed by small, medium and large companies. Average payment rates for these groups were not calculated. However, the differences between driver types in terms of crash involvement were found to be very small: small company drivers were found to have the highest rate of crash involvement in the previous two years (18 per cent), while medium company drivers had the lowest (16 per cent). These differences were found not to be statistically significant. The authors concluded that "The anecdotal evidence which tends to lay the blame for bad on-road behaviour on owner drivers is fallacious".

Other research has measured links between safety performance per se and indirect indicators apparently chosen for expected correlations with remuneration levels and structures. Two Australian studies of note are those of Williamson et al\textsuperscript{105} and Quinlan.\textsuperscript{106}

### 5.1.3.1 Employment type and accident history

Williamson et al\textsuperscript{107} conducted a large-scale survey of long-distance drivers in Australia on behalf of the then NRTC. Williamson et al found significant correlations between payment methods, total hours worked and the reported incidence of fatigue. Thus, drivers who were paid on a per kilometre/trip or per tonne basis were found to have a higher incidence of reported fatigue, while owner drivers were found to do much longer trips than employee drivers as well as more non-driving work. Williamson et al’s sample was stratified in terms of the size of the fleet in the case of employee drivers and also distinguished employee drivers from owner drivers. Owner drivers (both independent and contracted) and drivers employed by companies with smaller fleets were found to have higher rates of payment on a flat rate per load basis, while owner drivers were more likely to have to negotiate a rate for each load.\textsuperscript{108}

The observed links would suggest that owner drivers would demonstrate a higher accident rate, since they were more likely to be paid on a fixed rate basis (a factor found to be correlated with higher reported fatigue levels). They were also found to complete longer trips and more non-driving work, factors also suggesting higher fatigue exposures.

Despite this, no significant differences in accident involvement rates were observed. The survey included questions on accident involvement in the previous twelve months and found little or no linkage between driver employment types and accident history. Table 5.1 below is reproduced from this report.

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\textsuperscript{107} Williamson et al (2001), op cit

\textsuperscript{108} ibid, pp 40-41
Table 5.1: Experience of dangerous events at least sometimes while driving in the last year for drivers in each employment category (%)

<table>
<thead>
<tr>
<th>Measure</th>
<th>Employee drivers, less than 11 trucks</th>
<th>Employee drivers, 11-50 trucks</th>
<th>Employee drivers, greater than 50 trucks</th>
<th>Owner drivers, Independent</th>
<th>Owner drivers, Contracted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per cent having accidents in past 12 months</td>
<td>9.8 per cent</td>
<td>14.2 per cent</td>
<td>14.7 per cent</td>
<td>14.1 per cent</td>
<td>8.9 per cent</td>
</tr>
<tr>
<td>Per cent of accidents involving property damage/injury</td>
<td>98.8 per cent</td>
<td>94.9 per cent</td>
<td>100 per cent</td>
<td>92.2 per cent</td>
<td>100 per cent</td>
</tr>
<tr>
<td>Per cent of accidents in which fatigue was a factor</td>
<td>23.5 per cent</td>
<td>14.3 per cent</td>
<td>26.7 per cent</td>
<td>10.5 per cent</td>
<td>30.8 per cent</td>
</tr>
</tbody>
</table>


Table 5.1 shows that there is little difference between employee drivers and owner drivers in terms of either their accident history or the extent to which fatigue is a factor in accidents that do occur. It is notable that contracted owner drivers have the lowest reported accident involvement of all groups. However, the difference was found not to be statistically significant at the 95 per cent confidence level. The authors concluded that:

“A similar percentage of drivers in each subcategory reported having at least one accident over past 12 months.”

Notably, the authors also found that there was no significant difference between the driver groups in terms of other indirect indicators of safety performance including the frequency with which they broke working hours regulations, or the proportion who broke speed limits during their last trip. In addition, while owner drivers reported working longer hours, they were not found to have more fatigue-related accidents than employee drivers.

Williamson again investigated payment arrangements in conjunction with the TWU in a paper initially published in 2010 and, in a modified form, in 2012. These papers reach similar conclusions, finding that:

“Incentive payments were associated with longer working hours, greater distances driven and higher fatigue for more drivers. Drivers required to wait in queues did significantly more nondriving [sic] work and experienced fatigue more often than those who did not. Drivers who were not paid to wait did the longest trips with average weekly hours above the legal

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109 ibid
110 ibid, p 65, p 45
working hours limits, had the highest levels of fatigue and the highest levels of interference by work with family life. In contrast, drivers who were paid to wait did significantly less work with shorter usual hours and shorter last trips.\textsuperscript{113}

However, in contrast to the previous research, this study did not address the issue of the accident involvement rates of different cohorts within the survey respondent group. Hence, it does not provide more recent data to verify the earlier conclusion that failed to show a link between indirect safety indicators and actual accident involvement.

Quinlan\textsuperscript{114} reported similar results to Williamson et al\textsuperscript{115} in relation to the issue of accident involvement rates for the different driver groups. Quinlan reported the proportion of owner drivers and small and large fleet drivers stating that they had had an accident during the past year and the past five years. Table 5.2, below, reproduces his results.

Table 5.2: Truck crashes experience by 300 interviewed drivers in the immediate past 12 month period and in previous 5 years\textsuperscript{116}

<table>
<thead>
<tr>
<th>Measure</th>
<th>Owner drivers (n=99)</th>
<th>Small fleet drivers (n=104)</th>
<th>Large fleet drivers (n=85)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accident past 12 month period</td>
<td>10.1 per cent</td>
<td>12.5 per cent</td>
<td>5.9 per cent</td>
</tr>
<tr>
<td>Accident previous 5 years</td>
<td>20.2 per cent</td>
<td>18.3 per cent</td>
<td>15.3 per cent</td>
</tr>
</tbody>
</table>

Source: Quinlan (2001), op cit, pp.54-55.

Table 5.2 shows that the proportions of drivers reporting accident involvement varied relatively little between the three groups. A higher proportion of small fleet drivers than owner drivers were involved in accidents in the previous 12 months, although the position was reversed when the previous five years are considered. Large fleet drivers have the lowest accident involvement over both 1 and 5 year time horizons. The difference is substantial over the one-year period, but is proportionately much smaller considered over five years. ACIL-Tasman, in commenting on the study, reports that the differences between these accident involvement statistics were not found to be statistically significant:

"Professor Quinlan's 2001 survey of drivers in NSW found very little difference in the proportion of owner-drivers, small fleet drivers and large fleet drivers involved in a crash in the past five years.... Significance testing indicates that we cannot be confident that the proportion of owner drivers reporting at least one crash in the last five years is significantly different to the proportion of drivers in large fleets."\textsuperscript{117}

\textsuperscript{113}ibid
\textsuperscript{114}Quinlan (2001), op cit
\textsuperscript{115}Williamson et al (2001), op cit
\textsuperscript{116}Note: This table excludes drivers who did not identify with any of the three groups of owner drivers, small fleet drivers or large fleet drivers. These drivers were identified as ‘Other’ in the study and numbered 12 in total.
\textsuperscript{117}ACIL-Tasman (2003), op cit, p.53
5.1.4 Remuneration levels and accident history

A small number of studies have identified direct links between remuneration levels and safety performance and are discussed in this section. Three of these studies, by Belzer et al (2002), Rodriguez et al (2006) and Nafukho et al (2007), directly measure links between driver remuneration rates and accident involvement risk. A fourth (by Elkington and Stevenson (2013)) tests for correlation between payment method, as well as a number of other payment-related variables and accident involvement. The fifth (by Britto et al (2010)) measures the relationship between firms’ financial performance and their safety records, rather than the link between driver remuneration and safety per se.

5.1.4.1 Correlation between pay rates and accident involvement

5.1.4.1.1 Belzer et al (2002)

The 2002 study by Belzer et al analyses three different data sets and finds strong, statistically significant links between driver remuneration levels and safety outcomes in each case. In relation to one set of driver survey data, the authors find that a 10 per cent increase in remuneration rates is associated with a 9.2 per cent reduction in crash numbers. In a second, survey-based dataset, a 10 per cent higher wage rate was associated with a 34 per cent reduction in accident incidence. For the third dataset, a 10 per cent higher mileage rate reduced crash probability by 21 per cent.

The authors conclude that:

"It is difficult to come up with a single summary estimate of the effect of driver pay, as elasticities vary across datasets and model specifications, but conservatively we can say that the relationship between safety and pay probably is better than 2:1."

"...driver pay has a strong effect on safety outcomes. These results are consistent with economic theory because we expect that carriers pay drivers according to their market value, and that value is determined by their personal employment history, driving record, training and education experience, driving skills, temperament, and other unmeasured factors. Since very few of the drivers studied in our datasets are union members, we expect that the

123 Belzer et al (2002), op cit
124 This refers to the difference between the mean wage rate and a rate 10% higher than mean. The authors point out that the elasticities involved change at different remuneration levels.


*differences in safety outcomes are likely due to different individual characteristics for which they are paid differentially.*

That is, firms that pay higher wages are able to recruit higher quality drivers, with safety performance representing an important aspect of driver quality. Importantly, this proposition differs from that underlying the safe rates concept - i.e. that a given cohort of drivers will drive in a less safe manner as a result of financial pressures arising from low remuneration levels. That said, Rodriguez et al,\(^{126}\) who undertook further analysis of one of the datasets used by Belzer et al,\(^{127}\) did find that a cohort of existing drivers demonstrated improved safety performance following a pay increase.

5.1.4.1.2   **Rodriguez et al (2006)**\(^{128}\)

As noted, this paper is not independent of Belzer et al,\(^{129}\) in that it further analyses one of the data sets used in the earlier study. This data relates specifically to employee drivers within a single firm which moved to substantially increase its pay rates at a particular point in time.

As would be expected, given the use of a common data set, this study also finds a strong correlation between driver pay rates and accident involvement. Rodriguez et al\(^{130}\) find that a 1 per cent increase in pay rates from median levels leads to a 1.33 per cent decrease in crash risk. However, importantly, the authors find a non-linear relationship between these two variables. More notably, having mapped the relationship between remuneration rates and crash involvement for a wide range of remuneration rates, they note that the size of the effect of increased remuneration on crash risk not only declines with further pay rises, but ultimately turns negative. Graph 5.1, reproduced from Rodriguez et al, demonstrates the estimated relationship.

\(^{125}\) ibid
\(^{126}\) Rodriguez et al (2006), op cit
\(^{127}\) Belzer et al (2002), op cit
\(^{128}\) Rodriguez et al (2006), op cit. **Note:** Rodriguez and Belzer are 2 of 3 co-authors in both of the studies cited.
\(^{129}\) Belzer et al (2002), op cit
\(^{130}\) Rodriguez et al (2006), op cit
The authors note that increases in remuneration initially reduce crash incidence, but at a declining rate. Describing the above function as a whole, they state:

"[The graph] shows the change in crash probability as NEWPAY varies from 17 cents per mile to 47 cents per mile, with BASEPAY held at 17 cents per mile and all variables held at their median. At low pay levels, the net effect of a higher pay rate is lower crash risk, though the effect reduces incrementally and eventually reverses, controlling for other factors."\textsuperscript{131}

Speculating on the reasons for this apparently counter-intuitive outcome, the authors state:

"It is possible that the motivational effect of higher pay decreases over time, or that drivers adjust their recurrent financial commitments upward in the relatively short run after a pay increase."\textsuperscript{132}

Beyond this brief speculation, the authors offer no further analysis of the U-shaped nature of the function or comment on its implications for policy.\textsuperscript{133} This is particularly surprising given that the function estimated suggests a high degree of sensitivity of crash probability to remuneration levels, even around the ‘optimal’ level. For example, Graph 5.1 shows that a change of 9 cents in either

\textsuperscript{131} ibid
\textsuperscript{132} ibid
\textsuperscript{133} The author of the current paper previously contacted Rodriguez to seek more detail on his views on this issue. However, while a substantive response was promised, none was ultimately forthcoming.
direction from the optimum level of 31 cents/mile will increase crash probability by about 100 per cent. A 9 cent increase in remuneration is equal to about a 29 per cent increase from a 31 cent base.

Of note, the Rodriguez et al study also finds that the relationship between remuneration and safety does not solely depend on the ability of firms paying higher wages to recruit higher quality drivers who have better safety performance. Rather, they note that "for drivers employed during the lower pay regime and retained in the higher pay regime, crash incidence fell." Again, while the authors briefly speculate on the reasons for this, they offer no further analysis.

In sum, while the Rodriguez et al study uses one of the same data sets employed by Belzer et al, the implications for policy of its conclusions are, arguably quite different. The U-shaped relationship found to exist between remuneration and safety suggests practical difficulties in determining optimum remuneration levels from a safety perspective and the potential for significant safety costs to result if regulated remuneration levels fail to identify this optimum level accurately. Moreover, the authors' suggestion that drivers may "...adjust their recurrent financial commitments upward in the relatively short run after a pay increase" indicates a view that any observed improvement in safety performance due to increased remuneration may prove to be transient in nature.

5.1.4.1.3 Nafukho et al (2007)\textsuperscript{134}

Another more recent study of this issue is that by Nafukho et al.\textsuperscript{135} This study consists of a regression analysis conducted in respect of six variables considered to be related to accident risk. Two of these variables - salary and paid time off - are remuneration related. The authors found that the six variables all have statistically significant impacts on accident risk. However, the extent of the relationship between the remuneration variables and accident risk was found to be substantially smaller than the relationships estimated in the Belzer et al\textsuperscript{136} and Rodriguez et al\textsuperscript{137} studies. Specifically, the six variables were found \textit{in total} to explain only 3.2 per cent of the variation in accident rates, while paid time off and salary were among the least significant variables, as demonstrated in Table 5.3 below, reproduced from Nafukho et al.\textsuperscript{138}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Variable & Coefficient & Standard Error & t-Value & p-Value \\
\hline
Salary & 0.25 & 0.05 & 5 & 0.001 \\
Paid Time Off & 0.15 & 0.03 & 5 & 0.001 \\
 purchased fuel & 0.30 & 0.06 & 5 & 0.001 \\
Revenue & 0.22 & 0.04 & 5 & 0.001 \\
Driver Expenses & 0.18 & 0.03 & 5 & 0.001 \\
Traffic Conditions & 0.12 & 0.02 & 5 & 0.001 \\
\hline
\end{tabular}
\caption{Regression analysis of accident risk factors.}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Variable & Coefficient & Standard Error & t-Value & p-Value \\
\hline
Salary & 0.25 & 0.05 & 5 & 0.001 \\
Paid Time Off & 0.15 & 0.03 & 5 & 0.001 \\
 purchased fuel & 0.30 & 0.06 & 5 & 0.001 \\
Revenue & 0.22 & 0.04 & 5 & 0.001 \\
Driver Expenses & 0.18 & 0.03 & 5 & 0.001 \\
Traffic Conditions & 0.12 & 0.02 & 5 & 0.001 \\
\hline
\end{tabular}
\caption{Regression analysis of accident risk factors.}
\end{table}

\textsuperscript{134} Nafukho et al (2007), op cit
\textsuperscript{135} ibid
\textsuperscript{136} Belzer et al (2002), op cit
\textsuperscript{137} Rodriguez et al (2006), op cit
\textsuperscript{138} Nafukho et al (2007), op cit
Table 5.3: Stepwise regression analysis using cost of crash, miles per month, safety bonus, paid
time off, and age to predict the number of crashes

<table>
<thead>
<tr>
<th>Variables</th>
<th>R^2 Change</th>
<th>R^2 Change</th>
<th>F Change</th>
<th>P Change</th>
<th>β</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of crash</td>
<td>.012</td>
<td>.012</td>
<td>172.87</td>
<td>.000</td>
<td>.11</td>
</tr>
<tr>
<td>Miles per month</td>
<td>.021</td>
<td>.009</td>
<td>128.09</td>
<td>.000</td>
<td>.12</td>
</tr>
<tr>
<td>Safety bonus</td>
<td>.027</td>
<td>.006</td>
<td>93.34</td>
<td>.000</td>
<td>-.08</td>
</tr>
<tr>
<td>Paid time off</td>
<td>.030</td>
<td>.003</td>
<td>41.41</td>
<td>.000</td>
<td>-.07</td>
</tr>
<tr>
<td>Age</td>
<td>.031</td>
<td>.001</td>
<td>17.15</td>
<td>.000</td>
<td>.03</td>
</tr>
<tr>
<td>Salary</td>
<td>.032</td>
<td>.001</td>
<td>9.21</td>
<td>.002</td>
<td>.05</td>
</tr>
</tbody>
</table>


Thus, while they similarly find a statistically significant link between remuneration and accident
involvement, it is clear that Nafukho et al’s results in relation to the estimated size of the coefficient
- that is, the extent of the relationship between safety performance and remuneration - are very
different from those of Belzer et al. Moreover, the finding of a positive but small relationship
between these variables is also consistent with those of a study carried out by Monaco and Williams
and reported in two published papers.

5.1.4.1.4 Monaco & Williams (2000)\textsuperscript{140}

Monaco and Williams (2000)\textsuperscript{141} find that a $0.10 per mile increase in driver pay yields a 1.76 per cent
reduction in accident involvement. The reported average rate per mile for the study cohort was
$0.313, indicating that a $0.10 per mile increase would equal to an increase in remuneration of 32
per cent. Thus, the authors’ conclusions suggest that, to achieve a 1 per cent reduction in accident
involvement rates, a pay increase of 18.2 per cent would be required. This finding suggests, in
common with that of Nafukho et al,\textsuperscript{142} above, that increases in driver remuneration would be likely
to constitute a relatively ineffective initiative to improve safety.

The authors also found that payment methods were correlated with accident involvement rates,
however, their study does not differentiate between hourly rates and per kilometre rates, but
between mileage rates and rates based on a percentage of revenue. The authors find that drivers
paid a percentage of revenue have an 18 per cent greater accident involvement than those paid on a
per mile basis. They state that:

\textit{"This is not surprising because a driver who is paid by the mile typically gets paid the same
amount per mile regardless of the revenue generated by the load … Drivers who are paid a

\textsuperscript{139} op cit
\textsuperscript{141} See also: Williams, E., & Monaco, K. (2001). ‘Accidents and hours-of-service violations among over-the-road drivers.’
\textsuperscript{142} Nafukho et al (2007), op cit
percentage of revenue, primarily owner-operators, tend to drive more miles and run more loads in order to compensate for any empty or low-revenue loads."143

However, despite the finding that owner-operators predominate among those paid a percentage of revenue, the authors find that:

"The rates of accidents and logbook violations are remarkably similar across employment status, with roughly 15% of those in each group reporting an accident in the 12 months prior to the interview".144

This is consistent with other findings, discussed below, which indicate that owner drivers have safety performance that is as good or better than that of employee drivers, despite in some cases being found to exhibit a higher level of unsafe behaviours.

Also of note are the authors' findings that, while accident involvement rates unsurprisingly tend to increase with annual mileage driven, they do so at a less than proportionate rate, so that accident involvement per mile driven was lower for drivers completing the highest average mileage: while 10 per cent of drivers covering 50,000 miles or less in the previous year had been involved in an accident, this rose to 20 per cent among the cohort driving more than 160,000 miles.

5.1.4.1.5 Elkington & Stevenson (2013)145

Elkington and Stevenson note, in respect of the literature linking driver remuneration and safety, that:

"While the role of compensation and driver economic rewards on commercial vehicle driver behaviour and safety outcomes was the focus of some research in the 1990s and early 2000s, there has been little research on this in recent years."146

The Heavy Vehicle Study was a case control study conducted in NSW and Western Australia from 2008 to 2011 to explore the size, direction and interaction of the risk factors for long distance heavy vehicle crashes (across both the owner driver and employee driver sectors). Cases were drivers of heavy vehicles with a gross vehicle mass of 12 tonnes or more on a long distance trip who had a police attended crash in these two states during the study period.

The authors considered, inter alia, the impact of the incentive effects of different payment systems on safety performance, as distinct from the actual level of remuneration paid. Summarising this research, they cite Mayhew and Quinlan (2006)147 as finding that pay levels and systems together with work/scheduling pressures are associated with dangerous work practices (speeding, excessive hours and drug use) and work-related injuries but note that there was little research which could

143 Monaco and Williams (2000), op cit
144 ibid
145 Elkington, J. & Stevenson, M. (2013), op cit
146 ibid
enable quantification of the "... size and nature of the relationship between payment approaches and the risk of crashing among long distance heavy vehicle drivers." Moreover:

"While Williamson et al (2001) reported a clear link between trip-based pay structures, drug use and experiences of fatigue breaches of driving hours regulations, there is little evidence on the relationship between crash risk and performance-based pay structures, including incentive payment for early delivery or penalties for late delivery, piece rate payments (trip rate, per kilometre or measures of load, or some combination of these approaches) versus set salaries."  

Payment schedules were among the factors assessed for potential correlation with accident involvement, with the major payment types identified being payment schedules based on a kilometre rate, trip rate or flat hourly rate. The authors found:

"...no significant differences between cases and controls on the types of payment schedules they were being paid under for the week prior to the crash (for cases) or the week prior to the interview (for controls) except for the category "other" which comprised things such as payment by the palette, tonnage, or a mix of different payment types packaged together."

That is, the authors found no greater accident involvement probability for drivers paid on a per trip or per kilometre basis, compared with those paid on an hourly basis.

The authors also compared the experience of cases and controls (i.e. those who had and had not had an accident during the study period) in relation to a range of the payment-related factors that have been highlighted within the context of the policy discussion of the safe rates issue. The authors found no significant links between likelihood of crash involvement and payment for loading or unloading time, hours of paid work or hours of unpaid work. These conclusions are notable in that these factors are frequently cited as being significant contributors to drivers receiving low total remuneration levels and, therefore, as contributing to increased accident risk.

The authors did, however, find that a significantly smaller number of the drivers receiving incentive payments had been involved in an accident (0.6% vs 2.9% of the controls). However, the nature and extent of these incentive payments were not discussed.

5.1.4.1.6 Britto et al (2010)

Britto et al differs from the above studies in that, rather than focussing solely on driver remuneration, the authors examined both the relationship between carriers' financial performance (estimated as net profit, in contrast to some earlier studies which used cash flow measures) and driver remuneration on three measures of safety performance: crash involvement, plus two measures of safety risk: the driver safety evaluation area (DRSEA) score and the vehicle safety

149 ibid. Those receiving payment on a basis included in this "other" category were found to be significantly less likely to have been involved in an accident during the study period.
150 ibid, p 24
151 Britto et al (2010), op cit
evaluation area (VHSEA) score. A one year lag was used, so that safety performance was measured for the year following the financial performance data adopted.

The study found statistically significant correlations between net profit and all three measures of safety performance. Higher driver wages were also found to be significantly associated with lower accident rates, however, the size of this effect was found to be almost an order of magnitude smaller than that of net profit (co-efficient - 0.15 vs - 1.32). Hence, Britto et al’s findings in relation to the impact of driver wages can be seen as broadly consistent with those of Nafukho et al in that the observed relationship between driver remuneration and accident involvement was statistically significant but small in size. Consistent with these findings, the policy discussion contained in the article focuses entirely on the issue of firms financial performance.

5.1.5 Relationship between driver employment status and accident history

A further strand of research considers the question of the potential relationship between driver status and accident involvement. Some studies have focused specifically on the owner driver sector, while others have also sought to identify any differences in accident involvement between employee drivers working in small, medium and large fleets and others have focused on whether drivers in particular fleets are unionized or not.

Indirect indicators of safety performance by employment type have been reported by Hensher et al (1991) and Williamson et al (2009). Hensher et al found that, while stimulants were widely used in the industry, owner drivers were the least likely group to use them. Williamson et al reports similar findings, stating that "drivers employed by small or medium size companies were also at least twice as likely as owner drivers to report using drugs."

Similarly, studies that have considered accident involvement by employment type generally found owner drivers to have similar or better safety performance than employee drivers. Cantor et al analyses the owner driver sector specifically while Williamson et al includes both employee and owner drivers in the analysis, focussing specifically on the short-haul sector. Cantor et al identified characteristics and incentives that were unique to the owner driver sector and likely to affect driver behaviours in relation to safety and tested them in comparison to rates of crash involvement. Williamson et al adopted a similar research model to study a range of occupational health and safety related criteria across the different types of drivers (permanent employees, owner drivers and casuals) to determine whether there were differences between employee and owner drivers in terms of incidence of work-related illness or injury.

152 Nafukho et al (2007), op cit
153 Hensher et al (1991), op cit
155 Hensher et al (1991), op cit
156 Williamson et al (2009), op cit
158 Williamson et al (2009), op cit
159 Cantor et al (2013), op cit
5.1.5.1 Cantor et al (2013)\textsuperscript{160}

The authors of this study note the paucity of research on this specific issue, stating that "...there is little empirical work directly comparing owner–operator safety performance to that of employee drivers." They sought to test hypotheses that are very closely related to those that underlie the safe rates model. Specifically, the authors tested the following hypotheses:

- Owner–operators need to exceed the mandated hours-of-service in order to meet equipment payments and operating/maintenance expenses and earn a 'living wage'.
- In a tight financial position, owner–operators could potentially delay needed maintenance or short-circuit the required repairs.
- Owner–operators may be difficult to manage and less likely to accept the rigor and structure required by carriers. Lack of control over the owner–operators may put carriers in a position of having to expedite shipments and to require drivers to exceed safe operating hours in order to meet tight delivery schedules.

Cantor et al hypothesised that these dynamics would result in a greater likelihood of driver and equipment violations and increased crash likelihood among owner–operators as compared to employee drivers. These hypotheses were then tested using major United States databases.

The results reported by the authors are all statistically significant at the 99 per cent probability level. They confirm the first two hypotheses tested, showing that owner drivers have higher levels of:

- driver 'out of service' violations; and
- vehicle 'out of service' violations;

than do employee drivers. That is, owner drivers were found to have incurred a higher rate of infringements that led to the driver or the vehicle being suspended from operation.

However, while owner drivers were found to perform more poorly on these two indirect indicators of poor safety-related behaviours, the authors did not find that they also exhibited higher accident rates than employee drivers. Instead, they found that owner drivers were on average 22 per cent less likely to be involved in an accident than employee drivers. This result was statistically significant at the 99 per cent probability level.

The fact that the crash-involvement correlation has the opposite sign from that predicted strongly suggests that other factors are in play that have a stronger influence on crash involvement than do vehicle or driver violations. The authors propose one possible factor to explain this result:

"One possible explanation for this result is that owner–operators, as business entrepreneurs, recognize that a crash would seriously endanger their ability to continue in business. Accidents frequently involve significant vehicle repair with major cost implications and time..."

\textsuperscript{160}ibid
delays. Furthermore, while the vehicle is being repaired, it is not available to use in generating revenue.”

They also note that their result in relation to accident involvement is consistent with results from other studies, citing the following:

“In a comparison of fatalities of employee versus self-employed truck drivers, there is no statistically noticeable difference in frequency of occurrence (Monaco and Williams, 2000). Firm-level analysis of US motor carriers noted “significantly lower” accident rates with motor carriers using owner-operators and unionized employees (Dammen, 2005), while a direct comparison of different driver types in Australia showed owner-operators driving more miles on average, with one-sixth the level of accidents as company drivers (Williamson et al., 2009). The result is also consistent with documented evidence of strategies pursued by owner-operators to find ways to extend the life of their existing equipment such as driving at reduced speeds, avoiding mountainous roads, and taking lighter loads (Kvidera, 2009). Finally, if owner-operators are so independent, they would not respond to pressure from management to exceed safe operating hours.”

5.1.5.1.1  Williamson et al (2009)

This Australian study focuses on the short-haul sector, another relatively less studied area, and compares health and safety outcomes for permanent employees, casual employees and owner drivers across a range of occupational health and safety-related criteria. Table 5.4 is reproduced from this study.

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161 ibid
162 ibid
163 Williamson et al (2009), op cit
Table 5.4: Injury and work-related illness experiences over the past 12 months for the three driver groups (permanent, casual, owner driver)

<table>
<thead>
<tr>
<th>Vehicles</th>
<th>Employees, Permanent (N = 144) (per cent)</th>
<th>Employees, Casual (N = 30) (per cent)</th>
<th>Owner Drivers (N = 35) (per cent)</th>
<th>Equation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work-related Accident(s) in last 12 months</td>
<td>18.3</td>
<td>20</td>
<td>2.9</td>
<td>$X^2 (2) = 5.44, p &lt; 0.07$</td>
</tr>
<tr>
<td>Work-related illnesses in last 12 months</td>
<td>13.6</td>
<td>3.3</td>
<td>8.6</td>
<td>$X^2 (2) = 2.9, p = 0.24.$</td>
</tr>
<tr>
<td>Chronic work-related injury</td>
<td>36.6</td>
<td>6.7</td>
<td>22.9</td>
<td>$X^2 (2) = 10.7, p &lt; 0.005$</td>
</tr>
<tr>
<td>Workers’ compensation claim in past 5 years</td>
<td>39</td>
<td>24.1</td>
<td>5.7</td>
<td>$X^2 (2) = 15.3, p &lt; 0.001$</td>
</tr>
<tr>
<td>Violence related to truck driving</td>
<td>35.2</td>
<td>36.7</td>
<td>31.4</td>
<td>$X^2 (2) = 0.23, p = 0.89.$</td>
</tr>
<tr>
<td>General health questionnaire (mean, s.d.)</td>
<td>2.69 (3.9)</td>
<td>2.13 (2.6)</td>
<td>2.81 (3.3)</td>
<td>$F_{(2,204)} = 0.9, p = 0.4.$</td>
</tr>
<tr>
<td>Frequency of experience of fatigue (0 = rarely to 100 = always (mean, s.d.)</td>
<td>2.85 (2.33)</td>
<td>2.23 (1.63)</td>
<td>2.13 (1.96)</td>
<td>$F_{(2,196)} = 2.1, p = 0.13$</td>
</tr>
</tbody>
</table>


As highlighted by Cantor et al, the percentage of owner drivers that had experienced a work-related accident in the previous year, at 2.9 per cent, was found to be less than one sixth of that for either permanent employees (18.3 per cent) or casual employees (20.0 per cent). Also notable is the fact that the score for frequency of experience of fatigue was lowest for owner drivers (2.13 vs 2.23 and 2.85 for casual and permanent employees respectively). Finally, the owner drivers rated most highly on the general health questionnaire.

The context for these results indicating superior safety performance among owner drivers is one of lower average incomes among this group than employee drivers. While the income difference cited by the authors is relatively small, at 6 per cent, this result appears to be relevant to the Australian context in which it is widely believed that owner drivers have lower income levels on average than employees, as discussed below.

5.1.6 Remuneration vs other relevant factors affecting safety management

5.1.6.1 Mooren et al (2014)

This, the most recent study identified, "reviews the literature concerning safety management interventions, that have been effective in reducing injury outcomes in occupational health and safety (OHS) and road safety, and assesses their applicability to reducing crash and injury outcomes in heavy vehicle transport."
The authors highlight the fact that they had found "...little robust empirical research in the heavy vehicle transport sector providing evidence of effective safety management characteristics that reduced crashes and injuries"167 and that, as a result, they had also reviewed research on safety management practices, safety culture and injury risk assessment in other areas of transport and work health and safety (WHS) that purported to directly influence crash and/or injury outcomes.

The authors found the strongest evidence for the impact on safety outcomes of management commitment, safety training and scheduling and journey planning, each of which were confirmed as statistically significant predictors of safety outcomes in 10 or more organisation and individual level studies, including both those focused on heavy trucking as well as those that studied other occupational sectors. Less strong evidence (stated to be support for links with safety outcomes in at least four studies) was found for the role of worker participation in WHS, vehicle conditions or physical work environment, the size of the organisation and type of freight and incentives.

Table 5.5 below is reproduced from Mooren et al168 and summarises the results of their literature review in terms of the number of studies of different types that have found associations between particular variables and safety performance.

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167 The authors noted that: "In fact, despite finding 124 potentially relevant studies, only 42 provided evidence of statistically significant links between occupational characteristics and safety outcomes. Of these, only 17 studies (40%) focussed on comparing differences at an organisation or company level. The majority of studies into the characteristics that predict improved safety outcomes used the individual person, group or vehicle as the unit of study. While this latter evidence is useful, it may not be possible to understand whether the relationship between characteristics and safety outcomes operate at the organisation or system level or whether they are simply due to individual differences."

168 Mooren et al (2014), op cit
Table 5.5: Summary of the number of studies showing significant relationships between the characteristic and safety outcomes for organisation-level, individual level and intervention studies.

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Organisation level studies</th>
<th>Individual level studies</th>
<th>Intervention studies</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety training</td>
<td>6</td>
<td>1</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td>Management commitment</td>
<td>5</td>
<td>11</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Scheduling/journey planning</td>
<td>4</td>
<td>6</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Communication/support</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Vehicle conditions or physical work environment</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Risk analysis/corrective actions</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Incentives</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Worker participation in OHS</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Hiring/retention</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Safety or quality management accreditation</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Size of organisation/number of trucks</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Freight type</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Financial performance</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Safety and return to work policies</td>
<td>0</td>
<td>6</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Prior safety violations/crashes/incidents</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Pay systems and rates</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Worker characteristics: driver attitudes/behaviour/age/health</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Vehicle safety technologies</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>


Table 5.5 above shows that the authors identified four studies finding associations between pay systems and rates and safety performance and that this represents a significantly smaller degree of research support for this factor as a determinant of safety performance than was found for several other factors. Importantly, however, among the limitations of the review highlighted by the authors are the following:

"First the absence of evidence in this review does not signify that a particular characteristic is not important. The analysis in this review only looked at evidence of characteristics shown to be important across studies, it did not look at characteristics that have been tested and shown not to be important nor does it comment on characteristics that have not been tested..."
at all. The value of this review is that it distils those characteristics that have been tested and demonstrated to be related to safety outcomes to date.\textsuperscript{169}

5.1.7 Summary of research findings

Concerns regarding a possible link between remuneration and safety began to be highlighted at the time of the economic deregulation of the trucking industry in the United States, over 30 years ago. These concerns meant that the relationship has been studied over an extended period, albeit that a range of different relationships have been measured and there are in many cases few studies addressing particular, fundamental relationships.

Early research on the United States experience, where the economic deregulation of the industry had substantial impacts in lowering average freight rates, generally concluded that no negative effect on safety had resulted. Subsequently, most or all other OECD countries followed suit with economic deregulation. Despite the issue of remuneration and safety remaining under review throughout the post-deregulation period, no country is known to have moved to reintroduce price or other economic regulation.

In more recent times, ACIL-Tasman\textsuperscript{170} reviewed the literature on the issue of remuneration and safety performance on behalf of the Australian Transport Council.\textsuperscript{171} ACIL-Tasman noted that this literature was limited in extent and of variable methodological quality, while the conclusions reached also differed widely. They concluded that:

"...examination of recent Australian literature reveals that there is little, if any, difference between the safety performance of owner operators, small operators and employee drivers". Conversely, "there are a number of international studies that identify a much stronger link between size of firm, freight rates and safety performance".\textsuperscript{172}

ACIL-Tasman cited Belzer et al\textsuperscript{173} and two other references (Corsi et al (2002)\textsuperscript{174} and Moses and Savage (1994))\textsuperscript{175} in support of this latter conclusion. However, of these three studies, only Belzer et al\textsuperscript{176} reviewed the link between driver pay and accident involvement. The other two studies instead focus on links between firm characteristics and safety performance, with Corsi et al\textsuperscript{177} finding that "...firms that exhibit characteristics that imply better driver safety performance tend to have higher

\begin{flushleft}
\textsuperscript{169}Mooren et al (2014), op cit  
\textsuperscript{170}ACIL-Tasman (2003), op cit  
\textsuperscript{171}The Australian Transport Commission (the CoAG Ministerial Council comprising all transport ministers) appointed the Standing Committee on Transport (SCOT) Working Group. This group commissioned the 2003 ACIL-Tasman report.  
\textsuperscript{172}ACIL-Tasman (2003), op cit  
\textsuperscript{173}Belzer et al (2002), op cit  
\textsuperscript{176}Belzer et al (2002), op cit  
\textsuperscript{177}Corsi et al (2002), op cit
\end{flushleft}
finding that accident rates tend to decline with increasing firm size. Neither of these relationships is directly related to the underlying policy rationale for the RSR Act.

A discussion paper released by the Standing Committee on Transport Working Group following their review of the ACIL-Tasman report concluded, as one of its major findings, that "Evidence relating financial pressures to road safety is mixed and inconclusive." It states that Australian and overseas research does not present a persuasive road safety-based case for Governments. This reflects the fact that, while the research shows a link between low remuneration and unsafe on-road practices such as speeding and driving excessive hours, it does not appear that the detrimental effects noted in the research are being translated into poor road safety outcomes as there is no significant difference between the safety performance of owner drivers, small operators and employee drivers. The report noted that "...a road safety case for addressing owner-driver financial returns cannot be made at this time."

Quinlan challenged this conclusion, first arguing that none of the research reaches the contrary conclusion - i.e. that financial pressure is positively associated with road safety - and that such conclusions are required if the results are reasonably to be described as ‘mixed’. This contention, while arguable, is not an accurate summary of the literature. As noted above, at least one study, that of Hunter and Mangum, did find statistically significant relationships with the opposite sign to that hypothesised, while Rodriguez et al also demonstrated a negative link between remuneration and safety within a certain range. Moreover, Cantor et al (2013) found both lower remuneration and lower accident involvement for owner drivers compared with employees, while Williamson et al (2009) also found substantially lower accident rates among owner drivers, albeit that their data do not directly confirm the lower average remuneration of this group.

Quinlan and Wright also argue that research evidence is commonly mixed (in the sense that not all research supports the hypothesis being tested) and that "The real question is whether there is a weight of evidence favouring one interpretation over another." Quinlan and Wright argue that this ‘weight of evidence’ does, indeed, exist.

However, as discussed above, only a small number of studies have found strong links between driver remuneration and accident involvement - i.e. the issue at the heart of the RSRS model - as distinct

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178 ACIL-Tasman also cited research by the US General Accounting Office which found links between firm profitability and safety indicators. See: General Accounting Office (1991), Freight Trucking: A Promising Approach for Predicting Carriers' Safety Risks, General Accounting Office, Washington, DC.
179 Moses & Savage (1994), op cit
180 ACIL-Tasman (2003), op cit
182 Ibid, p.9
183 Quinlan (2001), op cit
184 Hunter and Mangum (1995), op cit
185 Rodriguez et al (2006), op cit
186 Cantor et al (2013), op cit
187 Williamson et al (2009), op cit
188 Quinlan and Wright (2008), op cit
from linkages between various safety indicators, both direct and indirect, and other financial variables, many relating to firm performance. Moreover, the studies in this group draw quite different conclusions regarding the specific nature and extent of the links between safety and driver remuneration, in ways that are highly significant from a policy perspective. While Belzer et al\textsuperscript{189} and Rodriguez et al\textsuperscript{190} both conclude that remuneration has a strong impact on safety, the latter finds that the direction of the correlation reverses at higher levels of remuneration, indicating that remuneration levels that are too high are likely to be associated with safety performance as poor as those that are too low. This raises the issue of whether and how it would be possible to identify ‘optimal’ remuneration levels from a safety perspective. Conversely, Nafukho et al\textsuperscript{191} finds that, while a significant correlation exists, the size of the impact is very small. Monaco and Williams\textsuperscript{192} find similarly small coefficients and highlight firm-level financial performance as the major factor in links between financial variables and safety performance.

The United States FMCSA in summarising the literature on remuneration and safety in the 2007 LTCCS stated that:

"... a number of studies purport to draw a relationship between driver compensation and safety outcomes, for example, that increased pay is associated with a reduction in crashes. The reviewers offer a cautionary note to these assertions: generally, it is not possible to understand the true nature of the relationship between these two factors. Specifically, it may be unclear whether cash bonuses for safe driving are responsible for higher pay, or that offering better pay at a company improves its ability to recruit and hire greater numbers of quality drivers.\textsuperscript{193}"

A further strand of the literature is arguably particularly relevant in the Australian context, in which concerns regarding low remuneration levels have historically been focused largely on the owner driver sector, as reflected \textit{inter alia} in the fact that all three sets of state government legislation addressing driver remuneration focus on this area. As noted above, Cantor et al,\textsuperscript{194} whose own study found significantly lower accident involvement rates among owner drivers than employee drivers, also summarised previous literature on this subject as generally demonstrating similar results. Such results suggest, at the least, that any negative impact on safety due to low remuneration is being more than offset by other factors bearing on the owner driver sector.

In sum, review of the literature suggests likelihood that some correlation between various financial measures (including firm financial performance and driver remuneration) and safety performance exists, at least where very low levels of remuneration are concerned. However, both the nature and extent of the impact on safety performance of a change in driver remuneration is highly uncertain.

\textsuperscript{189} Belzer et al (2002), op cit
\textsuperscript{190} Rodriguez et al (2006), op cit
\textsuperscript{191} Nafukho et al (2007), op cit
\textsuperscript{192} Monaco & Williams (2000), op cit, and Williams and Monaco (2001), op cit
\textsuperscript{193} FMCSA (2007), op cit
\textsuperscript{194} Cantor et al (2013), op cit
As noted above, the recently published literature review by Mooren et al\textsuperscript{195} suggests that this conclusion remains current, with only four studies showing significant links between pay systems and financial performance being identified and, by contrast, much more extensive evidence being identified addressing the links between safety performance and a range of other variables.

Given these conclusions on the state of the research literature, the fact that numbers of stakeholders have lobbied the Tribunal to conduct further research into this issue is unsurprising. The Tribunal is understood not to have taken up this suggestion to date, with no reference to such research being included in its current annual work program. It may be speculated that the Tribunal has taken the view that its establishment by the previous government indicates that government has taken a firm view on the issue of the remuneration and safety link and that it this should be regarded as settled. However, while institutionally understandable, such a view could have a negative impact on the Tribunal’s effectiveness by limiting its ability to understand the precise nature and extent of any links and, consequently, key factors affecting the potential effectiveness of its work.

5.2 Remuneration levels in the road transport industry

As noted above, even if it is accepted that there is a significant linkage between driver remuneration and safety performance, increases in remuneration are only likely to have a discernible positive impact on safety if ex ante remuneration levels are low. That is, the safe rates hypothesis is that unsafe driving is a response to severe economic pressure brought about by very low pay rates. An understanding of the current remuneration levels in the Australian road transport sector is therefore fundamental to reaching a view on whether remuneration is likely to be an important factor influencing road safety performance in practice in the current context. Remuneration arrangements differ between owner drivers and employees. Hence, this issue is addressed separately for the two sectors.

5.2.1 Owner driver remuneration

It is widely believed that owner drivers have experienced low net income levels over a long period. This is reflected in the fact that the legislative initiatives taken in Victoria, NSW and Western Australia to support heavy vehicle driver remuneration levels have all focused on this sector of the industry. However, despite widespread acceptance of this view, data on this issue are extremely limited.

