

# Review of the Road Safety Remuneration System Final Report

*January 2016*

This report was updated following the publication of the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 on 18 December 2015. The original report was provided to the Department of Employment on 23 December 2015.

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# *Executive Summary*

The Road Safety Remuneration System (the System) was established in 2012 to focus on remuneration-related incentives and pressures on road transport drivers to engage in unsafe practices. The System consists of the Road Safety Remuneration Tribunal (the Tribunal) and the Fair Work Ombudsman (the Ombudsman).

The Tribunal is empowered to make Road Safety Remuneration Orders, facilitate the negotiation of collective agreements and resolve disputes. The Ombudsman has a dual educative and enforcement role.

The Australian Government has expended \$13.4 million<sup>2</sup> over three years (2012-13 to 2014-15) on the System. Since 2012, the Tribunal has initiated several inquiries, produced two Road Safety Remuneration Orders, the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 (Road Transport Order) and the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 (Payments Order), and one draft order, the draft Road Safety Remuneration Order for the Cash in Transit Sector (Draft Cash in Transit Order). The Ombudsman has placed educative material on its website and provided funding to an industry representative and an employee representative to produce materials to educate their members. The Ombudsman has also taken enforcement action on six of the 12 complaints received by the Ombudsman since 2012.

Consistent with the requirements under s120 of the *Road Safety Remuneration Act 2012*, the Department of Employment has commissioned PricewaterhouseCoopers Australia (PwC) to review the System's first three years of operation.

In accordance with our terms of reference, this review focuses on 'the conduct and operation of the System and the extent to which it has fulfilled its functions and the object of the Act'. PwC has adopted a program logic evaluation approach to undertake this review, which we have used as a framework to consider three specific questions.

## ***Question 1: To what extent do the objectives and functions of the System align with government priorities and policies?***

In forming our view on this issue we have conducted a series of stakeholder consultations with industry and reviewed submissions to the Tribunal as well as reviewing the relevant literature, reports and inquiries on road safety. While some of these studies have found a link between remuneration and road safety, there remains limited research and conclusions vary as to the extent and nature of this relationship.

While there remains the potential for concern about the link between remuneration and road safety, PwC has not found any additional information to change our original view expressed in the Regulation Impact Statement we prepared for the Department of Education, Employment and Workplace Relations in 2011 prior to the establishment of the System. Namely, that the focus of the System should be on the link between remuneration and road safety and only once the link has been appropriately established should those issues be targeted proportionately and directly.

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<sup>2</sup> Inflated to 2015 dollars.

Moreover, our analysis of the costs and benefits of the System suggest that there will be a significant cost to the economy when both Road Safety Remuneration Orders are in effect,<sup>3</sup> with any potential safety benefits significantly outweighed by the associated costs.

Consistent with the direction set out in the Government's Guide to Regulation it is hard to see how any system that results in a net cost to the economy could be aligned with government priorities and policies.

### ***Question 2: Has the System been effective in delivering upon the objectives of the Act?***

The System has been established to deliver on the object of the Act; namely, 'to promote safety and fairness in the road transport industry'.

We have assessed the System's effectiveness in view of its safety objective, and whether the safety benefits of regulation justify the resulting costs.

PwC reviewed the two Road Safety Remuneration Orders, the draft order and the various sectors of inquiry. Our economic impact analysis focuses on the two enforceable orders, and our analysis of safety outcomes to date focuses on the impact of the Road Transport Order, the only order currently in force. We spoke to stakeholders and conducted a survey to determine the extent of awareness and compliance in the industry, and the perceived safety and economic impact of these instruments.

When considering the 2014 Road Transport Order, we reach the conclusion that there is a high degree of overlap with other agencies who oversight road transport, safety, and workplace matters such as the National Heavy Vehicle Regulator, state road authorities, and workplace safety agencies.

The System has the flexibility to avoid such overlap yet consultations suggest the Tribunal has not adequately considered existing regulatory systems when making orders.

While other regulators and safety agencies focus on road safety matters, we note that the Tribunal is the sole body that has the power to set national rates of remuneration for owner drivers across Australia.

Our analysis shows that the Road Transport Order and Payments Order will result in a net cost to the economy in excess of \$2 billion in net present value terms (NPV) over fifteen years from 2012 (refer Table 1). The benefit cost ratio (BCR) associated with the orders is less than one in all cases.

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<sup>3</sup> Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 in effect from May 2014, and the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 in effect from April 2016.

**Table 1: Summary of costs and benefits of the Road Transport Order and the Payments Order**

| <b>Order Type</b>    | <b>Benefit Cost Ratio</b> | <b>Net Present Value of benefits and costs (billion dollars)</b> |
|----------------------|---------------------------|--|
| Road Transport Order | 0.31                      | -1.8   |
| Payments Order       | 0.67                      | -0.4   |
| All Orders           | 0.38                      | -2.3   |

Despite these estimated costs, the design of the System may mean that - without further and significant resources for the Ombudsman - the level of compliance may be low. Relative to other road safety agencies, such as the National Heavy Vehicle Regulator, the Ombudsman appears to be considerably under resourced. In fact, most stakeholders were of the view that these functions are best delivered by government agencies currently providing ‘on the side of the road’ education and compliance oversight of road transport, such as authorised enforcement officers under Heavy Vehicle National Law, and not the Ombudsman.

***Question 3: Does the allocation of resources and accountability arrangements support the effective operation of the System?***

Regardless of how efficient any regulatory system is, when considered in terms of the net cost to the economy associated with the Tribunal’s orders, the \$13.4 million expended over three years (2012-13 to 2014-15) on the System cannot be seen as anything other than an additional ‘inefficient’ cost.

To date the Tribunal has been very broad in its consideration of the sector. This requires that the Tribunal has sufficient resources to canvass issues, seek feedback, and make orders pursuant to the legislative objectives of the System. These costs however, would be lowered with a narrower focus on those areas in the System that are not currently regulated by others, where there are demonstrated safety issues, and where the orders or action yields a net safety and economic benefit.

***Conclusion***

In line with PwC’s findings in the 2011 Regulation Impact Statement on the System – that there is a need ‘to conduct further investigation ... prior to determining a safe rate’ – we do not find contrary evidence in this review to substantiate the ongoing need for the System. Moreover, the estimated net cost of the System calculated by PwC during this review is eight times the net cost estimated in the 2011 Regulation Impact Statement, when the calculation is adjusted to be over the ten year period 2012 to 2021.<sup>4</sup>

Based on the performance of the System to date, including the outcomes and considerable overlap of the Road Transport Order with other regulatory frameworks, as well as the likely

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<sup>4</sup> In the 2011 RIS the minimum wage was used as the base rate of remuneration in the absence of further guidance (significantly lower than the rates in the Payments Order), and PwC was not required to consider the impact of non-remuneration conditions (e.g. safe driving plans). Following the release of the two enforceable Orders, the scope of the analysis in this report will be extended to consider the impact of non-remuneration measures in the Road Transport Order, and model the rates in the Payments Order. We also consider the impact over a 15 year period starting 2012, rather than the 10 year period considered in the 2011 RIS.

impact of the Payments Order, it is PwC's view that the System in its current form should be reformed.

We consider that the abolition of the System would result in significant net benefit to the economy and community at large.

To the extent that the Government wants to retain the System, the scope of activities of the Tribunal should be refined to focus on: first establishing the evidence base upon which remuneration is linked to safety outcomes; and, second, undertaking targeted remuneration orders designed to improve safety in the road transport sector. Activities must be evidence-based, and be able to demonstrate that expected safety outcomes exceed the costs.

To the extent that the Tribunal's scope is narrowed to focus on how remuneration impacts on safety in the road transport industry, the Ombudsman remains the appropriate body to educate and enforce. The Ombudsman is not the appropriate body to enforce other road safety matters.

# *Abbreviations*

| <b>Abbreviation</b> | <b>Description</b>   |
|---------------------|--|
| ABS                 | Australian Bureau of Statistics                            |
| ARTIO               | Australian Road Transport Industry Association             |
| BCR                 | Benefit cost ratio   |
| BITRE               | Bureau of Infrastructure, Transport and Regional Economics |
| CoR                 | Chain of responsibility                                    |
| the Department      | Department of Employment                                   |
| FWC                 | Fair Work Commission                                       |
| FWO                 | Fair Work Ombudsman  |
| GDP                 | Gross Domestic Product                                     |
| GVM                 | Gross Vehicle Mass   |
| HVNL                | Heavy Vehicle National Law                                 |
| NHVR                | National Heavy Vehicle Regulator                           |
| NPV                 | Net present value  |
| NTC                 | National Transport Commission                              |
| NTI                 | National Transport Insurance                               |
| OBPR                | Office of Best Practice Regulation                         |
| OHS                 | Occupational Health and Safety                             |
| PwC                 | PricewaterhouseCoopers                                     |
| RIS                 | Regulation Impact Statement                                |
| RSRO                | Road Safety Remuneration Order                             |
| tkm                 | Tonne-kilometre  |
| WHS                 | Work Health and Safety                                     |



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# 1. *Background to this review*

The Road Safety Remuneration System was established in 2012 with the remit to improve fairness and road safety outcomes for the road transport industry. The *Road Safety Remuneration Act 2012* (the Act) defines the road transport industry as being involved in the transportation of road freight, including any goods, wares or merchandise, interstate or intrastate for commercial purposes.<sup>5</sup>

The Department of Employment commissioned this review of the Road Safety Remuneration System to be completed by 31 December 2015, as per section 120 of the Act. This review follows a comprehensive report on the Road Safety Remuneration System prepared by Rex Deighton-Smith in April 2014, which served as a reference document for this review.<sup>6</sup>

This review assesses the operation of the Act since its inception in 2012. Our evaluation considers the operation of the Road Safety Remuneration System (the System) since the Act came into effect, including the Road Safety Remuneration Tribunal and the education and compliance framework administered by the Fair Work Ombudsman. Our review evaluates the effectiveness, appropriateness and efficiency of the System in fulfilling the object of the Act.

Specifically, in this review we have:

- evaluated the conduct and operation of the Tribunal against the functions and object of the Act
- considered the content of and relevant submissions to the 2014 Jaguar Review
- assessed the safety impact of the Tribunal's work programs, and particularly that of the first Road Safety Remuneration Order and any further orders made throughout the course of this review
- assessed the Tribunal's progress in setting appropriate rates of remuneration
- evaluated the effectiveness of the Tribunal's activities and processes.

## **1.1 Review approach**

We have used a program logic approach to guide our review (see Figure 1 and Appendix A: for more detail). This was tested with the Department and was used to support consultation and the analysis stages of this review.

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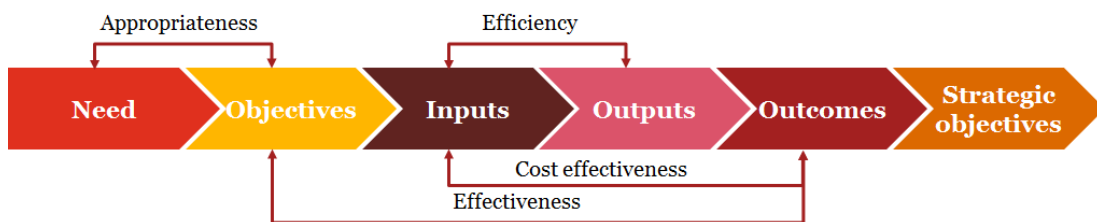
<sup>5</sup> The Act applies to road transport and distribution within the meaning of the *Road Transport and Distribution Award 2010*, long distance operations in the private transport industry within the meaning of the *Road Transport (Long Distance Operations) Award 2010*, the cash in transit industry within the meaning of the *Transport (Cash in Transit) Award 2010* and the waste management industry within the meaning of the *Waste Management Award 2010*.

<sup>6</sup> The Jaguar Review, undertaken by Mr Rex Deighton-Smith in 2014 has not been publicly released at the time of this review, but was provided in-confidence to PwC for the purposes of this review

Key elements of our approach, consistent with the Department of Finance’s Expenditure Review Principles, are:<sup>7</sup>

- Appropriateness – the extent to which the Road Safety Remuneration System addresses the identified need and aligns with government priorities/policies
- Efficiency – the relative cost inputs of achieving outputs
- Effectiveness – the match between the objectives and outcomes
- Cost effectiveness (value for money) – the relationship between the inputs and outcomes (benefits) of the System expressed in dollar terms (if available).

**Figure 1: Review framework**



In undertaking this review we drew on the following material:

- the Jaguar Review completed in April 2014 and provided to PwC in-confidence
- outputs of the Tribunal, including the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 (‘Road Transport Order’),<sup>8</sup> the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 (‘Payments Order’),<sup>9</sup>the draft Road Safety Remuneration Order for the Cash-In-Transit Sector (‘Draft Cash in Transit Order’), inquiry reports (including the retail, livestock, bulk grain, interstate long distance, intrastate long distance sectors reviewed in the Tribunal’s work programs), in addition to the Annual Work Programs, and material relating to collective bargaining and dispute resolution functions
- outputs of the Fair Work Ombudsman’s education and compliance activities
- information regarding the activities of the System (including reports and budgets, and responses to information requests to the Fair Work Commission and Fair Work Ombudsman)
- the legislative framework in which the System operates, including the Act, the Heavy Vehicle National Laws and other relevant regulatory material (such as the road transport awards, workplace health and safety legislation, industrial relations legislation, National Transport Commission and Fair Work Commission material, and relevant state and territory transport regulations)

<sup>7</sup> Department of Finance, Expenditure Review Principles, <http://www.finance.gov.au/budget/budget-process/expenditure-review-principles.html> <accessed August 2015>

<sup>8</sup> See <http://www.rsrt.gov.au/index.cfm/remuneration-orders/enforceable-rsros/>

<sup>9</sup> See <http://www.rsrt.gov.au/default/assets/File/decisions-files/PR350441.pdf>

- data regarding safety performance on road transport industry (including information from the Bureau of Industry, Transport and Regional Economics, the ABS and other market information)
- existing literature on safety regulation and the road transport industry
- data inputs and information provided by the Department, Road Safety Remuneration Tribunal and Fair Work Ombudsman.

We undertook targeted consultations with stakeholders to inform this review. Specific personnel and organisations and their contact details, were identified in liaison with the Department. Stakeholders consulted included 5 government authorities and departments, 5 industry associations, 1 employee organisation, 2 owner driver representatives, 3 employers/hirers, and the Fair Work Ombudsman. The Fair Work Commission and the Road Safety Remuneration Tribunal made written submissions to the review following information requests, but declined to meet for a consultation. Several government bodies and employers declined to participate in consultations, preferring to refer PwC to publicly available submissions made to the 2014 Jaguar Review, and submissions regarding the draft and enforceable Road Safety Remuneration Orders. PwC also conducted two surveys with:

- industry groups, employee and employer representatives, freight companies and supply chain participants (the ‘industry survey’)
- employee and contractor drivers in the sector (the ‘driver survey’).

Specifics of those consulted, and details regarding the surveys are presented in Appendix B: .

In addition to the consultations above, key stakeholders have had the opportunity to put forward their views as to the appropriateness and effectiveness of the System, and some of the System’s activities. This includes, but is not limited to:

- submissions to the Department of Education, Employment and Workplace Relations, and the Parliamentary committee in formulating the Road Safety Remuneration System
- Tribunal stakeholder consultation to inform the content of its Annual Work Programs, Inquiries and Orders
- submissions and stakeholder consultations for the Jaguar Review.

Findings from our desktop research, stakeholder consultations and surveys were synthesised to evaluate the operation of the System against the Review Framework. To complement the evaluation, we have considered the impact of the System over fifteen years from 2012. This seeks to quantify the effect of the introduction of the Road Transport Order in 2014, and the Payments Order, which is due to come into effect in April 2016.

Much of the analysis and consultation was undertaken on the basis of a draft Payments Order, which had been published on 26 August 2015. On 18 December 2015, the Tribunal published the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 (Payments Order). Given the timing of the publication, and the legislative requirement to complete the review by 31 December 2015, a report was provided to the Department and agreement reached to provide an updated report, including full analysis of the Payments Order by 31 January 2016.

Although the Payments Order was in draft form at the time of consultation, we are of the view that the concerns stakeholders expressed in consultations remain relevant. This is because the key sources of confusion, the coverage of the Order and the complex structure of the rates, did not change significantly from the draft to the final version of the Order. Therefore, much of the information we acquired through consultations and the survey remains relevant to our analysis.

The impacts of the Draft Cash in Transit Order, which was scheduled to come into effect July 2015 but is still the subject of ongoing consultation, are discussed qualitatively.

## ***1.2 Structure of this report***

This report is structured as follows:

- Chapter 2: Road transport industry and safety
- Chapter 3: The Road Safety Remuneration System
- Chapter 4: The need for the System
- Chapter 5: The System's safety impact
- Chapter 6: Economic impact of the System
- Chapter 7: The System's efficiency

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## 2. Road transport industry and safety

The object of the System is to promote safety and fairness in the road transport industry. The road transport industry is given a broad definition under section 4 of the Act:

- a) *the road transport and distribution industry within the meaning of the Road Transport and Distribution Award 2010 as in force on 1 July 2012;*
- b) *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;*
- c) *the cash in transit industry within the meaning of the Transport (Cash in Transit) Award 2010 as in force on 1 July 2012;*
- d) *the waste management industry within the meaning of the Waste Management Award 2010 as in force on 1 July 2012;*
- e) *the meaning prescribed by the regulations by reference to a modern award specified in the regulations.*

In summary, this broad definition gives the Tribunal the power to regulate the following industries:<sup>10</sup>

**Road transport and distribution industry** includes the transport, receipt, storage and distribution of:

- manufactured goods, partly manufactured and raw goods, wares, merchandise, materials
- livestock
- meat
- petrol, bulk petroleum products, crude oil or gas condensate
- milk, cream, butter, cheese and their derivatives

In addition, this definition is inclusive of mobile food vending and cartage by road of quarried materials.

**Long distance operations in the private transport industry** includes the transportation by road of all materials, whether in a raw or manufactured state, or of livestock, throughout Australia where the operation is interstate or the distance exceeds 500km from the point of commencement.

**Cash in transit industry** includes the transport of cash, securities and other financial instruments, bullion and other precious goods and materials, including valuables such as gold and jewels and other commercially negotiable articles and/or transactions.

**Waste management industry** means the collection, transportation, handling, recycling and disposal of any waste material whatsoever and includes the operation of transfer stations, landfill sites, incinerators, recycling depots, yards or terminals, treatment plants,

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<sup>10</sup> As per the *Road Transport and Distribution Award 2010*, *Road Transport (Long Distance Operations) Award 2010*, *Transport (Cash in Transit) Award 2010*, and *Waste Management Award 2010*.

compost facilities, alternative waste treatment facilities and the operation of other facilities of the same kind.

## 2.1 Road Safety

### 2.1.1 Road transportation and distribution industry

Freight transportation is integral to the effective operation of the Australian economy. Transportation by road is an important part of the broader transportation industry, moving approximately 35 per cent of freight in 2011-12.<sup>11</sup> In 2014-15, the road freight transportation industry grossed \$51.9 billion in revenue and \$13.5 billion in wage receipts.<sup>12</sup>

The industry recorded the highest fatality rates of any industry in Australia in 2013. Safe Work Australia estimated that for 2013 there were 34 fatalities, inclusive of non-road accidents. At 20.1 fatalities per 100,000 workers, this represents a fatality rate of 12 times the average rate for all industries (refer Figure 2).<sup>13</sup>

**Figure 2: Fatality rate per 100,000 workers in the Road Freight Transport sector**



Source: Safe Work Australia 2014, Work-related Traumatic Injury Fatalities 2013

When all parties, including drivers of other cars and pedestrians, are taken into account, 193 people were killed in heavy vehicle crashes in the 12 months ending December 2013.<sup>14</sup> Truck crashes are costly to the economy. According to the National Truck Accident Research Centre's report, there were 549 truck crash incidents with damage of over \$50,000 per incident in 2013.<sup>15</sup> This resulted in an aggregate cost of \$71.7 million for vehicle owners and drivers, third party vehicles and in relation to property damage.<sup>16</sup>

<sup>11</sup> Bureau of Infrastructure, Transport and Regional Economics (2014) *Freightline 1 – Australian freight transport overview*, Canberra

<sup>12</sup> IBIS World (2015) *Road freight transport in Australia*, Report I4610

<sup>13</sup> Safe Work Australia (2014) *Work-related Traumatic Injury Fatalities 2013*

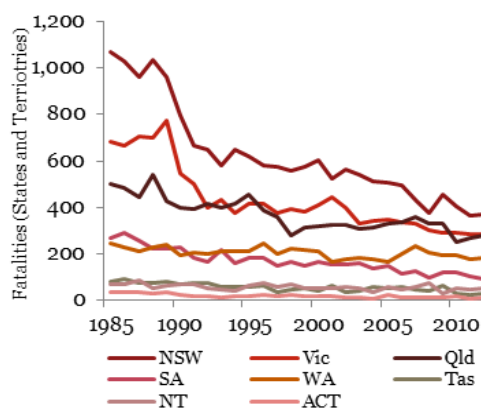
<sup>14</sup> Bureau of Infrastructure, Transport and Regional Economics (2013) *Road Trauma Australia – 2013 Statistical Summary*

<sup>15</sup> National Truck Accident Research Centre (2015) *Major Accident Investigation Report, Brisbane*

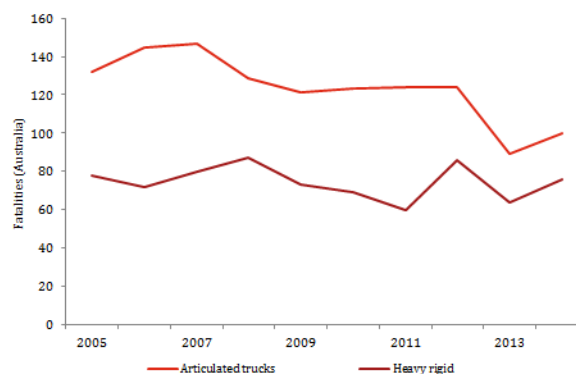
<sup>16</sup> Ibid

There was a 60 per cent decline in the annual number of all road deaths between 1985 and 2014, during which time there was a 50 per cent increase in population.<sup>17</sup> Of these fatalities, in 2014 10 per cent involved articulated trucks and 7 per cent involved rigid heavy vehicles, This rate has remained consistent over the past decade (refer Figure 3 and Figure 4).