A widely cited figure was calculated by ACIL-Tasman and included in its report to the Standing Council of Transport Ministers.\textsuperscript{196} ACIL-Tasman found that the average pre-tax profit of non-employing road transport businesses was $20,637. This figure was calculated using unpublished ABS data for 1999-2000.\textsuperscript{197} This notional profit figure effectively includes the return to both the labour supplied by the owner driver and the capital employed (i.e. the owner driver’s equity in the value of

\textsuperscript{195}Mooren et al (2014), op cit
\textsuperscript{196}ACIL-Tasman (2003), op cit
\textsuperscript{197}ACIL-Tasman states that this unpublished ABS data is ”experimental taxation data using taxation data and data from the ABS economic activity survey” (p 13).
his truck). Thus, to derive an effective ‘wage equivalent’ a normal rate of return on the capital employed would need to be deducted from this figure.

The Victorian Government’s guideline rates cite average truck values of between $80,441 (12 tonne rigid truck) and $112,117 (6 axle semi-trailer). An average of these figures is around $96,279. Applying the average 10 year government bond rate of around 5.2 per cent\(^{198}\) as a conservative proxy for a normal rate of return on capital, this suggests that return on capital should be around $5,007. However, it is likely that most owner drivers either lease their truck or have substantial borrowings against the value of their truck. In either case, the owner driver’s equity in the truck will be very much smaller than its value. For this reason, a simplifying assumption can be made that the above figure of $20,637 constitutes a pure return on labour inputs—that is, it is effectively assumed that equity is zero.

The above average income figure relates to 1999-2000 and, as noted, was calculated based on an analysis of unpublished data. The Review contacted the ABS to determine whether similar data were available for more recent periods, to enable an updating of this calculation. However, it was informed that the relevant data analysis has not subsequently been replicated by ABS, so that it is not possible to develop equivalent average profit estimates using current (or more recent) data.

The Review also attempted to identify other, more recent, estimates of owner driver incomes. These efforts included asking a range of stakeholders to identify any relevant data. However, no high quality data were identified. In this context, it is noted that the RIS prepared in respect of the Road Safety Remuneration Bill in 2011 also indicated that the ACIL-Tasman estimate remained the "most recent data on owner-driver remuneration". Given this, attempts have been made to update the ACIL-Tasman estimates.

The BITRE publication *Freight Rates in Australia 1964-65 to 2007-08*\(^{199}\) shows that real road freight rates in 2007-2008 were little different from those paid in 1999-2000: rates increased by only 4.5 per cent over the eight-year period, while substantial real increases in fuel costs are likely to have more than offset the impact of this marginal increase on owner driver incomes.\(^{200}\) The ABS *Producer Price Index* (ABS Cat. 6427.0)\(^{201}\) provides estimates of changes in road freight prices on a quarterly basis, which can be expected to be closely correlated with owner driver incomes. The Producer Price Index (PPI) increased by 59.8 per cent between December 1999 and December 2013. This compares with a 51.7 per cent increase in the all groups Consumer Price Index (CPI) over the same period,\(^{202}\) indicating that there has been very little change in real road freight rates over the past 13 years while real fuel costs have risen over the period. Given this, real driver incomes are unlikely to have increased.

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200 See BITRE Information Sheet No. 28, Figure 1 and Table 1.
201 Australian Bureau of Statistics (Dec 2013), *Producer Price Index* (cat. 6427.0).
202 CPI all groups Australia Dec 2013 = 104.8, Dec 1999 = 69.1. 104.8/69.1 = 1.517
If it is assumed that owner driver wages have remained approximately constant in real terms, as the above suggests, the PPI can be applied to the 1999-2000 average income figure cited above to obtain an estimate of current average owner driver incomes. The average income figure of $20,634 is multiplied by 1.598\textsuperscript{203} to obtain an equivalent 2013 average income of $32,973. This figure can be compared with the notional award wage that would be payable to obtain an estimate of the difference between average owner driver incomes and minimum employee driver incomes and, by implication, the increase in driver payments that would occur were the Tribunal to seek to equalise the two rates via future RSRO.

Two awards currently cover the majority of the road transport industry, the *Road Transport and Distribution Award 2010* (RTD Award) and the *Road Transport (Long Distance Operations) Award 2010* (LDO Award). As the name suggests, the LDO Award applies to long distance operations, while the RTD Award applies in other cases. The current award rate for an articulated vehicle driver is $18.78 per hour under the RTD Award and $19.60 per hour under the LDO Award.\textsuperscript{204} ACIL-Tasman\textsuperscript{205} estimated that the average number of hours worked by full time owner drivers was 51 per week, using ABS data for 2002.\textsuperscript{206} No more recent published estimate of the hours worked by this group has been found. However, ABS data for 2012 show that the average number of hours worked by employee drivers was 46.6.\textsuperscript{207} Given the likelihood that owner drivers would work longer hours than employee drivers on average, particularly in the context of the income pressures identified, it appears that the 2002 estimate of 51 hours is likely to remain broadly reflective of the current number of hours worked on average by owner drivers. Hence, this estimate is used in the following calculation.

Using the RTD Award as a base, wherein a standard working week is 38 hours, this suggests that 13 hours per week would be payable at overtime rates. It is assumed conservatively that these hours would all be paid at time and a half, rather than double time.\textsuperscript{208} An award wage for a 51 hour week, using these assumptions, under the RTD Award would be:

\[
\text{(}$18.78 \times 38\text{)} + \text{(}$18.78 \times 1.5 \times 13\text{)} = $1,079.85.
\]

This is equivalent to $56,306 per annum. This suggests that employee drivers working under the RTD Award and receiving only the award wage receive an average of $23,330, or 70.8 per cent, more than the estimated current average income for owner drivers, while employee drivers working under the LDO Award would receive slightly more again.

\hfill

\textsuperscript{203} i.e. the PPI is used, as per the above discussion.
\textsuperscript{204} Grade 6 driver rate. See: \url{http://www.commerce.wa.gov.au/LabourRelations/PDF/Awards/T/Transport_Workers_General_Award.pdf} (accessed 7 April 2014)
\textsuperscript{205} ACIL-Tasman (2003), op cit
\textsuperscript{206} Williamson et al (2001) similarly calculated an average work week of 55 among a sample of 1007 truck drivers interviewed at truck stops. The ABS data is obviously preferred due to its standing and the probability of a higher quality and more randomly selected sample being used.
\textsuperscript{207} ABS, *Employee Earnings and Hours*, ABS Cat. 6306.0. May 2012. Data for "truck drivers".
\textsuperscript{208} The RTD Award provides for the first two hours of overtime daily to be paid at 150%, with subsequent hours paid at 200%.
Moreover, the difference in earnings is likely to be greater than these calculations suggest, due to other allowances provided for under the award. For example, the LDO Award requires employee drivers to be paid for loading and unloading time, whereas this may not be the case under all owner driver contracts.

5.2.1.1 Other estimates: Proportions of drivers below ‘notional award’ remuneration

An alternative approach to assessing the income position of owner drivers was included in the RIS prepared by PwC and published in respect of the Road Safety Remuneration Bill in 2011. The data used was extracted from the ABS 2006 Census of Population and Housing.\(^{209}\) It included truck drivers working in the road freight sector and working more than 35 hours per week. The PwC RIS\(^{210}\) calculation used a ‘notional award’ rate of $600 per week. Those who worked more than 35 hours and receive $600 per week or less were considered underpaid in the model. It is not clear from the RIS how the ‘notional award’ rate of $600 per week was determined, however, it was potentially on the basis of using an income band with an upper bound that most closely approached the then current base award rates for heavy vehicle drivers. For comparison, the base (Grade 1) weekly award rate under the RTD award is currently $658.90, while that applicable to an articulated vehicle drivers (Grade 6) is $713.30 per week.

PwC reported that 29 per cent of owner drivers could be considered to be underpaid, within the terms of their model.\(^{211}\) The Review has updated this data, replicating the PwC approach but using data from the ABS 2011 Census of Population and Housing. Table 5.6 reports the result of this exercise.

Table 5.6: Number and proportion of drivers below notional award remuneration

<table>
<thead>
<tr>
<th>Weekly income band (as defined by 2011 Census)</th>
<th>Owner managers of incorporated enterprises</th>
<th>Owner managers of unincorporated enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative income(^{212})</td>
<td>28</td>
<td>55</td>
</tr>
<tr>
<td>Nil income</td>
<td>60</td>
<td>74</td>
</tr>
<tr>
<td>$1-$199</td>
<td>64</td>
<td>67</td>
</tr>
<tr>
<td>$200-$299</td>
<td>104</td>
<td>121</td>
</tr>
<tr>
<td>$300-$399</td>
<td>211</td>
<td>191</td>
</tr>
<tr>
<td>$400-$599</td>
<td>1003</td>
<td>667</td>
</tr>
<tr>
<td>Total</td>
<td>7935</td>
<td>6054</td>
</tr>
</tbody>
</table>

**Per cent ‘underpaid’**

<table>
<thead>
<tr>
<th></th>
<th>Owner managers of incorporated enterprises</th>
<th>Owner managers of unincorporated enterprises</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.5 per cent</td>
<td></td>
<td>19.4 per cent</td>
</tr>
</tbody>
</table>

**Source:** PricewaterhouseCoopers (2011), p.23.

Table 5.6 shows that between 18.5 per cent and 19.4 per cent of owner managers could be classified as underpaid, according to the PwC\(^{213}\) definition, based on the most recent census data, a somewhat


\(^{210}\) PricewaterhouseCoopers (2011), op cit

\(^{211}\) ibid

\(^{212}\) PricewaterhouseCoopers model does not appear to include negative income in its model.
lower figure than that derived on the basis of the 2006 data. However, as suggested above, these results would in both cases somewhat under-estimate the proportion of owner-managers who were receiving incomes below the award rate to which they would be entitled as employee drivers. Additionally, the weekly income earned from operating as an owner-manager also includes income from other sources such as interest, dividends or rents, further underestimating the proportion of owner-managers below the comparable award rate. If the proportion of owner-managers earning incomes in the next income band ($600 - $799 per week) is added to the ‘underpaid’ group, in recognition of these factors, the total proportion of underpaid owner-managers becomes 37.4 per cent in the case of incorporated enterprises and 35.3 per cent in the case of unincorporated enterprises.

Explaining the incidence of underpayment, PwC argued that lack of information on cost structures was likely to be a major factor initially while, in the medium term, the fact that owner drivers may be locked into truck leases, contracts and other commitments may account for their continuing to earn low incomes.\(^\text{214}\) This explanation is consistent with the views put by many stakeholders during the consultation process, which suggested that many owner drivers experienced good economic returns and that the lack of the business acumen required to run independent businesses would, in many cases, account for observations of low income levels among a minority of this group. The legislative approaches adopted in Victoria, NSW and Western Australia are predicated on the same approach, in that they focus on providing information and related tools to enable owner drivers to better manage their own interests.

The most recent modelling, using the approach adopted in the RIS in respect of the Road Safety Remuneration Bill, effectively concludes that over 80 per cent of owner drivers are not ‘underpaid’, at least in terms of the metric used in the RIS. While the data from the two sources are not directly comparable, this most recent data does appear to suggest a smaller gap between owner driver incomes and employee driver incomes than do the ACIL-Tasman estimates discussed above.

Finally, while the above analysis suggests that average owner driver remuneration is low, and has remained low over an extended period, some evidence suggests that there may be relatively wide variability in the financial performance of this group, with large numbers potentially being much better off than the average data would imply. ABS data from 2011 Census of Population and Housing indicates that 4007 owner drivers, representing close to a third of those surveyed, earned annual incomes over $65,000, and 1231 owner drivers (8.5 per cent) reported earnings over $104,000.\(^\text{215}\) This suggests that a proportion of owner drivers are able to command a premium price for provision of a higher quality service and potentially provides support to the views of some stakeholders that poor financial performance in this sector is often in large part a product of a lack of business skills.

\(^{213}\) ibid
\(^{214}\) ibid, p.24
5.2.2 Employee drivers

Most employee drivers in the road transport industry are covered by either the RTD Award or the LDO Award, although the Transport Industry (Cash in Transit) Award 2010 and the Waste Management Award 2010 would also cover some drivers.

The RTD award provides for hourly and weekly wage rates for a range of classifications and does not differentiate driving and non-driving time. By contrast, the LDO Award allows for drivers to be paid on either an hourly rate or a cents per kilometre basis, with the latter method being the default method where none has been nominated by the employer. In addition, the LDO Award differentiates between driving and non-driving hours, with the hourly rate (if used) being higher for the former.216 The LDO Award also explicitly provides for payment for loading and unloading, with these duties being paid at the same rate as the hourly driving rate. It requires that a minimum payment of one hour loading and one hour unloading per trip must be made where loading or unloading duties are required.

While awards provide a base level of remuneration, a large proportion of drivers appear to receive significantly over-award wages under the terms of various enterprise agreements. For example, according to comparative schedules of enterprise agreements published on the Tribunal’s website, a Grade 6 driver, whose award wage under the RTD Award is $713.30, is paid $1,029.02 under the Startrack Express agreement,217 while a Grade 7 driver is paid $953.42 under the Visy (Vic & SA) agreement.218

5.2.3 Aggregate data

The incidence of over-award payments clearly adds complexity to the issue of determining the actual remuneration levels paid. However, a market analysis prepared by Deloitte Access Economics for Coles Pty Ltd and included in the latter’s submission to the Review incorporated an international comparison of average truck driver wages, which compares Australian wages with those of the United States and the United Kingdom. Table 5.7, below, is reproduced from this report.219

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216 The driving rate is calculated by dividing the minimum weekly rate by 40, and multiplying by 1.3 (industry disability allowance) and 1.2 (overtime allowance).
Table 5.7: Average earnings for truck drivers and all occupations internationally

<table>
<thead>
<tr>
<th>Country</th>
<th>Average wage for all occupations</th>
<th>Truck driver wage</th>
<th>Percentage Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (weekly wages AUD$2012)</td>
<td>$1,123</td>
<td>$1,305</td>
<td>+16.3 per cent</td>
</tr>
<tr>
<td>United States (annual wages USD$2011)</td>
<td>$45,230</td>
<td>$41,250</td>
<td>-8.8 per cent</td>
</tr>
<tr>
<td>United Kingdom (weekly wages GBPE2012)</td>
<td>£490.3</td>
<td>£493.3</td>
<td>+0.6 per cent</td>
</tr>
</tbody>
</table>


Table 5.7 shows that, overall, truck driver earnings in Australia exceed average weekly earnings by 16.3 per cent. In contrast, truck driver earnings in the United Kingdom are approximately equal to average weekly earnings, while in the United States they fall 8.8 per cent below average weekly earnings. While this data compares wages in only a small number of countries, it is both recent and comprehensive, as well as being based on official data collections in each case.

Review of the source data for Australia indicates that the figures cited are those for average weekly cash earnings for all employees and all truck drivers respectively. However, this comparison is arguably not the most appropriate for use in comparing truck driver wages with the economy-wide average, as it does not account for two significant differences between the occupational profile of truck-drivers as a group and the economy-wide average. These are that:

- a higher proportion of truck drivers work full-time than is the case in the economy as a whole; and
- a higher proportion of truck drivers (indeed, presumably the total, given licensing requirements) are adults.

These differences can be corrected by comparing average truck driver wages with average wages for adult, full-time employees only. This comparison shows that average weekly cash earnings for full-time non-managerial adult truck drivers were $1,386, while those for all full-time non-managerial adult employees were $1,374. Thus, average full-time adult truck driver wages were $12 per week, or 0.9 per cent higher than average full time adult wages.

The data for the United Kingdom and the United States was also reviewed in order to ensure comparability as far as possible. The ABS data cited above refer to mean earnings, whereas those cited for the United Kingdom appear to refer to median earnings. Thus, estimates of mean earnings for the United Kingdom have been sourced to enhanced comparability, while it has been confirmed that the data relate specifically to full time employees and are therefore broadly comparable in this respect with the ABS data. In the case of the United States, it was verified that the data in question report mean (cf. median) earnings and updated data giving the annual average for 2012 were adopted. However, the United States data appears to relate to all employees, rather than full time
employees only, and it did not prove possible to obtain data based only on full-time employees. Hence, it is likely that the United States data slightly overstates the relative position of truck drivers.

Table 5.8 reports these adjusted estimates for each country.

**Table 5.8: Average earnings for truck drivers and all occupations internationally**

<table>
<thead>
<tr>
<th>Country</th>
<th>Average wage for all occupations</th>
<th>Truck driver wage</th>
<th>Percentage Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (FT non-managerial adult employees mean weekly wages AUD$2012)</td>
<td>$1,374</td>
<td>$1,386</td>
<td>+ 0.9 per cent</td>
</tr>
<tr>
<td>United States (mean wages 2012, USD)</td>
<td>$946</td>
<td>$862</td>
<td>- 8.9 per cent</td>
</tr>
<tr>
<td>United Kingdom (FT all adult employees mean weekly wages GBP£2012)</td>
<td>£607.1</td>
<td>£511.1</td>
<td>- 15.8 per cent</td>
</tr>
</tbody>
</table>

These adjusted comparisons show a less positive picture of truck driver wages for both Australia and the United Kingdom, where significant adjustments have been made, suggesting that an adjusted United States dataset focusing on full time adult wage comparisons would also show a less positive result. However the key point remains that aggregate data show that average truck driver earnings are:

- approximately equal to average weekly earnings in Australia; and
- higher, relative to average weekly earnings, than in two comparable countries.

These aggregate data therefore lend little support to the proposition that, in the employee sector at least, earnings pressures are likely to be significant factors in driving unsafe road behaviour. That said, two caveats must be noted. First, the above comparisons are of total earnings. If only ordinary time earnings are compared, truck drivers receive lower wages than the average ($1,091 vs $1,297, or 15.9 per cent below the average), indicating that truck drivers work longer hours in order to achieve average earnings. However, the overtime earnings data suggest that average overtime hours are around 7 per week.

Second, it appears that owner drivers would be largely excluded from these data, as they relate to ‘non-managerial’ employees, while owner drivers would generally be classified as owner-managers of their enterprises.

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220 Average of NCS 4841 - General Trucking ($856) and NCS 48412 - General Trucking Long Distance ($867).
221 ABS Employee Earnings and Hours, Australia, May 2012, catalogue 6306.0 see data cube, Full-time non-managerial adult employees, Average weekly cash earnings and hours paid for—Occupation by method of setting pay.
222 Assuming a standard 38 hour week, the average ordinary time wage of $1,091 is equal to $28.68 per hour. Assuming all overtime is worked at 1.5 times ordinary times earnings (i.e. $43.02 per hour), the average overtime earnings of $295.20 imply overtime hours of $295.20/$43.02 = 6.9 hours per week.
6 The policy context – Addressing heavy vehicle safety in Australia

Key Points

- Historically heavy vehicle safety in Australia has been regulated through a combination of specific road transport legislation and generally applicable workplace health and safety legislation.

- Key Commonwealth, state and territory regulation relevant to heavy vehicle safety and driver remuneration and conditions, includes:
  - road transport regulation such as the Heavy Vehicle National Law and the concept of ‘Chain of Responsibility’;
  - workplace health and safety regulation, including the model Work Health and Safety Act and Regulations, and relevant codes of practice and guidance notes;
  - Commonwealth, state and territory legislation regulating driver remuneration and conditions such as the *Fair Work Act 2009* (Cth), Chapter 6 of the *Industrial Relations Act 1996* (NSW), the *Owner Drivers and Forestry Contractors Act 2005* (Victoria) and the *Owner drivers (Contracts and Disputes) Act 2007* (WA);
  - legislation regulating the relationship between owner drivers and their hirers, such as the *Independent Contractors Act 2006* (Cth), and the *Competition and Consumer Act 2010* (Cth); and
  - other relevant Government policies and initiatives aimed at addressing safety concerns in the road transport sector.

- A substantial program of regulatory reform has been implemented in the area of heavy vehicle safety since the establishment of the National Road Transport Commission by all Commonwealth, state and territory governments in 1991. This has culminated in the recent adoption of the Heavy Vehicle National Law and establishment of the National Heavy Vehicle Regulator.

- Key reforms adopted in a range of areas are a progressive move away from prescriptive regulation toward more flexible performance-based and process-based regulation, and the adoption of the ‘Chain of Responsibility’ concept to require parties other than drivers to take responsibility where they have influence over safety outcomes.

- The reform program is still underway, with notable initiatives yet to be completed including a review of the Chain of Responsibility laws and the implementation of the road freight transport industry strand of the *Work Health and Safety Strategy 2012-2022*.

- There is significant regulatory overlap, duplication and inconsistency between a range of existing legislation and the RSR Act. The extent of this overlap and duplication is necessarily increased to the extent that the Tribunal takes a broad view of its remit to address ‘remuneration-related conditions’ under an RSRO, as has apparently been the case to date. The extent of regulatory overlap and inconsistency also appears to be increased to the extent that the approach adopted under the RSRS is essentially prescriptive in nature, in contrast to that of the Heavy Vehicle National Law and the Work Health and Safety laws.
6.1 Introduction

The primary objective of the RSR Act and the Tribunal is to promote safety and fairness in the road transport industry, with fairness in this context presumably relating to remuneration and related conditions. The Tribunal is empowered by the RSR Act to inquire into sectors, issues and practices within the road transport industry and, where appropriate, determine mandatory minimum rates of pay and related conditions for employee and owner drivers (generally referred to as owner drivers).

Importantly, however, heavy vehicle safety—like road safety generally—is addressed via a range of policy tools that go beyond the scope of government regulation. Improving the quality of the road network is a key factor in achieving better safety performance and may be particularly important in the heavy vehicle context. Improved vehicles which incorporate a range of new safety-related technologies also contribute. While governments frequently regulate to require particular technologies to be fitted to all vehicles sold, there is also an important market dynamic in this regard.

The context for considering heavy vehicle safety is one in which the National Road Safety Strategy 2011–2020 has established a goal of reducing the annual numbers of both deaths and serious injuries on Australian roads by at least 30 per cent by adopting a holistic approach to road safety improvement and the interactions of various elements of the road transport system.

Historically heavy vehicle safety in Australia has been regulated through a combination of specific road transport legislation and generally applicable work health and safety legislation. These areas of legislation are currently undergoing change, with Commonwealth, state and territory governments introducing a number of significant reforms in both areas.

The key initiative in the area of road transport legislation is the Heavy Vehicle Regulatory Reform, which is intended to harmonise heavy vehicle laws across jurisdictions and deliver benefits in terms of improved productivity, safety and environmental outcomes, while reducing regulatory burdens. This reform involves the establishment of the NHVR to administer the new Heavy Vehicle National Law (HVNL). This will constitute the first time in which there has been a single regulator with jurisdiction over heavy vehicle safety regulation across Australia.

Work health and safety legislation, which is of general application and therefore covers the road transport industry, has also been subject to a process of harmonisation towards a goal of nationally consistent regulation. At the same time, under the Australian Work Health and Safety Strategy 2012–2022 the road freight transport industry will be the focus of national prevention efforts to reduce the number of fatalities in the industry. 223

With specific regard to truck driver remuneration and conditions, legislation has been enacted in NSW, Victoria and Western Australia which is directly targeted at regulating the relationship between owner drivers and their hirers to ensure a safe and sustainable road freight industry in

223 As noted in the Transport Workers’ Union submission, the number of heavy vehicle driver fatalities makes the road freight industry one with the highest workplace fatality rate.
those states. However, the approach adopted in each state differs, particularly between the model adopted in NSW and that employed in both Victoria and Western Australia. The RSR Act borrows various aspects from each of these pieces of state legislation.

In addition to these state laws, as small businesses, owner drivers are also subject to various Commonwealth laws that regulate the relationship between owner drivers and their hirers, including the Independent Contractors Act 2006 (Cth) (IC Act), and the Competition and Consumer Act 2010 (Cth) (CC Act).

Employee drivers are meanwhile also covered by industrial legislation and instruments including the Fair Work Act 2009 (Cth) (FW Act), which provides various employment protections and a minimum safety net of wages and conditions.

The implementation of each of the above approaches to regulating road safety and truck driver remuneration is discussed in further detail below.

6.2 Legislation addressing heavy vehicle safety

6.2.1 Road safety regulation

Constitutional responsibility for the regulation of road transport lies with state and territory governments. Consequently each state and territory has historically implemented its own road, vehicle and driver regulations, with the result that different state and territory legislation has been required to be observed by all vehicles operating in, or through, each state or territory, regardless of where the vehicle is registered. The difficulties caused by the regulatory inconsistencies inherent in this system led over time to the establishment of the NRTC through an inter-governmental agreement (IGA) in 1991, and its successor, the NTC, with responsibility to develop and coordinate regulatory reforms and facilitate nationally consistent road transport policies and laws.224

The NTC has primarily sought to achieve nationally consistent road transport policies and laws through the development and implementation of model national transport laws for adoption in each state and territory. In doing so the NTC develops and submits reform recommendations for approval to the Transport and Infrastructure Council (TIC) (formerly SCOTI) which comprises Commonwealth, state and territory transport, infrastructure and planning ministers. The NTC also assists with implementation planning to ensure reform outcomes are realised in practice, as well as coordinating, monitoring, evaluating and maintaining the implementation of approved reforms.225

The NTC has developed as model legislation a common set of Australian road rules, uniform heavy vehicle charges, common drivers licence classes, standard procedures for licence and registration issues, and other measures designed to overcome inefficiency while improving productivity and safety. However, while the IGA establishing the NTC encourages adoption of the model legislation, there is no legal obligation on jurisdictions to do so. Thus, despite jurisdictions adopting model laws, inconsistencies have persisted due to jurisdictions either varying specific provisions of the model

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225 ibid
laws in accordance with their own legislative priorities, failing to adopt particular reforms, or implementing reforms in a modified form in order to comply with particular drafting or other legislative conventions specific to their state or territory.

6.2.1.1 Heavy Vehicle Regulatory Reform

More recently Australia’s transport and infrastructure ministers have agreed to a number of major national transport reforms including the Heavy Vehicle Regulatory Reform. This reform establishes a national system of regulation for all heavy vehicles weighing more than 4.5 tonnes, consisting of a uniform national law, the HVNL, administered by a single national regulator, the NHVR. The anticipated benefits of this reform include greater harmonisation of heavy vehicle laws across jurisdictions than has been achieved under the model laws approach and consequently reduced regulatory burdens and improved productivity, safety and environmental outcomes.

6.2.1.2 Heavy Vehicle National Law

The HVNL has come into effect during the course of the Review, commencing in Queensland, NSW, Victoria, South Australia, Tasmania and the Australian Capital Territory on 10 February 2014. The Northern Territory and Western Australia are not adopting the HVNL at this time. Moreover, NSW, South Australia and Victoria have introduced a number of variations to the national law, some of which will require a national response. The policy implications of these variations may be significant, as their impact is not limited to a single jurisdiction and will require coordination with multiple agencies. While these variations, together with the initial non-participation of two jurisdictions will to some extent perpetuate the legislative inconsistency that the HNVL was intended to address to some extent, the adoption of the HVNL marks a further step in the harmonisation of national legislation in this area and should yield improvements in legislative effectiveness in a number of areas. A more detailed overview of the NHVR is provided at Appendix 3. Importantly, section 18 of the HVNL provides that it does not limit the application of WHS laws and regulations and that evidence of a contravention of the HVNL is admissible in proceedings for offences against the primary WHS legislation.

The object of the HVNL is:

“...to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

(a) promotes public safety; and
(b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
(c) provides for efficient road transport of goods and passengers by heavy vehicles; and

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(d) *encourages and promotes efficient, innovative, productive and safe business practices.*

The HVNL applies to heavy vehicles over 4.5 tonnes gross vehicle mass and regulates, *inter alia* heavy vehicle registration and charges, vehicle standards, mass and loading, compliance and enforcement (including chain of responsibility), driver fatigue, speeding compliance and the Intelligent Access Program.\(^{229}\)

As discussed earlier, non-compliance with regulatory requirements in relation to speed and driver fatigue constitutes the key mechanism through which low rates of remuneration are believed to lead to poor safety outcomes. Thus, the content of the HVNL necessarily overlaps with the RSRS. The two regulatory approaches differ in that the HVNL, in common with its predecessor legislation, seeks to regulate speed and driver fatigue directly, while the RSRS seeks to improve driver behaviour in these areas indirectly by removing economic incentives for non-compliant or, more generally, unsafe behaviour.\(^{230}\) Importantly, the HVNL incorporates Chain of Responsibility (CoR) provisions.

### 6.2.1.3 Chain of Responsibility (CoR)

The CoR concept is similar to the legal ‘duty of care’ that underpins WHS law (see Section 6.2.2.1) and extends legal responsibility for on-road compliance beyond the heavy vehicle driver and operator to a broader range of parties and relationships within the transport chain including schedulers, loaders and consignors, as well as extending personal liability to company executives. The CoR therefore operates as a mechanism that imposes safety responsibilities on parties other than drivers.

The CoR provisions in the HVNL cover speed, fatigue and MDL and seek to ensure that steps are taken by all relevant parties to act to prevent the commission of an offence. In particular, parties in the supply chain are prohibited from making demands, including verbally or in written contracts, which could foreseeably result in a breach.

The effect of this is that where a driver has been found to have committed an offence in relation to speeding, fatigue or MDL, other parties in the supply chain who have an influence in the commission of the offence can also be held liable. For example, a scheduler whose demands effectively require a driver to exceed enforceable speed limits or skip required rest breaks to make a delivery on time can

\(^{229}\) See section 3 of the HVNL.

\(^{230}\) The Intelligent Access Program (IAP) is a voluntary national program whereby heavy vehicle operators agree to remote tracking of the movement and location of their vehicles to ensure they are complying with agreed operating conditions, in return for access or less restrictive access to road networks. IAP is a vehicle tracking system to monitor heavy vehicles that may damage road infrastructure and/or pose road safety risks. The IAP is built around vehicle telematics technology that can remotely monitor heavy vehicle use. This includes a combination of global positioning systems (GPS), in-vehicle sensors and transmitters, and communications technology for transmitting vehicle performance data to a base station for downloading and analysis. The collected data is then monitored to ensure heavy vehicles adhere to approved routes, at approved times and are not operating on inappropriate roads.

\(^{231}\) For example, inappropriate speed for the conditions may be a risky behaviour, though it may not constitute "speeding" in the specific regulatory sense.
be held liable for those offences. Similarly, the consignor could be held responsible for the offences if the scheduling demands resulted from the terms of consignment.

The CoR concept has been adopted progressively in the road transport sector via a range of the model laws developed by the NRRTC/NTC over more than a decade. A key milestone in this area is the Road Transport Reform (Compliance and Enforcement) Bill, approved unanimously by all Australian transport ministers in 2003.\textsuperscript{232} The adoption of the CoR concept reflected a similar view of the dynamics of the road freight industry to those that have underpinned the RSRS - i.e. that the relatively stronger position of various upstream parties enables them to place pressure on drivers to act in ways that are inconsistent with a range of safety legislation. As noted in the regulatory impact statement accompanying the Road Transport Reform (Compliance and Enforcement) Bill:

"...existing legislation focuses almost exclusively on drivers and, to a lesser extent, transport operators as being responsible for any breaches of the road law. This is considered an inadequate approach to enforcement as it fails to recognise that other parties often bear substantial responsibility for breaches. The proposed Act would deal specifically with the duties of vehicle owners, operators, consignors, packers and loaders, as well as drivers. In addition, directors and senior managers of corporations involved in the operation of trucks will also be subject to liability for breaches of the road law.

This change will have benefits in two main areas:

- farewell will be improved, since prosecutions will be better able to target those chiefly responsible for breaches of the road laws; and
- effectiveness will be enhanced, since prosecution of all responsible parties, leading to the application of appropriate sanctions, can be expected to better deter law-breaking behaviour.

It can be expected that improved fairness will also have an indirect impact in improving compliance, since it will tend to lead to greater acceptance of the law and, hence, a higher level of 'voluntary compliance'."\textsuperscript{233}

Stakeholders who have addressed this issue have expressed unanimous support for the CoR concept to the Review, although there is some range of opinion as to the effectiveness of this concept to date in addressing the underlying industry dynamics which are targeted by both CoR and the RSRS: some stakeholders have suggested that little effective use has been made of these legislative powers to date, while others highlighted significant instances of their enforcement in practice, despite agreeing that major difficulties existed.

Discussion with an official of the NHVR with extensive experience in the area of CoR highlighted a number of challenges in effectively applying the CoR provisions, including the time and cost involved in CoR investigations and a lack of CoR investigative capabilities within enforcement agencies, but

\textsuperscript{232} Despite this unanimous approval, CoR has not, to date, been adopted in legislation in either Western Australia or the Northern Territory. However, it is understood that it will shortly be adopted in the former jurisdiction. See Appendix 3 for a more detailed overview of the HVNL CoR provisions in relation to fatigue and speeding and additional information regarding CoR in Western Australia and the Northern Territory

\textsuperscript{233} National Road Transport Commission (2003), Road Transport Reform (Compliance and Enforcement) Bill. Draft Final Regulatory Impact Statement, p 12. Disclosure: This RIS was drafted by the present author.
also provided examples of cases in which substantial outcomes had been achieved through the application of CoR laws in some jurisdictions.\(^{234}\)

Two recent developments can be expected to improve the effectiveness of CoR in the medium term. First, the improved national consistency of transport legislation and second, future reforms to CoR laws.

6.2.1.3.1 National consistency

The adoption of the HVNL, including the establishment of the NHVR, can be expected to improve effectiveness by removing the practical barriers created by the existence of state boundaries. Previously, regulators in those states that had CoR laws were only empowered to enforce them within their jurisdiction, despite the fact that supply chains stretch across state borders. By contrast, the NHVR will be uniquely empowered to conduct cross border CoR investigations.

6.2.1.3.2 Future reform of CoR laws

CoR was identified during the development of the HVNL as an area that required further examination and review\(^{235}\) to ensure the requirements are fair, effective and appropriately targeted, as well as consistent with the COAG Principles on Directors’ Liability Provisions\(^{236}\) and affirmative legal obligations under the model Work Health and Safety Act 2011 (Cth). Additionally, concerns regarding inconsistencies of approach to CoR between different parts of the existing law were identified.

In November 2012, SCOTI decided to establish a taskforce to undertake the review of the CoR provisions (CoR Review). The CoR taskforce released an issues paper for public consultation on 5 July 2013\(^{237}\) and submissions to the CoR Review closed on 16 August 2013. According to the discussion paper, the purpose of the Taskforce and CoR Review is to:

- **Ensure that the HVNL retains an effective CoR regime, capable of holding current identified parties, including executive officers of those parties, sufficiently and appropriately accountable for the influence and control they can exercise over the compliance and safety of transport drivers, and the safety of the general public.**
- **Examine recent CoR provisions proposed or enacted in the HVNL with a view to:**
  - Providing broad affirmative legal obligations, such as general or specific statutory duties, upon the parties within the chain of responsibility, and including the executive

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\(^{234}\) For example, a VicRoads case against Ag-Spread in 2010 resulted in a $95,000 fine against the company for breaches of CoR fatigue laws, and a CoR investigation and court case run by NSW Roads and Maritime Services which specifically targeted the bulk grain storage and handling services sector, although ultimately lost, resulted in significant compliance improvements within the sector from 66% to 93%.


\(^{237}\) CoR Taskforce (2013), op cit.
officers of those parties, that are consistent with the positive duties provisions which apply under the Work Health and Safety Act 2011 (WHS Act); and

- Maintaining consistency with COAG’s “Principles and Guidelines” and other national transport reforms relating to the imposition of criminal liabilities upon directors and other corporate officers in connection with a corporate offence.

- Advise whether, with respect to the HVNL, the penalty regime relating to existing chain of responsibility provisions the HVNL needs to be amended as part of any move to adopt a framework of affirmative legal obligations.

- Advise whether any other amendments are desirable in order to advance the effectiveness, appropriateness or fairness of the CoR regime.238

The CoR Review released an ‘Assessment of Options Paper’ on 14 February 2014 which contains a range of specific proposals, presented as alternative responses to the key issues identified, and will form the basis for consultation with regulatory bodies and industry groups.239

CoR has also been raised as an issue in the Heavy Vehicle Compliance Review (HVC Review). A consultation draft for the HVC Review suggested that there is credible evidence CoR has fundamentally changed the way the industry works and noted a consensus among all parties – government and industry – that the NHVR’s compliance efforts should place significant emphasis on CoR investigations.240 Indeed, a draft recommendation of the HVC Review is “That the NHVR’s compliance effort place a major emphasis on chain of responsibility investigation”.241 However, the HVC Review also noted that in doing so, a challenge for government is that the skills and attributes required to conduct successful CoR investigations may be quite different to the skills and attributes held by more traditional enforcement officers.242

While these reviews are continuing at the time of writing, the above discussion suggests that it is likely that they will result in a number of changes to the CoR provisions of the HVNL, as well as a greatly increased focus on the use of the reformed CoR provisions as a key part of the modus operandi of the NHVR. These changes are expected to enhance the ability of the CoR provisions of the HVNL to deal with a range of safety issues, including those relating to speed, driving hours and fatigue. However, they also imply that the overlap already evident in terms of regulatory objectives and approaches between CoR and the RSR Act will be likely to increase further in the near future.

238 Chain of Responsibility Taskforce (2013), op cit, p 7.
6.2.1.4 Vehicle telematics

Telematics is the technology of sending, receiving and storing information relating to remote objects, such as vehicles, via telecommunication devices. For vehicles, it typically involves the integration of Global Positioning System (GPS) technology and computers and mobile devices.

In-vehicle telematics technologies can be used for a range of management and monitoring purposes, including:

- **Vehicle-based applications**: speed, location, travel times, load, mass, vehicle conditions
- **Driver-based applications**: work and rest hours, fatigue monitoring
- **Vehicle-driver applications**: recording how the driver drives (such as harsh braking, idling and gear change performance)

These applications can in turn be used for commercial, compliance and enforcement purposes, particularly in relation to speed, fatigue and mass monitoring and CoR. For example, mass data generated by telematics systems could be collected by an operator to maximise loads and increase productivity but could also be used to demonstrate legal compliance within an accreditation scheme, or to meet obligations under CoR. The same information could also be used by regulators and enforcement agencies to identify breaches and to issue infringements, or alternatively to reward safe behaviours, such as through greater road access, and reduced insurance premiums.

A policy paper prepared by the United Kingdom’s Royal Society for the Prevention of Accidents identifies a number of studies which suggest that in-vehicle monitoring can help employers and at-work drivers to reduce accident rates. This included one study which found that accident rates for vehicles fitted with a monitoring device were reduced by 20 per cent, while another found a reduction of 38 per cent in accidents. In one case the rate of specific unsafe driving behaviours was found to be reduced by up to 82 per cent following the installation of monitoring devices. However, the paper also noted that the observed effects of telematics devices have varied between fleets. While most studies showed a reduction in accident rates, some showed a small (though not statistically significant) increase.


244 Ibid.


Telematics also has the potential to reduce compliance costs, for example, by automatically computing complex fatigue regulations. The current written work diary is reported by stakeholders to be administratively burdensome, requiring the driver to account for every 15 minutes of their time. It is also time-consuming for on-road enforcement officers who have to review an extensive record and make complex calculations about work and rest hours.\(^1\) The use of vehicle telematics such as Electronic Work Diaries (EWD) provides opportunities to eliminate much of this work and provide greater accuracy and accessibility of data.

The HVNL contains two regulatory applications that utilise heavy vehicle telematics: EWDs and the Intelligent Access Program (IAP), although in both cases the definitions are framed in terms of performance outcomes rather than the essential components of what constitutes a telematics system or device.

An EWD device has not yet been finalised for regulatory purposes. However, a three year pilot project undertaken by NSW Roads and Maritime Services (RMS) resulted in the development of a technical specification for EWDs and a proposed systems framework. In May 2013 the then Standing Council on Infrastructure and Transport decided to pass the RMS EWD Pilot’s findings and recommendations to the NHVR (for consideration of implementation issues) and the NTC (for consideration of legislative policy issues) to develop an approach for national adoption of EWDs.

However, as a result of the RMS EWD Pilot the NTC identified a need to examine policy issues in relation to the use of vehicle telematics, particularly regarding privacy and surveillance challenges. These issues were highlighted in the October 2013 *Preparing Australia for Electronic Work Diaries: Regulatory Issues Paper*.\(^2\) The NTC is currently addressing these issues in consultation with stakeholders in an attempt to develop a compliance and enforcement framework for heavy vehicle telematics.

While these regulatory implementation issues continue to be addressed, the potential benefits of heavy vehicle telematics are already recognised by the Australian road freight industry, which has begun utilising it on a voluntary basis: Data indicate that the proportion of companies using some form of telematics increased from 34 per cent in 2006 to 44 per cent in 2012.\(^3\) Similarly, a series of surveys conducted in 2012 by AMR Research on behalf of the NTC\(^4\) indicated around 40 per cent of road transport companies use some sort of electronic system to manage driver fatigue.\(^5\) The survey also considered the uptake of heavy vehicle telematics by fleet size and found that larger companies

\(^{1}\) National Transport Commission (2013c), op cit.


\(^{4}\) AMR Research (2013a), op cit.; and AMR Research (2012b), op cit.

\(^{5}\) AMR Research (2013b), op cit.
being more likely to have implemented this technology.\textsuperscript{254} Similar results were found regarding the monitoring of driving speeds.\textsuperscript{255}

Telematics use in Australia appears to lag behind that of the United States and the European Union, in that these jurisdictions have mandated the use of telematics systems for enforcing compliance with speed and fatigue regulation in response to the evidence of their effectiveness in reducing accidents, vehicle and fuel costs and risky driving behaviours. However, the recent NTC discussion paper ‘Developing a Compliance Framework for Heavy Vehicle Telematics’\textsuperscript{256} suggests that Australia is at the forefront of regulatory development insofar as it is actively seeking to establish a national policy for the consistent use of heavy vehicle telematics for a range of compliance purposes, whereas the United States and European Union have addressed the use of telematics in the context of specific regulatory issues, such as fatigue management. Thus, the intent appears to be that Australia should ‘leapfrog’ the current leaders in this regard.

That said, telematics developments necessarily continue in both the United States and European Union, with areas of focus including:

- seeking to incorporate telematics-generated data into risk rating systems and intelligent, wireless roadside enforcement programs; and
- seeking to develop telematics-based enforcement approaches as part of a broader risk rating system, in order to ensure more consistent treatment of drivers, greater certainty for industry, streamlined roadside enforcement and the development of risk-based and proportionate measures that improve road safety.\textsuperscript{257}

As vehicle telematics is increasingly integrated into the Australian road transport industry, both as a result of voluntary industry driven initiatives and regulatory activity, benefits in terms of increased compliance with fatigue, speeding and CoR obligations and, as a consequence, reduction in accident rates can be expected.

Importantly, the adoption of electronic systems enabling detailed recording and monitoring of truck movements to be undertaken would appear likely to reduce the benefits of prescriptive approaches to managing speed and fatigue such as the use of very detailed safe driving plans.

\textbf{6.2.1.5 Other relevant initiatives}

A number of other national key areas of reform that will impact the national road transport sector are discussed below:

\textsuperscript{254} ibid. 64\% of companies with 30 or more trucks; 37\% of companies with five to 29 trucks; 22\% of companies with one to four trucks.
\textsuperscript{255} ibid. 36\% of companies with one to four trucks; 34\% of companies with five to nine trucks; 59\% of companies 10 to 49 trucks; 83\% of companies with 50 or more trucks. AMR, \textit{Reform Evaluation in the Road Transport Industry, 2012: Compliance and Enforcement, and Speed}, 2013.
\textsuperscript{256} national Transport Commission (2013c), op cit, pp. 21-27
\textsuperscript{257} ibid, p.25
6.2.1.5.1 National Road Safety Strategy 2011–2020:

The National Road Safety Strategy 2011-2020 (NRSS)\textsuperscript{258} adopts a ‘Safe System’ approach to road safety improvement, which takes a holistic view of the road transport system and the interactions of its various elements, consistent with the approaches adopted in Sweden (‘Vision Zero’) and in the Netherlands (‘Sustainable Safety’).\textsuperscript{259} The NRSS represents the commitment of Commonwealth, state and territory governments to an agreed set of national road safety goals, objectives and actions.

The NRSS presents a 10-year plan to reduce the annual numbers of both deaths and serious injuries on Australian roads by at least 30 per cent through a series of ‘first steps’ actions to be undertaken within three years, as well as a range of possible ‘future steps’ initiatives. Of these steps, a number are directly targeted to heavy vehicle safety and underpin some of the work currently being conducted by the NTC,\textsuperscript{260} including:

- greater enforcement of CoR, particularly in relation to heavy vehicle speeding;
- use of electronic work diaries for heavy vehicle drivers as an alternative to paper-based diaries;
- improved fatigue management
- development of competency-based standards for licensing heavy vehicle drivers;
- heavy vehicle design improvements; and
- improved heavy vehicle infrastructure.

As is apparent, the first three of these initiatives are clearly focused on key unsafe behaviours to which low remuneration rates are said to give rise—i.e. excessive speed and excessive hours of work/fatigue.

Under the NRSS the Australian Government has responsibilities for allocating agreed infrastructure resources to the national highway and local road networks, and for regulating safety standards for new vehicles. State and territory governments have primary responsibilities for funding, planning, designing and operating the road network, managing vehicle registration and driver licensing systems, and enforcing road user behaviour.

6.2.1.5.2 Infrastructure Investment Programme

The Australian Government’s Infrastructure Investment Programme is aimed at assisting national, regional economic and social development through the provision of funding aimed at improving the performance of land transport infrastructure. There are several components under the Infrastructure Investment Programme including the Heavy Vehicle Safety and Productivity Programme (HVSP).


\textsuperscript{259} See OECD (2011), op cit, p 190.

\textsuperscript{260} For example, the Chain of Responsibility Taskforce, pilot of electronic work diaries and the establishment of the HVNL and NHVR.
The HVSPP is an Australian Government initiative established under the *Nation Building (National Land Transport) Act 2009* (Cth). HVSPP funding is provided to six categories of projects that directly improve conditions for heavy vehicle drivers, as follows:261

1. **Rest Area projects**: To improve the provision of heavy vehicle rest areas on key interstate routes to more effectively manage fatigue.

2. **Parking/Decoupling Bay projects**: To provide heavy vehicle parking/decoupling areas and facilities in outer urban/regional areas.

3. **Technology Trial projects**: Funding trials of technologies with the potential to improve heavy vehicle safety and/or productivity.

4. **Road Enhancement projects**: To enhance the capacity and/or safety of roads (including bridges) to allow access by high productivity (i.e. heavier) vehicles to more of the road network.

5. **Demonstration projects**: To facilitate innovation to improve heavy vehicle safety and productivity projects.

6. **Livestock Transport Industry projects**: To improve heavy vehicle safety and productivity for specific livestock transport operations.

### 6.2.2 Work Health and Safety Legislation

In addition to the specific road safety legislation outlined above, the generally applicable WHS laws necessarily also apply to the road transport industry. Several key similarities between the heavy vehicle laws and WHS laws can be noted, as follows:

- State and territory governments have constitutional responsibility for WHS;262
- Substantial regulatory harmonisation efforts have been undertaken over an extended period;
- Harmonisation efforts have culminated in the recent adoption of national legislation, albeit with some non-participating jurisdictions; and
- The specific laws in place are supported by a long-term strategy for improving safety performance.

Safe Work Australia leads the development of national policy to improve WHS and workers’ compensation arrangements across Australia. It coordinates and develops national policy and strategies; assists with the implementation of model WHS legislation; undertakes research, and collects, analyses and reports data. However, Safe Work Australia does not regulate or enforce WHS, as each jurisdiction remains responsible for its own WHS arrangements.

Safe Work Australia has been responsible for developing the model WHS Act, supported by model WHS Regulations and model codes of practice and guidance material for adoption by governments around Australia. With the exception of Victoria and Western Australia, all jurisdictions have enacted

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262 However, the Commonwealth government has WHS responsibility for its own workers and enables certain eligible corporations to self-insure under the Comcare scheme
consistent model WHS laws. However, Victoria and Western Australia remain committed to the principle of harmonisation of WHS laws and continue to take steps towards achieving that outcome.

6.2.2.1 Duty of Care

The model WHS arrangements capture a broad range of employment relationships and potentially cover a sole trader (for example a self-employed person), each partner within a partnership, a company, unincorporated association or government department of public authority (including a municipal council), regardless of whether or not profit or gain are pursued, under the rubric of a ‘person conducting a business or undertaking’ (PCBU).

The WHS Act requires all PCBUs to ensure, ‘so far as is reasonably practicable’, the health and safety of workers engaged (or caused to be engaged) by the person, and workers whose activities are influenced or directed by the person, while at work in the business or undertaking. PCBUs owe a similar duty of care to other people who may be at risk from work carried out by the business or undertaking, including ‘others’ that may enter an area where work is being undertaken. A self-employed person must ensure his or her own health and safety while at work, so far as is reasonably practicable.

Under the primary duty of care PCBUs must ensure, so far as is reasonably practicable:

- the provision and maintenance of a working environment that is safe and without risks to health, including safe access to and exit from the workplace;
- the provision and maintenance of plant, structure and systems of work that are safe and do not pose health risks (for example providing effective guards on machines and regulating the pace and frequency of work);
- the safe use, handling, storage and transport of plant, structure and substances (for example toxic chemicals, dusts and fibres);
- the provision of adequate facilities for the welfare of workers at work (for example access to washrooms, lockers and dining areas);
- the provision of information, instruction, training or supervision to workers needed for them to work without risks to their health and safety and that of others around them;
- that the health of workers and the conditions of the workplace are monitored to prevent injury or illness arising out of the conduct of the business or undertaking; and
- the maintenance of any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

A worker is defined as any person who carries out work for a PCBU, including work as an employee, contractor, subcontractor, self-employed person, outworker, apprentice or trainee, work experience student, employee of a labour hire company placed with a ‘host employer’ or volunteer.

Workers have a duty to take reasonable care for their own health and safety and to ensure that their acts or omissions do not adversely affect the health or safety of others. Workers must also comply with any reasonable instruction, policy or procedure of a PCBU. Similar duties apply to other persons at a workplace, including customers and visitors.

The strong general duties provisions of the WHS laws imply that employers and others within the supply chain have significant obligations under this legislation, while the breadth of the concept of ‘person conducting a business undertaking’ and that of the definition of ‘worker’ adopted under the laws would appear to imply that a wide range of contractual relationships fall within the ambit of the WHS law. Thus, it would appear that this constitutes another significant body of legislation addressing safety performance within the road freight industry.

6.2.2.2 Road safety codes of practice and guidance

Codes of practice are used to assist duty holders to comply with their obligations under WHS laws. Codes of practice are not mandatory, in that non-compliance does not, of itself, give rise to any civil or criminal liability. Instead, in any proceeding, codes of practice may be used by the court to establish what is known about a particular hazard or risk to determine what is reasonably practicable in the circumstances to which the code relates.

Safe Work Australia has developed several model codes of practice relevant to the road freight industry, including the WHS Code of Practice: Traffic Management in Workplaces, which provides practical guidance to PCBUs on identifying, assessing and controlling risks associated with traffic in the workplace; the Traffic Management Guide: Construction work; Traffic Management Guide: Shopping centres; Traffic Management Guide: Warehousing; and Traffic Management Guide: Events.

However, as the NTC is primarily responsible for evaluating proposed new legislative safety measures for the road transport industry, Safe Work Australia has not developed any codes of practice or guidance material specifically targeted at the transport sector. The Guide for Managing the Risk of Fatigue at Work and Fatigue Management Workers Guide developed by Safe Work Australia to assists duty holders in applying practical principles to manage fatigue issues in the workplace, are clearly relevant to the sector. However, they are not designed to provide information on managing fatigue in specific industries and do not replace requirements related to fatigue under other laws.

6.2.2.3 Discriminatory, coercive or misleading conduct

The model WHS Act prohibits discriminatory, coercive or misleading conduct against workers, prospective workers and others because of the performance of legitimate safety-related functions or activities, or because they have raised a work health and safety concern under the model WHS Act.264

As previously indicated, a worker is broadly defined to mean any person who carries out work for a PCBU, in any capacity, including employees and contractors. The prohibition also applies to commercial arrangements, thereby protecting a person from being refused a contract or from

264 See sections 104, 108 and 109 of the Model Work Health and Safety Bill.
having a contract terminated because they have exercised a right or function, or raised a health and safety concern under the model WHS Act.

6.2.2.4 Drugs and alcohol in the workplace

The implementation of workplace drug and alcohol policies is not mandatory under WHS law. However, the general duties of a PCBU under the WHS legislation extend to ensuring a worker affected by alcohol or other drugs does not place themselves or other persons at risk of injury while at work. Likewise, workers affected by alcohol or other drugs have a duty to ensure the safety of themselves and others (e.g. other road users). Workplace hazards and risks associated with the use of alcohol and other drugs are therefore required to be eliminated or reduced, as far as practicable. One way of achieving this outcome is through the implementation of a drug and alcohol policy.

In recognition of these duties and the health and safety risks associated with the use of drugs and alcohol in the workplace, all states and territories have developed guidance material for addressing drugs and alcohol in the workplace.

6.2.2.5 Australian Work Health and Safety Strategy 2012-2022

Road freight transport is a priority industry under the Australian Work Health and Safety Strategy 2012-2022265 (WHS Strategy), which was developed and is being implemented by Safe Work Australia in association with jurisdictional regulators.

The WHS Strategy entails a collaborative approach between the Commonwealth, state and territory governments, and industry, and is focused on identifying the causes of injury and illness, and on working to find and implement solutions. It seeks to achieve four outcomes:

1. Reduced incidence of work-related death, injury and illness, achieved by
2. Reduced exposure to hazards and risks, using
3. Improved hazard controls, supported by
4. An improved work health and safety infrastructure.

The WHS Strategy identifies seven action areas that are required to support the outcomes:

1. Healthy and safe by design
2. Supply chains and networks
3. Health and safety capabilities
4. Leadership and culture
5. Research and evaluation
6. Government, and
7. Responsive and effective regulatory framework.

Three targets were set to measure progress in achieving the vision:

1. 20 per cent reduction in the number of fatalities due to traumatic injuries
2. 30 per cent reduction in incidence rates of all work-related injury claims resulting in one or more weeks off work, and
3. 30 per cent reduction in the incidence rate of claims for musculoskeletal disorders resulting in one or more weeks off work.

The road transport industry was identified as a priority industry under the WHS Strategy due to the high numbers and rates of injury and fatalities in the industry and will be the focus of national prevention efforts for the first five years of the WHS Strategy. Relevant sub-sectors from within the industry will also be chosen by jurisdictions during specified periods throughout the life of the WHS Strategy in order to target areas that require the greatest improvement.

Progress on the WHS Strategy is to be reported annually, however as at the time of writing this report the first WHS Strategy annual report is yet to be published. Given the early stage of implementation of the strategy, no further information on the initiatives likely to be pursued with respect to the road transport industry is currently available. However, as a general comment, there is clearly potential for additional duplication to arise between actions adopted under the strategy and current or future RSROs.

6.3 Legislation specifically addressing driver remuneration & conditions

6.3.1 State-based schemes

The relationship between owner drivers and their hirers is regulated in NSW, Victoria and Western Australia. In NSW this is done through Chapter 6 of the *Industrial Relations Act 1996* (NSW Act). In Victoria this occurs through the *Owner Drivers and Forestry Contractors Act 2005* (Victorian Act) and its associated regulations and codes of practice, and in Western Australia through the *Owner Drivers (Contracts and Disputes) Act 2007* (WA Act) and associated regulations. Each of these instruments is discussed below, with additional detail provided at Appendix 4.

The RSR Act was partly modelled on provisions in the NSW Act and is therefore similar in operation to that Act, with a significant difference being that the NSW Act applies only to owner drivers, where the RSR Act also applies to employee drivers. In this regard, the RSR Act is significantly broader in scope than the NSW Act.

Under the NSW Act the NSW Industrial Relations Commission (IRC) is provided powers to make ‘contract determinations’ and resolve certain disputes between principal contractors and owner drivers regarding terms and conditions in contracts of carriage.

‘Contract determinations’ are similar to awards and establish a safety net of minimum mandatory remuneration and other employee like terms and conditions for ‘contract carriers’ (i.e. owner drivers), and include provisions for leave, termination and dispute resolution procedures among others. Contract determinations apply to specific classes of ‘contracts of carriage’, and are binding on all parties to those contracts and enforceable by the NSW IRC.

However, each of the contract determination is unique in terms of application and content, presumably reflecting the complex variety of work and business models evident in the road transport industry. Rates of remuneration vary quite substantially between determinations and
according to variables including the size, type and age of vehicles, the load being carried and the distances travelled, while standing and running rates are also differentiated. TWU officials stated, during consultation with the Review, that they believe this sector-by-sector approach to be the appropriate one for the Tribunal to adopt. However, as set out below, the TWU submission to the Tribunal on the content of a future RSRO dealing with mandatory rates appears to set out a set of broadly applicable rates, along the lines of the Victorian and Western Australian approaches rather than pursuing the sector-by-sector approach.

Additionally, one contract determination made by the NSW IRC is the *Transport Industry - Mutual Responsibility for Road Safety (State) Contract Determination* does not specifically address remuneration rates. Rather, it establishes a number of requirements targeted at health and safety in the long distance transport sector which extends beyond contract drivers to consignors and transport operators, thus incorporating CoR elements. These requirements include safe driving plans, an instrument now replicated in the RSRO issued by the Tribunal, work health and safety training and drug and alcohol policies, the latter also being addressed in the RSRO.

The NSW Act also provides for the making of ‘contract agreements’ between a principal contractor and a group of owner drivers (i.e. collective bargaining). ‘Contract agreements’ are akin to enterprise agreements under the FW Act and must provide terms and conditions at least equivalent to the relevant contract determination that would otherwise apply. Contract agreements are exempt from the competition provisions of the *Competition and Consumer Act 2010* (Cth).

In contrast to the NSW model, the Victorian and Western Australian Acts adopt a lighter-handed approach to regulating owner driver remuneration and conditions, which recognises that owner drivers choose to be independent contractors and operate as small businesses and accordingly treat them within a framework of commercial laws, albeit with some additional protections and avenues for challenging harsh business practices.

The Victorian and WA Acts are similar in many respects, due in part to the fact that the WA Act is broadly based on the Victorian Act. Both Acts focus on improving the ability of owner drivers to assess their operating costs, negotiate sustainable contract arrangements and pursue their interests in the event of disputes. Thus, key provisions include the specification of disclosure requirements to be met by hirers, the provision of a range of information to owner drivers, including rate and cost schedules, and the provision of low-cost dispute resolution arrangements.

The key difference between the approaches taken in the state laws is that, while the NSW legislation provides for mandatory minimum rates to be established, in both Victoria and Western Australia the published rates schedules have ‘guideline’ status only. Consistent with this, the guideline rates schedules set a relatively small range of rates, each of which is regarded implicitly as having broad application, in contrast to the NSW model of numerous individual determinations.

The Victorian and Western Australian legislation is intended to provide cost and rate benchmarks to which owner drivers in particular can refer when negotiating payment rates and conditions. However, it is notable that the guideline rates in the two states differ in terms of structure and value, sometimes significantly.
Guideline rates in Western Australia are published for 13 different vehicle type combinations over 4.5 tonnes, and are also divided into metropolitan (short haul) and regional (long distance) rates, and for new vehicles and 5 year old vehicles. By comparison, Victoria publishes guideline rates for six vehicles types of one tonne and over and does not distinguish between vehicles of different ages or between metropolitan and regional services. The Victorian rates also do not incorporate calculations for a return on investment, while the Western Australian rates do. However, even where guideline rates exist for vehicle of a comparable type and age in each state, the values are often not aligned. While there appears to have been some degree of convergence in the Victorian and Western Australian guideline rates since 2011, it appears that this reflects changes made independently by the two jurisdictions, rather than any conscious attempt at co-ordination.

The following tables provide some comparative examples of the differences between the applicable rates in NSW, Victoria and Western Australian for similar truck types, where available. Also included for comparative purposes are the rates proposed by the Transport Workers' Union in its 4 March 2014 application to the Tribunal following the 11 February 2014 Conference on rates of payment and associated issues and the second annual work program.

Various differences of approach complicate attempts to compare the various rates. In addition to those noted above in respect of Victoria and Western Australia, a further difficulty arises because, while the Victorian and Western Australian rates are based on payment of either the hourly rate or the per kilometre rate, the NSW rates are based on payment of both rates simultaneously. Moreover, the TWU’s application to the Tribunal does not state whether its proposed hourly and per kilometre rates are intended to be paid jointly (as in NSW) or as alternatives, as in Victoria and Western Australia and in the relevant awards for employee drivers.

Table 6.1 below compares the various rates, in respect of an 8 - 10 tonne rigid truck. The Victorian rates tend to be the lowest of the group with the Western Australian and NSW metropolitan hourly rates both higher than the Victorian rate by 13.8 per cent and 35.1 per cent respectively, while the TWU’s proposed rate is substantially higher, being 53.2 per cent above the equivalent Victorian rate. The differences between regional rates are in some cases substantially larger, with the Western Australian hourly rate being 64.3 per cent higher than the (undifferentiated) Victorian metropolitan rate. The TWU regional hourly rate is almost 20 per cent lower than the Western Australian regional hourly rate, while the TWU regional per kilometre rate is less than half of that of Western Australia’s (the only other regional per kilometre rate specified). These observations could suggest an intention that the TWU rates be applied together, however, to do so would yield a total rate that was substantially higher than any comparable rate.

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266 Vehicle types include: 5 tonne GVM (rigid truck, 2 axles); 8 tonne GVM (rigid truck, 2 axles); 15 tonne GVM (rigid truck, 2 axles); 22.5 tonne GVM (rigid truck, 3 axles); Prime Mover (haulier - 1 trailer) (2 axles, 31.5 tonne GCM); Prime Mover (haulier - 1 trailer) (3 axles, 42.5 tonne GCM); Prime Mover (haulier - 2 trailers) (3 axles, 79 tonne GCM); Prime Mover (haulier - 3 trailers) (3 axles, 122.5 tonne GCM); Prime Mover + one trailer (42.5 tonne GCM); Prime Mover + two trailers (79 tonne GCM); Prime Mover + three trailers (122.5 tonne GCM); B-Double (3 axles, 62.5 tonne GCM); and Pocket Road Train (haulier - 2 trailers) (79 tonne GCM).

267 Vehicle types include: 1 tonne GVM – General Freight; 4.5 tonne GVM; 8 tonne GVM; 12 tonne GVM (2-axle); Prime Mover (Bogie Drive); and Semi-Trailer (Bogie Drive, 6-axle).

268 As revised rates schedules have been published in both jurisdictions.
Table 6.1: Rates comparisons - Rigid trucks

<table>
<thead>
<tr>
<th>Vehicle type</th>
<th>NSW</th>
<th>TWU</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rigid truck, 2 axles</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8-10 tonnes &gt; 3 yrs old</td>
<td>$34.82 per hour $0.72 per km</td>
<td>$69.31 per hour Not available per km</td>
<td>$45.23 per hour $2.26 per km</td>
<td>$51.45 per hour $2.38 per km</td>
</tr>
<tr>
<td>Rate – Metro</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indicative hrly rate</td>
<td>$61.10 per hour</td>
<td>Not available</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>Regional (if separate rate applicable)</td>
<td>Not applicable</td>
<td>$60.80 per hour $0.55 per km</td>
<td>Not applicable</td>
<td>$74.30 per hour $1.12 per km</td>
</tr>
</tbody>
</table>

Notes:
- Contract carriers in NSW are entitled to receive both the standing and running cost rates for all time and distance that the contract carrier travels with respect to a contract of carriage, including time and distance travelled to deliver and pick up goods (whether or not goods are carried), and time spent loading or unloading goods.
- It appears likely that the above rules are also applicable to the TWU proposed rates which have similarly low per km rates to the NSW contract determination, and much lower than the Victorian and Western Australian Guideline Rates. However, it is not clear from the Draft RSRO submitted by the TWU to the Tribunal whether the rates are intended to be treated the same way as those in the NSW contractor determination.
- Where the Victorian and Western Australian Guideline Rates list an hourly rate and a per km rate, these are to be treated as alternatives, i.e. they are not both payable at the same time for the same work.

Table 6.2 below provides an equivalent comparison in respect of articulated trucks. It shows that, as with rigid trucks, the Victorian rates tend to be the lowest of the group. However, the extent of the differences in the metropolitan rates is smaller, with the TWU rate being 29 per cent above the Victorian rate, vs 53.2 per cent in the above comparison. Other relativities also differ: based on an indicative distance per hour, the NSW rate appears to be 23.3 per cent higher than the TWU metropolitan rate in Table 6.2, where it was 13.4 per cent below the TWU rate in Table 6.1, based on the same distance estimate.

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269 NSW rates are based on the combination of the hourly and per km rates, whereas all other rate schedules are based on payment being made on either the hourly or per km rate. Thus, to enable a broad comparison to be made, an equivalent total hourly rate has been estimated, based on the latest RMS survey data which indicate an average speed of 36.5km/hr in the metropolitan context in 2010. See RMS, *Travel Speeds in Sydney Metropolitan Area*, [http://www.rms.nsw.gov.au/publicationsstatisticsforms/downloads/travelspeeds_sydneyMetroArea.html](http://www.rms.nsw.gov.au/publicationsstatisticsforms/downloads/travelspeeds_sydneyMetroArea.html) (accessed 7 April 2014).
### Table 6.2: Rates comparison - Articulated vehicles

<table>
<thead>
<tr>
<th>Vehicle type</th>
<th>NSW</th>
<th>TWU</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semi-Trailer</td>
<td>Bogie axle prime mover &gt; 3 yrs old</td>
<td>Bogie axle prime mover (all vehicle ages)</td>
<td>Semi-trailer (bogie drive, 6 axles) &gt; 10 yrs old</td>
<td>Prime mover + 1 trailer (42.5 tonnes) &gt; 5 yrs old</td>
</tr>
<tr>
<td><strong>Metro rate</strong></td>
<td>$56.11 per hour $1.57 per km</td>
<td>$91.98 per hour Not available per km</td>
<td>$71.31 per hour $3.96 per km</td>
<td>$82.07 per hour $3.32 per km</td>
</tr>
<tr>
<td><strong>Indicative hourly rate</strong></td>
<td>$113.42 / per hour$270</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>Regional (if separate rate applicable)</strong></td>
<td>Not applicable</td>
<td>$75.54 per hour $1.05 per km</td>
<td>Not applicable</td>
<td>$119.64 per hour $1.80 per km</td>
</tr>
</tbody>
</table>

**Notes:**
- Contract carriers in NSW are entitled to receive both the standing and running cost rates for all time and distance that the contract carrier travels with respect to a contract of carriage, including time and distance travelled to deliver and pick up goods (whether or not goods are carried), and time spent loading or unloading goods.
- It is understood that the above rules are also applicable to the TWU proposed rates which have similarly low per km rates to the NSW contract determination, and much lower than the Victorian and Western Australian Guideline Rates. However, it is not clear from the Draft RSRO submitted by the TWU to the Tribunal whether the rates are intended to be treated the same way as those in the NSW contractor determination.
- Where the Victorian and Western Australian Guideline Rates list an hourly rate and a per km rate, these are to be treated as alternatives, i.e. they are not both payable at the same time for the same work.

### 6.3.1.1 Methodological differences

It appears that a significant part of the observed differences between the rates summarised above is explained by differing methodological approaches and assumptions. Differences exist in relation to the assumed age of vehicles, their capital value and their assumed ownership (i.e. leasehold or freehold). Some specific differences are as follows:

- While the NSW *General Carriers Contract Determination* differentiates between rates for vehicles less than a year old, between one to three years old and vehicles over three years old, the Victorian guideline rates and TWU proposed rates do not.
- The Victorian guideline rates for an 8 tonne rigid truck assume that the vehicle is 5 years old, with a current capital value of $63,563 and subject to a leasing arrangement over a 4 year

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270 NSW rates are based on the combination of the hourly and per km rates, whereas all other rate schedules are based on payment being made on *either* the hourly or per km rate. Thus, to enable a broad comparison to be made, an equivalent total hourly rate has been estimated, based on the latest RMS survey data which indicate an average speed of 36.5km/hr in the metropolitan context in 2010. See RMS, *Travel Speeds in Sydney Metropolitan Area*, [http://www.rms.nsw.gov.au/publicationsstatisticsforms/downloads/travelspeeds_sydneyMetro_area.html](http://www.rms.nsw.gov.au/publicationsstatisticsforms/downloads/travelspeeds_sydneyMetro_area.html) (accessed 7 April 2014).
term with a 25 per cent residual and interest at a comparison interest rate of 8.10 per cent per annum.

- Conversely, the Western Australian guideline rates included in the Tribunal’s schedule for an 8 tonne rigid truck assume that the vehicle is new.271 The rates have been constructed independently of the Victorian guideline rates, using differing assumptions on current capital value and leasing arrangement details.

- In relation to articulated vehicles, the Victorian guideline rates for a semi-trailer (bogie drive, 6 axle) assume the vehicle is 10 years old with a current capital value of $112,117 and subject to a leasing arrangement over a 4 year term with a 25 per cent residual and interest rate of 8.10 per cent per annum. Under the Western Australian guideline rates the equivalent prime mover and one trailer (42.5 tonnes) is assumed to be subject to a leasing arrangement over a 5 year term with an interest rate of 7.24 per cent per annum and a current capital value of $226,352. It is not clear from the TWU draft RSRO what assumptions underlie their proposed rates.

These differences highlight the inherent difficulty—perhaps the impossibility—of determining an appropriate ‘safe rate’ that would be applicable in a wide range of circumstances relating to key variables such as truck age and financing arrangements. While such differences are perhaps of relatively limited significance in the context of setting guideline rates, where mandatory rates are concerned, the importance of these assumptions is inevitably much greater.

Moreover, the example of NSW, which has apparently sought to address this issue by specifying three sets of rates differentiated according to truck age, highlight a further difficulty in this area. Table 6.3 reproduces Table 1 from the NSW General Contract Carriers Determination.

271 A second schedule included with the Western Australian guideline rates assumes the vehicles are 5 years old. However, these are not the rates used in the comparison schedule prepared by the Tribunal.
Table 6.3: Vehicle Rates - NSW General Contract Carriers Determination

<table>
<thead>
<tr>
<th>Class of vehicle and Rigid Vehicles Carrying Capacity</th>
<th>Vehicle Age, Scale A (Up to 1 year) hourly Standing Rate ($ per hour)</th>
<th>Vehicle Age, Scale A (Over 1 year) running Rate (cents per km)</th>
<th>Vehicle Age, Scale B (Over 1 year, up to 3 years) hourly Standing Rate ($ per hour)</th>
<th>Vehicle Age, Scale B (Over 1 year, up to 3 years) running Rate (cents per km)</th>
<th>Vehicle Age, Scale C (Over 3 years) hourly Standing Rate ($ per hour)</th>
<th>Vehicle Age, Scale C (Over 3 years) running Rate (cents per km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 2 tonnes</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>2 to 5 tonnes</td>
<td>35.91</td>
<td>42.23</td>
<td>31.53</td>
<td>45.30</td>
<td>25.30</td>
<td>45.36</td>
</tr>
<tr>
<td>5 to 8 tonnes</td>
<td>42.47</td>
<td>58.45</td>
<td>36.11</td>
<td>58.71</td>
<td>27.16</td>
<td>58.75</td>
</tr>
<tr>
<td>8 to 10 tonnes</td>
<td>49.64</td>
<td>71.46</td>
<td>41.16</td>
<td>72.28</td>
<td>34.82</td>
<td>72.31</td>
</tr>
<tr>
<td>10 to 12 tonnes</td>
<td>66.36</td>
<td>100.60</td>
<td>52.09</td>
<td>99.48</td>
<td>42.32</td>
<td>99.61</td>
</tr>
<tr>
<td>12 to 14 tonnes</td>
<td>86.06</td>
<td>126.47</td>
<td>65.07</td>
<td>126.42</td>
<td>51.05</td>
<td>126.57</td>
</tr>
<tr>
<td>14 tonnes +</td>
<td>95.93</td>
<td>150.09</td>
<td>71.75</td>
<td>148.76</td>
<td>54.75</td>
<td>148.94</td>
</tr>
<tr>
<td>Single Axle Prime Mover</td>
<td>69.50</td>
<td>136.54</td>
<td>54.42</td>
<td>137.16</td>
<td>44.41</td>
<td>137.28</td>
</tr>
<tr>
<td>Bogie Axle Prime Mover</td>
<td>98.58</td>
<td>157.14</td>
<td>73.66</td>
<td>157.02</td>
<td>56.11</td>
<td>157.19</td>
</tr>
</tbody>
</table>

Table 6.3 shows that the rates applicable decline as the age of the vehicle increases. Thus, for example, in relation to a bogie axle prime mover, the Scale B standing rate (over 1 year, up to 3 years) is 25.3 per cent lower than the Scale A rate, while the Scale C rate (over 3 years) is 23.8 per cent lower than the Scale B rate and 43.1 per cent lower than the Scale A rate. While total remuneration will clearly differ significantly less than these comparisons suggest, since the running rates are near identical, it is arguable that these differences may create incentives to use the truck intensively in the period prior to its moving from one rate scale to the next, thus promoting unsafe driving practices.

6.3.2 *Fair Work Act 2009*

For employee drivers covered by the national workplace relations system, the FW Act provides a safety net of minimum terms and conditions of employment comprising the national minimum wage, National Employment Standards (NES) and modern awards. The NES cover matters including hours of work, flexible working arrangements, leave, public holidays, notice of termination and redundancy pay, and information requirements. Modern awards

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272 The Department of Employment has estimated that approximately 96% of all private sector employees are covered by the Fair Work Act.
set out minimum wages and conditions for specific industries or occupations and apply on top of the NES and minimum wage.

The two main modern awards which apply in the road transport industry are the RTD Award and the RLTO Award. These awards cover a number of matters such as hours of work, minimum rates of pay, allowances, leave, and consultation and dispute resolution.

The LDO Award provides for employees engaged in long distance operations to be paid for all driving time pursuant to either a specified hourly or per kilometre rate. Further, where an employer has an accredited Fatigue Management Plan in place (as approved under a Commonwealth or state law), the LDO Award provides that the hourly rate may be used to calculate a trip rate for the journey based on the number of driving hours specified in the Fatigue Management Plan for that journey. The LDO Award also requires employees to be paid an hourly rate for time spent loading/unloading vehicles, and for up to 8 hours delay occurring because of breakdowns or impassable highways.

The FW Act also affords employee drivers employment protections under the general protections and unfair dismissal provisions, while the FWC can make orders to resolve disputes in relation to enterprise agreements, bargaining and unfair dismissal. The FWC can also conciliate or mediate general protections disputes, and can arbitrate the dispute if the parties agree. Alternatively, a relevant court can also make a binding decision in a general protections dispute.

Appendix 5 contains further information on the operation of the FW Act, modern awards and enterprise agreements.

Owner drivers are primarily covered by commercial rather than employment law, given their legal status as independent contractors - in effect, small business operators. They are therefore not entitled to minimum wages or conditions, such as annual leave, sick leave and notice of termination, provided for under the NES or a modern award. They typically provide services to other organisations (i.e. a hirer) under a contract for service, which will usually include negotiated rates and other working arrangements and payment terms. However, some of the general protections provided under the FW Act extend to independent contractors and their principals (hirers). As

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274 The LDO Award includes schedules of agreed driving distances (clause 13.4(b)) and hours (clause 13.5(c)) for journeys between specified centres which are to be used in the calculation of payments. Where a journey to be completed is not listed in clause 13.5(c), payments are required for actual hours worked and must not be pursuant to a trip rate which provides for a fixed amount per trip.
275 See clause 13.5(a)(iii) of the LDO Award.
276 See clause 13.6 of the LDO Award.
277 See clause 22 of the LDO Award.
278 The General Protections, in Part 3-1 of the Fair Work Act, include protection from adverse action taken against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes to, or not to, exercise a workplace right. It also includes protection from adverse action taken against an employee because of their industrial activity or for a discriminatory reason.
279 An independent contractor or principal is protected from adverse action by a principal (person who has or proposes to enter into a contract for services) because the independent contractor has a workplace right, has or has not exercised a workplace right, or proposes to, or not to, exercise a workplace right or because of their engagement in industrial activities. In the context of an owner driver, adverse action by a principal contractor against the owner driver includes refusing to engage the owner driver, terminating the contract for service,
with employees, the FWC can assist in the resolution of general protections disputes by mediation or conciliation if the parties agree to participate. However, the FWC cannot make any binding decisions or orders. All disputes regarding a contract for services will need to be pursued through the courts for formal resolution.\footnote{280}

6.3.3 Other legislation

In addition to the protections under the FW Act, independent contractors are also capable of having harsh and unfair contracts reviewed by the Federal Circuit Court under the \textit{Independent Contractors Act 2006} (Cth) (IC Act). The court will look at the terms of the contract and the circumstances when the contact was made. In doing so the Court may have regard to, among other things, whether the total remuneration paid to the independent contractor is less than an employee doing the same work would have received. If it finds the contract is unfair or harsh, it can vary the contract.\footnote{281}

The \textit{Competition and Consumer Act 2010} (Cth) (CC Act) permits the ACCC to authorise independent contractors to collectively bargain with larger operators subject to certain conditions. It is also worth noting that the Government committed in its election policy\footnote{282} to extend to small business the ‘unfair contracts terms’ protections already available to consumers under the CC Act,\footnote{283} and to conduct a “root and branch” review of competition laws. While some detail on the latter has been published in the form of draft terms of reference, details on the former are yet to be released.

Appendix 5 provides further detail on the operation of the IC Act and CC Act.

6.4 Objectives of the \textit{Road Safety Remuneration Act 2012}

The key objectives of the RSR Act are to promote safety and fairness in the road transport industry. Section 3 of the RSR Act, which sets out these objectives, also specifies in part the manner in which they are to be achieved:

\textbf{3 Object}

\textit{The object of this Act is to promote safety and fairness in the road transport industry by doing the following:}

\begin{itemize}
\item refusing to make use of the owner driver’s services, altering the position of the owner driver to their prejudice and discriminating against the owner driver in the terms or conditions offered. See Part 3-1 of the Fair Work Act.
\item Alternative dispute resolution methods are available (such as voluntary mediation, conciliation and arbitration), however if they are not successful the dispute will ultimately require court action to achieve resolution.
\item It is understood that there have been very few cases with regard to independent contractors seeking relief from unfair contracts, and only one case in particular involving owner drivers. In Keldote Pty Ltd & Ors v Riteway Transport Pty Ltd [2010] FMCA 394 (16 June 2010), the Federal Magistrates Court of Australia ruled that the Contracts between three owner drivers and a transport company were unfair because they required the owner drivers to upgrade their vehicles without an applicable trip rate.
\item See Schedule 2, Part 2-3 ‘Unfair Contract Terms’.
\end{itemize}
(a) ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner;

(b) removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices;

(c) ensuring that road transport drivers are paid for their work; including loading or unloading their vehicles or waiting for someone else to load or unload their vehicles;

(d) developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers;

(e) ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards;

(f) facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

The above discussion highlights the potential for overlap that exists between a range of existing legislation and the RSR Act, particularly in relation to employee drivers and the subclauses of Section 3 of the Act which specify how the objectives of improving safety and fairness are to be achieved.

For example, since the definition of ‘road transport driver’ includes an ‘employee driver’, clause (c) of the ‘Object’ provision of the RSR Act overlaps with the LDO Award, which also states that drivers are to be paid for loading and unloading times. While the LDO Award is currently silent on the issue of waiting time, this comparison highlights the fact that, in this area as in many others, existing industrial arrangements appear to be capable of dealing with specific issues of the kind which the RSR Act purports to address.

Similarly, clauses (d) and (e) of the ‘Object’ clearly overlap with the CoR concept in the HVNL and the objects of that law, as set out below:

3 Object of Law

The object of this Law is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that—

(a) promotes public safety;

(clauses b and c excluded)

(d) encourages and promotes productive, efficient, innovative and safe business practices.

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284 See sections 5 and 6 of the RSR Act.
285 See clauses 13.3 and 13.6 of the LDO Award.
286 See sections 3 and 4 of Chapter 1, Part 1.1 of the HVNL.
4 Regulatory framework to achieve object

The object of this Law is to be achieved by a regulatory framework that—

(clauses a and b excluded)

(c) prescribes requirements about the following—
   (i) the standards heavy vehicles must meet when on roads;
   (ii) the maximum permissible mass and dimensions of heavy vehicles used on roads;
   (iii) securing and restraining loads on heavy vehicles used on roads;
   (iv) preventing drivers of heavy vehicles exceeding speed limits;
   (v) preventing drivers of heavy vehicles from driving while fatigued; and

(d) imposes duties and obligations directed at ensuring heavy vehicles and drivers of heavy vehicles comply with requirements mentioned in paragraph (c)(i) to (v) on persons whose activities may influence whether the vehicles or drivers comply with the requirements; and...

This potential overlap between the objectives of the RSR Act and existing legislation was consistently raised as a key concern of many stakeholders, who often described specific instances where the RSR Act was perceived to duplicate or overlap existing legislation. These views are examined in detail in Section 7.3.3 of this report.
7 Stakeholder Views

Key Points

- A total of 26 stakeholder submissions were received, while a number of direct consultations with stakeholders were conducted by teleconference. Only five submissions supported the continuation of the RSRS in its current form. 11 submissions called for the abolition of the RSRS while 10 called for major reform of it.
- Supporters of the RSRS argued that it was the only effective means of addressing the link between remuneration and safety and of ensuring all supply chain participants were involved in improving safety performance in the industry. They also argued that certain regulatory efficiencies could be attained via the RSRS, as it enables an integrated approach to safety issues to be taken.
- By contrast, many opponents of the RSRS argued that the link between remuneration and safety has not been adequately established and should be the subject of further research before any policy action of this type was taken. They therefore believe that little, if any, safety benefit is likely to arise from the implementation of the RSRS.
- However, these stakeholders focused strongly on the additional regulatory compliance costs that they see as arising from the RSRS. These are said to be the result of the high level of regulatory overlap and duplication created by the system and the associated complexity involved in ensuring compliance. Particular concerns were voiced by a number of stakeholders as to the ability of small business to meet its obligations.
- Opponents of the RSRS generally argued for further reform of existing heavy vehicle safety regulation, together with better implementation, as a preferred means of improving safety performance.
- In the event that the RSRS is to be retained, several stakeholders argued that its scope should be restricted to owner drivers and/or that a lighter-handed approach, not involving mandatory rate setting should be adopted. Several stakeholders also argued that the scope of RSRO should be restricted to remuneration per se, so that the level of regulatory duplication they entail is reduced.

7.1 Description of consultation undertaken

The Review sought the input of interested parties in several ways following the media release regarding the conduct of the review issued by Minister Abetz on 20 November 2014. First, a public call for submissions was made via the Review website. Second, the reviewer wrote to a range of key stakeholders highlighting the Review and inviting submissions. Third, teleconferences were undertaken with a number of stakeholders, some initiated by the reviewer and others at the request of the stakeholders themselves. The majority of stakeholders which engaged with the Review via teleconferences also provided written submissions. The exceptions to this were the NHVR and Linfox; the views expressed in this report are therefore taken from those discussions rather than from written material supplied.

The public call for submissions invited interested parties to provide submissions in response to the Terms of Reference, including addressing the following matters:

1. The impact to date of the Tribunal on the road transport industry and its safety performance
2. The potential future impact of the Tribunal on the road transport industry and its safety performance
3. The appropriateness of the Tribunal model as a means of addressing safety performance in the road transport industry, having regard to key policy considerations of effectiveness and efficiency
4. Any preferred approaches to addressing road safety concerns in the road transport industry
5. The nature and extent of any regulatory overlap and duplication arising from the operation of the Road Safety Remuneration System, including any additional regulatory or economic burdens and potential means of addressing these
6. Any other issues considered relevant to the Review

An overview of the views expressed by the various stakeholders on these matters is provided below.

7.2 Overview of stakeholder submissions

A total of 26 written submissions were received. The majority of submissions are available on the Department of Employment’s website,

but four organisations requested that their submissions remain confidential. While these views have been taken into account, the report does not attribute the views expressed by these stakeholders. As may be anticipated, the views expressed by stakeholder are varied, although they may be broadly summarised as follows:

- 11 submissions strongly oppose the RSRS; that is, they recommend the Tribunal be abolished and the RSR Act be repealed;
- 10 submissions do not specifically support or oppose the RSRS but raise significant concerns with the Tribunal, the RSR Act and/or the 2014 Order;
- 1 submission specifically supports retaining the Tribunal with a refined scope and role; and
- 4 submissions fully support the RSRS.

Each of the submissions agreed that heavy vehicle safety was a significant policy issue and that improving performance should be an industry and public policy priority. However, the quite strong level of concern expressed regarding the RSRS and the operation of the Tribunal is notable and clearly represents a significant issue. Key comments regarding the merits of the RSRS as a whole are summarised below.

7.2.1 Submissions in support of the RSRS

As noted above, five submissions supported the RSRS, although one of these advocated changes to the scope of the Tribunal’s functions and its specific role. The four submissions in support of the RSRS in its current form came from two unions (TWU and National Union of Workers) and from two individuals working in the field. With the exception of the TWU submission, these submissions in support of the RSRS were extremely brief (one to 2.5 pages) and provided relatively little detail as to the views expressed.

The TWU is fully supportive of the RSRS, stating that:

“The Road Safety Remuneration Act 2012 and the Road Safety Remuneration Tribunal were set up in response to more than 20 years of evidence showing the link between driver rates and safety on our roads.