**Figure 3: Fatalities on Australian roads**



**Figure 4: Fatalities involving heavy vehicles**



Source: Bureau of Infrastructure, Transport and Regional Economics (2014) Road Trauma Australia – 2014 Statistical Summary

The number of fatalities as a proportion of the total freight task carried by heavy vehicles has decreased, as the volume of heavy vehicle road freight has grown by approximately 35 per cent over the past decade, yet the number of fatalities has slowly declined.<sup>18</sup> Despite this decline, heavy vehicles remain overrepresented in road crashes and workplace fatality rates, as indicated by the proportion of heavy vehicles involved in crashes (17 per cent) compared to the proportion of total road kilometres driven by heavy vehicles (10 per cent).<sup>19</sup> The loss of life, economic hardships and distress that results from these incidents makes heavy vehicle safety an ongoing policy issue.

Heavy vehicle crashes are caused by a variety of factors. Research consistently highlights speeding and fatigue in the road transport industry as major factors impacting on road safety outcomes. These factors contributed to 27 per cent and 13 per cent of heavy vehicle claims in 2013 according to the National Transport Insurer’s 2015 report.<sup>20</sup> Other factors include drug use, poor vehicle maintenance, inattention and road or environmental conditions.<sup>21</sup>

Many submissions to the Tribunal since its inception have supported the proposition that poor remuneration, particularly of owner drivers has contributed to poor safety outcomes.

<sup>17</sup> Bureau of Infrastructure, Transport and Regional Economics (2014) *Road Trauma Australia – 2014 Statistical Summary*, ABS June 2015 *Demographic Statistics cat. 3101*

<sup>18</sup> Australian Bureau of Statistics (2015) *Survey of Motor Vehicle Use 2014*, cat 9208 ;Bureau of Infrastructure, Transport and Regional Economics (2014) *Road Trauma Australia – 2014 Statistical Summary*

<sup>19</sup> Australian Bureau of Statistics (2015) *Survey of Motor Vehicle Use 2014*, cat 9208

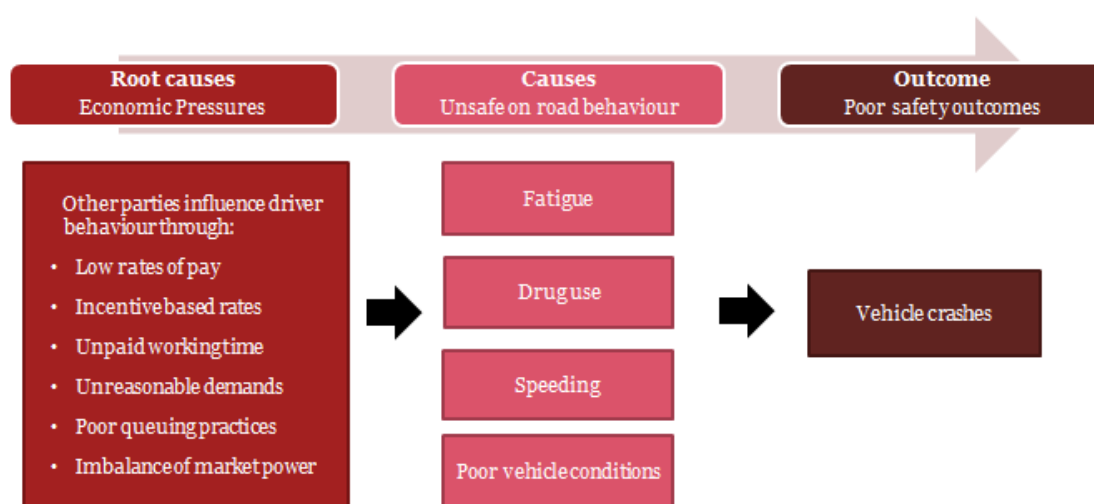
<sup>20</sup> National Truck Accident Research Centre (2015) *Major Accident Investigation Report, Brisbane*

<sup>21</sup> National Transport Commission (2008) *Safe Payments – Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, National Transport Commission p. 7

The welfare of owner drivers is a primary focus for the Tribunal as research suggests they are paid significantly less than their employee counterparts.<sup>22</sup>

At a high level, the rationale behind the causal link between economic pressures and road safety concerns were explained in the Department of Education, Employment and Workplace Relations's *Safe Rates Safe Roads Directions Paper*, with the key relationship reproduced in Figure 5.

**Figure 5: Link between safety outcomes and economic pressures**



Source: Adapted from the Department of Education, Employment and Workplace Relations *Safe Rates Safe Roads Directions Paper* (2010) p.5

Economic pressures are partially fuelled by the competitive nature of the industry with approximately 48,659 businesses in the market as at June 2014.<sup>23</sup> A large number of these businesses are independent contractors, with 70 per cent of fleets comprised of just one truck.<sup>24</sup> There is also competition from other modes of transport, such as rail.<sup>25</sup> Figure 6 shows that 11 per cent of businesses in the industry made a loss in 2013/14 financial year. This is roughly the same as the Australian average, but these losses are likely to be felt harder by owner drivers, who are often sole traders, than larger businesses that may have the financial support to operate at a loss for a more sustained period of time. These pressures increase when drivers are unladen, and therefore unlikely to be paid (see Figure 7).

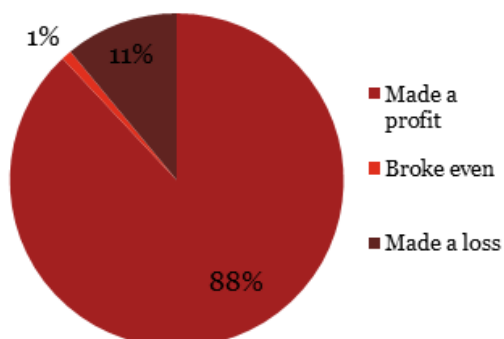
<sup>22</sup> For example, see Jaguar Consulting (2011) *Economic Analysis of Regulating Rates of Payment and Conditions for Safety in the Road Transport Industry*, Revised Final Paper prepared for the Department of Education, Employment and Workplace Relations, August 2011

<sup>23</sup> Australian Bureau of Statistics June 2015, *Counts of Business*, cat. 8165

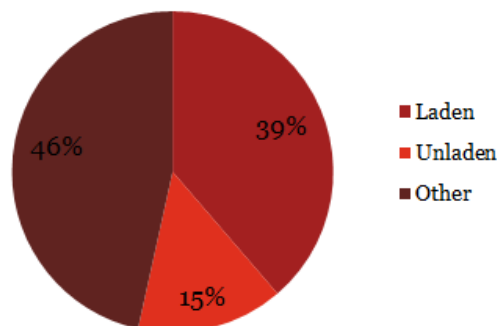
<sup>24</sup> National Transport Insurance (2015) *Guide to the Trucking Industry*

<sup>25</sup> Bureau of Infrastructure, Transport and Regional Economics (2003), *Working paper 60: An overview of the Australian Road Freight Transport Industry*, Canberra p.5

**Figure 6: Road Transport Industry businesses making a loss**



**Figure 7: Proportion of laden tonne kilometres**



Source: ABS 2015, Australian Industry 2013-14 cat. 8155; ABS (2015) Survey of motor vehicle use cat. 9208

There has been some academic research focused on the link between remuneration and road safety, which is discussed in more detail in Chapter 5. At the same time, and given the high economic cost to industry of wage price regulation, some stakeholders have expressed reservations as to whether regulation is warranted. This is discussed in more detail in Chapter 6.

### **2.1.2 Cash in transit industry**

The cash in transit industry primarily engages in the transportation of valuables such as cash from financial institutions and automatic teller machines, the value of which is in excess of \$600 billion a year.<sup>26</sup> The nature of these goods increases the risk of on road harm due to robberies. Most of these robberies are performed by several armed attackers.<sup>27</sup> Given this danger, these services have traditionally been provided using armoured trucks and armed guards.

In recent years, operators in the sector have noted an increase in the number of 'soft skin' operators. Soft skin operators have the following features: 'single rather than two or more guards; guards do not wear a uniform; an unmarked, unarmoured vehicle with limited security features; and the guard not being armed.'<sup>28</sup> These operators are usually small businesses, informal or formal couriers, or businesses carrying out this function ancillary to other activities. Some operators are 'semi-armoured', sharing characteristics with both types of operators. Many companies, mostly operators in the armoured vehicle sector, expressed concerns to the Tribunal that the number of operations carried out without appropriate safety measures are compromising the safety of the sector.

In 2010, the Australian Crime Commission noted that robberies in the sector are usually the work of professional armed robbers, and highlighted 'anecdotal evidence of a recent rise in these types of incidents.'<sup>29</sup> This study collated data from Australia's leading cash in transit

<sup>26</sup> Armaguard (August 2014) *Submission to the Cash in Transit Inquiry*

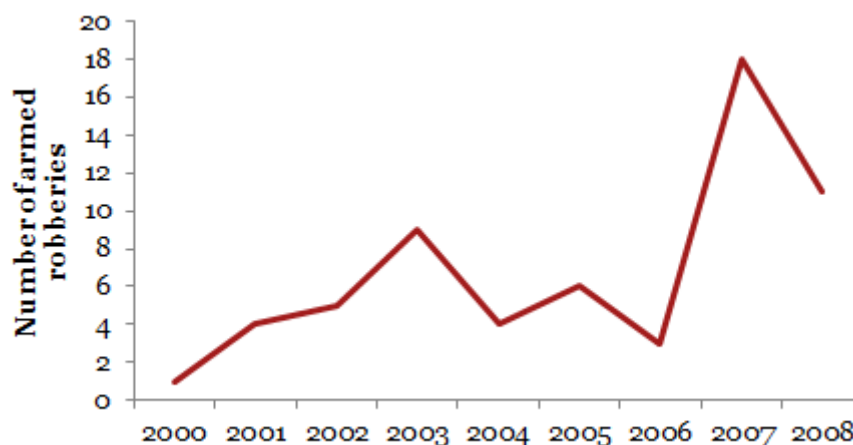
<sup>27</sup> Australian Institute of Criminology (2010) *Cash in transit armed robbery in Australia*, Canberra

<sup>28</sup> Road Safety Remuneration Tribunal, *Cash in Transit Inquiry – Final Report* p. 15

<sup>29</sup> Ibid

companies, which showed 61 incidents from 2000-2008, up from an estimated 27 in the previous period, with a large spike in 2007-2008 (see Figure 8). This study found that 90 per cent of incidents in 2008 involved armoured vehicles.<sup>30</sup> More research needs to be done in this area to clarify the extent of this issue.

**Figure 8: Number of armed robberies in the cash-in-transit industry**



Source: Australian Institute of Criminology 2010, Cash in transit armed robbery in Australia

There are a variety of factors that impact on the safety of cash in transit operators<sup>31</sup>. Whilst total remuneration has been a lesser concern, as the limited use of subcontractors in the sector means most drivers are covered by modern awards or enterprise bargaining agreements, the use of piece rate payments were highlighted by many as potentially causing safety concerns. Incentives to speed and driver fatigue are of less concern in this sector, as most operations are short distance and within standard operating hours.

Given the importance of being appropriately equipped and trained to deal with robberies, major operators of armoured vehicles have expressed concern that the operation of soft skin operators is impacting safety in the industry.<sup>32</sup>

### **2.1.3 Waste management industry**

The waste management industry is comprised of a mix of public and private operations. The latest comprehensive data on the sector was published by the ABS for 2009-10. In 2009-10 there were approximately 2,120 businesses in the public and private trading sector and 547 businesses in the general government sector in 2009-2010. Total employment was 32,737. Operations in this sector include collection, treatment and disposal. Over half over these businesses undertake waste collection, including collection of recyclables.<sup>33</sup>

New South Wales Waste Contractors and Recyclers Association (WCRA) estimated that [a]pproximately 5,500 trucks are used in NSW to collect waste and recyclables. These trucks

<sup>30</sup> Ibid, n 19

<sup>31</sup> Peterson J (1997) *Report to the Minister* Matter No IRC1880 of 1995, Industrial Relations Commission of New South Wales

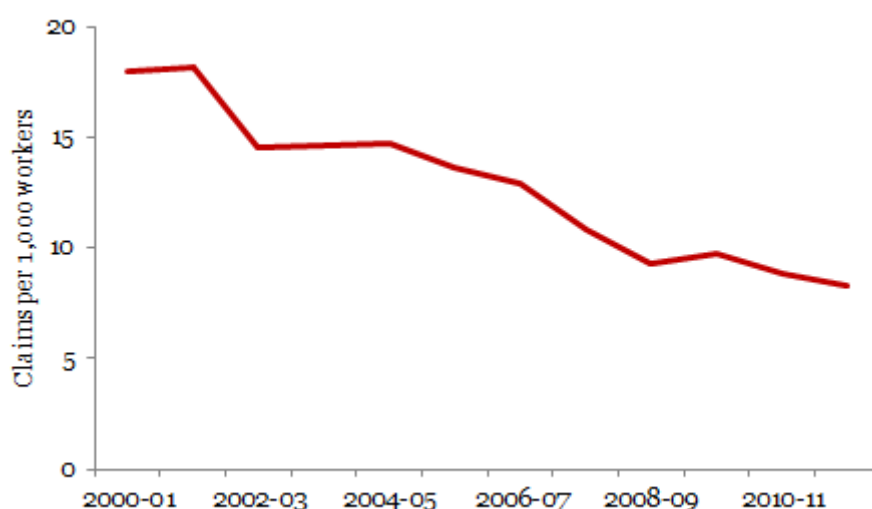
<sup>32</sup> For example, in Prosegur's August 2014 submission to the Cash in Transit Inquiry, the company stated "[a]s a result of Prosegur and Armaguard 'target hardening' their operations, armed robbery offenders will likely look for softer targets with soft-skin operators being a target of choice. Although we have been unable to obtain reliable data in relation to soft-skin armed robberies, there is certainly anecdotal evidence that the incidence of armed robberies on soft-skin operations has increased in recent years."

<sup>33</sup> Department of Environment (2014) *National Waste Reporting 2013*, Canberra

haul an estimated 1.7 million loads per annum carrying over 17 million tonnes of waste and recycling to approximately 130 landfills.<sup>34</sup> New South Wales has the largest number of waste businesses, and therefore presumably the largest amount of activity.

There were 1,160 serious compensation claims<sup>35</sup> in the ‘electricity, gas, water & waste services’ sector in 2012-13. The waste sector has a lower number of claims per 1,000 workers (8.3 compared to an industry average of 12.0, see Figure 9) and a frequency rate of 4.2 claims per million hours worked compared to the industry average of 7.2.<sup>36</sup> The number of fatalities in this industry has remained steady over recent years, recording an average of 5.1 fatalities per year in the 10 years to 2013. The sector records 3.42 deaths per 100,000 workers as opposed to an industry average of 1.61 in 2014.<sup>37</sup>

**Figure 9: Serious compensation claims per 1,000 workers**



Source: Safe Work Australia (2014) *Work-related Traumatic Injury Fatalities 2013*

Given the broad sectoral coverage of the Safe Work Australia statistics, more research is needed to determine if there is a specific safety problem in the waste management sector. Evidence in submissions to the Tribunal seldom used statistics. State workplace data provides some information. In 2013 there was one death of a member of the public at a waste facility.<sup>38</sup> In 2012 Western Australia reported 35 lost time injuries of five days or more and two ‘recent’ fatalities.<sup>39</sup>

<sup>34</sup> Waste Contractors and Recyclers Association of NSW (March 2015) *Submission to Waste Inquiry*

<sup>35</sup> A serious claim is an accepted workers compensation claim that involves a total of one or more weeks of time lost from work, excluding fatalities.

<sup>36</sup> Safe Work Australia, *Australian Workers’ Compensation Statistics 2012-13*.

<sup>37</sup> Safe Work Australia (2014) *Work-related Traumatic Injury Fatalities 2013*

<sup>38</sup> Workplace Health and Safety Queensland (2013) *Notified Fatalities July – December 2013*

<sup>39</sup> Western Australian Government (2012) *Worksafe WA Report - Waste Collection Industry*

Safety hazards in the waste management industry have been identified as being struck by vehicles, crushes in a compactor, injuries attained during manual labour, fatigue, environmental hazards, work near overhead power and noise.<sup>40</sup> The primary remuneration-related concerns brought before the Tribunal by interested parties are mandated start times and other regulations imposed by local councils. These require drivers to work during more congested periods, resulting in delays and limiting the availability of rest periods.<sup>41</sup> NSW WCRA and the Transport Workers Union (TWU) expressed concerns that these behaviours create cost pressures, especially for owner drivers, facilitating an unsafe working environment.<sup>42</sup> As a result, the Tribunal commenced an inquiry into the sector, which is still underway.

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<sup>40</sup> Western Australian Government (2012) *Worksafe WA Report - Waste Collection Industry*

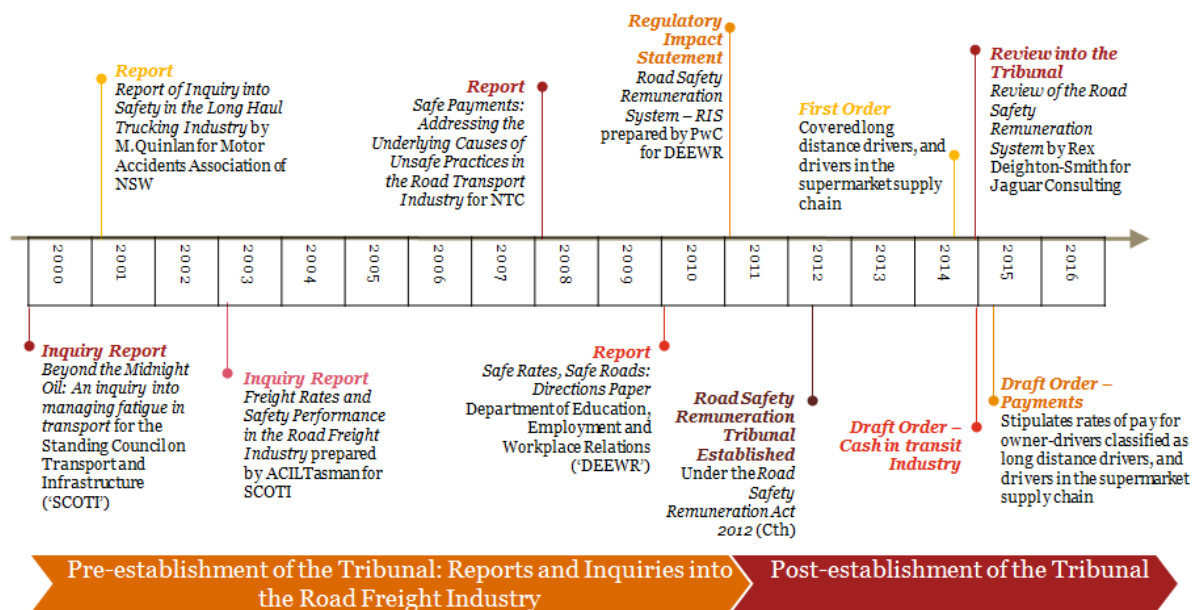
<sup>41</sup> Waste Contractors and Recyclers Association of NSW (March 2015) *Submission to Waste Inquiry*

<sup>42</sup> Transport Workers Union (March 2015) *Submission to Waste Inquiry*

# 3. The Road Safety Remuneration System

The Road Safety Remuneration System was established following a series of reports and parliamentary inquiries into safety within the road transport industry (refer Figure 10). These were motivated by an over-representation of heavy vehicles in road fatalities and serious injuries and the poor workplace health and safety record of the transport sector. These reports focused on whether, and to what extent, a link exists between driver remuneration and safety outcomes following concerns that economic pressures on drivers, particularly owner drivers, were fuelling unsafe practices.

**Figure 10: Establishment of the Road Safety Remuneration System**



These reports, as with much of the academic literature on the issue, came to different conclusions as to the link between remuneration and road safety.

*Beyond the Midnight Oil: An inquiry into managing fatigue in transport* recommended that the Transport Minister further examine remuneration measures to address road safety, but did not go so far as to support wage price regulation in the industry finding ‘these matters are to be set by industry itself.’<sup>43</sup> The *Freight Rates and Safety Performance in the Road Freight Industry* report also failed to find compelling evidence to support price regulation.<sup>44</sup>

In 2008 the National Transport Commission (NTC) produced *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry*, which

<sup>43</sup> 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*

<sup>44</sup> ACIL Tasman (2003) ‘Freight rates and safety performance in the road freight industry – a report prepared for the SCOT working group’

presented the findings of the research the NTC commissioned from Professor Michael Quinlan and the Hon Lance Wright QC. The mandate of this report was to establish whether there was a link between remuneration and road safety, whether there was a safety case for regulatory intervention and to present regulatory options. The report recommended that Commonwealth, state and territory transport and infrastructure ministers:

*‘1. recognise that payment rates and methods create an incentive for, or encourage unsafe on-road behaviours such as speeding, fatigue and use of illicit substances which contribute to poor safety outcomes in the trucking industry.*

*2. acknowledge that this link should be addressed through regulatory intervention*

...