The legislation draws on a substantive body of evidence demonstrating that improving safety on our roads requires the active involvement of all supply chain participants. It is only by engaging clients, fleet owners, transport companies, operators and drivers that commercial pressures that reverberate through the supply chain can be addressed in both a safe and fair way.”\textsuperscript{288}

The submission from Intercapital Trucking Pty Ltd argued that the RSRS constituted an essential response to:

"...the refusal of major companies to conduct themselves in a fair way when conducting business with people who do not have the business acumen, knowledge of their common law rights, and the RSRT gives the tribunal the right to address these issues if it is brought to their attention."\textsuperscript{289}

A third submission emphasised the role of the Tribunal in mediating between the interests of a wide range of parties and saw the resulting decisions as having democratic legitimacy.

7.2.2 Submissions expressing concerns regarding the role or operation of the RSRS

A large number of stakeholders identified regulatory duplication and/or overlap as a key general issue of concern regarding the RSRS, but did not specifically oppose the continuation of the system. These concerns include, but are not limited to, the nature and extent of regulatory overlap and the impact on owner drivers, compliance burdens, the operation and conduct of the Tribunal, and coverage of the RSR Act.

The Victorian Government identified a number of areas where there is overlap in the application and content of the Order and the Victorian Act, instruments and other State regulation which may lead to some duplication of obligations under the various regulatory systems, as well as complexity in determining which obligations apply to particular engagements and how they may be satisfied. They also questioned the necessity of the RSRO:

“The Tribunal’s decision accompanying the Order does not clearly answer the question as to whether the obligations imposed by the Order are necessary given the concurrent operation of State-based laws, or whether they represent an increase in regulatory burden that is not sufficiently offset by an increase in safety standards.”\textsuperscript{290}

Similarly, the NSW Government stated that:

“...any approach to addressing safe payments must closely consider how to complement, potentially leverage or at the very least not duplicate existing work health and safety, and

\textsuperscript{288} Submission of Transport Workers Union, p.2.
\textsuperscript{289} Submission of Intercapital Trucking Pty Ltd, p.2.
\textsuperscript{290} Submission of the Victorian Department of Treasury and Finance, p.16.
road safety, legislation. Such duplication may cause confusion for participants in the road freight transport sector and thereby detract from their ability or willingness to comply with ‘safe rates’ legislation.

This conflict and overlap with existing legislation could result in job losses, small business closures, reduced industry investment, prevent market entry and limit innovation within the industry and pass unnecessary costs on to consumers.”

Other submissions seeking reform, rather than abolition, of the RSRS focused on its scope and proposed various limitations. Thus, the Australian Road Transport Industrial Organisation (ARTIO) submitted that the Tribunal’s activities should be limited to addressing the remuneration-safety link and to complementing the CoR and WHS provisions enacted by the states and territories:

“Currently the Road Safety Remuneration Act does not prevent the Tribunal from overriding, extending or duplicating obligations contained in other legislation.”

Similarly, ARTIO argued strongly that it is not appropriate that the RSRS has jurisdiction over employees already covered by the FW Act, modern awards or enterprise agreements. The Australian National Retailers’ Association (ANRA) suggested the Tribunal would be best placed to focus on establishing minimum rates of remuneration and related conditions that apply only to contracts involving small independent contractors:

“Large operators already have systems in place to ensure they are meeting all the safety and remuneration obligations under the laws that exist outside the Road Safety Remuneration System.”

Finally, the Australian Logistics Council (ALC) raised concerns as to the qualifications of the Tribunal to address the safety issues over which its legislation gives it jurisdiction, commenting that “…a majority of members are effectively industrial relations practitioners with limited specialist knowledge in safety issues relating to the sector”, implying that the Tribunal may not have appropriate knowledge to make decisions on behalf the industry.

7.2.3 Submissions opposed to the RSRS

As noted above, there is substantial opposition to the premise underpinning the RSRS. For example, the Australian Chamber of Commerce and Industry (ACCI) argue:

“... There is no conclusive finding of cause and effect relating to remuneration and safety outcomes.

... The existing RSRS is an excessive regulatory intervention to appropriately address this issue. It unreasonably includes within its coverage parties which are already satisfactorily regulated at a state and territory level, or otherwise through the Fair Work system.

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291 Submission of the New South Wales Department of Industrial Relations, p.1.
292 Submission of the Australian Road Transport Industrial Organisation, p.12
293 Submission of the Australian National Retailers’ Association, p.4
294 Submission of the Australian Logistics Council, p.6
...Any proposed regulatory intervention should consider gaps in coverage or application."

Similarly, the Northern Territory Government recommends that the RSRS be abolished and that matters regarding safety and related pay and work conditions should be managed through existing regulatory arrangements. Their argument for the abolition of the system highlighted the fact that existing legislation is already in place (i.e. the Fair Work system, WHS provisions and HVNL) that adequately deal with the issues as well as business and industry considerations in the Northern Territory, particularly relating to the Northern Territory’s relative remoteness and dispersed population and the associated high costs of transporting goods and services for both business and the general population.

State governments that already address remuneration issues legislatively highlighted the overlap between the RSRS and their own legislation in expressing their opposition. The Western Australian Government reiterated the views expressed in their submission in response to the Safe Rates, Safe Roads Directions Paper:

“...the State Government was opposed to the introduction of a national road transport tribunal on the basis that a national tribunal would overlap the road transport regulatory system already in place in Western Australia and would result in confusion and an increased regulatory burden for transport operators, as well as being less effective than the existing State system in delivering safety outcomes.”

The Western Australian Government also notes that prior to the establishment of the RSRS they:

“...expressed opposition to any potential use of the trade and commerce power of the Australian Constitution to support the establishment of the desired national framework on the basis of the potential for a national system to further erode State responsibility and introduce another level of complexity into the current regulatory framework”.

A number of industry submissions highlighted the issue of regulatory overlap and duplication as key to their opposition to the RSRS. Thus, Master Builders Australia (MBA) submits that the RSRS should be abolished, stating that it is “...superfluous as there is overlapping regulation that is better suited to regulating safety within the road transport industry.”

Coles Supermarkets Australia is concerned about the potential for the RSRS to impose regulatory and compliance measures on supply chain participants which:

- “...merely duplicate existing measures imposed by other legislative schemes (including State and Territory chain of responsibility and WHS legislation, the Fair Work Act and the Heavy Vehicle National Law) without addressing the key issue of adequately enforcing existing regulation;

295 Submission of the Australian Chamber of Commerce and Industry, p.3.
296 Submission of the Western Australian Department of Commerce, p.6.
297 ibid, p.6.
298 Submission of the Master Builders Australia, p.12.
• impose significant cost burdens without yielding corresponding improvements to safety outcomes;

• in some respects, simply cannot be complied with in a practical sense (either due to the scale of the relevant supply chain, or the degree of control exercisable by the supply chain participant over the relevant activity);

• do not adequately focus on those operators and sectors within the industry which face the most significant compliance issues (such as smaller operators in the inbound line haul sector); and

• act as a mechanism to apply industrial pressure outside of the established enterprise bargaining regime.”

Some stakeholders expressed concern that the RSRS is the wrong approach to achieve its stated objective. The Australian Industry group (Ai Group) stated in its submission that improving safety in the industry requires a whole-of-government approach rather than a narrow focus upon the method and quantum of remuneration. It highlights the need for any regulatory intervention to have broad support, including the support of Commonwealth, state and territory governments and industry and argues that this is lacking in the case of the RSRS:

“The RSR System does not have broad support. It is a flawed system which was implemented by the previous Government in response to the Transport Workers Union’s Safe Rates, Safe Roads industrial campaign.

The RSR System is distracting Government and industry attention resources away from the measures which are widely recognised as improving safety, towards a regime which is not widely supported nor underpinned by robust economic modelling.”

The National Farmers’ Federation (NFF) also views that the establishment of the Tribunal has:

“…distracted government and industry attention and resources away from the measures which are widely recognised as improving safety, such as risk identification and control; improving roads; fatigue management; education and training; drug and alcohol policies; use of technology; and stronger compliance and enforcement mechanisms.”

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299 Submission of Coles Supermarkets Australia, p.1.
300 Submission of the Ai Group, p.2.
301 Submission of the National Farmers’ Federation, p.5.
The NFF believes that:

“...the Road Safety Remuneration Act 2012 (RSR Act) falls short in providing any real measures to improve safety in the transport industry. ‘The RSR Act is focused upon providing remuneration mechanisms/outcomes without any requirement for improved safety.”  

The ACCI is also concerned that the RSR Act does not provide any avenue of appeal beyond judicial review under the Constitution. The ACCI submits that any revised regulatory system should allow an aggrieved party to appeal decisions of the relevant regulator.

7.3 Stakeholder views on key issues

The following summarises the views received from stakeholders on several key issues identified in the Terms of Reference. Additional detail on some issues, in particular those relating to regulatory duplication and overlap, is provided in Appendix 6.

7.3.1 Impact to date of the Tribunal on the industry and its safety performance

The majority of stakeholders agree that it is difficult to assess the impact of the Tribunal to date, given that it has been operating for less than two years and that its first RSRO will not take effect until May 2014. The ALC argued that the review is necessarily an *ex ante* one and that it is therefore not possible to assess the economic burden of the Tribunal on the Australian economy. Coles Supermarkets Australia similarly stated that “...as the Tribunal has yet to meaningfully exercise its statutory functions it cannot be said to have had any demonstrable impact on the road transport industry’s safety performance to date.”

The TWU went further, stating that the “...review of the road safety legislative framework at this point of time is premature at best and ideologically charged at worst.” It expressed the view that the latest commencement date for the review specified in the Act - 1 July 2015 - “...represents a more accurate and useful juncture of assessing if the Act has allowed more drivers to return home safely each night.”

The Ai Group was of the view that despite the fact that the 2014 Order has yet to take effect, the RSR system has nevertheless had a negative impact on the industry:

“...it would be difficult to assert that, to date, the RSR System has delivered any identifiable positive impact on safety in the road transport industry. Its first RSRO is yet to commence. Nonetheless, we note that the system has resulted in a significant level of uncertainty and anxiety within industry regarding the potential changes to the regulatory environment that may flow from the Tribunal’s operation. Such uncertainty undermines business confidence and productivity. It undermines industry’s capacity to make and implement relevant decisions regarding their operations, and it undermines safety. Improved safety is not furthered by complexity and confusion. The implementation of the RSR System has already imposed a

302 ibid, p.4.
303 Submission of Coles Supermarkets Australia, p.2.
304 Submission of the Transport Workers’ Union, p.9.
305 ibid, p.2
significant burden and distraction on industry. It has been forced to come to terms with an entirely new legislative regime that interacts with existing laws in an extremely complex manner.\textsuperscript{306}

In total, 17 of the 26 submissions received explicitly stated that the Tribunal has had little observable impact on the road transport industry to date, with the 2014 RSRO not yet operational. Several stakeholders expressed surprise or disappointment that the Tribunal has not made use of its research function to investigate the fundamental issue of the nature and extent of linkages between rates of pay and road safety outcomes, with the context for these observations being that a number of stakeholders have previously unsuccessfully lobbied the Tribunal to incorporate such research into its work program.

7.3.1.1 2014 Order
The 2014 Order was raised as a concern by a number of stakeholders, with the key issues identified being duplication, the practicability of complying with its provisions and the administrative costs likely to be incurred in doing so.

The ARTIO state that “...the Tribunal ruled that its jurisdiction was not limited strictly to remuneration related conditions and may include within an order any measure that may be related to safety within the industry.” Therefore the ARTIO believe “...that there exists considerable potential for orders to overlap and duplicate existing regulatory schemes and impose significant cost and compliances burdens on the industry.”\textsuperscript{307}

Further, in relation to the consultation processes, the Australian Trucking Association (NSW) stated that their members were baffled at the release of the 2014 Order, stating that it reflected a “...complete lack of understanding of the ad hoc nature of the industry...” and demonstrated that the Tribunal “...ignored the strong evidence provided by those in industry that this order affects the most.”\textsuperscript{308}

Some stakeholders argued that the 2014 Order requires participants in the road transport supply chain to comply with additional regulation that unnecessarily duplicates existing regulation and is also, in some respects, inconsistent with existing regulation. Key areas of overlap identified were the HVNL and WHS legislation.

The ACCI maintains its concern that the RSRS regulates a significant number of matters that are currently regulated by state or territory based legislation, other Commonwealth bodies such as the NHVR, or that will be addressed through the COAG.

The Ai Group commented that:

“...industry has been obliged to attempt to engage with the new RSR Tribunal concerning the making of RSROs with the potential to impose significant and problematic new obligations.

\textsuperscript{306} Submission of the Ai Group, p.15 and 16.
\textsuperscript{307} Submission of the Australian Road Transport and Industrial Organisation, p.3.
\textsuperscript{308} Submission of the Australian Trucking Association (NSW), p.1.
Unfortunately, this burden has been insurmountable for the vast majority of stakeholders. Very few employers have directly participated in the Tribunal’s operations. The increased regulatory burden imposed on industry by the RSR System comes at a time when industry is still grappling with the implementation of important reforms to work health and safety laws and Transport Regulation along with successive and ongoing changes to the workplace relations system (both in the legislative context and in relation to the content of relevant modern awards).”

“The burden will be exacerbated by the recent release of the Tribunal’s first RSRO…”

A number of stakeholders were of the view that the obligations imposed by the 2014 Order would present particular compliance difficulties for small business operators. The industry bodies representing small to medium businesses are concerned that the potential extra compliance obligations and associated administrative burdens imposed would be very costly and time-consuming for smaller businesses, particularly owner drivers.

Many stakeholders argued that the Tribunal had not complied with its obligation to fully consider and examine existing legislation in the course of making the 2014 Order. Furthermore, some stakeholders believe that the timeframes for submissions and consultations on the draft RSRO were considered to be too rushed and that opportunities to participate in discussions on its content were limited. The Ai Group claim that:

“…the approach of the Tribunal severely limited industry’s involvement in the making of the first RSRO. In contrast to the development of the first RSRO, the Heavy Vehicle National Law and harmonised work health and safety laws were the product of extensive and detailed consultation and input from a very broad array of industry participants over several years. This represents a far more effective approach to the development of safety regulation.”

Similarly, the ALC highlighted a number of problems with the process by which the 2014 Order was developed. It stated that some evidence was not considered due to witness unavailability for cross examination and that much time was spent on whether the parties had enough time to consider evidence presented. They further commented that there “...is some doubt as to whether this is the best method to develop legally binding safety standards.”

The ANRA criticised the “unnecessarily” broad scope of the 2014 Order, in that its coverage extends beyond owner drivers and includes employee drivers.

The state governments that currently have legislation in place in relation to remuneration matters made a number of comments concerning the relationship between the 2014 Order and their own legislative arrangements, highlighting both key differences and areas of overlap.

The Victorian Government commented:

309 Submission of the Ai Group, p.16.
310 ibid, p.19
“...there may be circumstances where owner-drivers move in and out of coverage of the Order, such as where short haul drivers operate in a number of sectors, only some of which are covered by the Order. This may contribute to uncertainty by industry participants about their obligations, in particular small operators.”

“There are areas of overlap in the coverage and content of the Order and the Victorian Act, instruments and other State regulation. This may lead to some duplication of obligations under the various systems, as well as some complexity in determining which obligations apply to particular engagements. Therefore, the interactions between the RSR System, the Order and existing State regulation have the potential to cause some complexity and confusion for participants in the Victorian road transport industry. This has the potential to increase the regulatory burden and impose additional costs on participants in the industry.”

The Western Australian Government submitted that:

“...the high level objectives of the RSR Act and the OD Act are broadly similar. Both Acts seek to promote safety in the road freight transport industry by putting into place measures that reduce the financial incentive for owner-drivers to operate in ways that increase the risk of death and injuries on the road. Both Acts also aim to improve fairness for owner-drivers by ensuring that they are paid equitably for their work, and both acts facilitate access to dispute resolution procedures relating to remuneration and related conditions for road freight drivers. The RSR Act has broader coverage and wider powers than the OD Act, such as providing for the making of national road safety remuneration orders and collective agreements. In addition, the RSR Act covers employee drivers and other participants in the supply chain not covered in WA’s OD Act.”

The NSW Government is concerned “…that the concurrent operation of these State and Commonwealth provisions could create significant duplication of regulation which is a matter of material concern to the NSW Government and NSW stakeholders. Duplication generally leads to uncertainty and confusion for stakeholders and may increase costs that are passed on to consumers.”

7.3.2 Potential future impact of the Tribunal on the road transport industry and its safety performance

As a supporter of the Tribunal in its current format, the TWU advanced the view that the RSR Act establishes a legislative framework that simplifies current regulatory arrangements:

312 Submission of the Victorian Department of Treasury and Finance, p.10.
313 Submission of the Victorian Department of Treasury and Finance, p.9.
314 Submission of the Western Australian Department of Commerce, p.6.
315 Submission of the New South Wales Department of Industrial Relations, p.3.
"...the Act establishes a legislative framework that simplifies the regulatory response to this critical safety issue. Empowering the one regulator to address rates, commercial practices, safe driving and enforcement issues..."  

The TWU stated that the Tribunal is the only way to deal with the issue of remuneration and safety, as WHS legislation does not deal with economic pressure and the CoR legislation only deals with the symptoms but not the cause of issues that arise due to power imbalances within the industry. The TWU believes a key point of difference between the RSRS and other existing legislation bearing on heavy vehicle safety is that the Tribunal is taking a proactive approach to safety, rather than focusing on post-breach actions, as occurs under WHS legislation.

The TWU expressed the view that it would like the Tribunal to set remuneration rates in a manner consistent with that currently used in NSW in future RSRO, as they believe this will address the present excessive undercutting of rates by owner drivers and provide stability within the industry.

The TWU also highlighted the importance of the Tribunal’s unique capacity to address the complex range of matters impacting on road safety in a holistic fashion, taking into account factors from a range of other regulatory fields (including road transport law, CoR and fatigue management, WHS and modern awards). The TWU also argued that prior to the passage of the RSR Act and establishment of the Tribunal regulatory efforts in road safety were principally focussed on compliance. Previous attempts to expand the scope of other regulatory arrangements to enable remuneration-related matters to be addressed have so far been rejected, making the RSR Act and Tribunal the only mechanisms “…capable of implementing the suite of measures, identified as necessary, to address the root causes of the safety crisis in the road transport industry.”

Intercapital Trucking Pty Ltd particularly lauded the ability of the Tribunal to function as a no-cost, independent forum for independent contractors to raise disputes against larger entities, thereby better balancing the difference in bargaining power.

The ARTIO submission was generally supportive of the underlying intent of the RSR Act and the Tribunal, viewing it as the only legislative mechanism currently available to address the core issues pertaining to remuneration and safety at a national level. They concede there is a role for the Tribunal, but argue that it needs to be more limited than it is at present and driven by research.

Many stakeholders have expressed the view that the Tribunal will increase regulatory burdens and compliance costs without actually producing improvements in safety outcomes. This is considered to be a particular concern for small businesses - notably owner drivers - as they do not have the resources and capacity to deal with additional legislative requirements. The ANRA stated that, by contrast, the major operators already have systems and processes in place to meet their obligations. The NSW Government expressed concerns about how current and future obligations

316 Submission of the Transport Workers’ Union, p.9.
317 ibid, p.35
318 Submission of Intercapital Trucking Pty Ltd, p.2.
319 Submission of the Australian Road Transport and Industrial Organisation, p.6.
320 Submission of the Australian National Retailers’ Association, p.5.
under WHS legislation, and heavy vehicle and road safety legislation will interact with the operation of the Tribunal and its education and compliance framework.321

Some larger organisations are concerned about the potential of the Tribunal to impose regulatory and compliance measures on supply chain participants. There is concern that future RSROs that regulate rates of pay, as foreshadowed by the Tribunal, would unreasonably increase costs and regulatory burdens for all parties.

7.3.3 Regulatory overlap and duplication arising from the operation of the RSRS

The majority of stakeholders felt that there was substantial overlap and duplication arising from the operation of the RSRS and that this would add to regulatory and economic burdens for business. A fundamental aspect of this concern arises from the fact that the Tribunal's 2014 Order deals almost exclusively with matters other than remuneration. A number of stakeholders have argued that the Tribunal has, in making its 2014 Order, adopted an unduly broad interpretation of the permitted scope of the RSRO, in light of the provisions of section 27 of the Act. This inevitably means that the level of duplication and overlap implied in the current RSRO is greater than would otherwise be the case, while the closely related concern expressed was that this approach potentially presages a wider range of interventions in areas other than remuneration per se in future RSRO and other activities.

Section 27(1) of the RSR Act states that:

"If the Tribunal decides to make a road safety remuneration order, the Tribunal may make any provision in the order that the Tribunal considers appropriate in relation to remuneration and related conditions for road transport drivers to whom the order applies."

A widely held stakeholder view, in light of the adoption of an initial RSRO that generally deals with issues other than remuneration per se, is that many of the matters dealt with cannot easily be seen as being remuneration-related conditions. For example, one confidential submission stated in this context that:

"...[we believe] that the RSRT is trying to expand its reach into areas that are already regulated by other laws (such as the Fair Work Act, state and territory work health and safety laws, and the Heavy Vehicle National Laws)."322

This issue appears to relate particularly to the provisions contained in Part 5 of the 2014 Order, which establish very prescriptive requirements in respect of Safe Driving Plans as well as requirements in relation to training and drug and alcohol policies. While such provisions are clearly safety-related, in the broader sense, section 27 of the RSR Act constrains the use of RSROs to promoting safety via conditions that are ‘related’ to remuneration.

As discussed elsewhere, the issues underlying the Safe Driving Plan requirements are clearly within the scope of the HVNL and are addressed via aspects of that legislation. The fact that the Tribunal, in

321 Submission of the New South Wales Department of Industrial Relations, p.5.
322 Confidential submission.
its first ever RSRO, has shown a willingness to address such safety-related issues, which appear not
to have direct and clear-cut relationships to remuneration, highlights the extent of the potential for
future RSRO to further expand the extent of the legislative overlap to which the RSR Act gives rise.

The Tribunal has argued, in paragraphs 396-7 of its judgement, that safe driving plans are
remuneration-related, in that such a plan:

"...requires an employer or hirer to provide a written record of how the road transport service
to be ...performed in accordance with safe work practices...It also requires consideration of
whether any unsafe work practices arose in the performance of the road transport service. ...
This is information which is central to the provision of adequate rates of payment...Thereby it
is information which is central to reducing or removing a remuneration-related incentive
and/or pressure that contributes to unsafe work practices."323

However, it also cites clause 89 of the Explanatory Memorandum of the RSR Act, as follows:

"The list provides guidance to the Tribunal about what matters can be related conditions. It
should be remembered that subclause 20(2) includes provisions that will also require the
Tribunal to take into account existing laws and other road transport regulatory systems. It is
not intended to overlap or duplicate conditions (such as fatigue laws) which will be set out
in the National Heavy Vehicle laws."324 [Emphasis added]

The subject matter of the fatigue provisions of the HVNL and its predecessor legislation seem clearly
to lie at the heart of the Safe Driving Plan requirements of the 2014 Order, suggesting that the
inclusion of this key element in the Order is at the least arguably at odds with the intention of the
Act as described above in the Explanatory Memorandum. The Tribunal's decision in relation to the
2014 Order makes no comment on this specific point.

As noted above, a number of stakeholders criticised what they described as the Tribunal’s broad
interpretation of the definition of the term ‘remuneration and related conditions’, as used in
section 27 of the RSR Act, highlighting the potential for this approach to exacerbate regulatory
duplication and overlap. For example, the Ai Group has stated:

“The RSR Tribunal’s decision making the first RSRO reveals that the Tribunal has concluded
that it has power through the making of RSROs to regulate far more than remuneration. This
expanded view of the Tribunal’s power is not appropriate or consistent with the rationale for
its implementation. If effectively means that the Tribunal is afforded a very broad capacity to
regulate both the road transport industry along with its supply chain and issues of safety
generally.

324 ibid, para.389
...Given that the RSR Tribunal has adopted a very broad view of the scope of matters that can be regulated through RSROs there is significant potential for enforceable instruments made by the Tribunal to override and oust the operation of other regulatory regimes.  

Stakeholders expressed concern that the Tribunal’s interpretation has resulted in a range of matters being included in the 2014 Order which were never intended by the RSR Act, nominating the provisions on adverse conduct protection, safe driving plans, training and drug and alcohol policies and testing. In particular, the Australian Federation of Employers and Industry (AFEI) was critical of the Tribunal’s reasoning regarding the interpretation of ‘remuneration and related conditions’ as outlined in the Tribunal’s decision on the 2014 Order, while this criticism was also raised by a number of other parties during the development of the Order:

“According to this [the Tribunal’s] reasoning, the ‘legitimate’ regulation of ‘remuneration and related conditions’ through road safety remuneration orders is potentially unlimited notwithstanding significant doubt that actual improvements in road safety will eventuate.”

The AFEI argued on behalf of its members that the 2014 Order requires participants in the road transport supply chain to comply with additional regulation which is unnecessarily onerous, duplicates and/or is inconsistent with existing regulation. The ACCI similarly stated its view that the RSRS regulates a significant number of matters that are currently regulated by state or territory based legislation, other Commonwealth bodies such as the NHVR, or that will be progressed through the COAG.

The Ai Group argues that the potential for overlap between the RSRS and other laws is significant. Given that the Tribunal has adopted a very broad view of the scope of matters that can be regulated through RSROs, they believe there is significant potential for enforceable instruments made by the Tribunal to effectively overrule aspects of many other regulatory regimes. The Ai Group also argue that there is potential for the interaction of provisions set out in Division 3 of the RSR Act to lead to substantial uncertainty and complexity for industry parties faced with the challenge of determining which elements of respective laws apply to them. This is seen as a particularly confronting task for the small businesses that constitute the majority of the road transport industry. The problem will be magnified by the fact that RSROs, if made on a sectoral basis as advocated by parties including the TWU, are likely to apply in a piecemeal manner and potentially only at certain times, based on the nature of work being performed. Consequently parties may move in and out of the coverage of the relevant systems.

In contrast, TWU states that none of the current regulators have the capacity to make the changes that the Tribunal has been charged with. In their view, while there is indeed overlap between the RSRS and other legislation dealing with heavy vehicle safety, this is inevitable given the proven inadequacy of the existing suite of legislation in addressing the safety concerns that gave rise to the RSRS. Thus, the RSRS will substantially extend and improve the regulatory structure already in place.

The TWU also argues that the RSRS:

325 Submission of the Ai Group, pp.19 and 33.
326 Submission of the Australian Federation of Employers and Industry, p.5.
"...not only benefits employee and owner-drivers, but also all companies and fleet operators in the industry that are currently at the mercy of powerful clients...Empowering one regulator to address rates, commercial practices, safe driving and enforcement issues, the Act/Tribunal finally provides an opportunity to cut the death toll."

Conversely, the NSW Government states that the:

"...conflict and overlap with existing legislation could result in an additional compliance burden, uncertainty and costs, particularly for smaller businesses, without achieving any real gain in productivity, safety or remuneration. Independent contractors and small businesses do not have adequate resources and systems to enable them to implement duplicated obligations that already exist under other legislation such as the WHS Act. In addition, the multiple client points of contact that independent contractors engage with will burden the driver with additional paperwork and regulatory obligations, which is very different from the experience of a driver within a large operator, whose freight task may be a single delivery of an entire truckload between only two points."

At an institutional level, the NHVR highlighted the need for effective co-ordination mechanisms to be developed and maintained between itself and the Tribunal in order to ensure consistent and co-ordinated approaches were taken in complementary and/or overlapping areas of jurisdiction. The need for such co-ordination is clearly greater to the extent that a RSRO addresses issues other than remuneration per se.

The Victorian Government considers that the 2014 Order does not clearly establish that the obligations imposed are necessary given the concurrent operation of state based laws, or whether they represent an increase in regulatory burden that is not sufficiently offset by an increase in safety standards. Similarly, the NSW Government stated:

"...any approach to addressing safe payments must closely consider how to complement, potentially leverage or at the very least not duplicate existing work health and safety, and road safety legislation. Such duplication may cause confusion for participants in the road freight transport sector and thereby detract from their ability or willingness to comply with safe rates legislation. This conflict and overlap with existing legislation could result in job losses, small business closures, reduced industry investment, prevent market entry and limit innovation within the industry and pass unnecessary costs on to consumers."

An example provided was the stated overlap between requirements under the HVNL to complete work diaries, keep or hold permits and notices, and complete consignment or delivery paperwork and the need to develop and document safe driving plans under the 2014 Order. Additionally, some minimum contract requirements in the 2014 Order were said to be likely to add further regulatory obligations and compliance burdens to supply chain participants.

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327 Submission of the Transport Workers’ Union, p.9.
328 Submission of the New South Wales Department of Industrial Relations, p.4.
329 Ibid, p.1
Other stakeholders were concerned about the practicalities of implementing safe driving plans under the 2014 Order, highlighting the impacts of driver work patterns and the required timeframes for completion of plans and retention of records. As noted elsewhere, a number of stakeholders expressed the view that the safe driving plan requirements were highly prescriptive in nature and that this would cause implementation difficulties in some sectors at least.

A number of stakeholders also noted the duplication of the regulation already operating in the road transport industry, for example between Safe Work Australia's *Guide for managing the risk of fatigue at work* and the fatigue provisions of the Heavy Vehicle National Regulations. Many stakeholders made the point that WHS is already heavily regulated, so that the making of a RSRO which deals almost exclusively with safety issues, rather than remuneration issues *per se*, inevitably gives rise to significant overlap. Those stakeholders that believe the current model is inappropriate state that safety issues are best dealt with by industry specific legislation enforced by a specialist safety regulator, such as the NHVR. They argue that it is not apparent how the road safety remuneration provisions will complement WHS legislation or how the NHVR will interact with the Tribunal and the operation of the RSRS. In this view, reform of existing safety laws, such as the HVNL, would be a preferred approach to the continuation of the Tribunal.

The Ai Group highlighted the potential economic impacts of future RSRO setting mandatory remuneration levels. A key issue raised in this context was with the potential ‘second round’ effects, of clients substituting employee driver services or even transport by other modes in the event that a future RSRO were to seek to significantly increase owner driver remuneration:

“...the progressive implementation of RSROs will potentially have an extremely damaging effect on the road transport industry, including negative employment / engagement effects on owner drivers and employee drivers. Employee drivers can often be readily substituted for owner drivers and accordingly ill-conceived regulation puts the livelihood of owner drivers in jeopardy. Similarly, road transport services often compete with other modes of transport, such as rail, air and shipping. Excessive road transport cost increases are likely to lead to a shift to other forms of transport with a consequent adverse effect on the road transport industry and the people employed / engaged in the industry”.

However, a large number of stakeholders were concerned that concurrent operation of both state and Commonwealth provisions could create significant duplication. The Northern Territory Government commented that:

“The Northern Territory does not consider the expected benefits from operating a standalone system for the road industry to justify the potential financial and administrative burden on this industry as well as the potential impact on the cost of living in the Northern Territory. The current and future safety issues within this industry can be more appropriately addressed through other regulatory and non-regulatory means. Instead of a separate and additional legislation and regulatory entity specifically for the road transport industry, the Northern Territory sees greater benefit in the effective utilisation and as required, strengthening of

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330 Submission of the Ai Group, p.60.
existing legislative mechanisms outside this System to deal with matters related to the remuneration and work conditions of road transport workers that impact on road safety.”

Appendix 6 provides information regarding the interaction of the RSR Act with other legislative instruments and provides more detailed discussion regarding concerns of stakeholders relating to specific areas of overlap.

7.3.4 Appropriateness of the Tribunal model

Stakeholders supportive of the Tribunal argued that it provides an effective and appropriate mechanism for addressing safety concerns, enabling mediation between stakeholders and providing a forum for resolving issues in the road transport industry, as well as playing a vital role in monitoring and canvassing complex issues such as vertical supply chain pressures, contracts and safe driving plans. However, as noted at the beginning of this chapter, a substantial number of submissions opposed the RSRS, while a further large group raised major concerns with the operation of the system without explicitly calling for its abolition. Those opposed to the RSRS questioned the potential for the system to have positive safety impacts and suggested that large economic costs would more than outweigh any benefits. Thus, for example, the Ai Group argued:

“\textit{The Tribunal is not well placed to assess the economic consequences of its orders. Moreover, Ai Group believes the RSR Act places insufficient obligation on the Tribunal to have regard to the economic ramifications of any potential RSROs. Alarmingly, section 20 of the Act does not place any express obligation on the Tribunal to take into account the impact on the road transport supply chain. Even in relation to the road transport industry, the RSR Act merely requires the Tribunal to have regard to the likely impact of any order on the ‘viability’ of such businesses, as opposed to their profitability. There is no obligation on the Tribunal to have regard to the potential impact of a proposed RSRO on employment.}\textit{...The RSR System represents a risky and inappropriate approach to regulating safety with the potential for very significant and potentially unforeseen adverse consequences for the Australian Economy and the broader community.}”

Coles Supermarkets Australia argued that the RSRT model “\textit{...faces significant challenges from an efficiency standpoint}” and imposes “\textit{...significant cost burdens without yielding corresponding improvements in safety.}”

The NFF believes the RSRS “\textit{...falls short in providing any real measures to improve safety in the transport industry. The RSR Act is focused upon providing remuneration mechanisms/outcomes without any requirement for improved safety.}”

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331 Submission of the Northern Territory Northern Territory Department of Business, Northern Territory WorkSafe, p.3.
332 Submission of the Ai Group, p.61.
333 Submission of Coles Supermarkets Australia, p.2.
334 \(\text{ibid, p.1}\)
335 Submission of the National Farmers’ Federation, p.4.
Some stakeholders have expressed the strong view that the RSRS was established on the basis of limited evidence of links between rates of pay and safety within the road transport industry and that the policy basis of the legislation is therefore inadequate. As noted above, the ACCI state the RSRS is an “excessive regulatory intervention” to deal with the issue of ‘safe rates’ as they do not believe there is a direct causal link between remuneration and safety outcomes. The calls, which were noted above, for the Tribunal to exercise its research function to assess the evidence on this issue and attempt to establish the precise nature of any links between remuneration and safety clearly derive from this concern.

A number of submissions highlighted the institutional nature of the Tribunal as a quasi-judicial body and what was believed to be the consequential inevitability of the adoption of an adversarial approach to its operations. This was contrasted unfavourably with the approach of traditional safety regulators. For example, the ARTIO stated in its submission:

“We believe that the adversarial manner of hearings may be an inefficient use of the Tribunal’s power to create meaningful reform to address core issues concerning remuneration and remuneration related conditions.”

The ALC argued that a potentially more efficient model to deal with the core issue of the failure of small operators to fully account for their costs when negotiating rates would be to adopt some of the elements of existing Victorian legislation requiring the provision of information to independent contractors so they can make better informed business decisions without the undue interference of an arbitral body.

7.3.5 Prescriptive versus risk management approaches to safety

In addition to the matters addressed above, stakeholders were asked to identify any other matters which this Review should consider. One notable aspect of the identified overlap between the 2014 Order and other existing legislation is that very different regulatory approaches have been adopted in certain areas. Thus, stakeholders including the ALC and Ai Group have highlighted the fact that the prescriptive nature of the 2014 Order stands in stark contrast to the performance-based and process-based approaches adopted in particular in the WHS laws and the HVNL, via their adoption of risk-management based approaches to safety and the adoption of the ‘as low as reasonably practical’ principle. For example, the Ai Group stated:

“The HVNL operates in a far more flexible and instructive way than the first RSRO. For example, many provisions of the HVNL are expressed to require parties to take ‘reasonable steps’ to achieve certain outcomes or to prohibit certain conduct if a party would ‘know, or ought reasonably to know’ it would have a particular effect. The legislation provides guidance as to what factors may be taken into consideration in deciding whether such obligations have been complied with. As such, the HVNL ensures a level of practicality in the

336 Submission of the Australian Road Transport Industrial Organisation, p.7.
The Tribunal’s first RSRO generally adopts a far less sophisticated approach to regulating safety. While the NFF said:

“The imposition of the Road Safety Remuneration Orders as a measure to address safety is contrary to the Robens principles which have long underpinned the approach to the regulation of Occupational Health & Safety (OH&S) throughout Australia and many other developed nations.”

7.3.6 Preferred approaches to addressing road safety concerns in the road transport industry

There were many and varied responses from stakeholders with regard to their preferred approach to addressing road safety concerns in the road transport industry.

The TWU, as a strong supporter of the RSRS, stated that “…the key to solving the industry’s safety crisis is to look vertically up transport supply chains and focus on the role, power and influence of industry clients.” During a teleconference, the TWU pointed to the NSW IRC Chapter 6 system as demonstrating that it is feasible to set remuneration rates on a sector by sector basis and argued that, if done well, this approach provides a stable sector which is beneficial for all. They highlighted stability within industry sectors as a key benefit, stating that this stability gave companies and owner drivers the confidence to enter into long-term investments, supported by long-term contracts. The TWU also argued that the Tribunal as it currently operates has a unique opportunity to span the different areas of regulation impacting on the road transport industry, including modern awards, work health and safety and road transport regulation, stating that:

“All attempts to expand other regulators to address road-safety related matters have so far been rejected, making the Road Safety Remuneration Act 20012 and Road Safety Remuneration Tribunal the only mechanisms capable of implementing the suite of measures—identified as necessary—to address the root causes of the safety crisis in the road transport industry.”

Other stakeholders argued that the preferred approach was to effectively enforce the current requirements of the HVNL and other relevant legislation in relation to key safety determinants including speed, fatigue management, wearing of seatbelts, zero tolerance of drugs and alcohol, driving to road conditions and developing further codes of practice; with the NHVR, enforcement agencies and those administering WHS legislation being responsible for addressing road safety concerns within their particular remits. Additionally, focusing on building better infrastructure, road improvements and investing in safer vehicles were measures that were considered likely to be more effective in improving safety performance than regulating remuneration.

337 Submission of the Ai Group, p. 54 and 55.
338 Submission of the National Farmers’ Federation, p. 13.
339 Submission of the Transport Workers’ Union, p. 8.
The ACCI state that addressing road safety requires a whole of Government approach and engagement and support from relevant stakeholders. Their view is that the focus should be on achieving compliance with existing laws and instruments which directly address safety and on the performance of road transport operations. This must involve greater efforts to promote education and strong enforcement of existing laws, particularly the FW Act, the HVNL and WHS laws.

The ALC position is that the NHVR should, through its experience gained in regulating the heavy vehicle sector and its own research, continue to identify ways to improve road safety and, to the extent there is any need for remedial legislation to assist any perceived information asymmetry affecting the capacity of owner drivers to make informed business decisions, consideration could be given to inserting into law provisions requiring the publication of an information booklet along the lines of that contained in Part 2 of the *Owner Drivers and Forestry Contractors Act 2005* (Vic).

A number of stakeholders also argued that the Tribunal should focus solely on establishing minimum rates of remuneration, rather than taking on the broader issues of workplace health and safety. More generally, any proposed regulatory intervention should focus on gaps in the coverage or application of current regulation, rather than risking extensive duplication.

### 7.4 Conclusions

The above discussion clearly indicates that a large proportion of stakeholders who made submissions to the Review believe that there is substantial overlap and actual or potential inconsistency between the RSR Act and a range of existing Commonwealth, state and territory regulation, including WHS legislation, the HVNL and state-based owner driver schemes. The numerous specific examples provided, covering a very wide range of matters, demonstrate the existence of this substantial overlap. However, the practical extent of the problems—including uncertainty, additional regulatory costs and complexity—that would arise over time due to the implementation of the RSR Act necessarily remains uncertain, given the limited extent to which the powers provided by it have been exercised to date.

The substantial regulatory overlap identified by stakeholders appears to be a significant factor in the high level of opposition to the legislation and the low level of explicit support for it expressed in submissions, with many stakeholders apparently being of the view that there is little need for the additional level of regulation established under the RSRS, given the existing regulatory mechanisms to address the relevant safety issues. In particular, there is a strong view that both the HVNL and WHS legislation recognise the responsibility of employers and hirers for safety outcomes and include tools that enable unsafe practices of the kind that are the focus of the RSRS to be addressed. The CoR provisions that prohibit the inclusion of conditions in contracts that may cause or provide incentive for drivers to speed or breach their work and rest hour requirements are of particular importance in this regard.

The broad scope of the WHS legislation also suggests that there is much scope for it to be used to address systemic issues of the kind that have underlain the development of the RSRS. While WHS regulators have deliberately stayed clear of making industry-specific interventions to date, the
inclusion of the owner driver sector as one of the target areas for the current Australian Work Health and Safety Strategy 2012-2022 suggests a recent change in this regard and implies the likelihood of significant interventions in the industry under the authority of the WHS legislation in the medium term.

These areas of overlap and duplication are of significant concern to a wide range of stakeholders, including industry and state governments, who have expressed fears of the potential for increased costs, complexity and uncertainty to result. These concerns in relation to complexity and compliance costs are in part a reflection of the prescriptive nature of the RSRS as it is currently evolving. Thus, for example, while clause 204 of the HVNL establishes a duty for employers, prime contractors and operators to ensure that their business practices will not cause the driver to speed and provides examples of ‘reasonable steps’ of the kind that are required to be taken in this regard, the 2014 Order requires a Safe Driving Plan to be undertaken for each journey that includes, inter alia "...a travel plan detailing the anticipated timeframes and distances for each leg or stage involved in the provision of the road transport service, including but not limited to, when meal breaks, rest breaks, crib breaks and any other breaks are to be taken."

Similarly, where section 11.1 of the 2014 Order establishes a specific requirement that "An employer or hirer must take all reasonable measures to ensure a road transport driver employed or engaged by them is trained in work health and safety systems and procedures relevant to the road transport service to be provided by the road transport driver", the HVNL effectively creates a presumption in favour of the provision of training by including this as a matter to be considered in determining whether a hirer or other party has taken ‘reasonable steps’ to acquit duties or obligations under that Act, but does not establish specific training requirements.

This prescriptive approach places the RSRS at odds with both the HVNL and WHS legislation, which are process and performance based, as was the antecedent legislation in this area. The WHS legislation has taken this form since the mid-1980s in most states, with the international origins of this approach being found in the introduction of the Health and Safety at Work Act 1974 in the United Kingdom in response to the findings of the seminal Robens Report. Similarly, the move away from prescriptive regulation has been a fundamental element of the longer-term change in legislative approach in relation to heavy vehicle safety per se, implemented by the NTC and state regulators over an extended period and now carried forward via the adoption of the HVNL in 2012. Thus, the prescriptive approach adopted in the 2014 Order appears to stand in contrast to the progressive abandonment of such approaches by safety regulators in the field as a matter of conscious policy.

Moreover, the movement away from prescriptive regulation is consistent with international trends in the regulation of the road freight industry. Thus, the OECD noted in the OECD Report (2011) that performance-based regulation has become well established as the preferred approach to regulation in the heavy vehicle sector. Under the performance-based approach, standards specify the performance required from vehicle operations rather than mandating how that level of

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340 Safe Work Australia (2012), op cit
341 OECD (2011), op cit
performance is to be achieved. This move toward the use of performance-based regulation is also identified by the OECD as a broader trend, observable in many areas of regulation.