*4. endorse the policy proposal in Option 3.’<sup>45</sup>*

Option 3 essentially recommended the establishment of the Tribunal, termed a ‘framework for a safe payments system’ that would also create ‘a low cost and accessible forum for the resolution of disputes.’<sup>46</sup>

In response to this report, the Department of Education, Employment and Workplace Relations produced the 2010 *Safe Rates, Safe Roads: Directions Paper*. This report recommended that a ‘new specialist tribunal with power to make orders regarding safe rates and related terms in the road transport industry’ be established.<sup>47</sup>

The Department sought public comment on the *Safe Rates, Safe Roads: Directions Paper*, and received 45 submissions, 21 of which supported the establishment of the Tribunal. Following stakeholder feedback, the Government engaged PwC to produce a Regulation Impact Statement (RIS), including a review of the costs and benefits of establishing a Tribunal with the power to increase rates of remuneration for road transport industry drivers. PwC found that:

*‘Based on conventional economic measures and the assumptions used in this RIS, both options generate a BCR [Benefit Cost Ratio] 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.’<sup>48</sup>*

The RIS found that the net cost imposed on the economy largely due to higher remuneration rates, especially for Option 3 (establishing the Tribunal), the costs of which are likely to be passed on in the supply chain and ultimately paid for by consumers (see Table 2). Since the 2011 RIS pre-dates the Road Transport Order, PwC did not consider the impact of non-remuneration conditions (e.g. safe driving plans). The analysis in this review differs from the 2011 RIS in that we consider the impact of the specific provisions in the Road Transport Order (e.g. workplace health and safety training and other non-remuneration conditions), and estimate the impact of increased remuneration using the rates in the Payments Order (significantly higher than the minimum wage used in the 2011 RIS in the absence of specific rates). We also consider the impact over a 15 year period starting 2012, rather than the 10 year period considered in the RIS. These differences in the scope of the analysis, now that we have specific regulations to analyse, increase the magnitude of the costs and benefits

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<sup>45</sup> National Transport Commission (NTC) produce the *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry* p.46

<sup>46</sup> Ibid p.43

<sup>47</sup> Department of Education, Employment and Workplace Relations (2010) *Safe Rates, Safe Roads: Directions Paper*

<sup>48</sup> PricewaterhouseCoopers (2011) *Road Safety Remuneration System: Regulation Impact Statement* Department of Education, Employment and Workplace Relations, p.47

quantified; but the finding that the cost of regulation outweighs safety benefits remains the same (see Chapter 6 and Appendix E: ).

**Table 2: 2011 Regulation Impact Statement cost benefit analysis results<sup>49</sup>**

| Option Type  | Benefit Cost Ratio | Net Present Value of benefits and costs |
|--|--------------------|---|
| <b>Option 2 – voluntary 10 per cent compliance rate</b><br>Overall sector <sup>50</sup>              | 0.49               | -\$44.4 million                         |
| <b>Option 3 – 60 per cent coverage and 90 per cent compliance rates</b> Overall sector <sup>51</sup> | 0.51               | -\$228.4 million                        |

Source: PwC 2011 Regulation Impact Statement Safe Rates

Given the results set out in Table 2, PwC recommended that ‘it is important to conduct further investigation aiming to address the issues above prior to determining a safe rate. One of the practical approaches to the issues is to commission a body that will investigate the implementation of safe rates which may cover the topics including, but not limited to:

1. identifying and addressing the data gaps in order to conduct the necessary investigation around the current state of owner drivers’ remuneration, and
2. conduct analysis which shows the extent of correlation between remuneration and high risk drivers on the road.’<sup>52</sup>

Despite this recommendation, the *Road Safety Remuneration Bill 2011* was introduced to Parliament, and passed on 20 March 2012. The *Road Safety Remuneration Act 2012* commenced 1 July 2012, allowing the Tribunal to commence activities from that date.

On 9 May 2013 the Coalition released its federal election policy for workplace relations, ‘*The Coalition’s Policy to Improve the Fair Work Laws*’<sup>53</sup> (the Election Policy). In the Policy the Coalition committed to ‘...urgently review the operation of the *Road Safety Remuneration Tribunal [the Tribunal]* and the need for a further level of regulation’ (see pages 10 and 35).

In late 2013, the Department of Employment commissioned Rex Deighton-Smith to undertake a review of the Tribunal. At the time of writing, the government was considering the findings of the review.

<sup>49</sup> A benefit cost ratio (BCR) is measured as the ratio of the Present Value (PV) total of incremental benefits net of PV over total incremental PV of capital costs. A BCR greater than one indicates that benefits derived exceed regulatory costs. Likewise, the net present value (NPV) allows comparison of the difference between the PV of total incremental benefits and the PV of the total incremental costs. A positive NPV implies that incremental benefits exceed the incremental costs over the evaluation period.

<sup>50</sup> In the 2011 Regulation Impact Statement, the ‘overall sector’ means the direct costs and benefits to the long haul road freight, short haul quarried and short haul agriculture sectors. No second round market responses were modelled due to data limitations.

<sup>51</sup> In the 2011 Regulation Impact Statement, the ‘overall sector’ means the direct costs and benefits to the long haul road freight, short haul quarried and short haul agriculture sectors. No second round market responses were modelled due to data limitations.

<sup>52</sup> PricewaterhouseCoopers (2011), *Road Safety Remuneration System: Regulation Impact Statement* Department of Education, Employment and Workplace Relations, p.70.

<sup>53</sup> The Coalition’s Policy to Improve the Fair Work Laws May 2013, accessed at <<http://paweb-static.s3.amazonaws.com/Policies/FairWork.pdf>>

### ***3.1 Overview of the System***

The System consists of:

- The Road Safety Remuneration Tribunal (the Tribunal)
- The Fair Work Ombudsman (the Ombudsman)

The Tribunal is an independent statutory body whose functions are set out in the Act. The Tribunal has a multifaceted role within the System. The Tribunal has four primary functions:

1. Making road safety remuneration orders (Orders)
2. Approving and assisting with negotiations for road transport collective agreements (Collective Agreements)
3. Dispute resolution
4. Research into pay, conditions and related matters that could affect the road transport industry.

As a regulator, the Tribunal can place obligations on employers, hirers, consignors and other participants in the road transport industry. Orders and Collective Agreements may deal with the following:

- conditions for loading and unloading vehicles, waiting times, working hours, load limits, payment methods and payment periods
- other incentives, pressures and practices that contribute to unsafe work practices.

Orders can be made at the Tribunal's own initiative or upon application by an interested party. The Tribunal must produce a draft Order for consultation prior to making any Order. The Tribunal may hold conferences or private hearings, receive submissions and commission research in determining whether an Order should be instated, and what the contents of that Order should be. When making an Order the Tribunal must consider a range of factors including the impact of the Order on business viability and the wider economy. Orders last for a period of four years, and are required to be reviewed 12 months before their expiry.

The Tribunal also takes on a 'quasi-judicial' role, and is able to resolve disputes between parties and hear evidence in relation to its regulatory functions. Unlike a judicial body, the Tribunal may exercise an additional research function and seek information outside the evidence and opinions presented by parties.

Orders, collective bargaining agreements and dispute resolution determinations are binding on drivers, employers or hirers, or other supply chain participants operating within the road transport industry sub-sector over which the instrument applies. The Tribunal is required to prepare an Annual Work Program in consultation with stakeholders, stipulating areas of focus within the road transport industry.

The Ombudsman is responsible for educating affected parties as to the operation of the Tribunal and the impact of its instruments, and monitoring and aiding compliance with these instruments. The Ombudsman has the power to investigate non-compliance, and take a number of actions following non-compliance including issuing warning or non-compliance notice, referring matters to relevant authorities, commencing proceedings in court and representing drivers in relevant proceedings.

# 4. *The need for the System*

This chapter considers the appropriateness of the Road Safety Remuneration System to support outcomes. It does so in terms of the following questions:

1. **Need for Regulation:** Does the intervention fulfil an identified need for regulation?<sup>54</sup>
2. **Broader regulatory context:** Does the current regulation fit and complement the broad regulatory framework, or is there a more appropriate and effective use of Australian monies?
3. **Function and activities of the System:** If a need for regulation is established, will the functions and activities stipulated in the legislation deliver on the regulatory objectives? Could the bodies tasked with regulation be better equipped to deliver on these objectives?

## 4.1 *The need for regulation*

The Road Safety Remuneration System was established as part of a broader government commitment to do ‘all that is necessary to ensure that our truck drivers, whether they be an employee or a self-employed owner-driver, have a safe and fair workplace, while sustaining the long-term viability of the road transport industry’.<sup>55</sup>

The then-Government concluded that ‘a national approach to safety issues that address pay as well as pay-related conditions in the industry, particularly for owner drivers’ needed to be established.<sup>56</sup> This was predicated on the existence of *a link between remuneration and road safety*, and an assurance that these regulations would deliver a *net benefit* to society.<sup>57</sup>

In this regard:

- although a number of studies have found a statistically significant link between remuneration and road safety, evidence as to the extent and nature of this relationship varies substantially, is limited in size, focuses on employee drivers and largely uses international data sets (see Chapter 5 for more discussion and analysis).
- the regulation of remuneration under the Payments Order is likely to place significant costs on business, raising questions about the achievability of a net benefit (see Chapter 6 for more discussion and analysis).

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<sup>54</sup> The Australian Government has stipulated a broad commitment to regulation minimisation and red tape reduction:

‘Regulations that are properly adapted to purpose and are not unnecessarily burdensome can protect the community and help support a safe, strong, productive and dynamic modern Australian economy... [However] where unnecessary restrictions exist in licensing and other areas, competitive pressures in an industry can be reduced, in turn discouraging innovation and productivity.’, Australian Government (2014) *Annual Deregulation Report*

<sup>55</sup> House of Representatives Parliamentary Debates 23 November 2011, Hon Anthony Albanese MP p. 13535.

<sup>56</sup> Ibid p. 13526

<sup>57</sup> Required under the Australian Government, Department of Prime Minister and Cabinet (2014) *Australian Government Guide to Regulation*

In light of the ongoing uncertainty as to the extent and nature of the link between remuneration and road safety and the large economic impact of such regulation we maintain the position in the 2011 RIS that the government should commit resources to:

1. identifying and addressing the data gaps in order to conduct the necessary investigation around the current state of owner drivers' remuneration, and
2. conduct analysis which shows the extent of correlation between remuneration and high risk drivers on the road.<sup>58</sup>

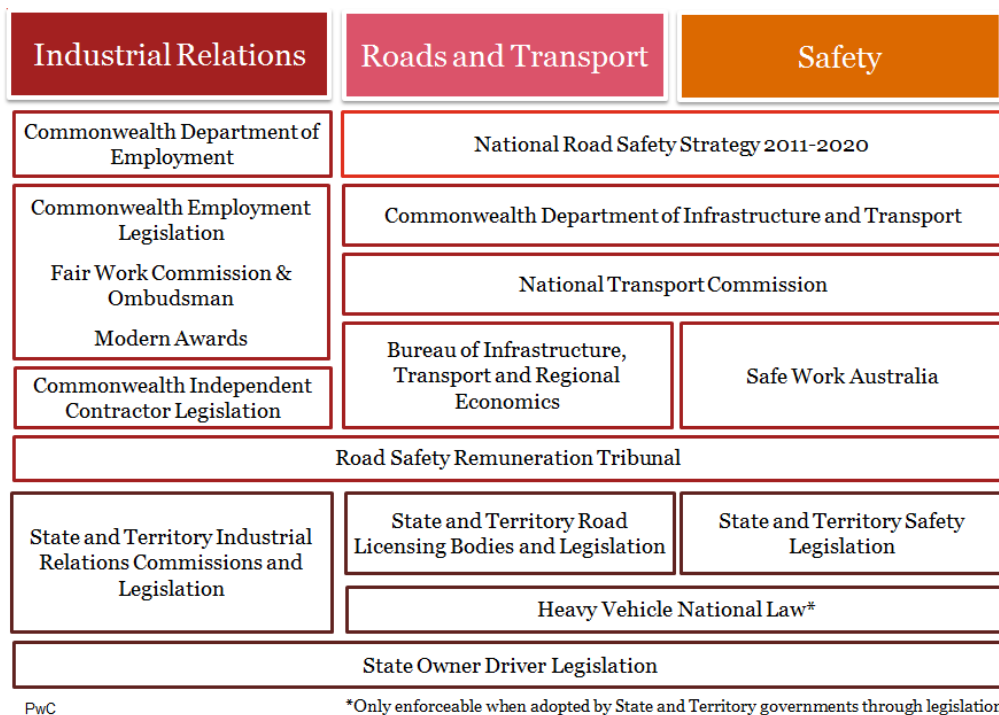
*Conclusion: It is not clear that there is a need for regulation, given continuing uncertainty as to the link between remuneration and road safety. Moreover it is questionable whether the System delivers a net benefit (i.e. where the benefits of the System are outweighed by the associated costs). This conclusion is supported by our regulation impact analysis, which finds the operation of the Tribunal is likely to impose greater costs than benefits.*

## 4.2 Broader regulatory context

The road transport industry is covered by a range of laws and regulations that can broadly be categorised as relating to roads and transport, workplace health and safety, and industrial relations. These laws and regulations place obligations on employee drivers, contractor drivers, employers, hirers and other supply chain participants. Both levels of government are involved in the regulation of roads and transport, safety, and industrial relations.

Figure 11 summarises the key regulators and legislation governing the road transport sector.

**Figure 11: Overview of laws and regulatory and policy bodies** <sup>59</sup>



<sup>58</sup> PricewaterhouseCoopers (2011) *Road Safety Remuneration System: Regulation Impact Statement*, Department of Education, Employment and Workplace Relations, p.70

<sup>59</sup> The application of Commonwealth employment legislation differs in Western Australia compared to the other states. See Appendix C: for more information.

### 4.2.1 Regulatory overlap

There appears to be significant overlap between the System and other regulations. Figure 12 shows the potential overlap between orders made by the Tribunal and other legislative frameworks. Particular areas of overlap include aspects of chain of responsibility, adverse action protections, and in particular, safety regulation. The degree of overlap depends on the legislation specific to each jurisdiction, which varies according to the adoption of model legislation and in the case of industrial relations legislation, the referral of powers. See Appendix C: for more information.

**Figure 12: Areas of potential regulatory overlap**

| Order/<br>Legislation<br>type                             | Employee<br>(E)/owner<br>driver<br>(OD)<br>coverage | Jurisdiction   | Pay<br>regulation | Leave<br>regulation | Unfair<br>conduct/<br>adverse<br>action<br>protection<br>regulation | Workplace<br>health and<br>safety<br>(including<br>fatigue<br>management)<br>regulation | Drug<br>and<br>alcohol<br>policies | Chain of<br>responsibility<br>regulation |
|---|---|--|-------------------|---------------------|---|---|------------------------------------|--|
| <b>First Order</b>  | E and OD  | Commonwealth<br>(Cth)                                  | No                | No                  | Yes   | Yes   | Yes                                | Yes                                      |
| <b>Draft CIT<br/>Order</b>                                | E and OD  | Cth  | No                | No                  | Yes   | Yes   | Yes                                | Yes                                      |
| <b>Payments<br/>Order</b>                                 | OD  | Cth  | Yes               | Yes                 | No  | No  | No                                 | Yes                                      |
| <b>Fair Work<br/>Commission<br/>and Modern<br/>Awards</b> | E   | Cth and all<br>States/<br>Territories apart<br>from WA | Yes               | Yes                 | Yes   | No  | No                                 | No                                       |
| <b>Independent<br/>Contractor<br/>Act</b>                 | OD  | Cth  | Yes               | No                  | Yes   | No  | No                                 | No                                       |
| <b>Owner Driver<br/>Legislation</b>                       | OD  | WA, VIC, NSW   | Yes               | Yes                 | Yes   | No  | No                                 | No                                       |
| <b>Heavy Vehicle<br/>National<br/>Laws</b>                | E and OD  | All States and<br>Territories<br>except WA and<br>NT   | No                | No                  | Yes   | Yes   | No                                 | Yes                                      |
| <b>Workplace<br/>Health and<br/>Safety Laws</b>           | E and OD  | All States and<br>Territories                          | No                | No                  | No  | Yes   | Yes*                               | No                                       |

\*Workplace health and safety laws do not mandate drug and alcohol policies. However, the general duties of care 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.

Note: Heavy Vehicle National Laws are enacted through model legislation, which has been adopted by all states, except Western Australia, and the ACT.

Source: PwC analysis of legislative regimes

The Tribunal must have regard to several factors under s20 of the *Road Safety Remuneration Act 2012* when making an Order. These factors should encourage the Tribunal to avoid regulatory duplication:

- (e) orders and determinations made by the Minimum Wage Panel of Fair Work Australia 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*

For example, in the decision accompanying the Road Transport Order the Tribunal provided the following reasoning to support that clauses under the Order - safe driving plans, workplace health and safety training, drug and alcohol policies, timing of payments and

adverse conduct protection - are consistent with the concurrent operation of other determinations and laws as outlined in section 20:<sup>60</sup>

- safe driving plans, training and drug and alcohol policy clauses apply nationally and are consistent with clauses awarded in the NSW Mutual Responsibility case by the Industrial Relations Commission of New South Wales (s20(e))
- payment time clause is also nationally applicable and enforceable and is consistent with the Western Australian Owner-Drivers (Contracts and Disputes) Act and the Owner Drivers and Forestry Contractors Code under the Victorian Owner Drivers and Forestry Contractors Act (s20(f))
- adverse conduct protection clause extends part of the general protections provisions of the Fair Work Act in recognition of the limits of those provisions in respect of a participant in the supply chain (s20(g))

Many stakeholders have expressed concern, however, that the Tribunal has not adequately considered other regulation in making Orders. For example, Toll Holdings Ltd consider that requirements relating to risk assessments contained in the Draft Cash in Transit Order 'are already regulated by State and Territory WHS laws...[and] would overlap these laws, in a manner inconsistent with paragraph 20(1)(g) of the Act'.<sup>61</sup> The Australian Industry Group went so far as to say that the 'absence of material before the Tribunal in respect of any of the matters listed at ss 20(1)(a)-(j) does not relieve the RSRT of the obligation to have regard to them', advocating that the Tribunal conduct further research into the impact of the measures on economic and business viability.<sup>62</sup>

Where there is overlapping legislation, the Act states that terms in Tribunal Orders and other enforceable instruments prevail over provisions in modern awards and enterprise bargaining agreements, where the terms of the Tribunal's instrument are 'more favourable'.<sup>63</sup> State and territory legislation regulating the same areas will be void to the extent of any inconsistencies.<sup>64</sup> See Appendix C: for more information.

However, the Tribunal can still place obligations on parties, where a similar but not conflicting obligation exists and is pursuant to the same objective. For example, fatigue control:

- Driver work and rest hours are strictly regulated under the Heavy Vehicle National Law and the Heavy Vehicle (Fatigue Management) National Regulation 2013, including the completion of a work diary or vehicles with a Gross Vehicle Mass of over 12 tonnes who operate in an area with a radius of 100km or more from their home base. In addition to these requirements, under Chain of Responsibility in Heavy Vehicle National Law there is also a duty placed on drivers to not drive when fatigued (s228), and a duty placed on

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<sup>60</sup> Full Bench Decision for the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 [2013] RSRTFB 7

<sup>61</sup> Toll Holdings Ltd Submission to the Draft Cash in Transit Order (18 June 2015), accessed at <[http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/CiT%20draft%20order%202015/Toll%20Submissions-Draft-RSRO-CiT-18June2015\\_Redacted.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/CiT%20draft%20order%202015/Toll%20Submissions-Draft-RSRO-CiT-18June2015_Redacted.pdf)>

<sup>62</sup> Australian Industry Group Submission to the Draft Contractor Driver Minimum Payments Road Safety Remuneration Order (30 September 2015) Para 17, accessed at <[http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/draft-Payments-RSRO/NatRoad-RoadFreightNSW-draft-Payments-RSRO-300915.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/draft-Payments-RSRO/NatRoad-RoadFreightNSW-draft-Payments-RSRO-300915.pdf)>

<sup>63</sup> *Road Safety Remuneration Act 2012* (Cth) ss10 -15

<sup>64</sup> *Road Safety Remuneration Act 2012* (Cth) ss10 -11

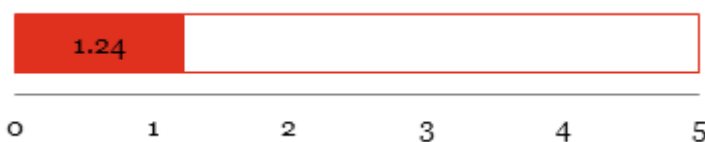
supply chain participants to ensure drivers and other supply chain participants do not infringe supply requirements (sections 229-241).

- Safe driving plans (required by the Road Transport Order) also operate to manage fatigue of drivers operating trucks over 4.5tonnes Gross Vehicle Mass and are undertaking a long distance operation, defined as a trip of 500km or more.
- Further, under various workplace health and safety laws a person conducting a business or undertaking also has a duty to as so far as reasonably practicable ensure that the health and safety of workers, including employee and owner drivers, is not placed at risk. This implicitly includes a duty to manage fatigue, but also to ensure that drivers do not work under the influence of drugs and alcohol and provide training.

In consultations, other transport regulators expressed concerns regarding concurrent regulations in pursuit of the same objectives. In particular, the concern that the Heavy Vehicle National Law and workplace health and safety laws take a performance based as opposed to a prescriptive approach, requiring that parties attain certain outcomes but giving them flexibility as to how they are achieved. A performance based approach is used to balance the need to achieve safety objectives with the desire to minimise the regulatory burden on participants in the industry. This is in contrast to the nature of the policies on the System that adopt a prescriptive approach. For example, clause 7 of the Road Transport Order requires that employers or hirers provide written contracts for drivers, prescribing a list of 13 elements to be included, and not allowing for instances where it is impracticable to draft a contract, such as ad hoc rural work. The Tribunal's more prescriptive approach is viewed as counterproductive to the concurrent regulations' burden minimisation approach.

In our discussions, government agencies and industry associations generally indicated that the Tribunal had a limited regulatory role to play in relation to any matter other than remuneration, and highlighted confusion and uncertainty stemming from the Tribunal's regulations to date. This is supported by the results in our survey of industry stakeholders, through which 141 respondents asserted the System fits poorly into the broader regulatory framework.

**Figure 13: 'How well do you consider the Road Safety Remuneration System (Tribunal and Ombudsman) fits into the broader heavy vehicle regulation and road safety context?'**



Source: PwC Industry survey

The Tribunal is the sole regulatory body that has the power to set rates of remuneration for owner drivers across Australia. It also has powers to regulate remuneration-related requirements by placing obligations on road transport supply chain participants (excluding drivers). The Tribunal has used this power to create one instrument that is currently in force, which placed obligations including details of contract provisions, timing of payments and safe driving plans. To this end, while there may not be any other national regulatory body with the power to set rates of remuneration for owner drivers, the requirements of the Road Transport Order appear to overlap with existing regulation.

*Conclusion: There is a high degree of overlap between the System and other regulations governing road transport, safety, and industrial relations. While the System has mechanisms to ameliorate that overlap, consultations suggest the Tribunal has not to date adequately considered existing regulation in making orders. Moreover, the Tribunal can still place obligations on parties, where a similar but not conflicting obligation exists and is*

*pursuant to the same objective. Stakeholders responding to our survey generally felt that the System fits poorly into the broader regulatory context. Regulatory overlap is compounded by differences in approach to the administration of regulation. Although there is a high degree of overlap in general, the Tribunal is the sole body that has the power to set national rates of remuneration for owner drivers across Australia.*

### **4.3 Functions and activities of the System**

The Act's objectives are to promote safety and fairness in the road transport industry by doing the following:

- ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner
- removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices
- 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
- developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers
- ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards
- facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

To support these objectives, the Tribunal is required to undertake a number of functions, including:

- making Road Safety Remuneration Orders
- facilitating the negotiation of collective bargaining agreements
- resolving disputes between parties

In consultations, owner driver representatives expressed concerns with some of these functions. In particular, that all functions of the Tribunal require active engagement with interested parties, leading to underrepresentation of the views of owner drivers who are not likely to be engaged with the System and prefer to settle their own terms and conditions. The Transport Workers Union maintains however, that there is a need to address 'rates of remuneration, remuneration systems and associated issues in the sectors covered by the [Road Transport Order]' to 'ensure that those holding the economic power at the top of transport supply chains are held accountable'.<sup>65</sup>

The processes the Tribunal is required to go through to exercise its functions do not always represent the views of all interested parties. This is due to:

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<sup>65</sup> Transport Workers Union (2014) *Submission to the Tribunal in relation to the Second Annual Work Program* pp 5

- the high opportunity cost of participating in the Tribunal’s consultation processes and the lack of awareness and understanding as to the operation of the Tribunal
- the level of engagement required to develop written submissions and participate in a meaningful manner to the Tribunal’s proceedings, which is prohibitive for many organisations, especially within short time frames.<sup>66</sup>

On the other hand, in consultations stakeholders were broadly supportive of areas of inquiry targeted by the Tribunal. However, some industry representatives expressed concern that - through the consultation process - the Tribunal is spreading its resources too thinly, and would be best to focus on a few targeted areas that are more likely to achieve safety results.<sup>67</sup>

*Conclusion: Stakeholders expressed concerns with some of the Tribunal’s functions – particularly the cost of the stakeholder engagement process for owner drivers. On the other hand, they were broadly supportive of the Tribunal’s areas of inquiry.*

#### **4.3.1 Do the activities and functions of the Ombudsman deliver on the objectives of the Act?**

The Ombudsman’s role is to monitor and ensure compliance with the Act and enforceable instruments. The Ombudsman is also responsible for educating workplace participants about the legislation. Section 74 of the Act provides for this function:

- a) to monitor compliance with this Act and enforceable instruments, including by providing education, assistance and advice to road transport drivers, their employers or hirers and participants in the supply chain in relation to road transport drivers;*
- b) to inquire into, and investigate, any act or practice that may be contrary to this Act or an enforceable instrument;*
- c) to commence proceedings in a court to enforce this Act and any enforceable instrument;*
- d) to refer matters to relevant authorities;*
- e) to represent road transport drivers who are, or may become, a party to proceedings in a court under this Act, if the Fair Work Ombudsman considers that representing the drivers will promote compliance with this Act or an enforceable instrument.*

The Ombudsman has reported that there has been little compliance activity to date. Although there are few complaints, anecdotal evidence provided through stakeholder consultations held via teleconference suggests there is a poor level of compliance with the Road Transport Order within the road transport industry. This is discussed in more detail in the next chapter.

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<sup>66</sup> For example, Australian Industry Group (August 2013) *Submission regarding the Draft Road Safety Remuneration Order* said “Unfortunately, the extremely short timeframe provided by the Tribunal for interested parties to provide their comments in respect of the RSRO has meant that consultation, particularly with those businesses that would be captured by the expanded scope of the RSRO, such as participants in the supply chain, has been inadequate.”

<sup>67</sup> For example, the Australian Road Transport Industrial Organisation (8 December 2015) *Submission regarding the Fourth Work Program* noted the draft fourth work program “is broad in its content and application ... ARTIO contends that the time, energy and expertise of the Tribunal and the various parties appearing before the Tribunal should continue to focus on completing the existing agenda”

Given the traditional role of the Ombudsman in promoting workplace relations and compliance with workplace laws,<sup>68</sup> it may not be the best placed body to educate drivers and undertake enforcement actions as they relate to non-remuneration requirements. We consider that this is particularly the case for safety requirements such as safe driving plans, which do not fall within the traditional ambit of the Ombudsman. This conclusion is based on views expressed in our consultations and survey responses, which indicated ‘on the side of the road’ education and compliance, where vehicles are pulled over and checked as under Heavy Vehicle National Law, is more appropriate

In addition, the Ombudsman’s ability to effectively support the Tribunal in achieving the objectives of the Act is dependent on the Tribunal handing down instruments that are easy-to-understand and enforceable. Stakeholders have indicated the Road Transport Order and the Payments Order have caused confusion in the industry.<sup>69</sup>

Freight companies and drivers in comments to our surveys, and industry associations in consultation considered that education of regulatory change and obligations are best delivered ‘on the side of the road’, and that the formats and channels that government agencies typically employ, such as websites and apps, were less suited to outreach among a driver audience. In contrast, participants of the supply chain were equipped with resources to properly understand and interrogate responsibilities put upon them.

Time spent seeking regulatory advice also carries an actual and opportunity cost. Several stakeholders explained that drivers are far more likely to deal with the consequences of non-compliance, such as paying a fine, even if they believe they are not in the wrong to avoid the opportunity cost they would incur by missing time spent driving to dispute the fine or other penalty.

*Conclusion: One of the key functions of the Ombudsman relates to compliance, however the Ombudsman appears to be ill-suited to deliver compliance activities relating to non-remuneration requirements, such as safety. These functions are better delivered by entities that provide ‘on the side of the road’ education and compliance and who are already responsible for such safety matters, such as the National Heavy Vehicle Regulator or workplace safety agencies.*

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<sup>68</sup> Fair Work Ombudsman website, accessed November 2015 at <<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/about-us/about-the-fair-work-ombudsman>>

<sup>69</sup> The Payments Order was in draft form at the time of consultation. We are of the view that the concerns stakeholders expressed in consultations remain relevant. The key sources of confusion, the coverage of the Order and the complex structure of the rates, did not change significantly from the draft to the final version of the Order.

# 5. *The System's safety impact*

This chapter considers the following: 1) has the Ombudsman been effective in its education and compliance function; and, 2) has the System achieved its safety objective.

## 5.1 *Education and Compliance*

### *Education function*

Since the inception of the Road Safety Remuneration System, the Ombudsman has engaged in the following educational activities:<sup>70</sup>

- developed web content, launched in 2012, tailored to road transport industry participants, including provision of:
  - detailed information about the application of the *Road Safety Remuneration Act 2012* and instruments
  - information about the implications for employers, employees, hirers, owner-drivers and supply chain participants
  - checklists to assist parties to identify whether a person is covered by the Road Safety Remuneration System.
- published information regarding the Road Transport Order on its website
- contracted the Australian Road Transport Industry Association (ARTIO) to develop a handbook, and Transport Workers Union (TWU) to create a smartphone application regarding the Act and Road Transport Order.

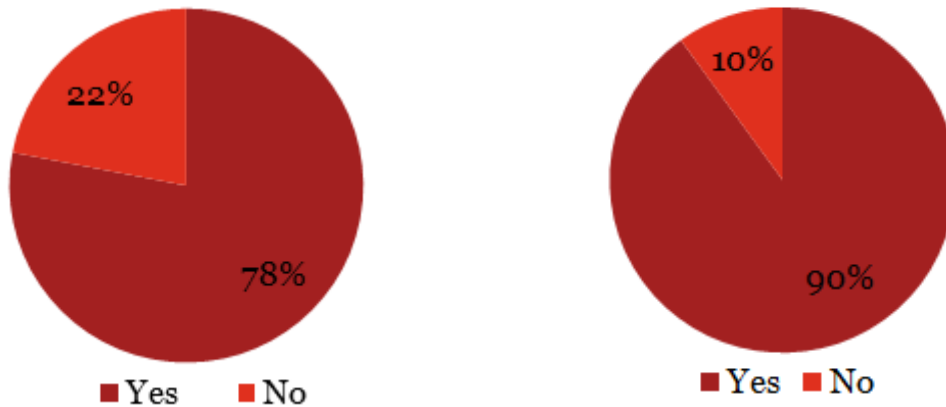
We understand that as a result of these activities, ten thousand copies of the ARTIO handbook were distributed. The ARTIO also conducted workshops and seminars that reached over 1,800 participants to educate operators about the operation of the System. The Transport Workers Union's app is yet to be released, however, we are advised that it is currently being updated following feedback from the Ombudsman and Tribunal.

These educative activities, and the education campaigns of industry and driver representatives, appear to have had an impact on increasing awareness and understanding of the Tribunal and its functions. The majority of participants to our surveys were aware of the Tribunal, however survey data is likely to be skewed as survey participants were more likely to be engaged with the System.

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<sup>70</sup> Fair Work Ombudsman, 8 October 2015, email correspondence with PwC

**Figure 14: ‘Have you heard of the Road Safety Remuneration Tribunal?’**



Source: PwC Driver Survey

Source: PwC Industry survey (freight companies only)

While we observed continued participation by many interested industry and employee-representative parties in the Tribunal, the understanding of the Tribunal’s role appears limited within the broader industry, particularly among owner drivers. The Road Transport Order and Payments Order have also been received by stakeholders with some confusion.

The majority of stakeholders we consulted, particularly industry representatives, indicated that significant ambiguity exists as to who is covered by the orders, and who will be responsible for terms that relate to supply chain participants; ‘many industries can at various times fall into the definition of “long distance” in the 2014 Order’.<sup>71</sup> In part, there is some confusion as to the differing definitions of a road transport driver within the meaning of the *Road Safety Remuneration Act 2012* and the National Heavy Vehicle Law. But much of the other confusion we heard related to the coverage of supply chain participants, and to whom requirements for safe driving plans and other non-remuneration provisions apply. For example, a major supermarket retailer had identified that while it had clear oversight for distribution of goods under its freight arrangements, it often did not know or have a role in freight of goods that were destined for its shelves. There is also ambiguity as to whether livestock from farms that would be subject to interim freight arrangements, but were ultimately packaged and sold as meat products in its supermarkets, would be covered under the orders. In these cases, the supermarket retailer did not have a role in the commercial arrangements covering farm gate and processing, and yet, under a reading of the Order, they were uncertain as to whether they would have responsibilities for those movements as a ‘supply chain participant’.

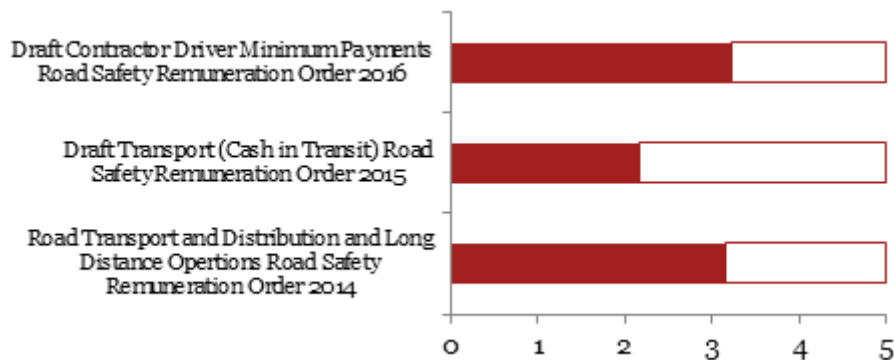
Survey respondents however, reported a reasonable understanding of obligations of the Road Transport Order and the Payments Order.<sup>72</sup> Understanding was higher among surveyed industry stakeholders than among drivers (refer Figure 15 and Figure 16). While Orders place requirements upon supply chain participants, the ambiguity among drivers regarding the obligations of the Road Transport Order suggests that they have a limited understanding of whether they are covered by the Order, and therefore if the contracting party to whom they are working is fulfilling its obligations under the Order.

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<sup>71</sup> Australian Business Lawyers and Advisors (25 September 2015) *Submissions to the Third Annual Work Program: Section 24 Submissions*, s5.3

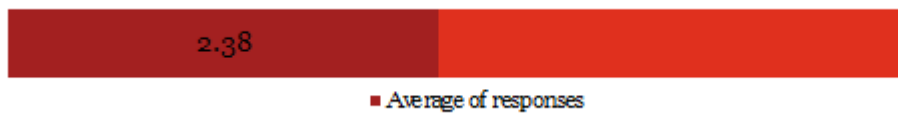
<sup>72</sup> The Payments Order was still in draft form when the survey was live.

**Figure 15: ‘Please rate your understanding of the obligations imposed by the Order in the Road Transport Industry’ – where 0 indicates low/no understanding and 5 indicates a high/full understanding.**



Source: PwC Industry Survey

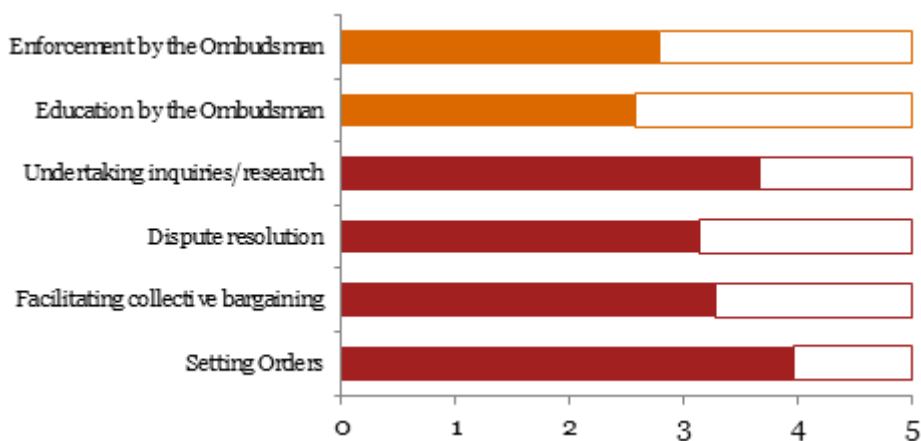
**Figure 16: ‘Please rate your understanding of what is required by you/your employer or hirer under the First Order?’ (where 0 indicates low/no understanding and 5 indicates a high/full understanding)**



Source: PwC Driver Survey

Drivers in the survey rated their understanding of the Ombudsman’s function lower than their understanding of the Tribunal’s role (see Figure 17). And as stated before, as the survey participants are likely to be more engaged, these findings likely overstate the general level of awareness of the Ombudsman’s role.

**Figure 17: ‘Please rate your awareness of the activity on a scale of 0 to 5’ (Red bars represent activities of the Tribunal)**



Source: PwC Driver survey

### ***Enforcement function***

The Ombudsman has reported that there has been little compliance activity as only one Order has been in force at the time of writing, and few complaints have been brought to the Ombudsman. As a result, the Ombudsman has not used its power to inquire and investigate into incidences of non-compliance.

Since the Road Transport Order took effect in May 2014, the Ombudsman has received 12 complaints under the Road Transport Order, nine of which were received from the public (the remaining three were referred from the Tribunal). Of these, the Ombudsman undertook enforcement action in six cases, issuing letters of caution and/or infringement notices. In the remaining six cases, the Ombudsman reported that no further action was taken, or that investigations are ongoing.<sup>73</sup>

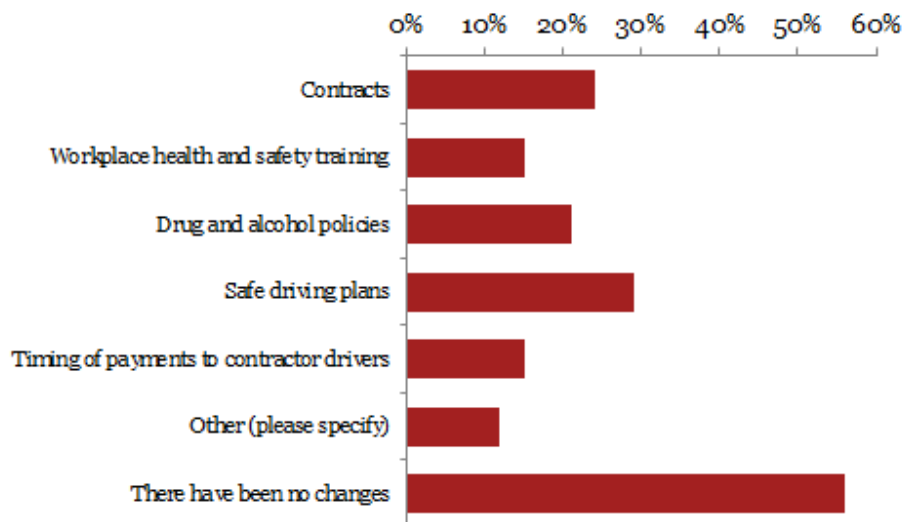
Under s 75 of the Act, the General Manager can refer a matter regarding non-compliance with an enforceable instrument to the Ombudsman for investigation. Since the Tribunal's inception, two such instances have occurred:<sup>74</sup>

- a remote roadside bogging of a truck driver in Western Australian in January 2015 that led to his death
- the death of a truck driver in February 2015 after losing control of a B-double truck.

Based on evidence provided to this review, the Ombudsman appears to distribute resources for its monitoring and compliance function across all industries in line with the number of complaints and other evidence the Ombudsman receives. Compared to the 12 complaints received under the Road Transport Order, the Ombudsman has received a total of 25,000 complaints across all of its functions since the Road Transport Order came into effect.

Industry associations indicated that they suspect that there is widespread non-compliance with the Road Transport Order. The suspected non-compliance relates to written contract and safe driving plans, which many operators consider unworkable. Some 56 per cent of respondents to the driver survey indicated that there have been no changes to work practices since the Road Transport Order came into effect (refer Figure 18), suggesting that either there is non-compliance within the sector, or that provisions within the Order are aligned with existing practices and so are not affecting practices within the sector.

**Figure 18: Have there been changes since the First Order commenced?**



Source: PwC Driver Survey

<sup>73</sup> Fair Work Ombudsman, 8 October 2015, email correspondence with PwC

<sup>74</sup> Fair Work Commission, 29 October 2015, Response to information request under s 120: Review of the Road Safety Remuneration Tribunal. Specific outcomes of these incidents were not provided.

Respondents to the driver survey rated the likely compliance of employers/hirers to the Payments Order, when it comes into effect in April 2016, at 1.9 out of 5, and only 1.6 out of 5 for likely compliance with the Draft Cash in Transit Order. This suggests that drivers consider that there are systemic issues of non-compliance and/or awareness with the Tribunal's Orders. Our research suggests that road transport safety compliance requires proactive and 'side of the road' enforcement to be effective. Other national and state regulators already have responsibilities in undertaking roles of this nature. The views of stakeholders that it is likely that Orders won't be widely complied with, impeding the System's ability to achieve safety outcomes. It also suggests that more needs to be done to improve the level of compliance in the industry, with a focus on direct engagement with drivers to point out non-compliant practices, how they can be addressed and what the consequences of non-compliance are.

*Conclusion: There is a lack of understanding of requirements under the Road Transport Order, and as a result, anecdotal evidence from consulted stakeholders of non-compliance within the sector. Stakeholders reported similar confusion regarding the Payments Order, particularly regarding coverage of the Order. Existing approaches to education and enforcement requires greater proactive engagement with drivers, and may be best achieved with 'on the ground' activities and approaches as adopted by other national and state regulators in the road transport industry.*

## **5.2 Safety Impact of the System**

This section is divided into two parts. The first part (section o) analyses whether there has been an actual safety impact post-2012, and the second part (section o) considers the potential safety beyond 2015, including the impact of the Payments Order when it comes into effect in April 2016, and the draft Cash in Transit Order.

### **5.2.1 Has there been a safety impact since 2012?**

The *National Road Safety Strategy 2011-2021* is assessed against five high level outcome measures:<sup>75</sup>

1. Number of deaths resulting from crashes
2. Number of road crashes resulting in fatalities (number of fatal accidents)
3. Number of deaths per 100,000 population
4. Number of deaths per 100 million vehicle-kilometres travelled (we used one million vehicle – kilometres travelled)
5. Number of deaths per 10,000 registered vehicles.

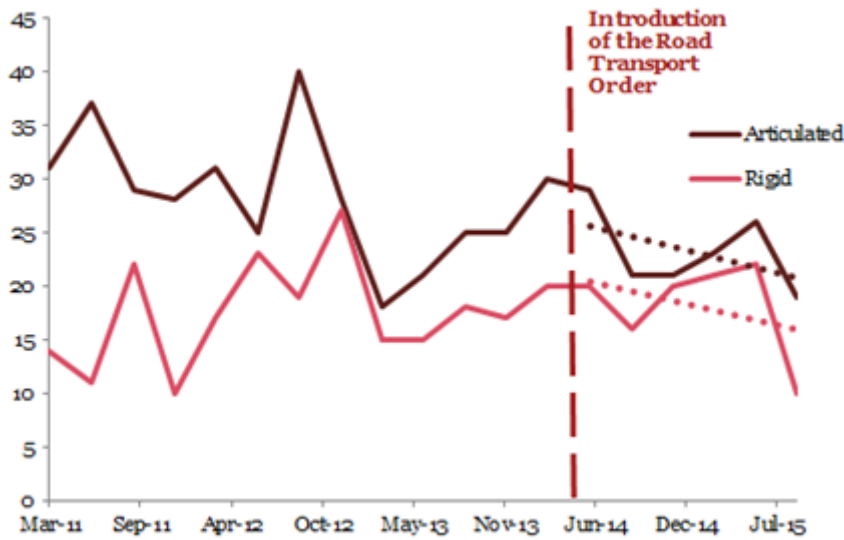
We have adopted these high level indicators and applied them to heavy vehicle accidents to assess whether the Road Transport Order, the only enforceable instrument currently in operation,<sup>76</sup> has had an impact on road safety outcomes. These are represented in Figure 19 through to Figure 23 below.