The concerns raised by stakeholders in relation to regulatory overlap creating potential uncertainty have a variety of dimensions. These include the potential for compliance with an RSRO to not necessarily guarantee compliance with other overlapping legislation; that the RSR Act may undermine other legislation such as the HVNL, the WHS laws or state legislation, particularly with regard to stated purposes such as reducing red tape; confusion created by inconsistencies between the definitions used in the RSRS and overlapping legislation such as the definition of supply chain parties under HVNL CoR provisions; and uncertainty with regard to the ‘default’ jurisdiction for dispute resolution when the RSRO overlaps with existing state-based owner driver schemes.

A fundamental point in relation to regulatory overlap is that the 2014 Order largely deals with non-remuneration safety matters. Stakeholders argue that these matters are already within the scope of existing transport and safety-related regulation and improvements in road safety should be pursued through those existing mechanisms and by those regulators.

Moreover, to the extent that future RSROs establish mandatory remuneration levels for employee drivers, those provisions will inevitably overlap with the Modern Award system, as the RSR Act acknowledges. The need for such overlap can clearly be questioned, given that the award system appears to be capable of dealing with such matters (actually and potentially) in relation to employee drivers. The remuneration for owner drivers is similarly already addressed in legislation in three states, which collectively account for more than two-thirds of the Australian population albeit that mandatory rates are only set in one of these.

Finally, a fundamental concern of stakeholders in respect of regulatory duplication and overlap relates to the appropriateness of the Tribunal, which is in essence an ‘industrial’ tribunal, acting, in effect, as a regulator of safety matters in the road transport industry in a context in which specialist authorities such as the NHVR and Safe Work Australia are already established for this purpose.

In order to address these concerns, stakeholders have called for action by the Australian Government ranging from abolishing the Tribunal to significantly reducing the scope of the RSR Act and limiting the Tribunal’s powers. Others, notably the TWU, have cautioned against such actions and instead suggest taking a ‘wait and see’ approach to determine to what extent the operation of the Tribunal has improved safety in the road transport industry.
8 Potential impacts of rate setting via RSROs

Key Points

- While the Tribunal did not set any rates in its first RSRO, it has indicated its intention to do so in a subsequent Order and has taken steps toward this outcome. Mandatory rate-setting would have potentially significant, but very difficult to predict, impacts.

- Available data indicate that average earnings among employee drivers are not low. This implies that the main impact of future mandatory rate setting may be on owner drivers. While data is limited, it appears likely that many owner drivers experience low levels of remuneration. This implies that future RSROs could significantly increase rates for this group.

- However, the wide range of published rates, including NSW contract determinations, Victorian and Western Australian guideline rates and the TWU’s rates as proposed to the Tribunal, indicates that there is great uncertainty as to what would be the outcome of future mandatory rate setting by the Tribunal.

- The impact of such increases on aggregate incomes for this group is also unclear. Higher base rates may lead to significant entry to the market, while it would also be likely to lead to demand switching toward employee driver services. Both of these factors will tend to offset the impact of rate rises in increasing aggregate owner driver remuneration.

- Assessment of the current relative position of Australia’s heavy vehicle industry in terms of safety performance provides indicative benchmarks as to the extent of achievable safety improvements. The fact that safety performance is the outcome of a range of regulatory and other policy initiatives (e.g. road building), as well as vehicle standards improvements, highlights further the limited impact that rate setting can realistically be expected to have.

- In this context, the large safety impacts predicted by a very few individual studies have limited plausibility in practice. Conversely, the small impacts predicted by other studies suggest that the benefits of mandatory rate-setting would be unlikely to offset the economic and regulatory costs highlighted above.

8.1 Financial and economic impacts

The basic policy rationale for the RSR Act is that increases in driver incomes are required in order to remove current economic incentives for unsafe performance. As labour costs represent a significant element of the total cost structure in the road freight industry, these increases will necessarily have a range of broader economic impacts.

Predicting the size and incidence of these impacts is necessarily subject to considerable uncertainty: the Tribunal has, as yet, given little indication of the manner in which it will exercise its rates setting powers under the legislation while, as preceding sections have demonstrated, there is limited data regarding current income levels in the owner driver sector in particular. Given this, the purpose of the following discussion is to highlight in general terms the expected implications of rate setting by the Tribunal via a future RSRO.

The above discussion noted evidence that average truck driver incomes are relatively high in Australia by comparison with the United States and United Kingdom and in relation to average weekly earnings. This high average income is likely to reflect in particular the comprehensive award coverage of employee drivers and the existence of numbers of enterprise agreements providing for
above award payment rates. By contrast, while data is limited, it appears that average owner driver incomes are considerably lower: a view that is also reflected in both the owner driver focus of state legislation in relation to driver remuneration and in the general focus on this group in discussions on remuneration issues. Thus, it can be anticipated that the major impact of rate-setting activity by the Tribunal would be felt in the owner driver sector.

Section 5 above included a calculation updating ACIL-Tasman’s 2003 estimate of average owner driver incomes to current dollar terms and compared this with the relevant award wage for an articulated truck driver, based on the average 51 hour working week reported in the ABS data. It shows that owner drivers would need to receive an increase in average earnings, net of operating costs, of around 70 per cent in order for their net remuneration to be equal to that of an employee driver being paid the award rate for an equivalent working week. Using ACIL-Tasman’s data, this implies an increase in gross income of around 21 per cent.

Thus, if the Tribunal were to adopt a concept of ‘safe rates’ that implied owner drivers should receive rates that would enable them to earn average incomes similar to award wages, an increase in rates paid in the owner driver sector of around 20 per cent might be expected to result. However, given the paucity of available data on owner driver remuneration, it must be stressed that this represents an indicative calculation only.

8.1.1 Other estimates
As noted above, there is much uncertainty as to the approach that would be taken by the Tribunal in practice in setting minimum rates, with no indication having been given to date as to the Tribunal’s preferred approach.

The extent of this uncertainty can be illustrated by comparison of the various rates schedules published to date. As discussed in Section 6.3 of this report, the guideline rates published pursuant to the Victorian and Western Australian legislation differ in many areas, while the minimum rates set in NSW are different again. Moreover, the Tribunal has already received a number of proposed RSROs from stakeholders in response to its recent request, with some, such as that submitted by the TWU, containing detailed proposed rates schedules. It is clearly possible that the Tribunal could set rates at any point within the range spanned by these various rates schedules.

To illustrate the range of potential outcomes, the impact on owner driver incomes of adopting rates consistent with the Victorian and Western Australian guideline rate schedules has been modelled below. Table 8.1 below is based on two comparable rates drawn from these rate schedules: the Western Australia prime mover + trailer (42.5 tonnne) regional rate of $120/hr and the Victorian semi-trailer (6 axle) rate of $71.31/hr.

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342 As summarised on the Tribunal’s website.
343 See ACIL-Tasman (2003), op cit, Table 10, p 13. A 70.8% increase in average operating profit before tax would require a 20.9% increase in total operating income for the cohort of non-employing enterprises.
344 These rates have been used for comparative purposes as the articulated vehicle sector undertakes the majority of the freight task, measured in terms of tonne-kilometres. However the degree of variation in comparable rates between the two guideline rate schedules varies significantly.
Table 8.1: Comparison of gross income using Victorian and Western Australian Guideline Rates

<table>
<thead>
<tr>
<th>Measure</th>
<th>Victoria</th>
<th>Western Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hourly rate</td>
<td>$71.31</td>
<td>$119.64 (regional)</td>
</tr>
<tr>
<td>Hours per week</td>
<td>51</td>
<td>51</td>
</tr>
<tr>
<td>Weekly revenue</td>
<td>$3,638.81</td>
<td>$6,101.64</td>
</tr>
<tr>
<td>Annual revenue</td>
<td>$174,662.88</td>
<td>$292,878.72</td>
</tr>
</tbody>
</table>

Notes:
1. Rates relate to six-axle semi-trailer.
2. Annual revenue based on 48 week working year.

Table 8.2 below compares the overall impact on average owner driver incomes of the adoption of different rates outcomes. The base revenue figure is equal to the average revenue for non-employing enterprises reported by ACIL-Tasman, converted to current dollar terms. The ‘base case’ figure reflects the above calculation based on the ACIL-Tasman data to estimate the increase in income required to generate net revenue equal to an award wage. As per Table 8.1, all revenue estimates are based on a 51 hour working week, which was the average owner driver working week reported by ACIL-Tasman.

Table 8.2: Potential revenues (annual) and increases over estimated current revenue

<table>
<thead>
<tr>
<th>Measure</th>
<th>Revenue</th>
<th>Increase on current</th>
<th>Per cent increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current revenue</td>
<td>$105,302</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Base case</td>
<td>$127,395</td>
<td>$22,093</td>
<td>21 per cent</td>
</tr>
<tr>
<td>Victorian guideline</td>
<td>$174,663</td>
<td>$69,361</td>
<td>65.9 per cent</td>
</tr>
<tr>
<td>WA guideline rates</td>
<td>$292,879</td>
<td>$187,577</td>
<td>178.0 per cent</td>
</tr>
</tbody>
</table>

Table 8.2 demonstrates the wide range of outcomes that could, at least theoretically, arise from a mandatory rate set by the Tribunal, as well as the potential for very substantial changes in current prices and freight prices. That said, the specific estimated revenue increases associated with the adoption of the rates contained in the Victorian and Western Australian models would clearly constitute over-estimates, in that they implicitly assume that the average hours worked are all paid hours, while it is widely argued that owner drivers effectively work many unpaid hours. Moreover, the requirement of section 20(1)d of the RSR Act for the Tribunal to have regard to "the likely impact of any order on the national economy and on the movement of freight across the nation" might also be seen as rendering it unlikely that mandatory rates would be set at the levels suggested above.

Specific rate impacts

It is notable that not only do comparable rates vary significantly across the various rate schedules discussed above, but the pattern of rates also differs widely. For example, the Victorian guideline rates make no distinction between metropolitan and regional rates, while both the Western Australian guideline rates and the rates contained in the TWU's proposed RSRO do include separate regional rates. This highlights the extent of the differences in approach to the determination of appropriate rates in different circumstances.
As suggested above, the guideline rates currently in place in Victoria and Western Australia imply that the relevant industry councils have reached quite different conclusions in many cases as to what constitutes a reasonable rate. This appears in large part to reflect some basic differences in the assumptions used in calculating these rates. For example, a key methodological difference between the Victorian and Western Australian approaches is that the former is based on the cost of operating a 10 year old truck, while the latter is based on the cost of a new truck.\footnote{A second schedule of rates based on a 5 year old truck is also published in Western Australia, however, this is not the rate used in the comparison schedule prepared by the Tribunal. Note that the ‘base case’ estimates provided above are also implicitly based on the costs of operating a 10 year old truck, since the expenses component used is based on actual survey evidence and 11.5 years is the approximate average age of the fleet of articulated vehicles. See ABS Motor Vehicle Census, 2013 (Cat.9309.0). The average age of the articulated vehicle fleet in 2009 was 11.5 years. The average age of heavy rigid vehicles was 15.6 years, while the average age of light rigid trucks was 10.4 years.}

In sum, the above discussion highlights the extent of the uncertainty that inevitably exists as to the impact on owner driver incomes of mandatory rate setting by the Tribunal via a future RSRO. Nonetheless, it suggests that relatively large increases in owner driver remuneration are likely to result. Importantly, it was noted above that mandatory rate setting is likely to have a larger impact on the owner driver sector than on employee drivers. This raises the question of the likely impact of such changes on the structure of the road freight industry.

### 8.1.1 Substitution effects

The owner driver sector and larger fleets using employee drivers are likely to be relatively close substitutes throughout much of the road freight industry. Thus, should the practical impact of rate setting under a future RSRO be to significantly increase the relative price of services provided by owner drivers, a market response involving a shift in demand away from this sector can be anticipated. The size of such a shift is difficult to estimate, since consultation with a range of stakeholders highlights the fact that a number of factors other than price are relevant to the decision as to whether to use in-house fleets, large independent operators or owner drivers or some combination.

Nevertheless, the shift in relative prices would suggest a shift in employment in the industry away from owner drivers and toward employee drivers. The Productivity Commission\footnote{Productivity Commission (2006), Road and Rail Freight Infrastructure Pricing: Productivity Commission Inquiry Report No.41., 22 December 2006. See p.F16.} has estimated the price elasticity of demand for road freight to be 0.431. That is, a 10 per cent increase in the price of road freight was found to lead to a reduction in demand of 4.3 per cent. However, this estimate assesses the demand response to a given price increase across the road freight sector. The likely increase in the relative price of owner drivers constitutes a price increase within the sector, and could be expected to yield a larger demand response, since other road freight services (i.e. those provided by employee drivers) represent a closer substitute.

### 8.1.2 Net impact on owner driver incomes

The expectation of a significant substitution away from the use of owner drivers as a result of their becoming relatively more expensive due to mandatory rate setting means that the impact of rate...
setting on their aggregate incomes is uncertain. Higher rates would be expected to encourage entry to the sector in the short term, increasing supply to a potentially significant extent. However, demand will simultaneously be reduced, as it is switched toward relatively cheaper employee-driver based services. Thus, larger numbers of owner drivers will compete for a reduced amount of work at fixed minimum rates.

These dynamics are clearly important to the extent that rate-setting is undertaken in pursuit of equity objectives—i.e. the goal is to increase owner driver incomes—as they suggest that the impact of rate setting on the aggregate incomes of this group will be much smaller in percentage terms than the increase in rates arising from rate-setting via a future RSRO. However, from a ‘safe rates’ perspective, the above dynamic does imply a reduction in the extent of any economic pressures to drive in an unsafe manner (i.e. for excessive hours or at excessive speeds), even if the impact of rate setting on total incomes is limited.

### 8.1.3 Impact on employee drivers

The above discussion has focused on the impact on owner drivers of the Tribunal setting a mandatory rate via an RSRO, as it appears likely that the impact of such rate setting is likely to be largely felt in this sector. A major reason is that concerns regarding low income levels among heavy vehicle operators have largely been expressed in relation to owner drivers, rather than employee drivers. This reflects the fact that the award system provides a legal minimum wage structure for employee drivers, whereas owner drivers, because they are considered to be independent contractors, and hence small businesses, do not benefit from similar protections.

Nonetheless, the Tribunal has powers to make rates orders affecting employee drivers, with the RSR Act specifically indicating that such provisions of a RSRO would override the terms of awards and enterprise agreements to the extent that they were less favourable to drivers. Moreover, the TWU has argued that the ‘safe rates’ issue extends beyond the owner driver sector to include employee drivers, highlighting the issue of unpaid time as affecting the latter group.

Thus, it is clearly possible that the issue of RSRO setting minimum rates will also have the effect of increasing employee driver incomes. Moreover, should the Tribunal make determinations that employee driver incomes must rise from current levels to achieve a safe rates outcome, this presumably implies that the extent of increases in the owner driver sector may also be higher than at least the above ‘base case’ calculation suggests.

However, there is no current basis for assessing the size of any impact on employee driver incomes. While the Tribunal has sought applications for a draft RSRO including remuneration rates from stakeholders, the focus of those received and published to date is clearly on the owner driver sector.

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347 Note that it is possible for the combination of increased supply and reduced demand for owner driver services could lead to a position in which aggregate revenue per driver would actually be reduced, at least in the short term. However, in the medium term, this could be expected to lead to exit from the sector.


349 Given that this was based on an implicit equalisation of owner driver incomes with current award rates.
For example, the TWU application\(^{350}\) contains detailed rates schedules for owner drivers, but no proposed rates in respect of employees.

That said, the data presented above indicating that average truck driver incomes are approximately equal to average earnings suggest that it is unlikely that future RSROs would adopt substantial increases in employee driver income in pursuit of a ‘safe rates’ objective.

### 8.2 Equity effects

The above analysis has focused closely on the safety impacts of the RSRS. However, the object of the RSR Act is to ‘promote safety and fairness’ in the road transport industry. Hence, any analysis of the impacts of rate setting via RSROs should include consideration of the potential equity benefits of institutionally driven wage determination.

Australia’s industrial relations system has historically focused on provision of a ‘living wage’ or ‘safety net’ for all workers. Moreover, an issue that has received significant attention in recent years is the position of nominally independent contractors who, because they work largely or wholly for a single hirer, often have very limited bargaining power and can be seen as being ‘quasi-employees’. For example, the recent inquiry into the Victorian taxi industry considered at length the question of whether taxi drivers should be deemed legislatively to be employees.\(^{351}\) Similarly, the Victorian Government’s 2005 inquiry into the road freight industry highlighted the low level of independence of many owner drivers. According to the report, over 50 per cent of owner drivers are ‘dependent contractors’, defined as operators who obtain more than half of their income from a single source.\(^{352}\) In this context of what might be characterised as ‘quasi-employee’ relationships, the equity benefits that would flow from the adoption of the safe rates proposal should arguably be weighed.

Conversely, owner drivers’ self-image as small businesspersons—including their expressed desire to avoid being ‘deemed’ to be employees, as documented by Quinlan and Wright\(^{353}\)—must be noted. Government regulation in support of business incomes enjoys significantly less support than the ‘living wage’ concept. To the extent that this is so, the weight to be given to equity benefits must be reduced. The Victorian Government’s 2005 inquiry notes that the regulation of commercial activities must be undertaken with care, as it has the potential to raise the costs of business transactions and interfere with the operation of efficient markets. It also notes that the role of fair trading laws generally is to maintain and/or promote the operation of healthy and competitive markets, rather than seeking to protect operators from the “harsh effects of competition.”\(^{354}\) However, the initiatives contained in the resulting legislation did focus strongly on equity issues.

Thus, the Second Reading Speech in respect of the Victorian *Owner Drivers and Forestry Contractors Bill 2005* suggests that the Bill is at least equally concerned with improving equity outcomes for this group as it is in improving safety outcomes. The Minister stated:


\(^{353}\) Quinlan & Wright (2008), op cit

\(^{354}\) Industrial Relations Victoria (2005), op cit, Vol 1, p.101.
"The purpose of this bill is to provide some basic protections and a framework for effective resolution of disputes to improve the position of vulnerable small businesses, namely, owner-drivers in the transport industry..."

"...the low and declining level of earnings of this group are not only unjust and well below an acceptable community standard, but are simply not sustainable, and have serious ramifications for the safety of the drivers themselves and for other road users."  

Consistent with this approach, the RIS in respect of the regulations adopted under the RSR Act focused primarily on equity issues and discussed potential road safety gains as a secondary source of benefits.\textsuperscript{356}

8.2.1 Data issues

It is widely asserted that owner drivers have experienced sustained, low remuneration levels over an extended period and that this reflects, in large part, the structure of the road transport industry, which is said to be characterised by long contracting chains with those at the end of these chains having very limited ability to influence the terms and conditions on which they work. However, Section 5 of this report shows that, while there is some evidence for the contention of sustained, low remuneration levels for owner drivers, it is limited in extent and in some cases significantly dated. Moreover, the only market analysis of the industry included in submissions to this Review—prepared by Deloitte for Coles Supermarkets Australia—emphasises the wide range of sectors from which the demand for road freight services are derived and, by implication, suggests that it is unlikely that there are substantial imbalances due to accretions of market power on the demand side.

8.3 Safety impacts

The costs of heavy vehicle-related accidents are clearly substantial and indicate that any policy capable of achieving a significant reduction in these costs will yield substantial benefits in terms of both deaths and injuries averted and property damage avoided. Perhaps surprisingly, the Review has found no comprehensive estimates of the costs of heavy vehicle related accidents in Australia. Thus, Appendix 2 reports estimates of these derived using recent accident data, past research by Australian road safety authorities and standard regulatory impact assessment methodologies.

In sum, there were 246 heavy vehicle related fatalities in 2012, while a plausible estimate of the number of heavy vehicle related serious injuries is around 1,230 (see Appendix 2). The total cost of these heavy vehicle related accidents is estimated at approximately $3.2 billion per annum. These estimates highlight the scale of the benefits that can be derived from effective measures to improve heavy vehicle safety: they suggest that, for each 1 per cent reduction in heavy vehicle-related accidents, benefits of $32 million will be attained.

\textsuperscript{355} Hon. Rob Hulls MP, Minister for Industrial Relations. Legislative Assembly, 21 April 2005.

\textsuperscript{356} Industrial Relations Victoria (2006), \textit{Regulatory Impact Statement: Owner Drivers and Forestry Contractors Regulations 2006}. 
8.3.1 Benchmarking potential safety gains

8.3.1.1 International comparisons

This section estimates the benefits of improving Australia's heavy vehicle safety performance to a level equivalent to that found at present in the best performing countries. The purpose of this analysis is to provide an indicative assessment of the potential for further improvements in safety performance, given Australia's current relative position. That is, it is clearly extremely difficult for individual policy actions (or even combinations of such actions) to drive major changes in a country's relative safety performance over the medium term - as demonstrated by the degree of stability in countries' relative positions over time (see Chapter 4). Given this perspective, an assessment of the difference between Australia's current safety performance and that of the best performing countries can be seen as providing a practical upper bound for the combined impact of policy actions that may be taken to improve heavy vehicle safety performance - of which the 'safe rates' proposal is one - in the medium term.

As noted above, improved road safety results from the interaction of a wide range of factors including improved vehicle safety and improved road quality as well as improvements in regulatory design, implementation and enforcement, with many of these measures being synergistic. This necessarily suggests that regulatory improvements, in total, are likely to be minority contributors to overall safety improvements. The benefits of adopting the 'safe rates' proposal necessarily constitute a sub-set of these available regulatory benefits.

8.3.1.1.1 Fatalities per vehicle kilometre

Table 8.3, below, reproduces the most recent OECD-sourced data on fatal truck crashes per 100 million vehicle kilometres travelled as discussed in Chapter 4 of this Report. The data for 2005, the last year for which data are presented from all the comparator countries, shows Australia's fatality rate to be the third lowest among the eight countries compared, with only the United States and Switzerland having lower rates. The data for 2007, the last for which data are available, shows that Australia's fatality rate of 1.43 is slightly lower than that of Belgium, slightly higher than that of the United Kingdom and significantly higher than that of the United States and Switzerland.

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357 As noted below, previous NRTC research suggests that road quality improvements constitute the most promising approach to improving heavy vehicle safety in Australia.
### Table 8.3: Fatal truck crashes per 100 million kilometres travelled, 2001-2007

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>Not available</td>
<td>2.31</td>
<td>1.59</td>
<td>1.68</td>
<td>1.50</td>
<td>1.51</td>
<td>1.43</td>
</tr>
<tr>
<td>Belgium</td>
<td>2.19</td>
<td>1.88</td>
<td>1.54</td>
<td>1.61</td>
<td>1.67</td>
<td>1.41</td>
<td>1.49</td>
</tr>
<tr>
<td>Canada</td>
<td>1.76</td>
<td>1.94</td>
<td>1.92</td>
<td>1.63</td>
<td>1.64</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>Denmark</td>
<td>Not available</td>
<td>3.27</td>
<td>2.56</td>
<td>2.8</td>
<td>3.42</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>France</td>
<td>Not available</td>
<td>2.43</td>
<td>1.92</td>
<td>1.79</td>
<td>1.86</td>
<td>Not available</td>
<td>Not available</td>
</tr>
<tr>
<td>Great Britain</td>
<td>1.92</td>
<td>1.73</td>
<td>1.70</td>
<td>1.44</td>
<td>1.52</td>
<td>1.33</td>
<td>1.34</td>
</tr>
<tr>
<td>United States</td>
<td>1.32</td>
<td>1.22</td>
<td>1.24</td>
<td>1.26</td>
<td>1.27</td>
<td>1.21</td>
<td>1.15</td>
</tr>
<tr>
<td>Switzerland</td>
<td>1.13</td>
<td>0.88</td>
<td>0.84</td>
<td>0.93</td>
<td>0.81</td>
<td>0.56</td>
<td>0.58</td>
</tr>
</tbody>
</table>

**Source:** OECD (2011), op cit, Chapter 6.

It is also apparent that Switzerland's fatality rate is substantially below that of any of the other comparator countries. For example, it is half that of the next safest country (the United States). The size of this difference suggests that the United States may constitute a more relevant benchmark in terms of the potential benefits from improved safety performance within the Australian heavy vehicle sector. Given this, two benchmarks are used in the following analysis, one based on Switzerland and the other based on the United States.

Annual fatality rates necessarily show a degree of volatility, given the relatively low overall numbers of fatalities involved. Given this volatility, the benchmark analysis is based on average fatality rates for the most recent three years for which data are available - in this case 2005 to 2007.

The average fatality rate for Australia over this three year period is 1.48, compared with 1.21 in the United States and 0.65 in Switzerland. Reducing Australia's fatality rate to that of the United States would therefore require a reduction of around 18.2 per cent from current levels, while a reduction of 56.1 per cent would be required to reduce Australia's fatality rate to be equal to that of Switzerland.

These percentage reductions can be combined with current data on fatality and serious injury numbers to calculate the implied reduction in fatalities and serious injuries associated with such a proportionate improvement in safety performance. These estimates can be combined with the accepted Value of a Statistical Life (VSL) and the value of a serious injury to derive estimates of the dollar value of such safety improvements. Appendix 2 sets out the method adopted in arriving at these dollar values.

Thus, using the values derived at Appendix 2, an 18.2 per cent improvement in heavy vehicle related safety performance would be expected to yield benefits in terms of reduced non-human costs of around $218.4 million per annum and a 56.1 per cent improvement would yield benefits of $673.2 million.
Table 8.4, below, summarises these results.

Table 8.4: Potential benefits of improved safety performance

<table>
<thead>
<tr>
<th>Measure</th>
<th>Current</th>
<th>Reduction in fatality rates to that of the United States, 18.2 per cent reduction</th>
<th>Reduction in fatality rates to that of the United States, dollar value of reduction</th>
<th>Reduction to fatality rates to that of Switzerland, 56.1 per cent reduction</th>
<th>Reduction to fatality rates to that of Switzerland, dollar value of reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatalities</td>
<td>246</td>
<td>44.8</td>
<td>$183.7 million</td>
<td>138.0</td>
<td>$565.8 million</td>
</tr>
<tr>
<td>Serious injuries</td>
<td>1,230</td>
<td>223.9</td>
<td>$183.6 million</td>
<td>690.0</td>
<td>$565.8 million</td>
</tr>
<tr>
<td>Non-human costs</td>
<td>$1,200.0 million</td>
<td>Not applicable</td>
<td>$218.4 million</td>
<td>Not applicable</td>
<td>$673.2 million</td>
</tr>
<tr>
<td>Total</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>$585.7 million</td>
<td>Not applicable</td>
<td>$1,804.8 million</td>
</tr>
</tbody>
</table>

Note:
1. The dollar value of a reduction in fatalities utilises the Office of Best Practice Regulation’s recommended value of a statistical life (VSL) = $4.1 million.
2. The dollar value of a reduction in serious injuries utilises the value of a serious injury = $0.82 million, representing 0.2 x the VSL figure.
3. Estimate of the current value of non-human costs is derived from previous BITRE estimates, appropriately updated.
4. For further detail on the derivation of these estimates, see Appendix 2.

Table 8.4 suggests that reducing Australia’s heavy vehicle fatality rate to a level equivalent to that of the United States would yield a reduction of 44.8 fatalities annually, compared with current fatality rates, while an equivalent reduction in the serious injury rate would mean 223.9 fewer serious injuries annually. Using standard Value of a Statistical Life (VSL) figures and including BITRE derived estimates of the non-human costs associated with road accidents, the dollar value of the benefits associated with such safety improvements is estimated be around $585.7 million annually.

Table 8.4 also shows that reducing Australia’s heavy vehicle fatality and injury rates to levels currently achieved by Switzerland would yield an annual reduction in fatalities of 138 and a reduction in serious injuries of 690. The dollar value of the benefits of safety improvements of this magnitude is estimated at over $1.8 billion annually.

The above analysis provides broad estimates of the value of the benefits that could be feasibly attained through improvements in Australia’s heavy vehicle road safety performance that brought it into line with the currently best performing countries. The OECD data suggest that there is quite limited movement in most countries’ relative performance over time, with Australia’s improvements over the previous decade being unusual in this regard. This necessarily suggests the need for caution as to the size of the benefits attainable from future regulatory changes. However, as indicated above, even the achievement of a reduction in fatality rates to the level of the United States - the second best performer among the countries for which the OECD data is reported - would yield substantial benefits, implying an improvement of about 18.2 per cent on current fatality rates,
saving around 45 lives and 224 serious injuries per year and generating benefits with a total dollar value of around $0.6 billion per annum.

Achieving such gains in overall heavy vehicle safety performance would require action to be taken across the full range of relevant policy areas. The key question from the point of view of the current Review is that of the extent to which the adoption of the ‘safe rates’ proposal would have the potential to contribute to the achievement of such an outcome.

8.3.2 Potential benefits due to adoption of the safe rates proposal

As discussed above, the literature supporting links between remuneration and safety performance demonstrates limitations in terms of the small number of published papers, the range of different remuneration-related variables tested and the widely varying conclusions reached. A particular impediment to attempts to model the likely safety impacts of changes to driver remuneration is that only a small number of published studies include functions estimating the impact of driver remuneration on safety performance. Moreover, these studies yield significantly differing conclusions, as discussed below. These widely differing conclusions make the estimation of likely benefits from setting mandatory rates virtually impossible. To illustrate this point, the following discusses the implications of applying the functions suggested by the relevant papers. Comparison of the conclusions obtained with the above discussion of the feasible range of improvements in safety performance due to all policy action provides a ‘reality check’ on the applicability of these specific research findings to macro-level data.

The key studies providing quantitative estimates of functions linking driver remuneration and accident risk are those of Nafukho et al,358 Rodriguez et al359 and Belzer et al.360 The implications of their conclusions for estimation of the potential benefits of mandatory rate setting via a future RSRO are discussed in turn.

8.3.2.1 Nafukho et al361

Nafukho et al found that the six remuneration-related variables included in his statistical analysis collectively accounted for a total of 3.2 per cent of the observed variation in accident rates. This implies that, even were the Tribunal able to identify an ‘optimum’ set of rates, the implementation of which completely removed remuneration as an explanatory variable in safety performance, safety performance improvements of more than 3.2 per cent would be unlikely to result.

The above calculations (see Section 8.3 and Appendix 2) found that the annual benefits of each 1 per cent improvement in safety performance would be equal to $32 million. This implies that the upper bound level of potential gains from adopting the safe rates proposal, calculated using Nafukho et al’s coefficient is:

$$3.2 \times ($32 \text{ million}) = $102.4 \text{ million}.$$
On the basis of a more realistic assessment that adoption of the mandatory minimum rates might halve the contribution of remuneration variables to crash involvement, the likely dollar value of the benefits would be around $51.2 million per annum. Annual fatalities would be expected to fall by 3.7, while serious injuries would be expected to fall by 19.7 per annum. Such a result would represent a small contribution to improved safety performance, by comparison with past initiatives, and would likely be judged as constituting a small return on the investment in establishing, implementing and maintaining the RSRS.

8.3.2.1.1 Rodriguez et al

Rodriguez et al’s data suggests that adoption of the ‘safe rates’ proposal could have substantially larger benefits than those indicated above. However, given the shape of the function plotted by Rodriguez et al, which was included in Chapter 5 and is reproduced below for the sake of clarity, there would be uncertainty as to both the actual size of the effect and even its direction.263

Graph 8.1: Pay rates and estimated accident risk (Rodriguez et al, 2006.)


If it is assumed that owner drivers in Australia are currently in a position near to the left hand side of the graph and that an increase in rates of around 21 per cent results from a future RSRO setting mandatory rates, as suggested in the ‘base case’ analysis presented in Section 8.1, the shape of this

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262 Rodriguez et al (2006), op cit
263 As noted in Chapter 5, Rodriguez et al’s analysis includes little discussion attempting to explain the observation of rising accident risk with higher incomes, toward the right hand side of the graph. Attempts were made to obtain clarification of these issues from the author but have, to date, proven unsuccessful.
curve suggests that predicted crash probability for this group could be reduced by around 50 per cent.\textsuperscript{364}

However, there is necessarily uncertainty as to the specific ‘safe rates’ that would be determined by the Tribunal, as indicated by the above comparison between the Victorian and Western Australian guideline rates, the NSW Contract Carrier determination and the rates proposed in the TWU’s submission on a future RSRO (see Section 8.1.1). As set out in Table 8.2 above, were the Tribunal to adopt rates equivalent to those set out in the Victorian guideline rates, an average remuneration increase of approximately 66 per cent could result, while adoption of those included in the Western Australian guideline rates could increase remuneration by almost 180 per cent. Measuring increases of these magnitudes against the above graph suggests quite different outcomes. Thus, if remuneration were to increase by 66 per cent from a starting point equivalent to the 17c/mile point\textsuperscript{365} on the above graph to 28.22c/mile, predicted accident involvement would be reduced by approximately 80 per cent. However, an increase of 180 per cent from the same starting point to 47.6c/mile would suggest an outcome in which accident involvement would increase by around 33 per cent.

Substituting different assumed starting points on Rodriguez et al’s function yields different results again, further highlighting the degree of uncertainty involved. For example, if the starting point for owner driver remuneration is equivalent to the 23c/mile point on the graph, rather than 17c/mile, the impact on accident involvement probability of a 66 per cent increase in remuneration would be near zero, in contrast to the 80 per cent reduction found if the starting point were 17c/mile.

In sum, the U-shaped curve described by Rodriguez et al, when combined with the high degree of uncertainty as to the outcome of attempts at mandatory rate-setting, necessarily implies that the resulting safety impacts would be very difficult to estimate.

However, a further significant issue becomes apparent when the estimates of the size of the impact of rate setting are considered. The above discussion highlights the fact that the potential impact of mandatory rates setting is likely to be greatest in the owner driver sector, reflecting the evidence of their sustained low remuneration levels, on the one hand, and the above evidence suggesting that employee drivers are relatively well remunerated overall, on the other.\textsuperscript{366} While the expected benefits in terms of improved safety performance would seem likely to derive largely from the owner driver sector, since this is where remuneration changes are likely to be greatest, the research that has measured the safety performance of this sector relative to that of the employee driver sector has not shown that owner drivers have higher accident involvement rates. Indeed, as discussed in Section 5.2.5, Cantor et al\textsuperscript{367} found owner drivers to have a 22 per cent lower rate of

\textsuperscript{364} That is, an increase from the equivalent of 17c/mile to 20.6c/mile would reduce predicted crash probability from 15% to around 7.5%.

\textsuperscript{365} Note that there is no direct comparison to be made in terms of the actual payment rates reported by Rodriguez et al and those currently applying in Australia, given differences in time and place. References to points on the Rodriguez et al curve simply refer generically to the shape of the function plotted by the authors.

\textsuperscript{366} i.e. the average wage comparisons reproduced above from the Deloitte market analysis and the discussion of rates contained in various enterprise agreements summarised on the Tribunal’s website.

\textsuperscript{367} Cantor et al (2013), op cit
accident involvement than employee drivers, a result which was found to be statistically significant. The authors also highlighted similar results reported by Dammen\textsuperscript{368} and, in particular, the findings of Williamson et al\textsuperscript{369} in the Australian context, which were that owner-operators drove more miles while reporting one-sixth the level of accidents of employee drivers.

That owner drivers appear to have both lower average remuneration and lower (or, at a minimum, no higher) accident involvement than employee drivers complicates the estimation of the net impact of mandatory rate setting.

8.3.2.1.2 Belzer et al\textsuperscript{370}

While the Rodriguez et al\textsuperscript{371} paper uses one of the same datasets as the Belzer et al paper, Belzer et al do not graph a specific function linking safety performance and remuneration levels, as does Rodriguez et al. Rather, Belzer et al reports the estimated impact of a 10 per cent increase in remuneration rates as applied to each of the three datasets he considers. The results are reductions in accident numbers of 9.2 per cent, 21 per cent and 34 per cent. Faced with these quite wide differentials, the authors conclude that:

"It is difficult to come up with a single summary estimate of the effect of driver pay, as elasticities vary across datasets and model specifications, but conservatively we can say that the relationship between safety and pay probably is better than 2:1."\textsuperscript{372}

Applying this fairly speculative figure in the context of an estimated 20 per cent increase in remuneration suggests that accident reductions of the order of 40 per cent could be expected to result. This is similar to the estimated effects derived from Rodriguez et al\textsuperscript{373} function above.

However, attempts to estimate the impact of larger increases in remuneration are problematic. If the relationship between the variables were assumed to be linear in nature, the absurdist result of a complete elimination of road accidents would be reached at the point of a 50 per cent increase in remuneration (i.e. a remuneration level broadly consistent with the adoption of the Victorian recommended rates). Implicitly, the safety benefits of further remuneration increases must decline progressively. However, the observation that one dataset found a 34 per cent reduction in crash incidence resulting from a 10 per cent change in remuneration suggests that this would occur at a point at which very high proportionate increases in accident numbers had been achieved.

Consideration of the Belzer et al’s conclusions in the context of both time-series and cross-section comparisons of heavy vehicle safety performance suggests that questions exists as to the plausibility of the results.

\textsuperscript{369} Williamson et al (2009), op cit
\textsuperscript{370} Belzer et al (2002), op cit
\textsuperscript{371} Rodriguez et al (2006), op cit
\textsuperscript{372} Belzer et al (2002), op cit
\textsuperscript{373} Rodriguez et al (2006), op cit
8.3.2.2 Summary

The conclusions of the three key studies estimating relationships between driver remuneration and safety performance suggest very different outcomes from mandatory rate setting via a future RSRO. In terms of ‘first round’ effect, the results of Nafukho et al\textsuperscript{374} suggest that a modest change in safety performance would be obtained. The results of Belzer et al\textsuperscript{375} suggest implausibly large safety gains, while the results of Rodriguez et al\textsuperscript{376} suggest that similarly large gains would be obtained unless mandatory minimum rates were set at too high a level - in which case deterioration in safety performance could result.

Importantly, to the extent that mandatory rate setting raises the relative price of owner driver provided services (i.e. because they address a lower current remuneration level), a level of substitution toward the use of employee drivers would be expected. As discussed above, some studies within the (limited) literature comparing the safety performance of the two groups find that owner drivers have lower accident involvement rates, while no research has been identified that suggests the contrary conclusion. This suggests the possibility that, by reducing the market share of owner drivers, mandatory rate setting could also have an offsetting negative impact on safety performance. Given the size of the differences in accident involvement rates between the two sectors reported by some authors, the size of this offsetting impact could potentially be significant.

Moreover, the observation of lower average incomes co-existing with equal or better safety performance suggests that other incentives operating on owner drivers may mean that the size of any linkage between remuneration and safety performance is smaller among this group than the average for the industry as a whole. Were this the case, the positive direct impacts on safety performance of future RSRO setting rates to improve the incomes of this sector may be significantly smaller than some of the above research would suggest, while, as noted above, the possibility of significant offsetting effects - i.e. reductions in safety performance due to substitution in favour of employee drivers - appears very real. These probable dynamics add a further dimension of uncertainty to the estimation of the potential safety impacts of mandatory rate setting via future RSRO.

8.3.3 Impact of current legislated initiatives in respect of freight rates

The estimates of very large safety gains due to increased remuneration reported in the Belzer et al\textsuperscript{377} and Rodriguez et al\textsuperscript{378} papers discussed above, should also be considered in light of the fact that a mandatory rate-setting regime has been in place in NSW for several decades. As previously noted, the Review is unaware of any reviews completed to date of the effectiveness of the legislation addressing driver remuneration in NSW. This is also the case in relation to the Victorian and Western Australian legislation addressing remuneration for the owner driver sector, albeit that a review has recently been commenced in the latter jurisdiction. In this context, the Review has analysed the available data on heavy vehicle-related fatalities for these three states, to determine whether there

\textsuperscript{374} Nafukho et al (2007), op cit
\textsuperscript{375} Belzer et al (2002), op cit
\textsuperscript{376} Rodriguez et al (2006), op cit
\textsuperscript{377} Belzer et al (2002), op cit
\textsuperscript{378} Rodriguez et al (2006), op cit
are any observable trends in the data that could be attributed to the impact of these legislative arrangements. Graph 8.2 shows the proportion of Australia’s total number of articulated truck related fatalities occurring in each of these three states over the period 1990 to 2012.

**Graph 8.2: Proportion of articulated truck related fatalities occurring in relevant states, 1990-2012**

![Graph showing the proportion of articulated truck related fatalities occurring in relevant states, 1990-2012.](image)

**Source**: BITRE, *Australian Road Deaths Database*

Notwithstanding the year to year volatility evident in the data, review of the data suggests that the proportionate contribution of each state to total fatalities has been broadly constant over the period. This is perhaps unsurprising in the case of NSW, since the relevant legislative provisions have been in place throughout the period graphed. However, it is notable that there is no apparent impact of the legislation adopted in Victoria or Western Australia. That said, the relatively recent adoption of these legislative regimes, combined with the volatility evident in the data generally, could explain the lack of any immediately apparent impact.

A further comparison is made in Graph 8.3. This compares the NSW fatality rate (i.e. fatalities per 100 million vehicle kilometres) for accidents involving articulated trucks with that of Australia as a whole, with both raw data and trend estimates included in the graph.
Graph 8.3: Comparative fatality rates for accidents involving articulated trucks - NSW vs Aust, 1998-2012

Graph 8.3 shows that, despite the longstanding operations of the NSW IRC in setting mandatory rates in the road freight industry in that state, fatality rates in NSW remain substantially higher than those observed in Australia as a whole. Moreover the trend lines suggest that the rate of improvement in fatality rates is broadly similar, so that there has been little convergence over the 15 year period graphed. Again, this comparison yields little evidence of the effectiveness of the mandatory rate-setting model adopted in NSW in improving road safety performance in that state.

8.3.4 Contributors to improved safety performance

As noted above, road safety improvements achieved over time have resulted from a wide range of actors, including improvements to vehicle quality, roads and a range of regulatory design, implementation and enforcement factors. The relative importance of these factors is likely to differ depending on the contexts, reflecting different environments and the mix of interventions that have previously been adopted. The Review has not identified any recent assessments of the performance of Australia in heavy vehicle safety relative to international comparisons which address the question of what are the key policy ‘gaps’ needing to be addressed to enable further improvement. However, in response to previous international heavy vehicle safety comparisons published by the OECD, the then NRTC commissioned a truck safety international benchmarking study, which concluded as follows:

"The study concludes that the higher fatality rates on Australian roads compared to Great Britain and the United States may be largely explained by the lower proportion of truck travel on divided and limited access roads in Australia, and possibly truck speed limits...."\(^{379}\)

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\(^{379}\) Haworth, N., Vulcan, P. & Sweatman, P. (2002), op cit
The study further concluded that:

"Based on simple assumptions, it can be shown that if Australian roads were upgraded to having similar proportions of divided and limited access roads, as in the United States or Great Britain, the Australian truck fatality rate could be expected to be similar to that in these countries and well below the rates in Canada and Germany."

That is, the authors conclude that the major intervention required to improve Australian heavy vehicle safety to international best practice levels is greater investment in road building, rather than regulatory reform. While this conclusion is more than a decade old, there seems to be little reason to believe that it is no longer applicable, particularly given the authors' emphasis on the fact that such road upgrades would necessarily require a long-term investment program to bring to fruition. This conclusion also provides important context in relation to the potential contribution of remuneration related issues to heavy vehicle related accidents and, by implication, the effectiveness of mandatory rates setting in improving safety performance.

8.3.5 Fault in heavy vehicle related accidents

Finally, another factor that tends to call into question the potential gains from mandatory rate setting is the data that indicates that a relatively small proportion of heavy vehicle accidents - at least those involving other vehicles - are the fault of the heavy vehicle driver. While recent official data have not been found, research from the 1990s published by the Federal Office of Road Safety (FORS) concludes in relation to multiple vehicle accidents:

"...research has shown that for most of these fatalities and serious injuries, the truck driver is not at fault. Car drivers were primarily responsible for five out of six crashes involving an articulated truck and two out of three crashes involving a rigid truck."

In relation to the overall picture of accidents involving articulated trucks (i.e. including single vehicle accidents and those involving pedestrians), FORS found:

- 20 per cent of fatalities were single vehicle accidents, with the driver at fault in the great majority of cases;
- 70 per cent of fatalities were multiple vehicle accidents, with the driver of the truck at fault in 16 per cent of cases; and
- 10 per cent of fatalities were pedestrian crashes, with the truck driver responsible in 27 per cent of cases.

Aggregating the above, and assuming the truck driver to be responsible for all single vehicle accidents, suggests that the truck driver is primarily at fault in relation to 33.9 per cent, or around

380 ibid
one third, of heavy vehicle related fatalities. Clearly, the major impact of any regulatory initiative targeted at heavy vehicles will be on this subset of accidents.

ACIL-Tasman found a similar picture. Using 2000 data from the Australian Truck Crash Database, they estimated that in 82 per cent of multiple vehicle crashes involving heavy vehicles, the driver of the heavy vehicle was not at fault. Similarly, the NTI/NTARC data discussed in Chapter 4 concludes that truck drivers are only at fault in a small proportion of multiple-vehicle accidents (0 per cent in 2011 and 18 per cent in 2009).

These findings point to inherent limitations in the potential for regulatory actions focusing on the heavy vehicle industry to affect its safety performance. That is, strategies aiming to improve truck drivers’ on-road behaviour are likely to have relatively little impact in relation to accidents that are not the fault of the truck driver.

8.3.6 Conceptual discussion

The above discussion of the relative safety performance of the Australian heavy vehicle sector in international terms provides benchmarks that indicate the broad scale of achievable improvements due to regulatory and other intervention. That is, the safety performance of the best performing countries identified provides a reasonable guide to the maximum extent of the improvement to Australian safety performance that could be expected in the medium term due to government policy action.

However, it is important to note that the sustained improvement in road safety performance observed internationally over several decades has been the result of the combined impact of a wide range of policy interventions. Safety-related regulation has clearly been a major contributor. Such regulation embraces a wide range of initiatives including the mandating of the incorporation of various safety devices in vehicles and more stringent regulation and greater enforcement in areas such as speeding, drink-driving and driving hours. Other major contributors include improvements in road quality and technological improvements that have led to vehicle safety advances other than those specified in regulation.

Given this, it is unlikely that improvements in safety regulation alone can bridge the gap between current Australian road safety performance and that of the best-performing countries. Moreover, the current regulatory context is one in which a number of recent initiatives are yet to be fully implemented. Full implementation of these initiatives is expected to further improve Australia’s current heavy vehicle safety performance. Given that a number of these initiatives address the same issues as the RSRS, the potential for additional benefits to be obtained via RSRS is evidently diminished to the extent these prior initiatives prove to be effective in practice.

The literature review conducted above provides some support for the proposition that improving truck driver remuneration would lead to improved safety performance. However, studies of this relationship are relatively small in number, suggesting that caution is required in drawing

383 ACIL-Tasman (2003), op cit
384 Conversely, the driver of the heavy vehicle was at fault in around 80% of single vehicle crashes. Three quarters of crashes involving heavy vehicles were found to be multiple vehicle crashes.
conclusions as to the likely impact of regulating payment rates. Moreover, such studies as do exist yield differing conclusions, while the suggested size of the impacts in some cases lack plausibility, when measured against the aggregate impact of past safety measures and the relative position of Australia in terms of international safety performance comparisons. Given this, there is uncertainty as to the likely size of the possible impact of mandating rates.

An additional factor to be weighed in this regard is the current Australian policy environment. The research finding correlations between remuneration and safety is based on United States data that is in most cases a decade or more old. An important contextual difference is that Australian regulators have implemented a wide range of policies that aim to address fatigue and speeding in the heavy vehicle industry in recent years. To the extent that these policies are successful - essentially in reducing the likelihood that drivers will be able to speed or drive excessive hours without detection, the potential benefits of policies that reduce incentives to engage in these behaviours are inevitably reduced. As discussed above, some data from both NTC and NTI suggest that there have been significant changes in performance in these areas in recent years.

In addition, to the Review’s knowledge, NSW appears to constitute the one jurisdiction currently implementing mandatory rates-setting. The fact that heavy vehicle safety performance is not observably better than the national average, despite the long-standing implementation of these rates-setting arrangements, inevitably calls the potential effectiveness of future rate-setting activity by the Tribunal into question.

Finally, data reported above indicate that the average income levels of truck drivers in Australia are higher in relative terms than in either the United States or the United Kingdom. More importantly, truck driver wages in Australia are approximately equal to domestic average weekly earnings (see Section 5.2.3). This suggests that, to the extent that low rates are yielding unsafe outcomes, the dynamic may affect a minority of drivers. While available data suggest that owner drivers are most likely to experience low income levels, research specifically focussing on this sector suggests that their safety performance compares very favourably with that of employee drivers as a group.
9 Conclusions

9.1 Regulatory and economic burden

The Terms of Reference require the Review to assess the regulatory and economic burden of the RSRS on industry participants and the economy and to examine whether other Commonwealth, state and territory regulations and initiatives provide a more appropriate means of improving safety outcomes.

The Review was commenced less than 18 months after the commencement of the RSR Act. Given this, and the fact that the Tribunal's first RSRO is not due to take effect until 1 May 2014, the conduct of the Review has largely preceded any substantive implementation of the RSR Act. This necessarily implies that the impact of the RSR Act to date has been very limited. While stakeholders have clearly expended significant resources on engaging with the Tribunal in its work to date of developing annual work programs and the first RSRO, the fact that the 2014 Order has not yet taken effect necessarily means that the RSRS has not yet directly imposed any substantive regulatory or economic burden. It follows, therefore, that no measurable impacts on road safety performance can be identified as a result of the operations of the Tribunal to date.

Given this context, the Review has instead focused on attempting to assess the likely future impact of the RSRS in terms of the imposition of regulatory and economic burdens on the industry and the economy more generally. While it has not been possible to quantify these expected future burdens in any meaningful sense, the Review concludes that they are substantial in size. At a fundamental level, this reflects the potential for the Tribunal to exercise its powers to undertake minimum price-setting and give rise to significant economic distortions if mandatory minimum rates are set at inappropriate levels. The difficulties involved in setting rates at or near socially optimal levels in a large and multi-faceted industry are necessarily substantial, as numerous stakeholder submissions have underlined. The removal of previous price regulation regimes in this industry in numerous OECD countries arguably reflects recognition of this problem, as well as the general move away from the use of price regulation in market economies in recent decades. Thus, the potential regulatory and economic burden resulting from the continuation of the RSRS is significant.

A second source of regulatory burden arises to the extent that the operation of the RSRS gives rise to significant regulatory overlap, duplication and uncertainty. Numerous stakeholders highlighted substantial concerns in this regard, particularly given the broad scope of the Tribunal's 2014 Order, which addresses numerous safety related issues that are also addressed by a range of other existing legislation and regulators.

In assessing whether this regulatory overlap suggests that other regulations and initiatives provide more appropriate means of improving safety in the industry, it is necessary to consider whether other existing regulation and initiatives have been effective in addressing heavy vehicle safety and/or whether they are likely to demonstrate such effectiveness in the future. That is, the question of whether regulatory overlap and duplication are necessary in order for appropriate safety outcomes to be attained must be considered.
In order to answer this question, the current and historical safety performance of the industry must be properly understood and the potential for the RSRS to yield further safety improvement must be assessed.

9.2 Safety performance of the road freight sector

The available data show that significant improvement in road safety performance has been achieved in the heavy vehicle sector in Australia in the 23 years since the establishment of the then NRTC by the Commonwealth, state and territory governments. The available data from the ABS, BITRE and other sources indicates that the extent of the improvement in the overall safety performance of the Australian heavy vehicle sector over this period has been very similar, in proportionate terms, to that recorded by the road transport fleet generally. As noted previously, taking account of the increase in distances travelled over the period, the 2012 fatality rate for all road vehicles was 30.0 per cent of its 1988 level, while the rate for articulated trucks was 24.0 per cent of its 1988 level.

The available international data suggest that the safety record of the Australian heavy vehicle industry is also relatively good, although it may not be among the leading countries. Australia’s relative safety performance improved noticeably relative to other comparable countries during the first half of the last decade. However, data limitations mean that it is not possible to draw clear conclusions as to more recent performance.

The observed improvements in the safety performance of the industry have occurred in a context of substantial regulatory reform, much of it driven by the NRTC/NTC. Key areas of reform have included the adoption of the CoR concept, the establishment of a more sophisticated sanctions and enforcement regime, better management of fatigue and speed issues and the adoption of performance-based regulation, which has facilitated changes to the trucking fleet in favour of heavier vehicles, which have been shown to have superior safety performance in the aggregate. Available evidence suggests that these regulatory reforms have been important contributors to the observed improvements in safety performance, albeit that, in common with other areas of road safety, improvements in both road and vehicle quality will also have been factors.

This improvement in safety performance provides the basic context for consideration of the RSRS model. Some submissions to this Review, as well as views advanced in the lead up to the establishment of the RSRS, argued for the adoption of the system as a crisis response and an initiative made necessary by the alleged failure of other regulatory initiatives to improve safety performance.

Despite the major improvements in heavy vehicle safety performance that have occurred, the sector continues to account for a significant proportion of road fatalities and, as such, must remain the subject of concerted policy action to continue to improve its performance. Again, however, policy must be based on a clear understanding of the relevant data. While heavy vehicle-related fatality rates are more than twice those of the road transport fleet as a whole, data indicates that this is not due to higher accident rates in the heavy vehicle sector but, rather, to the lesser survivability of accidents between heavy vehicles and other road users. Indeed, Australian data on total fatality and
injury accident rates indicate that these are significantly lower for heavy vehicles than for all vehicles—a conclusion that is consistent with those of the OECD on this issue.\textsuperscript{385} Moreover, data also indicates that a majority of multiple vehicle accidents involving heavy vehicles occur due to the fault of a light vehicle driver.

In sum, the available data strongly suggest that the program of regulatory reform pursued in the heavy vehicle sector since the establishment of the NRTC has been effective in addressing key heavy vehicle safety issues. In addition, it is clear that substantial regulatory reform is continuing and that the impacts of key recent initiatives, such as the adoption of the HVNL, as well as initiatives currently in train such as the reform to CoR laws and moves to enable or require the more widespread use of telematics and other technological advances, have yet to be felt.

\section*{9.3 Potential of the RSRS to yield further safety gains}

The regulatory and policy reforms adopted in Australia since the early 1990s are largely consistent with those pursued in other OECD countries for which data is available. This reflects the existence of a strong network of heavy vehicle safety regulators and policy specialists and effective dissemination of information on new policy initiatives and a consequently relatively high level of consensus as to key regulatory and policy priorities. Key initiatives identified by the OECD\textsuperscript{386} include mechanisms to manage fatigue and address inappropriate speed, truck design factors (such as enabling the use of heavier vehicles, under-run protection and axle steering on semi-trailers), infrastructure factors (such as road improvements and separation of heavy vehicles from other traffic) and improved driver training and licensing. Identified priority areas for future policy initiatives include a range of driver support and communication measures, including lane departure warning, adaptive cruise control, electronic stability control, forward collision warning, driver fatigue detection systems, automatic crash notification and vehicle condition monitoring systems.\textsuperscript{387}

However, in contrast to this generally high level of similarity in the direction of policy and regulation, the Review has been unable to identify any other country that has either adopted regulatory initiatives based on the ‘safe rates’ concept or is currently considering adopting such initiatives.\textsuperscript{388} NSW is the only jurisdiction identified which currently implements similar regulatory arrangements; however, no evidence has been found to suggest that heavy vehicle safety performance in that state is superior to the national average. Neither has any discussion of the merits of initiatives such as the RSRS been identified in official documents published by the OECD or other relevant international organisations. Similarly, little evidence of the consideration of this issue by authorities responsible for heavy vehicle safety was identified. A notable exception is the United States FMCSA, which indicated in 2007 that it was unconvinced by the evidence from research on what it described as the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{385} OECD (2011), op cit, p.177
\item \textsuperscript{386} ibid
\item \textsuperscript{387} ibid
\item \textsuperscript{388} The 2013 OECD/ITF Annual Report notes the establishment of the Tribunal, without referring to any similar initiatives in Member countries. Questions to OECD subject experts yielded the response that they were unaware of any similar initiatives, while web searches also failed to identify relevant initiatives.
\end{itemize}
\end{footnotesize}
‘purported’ link between remuneration and heavy vehicle safety, while also cautioning that it was not possible to understand the precise nature of any relationship between the two factors.  

While some researchers have taken the view that important links between remuneration and safety exist, several reviews of the available research have concluded that the evidence for causal relationships is limited and/or unclear. Importantly, the available research literature addresses several different relationships, involving both driver remuneration and firm financial performance and both actual safety performance and indirect risk indicators. Thus, only a minority of the research literature specifically addresses the link between driver remuneration and safety performance per se.

Consistent with these views, this Review’s assessment of the current state of the research literature is that evidence for a link between driver remuneration and safety performance remains relatively weak, while the specific nature of any link also remains unclear. This does not suggest that the potential existence of a link is, or should be, dismissed. However, there is clearly a need for further high-quality research to clarify this issue. This view has been emphasised by a number of stakeholders, some of which argued that the Tribunal should include such research in its work program.

Given the lack of either direct evidence from other countries of the effectiveness of legislation setting minimum rates or a strong body of research demonstrating clear and substantial links between remuneration and safety, 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. However, the likelihood of the RSRS leading to the achievement of such benefits in Australia at present is further reduced by the observation that remuneration rates do not appear, on the whole, to be particularly low. ABS data shows that truck driver earnings are approximately equal to the national average, and that this relativity is more favourable than that observed in either the United States or the United Kingdom, while details of several enterprise agreements published by the Tribunal also demonstrate the existence of over-award payments. This does not suggest that some drivers are not experiencing low levels of remuneration. Indeed, some limited evidence suggests that many owner drivers may be in this position. However, it does suggest that there is not an industry-wide issue of low remuneration.

A further issue is that of the likely impact of mandatory rate-setting on actual remuneration levels. While the broad discretion accorded to the Tribunal implies that a range of outcomes are possible, current data does not indicate that the mandatory rate-setting arrangements in operation in NSW have led to significantly higher average driver incomes in that state. Thus, uncertainty as to the size of the impact of the Tribunal’s operations on driver incomes adds further doubt as to the potential safety impact of the RSRS.

In summary, even if the existence of a strong link between remuneration and safety performance were accepted in general terms, minimum rate-setting may have a very limited impact in the current Australian context.

9.4 Owner drivers

While the scope of the RSRS embraces both employee drivers and owner drivers, it appears that a large part of the rationale for, and focus of, the system relates to owner drivers. Employee drivers have award coverage which sets minimum weekly remuneration, requires payment for major non-driving duties (loading and unloading) and provides an avenue for addressing remuneration-related concerns at an industry-wide level. Conversely, owner drivers must understand their own cost structures and be able to negotiate rates that provide a sustainable return on both their labour and capital: tasks that require significant business skills. The fact that the Victorian and Western Australian legislation applies solely to owner drivers suggests that both governments have taken a view that it is in this sector that concerns over remuneration levels lie.

Given the underlying logic of the RSRS, the apparently low remuneration levels of owner drivers would suggest, a priori, that this group would be strongly over-represented in heavy vehicle accidents. However, while this specific issue has been the subject of research, the results have largely failed to demonstrate any such link, with the results either showing no significant differences in accident involvement between employees and contractors (i.e. owner drivers) or, in some cases, significantly lower accident involvement rates for contractors, despite their lower average remuneration. Thus, to the extent that the issue of low remuneration is concentrated in the owner driver sector in the Australian context, these research findings tend to cast further doubt on the likelihood that mandatory rate setting would yield substantial safety gains.

In sum, there is a lack of research demonstrating a clear and strong link between driver remuneration and safety performance and no evidence of the effectiveness of a model consistent with the RSRS in improving safety in other jurisdictions. These factors, plus the evidence suggesting that truck driver remuneration cannot, on the whole, be considered to be particularly low in Australia, mean that there can be little confidence that the RSRS will yield significant safety benefits in the future. The fact that Australia’s heavy vehicle safety record currently compares favourably with most comparable countries necessarily suggests that there is lesser likelihood of the RSRS, or indeed other significant regulatory changes, yielding a ‘step change’ in safety performance.

9.5 Potential costs of the RSRS

Conversely, the potential costs of the RSRS appear to be high. Fundamentally, these involve the economic distortions that may arise from the imposition of price regulation across a large, multi-faceted industry. Setting minimum rates at too high a level would yield significant economic costs, a factor which underlay the removal of price regulation from most industries in which it had existed in recent decades, while one of the few research papers showing clear and significant links between remuneration and safety even finds that safety performance declines significantly when remuneration is set at too high a level (see Rodriguez et al (2006)). These factors underline both the difficulty involved in attempting to set mandatory rates and the potential for significant harm to occur should rates be set at inappropriate levels.

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Comparison of the guideline rates established in Victoria and Western Australia highlights the extent of this problem in practical terms, with some rates differing substantially between the two jurisdictions. These differences highlight the difficulty of setting industry, or even sector-wide rates. This issue was highlighted by a wide range of stakeholders, who identified specific difficulties including the fact that very different payment mechanisms are used in different sectors and that cost structures can differ significantly between sectors due to specific truck-related requirements and the product being transported.

The Tribunal has itself commented on the difficulties involved in setting rates, in the Full Bench Decision accompanying the 2014 Order. The fact that even the proposed requirement that "A hirer must pay a contractor driver engaged by them a reasonable amount for work", included in the draft RSRO published in mid-2013, was subsequently removed as a result of objections received from stakeholders points to the scale of the challenges faced by the Tribunal in this regard. The fact that the 2014 Order, while entitled ‘Road Safety Remuneration Order’, contains no content related to remuneration, other than a provision in relation to payment time and to deductions from payments made, further underlines this point. The fact that the Tribunal has requested parties to submit ‘proposed Orders’ which they seek to have made, rather than simply submissions on the rates issue, may also point to the scale of the challenges involved, as may the widely varying approaches proposed by stakeholders.

In addition, the possibility that perverse safety outcomes may arise from the operations of the Tribunal should be weighed. These could arise as a result of the effect of the RSR Act in fragmenting responsibility for non-remuneration related safety regulation and thereby reducing the cohesiveness and, potentially, the effectiveness of the suite of safety regulation. The focus of the Tribunal’s 2014 Order on matters other than remuneration per se highlights this potential concern, while the fact that a core aspect of the 2014 Order—that of safe driving plans—lies within the broad scope of the HVNL tends to underline it.

In summary, even were it to be considered that the evidence in favour of a link between remuneration and safety is sufficient to justify the setting of mandatory minimum rates, it is questionable whether such an intervention would yield benefits sufficient to justify the expected costs. That is, making the case for regulation requires not only that the nature and extent of the problem be clearly established but that it be shown that regulation will be able to address the problem effectively, at proportionate cost and without creating other, unanticipated problems. There appears to be substantial doubt as to whether this would be the outcome in practice of the adoption of mandatory minimum rates as part of the future operation of the RSRS. It is notable that even the RIS prepared in connection with the Road Safety Remuneration Bill concluded that the legislation would not give rise to net benefits to society.

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9.6 Alternative approaches

Three states, covering more than two-thirds of Australia’s population, had adopted legislation addressing the remuneration of heavy vehicle drives prior to the establishment of the RSRS. However, while the NSW model is broadly similar in approach to the RSRS, Victoria and Western Australia have adopted very different approaches.

Victoria and Western Australia have adopted significantly ‘lighter-handed’ regulation, which can also be seen as more targeted in that it:

- attempts to directly address certain perceived market failures, such as information asymmetry, by relying on a combination of guideline rates, information provision, disclosure requirements and prohibitions on unconscionable conduct; and
- applies only to the owner driver sector, where concerns over low remuneration levels have largely arisen.

The fact that neither legislative scheme has yet been reviewed means that it is not yet possible to assess directly the effectiveness of this approach. However, it is notable that these approaches apparently enjoy a significantly higher level of industry support than the RSRS. This was evident in the comments of a number of stakeholders to the Review and is also suggested by the active involvement of industry representatives on the bodies charged with aspects of the implementation of these Acts.

Importantly, these lighter-handed regulatory options do not give rise to the high potential costs of poor regulatory implementation that have been identified above in respect of the RSRS. Such an approach could, therefore, be seen as more proportionate in relation to the current strength of the evidence for a link between remuneration and safety performance. Moreover, principles of good regulation suggest that more interventionist regulatory options should be adopted only if and when it is determined that a lighter-handed approach has proven ineffective and is unlikely to be able to be reformed successfully.

These factors suggest that the adoption of a lighter-handed regulatory model at the national level could constitute a viable alternative to the RSRS as currently configured, were the Government of the view that continued regulatory intervention is required in this area.
10 Recommendations

1. That the Road Safety Remuneration System should not continue in its current form.

The adoption of price regulation in the context of a competitive industry risks creating significant economic distortions which can easily outweigh the benefits sought. The multi-faceted nature of the road freight industry renders the task of price regulation particularly challenging and consequently increases the extent of these risks. The strength of the evidence for the asserted link between driver remuneration and safety is insufficient to support the use of such a highly interventionist regulatory tool, which is rarely used in modern market economies. This conclusion is strengthened by the evidence that the range of regulatory interventions adopted to date have been successful in improving heavy vehicle safety, while the range of further reforms currently in train suggest that further improvements in performance can be expected.

Moreover, the consultation undertaken as part of this Review reveals that there is very limited support for the continuation of the RSRS in its current form and substantial concern regarding the likely costs of the system in terms of regulatory overlap, duplication and complexity.

2. That, accordingly, the provisions of the RSR Act authorising the Tribunal to set mandatory rates should be repealed.

Should the Government wish to retain a remuneration-related regulatory function, consideration should be given to amending the RSR Act to establish a light-handed regulatory model, similar to those in place in Victoria and Western Australia, which is based on some combination of guideline rates, information provision, disclosure requirements and/or the provision of fora for dispute resolution. Such an approach would be more targeted and proportionate in nature and likely to yield significantly greater stakeholder support.

3. That, should the Government determine that mandatory price setting powers should be retained, the scope of these powers should be narrowed to encompass only owner drivers.

The existence of the modern award system provides an appropriate means of addressing any remuneration-related issues relating to employee drivers and appears to have sufficient scope to do so in its current format. This includes the issues of payment for waiting, loading and unloading time which have been most commonly raised in this context. The adoption of a mandatory RSRO in relation to employee driver remuneration would therefore inevitably entail extensive overlap and duplication between the RSRO provisions and those of the relevant awards, leading to complexity, uncertainty and increased costs. Moreover, the key area of concern in respect of driver remuneration appears to be that of owner drivers, who do not benefit from these protections. Hence, if mandatory rate setting is to be retained, it should be targeted in this area of particular concern.

4. That, should the RSR Act be retained, it should be amended to ensure that the scope of the Tribunal’s operations is limited to remuneration and to matters that are directly remuneration-related.

The adoption of a broad interpretation of the current section 27 provisions of the RSR Act authorising a RSRO to address ‘remuneration related’ matters has led the Tribunal to include
provisions in its first RSRO that overlap substantially in subject matter with other legislation, notably the HVNL. As advocated by most stakeholders, there should be clear delineation of responsibilities in these areas, with safety-related matters that are not clearly and directly remuneration-related being addressed by experienced and specialised safety regulators.

5. That, should the RSR Act be retained, the Tribunal should enter into a formal memorandum of understanding with the National Heavy Vehicle Regulator to ensure that a shared understanding of the respective roles of these bodies is developed, co-operation is encouraged where relevant and overlap and duplication are minimised.

Both the review of relevant legislation undertaken as part of this report and the clear views of a majority of stakeholders consulted demonstrate the substantial potential for overlap and duplication between the Tribunal and other institutions involved in heavy vehicle safety. To the extent that the Tribunal's future role continues to give rise to actual or potential overlap and duplication, this should be managed through the adoption of a formal protocol addressing these issues and promoting co-operation and a shared understanding of the respective roles of the Tribunal and the NHVR as the institution with primary responsibility for regulating the heavy vehicle sector.

6. That, should the Government decide to retain legislation addressing heavy vehicle driver remuneration issues, it should consult with state and territory governments with a view to enabling a single, national scheme to operate.

As indicated in submissions to the Review, there is significant overlap between the RSRS and legislation dealing with remuneration currently in place in NSW, Victoria and Western Australia. Such overlap would continue and, at least potentially, could increase in extent were the Australian Government to move to adopt a lighter-handed regulatory approach as envisaged in Recommendation 2, above.

Thus, should the Australian Government decide to retain regulatory provisions in this area, it should explore the option of adopting a co-operative approach with the states and territories which could result in a single, national system replacing the current state-based approaches. Such an approach would be consistent with the high level of national harmonisation achieved over the past two decades in respect of the regulation of heavy vehicle safety.

An important element of such an approach should be to ensure that a detailed review of the operation and impacts of the existing state legislation in this area is undertaken to provide an appropriate evidence base to support the development of any light-handed regulatory approach at the Commonwealth level.

7. That, should a single national system addressing remuneration issues be agreed, as per Recommendation 6, consideration should be given as to the most appropriate institutional arrangements to implement the system.

The Tribunal has been established under the aegis of the Fair Work Commission to implement a mandatory rates system. These institutional arrangements, which are formal and somewhat adversarial in nature, may not be the most appropriate means by which to implement an alternative, lighter-handed regulatory approach.
Therefore, consideration should be given to alternative options. In this context, the models currently adopted under the relevant Victorian and Western Australian legislation may provide a useful starting point. Moreover, given the broad responsibilities of the NHVR with regard to heavy vehicle safety, it may be appropriate for that body to provide support services to any new decision-making body.
11 Submissions received and consultations undertaken

11.1 Submissions received

A total of 26 submissions were received. Four submitters requested that the content of their submissions remain confidential. Submissions were received from the following organisations:

- Australian Business Industrial and New South Wales Business Chamber [Confidential]
- Australian Chamber of Commerce and Industry
- Australian Federation of Employers and Industry
- Australian Industry Group
- Australian Livestock and Rural Transporters Association
- Australian Logistics Council
- Australian National Retailers Association
- Australian Risk Policy Institute
- Australian Road Transport Industrial Organisation (Queensland Branch)
- Australian Trucking Association (New South Wales)
- Business SA [Confidential]
- Coles Supermarkets Australia
- Dr Jann Karp PhD (Social Policy, University of New South Wales)
- Intercapital Trucking Pty Ltd, Victoria
- Livestock and Rural Transport Association of Western Australia (Inc.)
- Masters Builders Australia
- National Farmers’ Federation
- National Transport Commission [Confidential]
- National Union of Workers
- NatRoad [Confidential]
- New South Wales Government - New South Wales Department of Industrial Relations
- Northern territory Government - Northern Territory Department of Business, Northern Territory WorkSafe
- Professor Philip Laird PhD (Faculty of Engineering and Information Sciences, University of Wollongong)
- Transport Workers’ Union Australia
- Victorian Government - Victorian Department of Treasury and Finance
- Western Australian Government - Western Australian Department of Commerce

11.2 Consultations undertaken

The following organisations participated in direct consultations via teleconference as part of the Review:

- Australian Chamber of Commerce and Industry
- Australian Industry Group
- Australian Logistics Council
- Australian Road Transport Industrial Organisation (Queensland Branch)
- Coles Supermarkets Australia
• Linfox
• National Heavy Vehicle Regulator
• NatRoad
• Transport Workers’ Union Australia
Appendix 1: Terms of Reference for a Review of the Road Safety Remuneration System

The Purpose of the Review
The purpose of the Review is to assess the operation of the Road Safety Remuneration Act 2012 and the Road Safety Remuneration Tribunal (together - the Road Safety Remuneration System) and advise Government on whether this system represents an effective and appropriate means of addressing safety concerns in the road transport industry.

The scope of work
The Review will:

- assess the regulatory and economic burden of the Road Safety Remuneration System on participants in the road transport industry and the Australian economy generally;
- examine whether other Commonwealth, state and territory regulations and initiatives provide a more appropriate means of improving safety outcomes in the road transport industry;
- examine any available evidence about the impacts of the Road Safety Remuneration System on improving road safety (e.g. accident data);
- assess the operation and conduct of the tribunal and the extent to which it has achieved its aim and objectives;
- consult relevant stakeholders as necessary; and
- make recommendations to Government, based on the evidence and assessment above.

Principles
The following principles will guide the Review:

- Eliminate duplication of regulation.
- Ensure that regulations and policies for improving safety performance in the road transport industry are based on credible evidence.

Consultation
In developing recommendations, the Review will detail the level of consultation undertaken with industry, government and other stakeholders and the outcomes of those consultations.

Outputs and reporting requirements
A report will be prepared for Government outlining any recommendations and their anticipated regulatory impact, supporting data and implementation and compliance strategies.
Appendix 2: Estimates of the costs of heavy vehicle related accidents

In 2012 there were 148 fatalities involving articulated trucks and a further 98 fatalities involving heavy rigid trucks Australia-wide, yielding a total of 246 heavy vehicle related fatalities.

Equivalent published data on the current number of heavy vehicle-related serious injuries do not appear to be available. However, data published by the FORS in 1997 indicated that the serious injury rate for articulated trucks was approximately 3.5 times the fatality rate, while the serious injury rate for rigid trucks was almost 6.3 times that of the fatality rate. While fatality and injury rates have fallen significantly since this time, it is probable that the ratio of fatalities to injuries in respect of these two categories of accident would have remained similar. Consequently, a rough average of these ratios has been used to estimate an average ratio of the number of serious injuries to fatalities for the fleet as a whole. Given the fact that articulated trucks account for at least 60 per cent of total fatalities, a ratio of 5.0 has been adopted in deriving the following estimates.

These potential gains from improved safety performance can be multiplied by generally accepted figures for the Value of a Statistical Life (VSL) and the value of a serious injury in order to obtain dollar estimates of the value of the benefits of such improvements in safety performance.

The Office of Best Practice Regulation's Best Practice Regulation Guidance Note on VSL argues that an appropriate base case figure for VSL is $3.5 million, expressed in 2007 dollars. This is equivalent to $4.1 million in 2013 dollars. This figure is based on research by Abelson, which involved a meta-analysis of relevant research, using Willingness to Pay (WTP) methodologies.

The WTP approach is widely, though not universally, regarded as superior to alternative (typically human capital based) approaches in calculating VSL figures. It can be noted, however, that these alternative approaches generally yield significantly lower VSL figures. Figures within the range of $1.5 - $2 million are reasonably typical results where human capital based approaches are adopted.

Given the preference of OBPR for the use of a WTP methodology for VSL purposes, a methodological complication arises from the fact that most estimates of injury costs are based on less comprehensive approaches (typically involving calculation of medical costs and productivity losses) which, at least arguably, substantially understate true costs and are in any case not methodologically consistent with the VSL approach required to be taken by OBPR.

However, some literature argues that serious injuries should be valued in terms that are consistent with the VSL figure used, by adopting an estimate that represents a proportion of the VSL figure. A review of sources indicates that accepted values are in the range of 0.20 to 0.23 times the estimated

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393 Federal Office of Road Safety (1997), op cit. Based on 1995 data. For articulated trucks, fatalities/serious injuries per 100m vehicle km were 3.91/13.64. For Rigid trucks, this was 3.20/20.12.
This approach is preferred to alternatives because it is comprehensive and it effectively adopts a consistent WTP approach to valuing both fatalities and injuries. Consequently, the above VSL figures are also used as the basis for calculation of the benefits due to reductions in serious injury numbers. Serious injuries are valued at 0.2 times the VSL figure adopted in the following calculations (i.e. at $0.82 million).

These potential benefits, while substantial, nonetheless under-estimate the total value to society of safety improvements, since a range of other costs are incurred due to road accidents. The following list of ‘non-human’ costs was drawn from research by the Bureau of Transport and Regional Economics. The costs cited are for all road accidents in Australia and relate to 2006.

**Table A2.1: Non-human costs of road accidents in Australia, 2006**

<table>
<thead>
<tr>
<th>Cost type</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repair costs (vehicle and other)</td>
<td>$4,227 million</td>
</tr>
<tr>
<td>Insurance administration</td>
<td>$1,421 million</td>
</tr>
<tr>
<td>Travel delays</td>
<td>$840 million</td>
</tr>
<tr>
<td>Vehicle unavailability costs</td>
<td>$214 million</td>
</tr>
<tr>
<td>Police &amp; emergency services</td>
<td>$73 million</td>
</tr>
<tr>
<td>Health cost of accident caused pollution</td>
<td>$53 million</td>
</tr>
<tr>
<td>Street furniture damage cost</td>
<td>$40 million</td>
</tr>
<tr>
<td><strong>Total non-human</strong></td>
<td><strong>$6,869 million</strong></td>
</tr>
</tbody>
</table>

Table A2.1 shows that these ‘non-human’ costs amounted to around $6.9 billion in 2006. This is equal to $8.4 billion in current dollar values. However, subsequent improvements in road safety performance suggest that these costs will have declined in real terms. For example, whereas there were 1,602 road fatalities in 2006, this had been reduced to 1,303 in 2012. Applying this ratio to the above figure suggests that the non-human costs of road accidents in 2012 could have been of the order of:

\[
(1,303/1,602) \times 8.0 \text{ billion} = 6.5 \text{ billion}
\]

Heavy vehicle related fatalities accounted for approximately 18.9 per cent of all road fatalities in 2012. On a conservative assumption that heavy vehicle related accidents account for a similar proportion of non-human costs, this would imply that the non-human costs of heavy vehicle related accidents is around $1.2 billion per annum. In practice, the non-human costs associated with

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398 CPI all groups Australia December 2013/December 1996: 104.8/86.6 = 1.21. $6.9bn x 1.21 = $8.4bn.

399 This calculation effectively assumes, in the absence of other information, that the real non-human cost per fatal/injury accident has remained constant since 1996.

400 246 of 1,303 fatalities, albeit this is an atypically large proportion.

401 i.e. $6.5 billion x 0.189 = $1.2285 billion.
heavy vehicle-related accidents are considered likely to be higher than this amount, since it seems intuitively probable that the average non-human cost of a heavy vehicle related accident would be higher than the average for all road accidents. However, no data have been found to confirm this speculation.

The above estimates are summed in Table A2.2, below, to derive estimates of the total cost of heavy vehicle-related accidents in Australia at present.

**Table A2.2: Cost of heavy vehicle-related accidents in Australia, 2012**

<table>
<thead>
<tr>
<th>Measure</th>
<th>Number</th>
<th>Value per fatality/injury</th>
<th>Total value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatalities</td>
<td>246</td>
<td>$4.1 million</td>
<td>$1,008.6 million</td>
</tr>
<tr>
<td>Serious injuries</td>
<td>1,230</td>
<td>$0.8 million</td>
<td>$1,008.6 million</td>
</tr>
<tr>
<td>Non-human costs</td>
<td>Not applicable</td>
<td>Not applicable</td>
<td>$1,200.0 million</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>Not applicable</td>
<td>Not applicable</td>
<td><strong>$3,217.2 million</strong></td>
</tr>
</tbody>
</table>

Table A2.2 shows that the total cost of heavy vehicle related accidents involving fatalities and/or serious injuries in 2012 was in the vicinity of $3.2 billion. By implication, for each 1 per cent improvement in heavy vehicle safety performance, annual benefits with a value of around $32 million would be obtained.

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402 In particular, the two largest categories of non-human costs as per Table A2.1, being vehicle related costs and travel delays both appear likely to be larger on average where heavy vehicles are concerned, given that the average value of a heavy vehicle is considerably higher than that of a car, while a higher proportion of heavy vehicle accidents will involve commercial (as compared to leisure) travel.

403 i.e. 246 fatalities x the ratio of 5.0 estimated above.
Appendix 3: Road safety legislation

Chain of Responsibility

CoR is a concept incorporated in the HVNL that is similar to the legal ‘duty of care’ that underpins WHS law. It was first developed by the NTC for use in the model Road Transport Reform (Compliance and Enforcement) Bill 2003 as a way to encourage greater compliance across industry by extending legal responsibility for non-compliance with road transport laws to all parties in the supply chain.

The CoR concept and its operation under the HVNL are discussed in detail in the Chain of Responsibility in the Heavy Vehicle National Law: Issues Paper prepared by the Chain of Responsibility Taskforce, which is currently undertaking a review of the CoR provisions in the HVNL. However, in summary the CoR concept generally recognises that the behaviour of one party in the supply chain can be influenced or controlled by other parties in the chain, although the degree of control over potential risks will vary depending on each party’s place within the chain and their activities. CoR therefore operates to ensure that any party in a position to control, influence, prevent or encourage particular on-road behaviours is identified and held appropriately accountable.

Under the HVNL CoR provisions, specified parties in the supply chain can be held accountable for transport breaches relating to MDL, fatigue and speeding requirements because of the degree of control or responsibility that they exercise over road transport activities. This is achieved by imposing duties on all parties in the supply chain to ensure that their action or inaction does not contribute to or encourage breaches of road transport laws.

In particular, parties are specifically prohibited from making demands that they ought to know would cause a breach; from coercing, inducing or encouraging breaches; or from passing on false or misleading information that could cause a breach.

For example, under CoR, schedulers whose business practices place unrealistic timeframes on drivers which cause the drivers to exceed their work rest options, or operators who do not provide drivers with a sleep environment which allows for quality sleep if their work requires them to sleep away from home (approved sleeper cab, access to rest stops), could be held responsible for breaches of the HVNL.

Parties in the supply chain must also make sure the terms of consignment and work/employment contracts will not result in, encourage, reward or provide an incentive for other parties in the supply chain (e.g. a driver or scheduler) to break any road transport laws.

A ‘party’ in the supply chain includes, but is not limited to:

406 ibid
a) corporations, partnerships, unincorporated associations or other bodies corporate
b) employers and company directors
c) exporters/importers
d) primary producers
e) drivers (including a bus driver and a contractor/owner driver)
f) prime contractors of drivers
g) operator of a vehicle
h) schedulers of goods or passengers for transport in or on a vehicle, and the scheduler of its driver
i) consignors/consignees/receivers of the goods for transport
j) loaders/unloaders of goods
k) loading managers (the person who supervises loading/unloading, or manages the premises where this occurs)

A person may also be a party in the supply chain in more than one way. For example a person may have duties as the employer, the operator and the consigner of goods.\(^\text{408}\)

The CoR Taskforce describes the CoR duties under the HVNL as a series of general and intermediate duties supported by process-based requirements, specification standards, and executive officer liability provisions.\(^\text{409}\)

General duty offences establish an obligation on parties to secure or avoid certain broadly described outcomes, while intermediate duty offences are based around the role and functions of the relevant parties. Unlike the model WHS Act, the HVNL contains a single broad general duty under section 229 regarding fatigue and a series of narrower intermediate duty offences in relation to the speed and fatigue requirements.\(^\text{410}\)

Process-based requirements specify particular processes or steps that may be followed in order to meet an obligation and can be used for establishing a defence (i.e. ‘reasonable steps defence’, see below) for certain MDL offences, or in determining whether an offence has been committed (i.e. whether all ‘reasonable steps’ have been taken) in some speed and fatigue related intermediate duty offences.\(^\text{411}\)

Specification standards provide guidance to duty holders as to how to meet a duty by providing precise and detailed information on what is required and are provided under the MDL, speeding and fatigue management chapters of the HVNL.\(^\text{412}\) In certain circumstances, where a breach of a driver’s specification standard relating to keeping documents, or to a MDL, speed or fatigue requirement is

\(^{407}\) ibid

\(^{408}\) ibid

\(^{409}\) Chain of Responsibility Taskforce, op cit, p.15.

\(^{410}\) ibid, paras 50-51.

\(^{411}\) ibid, paras 54-55.

\(^{412}\) ibid, p.17, paras 57-58.
identified, CoR provisions in the HVNL extend liability to persons other than the driver and operator of a heavy vehicle, known as ‘deemed liability’.\textsuperscript{413}

Section 636 of the HVNL also extends liability to executive officers of corporations for breaches of specified offences (e.g. fatigue and speeding) committed by the corporation.

A defence of ‘reasonable steps’ is available where a breach of transport laws has occurred.\textsuperscript{414} Reasonable steps are the actions people can take to ensure that heavy vehicle drivers do not drive in contravention of road transport laws. A ‘reasonable steps’ defence can be claimed by a party in the supply chain if they can show they took all reasonable steps to prevent the breach, or that there were no reasonable steps they could have taken to prevent the breach. The defence of ‘reasonable steps’ can also be claimed if the party did not know, or could not reasonably have been expected to know, that a breach had occurred.\textsuperscript{415} For the defence to be successful, all ‘reasonable steps’ must have been taken. It is not sufficient that only some steps were taken. Taking ‘all reasonable steps’ involves doing what is reasonable and proportionate considering all relevant circumstances, including the nature of the risk and the seriousness of the potential consequences. It does not require implementing every conceivable countermeasure.\textsuperscript{416}

Where a CoR breach has been established, the fines imposed can run into the tens of thousands of dollars.

**Western Australia**

Heavy vehicles are generally regulated in Western Australia under the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA). CoR is not currently a component of these laws but will shortly be introduced, while fatigue management is administered under the *Occupational Safety and Health Act 1984* (WA).

Western Australia is currently in the process of implementing CoR reforms based on the national model Road Transport Reform (Compliance and Enforcement) Bill which also formed the basis for CoR provisions in the HVNL, although some industry driven changes were made to the proposed Western Australian legislation.\textsuperscript{417} The Western Australian CoR reforms at this stage appear to be restricted to MDL offences only.