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<sup>75</sup> National Road Safety Strategy 2011-2020, accessed at <<http://roadsafety.gov.au/performance/spis.aspx>>

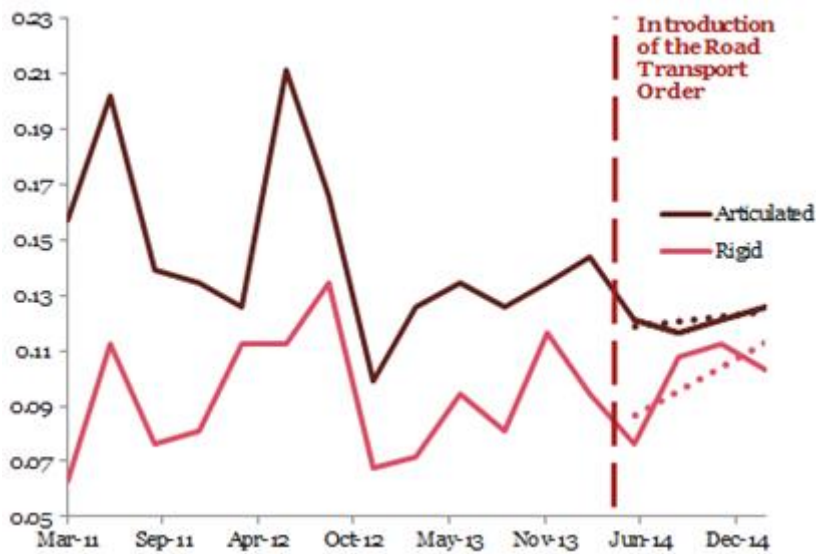
<sup>76</sup> The Payments Order does not come into operation until April 2016

**Figure 19: Heavy vehicle crash data – number of fatal accidents**



Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014

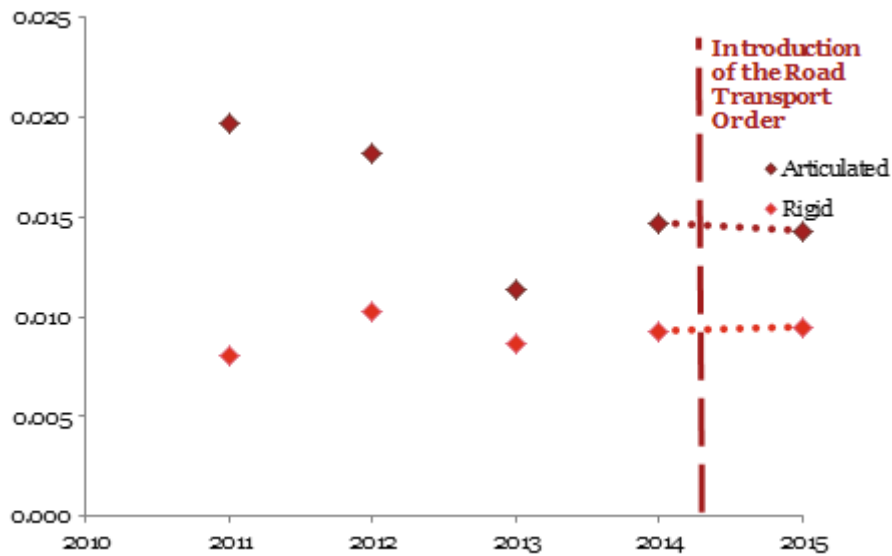
**Figure 20: Number of deaths per 100,000 population**



Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014; ABS March 2014, Australian Demographic Statistics cat. 3101.0

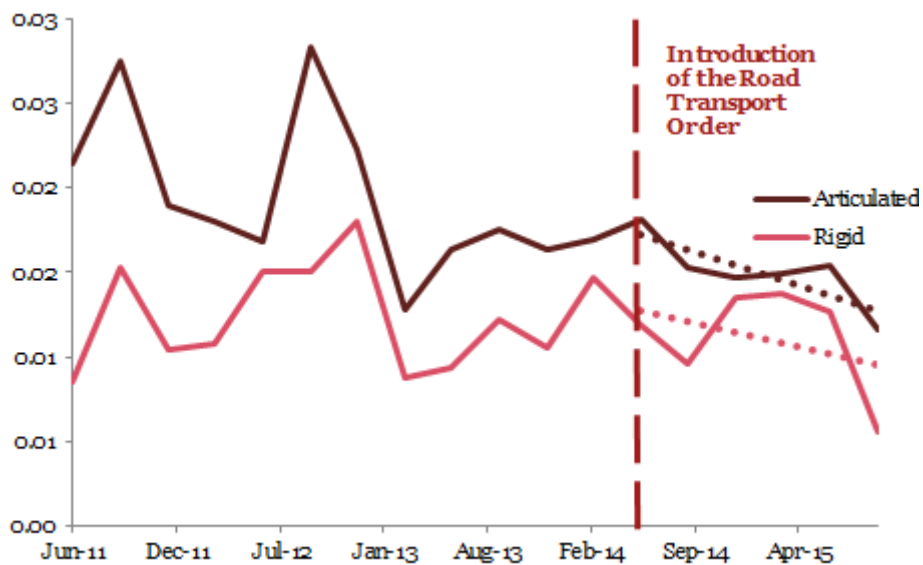
Note – Demographic statistics were only available to March 2015.

**Figure 21: Number of fatalities involving heavy vehicles per 1,000,000km**



Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014; ABS (2014) Survey of Motor Vehicle Use.

**Figure 22: Deaths per 10,000 registered Vehicles**



Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014; ABS (2014) Survey of Motor Vehicle Use.

Note: We assumed the number of vehicles stays constant over each year, and that the number of vehicles in 2015 = 2014 \* 2 per cent (average annual growth rate of vehicles from 2011 to 2014)

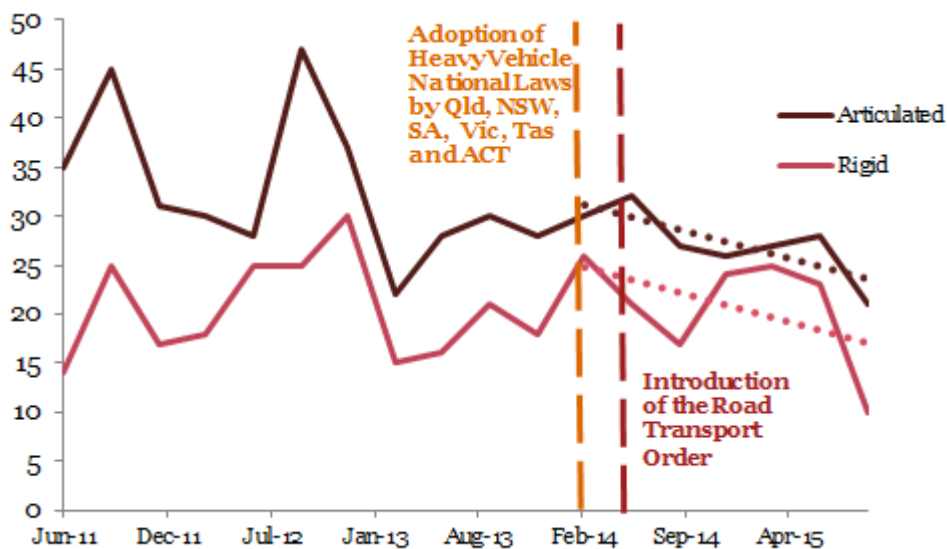
Benchmarked against the total number of fatal crashes and deaths (Figure 19 and Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014; ABS (2014) Survey of Motor Vehicle Use.

Figure 22), there is a correlation between the introduction of the Road Transport Order and an improvement in safety outcomes. However, when data is controlled for the population or kilometres travelled, the trend line indicates deterioration in safety outcomes (Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014

Figure 20 and Figure 21).

The varied results in these outcome measures reflect that statistics are influenced by a number of causal factors, including conditions on the road and the existence of other regulations in the sector. In particular, the operation of National Heavy Vehicle Law, which came into force in February 2014, may also have contributed to safety outcomes. The trend following the adoption of the National Heavy Vehicle Laws by New South Wales, the Australian Capital Territory, South Australia, Queensland, Victoria and Tasmania shows an improvement in safety outcomes since early 2014, concurrent with the introduction of the Road Transport Order (Figure 23).

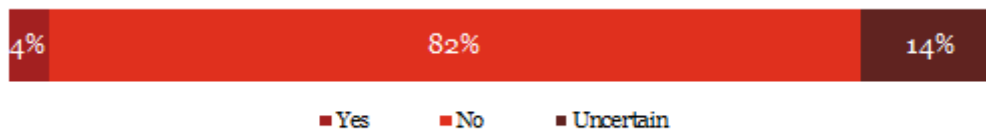
**Figure 23: Heavy vehicle crash data – number of deaths resulting from accidents**



Source: BITRE Heavy Vehicle Fatal Accidents, Quarterly Reports March 2011 – December 2014

There is a strong view from freight companies and owner driver representative stakeholders consulted and surveyed that the System has not had an impact on safety outcomes to date. Of the answers by 148 industry survey respondents, only 4 per cent, or six respondents, believed the System had an impact on road safety outcomes (Figure 24).

**Figure 24: ‘Do you believe the Road Safety Remuneration System has had an impact on road safety outcomes?’**



Source: PwC Industry Survey

*Conclusion: On balance, there is not enough evidence to conclusively prove that the Road Transport Order has had an impact on safety outcomes given the multiple causal factors affecting road safety.*

*In addition to perspectives that the System has had no impact on safety outcomes, stakeholders conveyed to PwC that there is widespread non-compliance with the Road Transport Order within the industry due to its ‘unworkability’. If that is the case, it would be difficult to conclude that the introduction of the Order, which requires changed practice within supply chains is having any effect if it has indeed, not changed those practices.*

### **5.2.3 Will there be a safety impact post-2015?**

Given the difficulties in determining whether the System has had an impact on road safety outcomes to date, this section will explore the rationale behind each of the provisions in the Orders to determine whether the System is likely to meet its objectives in the future.

#### **Safety impact of Road Transport Order**

The Road Transport Order contains the following requirements:

- hirers/employers must provide written employment or road transport contract (clause 7)
- supply chain participants must take all reasonable measures to ensure that any contract is consistent with the requirements in the Order (clause 8)
- hirer must pay the driver within 30 days and not make any deductions related to equipment or insurance unless certain criteria are met (clause 9)
- hirers/employers must prepare safe driving plans for all vehicles with a GTM over 4.5 tonnes (clause 10)
- hirers/employers must take all reasonable measures to ensure road transport drivers abide by workplace health and safety training (clause 11)
- hirers/employers must prepare, implement and train workers on a drug and alcohol policy (clause 12)

In addition to these requirements, the Road Transport Order contains a provision that facilitates dispute resolution for disputes arising regarding the Order, and provides protection for ‘whistle blowers’ in connection with the Order.

In its Road Transport Order, the Tribunal has regulated a wide range of measures that require supply chain participants to address varying safety and remuneration-related aspects of road transport. While not core to the specific payments to drivers, this reflects Quinlan and Wright's (2008) assertion that 'capacity [and] mechanisms to recover costs; ... the role and impact of all parties in the transport supply chain on driver payments and methods; and gaps in current regulatory approaches... all intersect to impact on the relationship between remuneration and safety.'<sup>77</sup> The wider approach to holistically addressing safety matters across the supply chain has been supported by the TWU, and other driver representatives in submissions to the Tribunal.

Critics of this approach consider that broader supply chain responsibility for workplace health and safety, workplace health and safety training, and drug and alcohol policies as addressed under the provisions of the Road Transport Order are explicitly or implicitly regulated under other laws.<sup>78</sup> Therefore these requirements will at best have no safety impact, and at worst potentially discourage operators from complying with all laws and regulations due to confusion about their interaction and application.

Table 3 provides a brief overview of rationale for each provision of the Road Transport Order, and stakeholder views as to the likely safety impact.

**Table 3: Safety impact of each provision**

| <b>Provision</b>  | <b>Rationale</b>   | <b>Stakeholder views</b>   |
|-------------------|--|--|
| Written contracts | Written contracts prevent drivers from being deprived of income and workplace protections due to unclear contractual obligations and a weak bargaining position. In particular, written contracts ensure that 'recipients-invoicing', where a contract is verbally made and the recipient provides an invoice with different terms to those stipulated in the verbal agreement is not practiced. <sup>79</sup> | This provision was a necessary inclusion to provide clarity and transparency as to road transport driver conditions, to assist in reducing economic pressures. <sup>80</sup><br><br>Hirers and employers argue the provision is impractical or onerous to comply with. This will create economic pressure to not comply, or to reduce expenditure on other safety initiatives, undermining the purpose of the provision. <sup>81</sup> |

<sup>77</sup> Wright, L. and Quinlan, M. (2008) *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*

<sup>78</sup> For example, Coles in its submission to the 2014 Jaguar Review stated the System has the potential to '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' see < <https://submissions.employment.gov.au/empforms/Review-of-the-Road-Safety-Remuneration-System/pages/index?c=3>>

<sup>79</sup> Wright, L. and Quinlan, M. (2008) *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*

<sup>80</sup> Trade Worker's Union (August 2013) *Draft Road Safety Remuneration Order – Submission and Evidence in Reply*

<sup>81</sup> Australian Industry Group (February 2013) *Submission to Road Safety Remuneration Tribunal; Individual Submission*, accessed at <[http://www.rstrt.gov.au/default/assets/File/1st\\_AWP/Submissions/Individual2\\_RSRO\\_subs\\_2013.pdf](http://www.rstrt.gov.au/default/assets/File/1st_AWP/Submissions/Individual2_RSRO_subs_2013.pdf)>

| Provision                 | Rationale  | Stakeholder views  |
|---------------------------|--|--|
| Supply chain requirements | It has widely been acknowledged that supply chain pressures impact negatively on road safety. This is argued to be especially prevalent in the supermarket sector. <sup>82</sup> | Overlap with Chain of Responsibility under HVNL means that these requirements will create confusion and have no real effect on safety. <sup>83</sup><br><br>The caveat is that the requirement that supply chain participants take 'all reasonable measures' to comply with this obligation is ambiguous and will result in widespread non-compliance. <sup>84</sup> |
| Payments to drivers       | Protections that provide that payments are made to drivers in a timely manner and which specifies allowable deductions to ensure drivers are not losing income.                  | Hirers are concerned that payment period of 30 days is too short. <sup>85</sup><br><br>In contrast, drivers are largely supportive of this change as long payment periods affect the cash flow, and therefore the financial viability, of their business. <sup>86</sup>  |

<sup>82</sup> Quinlan (2011) notes that “[s]tudies (Mayhew & Quinlan, 2006; Saltzman & Belzer, 2007) have linked client demands for tight time schedules, long hours (and poor queuing practices that reduced opportunities for drivers to rest) and low returns (as elaborate pyramid subcontracting is used to reduce freight rates/returns to drivers)”

<sup>83</sup> For example, the New South Wales Government in its submission to the 2014 *Review of the Road Safety Remuneration System* noted “[a]ny 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.” <<https://submissions.employment.gov.au/empforms/Review-of-the-Road-Safety-Remuneration-System/pages/index?c=4>> accessed 1 December 2015.

<sup>84</sup> For example, the Australian National Retail Association in their August 2013 submission highlighted that ‘clause 7.4 fails to fully articulate what might be considered “reasonable steps” in any particular case’ as a concern, <<http://www.rsrt.gov.au/default/assets/File/Subs%20on%20draft%20RSRO/ANRA.pdf>> accessed 1 December 2015.

<sup>85</sup> For example, the Australian Livestock and Rural Transporters Association’s submission to the Tribunal regarding the draft Order stated ‘The ALRTA is supportive of this requirement ‘in principle’, however a longer period of 30 days would be more appropriate ... Except where State-based legislation has delivered improvements, it is commonplace for rural transporters to find that their accounts will not be paid in less than 90 days, with delays of 120 days being unexceptional. During this period, transporters will carry both the costs of financing this delayed cash flow and also the risk of non-payment.’ <<http://www.rsrt.gov.au/default/assets/File/Subs%20on%20draft%20RSRO/ALRTA.pdf>> accessed 1 October 2015.

<sup>86</sup> See comments made in Intercapital Transport Pty Ltd (now National Independent Trucking Association) in its submission to the Tribunal regarding the draft order <<http://www.rsrt.gov.au/default/assets/File/Comments%20on%20draft%20RSRO%20subs/Intercapital%20Trucking.pdf>> accessed 1 October 2015.

| Provision                            | Rationale  | Stakeholder views  |
|--------------------------------------|--|--|
| Safe driving plans                   | <p>Safe driving plans ensure fatigue management is achieved.</p> <p>This supports findings from Feyer and Williamson (1995) that imposed work schedules are effective in improving safety outcomes, and Gobol and Hensher (1994) that self-imposed schedules (i.e. driving in the absence of plans) increase incidence of illicit drug use and speeding.</p> | <p>The TWU argues '[s]afe driving plans ... provide a crucial mechanism for reducing incentives for unsafe work practices by requiring planning of work generally and planning of work in a manner that takes into account remuneration paid for the work performed, requiring consultation with other supply chain participants in relation to the plan and retention of plans to aid transparency and accountability.'<sup>87</sup></p> <p>In contrast, hirers and employers were concerned about duplication, as existing fatigue management regulations and systems based on technology already deal with this issue. Therefore there will be little benefit at a real administrative cost.<sup>88</sup></p> |
| Workplace health and safety training | <p>Several studies have purported to show a link between workplace health and safety training and improved safety outcomes;<sup>89</sup> however one study asserts this is predicated on a genuine personal involvement in the attainment of safety outcomes.<sup>90</sup></p>   | <p>Employers, hirers and some other supply chain participants have a general obligation to promote a safe work environment, including providing training. Therefore, hirers and employers argue that this provision will have no safety impact.<sup>91</sup></p> <p>This is contrasted by the TWU's submissions, which asserted the necessity of the training obligation to reduce widespread ignorance of workplace health and safety obligations.<sup>92</sup></p>   |

<sup>87</sup> Trade Worker's Union (August 2013) *Draft Road Safety Remuneration Order – Submission and Evidence in Reply*

<sup>88</sup> Australian Business Industrial, Australian Chamber of Commerce and Industry, and NSW Business Chamber (August 2013) *Submission to the Tribunal*

<sup>89</sup> Huang, Y.H., Chen, J.C., DeArmond, S., Cigularov, K. and Chen, P.Y. (2007) *Roles of safety climate and shift work on injury: A multi-level analysis. Accident Analysis & Prevention* (39) 1088-1096 - found safety training improved "Safety climate"; Wills, A., Biggs, H. and Watson, B. (2005) *Analysis of a safety climate measure for occupational vehicle drivers and implications for safer workplaces* Australian Journal of Rehabilitation Counselling 11 (1), 8-21 found strong correlation between driver error and training and safety rules.

<sup>90</sup> Silva, S., Lima, M.L., Baptista, C (2004) *OSCI: an organizational and safety climate inventory* Safety Science 42 (3) 205–220.

<sup>91</sup> For example, in their joint submission to the Tribunal, the Australian Chamber of Commerce and Industry, Australian Business Industrial, and the New South Wales Business Chamber asserted 'It is implicit in the general obligations on employers arising from the various laws discussed above that drivers must be competent to perform the work they undertake and to the extent necessary trained in basic WHS processes and procedures. Requiring the adoption of a fixed training regime is unnecessary in light of this and may well promote resistance in employers and hirers from undertaking directly relevant training in WHS that will have more impact on WHS outcomes.'

<sup>92</sup> Trade Worker's Union (August 2013) *Draft Road Safety Remuneration Order – Submission and Evidence in Reply*

| Provision                 | Rationale   | Stakeholder views   |
|---------------------------|---|---|
| Drug and alcohol policies | Drugs and alcohol are estimated to account for 14 per cent of all heavy vehicle truck crashes between 1996 and 2000, <sup>93</sup> though the efficacy of drug and alcohol policies in improving outcomes is unclear. | It is argued that the general 'duty of care' under workplace health and safety laws requires employers, hirers and some supply chain participants to ensure drugs and alcohol are not being used, therefore the inclusion of this provision is duplicative. <sup>94</sup><br><br>However, several companies submitted that as they already had a drug and alcohol policy, there was no objection to the inclusion of the provision. <sup>95</sup> |

*Conclusion: Given stakeholder sentiment that there has been little change observed since the introduction of the Order, an inability to attribute improved safety outcomes to the introduction of the Road Transport Order due to the concurrent operation of the Heavy Vehicle National Laws, and perceptions that the Order is not widely complied with suggests that it is unlikely that there has been a safety impact in the sector following the Tribunal's Order. This is compounded by issues of concern as to regulatory overlap specific to the provisions in the Order, which increases uncertainty and compliance burden within the sector, with little safety improvement.*

### **Safety impact of the Payments Order**

The Payments Order contains the following requirements:

- supply chain participants must take all reasonable measures to ensure that any contract is consistent with the requirements in the Order (clause 8)
- minimum payments for contractor drivers carrying out a distribution operation (clause 9) and a long distance operation (clause 10)
- payments for each hour the driver spends providing 'road transport services' (clause 10)
- allowance for unpaid leave (clause 12)

The Order also contains provisions to facilitate dispute resolution, ensure that the Order is promoted, and to ensure that this Order is consistent with other provisions under the Act.

<sup>93</sup> Williamson et al (unknown) accessed at <http://acrs.org.au/files/arsrpe/RS030154.pdf>, November 2015.

<sup>94</sup> For example, the Australian Industry Group stated '[m]any road transport businesses have already developed drug and alcohol policies appropriate to their operations. Often this will have involved significant resources being devoted to not only the development of such policies but also in relation to training of drivers regarding the contents of such policies. It will of course be a significant additional burden on such businesses to have to revisit their existing policies and re-train relevant drivers to comply with the requirements of clause 13 of the RSRO.'

<sup>95</sup> For example, Linfox submitted that 'the Tribunal should be minded to include Clause 13 of the Tribunal's Draft RSRO in its final RSRO for the following reasons... As noted in its previous submissions to the Tribunal, Linfox has a long standing drug and alcohol policy, which is an integral part of its Vision Zero safety platform. This policy employs a zero tolerance approach to drugs and alcohol in the workplace as such substances are highly detrimental to the safety of road transport drivers and the community as a whole, <<http://www.rsrt.gov.au/default/assets/File/Subs%20on%20draft%20RSRO%202/Linfox%20Australia%20Pty%20Ltd.pdf>> viewed 1 December 2015.

The rationale behind the Payments Order is that if owner drivers are paid enough to cover costs, including being paid for all hours they are under the direction of the hirer, and make a reasonable margin (including ‘danger money’), then there will be no adverse economic incentives to engage in unsafe behaviour, such as to speed and take drugs.

Stakeholder concerns regarding Order, when it was in draft form, particularly those articulated by hirers of owner drivers, centre on the economic impact of the Order, though some also question the link between remuneration and road safety; ‘the rates that are set must have a clear connection to safety’<sup>96</sup>, iterating the importance of the link. Therefore the overarching message in regard to the effectiveness of the Order is not whether there will be a safety impact, but whether the magnitude of the safety improvements justifies making the Order. This will be discussed in detail in the next chapter.

Literature supporting the regulation of rates and payments for loading and unloading times identifies that:

- There are four studies which identify a statistical link between remuneration and road safety, which find that a 1 per cent increase in remuneration can lead to a 0.06 per cent to 3.4 per cent decrease in road accident numbers involving crashes. However, these present a varied range of conclusions, and the scope of study focuses on employee drivers, limiting the application to which the link can be considered here.
- Unpaid waiting time creates economic incentives to engage in unsafe practices, where drivers are more likely to make an overnight trip when fatigued to avoid make up time lost waiting.<sup>97</sup>
- Piece rates incentivise drivers to make riskier decisions, such as skipping breaks.

Further detail on literature regarding the safety linkages of remuneration can be found at Appendix D: .

Most concerns raised by hirers of owner drivers in relation to the Payments Order, when it was in draft form, related to the economic impact of the provisions. The Tribunal took note of these concerns when delivering their final Payments Order, acting to exclude Goods and Services Tax (GST) on inputs, removing supplementary rates, limiting the scope of supply chain participants that must comply with contract audits, and clarifying when the driver should be paid under clause 11.<sup>98</sup> While the economic incentives sought to be addressed by the Payments Order align with literature, concerns remain that drivers will face economic pressures to engage in unsafe work practices. This is driven by risks associated with per kilometre payments, and non-compliance due to the complexity of the System. Further, our economic modelling shows the rates are likely to place a large cost burden on businesses for a low and uncertain sum of benefits, even with the revised rates in the final Payments Order.

For example, submissions from road freight companies in relation to the draft Payments Order have indicated that long-haul drivers work anywhere from 200,000 to 300,000 kilometres per week. Some have pointed to these distances as inherently unsafe, as if the driver is travelling at an average of 100km per hour (which is unlikely) this equates to between 38 and 57 hours worked per week excluding waiting, loading and unloading times

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<sup>96</sup> Australian Business Lawyers and Advisors (25 September 2015) *Submissions to the Third Annual Work Program: Section 24 Submissions*, s8.2

<sup>97</sup> Wright, L. and Quinlan, M. (2008) *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*

<sup>98</sup> Full Bench Decision for the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 [2015] RSRTFB 15

etc. However, application of per kilometre rates seems unlikely to remove the incentive to drivers to drive less. The exception to this is if demand for their services decreases, but this may reduce potential income and incentivise them to work more.

The Tribunal did not use combined hourly rates as ‘costing models available have varying assumptions and the rationale for selecting one set of assumptions over another is unclear.’<sup>99</sup> Whilst most stakeholders support the rejection of arbitrary assumptions that may reduce the accuracy of the rates, there is not enough analysis in the Tribunal’s statement and further research that they have considered the connection between the payment method and safety thoroughly.

### **Safety impact of the Draft Cash in Transit Order**

The Draft Cash in Transit Order contains the following requirements:

- hirers/employers must perform pre-employment and pre-engagement checks of credit and criminal histories (clause 7)
- hirers/employers must provide written employment or road transport contract (clause 8)
- supply chain participants must take all reasonable measures to ensure that any contract is consistent with the requirements in the Order (clause 9)
- payments to contractor drivers must be a ‘reasonable amount’ taking into account operating costs and a margin for profit (clause 10)
- hirer must pay the driver within 30 days and not make any deductions related to equipment or insurance unless certain criteria are met (clause 11)
- employer/hirers must supply drivers with listed personal protective equipment (clause 12)
- hirers/employers must prepare safe driving (clause 13)
- requirement that a risk assessment be performed (clause 14)
- hirers/employers must take all reasonable measures to ensure road transport drivers attend workplace health and safety training regarding manual handling procedures, safety advice (clause 15)
- hirers/employers must prepare, implement and train workers on a drug and alcohol policy (clause 16).

The 1997 Peterson Report, the most recent government commissioned review of safety factors in this sector,<sup>100</sup> found that robberies in the cash in transit sector could be linked to safety aspects relating to training, experience, firearms and vulnerability for entry to the sector by those whom have serious criminal convictions.<sup>101</sup> The report found that a range of measures might be required to bring up the safety standards of the sector, including to address obligations within the supply chain. While Quinlan and Wright (2008) agree with

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<sup>99</sup> Statement on the Draft Road Safety Remuneration Order – Payments for Contractor Drivers [2015] RSRTFB 11, pp45

<sup>100</sup> Note: The Australian Crime Commission also produced a document (Australian Institute of Criminology 2010, Cash in transit armed robbery in Australia) quantifying the number of armed robberies in the sector.

<sup>101</sup> Peterson J (1997) *Report to the Minister* Matter No IRC1880 of 1995, Industrial Relations Commission of New South Wales

the need to consider holistic contributions to safety, including supply chain and contractual requirements,<sup>102</sup> literature that quantifies the impact of such measures on safety outcomes in the cash in transit sector is sparse.

Submissions regarding the Draft Cash in Transit Order have highlighted a need for holistic regulation of the sector to improve safety outcomes, arguing that a lack of regulation is responsible for existence of soft skin operators, use of piece rates and other practices that jeopardise the safety of the industry. With the exception of the TWU, the core issues of safety to the cash in transit sector are considered to relate most to non-remuneration aspects of operation. There is a desire among these stakeholders to impose stringent requirements on Cash in Transit (CIT) operators to ensure that the proliferation of 'soft skin' operators does not compromise broader safety needs of the sector. In this view, many of the draft provisions are considered weaker than are needed to achieve this objective. While consultations undertaken in this review were only with major armoured vehicle operators, comment was made regarding the proliferation of 'soft skin' operators who are increasingly 'squeezing' operators within the cash in transit sector. Many of the submissions to the Tribunal reflect this point and support the creation of an Order that enforces requirements on 'soft skin' operators to adopt strict safety practices that align with practices of armoured vehicle companies.<sup>103</sup> The effect of regulating to this standard, however, could be to reduce the scope for competition among the diversity of operators within the market for cash in transit services.

Positive aspects of these regulations include risk assessments, which were 'identified by a number of parties as critical to promoting safety in the CIT industry.'<sup>104</sup> Submissions were also generally supportive of the chain of responsibility requirements. The necessity of these provisions was explained by Armaguard; 'The first common response is for customers to disregard or be unaware of their responsibilities under the WHS Act and require the CIT Business to take absolute liability for all matters, regardless as to whether the safety or security risk pertains to the CIT activities being performed at a customer's site. This often goes hand-in-hand with the imposition of operational requirements on site which do not take into consideration the inherent safety and security risks of CIT activities.'<sup>105</sup>

Stakeholders criticised the number of provisions in the Draft Cash in Transit Order that mirror the Road Transport Order. For example, safe driving plans were rejected by most stakeholders as these are considered to be relevant only to long distance work. Given the nature of cash in transit operations, where most drivers travel short distances within standard working hours, these stakeholders considered that this provision would therefore be unlikely to achieve safety outcomes.<sup>106 107 108</sup> Other provisions were considered by many stakeholders to codify existing practices among armoured vehicle operators, such as pre-employment checks, and hence would achieve little safety impact in regard of their operations. Submissions argue that these provisions are not relevant to the sector, and combined with a lack of enforcement will have a limited impact on road safety.

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<sup>102</sup> Wright, L. and Quinlan, M. (2008) *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*

<sup>103</sup> For example, Paul Marsden and Associates (2014) *Submission to the Cash In Transit Inquiry*

<sup>104</sup> Road Safety Remuneration Tribunal, *Cash in Transit Inquiry – Final Report* p. 47

<sup>105</sup> Armaguard (August 2014) *Submission to the Cash in Transit Inquiry*

<sup>106</sup> Toll Pty Ltd (June 2015) *Submission to the Cash in Transit Inquiry*

<sup>107</sup> Ardent Security (June 2015) *Submission to the Cash in Transit Inquiry*

<sup>108</sup> Armaguard (June 2015) *Submission to the Cash in Transit Inquiry*

The Draft Cash in Transit Order is being renegotiated in private consultations organised by the TWU, in light of the perceived deficiencies highlighted above. This may call for additional measures raised in submissions to the Tribunal, such as mandatory firearms,<sup>109</sup> and the prohibition of piece rates.<sup>110</sup>

### Safety impact of the System

In addition to the evidence against each of the specific impacts of the Orders, the System as a whole is not widely perceived to have a significant safety impact. 76 per cent of surveyed industry stakeholders – whom were predominantly road freight companies – consider that the System will not have a positive impact on safety outcomes (refer Figure 25).

Reasons cited for concern as to the efficacy of the System are:

- lack of education and enforcement of the Orders
- provisions in the Orders cannot be practically enforced in some parts of the industry
- regulatory duplication will confuse or disengage industry participants and therefore undermine safety achievements.

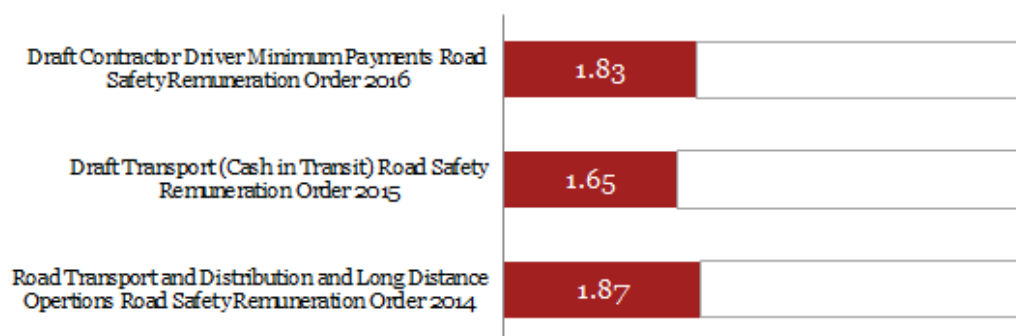
**Figure 25: ‘Do you think the Road Safety Remuneration System will have a positive impact, such as reduced fatalities, on future road safety outcomes?’**



Source: PwC Industry survey

In regard to each Order, industry survey participants rated the impact of the Road Transport Order, Payments Order and Draft Cash in Transit Order on safety as limited (Figure 26).

**Figure 26: ‘Please rate the relative impact on road safety on a scale of 0 to 5’**



<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

Source: PwC Industry survey

*Conclusion: The Road Transport Order, Payments Order and the Draft Cash in Transit Order seek to address the perceived causal factors such as economic pressures imposed by low rates, poor contracting arrangements and supply chain pressure, as well as driving when fatigued, under the influence of drugs and alcohol and other poor workplace health and safety arrangements. Despite this, few stakeholders, either in our discussions or in the submissions to the review, are convinced of a substantial safety impact in the future. Furthermore, 76 per cent of industry survey respondents, largely consisting of road freight companies, believed the Tribunal would fail to have a safety impact in the future.*

# 6. *Economic impact of the System*

The impact of the decisions of the Tribunal on the viability of businesses and the wider Australian economy is potentially large (see Table 4).

PwC has estimated the costs and benefits associated with the Orders to better inform our understanding of the economic impacts and subsequent cost effectiveness of the System. Benefits are estimated as the number of lives saved, serious injuries avoided and reduced property damage incidents, as a result of the reduction in road accidents. The number of lives saved and serious injuries avoided are monetised in accordance with Office of Best Practice Regulation guidelines.<sup>111</sup> The valuation of a statistical life and serious injuries is an analytical tool in economic modelling, used to consistently formalise and understand implicit trade-offs.

Our analysis is based on the following measures of economic performance:

- Net Present Value (NPV) – the difference between the present value (PV) of total incremental benefits and the PV of the total incremental costs
- Benefit Cost Ratio (BCR): ratio of the PV total incremental benefits net of PV of total incremental PV of capital costs.

Impacts have been estimated using modelling which quantified the costs and benefits of the Road Transport Order and the Payments Order over a 15 year period starting in 2012. The impact of the Draft Cash in Transit Order is qualitatively discussed.

**Table 4: Summary of results**

| Order Type           | Benefit Cost Ratio | Net Present Value of costs and benefits (billion dollars) |
|----------------------|--------------------|---|
| Road Transport Order | 0.31               | -1.8  |
| Payments Order       | 0.67               | -0.4  |
| <b>All Orders</b>    | <b>0.38</b>        | <b>-2.3</b>   |

In addition to our finding that the costs estimated in our analysis far outweigh the benefits, we assert the additional findings:

- The Road Transport Order and Payments Order will likely have a negative impact on business viability for hire and reward companies, ancillary operators and owner drivers whose services are no longer demanded. Compliance costs form a significant part of this burden. This has wider implications for the transportation of road freight and the wider Australian economy due to higher prices and modal shifts.

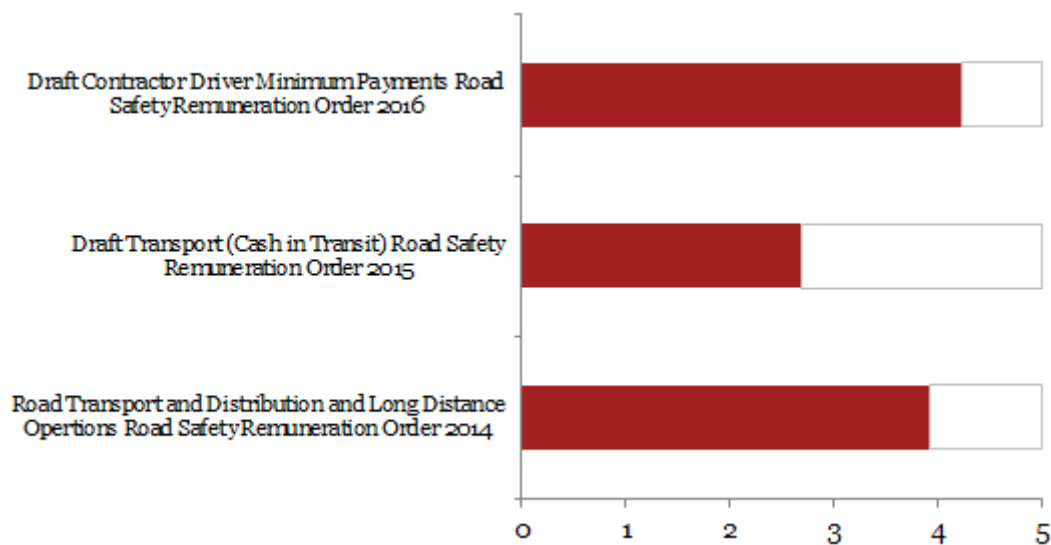
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<sup>111</sup> OBPR Guidance Note on the Value of a Statistical Life, < <http://www.dpmc.gov.au/office-best-practice-regulation/publication/best-practice-regulation-guidance-note-value-statistical-life>>

- The Draft Cash in Transit Order will have little impact on either safety or business viability in its current form.
- Long haul freight is particularly important to rural and regional transportation and economies. Submissions to the Tribunal suggest that many of the costs imposed on industry will be felt in these areas.
- Given the uncertainty as to benefits and the large cost impost, we are of the view that the System is not achieving its fairness objective under the current Order.

Submissions to the Tribunal support the findings in this report that the costs far outweigh the benefits for the Tribunal’s Orders.<sup>112</sup> The magnitude of the economic impact is consistent with the view of industry survey participants (Figure 27).<sup>113</sup>

**Figure 27: ‘Rate the economic impact of each Order on a scale of 0 to 5’**



Source: PwC Industry Survey

The operation of these Orders will have the largest impact upon hire and reward, and ancillary operators, who will in turn pass some of these costs onto the consignors and consignees that demand road freight services and consumers. Drivers are likely to benefit the most due to increased remuneration and fewer road accidents, followed by government and members of society who face costs following road crashes, and will therefore benefit from an improvement in safety.

Direct costs of the System’s operation to government and participants are low compared to other cost burdens at approximately \$4 million per year in FY2015 dollars. The efficiency of

<sup>112</sup> For example, the South Australian Rural Transport Associations submission regarding the Road Transport Order states ‘[t]he requirement in the draft order to reissue an sdp prior to every trip would not add to safety but it would add substantial unjustifiable cost and even an extra burden or work on the drivers themselves.’ (*emphasis removed*)

<sup>113</sup> Note that the rates of remuneration in the Payments Order have been revised down from the draft version of the Payments Order. Therefore the perceived economic impact from industry survey participants may overstate the impact following the revisions.

government expenditure and consultation processes is discussed in more detail in the next chapter.

Costs not included in this analysis that also have a significant impact include productivity inefficiencies that stem from uncertainty, and costs of seeking legal and/or industrial relations advice to clarify obligations under the Act. Concerns as to the coverage of the provisions have been particularly prevalent. For example:

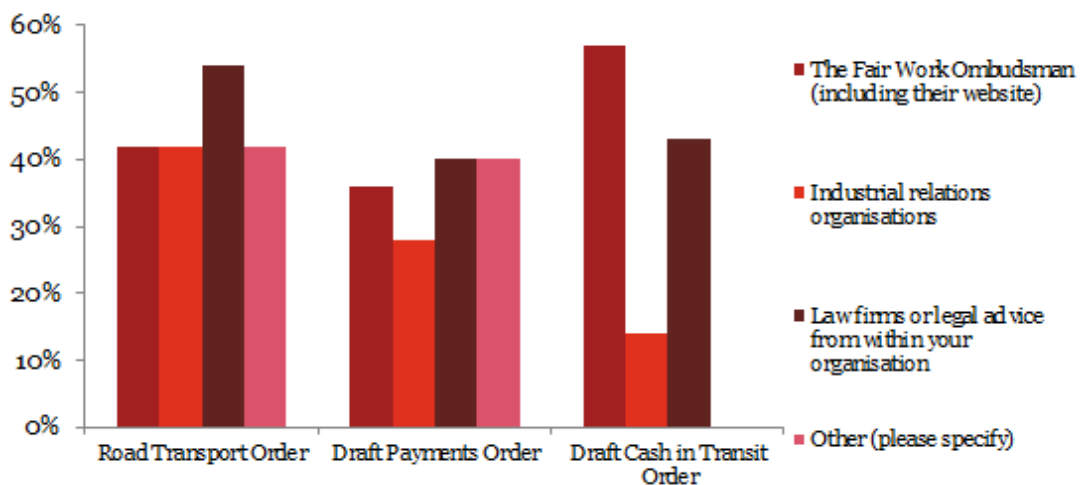
*‘widespread coverage of the road transport industry. As such there is little scope for accommodating operational characteristics that may be unique to a particular sector.’<sup>114</sup>*

*The breadth of the expression generates uncertainty as to the true scope of the [Road Safety Remuneration Order] –the phrase ‘in connection with’ is of wide import ... it may ‘require a value judgement’ about the range of an instrument. It follows that the boundaries of a ‘road transport service involving or in connection with’ various things will be difficult to identify with precision.’<sup>115</sup>*

*‘A further and closely related source of uncertainty and regulatory burden is the potential for parties to move into the coverage of an Road Safety Remuneration Order intermittently or occasionally. To use a hypothetical but realistic example, an operator may maintain a fleet of twenty trucks primarily engaged in local work. In any particular week one of the twenty trucks may travel over 500km in a shift once’<sup>116</sup>*

Figure 28 indicates that that this perceived uncertainty has already led survey participants to invest time and money into seeking advice.

**Figure 28: ‘Have you sought advice from any of the following organisations regarding the Order?’**



Source: PwC Driver survey

<sup>114</sup> Livestock and Rural Transport Association of Western Australia (August 2013) *Submission to the Road Safety Remuneration Tribunal*

<sup>115</sup> Australian Chamber of Commerce and Industry, Australian Business Industrial and NSW Chamber of Business (August 2013) *Submission to the Road Safety Remuneration Tribunal*

<sup>116</sup> Ibid.

An additional cost to parties will be that of record keeping to prove compliance. One submission noted ‘The cost impact of additional record keeping and administration should not be underestimated particularly on small operators.’<sup>117</sup> Our analysis costed it at a total of \$56 million a year for each order, the Road Transport Order and Payments Order, or approximately \$2,000 per business impacted (roughly the equivalent to one hour per week).

## ***Road Transport Order***

According to our analysis, the costs of the Road Transport Order outnumber the benefits, by \$3 in cost to every \$1 of benefits. Our best case scenario analysis shows the Road Transport Order would have to decrease the impact of road accidents in the economy by over 20 per cent for the benefits to outweigh the costs. In 2013, the driver was only at fault (due to speed, fatigue etc.) in 18 per cent of heavy vehicle fatalities.<sup>118</sup> Since the Road Transport Order operates to control fatigue and speed, but cannot impact the behaviour of small vehicle drivers, pedestrians, road conditions and other factors, it is highly unlikely a 20 per cent reduction can be realised, if these factors where the driver is at fault only amounted to 18 per cent of fatal crashes in 2013. Furthermore, we have used conservative estimates in our analysis leading to the likely conclusion that an appropriately enforced Order would impose far greater costs on industry than safety benefits.

### ***6.1.1 Economic impact to date***

Our economic analysis assumes there was no economic impact until May 2014, when the Road Transport Order came into operation. Prior to this, there may have been a slight safety benefit and economic cost from businesses changing their practices prior to the Order coming into effect but there was no evidence to support this.