An additional significant difference between the Western Australian CoR legislation and that of other states is the extension of coverage of the CoR provisions to all vehicles regardless of size, as opposed to the HVNL and NTC model laws which only apply to heavy vehicles over 4.5 tonnes. This is achieved by specifying two categories of vehicles to which the legislation applies: ‘Heavy vehicles’ (GVM of 4.5 tonne or over) and ‘light vehicles’ (GVM of less than 4.5 tonne). Thus small vehicles such as ‘utes’ and courier/delivery vans are also covered by the Western Australia CoR provisions.

\begin{thebibliography}
\bibitem{413} ibid, para 59
\bibitem{414} See section 618 of the HVNL.
\bibitem{415} ibid
\bibitem{416} Chain of Responsibility Taskforce, op cit, p. 37 para 133.
\end{thebibliography}
Western Australia believes that to gain maximum road safety benefits, it is essential that the CoR provisions apply to all parties in the transport chain that are able to influence compliance outcomes for light vehicles so they can also be held accountable for offences.418

The Western Australian CoR reforms are being implemented via amendments to the Road Traffic (Administration) Act 2008 (WA) and the Road Traffic (Vehicles) Act 2012 (WA). The amending legislation was passed by the Parliament of Western Australia in May 2012 and is expected to commence in October 2014 following the drafting of supporting regulations.419

The NHVAS does not operate in Western Australia, instead operators of certain types of heavy vehicles must become accredited under the Western Australian Heavy Vehicle Accreditation Scheme (WAHVAS) to gain a permit or notice from Main Roads Western Australia. The WAHVAS includes two modules: one for fatigue management and one for vehicle maintenance.

Accreditation under the NHVAS is recognised in Western Australia, except for fatigue management which must comply with the Western Australian requirements for fatigue management.

**Northern Territory**

Heavy vehicles are generally regulated in the Northern Territory under the Motor Vehicles Act 2011 (NT), including heavy vehicle driver licensing, MDL and vehicle registration. Heavy vehicles registered in the Northern Territory are required to undergo annual inspections unless the vehicle is accredited under the NHVAS, which is administered by the NHVR.

There are no heavy vehicle CoR provisions operating in the Northern Territory. However this may change depending on the extent to which the Northern Territory Government adopts the HVNL. Fatigue management for drivers of heavy vehicles is administered under the Work Health and Safety (National Uniform Legislation) Act 2011 (NT).

**Fatigue management**

In addition to general WHS obligations there are also existing heavy vehicle laws which specifically regulate fatigue management of drivers in the road transport industry and long distance operations. With the exception of Western Australia and the Northern Territory, these fatigue laws have been harmonised under the HVNL. Fatigue laws are enforced by state and territory road transport authorities and police agencies on behalf of the NHVR.

**Heavy Vehicle National Law**

Driver fatigue is a significant safety hazard for the road transport industry. The National Road Safety Strategy 2011 – 2020 estimates that fatigue is implicated in 20–30 per cent of deaths on the road

and around 8 per cent of total serious injuries.\textsuperscript{420} This would mean fatigue is the cause of between approximately 46 and 69 deaths per annum from crashes involving heavy rigid and articulated trucks.\textsuperscript{421}

The main causes of driver fatigue are too little sleep, driving during normal sleep hours and working or being awake for very long hours.\textsuperscript{422} The HVNL recognises the seriousness of this issue through the incorporation of provisions for the management of fatigue for drivers of heavy vehicles.

The main elements of fatigue management under the HVNL include working hours, recording work and rest times, accreditation schemes (i.e. NHVAS), and CoR obligations.

Driver work and rest hours are strictly regulated under the HVNL and the \textit{Heavy Vehicle (Fatigue Management) National Regulation 2013}, although greater flexibility in determining work and rest hours is available through accreditation under the NHVAS ‘Basic Fatigue Management’ or ‘Advanced Fatigue Management’ modules. All drivers of fatigue-regulated heavy vehicles who operate in an area with a radius of 100km or more from their home base or under the NHVAS fatigue management modules are required to complete a work diary\textsuperscript{423} to record their work and rest times.\textsuperscript{424}

Requirements for work diaries are detailed in Part 6.4 of the HVNL and the \textit{Heavy Vehicle (Fatigue Management) National Regulation 2013}. These laws provide a legal structure for the approval and operation of electronic work diaries (EWDs) in the heavy vehicle sector. However, when the national law was drafted the nature and technical elements of the EWD were not known. Therefore a range of EWD provisions are the subject of further review to ensure the HVNL is consistent with the policy position and technological direction of EWDs.\textsuperscript{425}

Under the HVNL drivers have a general duty not to drive on the road while impaired by fatigue.\textsuperscript{426} This duty is backed up by CoR provisions requiring each person in the supply chain to take all reasonable steps to ensure a heavy vehicle driver can perform his or her duties without breaching the fatigue provisions. This obligation is similar to WHS laws and is enshrined in a single broad


\textsuperscript{421} Calculated as follows: BITRE figures indicate 229 deaths from crashes involving heavy rigid and articulated trucks in Australia during the 12 months to the end of March 2013 (Department of Infrastructure and Transport, BITRE, \textit{Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin}, Jan–Mar 2013, p. 1). Applying the National Road Safety Strategy proportions of 20–30\% of deaths results in figures between 45.8 and 68.7.


\textsuperscript{423} Drivers completing work less than 100 km from their base must also comply with statutory hours, however, do not have the same record-keeping requirements.


\textsuperscript{425} See the NTC report ‘Preparing Australia for Electronic Work Diaries: Regulatory Issues Paper’ op cit.

\textsuperscript{426} See section 228.
general duty under section 229 of the HVNL regarding fatigue, as well as a number of additional obligations targeted towards ‘off-road’ parties in the supply chain, including the following:  

- **Employers, prime contractors and operators** must ensure their activities do not cause the vehicle’s driver to drive while fatigued or in breach of regulated work and rest hours, and that each scheduler for the vehicle has complied with their scheduling obligations.

- **Schedulers** must ensure a schedule does not cause a driver to drive while fatigued or in breach of regulated work and rest hours, including allowing for adequate rest breaks and establishing flexible contingencies to accommodate unplanned delays due, for example, to traffic conditions, congestions and delays caused by loading, unloading or queuing.

- **Consignors and consignees** must:
  - ensure the terms of consignment will not result in, encourage or provide an incentive for the driver to drive while fatigued or in breach of regulated work and rest hours;
  - ensure the terms of consignment will not result in, encourage or provide an incentive for an employer, prime contractor or operator to cause the driver to drive while fatigued or in breach of regulated work and rest hours;
  - assure themselves that employers, prime contractors, operators and schedulers have complied with their obligations before entering into a contract or agreement; and
  - refrain from making demands that may cause a scheduler to contravene their obligations.

- **Loading managers** must ensure:
  - queuing is managed so loading/unloading is done in a way to prevent a driver driving while fatigued or in breach of regulated work and rest hours; and
  - a driver is able to rest while waiting for loading/unloading if there are delays to the notified starting or finishing times for loading/unloading, or these times are unknown.

Each of the above duties is subject to the ‘reasonable steps’ defence outlined earlier.

Additional provisions under the HVNL CoR also prohibit parties in the supply chain from:

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428 See section 230.
429 See sections 231 and 232.
430 See sections 233 and 234.
431 See section 235(1).
432 See section 235(2).
433 See section 236.
434 See section 237.
435 See section 238.
436 See section 239.
437 See sections 240 and 241 of the HVNL.
• asking, directing or requiring, either directly or indirectly, a driver to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the driver to breach fatigue laws; and
• entering into a contract or other agreement with a driver or another party in the supply chain that the person knows, or ought reasonably to know, would cause, encourage or provide an incentive for the driver, or a party in the supply chain to cause a driver, to breach fatigue laws.

Corporations, partnerships, unincorporated associations or other body corporates are also liable for offences committed by their employees, directors or officers.\textsuperscript{438}

Fatigue laws also operate in Western Australia and the Northern Territory despite both states opting not to adopt the HVNL. However, while sharing some similarities with the HVNL, the fatigue management laws in Western Australia and the Northern Territory are administered under WHS legislation rather than transport legislation.

**Western Australia**

Western Australia has opted not to participate in the national process to harmonise WHS laws.

In Western Australia laws governing driver fatigue are administered under the *Occupational Safety and Health Act 1984* (WA), *Occupational Safety and Health Regulations 1996* (WA)\textsuperscript{439} and the *Code of Practice Fatigue Management for Commercial Vehicle Drivers*.

The *Occupational Safety and Health Act 1984* (WA) imposes a general duty on employers (‘the responsible person at a workplace’) and employees to take reasonable care to ensure their own safety and that of others at the workplace, including other road users. For employers this duty of care means identifying and assessing fatigue risks and taking actions to eliminate or control those risks. This includes ensuring that employees and contractors who drive commercial vehicles have adequate information, instruction, training and supervision in order that they can work in a safe manner.\textsuperscript{440} For employees who drive commercial vehicles this duty of care means reporting hazards to their employer, ensuring they follow their employer’s safety instructions and reporting for work rested and fit for duty.\textsuperscript{441} A person can have duties in more than one capacity. In the case of contractor drivers, they are required to comply with both sets of duties as an employee and a responsible person.\textsuperscript{442}

The *Occupational Safety and Health Regulations 1996* (WA) also set out additional specific duties for the ‘responsible person’ that work in tandem with the general duties under the *Occupational Safety and Health Act 1984* (WA), including ensuring the following:

\textsuperscript{438} See section 636.
\textsuperscript{439} Part 3 Division 10.
\textsuperscript{440} See section 19.
\textsuperscript{441} See section 20.
\textsuperscript{442} See section 21.
• Commercial vehicles are operated in accordance with the ‘commercial vehicle operating standard.’\footnote{See regulation 3.131(1)(a).}
• Drivers are certified by a medical practitioner as fit to drive the commercial vehicle.\footnote{See regulation 3.131(1)(b).}
• There is a fatigue management plan that covers every driver.\footnote{See regulation 3.133 and the definition of “driver fatigue management plan” in regulation 3.130.}
• Records of work time, breaks from driving, and non-work time are kept for each driver.\footnote{See regulation 3.134.}

Drivers similarly have duties under the Regulations to drive commercial vehicles in accordance with the commercial vehicle operating standard and hold a current medical certificate that confirms their fitness to drive a commercial vehicle.\footnote{See regulation 3.131(2).}

The ‘Commercial Vehicle Operating Standard’ regulates work and rest hours\footnote{See regulation 3.132.} but is designed to provide flexibility in hours of work so that extended hours of work can be performed in well-managed circumstances. There is a requirement for the standard to be followed in ‘so far as is practicable’, meaning that it may be varied but only in circumstances where the variation is minor, is not a regular occurrence, is reasonable and does not increase the risk of fatigue.\footnote{WorkSafe Western Australia (2004), Code of Practice Fatigue Management for Commercial Vehicle Drivers, 2004, p.10.} This approach has been taken in recognition of the geography of Western Australia and the distances driven.

The fatigue management plan is a written document that provides information on an organisation’s approach to fatigue management and must set out requirements and procedures relating to:

a) scheduling trips
b) rostering drivers
c) establishing a driver’s fitness to work
d) education of drivers in fatigue management
e) managing incidents on or relating to commercial vehicles
f) establishing and maintaining appropriate workplace conditions

There is no requirement within the regulations to maintain a logbook or trip diary. However, the record must be “set out in a clear and systematic manner”, detail “work time, breaks from driving, and non-work time” and be kept for at least three years after the date of the last entry. Heavy vehicle drivers in Western Australia are not obliged to use the national work diary.

There is also no requirement to complete the records in a timely manner or for the driver to complete the records. Rather, the regulations stipulate a ‘responsible person’.

Western Australia’s approach to fatigue management was recently criticised in a draft NTC report\footnote{NTC (2013), Heavy Vehicle Compliance Review: Consultation Draft, September 2013.} which identified particular enforcement challenges with using WHS laws to manage fatigue. In particular, the NTC found that officers with jurisdiction over health and safety (i.e. WorkSafe...
inspectors) do not have powers to intercept heavy vehicles, while officers with heavy vehicle intercept powers (i.e. Main Roads Western Australia or Department of Transport officers) have no jurisdiction over fatigue other than reviewing fatigue records for accreditation purposes.\textsuperscript{451} The report suggested that this complication may be the reason for the comparatively low number of successful fatigue prosecutions in Western Australia compared with other states.

**Northern Territory**

Similar to Western Australia, the Northern Territory has adopted a WHS approach to the management of fatigue, which is based on the principles of risk identification, assessment and control. This approach is taken in recognition of the different operating environment in remote areas.

In the Northern Territory, management of driver fatigue is mandatory for all transport operators and is regulated under the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT) and Regulations and the *Road Transport Fatigue Management Code of Practice* made under the Act.

The Northern Territory fatigue management system encourages the adoption of record keeping systems and self-monitoring to ensure drivers do not drive while fatigued. Instead of prescriptive driving/working hours, drivers are required to comply with specified minimum rest periods, being a minimum of two rest periods of at least 24 hours each in a 14-day period and at least six hours rest in any 24-hour period.\textsuperscript{452} The intent of this is to provide drivers and operators greater flexibility to stop and take rest when they themselves decide they need it based on a risk assessment of the task at hand.\textsuperscript{453}

The documentation employers and drivers are required to keep include:

- a) a risk assessment checklist
- b) a safety plan checklist
- c) driving records
- d) staff rosters/records
- e) medical records
- f) evidence of driver experience, competence and qualifications
- g) records of driver health training and information provided to drivers

The Northern Territory currently has no plans to adopt the national approach to fatigue management under the HVNL. Rather the Northern Territory has indicated that that it is concerned the national fatigue management system under the HVNL will be an impost on operators in remote Australia and as such will not implement those provisions at this time.\textsuperscript{454}

\textsuperscript{451} Ibid, p.75
\textsuperscript{452} Worksafe NT, *Road Transport Fatigue Management Code of Practice*.
\textsuperscript{453} Ibid
However, the Northern Territory will recognise the HVNL and Western Australia fatigue laws for those companies operating across borders and will continue with its current WHS fatigue regime for those operating solely within the Northern Territory. This is intended to allow Northern Territory operators to opt into the system that best suits their business needs, without compromising safety.

**Speeding**

Speeding offences exist in all states and territories for vehicles that exceed legal speed limits. Speeding laws are enforced by state and territory road transport authorities and police agencies, with penalties ranging from monetary fines through to imprisonment.

With the exception of Western Australia and the Northern Territory, speeding is also addressed through CoR provisions.

**Heavy Vehicle National Law**

Like fatigue, speed is widely acknowledged as a significant contributor to road deaths involving heavy vehicles. The *National Road Safety Strategy 2011 – 2020* estimates that speeding is implicated in 34 per cent of deaths on the road and around 13 per cent of total serious injuries. This would mean speeding is the cause of approximately 78 deaths per annum from crashes involving heavy rigid and articulated trucks.

The HVNL addresses speeding through CoR provisions similar to those for fatigue management. Specific CoR obligations for speeding include the following:

- *Employers, prime contractors and operators* must ensure their activities do not cause the vehicle’s driver to exceed speed limits, and that each scheduler for the vehicle has complied with their scheduling obligations.

- *Schedulers* must ensure a schedule does not cause a driver to exceed speed limits, including by providing for compliance with speed limits, regulated work and rest hours and establishing flexible back-up plans to compensate for unplanned delays.

- *Loading managers* must ensure the arrangements for the loading or unloading of goods does not cause or encourage the vehicle’s driver to exceed speed limits.

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456 Northern Territory Department of Transport (2014), op cit
457 Standing Committee on Transport, op cit
458 Calculated as follows: BITRE figures indicate 229 deaths from crashes involving heavy rigid and articulated trucks in Australia during the 12 months to the end of March 2013 (Department of Infrastructure and Transport, BITRE, *Fatal Heavy Vehicle Crashes Australia Quarterly Bulletin*, Jan–Mar 2013, p. 1). Applying the National Road Safety Strategy proportions of 34% of deaths results in a figure of 77.86.
459 See section 204.
460 See sections 205 and 206.
461 See sections 207 and 208.
462 See section 209.
• **Consignors and consignees** must ensure the terms of consignment will not result in, encourage, or provide an incentive for the driver (or a relevant party of the driver) to exceed speed limits, or cause a scheduler to breach their obligations.⁴⁶³

Each of the above duties is subject to the ‘reasonable steps’ defence outlined earlier.

Additional provisions⁴⁶⁴ prohibit parties in the supply chain from:

- asking, directing or requiring, either directly or indirectly, a driver to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the driver to exceed applicable speed limits; and
- entering into a contract or other agreement with a driver or another party in the supply chain that the person knows, or ought reasonably to know, would cause, encourage or provide an incentive for the driver, or a party in the supply chain to cause a driver, to exceed applicable speed limits.

The HVNL also extends liability for speeding offences committed by the vehicle’s driver to persons who are most directly responsible for the use of a heavy vehicle (i.e. the employer, prime contractor or operator).⁴⁶⁵

Corporations, partnerships, unincorporated associations or other body corporates are also liable for offences committed by their employees, directors or officers.⁴⁶⁶

The NHVR has no role in speeding offences other than in a CoR context.

**Western Australia**

Western Australia is currently in the process of implementing CoR reforms.⁴⁶⁷ However, at this stage these reforms do not appear to extend to speeding. As a result, only the driver of a heavy vehicle caught speeding is responsible for the speeding offence.

**Northern Territory**

CoR provisions do not currently operate in the Northern Territory. As a result, only the driver of a heavy vehicle caught speeding is responsible for the speeding offence. However this may change depending on the extent to which the Northern Territory Government adopts the HVNL.

**Heavy vehicle speed limiting**

The use of speed limiters in heavy vehicles has been regulated in Australia for over 20 years. Since 1991, *Third Edition Australian Design Rule 65* (ADR 65) has required all vehicles over 12 tonnes gross vehicle mass (GVM) to be speed limited to 100 km/h.

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⁴⁶³ See sections 210 to 213.
⁴⁶⁴ See sections 215 and 216.
⁴⁶⁵ See section 219.
⁴⁶⁶ See section 636.
⁴⁶⁷ Main Roads Western Australia, ‘Chain of Responsibility – Overview’, op cit
The Australian Design Rules (ADR) are national standards for vehicle safety, anti-theft and emissions and apply to all vehicles newly manufactured in Australia or imported as new or second hand vehicles, and supplied to the Australian market.

For vehicles manufactured after July 1989, the application of the ADRs is the responsibility of the Australian Government under the Motor Vehicle Standards Act 1989 (Cth). This Act is binding on the Commonwealth and each state and territory, thereby ensuring nationally consistent application.

In 2006 the ADRs were re-made as national vehicle standards. At that time ADR 65 was registered on the Federal Register of Legislative Instruments as the Vehicle Standard (Australian Design Rule 65/00 – Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses) 2006.

Heavy vehicle compliance with ADR 65 is mandatory in all Australian states and territories through application of the HVNL\textsuperscript{468} and motor vehicle laws in Western Australia\textsuperscript{469} and the Northern Territory.\textsuperscript{470} With the exception of the Northern Territory, each state and territory also makes it an offence for a person to tamper with a speed limiter required by law to be fitted to a heavy vehicle.\textsuperscript{471}

This offence is extended under the HVNL to apply to:

- a person who fits, or directs the fitting of, a speed limiter that they know, or ought reasonably to know, has been tampered with,\textsuperscript{472} and
- an operator of a heavy vehicle who uses, or permits a vehicle to be used on a road if they know, or ought reasonably to know, that a speed limiter fitted to the vehicle has been tampered with.\textsuperscript{473}

In the Northern Territory there is no specific offence for tampering with a speed limiter. However Regulation 35 of the Motor Vehicles (Standards) Regulations (NT) makes it an offence for a person to drive, or cause or permit to be driven on a public road, a vehicle that does not to comply with a requirement of the Motor Vehicles (Standards) Regulations (NT) or Australian Vehicle Standards Rules (NT).

\textsuperscript{468} Section 60 of the HVNL makes it an offence for a person to use or permit to be used, a heavy vehicle that is in contravention of ADR 65. The Heavy Vehicle (Vehicle Standards) National Regulation 2013, made under the HVNL, require heavy vehicles over 12 tonnes gross vehicle mass to comply with ADR 65 and specify that the maximum speed limit for road trains is also 100 km/h.

\textsuperscript{469} In Western Australia, Part 3 Division 2 of the Road Traffic (Vehicle Standards) Rules 2002 require vehicles generally to comply with ADRs. Rule 149 of the WA Rules specify compliance with ADR 65.

\textsuperscript{470} In the Northern Territory, Part 3 Division 2 of the Australian Vehicle Standards Rules (NT) require vehicles generally to comply with ADRs. Rule 155 of the NT Rules specify compliance with ADR 65.

\textsuperscript{471} See section 93(1) of the HVNL and Regulation 68 of the Road Traffic (Vehicle Standards) Regulations 2002 (WA).

\textsuperscript{472} See section 93(2) of the HVNL.

\textsuperscript{473} See section 93(3) of the HVNL.
Appendix 4: Legislation addressing truck driver remuneration

New South Wales

Contractual arrangements between contractor drivers (i.e. owner drivers) and hirers in the NSW road transport industry have been regulated under the NSW industrial system since 1979, initially through the Industrial Arbitration Act 1940, the Industrial Relations Act 1991 and now Chapter 6 of the Industrial Relations Act 1996 (NSW) (IR Act).

The IR Act provides the NSW Industrial Relations Commission (IRC) powers to make ‘contract determinations’ upon application by specified parties. Contract determinations are similar to awards as they establish a safety net of remuneration and other employee like terms and conditions for the engagement of ‘contract carriers’ (i.e. contractor/owner drivers) and apply in relation to particular ‘contracts of carriage’ in the transport industry. A contract determination is binding on all principal contractors and owner drivers who are parties to contracts of the class to which the determination relates and is enforceable by the NSW IRC.

The IR Act prevents undercutting of prices by requiring that contractor drivers must be paid at least as much as the safety net amount prescribed by the applicable contract determination, although contractor drivers are allowed to contract above the minimum standards required by contract determinations.

The IR Act provides for contract agreements, which are akin to enterprise agreements and deal with terms and conditions specific to a particular enterprise. A contract agreement can be made between a principal contractor and a group of contractor drivers, or an association representing either party (e.g. union or industry group) and registered under the IR Act. A contract agreement does not have effect unless it is approved by the NSW IRC and must provide at least equivalent terms and conditions to the contractor drivers covered by the agreement when compared with the provisions of a relevant contract determination, which would otherwise apply. The provisions of a contract agreement prevail over the provisions of any contract determination to the extent of any overlap and are binding on all parties to the contract agreement. Contract agreements are exempt from the competition provisions of the Competition and Consumer Act 2010 (Cth), which is discussed elsewhere in this Report.

The NSW IRC has powers under the IR Act to resolve disputes between principal contractors and contractor drivers regarding terms and conditions in contracts of carriage. In doing so, the NSW IRC may make a contract determination (‘interim determination’) to restore or maintain the conditions existing between the parties immediately before the dispute. Interim determinations can only apply for a maximum period of one month.

The IR Act also protects contractor drivers against the arbitrary termination of a contract, and provides them the capacity to recover compensation in certain circumstances.
A total of 29 contract determinations operate under the IR Act.\textsuperscript{474} A further 115 enterprise-specific contract agreements have been approved by the NSW IRC.\textsuperscript{475}

One of the primary industrial instruments currently regulating the terms and conditions for NSW contractor drivers is the \textit{Transport Industry General Carriers Contract Determination}. This determination applies in the Sydney metropolitan area and covers a number of matters including remuneration, annual leave, lunch breaks, uniforms, termination, disputes and other obligations. Regarding remuneration, the determination generally stipulates what rates (hourly and km) contractor drivers should be paid.

In calculating the rates payable to contractor drivers, Schedule 1 of the determination expressly notes that the payable rates take into account, and include payment for wages, overtime, leave (annual, long service and sick) and public holidays and provide cost-recovery for registration, insurances, administrative overheads, running costs (e.g. fuel, oil etc.), repairs and maintenance, return on capital invested, depreciation and leasing costs.\textsuperscript{476}

A number of other contract determinations have been made to regulate contract prices and arrangements for specific issues, enterprises and sectors of the transport industry such as couriers, concrete movers, quarries, waterfront, waste collection, breweries, car carriers and general long distance freight. However, the terms and conditions of engagement and calculation of rates varies between contract determinations, sometimes significantly.

\textbf{Transport Industry - Mutual Responsibility for Road Safety (State) Contract Determination}

One of the contract determinations made by the NSW IRC is the \textit{Transport Industry - Mutual Responsibility for Road Safety (State) Contract Determination}, which has been in force since 2006. This contract determination establishes a number of requirements targeted at health and safety in the long distance transport sector including safe driving plans, accountability, compulsory basic training that covers WHS and a requirement that employers and principal contractors implement workplace drug and alcohol policies. The determination also sets out a process for resolution of disputes.

The determination requires safe driving plans to specify a number of details including:

\begin{itemize}
  \item[a)] The period in which work is required to be performed.
  \item[b)] The relevant pick-up and delivery location.
  \item[c)] How the work to be performed will to be remunerated in accordance with any applicable industrial instrument (e.g. the \textit{Transport Industry General Carriers Contract Determination}).
  \item[d)] The remuneration method chosen and the rate.
\end{itemize}


\textsuperscript{476} See Schedule 1 of the \textit{Transport Industry General Carriers Contract Determination} (NSW).
e) The system(s) by which the effect of the chosen method of remuneration on driver fatigue may be monitored and measured.

f) The means by which the amount of hours and work to be performed by contract carriers is to be limited in order to prevent driver fatigue occurring and excessive hours being worked, and the means by which such limitations are to be enforced.

g) How the work is to be performed (e.g. hours of work, limitations upon hours of work) and rest breaks taken in accordance with applicable laws and industrial instruments.

h) The means for ensuring persons performing the work are not inhibited by drugs and alcohol.

The determination also establishes accountabilities throughout the supply chain for ensuring compliance with safe driving plans and other applicable laws, similar to CoR requirements under the HVNL.

**Victoria**

The Victorian *Owner Drivers and Forestry Contractors Act 2005* (ODFC Act), regulates the relationship between owner drivers (i.e. contractor drivers) and their hirers. It applies to owner drivers including sole traders; non-public corporations and partnerships where an owner or a director of the business is also the main driver of a vehicle supplied by the business; and the business operates no more than three vehicles. The ODFC Act also applies to harvesting and haulage contractors in the forestry industry. 477 The ODFC Act does not apply to employee drivers.

The ODFC Act provides basic protections for small business owner drivers, forestry contractors and haulage contractors, and a framework for the resolution of commercial disputes between these contractors and their hirers. In particular, the Act:

a) requires the Minister to develop and publish annual rates and costs schedules for contractors; 478

b) requires hirers to provide tenderers and owner drivers in longer-term relationships (more than 30 days in any three-month period) with a copy of the *Victorian Owner Driver Information Booklet* 479 and the rates and costs schedules; 480

c) specifies certain requirements for contracts, including:

i. that longer-term contracts must be in writing, and must specify the minimum hours or income to be paid; 481

ii. minimum periods of notice for termination of longer term contracts; 482 and

iii. prohibiting deductions by hirers (for example, for insurance) unless certain conditions are met. 483

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478 See sections 14 and 15.

479 See sections 10 to 13.

480 See sections 16, 17 and 18.

481 See section 20.

482 See sections 21 and 22.
d) provides a collective bargaining framework for groups of owner drivers to negotiate with their common hirer, and to appoint an agent to negotiate on their behalf;\footnote{484}

e) provides protections for owner drivers who seek to exercise their rights under the Act;\footnote{485}

f) provides for regulations prescribing a code of conduct in relation to the engagement of owner drivers and conduct and practice under owner driver contracts;\footnote{486}

g) makes ‘unconscionable conduct’ by hirers and owner drivers unlawful;\footnote{487}

h) establishes a framework for the resolution of disputes between owner drivers and their hirers;\footnote{488} and

i) establishes the Transport Industry Council (TIC) and the Forestry Industry Council (FIC).\footnote{489}

The \textit{Victorian Owner Driver Information Booklet} provides information on business planning skills, the legislation, the code of practice, health and safety, industry regulation and sources of advice and assistance.

The schedules set out the typical operating costs of an owner driver business and act as a guide to assist owner drivers to prepare their own individual cost models. The operating costs are made up of variable costs (which vary depending on kilometres travelled, such as fuel and tyres), and fixed costs (such as registration, finance, administration, insurance and superannuation). The schedules also provide information on rates that would typically apply for the contractor’s own labour if he or she completed the work as an employee.

Part 2 Division 2 of the ODFC Act requires that rates and costs schedules are published by the Minister after advice from the TIC and FIC. These Councils are tasked under the ODFC Act with:\footnote{490}

\begin{itemize}
  \item providing the Minister advice on codes of practice in respect of owner drivers and forestry contractors and relevant information booklets;
  \item developing, publishing and promoting model owner driver, haulage and harvesting contracts; and
  \item advising the Minister on any other matters relevant to owner driver and forestry contractor contracts, and the commercial practices generally engaged in by owner drivers, forestry contractors and hirers in relation to each other.
\end{itemize}

Both the TIC and FIC are made up of representatives of participants in the transport and forestry industries.

Under the disputes framework, the Victorian Small Business Commissioner provides an independent dispute resolution service for disputes between owner drivers and forestry contractors and their hirers regarding the requirements of the ODFC Act or regulations or the terms of a contract.
regulated by the Act. Where a dispute cannot be resolved through this process, it can be referred to the Victorian Civil and Administrative Tribunal for determination.

The ODFC Act is supported by the Owner Drivers and Forestry Contractors Regulations 2006, which establishes the Owner Drivers and Forestry Contractors Code of Practice. For the purposes of the ODFC Act the Code of Practice describes conduct that is likely to be ‘unconscionable’ and contract terms that are likely to be unjust. The Code also contains some mandatory requirements with which hirers and contractors must comply.

Collective bargaining between groups of owner drivers and their common hirer in accordance with the ODFC Act is exempt from the competition provisions of the Competition and Consumer Act 2010 (Cth), which is discussed elsewhere in this Report.

**Western Australia**

Like Victoria, Western Australia also regulates the relationship between owner drivers (i.e. contractor drivers) and their hirers through the Owner Drivers (Contracts and Disputes) Act 2007 (ODCD Act).

The Western Australian legislation generally covers all owner drivers and hirers operating vehicles greater than 4.5 tonnes for the carriage of goods for reward in Western Australia. Employee drivers are not covered by the ODCD Act. Likewise, owner driver contracts affected by an order or determination made under either the Victorian or NSW owner driver system are not covered by the ODCD Act.

The ODCD Act is broadly based on the Victorian Owner Drivers and Forestry Contractors Act 2006 (Vic), and is therefore similar in many respects. Like the ODFC Act, the ODCD Act provides basic protections for owner drivers, including guideline rates, and establishes a framework for the resolution of commercial disputes between owner drivers and their hirers. Specifically, the ODCD Act includes provisions for the following matters:

a) Certain contract provisions are prohibited:

   i. The ODCD Act bans liability of a party to pay money under the contract to another party contingent, whether directly or indirectly, on the first party being paid money by another person. Where such provisions are included they have no effect.
   
   ii. Where an owner driver contract contains a provision requiring a payment to be made more than 30 days after a payment claim is lodged, the ODCD Act provides that the contract is to be read as being amended to require payment within 30 days of the claim being made.

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493 See sections 9, 10 and 11.
iii. Additional prohibited provisions can be prescribed by regulations.

b) Where certain provisions are not already covered in the contract, implied provisions are set for a number of matters including:

i. Payment times: Payments must otherwise be made within 14 days if there is nothing written in the owner driver contract about payment times.

ii. Interest on overdue payments.

iii. Making claims for payments.

c) The Road Freight Transport Industry Council (RFTI Council) is established to provide advice and recommendations to the Minister in relation to the development and review of a code of conduct and guideline rates and model contracts for owner drivers.

d) Regulations may be made prescribing a code of conduct in relation to the engagement of owner drivers under owner driver contracts and conduct and practice under owner driver contracts.

e) A collective bargaining framework is established to allow groups of owner drivers to negotiate with a common hirer, and to appoint an agent to negotiate on their behalf.

f) ‘Unconscionable conduct’ by hirers and owner drivers is prohibited. For this purpose the Act specifies a number of matters to which the Tribunal may have regard in determining whether a party has engaged in unconscionable conduct towards the other party.

g) Industrial inspectors from the Labour Relations Division of the Department of Commerce are provided powers to investigate alleged breaches of the ODCD Act, the Code of Conduct, or an owner driver contract regulated by the Act.

h) Owner drivers (or their representative) are provided rights for access to certain types of records that a hirer is required to keep about that owner driver under the ODCD Act or Code of Conduct.

i) The Road Freight Transport Industry Tribunal (RFTI Tribunal) is established for the purpose of resolving disputes between owner drivers and their hirers regarding payments or breaches of a requirement of the ODCD Act, the Code of Conduct or a contract.

A party to an owner driver contract cannot give away or bargain away any of the rights or obligations that the ODCD Act or Code of Conduct gives or imposes on them.

The ODCD Act is supported by the Owner drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010, which establishes the Owner driver Contracts Code of Conduct 2010 (Code of Conduct) for the purposes of sections 26 and 27 of the Act. Additional requirements imposed by the Code of Conduct include:

See sections 13, 14 and 15.

See Part 3.

See Part 4.

The Code of Conduct prescribed by section 26 of the Act can provide for the conduct of negotiations for owner driver contracts, whether on an individual or joint basis. This is reinforced by sections 28 and 29 of the Act which provide for the appointment of negotiating agents on behalf of groups of owner drivers or hirers.

See Part 6.

See Part 7.

See Part 8.

See Part 9.
A group of owner drivers and their hirer may conduct joint negotiations for an owner driver contract.\textsuperscript{502}

Before entering into a contract with an owner driver a hirer must provide the owner driver with a copy of the \textit{Owner drivers Information Pamphlet}\textsuperscript{503} and the guideline rates produced by the RFTI.\textsuperscript{504}

An owner driver is not liable to pay a hirer any amount that is a penalty.\textsuperscript{505}

A hirer must not deduct any amount from money payable under an owner driver contract to an owner driver, except in specific circumstances as set out in the Code or authorised by the contract (e.g. in-house vehicle servicing or insurance cover).\textsuperscript{506}

As with the Victorian rates and cost schedules, the guideline rates published by the RFTI Council set a benchmark for owner drivers and hirers to refer to when negotiating payment rates and conditions for the owner driver. The guideline rates address typical fixed and variable overhead costs for owner drivers and also identify rates that would typically apply if the owner driver was an employee performing the same or similar work. The Guideline Rates do not set a minimum or maximum rate, but the RFTI Tribunal can refer to them to determine whether payments have been made at a safe and sustainable rate.\textsuperscript{507}

The Western Australian Industrial Relations Commission (WAIRC) has jurisdiction under the ODCD Act to hear and determine certain disputes between owner drivers and hirers. When hearing those disputes, the WAIRC sits as the RFTI Tribunal.\textsuperscript{508}

The RFTI Tribunal can enquire into and deal with any other matter relating to the negotiation of owner driver contracts that may be referred to it under the ODCD Act. The RFTI Tribunal can deal with disputes under or in relation to breaches of the ODCD Act, Code of Conduct or an owner driver contract, including payment terms and conditions of engagement. The RFTI Tribunal also has powers to resolve disputes through compulsory conciliation and if necessary making an enforceable determination (except in relation to joint negotiations).

The RFTI Tribunal can declare void any unjust term of an owner driver contract, but cannot insert new terms into or vary owner driver contracts (even where the contract is found to be unfair)\textsuperscript{509} and cannot require hirers of owner drivers to provide notice if they terminate an owner driver contract.

The RFTI Tribunal can also refer matters to other regulatory agencies. For example, if the RFTI Tribunal considers that the fatigue management code or other safety legislation has been breached, it can refer the matter to Western Australian Department of Commerce or WorkSafe inspectors.

\textsuperscript{502} See Regulation 5.
\textsuperscript{503} See Appendix 1 of the regulations.
\textsuperscript{504} See Regulation 7(2).
\textsuperscript{505} See Regulation 9.
\textsuperscript{506} See Regulation 10.
\textsuperscript{507} Western Australian Department of Transport (2013), \textit{Discussion Paper Review of the Owner-Drivers (Contracts and Disputes) Act 2007}, op cit, p.8
\textsuperscript{508} ibid, p.2
\textsuperscript{509} See section 48(5) of the ODCD Act.
Collective bargaining between groups of owner drivers and their common hirer in accordance with the ODCD Act is exempt from the competition provisions of the *Competition and Consumer Act 2010* (Cth), which is discussed elsewhere in this Report.
Appendix 5: Other legislation

Fair Work Act 2009 (Cth)

Currently, employee drivers are afforded a safety net under workplace relations law as set out under the Fair Work Act 2009 (FW Act). Modern awards, together with the National Employment Standards (NES) and the national minimum wage orders made by the FWC, make up the safety net for employees covered by the national workplace relations system. The FW Act, Modern Awards and any applicable agreements and instruments are administered and enforced through the FWO and FWC.

The FW Act provides for the setting of national minimum wages and sets out the NES, which are the minimum standards afforded to all employees in the national system. There are 10 NES that cover:

1. **Maximum weekly hours** – 38 hours per week, plus reasonable additional hours.
2. **Requests for flexible working arrangements** – Certain employees can ask for a change in their working arrangements.
3. **Parental leave** – Up to 12 months unpaid leave per employee, as well as the right to request an additional 12 months leave.
4. **Annual leave** – Four weeks paid leave per year, plus an additional week for some shift workers.
5. **Personal/carer’s leave and compassionate leave** – 10 days paid personal/carer’s leave per year, two days unpaid carer’s leave and two days compassionate leave (unpaid for casuals) as required.
6. **Community service leave** – Unpaid leave for voluntary emergency management activities and leave for jury service.
7. **Long service leave** – Paid leave for employees who have been with the same employer for a long time.
8. **Public holidays** – A paid day off on a public holiday, unless reasonably requested to work.
9. **Notice of termination and redundancy pay** – Up to five weeks notice of termination and up to 16 weeks redundancy pay.
10. **Fair Work Information Statement** – A statement which details the rights and entitlements of employees under the system and how to seek advice and assistance must be provided to all new employees.

The FWC is responsible for making a national minimum wage order for employees not covered by an award or agreement.

Minimum standards in the NES can be built upon by Modern Awards or by enterprise agreements (see below).

Employees must be paid at least the minimum wage provided in the relevant award or agreement. If they aren’t covered by an award or agreement, they must be paid at least the national minimum wage.

Unlike employees, independent contractors aren’t entitled to minimum wages or conditions such as annual leave, sick leave and notice of termination that are in the NES or a Modern Award.
In addition to the minimum wages and conditions set by the NES and modern awards, the FW Act also affords employees and independent contractors’ protections of certain rights including:

- ‘workplace rights’;
- the right to engage in industrial activities;
- the right to be free from unlawful discrimination; and
- the right to be free from undue influence or pressure in negotiating individual arrangements.

Workplace rights include where a person:

- is entitled to a benefit or has a role or responsibility under a workplace law, workplace instrument (such as an award or agreement) or an order made by an industrial body;
- is able to initiate or participate in a process or proceedings under a workplace law or workplace instrument; or
- has the capacity under a workplace law to make a complaint or inquiry:
  - to a person or body to seek compliance with that workplace law or workplace instrument; or
  - if the person is an employee, in relation to their employment.

These rights are protected from certain unlawful actions, including (but not limited to) adverse actions as specified in the FW Act, coercion, misrepresentations and undue influence or pressure.

All states, except Western Australia, referred workplace relations powers for the private sector to the Australian Government, starting on 1 January 2010.

The Australian Government has put in place a national workplace relations system for the private sector. Approximately 96 per cent of all private sector employers and employees are covered by the FW Act.

The FW Act is principally supported by the Commonwealth’s constitutional powers in relation to constitutional corporations (that is, trading, financial and foreign corporations), interstate trade and commerce and the territories.

The FW Act’s operation is extended by referrals of workplace relations power from all states except Western Australia to the Commonwealth in relation to private sector employers otherwise outside Commonwealth power (e.g. unincorporated employers) with effect from 1 January 2010. Most states have retained workplace relations coverage of public sector and local government employees and some states also have coverage of specified public sector corporations.

Western Australia has elected not to join the national system. In Western Australia the FW Act applies to employers that:

- are constitutional corporations;

See section 342 of the *Fair Work Act 2009*. 
• employ certain flight crew, maritime or waterside employees in interstate or international trade or commerce; and
• are Commonwealth agencies or authorities.

State referrals of workplace relations powers relate to employees and in some circumstances, outworkers in the textiles, clothing and footwear sector. Referrals do not relate to ‘owner drivers’ that are independent contractors.

The Commonwealth, referring states and the territories signed the Multilateral Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector (IGA), which outlines the principles of the national system and the roles and responsibilities of the parties. Under the IGA, any amendment to the FW Act requires consultation between the Commonwealth, referring states and the territories.

Many private sector employees and employers in Victoria have worked under the Commonwealth system since 1996. The Victorian Parliament passed legislation in 2009 giving effect to a new referral of workplace relations matters to the Commonwealth from 1 July 2009.

Modern awards
A Modern Award is an enforceable instrument that sets out minimum wages and conditions for an industry or occupation in addition to any legislated minimum terms, and provides a benchmark for assessing enterprise agreements before approval (see below).

Modern Awards apply on top of the NES and cover things like pay, hours of work, rosters, breaks, allowances, leave, penalty rates, overtime and procedures for consultation, representation and dispute settlement.

The FWC has responsibility for making and varying awards in the national workplace relations system.

Employees in the road transport industry are covered by four Modern Awards:

1. Road Transport and Distribution Award 2010
2. Road Transport (Long Distance Operations) Award 2010
3. Transport (Cash in Transit) Award 2010
4. Waste Management Award 2010

Of these awards, the Road Transport and Distribution Award 2010 and Road Transport (Long Distance Operations) Award 2010 provide the broadest coverage for employees in the road transport industry.

These awards cover a number of matters such as hours of work, minimum rates of pay, allowances, leave, and consultation and dispute resolution.

Enterprise agreements
Enterprise agreements are agreements made at an enterprise level between employers and employees. An enterprise agreement sets out the minimum wages and conditions for a workplace. When an agreement is in place, it will usually apply instead of the relevant modern award.
Enterprise agreements can include a broad range of matters such as:

- rates of pay;
- employment conditions e.g. hours of work, meal breaks, overtime;
- consultative mechanisms;
- dispute resolution procedures; and
- deductions from wages for any purpose authorised by an employee.

Enterprise agreements cannot, however, include unlawful content prohibited by the FW Act, such as discriminatory or objectionable terms.

The FWC can assist in the process of making enterprise agreements, can deal with disputes arising under the terms of agreements, and assess and approve agreements.

Before approving an enterprise agreement, the Commission must ensure, among other things, that the agreement or variation passes the ‘better off overall’ test. This test requires that each of the employees to be covered by the agreement are better off overall than under the relevant modern award.

**Independent Contractors Act 2006 (Cth)**

The *Independent Contractors Act 2006* (IC Act) provides a national unfair contracts system for independent contractors, such as owner drivers. The IC Act gives effect to Government policy that independent contractors should be subject to commercial, and not industrial relations, law. To the extent that it is constitutionally possible, the IC Act overrides state and territory laws that require independent contractors to be treated as employees or provide employment-like entitlements, unless a specific exemption has been granted.

Even if an owner driver is an independent contractor under common law, certain state and Commonwealth legislation may still classify the owner driver as an employee for specific purposes. This includes superannuation, WHS, workers compensation and payroll tax.