### ***Compliance costs***

A majority of submissions to the Tribunal supported the assertion that the Road Transport Order and Payments Order, if properly enforced, will place large compliance costs on operators in the road transport industry. PwC’s analysis supports this view. We have estimated costs drawing on available evidence and adopting conservative assumptions (see Appendix E: ). Note that PwC was not required to consider the impact of many of these costs in the 2011 RIS, particularly the cost of complying with the non-remuneration provisions in the Road Transport Order, since the RIS pre-dates the Road Transport Order. The additional costs stemming from non-remuneration related provisions accounts for much of the difference between the impacts quantified in the RIS and the impacts quantified in this modelling.

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<sup>117</sup> Livestock and Rural Transport Association of Western Australia (August 2013) *Submission regarding the Draft Road Transport Order*

<sup>118</sup> National Transport Insurer (2015) *Serious Crash Investigation*. Note that the National Transport Insurer’s report is relevant to a sample of heavy vehicle crashes only.

**Table 5: Compliance costs**

| Regulation                | Estimated compliance costs                              | Supporting evidence in submissions   |
|---------------------------|---|--|
| Written contracts         | <p>Start up cost - \$11m</p> <p>Ongoing cost - \$1m</p> | <p>This requirement will require many freight movements currently organised through verbal contracts to move to written contracts. The following drivers are unlikely to have written contracts:</p> <ul style="list-style-type: none"> <li>• casual, ad hoc or iterant drivers;</li> <li>• livestock and grain carriers.</li> </ul> <p>These drivers form a large proportion of carriers of long haul freight.<sup>119</sup> This is supported by a survey by Natroad which found 62 per cent of the members surveyed had no written contracts.<sup>120</sup></p> <p>Submissions to the Tribunal have asserted that compliance with written contracts will be impractical and costly to enforce.<sup>121122</sup></p>   |
| Supply chain requirements | Ongoing cost - \$90m                                    | <p>Under the definition in the Act, the number of supply chain participants can be high. For example:</p> <ul style="list-style-type: none"> <li>• Coles estimates they are party to approximately 1.404 million contracts per year. In approximately 70 per cent of inbound freight movements and 40 per cent of outbound freight movements Coles is the recipient (consignee), not organiser, of the freight movements.<sup>123</sup></li> <li>• Freight consolidators such as Toll IPEC will have ‘potentially hundreds of consignors and consignees on a single long distance trip’ many of whom are unaware of the operation of the Tribunal.<sup>124</sup></li> <li>• In regard to the Western Australian rural sector, Livestock and Rural Transport Association of WA said ‘The participants [in the supply chain] change daily and there could be as many as 15 participants for each job multiplied by the number of vehicles in service.’<sup>125</sup></li> </ul> <p>Many stakeholders have expressed concerns that all participants reviewing contracts and safe driving plans will result in a high cost impost on the industry. The Tribunal said this issue was addressed by inserting the phrase ‘where reasonably practical’ into the report. However, even assuming that only 10 per cent of supply chain participants check plans, the cost is still over \$90 million a year.</p> |

<sup>119</sup> Intercapital Trucking (August 2013) *Submission regarding the Draft Order*

<sup>120</sup> NatRoad Limited (1 August 2013). Note this survey was of 53 of around 60 of its members, some 56% of whom are small businesses and about 86% of whom do long distance work.

<sup>121</sup> Toll Holdings Ltd (August 2013) *Submission regarding the Draft Road Transport Order*

<sup>122</sup> Australian Livestock Transporters Association (2012) *Submission to Safe Rates Safe Roads Paper*

<sup>123</sup> Coles (August 2013) *Submission regarding the Draft Road Transport Order*

<sup>124</sup> Toll Holdings Ltd (August 2013) *Submission regarding the Draft Road Transport Order*

<sup>125</sup> Australian Livestock Transporters Association (2012) *Submission to Safe Rates Safe Roads Paper*

| <b>Regulation</b>                    | <b>Estimated compliance costs</b>               | <b>Supporting evidence in submissions</b>  |
|--------------------------------------|---|--|
| Payments to drivers                  | Unknown.  | The reduction in the number of payment delays (beyond the 30 day period) to drivers is likely to increase remuneration for drivers, due to reduced overdraft and interest liabilities, but impose a cost on industry due to smaller interest payments and the cost of acquiring funds in a timely manner.  |
| Safe driving plans                   | Ongoing cost - \$161m                           | <p>There are millions of freight movements each year. Therefore the cost of providing, implementing and reviewing safe driving plans is a major concern for companies in the industry.<sup>126</sup></p> <p>Coles estimated that assuming safe driving plans were only provided for long distance freight movements, this equates to over 300,000 a year, and if these plans took half an hour each to assess, that 821 plans would need to be reviewed each day, requiring 51 full time equivalent people to engage in this task. Assuming a wage of just \$50,000 a year the cost to Coles would be \$2.5 million per year. Given Coles encompasses roughly 0.5 per cent of the total freight movements, the estimate for safe driving plans used in this analysis is conservative.</p> <p>This cost impact of safe driving plans has been adjusted following submissions from some major freight companies that they already have safe driving plans in some form in operation.<sup>127</sup></p> |
| Workplace health and safety training | Start up cost - \$4m<br><br>Ongoing cost - \$3m | <p>Submissions to the Tribunal indicate that workplace health and safety training may have not been provided externally at a significant cost to the hirer/driver. For example, one submission noted government place average costs of these courses at \$90, but such course often cost in excess of \$200 plus driver's wages and lost revenue for the time the driver could have spent driving.<sup>128</sup></p> <p>Note that the enterprise agreements for major providers already include workplace health and safety training. This figure has been adjusted to account for businesses that already provide workplace health and safety training consistent with the Order.</p>   |
| Drug and alcohol policies            | Start up cost - \$4m<br><br>Ongoing cost - \$3m | Submissions are generally supportive of the existence of drug and alcohol policies, provided the requirement remained that 'reasonable steps' were required to educate relevant parties. As above, this figure has been adjusted to account for businesses that already provide drug and alcohol policies and related training consistent with the Order.  |

Source: See Appendix D:

<sup>126</sup> Coles (August 2013) *Submission regarding the Draft Road Transport Order*

<sup>127</sup> See Toll and Linfox safe driving plans included in Appendix of statement supporting the Order.

<sup>128</sup> Full Bench Decision for the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 [2013] RSRTFB 7

## ***Payments Order***

The Payments Order will impose a large cost on hirers of owner drivers. Like the Road Transport Order, the costs of the Order imposed through compliance requirements and reduced competitiveness of the Road Transport Order mean that the costs outweigh the benefits.

Many submissions to the draft Payments Order have expressed concern that the rates in the Order will have a negative impact on the economic viability of many hirers and owner drivers. PwC's analysis supports this view. Further, we do not find that the concessions made from the draft to the final Order, such as the removal of GST from inputs, minimise rates to the extent that benefits outweigh costs. The table below summarises the key cost impacts of implementation of the Payments Order. The assumptions and method for analysing the impact of the Payments Order is at Appendix E: .

**Table 6 Cost impacts under the Payments Order**

| <b>Regulation</b>               | <b>Estimated costs</b>  | <b>Supporting evidence in submissions</b>   |
|---------------------------------|---|---|
| Increased rates of remuneration | <p>Cost of increased remuneration</p> <p>Ongoing costs - \$40m</p> <p>The Order states that remuneration will increase at 2 per cent per annum to allow for inflation. Our analysis assumes these increases are in line with inflation such that the increase in real income over the modelling period is equal to zero</p> | <p>Increased remuneration to drivers from hirers is treated as a transfer, meaning the net economic impact is equal to zero. This is because the cost of additional income paid by hirers to drivers is exactly equal to the benefit drivers attain from increased income. Increased labour costs to hirers and the increased price of owner drivers will also have a market substitution effect which will impose a cost on the economy.</p> <p>The cost of increased remuneration for owner drivers to the economy is measured in the model as a reduction in hirer profits. Under the changes, hirers of owner drivers will choose one or more of three options:</p> <ol style="list-style-type: none"> <li>1. Stop transporting road freight<sup>129</sup></li> <li>2. Substitute owner driver services with employee drivers or smaller fleets<sup>130</sup></li> <li>3. Increase payments for owner drivers whose services are still in demand</li> </ol> <p>All three of these outcomes result in a reduction in profits for hirers, either because they are no longer providing the service or they are paying more money to acquire driver services.</p> <p>This analysis is supported by submissions to the Tribunal regarding the draft Payments Order, that indicated costs would increase 20-30 per cent and businesses would decrease use of owner driver services or close as a result.<sup>131</sup> Our analysis shows that even with the reduced rates in the final Payments Order, freight companies will lose \$40 million per year (1 per cent decrease in profits for the industry per year).<sup>132</sup></p> |
|                                 | <p>Cost of changes to payment Systems</p> <p>Start up cost - \$116m</p> <p>Ongoing costs - \$14m</p>  | <p>Costs incurred as a result of the provisions include high implementation and reporting costs as some businesses would have to change their payment methods for drivers, and have an accurate means of measuring total kilometres travelled. One submission estimated this would cost up to \$200,000 to install the firm systems, an additional \$4,000 per driver for GPS hardware and \$25,000 to outsource data storage.<sup>133</sup></p>  |

<sup>129</sup> Australian National Retailers Association (July 2015) *Submission to inquiry into minimum payments for contractor drivers*

<sup>130</sup> FK&S Freighters (September 2015) *Submission regarding Draft Payments Order*; Toll (September 2015) *Submission regarding Draft Payments Order*

<sup>131</sup> Australian Industry Group, Natroad, Road Freight NSW, *Submission regarding Draft Payments Order*

<sup>132</sup> ABS June 2015, *Australian Industry 2013-14* cat 8155.0

<sup>133</sup> Booth Transport (October 2015) *Submission regarding Draft Payments Order*

| Regulation                         | Estimated costs   | Supporting evidence in submissions   |
|------------------------------------|---|--|
|                                    | Cost of contract amendments<br><br>Start up cost -\$11m<br><br>Ongoing cost -\$1m | Increased remuneration under the Payments Order will require changes to contracts to reflect different structures and rates of remuneration.   |
| Supply chain contract requirements | Ongoing cost - \$93m  | Under the clause 8, all supply chain participants are required to 'take all reasonable steps' to ensure contracts are compliant. As with the Road Transport Order, we made the conservative assumption that this takes 15 minutes per contract, assuming 20 per cent compliance. <sup>134</sup> In addition, we assumed that hirers and other supply chain participants captured by the audit requirement of this provision spend 4 hours per year ensuring that their contracts and records are compliant. This is deemed to be conservative based on the number of contracts and evidence from supply chain participants. <sup>135</sup> |

Submissions to the Tribunal regarding the draft Payments Order also argued that the rates should be lower, citing issues with the methodology and data used in the KPMG model.<sup>136</sup> Criticisms centre on the calculation of payment to cover capital and operating costs. These criticisms include:

- concerns as to an underestimation as to hours worked and kilometres travelled<sup>137</sup>
- that initial capital outlays are modelled in regard to expensive vehicles
- overstated fuel costs – especially the inclusion of supplementary rates in certain regions to allow for fuel price difference
- incorrect allowance for GST credits and the sale price of the vehicle are not adequately taken into account.<sup>138</sup>

<sup>134</sup> Submissions expressing concerns regarding the high cost to participants, and the ambiguity as to who is captured under the Order include Retail Council (September 2015) *Submission regarding Draft Payments Order*; JB-Hifi (September 2015) *Submission regarding Draft Payments Order*. JB Hi-Fi's submission noted that 'hundreds of thousands of deliveries made both to and from JB Hi-Fi each year will amount to 'long distance operations' as defined in the Order. JB Hi-Fi is concerned about the time and cost burden imposed on retailers'. Their submission explained that under the provisions the business, manufacturer, distributor and transport contractor will be required to audit each of their activities.

<sup>135</sup> For example, in Coles (August 2013) *submission regarding the draft Road Transport Order*, they estimated that they are party to approximately 1.404 million contracts per year.

<sup>136</sup> For example, see Linfox's submission to the Tribunal which stated 'Linfox respectfully submits that significant errors exist in the key assumptions used by KPMG, This is not intended to be a criticism but nonetheless it is important that fundamental assumptions are correct.' See < [http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/draft-Payments-RSRO/Linfox-draft-Payments-RSRO-submission-250915.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/draft-Payments-RSRO/Linfox-draft-Payments-RSRO-submission-250915.pdf)>

<sup>137</sup> Australian Business Industrial, NSW Business Chamber, Master Builders Australia (June 2015) *Submission regarding the Draft Payments Order*; Toll Holdings Ltd (April 2015) *Submission regarding the third Annual Work Program*

<sup>138</sup> Retail Council engaged an expert accountant from EY to review the KPMG model. EY found "the adoption of a GST exclusive model would be a more accurate reflection of the driver costs" and "at the end of the loan term the capital value of the vehicle in the KPMG Model at year 9 is greater than the balloon payment. In my opinion, this would lead to compensation over and above

In light of this evidence, the Tribunal amended the rates used in the KPMG model, so that the “the revised minimum rates:

- exclude GST [on inputs and the final rate],
- exclude depreciation,
- increase the period over which the standing and running costs of providing a road transport service are recovered compared to that in the KPMG cost model, and
- take into account the current wage rates in relevant modern awards.
- The revised rates also recognise the decline in finance and fuel costs, including the change to the fuel rebate, since the KPMG developed cost model and the residual vehicle value at the end of the loan term.
- Further, they recognise the range of fuel burn rates, vehicle and trailer values and the values attached to other standing and running costs in providing a road transport service in the submissions, material and comments before us.”<sup>139</sup>

Given these revisions, we have made the assumption that the rates in the final Payments Order that will be paid for operating and capital achieve cost recovery. We use this assumption to underpin our modelling, but also subject this assumption to sensitivity testing, recognising stakeholder concerns regarding the difficulties in setting standardised rates (See Appendix E: ).

Stakeholder concerns regarding the mandatory setting of rates, particularly over such a large proportion of the road transport sector, include that:

- the industry is too diverse to set appropriate rates<sup>140</sup>
- that cost inputs to rates (especially fuel) are constantly changing so that rates set on a four yearly basis become inaccurate<sup>141</sup>
- that drivers will be unable to recover some costs through ‘backloading’ (contentious)<sup>142</sup>
- that it is unclear how ‘split loads’ will be treated. <sup>143</sup>

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the cost associated to the driver” viewed 10 December 2015 at <[http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/draft-Payments-RSRO/Retail-Council-Report-by-EY-submissions-in-reply-Draft-Payments-RSRO-131015.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/draft-Payments-RSRO/Retail-Council-Report-by-EY-submissions-in-reply-Draft-Payments-RSRO-131015.pdf)>

<sup>139</sup> Full Bench Decision for the Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 [2015] RSRTFB 15 (formatting amended)

<sup>140</sup> Road Freight NSW (July 2015) *Submission regarding payments for contractor drivers*

<sup>141</sup> For example, the Retail Council noted in their 11 December 2015 submission to the Tribunal regarding the draft Payments Order, regarding fuel price volatility, that they “agree broadly with the submission of Linfox and Toll that any assumed fuel price input should be based on up-to-date data (either for the most recent week or month), and should not be based on out-of-date information for the 2014-2015 financial year” see <[http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/draft-Payments-RSRO/Retail%20Council-draft-Payments-order-further-submission-111215.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/draft-Payments-RSRO/Retail%20Council-draft-Payments-order-further-submission-111215.pdf)>

<sup>142</sup> Ai Group, Natroad, Road Freight NSW (July 2015) *Submission regarding Draft Payments Order*

<sup>143</sup> Australian Road Transport Industrial Association (September 2015) *Submission regarding Draft Payments Order*

Even if mandatory rates were finessed to address the above issues, there is concern that the rates in the Payments Order do not achieve their intended goal, which is to act as a ‘minimum’ wage benchmark in the industry. Anything higher than a price floor, under which drivers can achieve cost recovery for inputs plus receive an income that meets living standards, may go above what is needed to reduce adverse economic incentives that spur unsafe behaviour and therefore place an unnecessary burden on industry.

### ***Impact of the Draft Cash in Transit Order***

The Draft Cash in Transit Order was not directly included in the regulatory impact analysis. Given the current widespread practice of many of the measures in the Draft Cash in Transit Order by major players in the industry, the non-mandatory language used and the lack of enforcement mechanisms, stakeholders in submissions to the Tribunal and our consultations are largely of the opinion that the Order will have little safety impact nor adverse economic effect. Our analysis of the Draft Cash in Transit Order is largely supportive of this view.

Given this view, and as the TWU is currently meeting informally with major participants in the industry to formulate an alternate draft Order, it is more pertinent to assess the potential economic and safety impacts of the Draft Cash in Transit Order outside of the model.

Table 7 outlines stakeholder views as to the economic impacts of key provisions in the Draft Cash in Transit Order and our own analysis/research where applicable. Parties in discussions with the Tribunal identified ‘soft-skin’ operators, particularly newer operators or those who supply cash in transit services ancillary to their other operations as a paramount safety risk. The key reason being that these parties do not engage in many of the practices required under the Draft Cash in Transit Order. It is difficult to estimate how many companies are affected, but ASIAL submitted that 300 of their members engage in cash in transit work, 120 on a regular basis and the majority of these operators are ‘soft-skinned or non-armoured’.<sup>144</sup>

**Table 7: Compliance costs**

| <b>Regulation</b>         | <b>Economic impact</b>  |
|---------------------------|---|
| Written contracts         | The major operators in the Cash in Transit industry engage a small number of sub-contractors, with the exception of Security Specialists Australia. <sup>145</sup> Assuming employee contracts are written and can be standardised, there will be a minimal cost impost as a result of this provision due to its alignment with current practices.  |
| Supply chain requirements | <p>These requirements place an ambiguous obligation upon parties. Concerns were raised as to whether participants have the requisite knowledge to assess risks, and therefore whether this provision was an effective and efficient means of dealing with road safety issues. As with the other Orders, there were concerns as to the broad application of this provision.</p> <p>Linfox provided the Tribunal with a breakdown of their clientele. This indicates which industries may face increased costs as a result of the changes:</p> <ul style="list-style-type: none"> <li>• Retail – 42 per cent</li> <li>• ATMS &amp; Financial Institutions – 40.4 per cent</li> <li>• Hospitality/Sports/Leisure – 7.3 per cent</li> </ul> |

<sup>144</sup> Road Safety Remuneration Tribunal, *Inquiry into the Cash in Transit Industry - Report*

<sup>145</sup> Security Specialists Australia (October 2014) *Submission to Cash in Transit Inquiry*

| Regulation                               | Economic impact  |
|--|--|
|  | <ul style="list-style-type: none"> <li>• Government/Health/Community – 5.5 per cent</li> <li>• Miscellaneous – 4.8 per cent</li> </ul> <p>Given the broad range of clientele within many of these industries, particularly retail, and their lack of security-specific knowledge, this requirement may impose a large cost for little safety improvement.</p>  |
| Payments to drivers                      | <p>This provision is highly ambiguous. Assuming that a ‘reasonable’ amount is that specified in the modern award, most operators are compliant. Enterprise agreements ‘historically’ regulate larger CIT operators, whilst small and medium sized businesses are regulated under the <i>Transport (Cash in Transit) Award 2010</i>. New South Wales’ Cash in Transit Award has provision for soft skin operators. Several companies submitted their current rates of pay are significantly higher than awards. Some soft skin operators may have to increase or change the method of payments, but there is no clarification as to what is considered a ‘reasonable amount’, and the income change compared to current wages, especially wages of those at Award level or above.</p> |
| Safe driving plans                       | <p>Submissions to the Tribunal generally viewed safe driving plans as irrelevant to the safety issues in the industry, thereby creating a high administrative cost with minimal return.<sup>146</sup><sup>147</sup><sup>148</sup></p>  |
| Pre-employment and pre-engagement checks | <p>Criminal history checks are provided by federal, state and territory police forces and range from \$42 to \$61.80.<sup>149</sup></p> <p>Credit checks can be attained by the potential driver for free twice yearly. Preliminary research suggests companies are unable to directly get access to the report.<sup>150</sup></p>   |
| Risk assessments                         | <p>The cost imposition of the risk assessments depends on when they are required. Most operators supported risk assessments when a new contract is entered into, though Linfox Armaguard questioned whether they are needed for contract renewals. These are likely to require significant investments in time of an employee or services of an assessor, and therefore could be one of the most costly provisions.</p>  |
| Supply of personal protective equipment  | <p>Costs of personal protective equipment are variable, and we were unable to discern a standardised cost. Some parties submitted much of the equipment is already supplied, which could imply that this provision has a minimal cost impact. Key concerns raised by companies included the prescriptive nature of the provision such as back to base radios when greater reliance is being placed on mobile phones and mobile technology devices, and a lack of flexibility to carry less equipment when this strategy may eventuate in a safer outcome.<sup>151</sup></p>  |

<sup>146</sup> Toll Holdings Ltd (June 2015) *Submission regarding Draft Cash in Transit Inquiry RSRO*

<sup>147</sup> Ardent Security (June 2015) *Submission regarding Draft Cash in Transit Inquiry RSRO*

<sup>148</sup> Armaguard (June 2015) *Submission regarding Draft Cash in Transit Inquiry RSRO*

<sup>149</sup> See eg, Australian Federal Police website <http://www.afp.gov.au/what-we-do/police-checks.aspx> <viewed 1 November 2015>

<sup>150</sup> Office of the Australian Information Commissioner <http://www.oaic.gov.au/individuals/faqs-for-individuals/credit-reporting/accessing-your-credit-report> <accessed 10 November 2015>

<sup>151</sup> Toll Holdings Ltd (June 2015) *Submission regarding Draft Cash in Transit Inquiry RSRO*

| Regulation                           | Economic impact  |
|--------------------------------------|--|
| Workplace health and safety training | <p>Training requirements could potentially impose large costs on the industry. Proseguer submitted that 'the vast majority of operators provide little, if any, training... [and] , there is anecdotal evidence that much of the training occurs without the employees being compensated for their time.' <sup>152</sup> However Armaguard and Proseguer submitted their drivers undergo extensive training.<sup>153</sup></p> <p>According to the Australian Government's My Gov website average costs of the training are:<sup>154</sup></p> <ul style="list-style-type: none"> <li>• \$1,500 for a Certificate III in Security Operations</li> <li>• \$150 for First Aid training</li> <li>• \$133 for Manual Handling Procedures</li> </ul> <p>Toll Secure submitted that as first aid training is required for security training this requirement leads to duplication.</p> |
| Drug and alcohol policies            | <p>Similar to the Road Transport Order, many submissions thought the cost of this requirement was minimal provided companies had latitude as to the content of the policy and flexibility as to how drivers are made aware of the requirements.</p>  |

### **Conclusion**

*Conclusion: We consider that the safety impact achieved by the Road Transport Order and the Payments Order is disproportionate to the economic impacts, with the benefit cost ratio for each Order, at best, likely to result in a benefit cost ratio of 0.31 and 0.66 respectively – a substantial loss to the Australian Economy which totals in the billions of dollars. These figures exceed, by eight times,<sup>155</sup> the estimated costs of the System in the 2011 Regulatory Impact Statement driven by the large compliance cost burden on industry of the non-remuneration provisions in the Orders.*

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<sup>152</sup> Security Specialists Australia (August 2015) *Submission to Cash in Transit Inquiry*

<sup>153</sup> Armaguard (August 2015) *Submission to Cash in Transit Inquiry*

<sup>154</sup> See the following Myskills websites <https://www.myskills.gov.au/courses/unit?Code=HLTAID003> ;  
<https://www.myskills.gov.au/courses/details?Code=CPP30411> ;  
<https://www.myskills.gov.au/courses/unit?Code=HLTHSE204D>.