The IC Act does not override these laws. For the IC Act to apply to a services contract, one of the parties to the contract must be either the Commonwealth, or a corporation incorporated in Australia, or the contract must refer to work carried out in a territory. The contract must also be for services to be provided by the independent contractor. In the case of owner drivers, this service is the provision of transport services.

The IC Act allows for the Federal Court or the Federal Magistrates Court to review contracts, and to vary, or set aside, the contract if it is found to be unfair or harsh. In deciding whether a contract is unfair or harsh, the Court may consider the following:

- The terms of the contract when it was made.
- The relative bargaining strengths of the parties to the contract.
- Any undue influence, pressure or unfair tactics which may have been used.
- Whether the total remuneration paid to the independent contractor is less than an employee doing the same work would have received.
- Any other relevant matters.
Every owner driver in Australia has access to the unfair contract regime under the IC Act, provided their service contract falls within the scope of the IC Act. Owner drivers in Victoria, NSW and Western Australia may have additional unfair contract protections created under specific, state-based, owner driver legislation.\(^{511}\)

Independent contractor disputes that involve general commercial matters are usually heard in state or territory courts or tribunals, including small claims divisions. Small claims processes are informal and aim to keep costs low.

In NSW, Victoria and Western Australia, the rights of owner drivers are protected by state-specific, owner driver legislation. The IC Act specifies that these laws are exempt from being overridden by the IC Act. Without the exemption, the IC Act would prevent these state-based laws applying to owner drivers (independent contractors) because they provide employee-like entitlements for owner drivers.

**Competition and Consumer Act 2010 (Cth)**

The *Competition and Consumer Act 2010* (CC Act) (formerly the *Trade Practices Act 1974*) provides the legal framework for Australia’s competition and consumer policy rules. Competition and consumer laws are designed to make markets work efficiently for the benefit of consumers.

The CC Act applies to the activities of corporations. The competition provisions also apply to other businesses, through the application of the Competition Code in state and territory laws.

The CC Act includes:

- **Anti-competitive conduct (Part IV):** Corporations are prohibited from engaging in certain anti-competitive conduct. Rather than seeking to directly regulate particular outcomes of a market, such as price or output levels, the CC Act instead promotes competitive markets. In some cases, certain conduct which would otherwise be a breach of the CC Act may be authorised provided there is a public benefit.

- **Fair trading and consumer protection (Schedule 2 – the Australian Consumer Law):** The CC Act sets out rules regulating business conduct towards consumers and other businesses, and provides for consumer protection through rules on consumer rights in transactions and product safety regulation.

**Collective bargaining**

The competition laws in the CC Act generally require businesses to act independently of their competitors when making decisions about pricing, which firms they do business with, and the terms and conditions of doing business. Competitors who act collectively in these areas are at risk of breaching the competition provisions of the CC Act.

Collective bargaining is an arrangement where two or more competitors come together to negotiate with a supplier or a customer over terms, conditions and prices. A group of businesses may

\(^{511}\) See the discussion on state owner driver legislation in Appendix 4 of this report.
sometimes appoint a representative, such as an industry association, to act on its behalf in the negotiations.

In some circumstances, allowing collective arrangements may be in the public interest. For example smaller businesses can face challenges when negotiating with larger businesses and the outcomes from these negotiations may not be the most efficient or optimal. By getting together, small businesses may have a better opportunity to have input into negotiations than if they stay on their own.

The CC Act therefore allows protection from legal action to be granted to parties to engage in anti-competitive conduct, including collective bargaining, when there are public benefits that would outweigh the detriments to competition.

For a proposed collective bargaining arrangement, businesses can lodge an application for authorisation to obtain protection from legal action under the cartel and anti-competitive conduct provisions in the CC Act. In some cases, as an alternative to lodging an application for authorisation, businesses may be able to lodge a collective bargaining notification. The protection from legal action provided by a collective bargaining notification commences automatically 14 days after the notification is validly lodged, unless the ACCC objects to the notification within the 14 day period.

The authorisation process is likely to be more suitable than lodging a notification for a proposed collective bargaining arrangement when:

- all members of the bargaining group cannot be identified or might change over time;
- there is more than one supplier or customer (target) with whom the group wishes to negotiate;
- the annual value of the transactions each member of the bargaining group will have with the target is greater than $3 million (the transaction threshold differs for some industries); or
- the exemption is required for more than three years.

Unconscionable conduct

Under the CC Act businesses must not engage in ‘unconscionable conduct’ when dealing with other businesses or customers. Although unconscionable conduct does not have a precise legal definition, it is generally accepted to mean conduct which should not be done in good conscience. Business behaviour may be deemed ‘unconscionable’ if it is particularly harsh or oppressive, and is beyond hard commercial bargaining.

When assessing whether conduct is ‘unconscionable’ a court will consider:

a) The relative bargaining strength of the parties;

512 See Schedule 2, Part 2-2 ‘Unconscionable Conduct’.
514 ibid
515 ibid
b) Whether any conditions were imposed on the weaker party that were not reasonably necessary to protect the legitimate interests of the stronger party;
c) Whether the weaker party could understand the documentation used;
d) The use of undue influence, pressure or unfair tactics by the stronger party;
e) The requirements of applicable industry codes;
f) The willingness of the stronger party to negotiate; and
g) The extent to which the parties acted in good faith.

If a court determines that unconscionable conduct has occurred, a variety of remedies may be ordered including:  

a) Compensation for loss or damage.  
b) Financial penalties.  
c) Having the contract declared void in whole or in part.  
d) Having the contract or arrangement varied.  
e) A refund or performance of specified services.

**CC Act exemptions under Commonwealth, state or territory legislation**

Commonwealth, state and territory Acts and regulations are able permit conduct that would normally contravene the competition laws, in accordance with subsection 51(1) of the CC Act.

The scope of exemptions is limited in several respects under section 51 of the CC Act, including:

- the authorising provision must expressly refer to the CC Act in order to be regarded as specifically authorising something;
- apart from a Commonwealth statute, a law or regulation may not except something from the operation of sections 50 or 50A (prohibition of acquisitions that would result in a substantial lessening of competition); and
- regulations will be effective for only 2 years after they are made, and any similar regulation made after that time will be ineffective.

In accordance with subsection 51(1) of the CC Act, section 37A of the RSR Act provides an exemption from most competition laws for:

- anything done in accordance with an approved road transport collective agreement by the participating driver, a contractor driver (who is providing applicable services to the participating hirer) or their representatives;
- entry into an approval-pending road transport collective agreement by a hirer or potential hirer of contractor drivers and contractor drivers; and
- anything done by a hirer or potential hirer, a contract driver or their representatives in preparation for, or incidental to, entry into an approval-pending road transport collective agreement.

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516 ibid
The practical effect of this exemption is to allow collective action that may otherwise be prohibited by the cartel conduct and other provisions of the CC Act, without the need for ACCC authorisation or notification.

However, the exemption also provides that it does not extend to authorising primary or secondary boycott conduct (such as subsection 45(2) and section 45D of the CC Act). Such conduct would still require ACCC authorisation or notification to be legal.
Appendix 6: Additional stakeholder concerns regarding duplication and overlap

Regulatory overlap was a major concern raised by stakeholders in relation to the RSR Act. A number of submissions to the Review expressed concern that the RSR Act has substantial potential to undermine, duplicate and overlap with the FW Act and existing WHS and road transport laws, and that this in turn will increase the regulatory burden on the road transport industry.

Coverage and scope of the Road Safety Remuneration Act 2012

Coverage

As noted elsewhere, the vast majority of Australian employees are covered by the FW Act. This coverage was achieved through a combination of the Commonwealth’s Constitutional corporations power and referrals of power to the Commonwealth by all states except Western Australia. However, the position of the RSR Act is somewhat different. As noted by the Australian Risk Policy Institute, the Commonwealth Government does not have any “...direct power to deal with self-employed drivers or interstate road contracts... The constitutional responsibility to act in this area is instead a core responsibilities [sic] of the states.”

Therefore, in order to provide a single national approach to the issue of driver remuneration, the Commonwealth had to rely on a combination of Constitutional powers when trying to establish a national RSR Act, including the corporations power (Section 51(xx)), the trade and commerce power (Section 51(i)), the power to regulate entities of the Commonwealth and Commonwealth authorities, and the territories power. As a result, the RSR Act applies to employees and contractor drivers where they are working for a constitutional corporation, on interstate deliveries or in the Australian Capital Territory or Northern Territory.

However, in the absence of state referrals of power, the Commonwealth’s reliance on Constitutional powers is unlikely to achieve the same levels of coverage as that of the Fair Work system. This was acknowledged in the RIS accompanying the Road Safety Remuneration Bill 2011, where achievable coverage was assumed to be 60 per cent of contractor drivers and 90 per cent of employees. That is, the Commonwealth view at the time of the introduction of the legislation was that around 40 per cent of contractor drivers would remain outside the scope of the legislation. Given that, as discussed previously, this group has historically been at the core of concerns regarding the adequacy of remuneration levels, this limited coverage is particularly significant.

Despite the intention to provide a single national approach to the issue of driver remuneration via the RSR Act, these gaps in coverage are likely to persist unless referrals of powers from the states occur in the future. To some extent, the restricted coverage of the RSR Act is likely to exacerbate those problems already identified regarding overlapping jurisdiction.

This issue has been highlighted by several stakeholders, including the Ai Group:

517 Submission from Australian Risk Policy Institute, p.3.
518 Refer to the Explanatory Memorandum for Road Safety Remuneration Bill 2011.
“The effectiveness of the RSR System is undermined by the limited constitutional capacity of the Commonwealth Government to regulate the activities of the road transport industry and, in particular, remuneration and related conditions for independent contractors.

A significant proportion of owner drivers remain outside the potential scope of the RSR System.”

In acknowledging this issue, some stakeholders have also suggested that in order to establish whether they are covered by the RSRS, many businesses will be required to engage expert industrial relations or legal advice, thereby incurring substantial compliance cost. This is because determining whether a business falls within the scope of the RSR Act requires an assessment of whether it:

- is a constitutional corporation; or
- is engaged in constitutional trade or commerce (i.e. contracting directly with a corporation or trading across state borders or in a territory);
- falls within the meaning of the ‘road transport industry’ of the Road Transport and Distribution Award 2010 or ‘long distance operations’ of the Road Transport (Long Distance Operations) Award 2010; and
- is an employer, hirer or participant in the supply chain in relation to a road transport driver.

Furthermore, the Victorian Government has argued that there may be circumstances where drivers move in and out of coverage of the 2014 Order:

“There may be circumstances where owner drivers move in and out of coverage of the Order, such as where short haul drivers operate in a number of sectors, only some of which are covered by the Order. This may contribute to uncertainty by industry participants about their obligations, in particular small operators.”

Scope

Many of the issues of overlap and duplication identified by stakeholders are directly related to the scope of the RSR Act and powers conferred upon the Tribunal.

Some stakeholder submissions have suggested that given the extent of the existing regulatory arrangements targeted at addressing road safety and the extensive potential for overlap between the activities of the Tribunal and that regulation, it would be desirable for the Tribunal's powers to be limited to dealing with remuneration only. For example, ARTIO submitted that:

“...the Tribunal activities be limited to addressing the remuneration-safety link and complement the COR and WH&S provisions enacted by the States and Territories. Currently the Road Safety Remuneration Act does not prevent the Tribunal from overriding, extending or duplicating obligations contained in other legislation.”

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519 Submission from Ai Group, p.61-62.
520 Submission of Victorian Department of Treasury and Finance, p.10.
521 Submission of Australian Road Transport Industrial Organisation, p.12.
The Australian Livestock and Rural Transporters Association (ALRTA) generally shared this view, to the extent that the continuation of the Tribunal was considered necessary, but did not specify what the powers should be limited to, while the ANRA went further to suggest that the Tribunals powers should be restricted to contracts involving small independent contractors:

“ANRA submits that if the Road Safety Remuneration System is retained it would be better placed to focus on small operators only. By focusing on small operators the Road Safety Remuneration System would not interfere with competitive bargaining processes between large consignees and consignors.”

**Interaction of the RSR Act with other legislation**

A key concern raised was the ability of the RSR Act to override the provisions of a range of existing laws, in a context in which those laws have been developed and revised over a long period and through processes involving extensive consultation and harmonisation. Related to this is the concern that the RSR Act has been adopted prior to the full impacts and benefits of those reforms being realised, much less assessed. Several ongoing industry strategies and reviews aimed at improving safety outcomes were highlighted in this context, including the CoR Taskforce, the National Road Safety Strategy 2011–2020 and the Australian Work Health and Safety Strategy (2012-2022).

**Sections 10 to 13 of the RSR Act: Prevalence in instances of inconsistency**

A number of stakeholders highlighted the importance of sections 10 to 13 of the RSR Act in giving rise to what they saw as substantial elements of duplication, overlap and inconsistency between the RSRS and other regulation. Thus, the following discusses the content of these provisions and summarises stakeholder views on this particular aspect of the RSR Act.

Section 10 of the RSR Act provides that the Act is not intended to exclude or limit the operation of Commonwealth, state and territory laws that are capable of operating concurrently with the Act, including state-based owner driver and WHS legislation, the HVNL and the FW Act. However, section 11 of the RSR Act provides that an enforceable instrument made under the Act, such as a RSRO, prevails over state laws to the extent of any inconsistency. This would include state laws such as the HVNL and WHS acts.

With regard to employee drivers, section 12 of the RSR Act also provides that a term of an enforceable instrument made under the Act (i.e. a RSRO) prevails over a term of a modern award, enterprise agreement, FWC order or transitional instrument to the extent it is more beneficial to the driver. Thus, where there is a difference between a term in a modern award or enterprise agreement and an enforceable instrument, an employee driver should receive whichever entitlement is the more beneficial. This raises the likelihood that, should the Tribunal make significant use of its powers to specify remuneration through a RSRO in respect of employee drivers, the existing awards covering this group will take on a ‘residual’ nature and be rendered increasingly irrelevant in practice.

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522 Submission from Australian National Retailers Association, p.6.
Section 13 of the RSR Act provides that owner drivers are entitled to at least the remuneration and conditions in an applicable enforceable instrument made or approved by the Tribunal (i.e. a RSRO, an approved road transport collective agreement or an arbitration order), regardless of the terms of any contract to which the driver is a party. This applies to agreements made under NSW, Victorian and Western Australian owner driver legislation. Thus, despite the obvious potential benefits of these clauses to drivers, they also have the potential to introduce significant complexity, confusion and uncertainty, both in relation to contracts with owner drivers and in relation to payment arrangements for employee drivers and thereby increase the regulatory burden for industry participants. A potentially significant issue in this regard is that of how ‘more favourable’ terms are to be assessed in circumstances in which different payment arrangements are specified in an award (or a contract) and a RSRO.

Where a term of a RSRO is not inconsistent with a state or territory law that deals with the same issue, businesses would be expected to comply with both laws. This would effectively result in dual obligations under the RSRO and state systems and was a particular concern outlined in a number of submissions, including those from state and territory governments. Stakeholders noted that the clauses would not only cause complexity in determining which obligations apply to particular engagements and how they may be satisfied, but may also require parties to seek legal advice and assistance to determine whether any change in practices is required. On this issue, the Victorian Government indicated that:

“There are areas of overlap in the coverage and content of the Order and the Victorian Act, instruments and other State regulation. This may lead to some duplication of obligations under the various systems, as well as some complexity in determining which obligations apply to particular engagements.”

These concerns were shared by the NSW Government, which stated:

“The concurrent operation of these State and Commonwealth provisions could create significant duplication of regulation which is a matter of material concern to the NSW Government and NSW stakeholders. Duplication generally leads to uncertainty and confusion for stakeholders and may increase costs that are passed on to consumers.”

The Ai Group was similarly critical of the RSR Act regarding overlap with state owner driver systems:

“The operation of section 11 of the RSR Act raises complex questions about the validity of elements of State systems and the utility in maintaining State systems. At the very least, the continued operation of the RSR System will likely result in further complexity and uncertainty for parties that operate in such jurisdictions.”

Regarding the NSW system in particular, the Ai Group noted that:

523 Section 33(2) of the RSR Act makes it clear that collective agreements made under State laws are not road transport collective agreements made pursuant to the Act.
524 Submission from the Victorian Department of Treasury and Finance, p.9.
525 Submission of New South Wales Department of Industrial Relations, p.3.
526 Submission of Ai Group, p.45.
“...the operation of the RSR Act does not of itself oust the operation of the jurisdiction. Instead RSROs, Road Safety Collective Agreements and the capacity for the RSR Tribunal to perform certain dispute settlement functions give rise to complex questions and uncertainty regarding the continued validity of elements of the NSW system.”

The Ai Group also indicated that it believes the operation of section 12 of the RSR Act has the potential to cause significant uncertainty and complexity in determining employee conditions:

“The interaction between enforceable instruments and the laws applicable to employees referred to in section 12 is particularly problematic. The section necessitates a potentially subjective assessment of the ‘benefit’ of the relative terms. It also appears to dictate that the test must be applied in the context of ‘...a particular driver’. Accordingly the test must be applied to the specific circumstances of individuals. Depending on the terms of RSROs that may ultimately be developed by the RSR Tribunal there is the potential for section 12 to result in very uncertain and varying outcomes.

...It is unclear how section 12 of the RSR Act will apply in situations where an enforceable instrument may be made setting a rate of pay for the performance of a particular activity while an award or enterprise agreement might set a level of remuneration, such as a cents per kilometre rate, that takes the performance of such activities into account without prescribing that they attract separate payment. For example, the Road Transport (Long Distance Operations) Award 2010 sets kilometre rates that take into account that drivers often perform additional duties and have additional responsibilities such as arranging loads, purchasing spare parts, tyres etc. but does not prescribe a separate payment for such activities. It would be very difficult to determine which term was more or less beneficial.”

The ALC also identified the operation of section 12 of the RSR Act as an area of concern, particularly with regard to safe driving plans mandated under the 2014 Order:

“...one question is whether section 12 of the Act, which provides that the terms [of] an RSRO effectively override a modern award or enterprise agreement where the terms are ‘more beneficial’, means that the safe journey plans determined in enterprise agreements are ousted and the RSRO becomes the requirement to be followed?”

It has also been asserted in submissions that compliance with a RSRO would not necessarily guarantee compliance with other overlapping legislation. The Victorian Government highlighted several scenarios in which this issue could arise, in particular in relation to WHS legislation. For example, the 2014 Order requires the preparation of ‘safe driving plans’, however the Victorian Government argued that:

“...successful implementation of a safe driving plan under the Order may not, of itself, equate to full compliance with OHS duties... For example it is unclear whether the contents of the

527 ibid, p.44.
528 ibid, p.35.
529 Submission from Australian Logistics Council, p.8.
Fatigue Risk Management System to be recorded under clause 10.6(e) of the Order will be consistent with the current state of knowledge, for example, as set out in WorkSafe Victoria’s guidance material on fatigue management prevention in the workplace.”

This issue was also identified in the submissions of the ALC. Conversely, the ARTIO identified the possibility that compliance with a state law would not necessarily guarantee compliance with a RSRO:

“Many operators would in some form utilise safe driving plans, have drug and alcohol policies and undertake training to comply with WH&S obligations. Such policies are implemented by operators utilising best practice principles. However the very prescriptive nature of the RSRO in relation to some of these provisions means that in many cases their current practices may not comply with the RSRO and or systems currently utilised to manage risks may not be recognised, even though those practices may be consistent with and comply with other legislative obligations.”

The Ai Group has also argued that section 12 of the RSR Act undermines the operation of the FW Act and the FWC regarding employee driver terms and conditions, since any RSRO issued by the Tribunal overrides modern awards and enterprise agreements made under FW Act and approved by the FWC. This argument was echoed by the NFF:

“Any argument that the wages and conditions for employees in the road transport industry are not fair, relevant or safe is an argument that the FW Act and the modern award system have not delivered fairness.”

Likewise, a number of other stakeholders have also referred to the potential for the RSR Act to overlap with and undermine other legislation, such as the HVNL and WHS laws. For example, the Ai Group stated:

“The RSR System undermines the benefits of regulatory simplification flowing from the move towards a single rule book (the HVNL), administered and overseen to a great extent by a single regulatory body, the National Heavy Vehicle Regulator.”

Meanwhile, the Victorian Government also highlighted the potential for the RSR Act and RSRO to undermine Victorian legislation and the HVNL:

“It is important that the operation and objectives of the Victorian OHS Act and Regulations and other laws are not undermined as a result of the application of the Order, and that benefits to be achieved in terms of red tape savings from implementation of the HVNL are

530 Submission from the Victorian Department of Treasury and Finance, p.13.
531 Submission from Australian Road Transport Industrial Organisation, p.4.
532 Submission from National Farmers Federation, p.12.
533 Submission from Ai Group, p.55.
not diminished. The HVNL is intended to reduce duplication and inconsistencies across State and Territory borders and cut costs, red tape and confusion.”  

Conversely, the TWU did not share other stakeholders’ views that the RSR Act potentially overlaps and duplicates existing legislation. Rather, the TWU is of the opinion that the system established via the RSR Act constitutes the only way to effectively address the link between driver remuneration and safety:

“All of the evidence indicates that the key to solving the industry’s safety crisis is to look vertically up transport supply chains and focus on the role, power and influence of industry clients. The Road Safety Remuneration Tribunal’s ability to focus on the high level of influence and control that is exercised by clients means that it is the only system that can effectively address the safety concerns in the road transport industry.

It is also worthwhile noting that the Tribunal is the only body capable of examining the vertical causes of truck deaths in a forward looking capacity instead of desperately seeking to assign blame after a horrific fatality has occurred – a limitation that characterises most chain of responsibility legislative endeavours.

“The TWU made submissions upon the initial making of modern awards to the effect that the suite of safety matters identified in the body of evidence be contained in the proposed new Federal instruments. The TWU’s submissions were rejected on the basis that safety matters and matters extending beyond the direct employment relationship, such as supply chain provisions (other than in the textiles clothing and footwear sector) could not be included as provisions in modern awards. The TWU made no submission regarding owner drivers as it was clear that owner driver provisions could not be contained in a modern award.

Further, the TWU has made ongoing attempts to have OHS regulators and OHS laws recognise and deal with economic pressures relating to the performance of road transport work, which the evidence indicates have a negative influence on safety outcomes. The consistent response from both regulators and governments, however, is that rates of pay and economic considerations are and should remain beyond the scope of OHS laws.

In short, the modern award system is incapable of including matters directly relating to safety, owner drivers or supply chain participants (other than for textile, clothing and footwear workers), and OHS systems do not deal with rates/economic issues.”

**Section 20 of the RSR Act: ‘necessary’ overlap**

Section 20 of the RSR Act outlines a number of matters that the Tribunal must have regard to when deciding whether to make a RSRO, including the need to avoid any "unnecessary overlap" with the FW Act and any other laws prescribed by regulation, and to reduce the compliance burden on the road transport industry. However, as pointed out by ARTIO and ALC in their submissions, section 20 does not prevent the Tribunal from determining that regulatory overlap is ‘necessary’ or warranted.

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535 Submission from the Transport Workers Union, pp.7-9.
Because of this there is significant scope under the Act for the Tribunal to issue RSROs that ‘necessarily’ overlap and potentially override existing laws. On this, Ai Group suggested that:

“...the provision falls well short of an obligation on the Tribunal to ensure there is no overlap with obligations under other laws or instruments, or of imposing a positive obligation on the Tribunal to develop an RSRO which would have the effect of reducing the level of regulation imposed on industry. Moreover, such considerations are merely factors to be balanced against other relevant considerations. The Tribunal is afforded significant discretion to determine how much weight will be placed on such matters.”  

The practical impact of this issue was evident during the Tribunal’s deliberations prior to issue of the 2014 Order where, although the Tribunal considered potential overlap of the Order with Commonwealth and state and territory laws on a number of matters, it nonetheless determined that there was no ‘unnecessary’ overlap or inconsistency between the 2014 Order and existing laws. With regard to the training and drug and alcohol policy clauses of the 2014 Order, the Tribunal determined that:

“While some suggested the training clause and the drug and alcohol policy clause in the draft RSRO unnecessarily overlapped with the prescribed laws [for the purposes of s.20(g) of the RSR Act], we are not persuaded that is so. In any instance, the training clause and the drug and alcohol policy clause recognise the broad context in which the prescribed laws operate and provide needed specificity within that context.”

While on the matter of the adverse conduct provisions of the 2014 Order, the ALC stated:

“There also appears to be no consideration given by the Tribunal as to the cost involved in duplication.

For instance, parties to proceedings indicated that the adverse conduct provision of the RSRO largely replicated general protection provisions contained in the Fair Work Act 2009.

Yet the clause was inserted.”

The Victorian Government was also critical of the Tribunal’s reasoning regarding ‘necessary’ overlap, stating:

“The Tribunal’s decision accompanying the Order does not clearly answer the question as to whether the obligations imposed by the Order are necessary given the concurrent operation of State-based laws, or whether they represent an increase in regulatory burden that is not sufficiently offset by an increase in safety standards.”

536 Submission from Ai Group, pp.35-36.
538 Submission from the Australian Logistics Council, p.8.
539 Submission from the Victorian Department of Treasury and Finance, p.16.
The role of existing legislation and regulators

In voicing the concerns regarding overlap discussed above, several stakeholders noted that they did not object to the use of instruments such as safe driving plans, driver training and drug and alcohol policies and recognised their potential role in improving safety in the road transport industry. Indeed, they argued that existing legislation, as well as industry practice, means that such instruments are already in widespread use. The Tribunal itself lends support to this view, insofar as it lists a number of instances in its decision accompanying the 2014 Order where safe driving plans, driver training and drug and alcohol policies are already standard practice within the road transport industry.  

However, a primary concern raised in submissions from both industry groups and governments was the ability of the RSRS to cut across a number of regulated fields. It was argued that a formerly relatively clear delineation of regulatory responsibilities for road transport, safety and industrial matters risks being significantly blurred as a result of the operations of the Tribunal. In this context, there were strong arguments presented that any perceived gaps in the regulation of non-remuneration based safety issues should be pursued via the pre-existing legislative structure rather than via the use of RSROs to deal with non-remuneration related issues.

For example, the Ai Group stated:

“The focus should be on achieving compliance with existing laws and instruments which directly address safety and on the performance of road transport operations. This must involve greater efforts to promote education and strong enforcement of existing laws, particularly the FW Act, the HVNL and work health and safety laws.”

The NFF recommended:

“Education and enforcement of the existing laws needs to be a key focus. It is simplistic to perceive increases in remuneration as the silver bullet which will strike down problems of safety in the road transport industry. Such an approach will also be counterproductive to a range of important new measures to improve safety which have already been implemented and which need to be supported plus given time to work, including:

- The new national work health and safety laws;
- Chain of responsibility laws; and
- The National Heavy Vehicle Regulator.”

The Northern Territory Government also argued for the use of existing regulatory structures to address remuneration-related concerns, in preference to the RSRS:

“Instead of a separate and additional legislation and regulatory entity specifically for the road transport industry, the Northern Territory sees greater benefit in the effective utilisation of existing laws and instruments.”

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540 Road Safety Remuneration Tribunal, op cit
541 Submission from Ai Group, p.63.
542 Submission from the National Farmers Federation, pp.9-10.
and as required, strengthening of existing legislative mechanisms outside this System to deal with matters related to the remuneration and work conditions of road transport workers that impact on road safety.”

A further aspect of this stakeholder support for a focus on greater enforcement and extended application of existing laws, in preference to continuation of the RSRS approach, was that a number of stakeholders expressed reservations as to whether the Tribunal had the necessary expertise to deal with broader safety matters and suggested that existing safety regulators were significantly better qualified in this regard. The ALC raised this issue in its November 2013 submission to the National Commission of Audit, and reiterated it again in its submission to this Review:

“ALC has strongly argued that safety issues are best dealt with by specialist laws - in the case of heavy vehicles the HVNL, administered by specialist regulators - in the case of heavy vehicles the newly established National Heavy Vehicle Regulator.”

The Ai Group also shared this concern:

“It must also be borne in mind that members of the FWC predominantly focus on matters of an industrial character rather than dealing with the regulation of matters associated with safety or the performance of on-road activities. In contrast, specialised bodies such as the National Heavy Vehicle Regulator and Safe Work Australia are far better placed to tackle issues associated with safety issues.”

Disputes about remuneration and ‘related conditions’

The Tribunal has powers under Part 4 of the RSR Act to deal with disputes between employee drivers and their employer (or former employer), disputes between contractor drivers and their hirer (or former hirer), and disputes involving supply chain participants.

Sub-sections 41(3) and 41(4) of the RSR Act prevent employee drivers making claims in both the Tribunal and the FWC, providing that if a claim is made in one court it can only be brought in the other if the original application has been withdrawn or failed on the grounds that the court does not have jurisdiction to hear the matter. The intent of these provisions is presumably to prevent ‘forum shopping’, whereby litigants seek to have their legal case heard in the court thought most likely to provide a favourable judgment. However, the issue of jurisdiction for disputes is less than clear when considered in the context of state contractor driver schemes.

Stakeholders have argued that Part 4 of the RSR Act creates jurisdictional overlap with state authorities, with some disputes potentially able to be pursued through dispute resolution mechanisms in multiple jurisdictions. This, in turn, adds complexity in that parties may have difficulty determining which dispute resolution mechanism will be the most appropriate and may even result in ‘forum shopping’. For example, the Victorian Government noted that:

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543 Submission of the Northern Territory Department of Business, Northern Territory WorkSafe, p.3.
544 Submission from the Australian Logistics Council, p.5.
“There is a potential overlap between disputes which may be dealt with by the [Road Safety Remuneration] Tribunal, and disputes concerning potential breaches of the Victorian scheme (which may be referred to the VSBC [Victorian Small Business Commissioner] for mediation, and where this is unsuccessful, to VCAT [Victorian Civil and Administrative Tribunal]). For instance, where a dispute relates to payment in lieu of notice on termination, the relationship between the provisions of the Victorian Act and the Order, and which body could deal with the dispute, are unclear.”

The Western Australian Government identified similar concerns:

“There is the potential for some Western Australian owner drivers to have their disputes heard by either the RSR Tribunal or RFTI [Road Freight Transport Industry] Tribunal and for confusion in parts of the industry about jurisdictional issues to arise as a result.”

The Ai Group noted similar issues in NSW regarding potential jurisdictional overlap between the dispute settlement functions of the NSW IRC and the Tribunal:

“Further potential for overlap exists in relation to RSR Tribunal’s dispute settlement functions and the operation of the NSW IRC’s dispute settlement functions under Part 4 of the Industrial Relations Act 1996 [NSW] and the NSW IRC’s capacity to order reinstatement of contracts of carriage pursuant to section 314 of the [NSW IR] Act.”

The Ai Group has also indicated that the potential for such overlap may be observed in the Tribunal’s utilisation of its dispute resolution functions to date:

“…there have only been 5 applications seeking to access the Tribunal’s dispute resolution services and…the Tribunal has not issued a decision in relation to any dispute.

...It is also not possible to verify whether they [the disputes] were properly within the jurisdiction of the Tribunal or whether they could have been dealt with through other previously existing forums, such as through the various mechanisms established under the FW Act or under the relevant State jurisdictions dealing with independent contractors. There is significant overlap between such forums.”

These stakeholder concerns give rise to a number of other questions and possibilities around ‘primacy’ that would need to be addressed to provide stakeholders clarity as to the ‘default’ jurisdiction for hearing and ruling on certain types of broad disputes. For example, does the primacy of Commonwealth over state law mean parties will increasingly move toward the Tribunal as the arbitrator of disputes for fear of decisions of state bodies ultimately being overturned following applications to the Tribunal by other parties aggrieved at the result? Or, given the potential for co-existence of Commonwealth and state laws, is there potential for bodies at both the Commonwealth

546 Submission from the Victorian Department of Treasury and Finance, p.12.
547 Submission from the Western Australian Department of Commerce, p.7.
548 Submission from Ai Group, pp.43-44.
549 ibid, pp.23-24.
and state level to adjudicate on the same dispute and for their judgements to ‘co-exist’, to the extent that they are not inconsistent?

**Collective bargaining and protections from ‘unconscionable conduct’ and unfair contracts**

The RSR Act provides that where an RSRO applies to contractor drivers, those drivers are able to negotiate as a group with their hirer or potential hirer for a road transport collective agreement, which is similar to enterprise agreements made between employees and an employer at an enterprise level under the FW Act. The RSR Regulations provide further protections in the form of a code of conduct for negotiation of road transport collective agreements.

Several submissions, including those of the ALC and Ai Group, pointed out that the collective bargaining provisions of the RSR Act duplicate collective bargaining processes already available to independent contractors under the *Competition and Consumer Act 2010* (Cth).

The ALC also noted that unconscionable or oppressive conduct provisions in the *Consumer and Competition Act 2010* (Cth) already provide businesses with protections from conduct including the exploitation of vulnerabilities and the use of undue influence, pressure or unfair tactics by the other party. 550 This view was shared by Master Builders Australia (MBA), which called for greater enforcement of these provisions as opposed to further regulation through the RSR Act:

“…assertions [about problems with lack of compliance with awards and agreements, especially among small operators], if true, should trigger a regulatory response to increase Government endeavours for operators to follow the law as expressed in awards and agreements and for legal action to be taken against those who unfairly contract with owner/drivers utilising the provisions about unconscionability in the *Consumer and Competition Act 2011* (Cth) or the civil remedy provisions under the *Fair Work Act 2009* (Cth). In other words, the answer to the problem raised again appears to be greater enforcement of the existing law rather than the continuation of the Road Safety Remuneration System with its new rules and unnecessary bureaucracy.”

It was also suggested in a number of submissions, including those of the MBA, ALC, Ai Group and the NFF that the unfair contracts provisions of the *Independent Contractors Act 2006* (Cth) already provide independent contractors with avenues to deal with remuneration-related issues without the need for the Tribunal. In making this argument, the Ai Group referred to the *Safe Rates, Safe Roads Directions Paper*, 552 which noted that “…every owner driver in Australia has access to the unfair contracts regime under the IC Act, provided their service falls within the scope of the Act”.

This was summed up by the ALC:

551 Submission from Master Builders Association, pp.5-6.
552 Australian Government Department of Education, Employment and Workplace Relations (2010), op cit, p.36.
“...bona fide independent contractors are capable of having unfair contracts reviewed by the Federal Circuit Court under the Independent Contractors Act 2006 and that the Competition and Consumer Act 2010 permits ACCC to authorise collective bargaining with larger operators.”

2014 Order: Overlap with existing regulatory obligations and instruments

Beyond the high level observations noted above, almost all of the specific clauses of the 2014 Order were identified in stakeholder submissions to this Review, and to the Tribunal during deliberations on the Order, as overlapping or duplicating - and in many cases being inconsistent with - existing provisions in state-based WHS laws and owner driver schemes, and the HVNL. Stakeholder concerns regarding the various provisions of the 2014 Order are discussed below.

Definitions

Definitions of supply chain parties are not consistent across the Order and HVNL CoR provisions. For example, the definitions of ‘consignor’ and ‘consignee’ differ, while the 2014 Order definitions of ‘intermediary’ and ‘operator of premises for loading and unloading’ do not directly correspond to the HVNL.

Dispute resolution

The provisions in the 2014 Order overlap with dispute resolution processes under existing state-based owner driver schemes (see Section 6.3.1 of this report).

Adverse conduct protection

The ‘Adverse Conduct Protection’ provisions of the 2014 Order overlap with the ‘General Protections Provisions’ of Part 3-1 of the FW Act, the discrimination and victimisation provisions in section 699 of the HVNL and state owner driver legislation. For example, the Victorian Government argued that:

“...while both section 61 of the Victorian Act and clause 6 of the Order confer protections on contractor drivers in respect of adverse (detrimental) conduct, each provision refers back to entitlements and proceedings under their respective systems and contain a number of other differences in wording and scope. To the extent that protections under the Victorian Act are capable of operating concurrently with the Order, there may be two potential avenues of redress.”

Written contracts

The terms of written contracts required under the 2014 Order overlap with similar requirements in the RTD Award and LDO Award, and state owner driver schemes. For example, both Awards already regulate various provisions for employee drivers similar to those in the 2014 Order, while the Victorian and Western Australian owner driver schemes already regulate a number of contract provisions for owner drivers, including regarding payments, minimum hours, and termination.

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553 Submission from Australian Logistics Council, p.6.
554 Submission from the Victorian Department of Treasury and Finance, p.11.
Another example is that the 2014 Order requires written contracts in all circumstances, while the Victorian *Owner Drivers and Forestry Contractors Act 2005* only requires them if the term of engagement is for 30 days or more.\(^{555}\)

**Other contracts**

It was argued that the ‘Other Contracts’ provisions in the 2014 Order are already covered by obligations under WHS laws and CoR provisions in the HVNL. For example, the HVNL contains a number of provisions pertaining to the content of contracts, particularly in prohibiting the inclusion of conditions that may cause or provide incentive for drivers to speed or breach their work and rest hour requirements. The 2014 Order contains some provisions relating to minimum contract requirements, which although not necessarily a duplication of requirements, may serve to add further layers to the regulation of road transport contracts and further compliance burdens on supply chain participants.\(^{556}\)

Additionally, participants in the supply chain already have a number of WHS obligations that would prohibit them from contracting with another participant in the supply chain in a way that is inconsistent with the safety requirements in the 2014 Order.\(^{557}\)

**Safe driving plans**

Aspects of the safe driving plan provisions in the 2014 Order were identified as overlapping with fatigue management requirements under the HVNL and state WHS laws, and similar provisions in the NSW *Mutual Responsibility for Road Safety Contract Determination*. For example, on the matter of safe driving plans the Ai Group noted:

> “The content of the first RSRO already calls into question the continuing validity of elements of the Mutual Responsibility for Road Safety Contract Determination which deals with similar matters relating to the implementation of safe driving plans and drug and alcohol policies.”\(^{558}\)

While the Victorian Government stated:

> “Clause 10 of the Order requires a safe driving plan to be prepared when a road transport driver is to undertake a long distance operation using a motor vehicle with a GVM of more than 4.5 tonnes.

Under subclause 10.7(b) (and subject to subclause 10.9), road transport drivers must record the actual timeframes and distances involved in the provision of the road transport service. It is noted that existing requirements for heavy vehicle drivers and operators to complete a

\(^{555}\) ibid

\(^{556}\) Confidential submission.

\(^{557}\) ibid

\(^{558}\) Submission from Ai Group, p.43
work diary under sections 191S, 191T, 191U and 191X of the Victorian RS Act [Road Safety Act 1986] mean that similar information is already required to be kept.”

WHS training

The WHS training provisions of the 2014 Order were considered to overlap with training requirements under Commonwealth and state WHS laws, which require the provision of information, instruction, training or supervision to workers (including contractors) needed for them to work without risks to their health and safety and that of others around them.

The ALRTA has also criticised the training provisions in the 2014 Order because, despite overlap with other legislative requirements, they do “...not recognise accumulated workplace safety skills and experience or other types of WH&S training that may occur under existing industry accreditation schemes including: TruckSafe, truckcare, Western Australia’s fatigue and mass management scheme or the National Heavy Vehicle Accreditation Scheme.”

Drug and alcohol policies

The drug and alcohol policy provisions of the 2014 Order were considered to overlap with requirements under Commonwealth and state WHS laws, road transport laws prohibiting the consumption of drugs and alcohol when operating a heavy vehicle, and clauses in the NSW Mutual Responsibility for Road Safety Contract Determination.

With regard to this overlap, the Victorian Government stated that:

“WorkSafe Victoria has published guidance material: Guidelines for Developing a Workplace Alcohol Policy, to support compliance with OHS duties. It is important that drug and alcohol policies developed pursuant to the Order align with WorkSafe Victoria’s published guidelines in this area.

There is also existing legislation in place prohibiting drug and alcohol consumption when operating a vehicle. For example, sub-section 49(1)(ba) of the RS Act [Road Safety Act 1986 (Vic)] provides that a person is guilty of an offence if he or she drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug, and sub-sections 52(1A) and (2) of the RS Act provide that a person licensed to drive a large vehicle must have a zero concentration of alcohol in the blood or breath while the person is driving or in charge of a large vehicle.

While the Order requires a drug and alcohol policy to set out the consequences for breaching the policy, such as education or disciplinary action, different penalties are specified under the RS Act.

It is noted that the question as to whether the obligations imposed by the Order are necessary given concurrent OHS and other duties, or whether they represent an increase in

559 Submission from the Victorian Department of Treasury and Finance, p.13.
560 Submission from Australian Livestock and Rural Transporters Association, p.17.
regulatory burden that is not sufficiently offset by an increase in safety standards, is not clearly answered in the Tribunal’s decision accompanying the Order.”

The extent of overlap between the 2014 Order and existing legislation was also broadly noted in the submission from Coles Supermarkets Australia, who stated:

“In delivering a measured RSRO based on extensive evidence led by both union and employer parties the Tribunal has in the most part traversed ground already covered by an extensive and largely effective regulatory regime (set out in summary form in Coles’ 22 April 2013 submission at Annexure A to this submission).

That regulatory regime is overseen by multiple regulators across the various states and territories and includes:

- ‘chain of responsibility’ legislation in various States and Territories, which imposes obligations upon supply chain participants in areas such as vehicle safety, speed limits, driver fatigue management, safety and security of loads, work and rest time, record keeping, as well as noise and exhaust emissions and road damage issues;
- workplace health and safety legislation in various States and Territories; and
- the Fair Work Act 2009 (Cth), which provides employee drivers with minimum conditions (through awards, enterprise agreements and the NES) and general protections.”

“…Looking forward, the degree of regulatory overlap becomes increasingly pronounced in light of the impending commencement of the Heavy Vehicle National Law (HVNL). The HVNL will provide for a generally consistent set of enforceable national supply chain obligations which specifically address mass requirements; load restraint; dimension requirements and speed and fatigue management, backed by a regulator with on-road compliance and enforcement powers in respect of those obligations.

As noted above, a close reading of the Final RSRO shows that much (if not all) of the obligations go no further than obligations already (properly) dealt with under this existing legislative scheme.”

561 Submission from the Victorian Department of Treasury and Finance, pp.13-14.
562 Submission from Coles Supermarkets Australia, pp.3-4.
Bibliography


Australian Bureau of Statistics (2013), Causes of Death, Australia, 2012 (Cat. no. 3303.0).

Australian Bureau of Statistics (2013), Employee Earnings and Hours, Australia, May 2012 (Cat. no. 6306.0, Data cube 7).

Australian Bureau of Statistics (2013), Producer Price Index (Cat. no. 6427.0).


Brodie, L., Lyndal, B., and Elias, I. J. (2009), 'Heavy vehicle driver fatalities: Learning's from fatal road crash investigations in Victoria', Accident Analysis and Prevention, 41(3).


Bureau of Infrastructure, Transport and Regional Economics (2006), Road Crash Costs in Australia, Report No. 118, Canberra.


Federal Motor Carrier Safety Administration (2007), Large Truck Crash Causation Study (Publication FMCSA-RRA-07-017), U.S. Department of Transportation, Washington, D.C.