<sup>155</sup> This figure has been calculated over a 10 year period to allow for more accurate comparison with results of the 2011 RIS

# 7. The System's efficiency

Under the evaluation framework, efficiency is assessed through a comparison of inputs and outputs. In considering efficiency we have:

- reviewed current financial and reporting arrangements for the Tribunal and Ombudsman
- assessed whether current financial arrangements for the Tribunal and Ombudsman support the attainment of the System's objectives
- assessed whether current activities engaged in by the Tribunal and Ombudsman support outcomes being achieved
- considered whether reporting and performance arrangements provide adequate oversight of the Tribunal and Ombudsman's functions.

Funding inputs to the Tribunal and Ombudsman can be measured against outputs to estimate the cost efficiency of the System. Alignment between activities and outputs are used to assess the efficiency of the Tribunal and Ombudsman's processes. These inputs and outputs are listed in Table 8.

**Table 8: Summary of inputs and outputs**

| <b>Body</b>      | <b>Funding (input)</b>   | <b>Activities (output)</b>   | <b>Functions (output)</b>   |
|------------------|--|--|---|
| <b>Tribunal</b>  | <ul style="list-style-type: none"> <li>• Budget appropriations</li> <li>• Staffing</li> <li>• Business plan</li> </ul> | <ul style="list-style-type: none"> <li>• Inquiries</li> <li>• Stakeholder consultation and submissions</li> <li>• Dispute resolution cases</li> <li>• Collective bargaining engagement</li> <li>• Data collection</li> </ul> | <p>The Tribunal delivers on its functions under the Act through:</p> <ul style="list-style-type: none"> <li>• annual work programs</li> <li>• making road safety remuneration orders</li> <li>• approving road transport collective agreements with owner/contractor drivers</li> <li>• dealing with certain disputes about remuneration and related safety issues relating to road transport drivers, their employers or hirers, and participants in the supply chain</li> <li>• conducting research into pay, conditions and related matters that could be affecting safety in the road transport industry</li> </ul> |
| <b>Ombudsman</b> | <ul style="list-style-type: none"> <li>• Budget appropriations</li> <li>• Staffing</li> <li>• Business plan</li> </ul> | <ul style="list-style-type: none"> <li>• Monitor compliance with the Act and enforceable instruments, including provision of education, assistance and advice</li> <li>• Inquiries into noncompliance</li> </ul>             | <p>The Ombudsman delivers on its objectives under the Act by:</p> <ul style="list-style-type: none"> <li>• Educational materials and workshops</li> <li>• Receipt and evaluation of complaints</li> <li>• Actioning complaints (letters of caution, infringement notices etc)</li> <li>• Commence proceedings in court</li> <li>• Refer matters to relevant authorities</li> <li>• Represent drivers in court</li> </ul>  |

### **7.1.1 Efficiency of the Tribunal's processes**

It is difficult to assess how efficient the expenditure of the Tribunal has been with the limited information that has been provided (refer Appendix F: ). Using a high level analysis, we note the following points.

- A lack of information as to time spent by staff under the shared services model on Tribunal activities makes total cost to government and possible cost efficiencies difficult to ascertain.
- The provision of services 'as needed' under the model has the potential to increase costs of the Tribunal to the Commission without better collection of information regarding the use of resources to ensure efficiencies.
- Stakeholders have expressed concerns that – as the Tribunal has only produced two enforceable instruments to date – this demonstrates inefficiency. It is difficult to support this conclusion. Tribunal outputs have the paramount objective of safety and fairness. Imposing arbitrary timelines or output quotas is likely to undermine this objective by placing pressure on the Tribunal to prematurely make enforceable instruments, or create an instrument where the weight of the evidence suggests there should be no regulation.
- While we do not make an assessment as to the prioritisation and allocation of expenditure, as this is effectively at the direction of the Tribunal, we observe that the Tribunal has tackled a broad range of activities within its Annual Work Programs which risks that its resourcing is 'spread thin' across activities.

Many stakeholders indicated that the negotiation of Annual Work Programs is inefficient, as the Tribunal does not complete inquiries into all the relevant areas within the year. This gives the process for the following year an element of repetition and extends the scope of what is inquired into beyond what the Tribunal has the resources to inquire into.

In addition, as the distribution of resources to inquiries is decided upon through mandatory consultation, the Tribunal cannot objectively assess priority areas independent of stakeholder lobbying. In regard to this the Tribunal stated '[i]t would be a fundamental misunderstanding of the role of the Tribunal to suggest it should undertake strategic planning in the manner of an Agency performing an administrative function so as to give effect to Government policy.' The lack of legislative power to independently evaluate the scope of its work program to objectively assess priority areas is an impediment to the Tribunal's ability to focus its activities.

On a related note, the quasi-judicial nature of the Tribunal leads to inherent inefficiencies. Since the Tribunal largely considers information brought to them, similar to a judicial body, engagement is biased towards those who are most resourced to participate. This may reduce the extent of evidence received by road freight companies and drivers, particularly owner drivers to whom many of the Tribunal's activities relate.

Of particular concern to stakeholders, with the exception of the TWU, is the short timelines through which the Tribunal requires submissions and attendance at hearings and conferences.<sup>156</sup> Process inefficiencies are created as industry groups do not have enough time to consult with members before providing submissions to the Tribunal, limiting the quality of these submissions. In addition, tight timelines prevent these parties from commissioning

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<sup>156</sup> Complaints regarding the timelines in the Road Transport Order are raised by the Tribunal in paragraphs [33] to [55] of the Full Bench Decision for the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 [2013] RSRTFB 7

their own in-depth, empirical analysis as to the impact of proposed Tribunal instruments, reducing the scope of information the Tribunal receives.

As mentioned above, the Tribunal has interpreted its legislative powers widely. After reviewing the discussion papers preceding the Tribunal's commencement and the explanatory memorandum we agree with submissions that the Tribunal has interpreted the scope of their powers widely. As a result, there are inefficiencies in structure and processes that follow. For example, the Ombudsman's office specialises in education and compliance work regarding industrial relations matters. Expansion into workplace health and safety matters is inherently ill-fitting to the Ombudsman. The type of enforcement and penalties that are traditionally applicable to industrial relations laws may not directly translate to workplace health and safety. A similar argument has been made by some stakeholders in regard to Commission staff, however the Commission notes the staff offered to the Tribunal have expertise in these areas.

The Tribunal's annual report notes that '[a]dditional work has also been done to review the Tribunal's website and investigate new tools to assist parties to better understand the functions of the Tribunal and its work'.<sup>157</sup> One of these was the costs calculator, that the Ombudsman had considered developing but were subsequently advised that this was under development by the Tribunal. Efficiencies could be achieved if the agencies cooperate to minimise overlap of educational materials.

### ***7.1.2 Efficiency of the Ombudsman***

The Ombudsman received a total appropriation of \$5.3 million<sup>158</sup> to undertake compliance and education work, beginning 2012-13. The Ombudsman's outputs are summarised as follows:

- detailed educational information published on a dedicated Road Safety Remuneration System page
- contracted ARTIO and TWU to assist with the delivery of educative materials for their members
- received 12 complaints, and took enforcement action in the form of letters of caution and infringement notices for six of these complaints.

Given the lack of information, we are unable to make a thorough assessment as to whether cost efficiency has been achieved. At a high level, it appears the Ombudsman's office is yet to expend all government funds.

The manner of funding distribution – where internal expenditure is proportional to the gravity of industrial relation issues among all of the Ombudsman's functions – inhibits assessment of expenditure efficiency. The number of complaints received is one of the primary considerations in determining what areas the Ombudsman targets. Since the Ombudsman has received 12 complaints regarding the System over three years of a total 25,000 complaints, the relative lower level of focus on compliance with the System by the Ombudsman is therefore to be expected. But equally this approach may be ill-suited to the anecdotal evidence of non-compliance in the System and lack of evidence of participants bringing complaints to the Ombudsman's attention.

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<sup>157</sup> General Manager's Overview – Annual Report 2014-15

<sup>158</sup> Inflated to 2015 dollars

### 7.1.3 Performance assessment and reporting requirements

The Tribunal has the following reporting obligations under the Act:

- ensure information and copies regarding enforceable instruments are provided at the end of each quarter
- provide quarterly reports provided to the Minister and the Fair Work Ombudsman are published on the Tribunal’s website
- provide to the Minister for Employment, for presentation to the Parliament, an annual report on the operations of the Tribunal during that year

The key performance indicators included in the Commission’s Portfolio Budget Statement for 2015-16 with respect to Road Safety Remuneration Tribunal are in Table 9.

**Table 9: Assessment of the Tribunal’s KPIs**

| Indicator  | Timeframe        | Assessment   |
|--|------------------|--|
| Road safety remuneration orders reviewed within 12 months of expiry of any preceding order | Within 12 months | Not applicable for any years.  |
| Annual Work Programs   | Annually         | Met for all years.   |
| Publish research and submissions   | Within four days | Met FY15 – 91 per cent of submissions and all research was published within the timeframe. |

The assessment of the key performance indicators (KPIs), as with other Commonwealth agencies will ordinarily be a matter for the President of the Tribunal, and is subject to defined public accountability standards, such as the Parliament. Staff of the Commission provide administrative support to the Tribunal in respect of these KPIs. The Commission provides no administrative oversight with respect to these KPIs.

In regard to how the Tribunal monitors their performance outside of the listed KPIs, the Tribunal responded ‘[t]he Tribunal’s performance is to be measured against the Objects of the Road Safety Remuneration Act (s. 3), and the matters brought to the Tribunal by the parties in the road transport industry.’ No further information was provided.

While the Commission’s KPIs relate to the Tribunal, these are output, rather than outcome-driven. The Commission’s Business Plan 2013-14 set four goals that underpin the activities of the Commission in the performance of our functions. Two goals expressly refers to the Tribunal:

- to provide outstanding service delivery and support to Members of the Commission and the RSRT
- to provide outstanding service and assistance to clients of the Commission and the RSRT.

The current accountability and measurement framework to enable performance review against the objectives of the Act is lacking. Activities of the Tribunal’s annual work program are therefore not measured against the safety impacts achieved, nor enable targeting of activities proportional to the safety outcomes expected. Without accountability, the reporting and efficiency of activities cannot be understood in detail.

In terms of external scrutiny, the Auditor-General, Parliamentary Committee or the Commonwealth Ombudsman may report on operation of the Tribunal. No reports have been made to date.

Individuals also have a limited appeals mechanism under s92 of the Act. Where the Tribunal's activities are not aligned with the objectives of the RSR Act, and are inconsistent with the Road Safety Remuneration Act, an injured party may appeal the decision to the High Court of Australia or Federal Court of Australia.

*Conclusion: The wide undertaking of sectoral issues investigated by the Tribunal requires sufficient resources to enable inquiry, engagement and the making of regulatory orders. A broad work program risks spreading resources thinly and can create inefficiencies. Additionally, expansion into non-remuneration elements, such as safety, is ill-fitting to the role of the Ombudsman. The resourcing allocated to the Ombudsman does not appear to reflect the resource-intensive 'side of the road' compliance requirements stakeholders consider most effective in the road transport sector. Additionally, there appears to be a lack of performance measurement of the System against the objects of the Act in its accountability framework. We consider that regardless of how efficient any regulatory system is, when considered in terms of the net cost to the economy associated with the Tribunal's orders, the \$13.4 million expended over three years (2012-13 to 2014-15) on the System cannot be seen as anything other than an additional 'inefficient' cost.*

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# Appendices

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## **Appendix A: Road Safety Remuneration System program logic**

### **Need**

The Road Safety Remuneration System was established to address a need to<sup>159</sup>:

- Address the high incidence of fatalities and injuries for truck driving in Australia
- Reduce the economic costs to the economy as a result of road safety incidents
- Address the: 30 per cent below-award rate remuneration for owner-drivers; the significant influence of commercial arrangements on owners/driver road safety; unpaid queuing time as identified by the National Transport Commission
- Remove economics incentives for unsafe work practices to provide drivers with a safe and fair workplace

### **Objectives**

To promote safety and fairness in the road transport industry by<sup>160</sup>:

- ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner
- removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices
- 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
- developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers
- ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards
- facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.

### **Inputs**

#### **Funding**

- Budget appropriations
- Staffing
- Business plan

#### **Activities**

- Annual work program
- Inquiries
- Stakeholder consultation and submissions
- Dispute resolution cases
- Collective bargaining engagement
- Data collection

### **Outputs**

The Tribunal delivers on its functions under the Act through<sup>161</sup>:

- making road safety remuneration orders (RSRO)
- approving road transport collective agreements with owner/contractor drivers

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<sup>159</sup> Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, Second reading speech, *Road Safety Remuneration Bill* 2011, November 2011

<sup>160</sup> *Road Safety Remuneration Act 2012 (Cth)* s 3

<sup>161</sup> Road Safety Remuneration Tribunal, <http://www.rsrt.gov.au/index.cfm/about-rsrt/what-rsrt/>, accessed 20 July 2015

- dealing with certain disputes about remuneration and related safety issues relating to road transport drivers, their employers or hirers, and participants in the supply chain
- conducting research into pay, conditions and related matters that could be affecting safety in the road transport industry.

**Outcomes**<sup>162</sup>

- Reduce any negative link between remuneration-related matters and safety in the road transport industry to improve overall road safety outcomes.
- Road transport drivers are remunerated for their work, including for loading, unloading and waiting times.
- Road transport industry supply chain participants are accountable to set standards for driver safety.
- Drivers are provided with a dispute resolution avenue for remuneration-related matters.
- Educate and enforce instruments to road transport drivers and participants in the supply chain.

Strategic objective: Improved road safety for truck drivers, and all Australian road users, through the removal of pay-related incentives and economic pressures on drivers that encourage unsafe work practices.<sup>163</sup>

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<sup>162</sup> Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, Second reading speech, *Road Safety Remuneration Bill* 2011, November 2011

<sup>163</sup> Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, Second reading speech, *Road Safety Remuneration Bill* 2011, November 2011

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## ***Appendix B: Consultations***

### ***1 Stakeholders consulted***

PwC engaged in targeted consultations with the following parties:

- Australian Industry Group
- Australian Livestock and Rural Transport Association
- Australian Long Distance Owner and Drivers Association
- Australian Road Transport Industrial Organisation
- Fair Work Ombudsman
- K&S Corporation
- Linfox Armaguard
- National Heavy Vehicle Regulator
- National Independent Trucking Association
- National Transport Commission
- Natroad
- New South Wales Government
- Prosegur
- Safe Work Australia
- South Australian Road Transport Authority
- Tasmanian Government
- Transport Workers' Union Australia

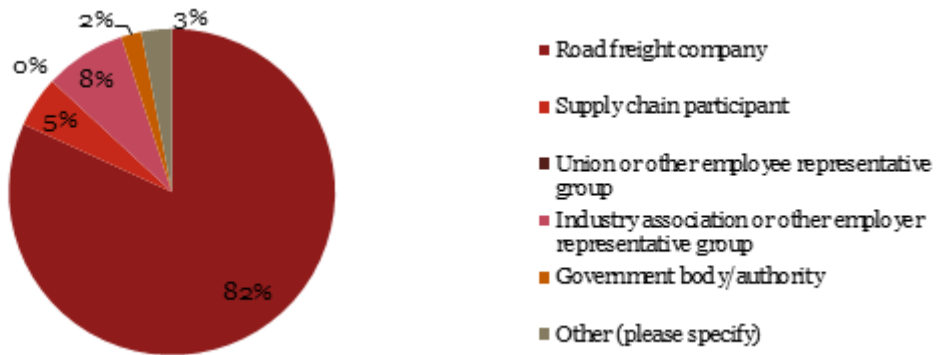
### ***2 Consultation process***

PwC also received written submissions from the Fair Work Commission and the Tribunal to questions drafted by PwC in consultation with the Department.

A number of additional stakeholders were approached by PwC to participate in this review, but instead, referred us to their perspectives outlined in submissions to the 2014 *Review of the Road Safety Remuneration System* or to their submissions to the Tribunal. We have reviewed these documents thoroughly to ensure the views of these parties are reflected in our findings.

PwC also distributed two surveys, which were also developed in consultation with the Department. These surveys were open for submission online from the 8 – 30 October 2015. The first survey ('the industry survey') was targeted at all stakeholders to seek broader industry views. 201 parties completed the survey, with the majority of respondents to this survey being freight companies (see Figure 29).

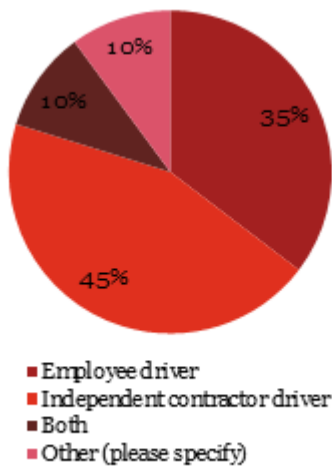
**Figure 29: Respondents to the industry survey**



PwC additionally sought direct feedback from drivers through a second survey targeted at drivers. We requested that a number of parties (including freight companies and the TWU) distribute the survey to their members, and advertised on the Owner Driver Magazine website<sup>164</sup> to engage a wider audience. 96 drivers responded to the survey.

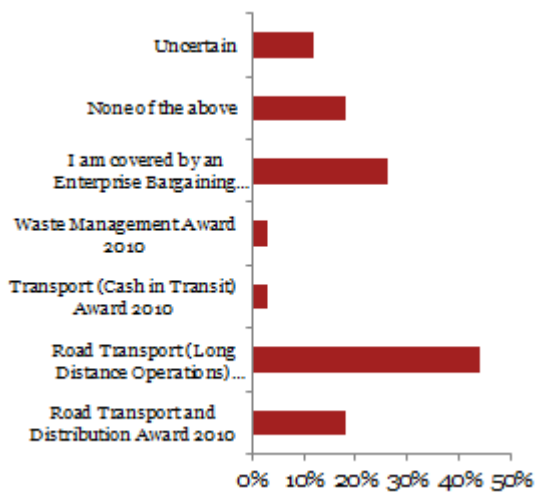
We asked a number of initial demographic questions to better understand the composition of the survey participant group, and therefore to be able to assess any biases (see Figure 30, Figure 31 and Figure 32). The TWU raised concerns with the survey design and declined to distribute it. Recognising the sample size collected is not large enough to draw conclusions as to the composition of the overall market, we have not used this data in our regulatory impact analysis.

**Figure 30: Type of driver**

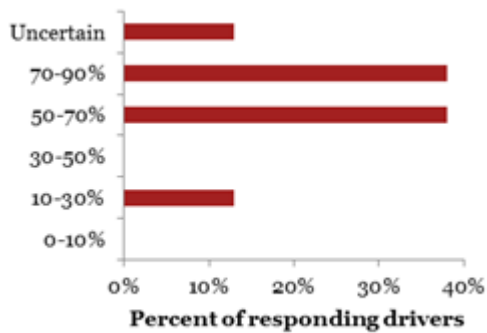


<sup>164</sup> Owner Driver Website, <http://www.ownerdriver.com.au/>

**Figure 31: Coverage of employee drivers by Awards**



**Figure 32: Employee and contractor drivers - per cent of time operating as a contractor**



The two surveys distributed are shown below.

### **3 Industry Survey**

#### **Questions**

1. What is the role of your organisation within the road freight industry?

*Check box:*

- a. Road freight company
- b. Supply chain participant
- c. Union or other employee representative group
- d. Industry association or other employer representative group
- e. Government body/authority
- f. Other (*please specify*)

2. Have you heard of the Road Safety Remuneration Tribunal?

*Check box:*

- a. Yes
- b. No

3. In your view, how aware are participants in the road freight industry of the Tribunal?  
*Rank on a scale of 1 (not at all) – 5 (very aware)*

The Road Safety Remuneration Tribunal was established to set rates of remuneration for road transport drivers that promote safety and fairness in the road transport industry.

4. Is this consistent with your view of the role of the Tribunal?

Check box:

- a. Yes
- b. No
- c. Uncertain

The Fair Work Ombudsman is tasked with the enforcement of orders and other instruments handed down by the Tribunal.

5. In your view, is this the most appropriate system of enforcement to fulfil the objectives of the Tribunal?

Check box:

- a. Yes
  - b. No
  - c. Uncertain
6. How well do you consider the Road Safety Remuneration System (Tribunal and Ombudsman) fits into the broader heavy vehicle regulation and road safety context?  
*Rank on a scale of 1 (duplicative) – 5 (very supportive)*
7. To date, do you think the Road Safety Remuneration System has had an impact on road safety outcomes?

Check box:

- a. Yes
  - b. No
  - c. Uncertain
8. (If c) is selected) Please comment on the impact you think the System has had?

Free text box

9. The operation of the Road Safety Remuneration System (Tribunal and Ombudsman) comprises a number of activities. These include setting remuneration orders, undertaking inquiries, collective bargaining and dispute resolution. The Fair Work Ombudsman also educates and undertakes compliance relating to the Tribunal's activities. Please rate your awareness, their relevance and utility.

| Activity                                     | Awareness of the Activity | Relevance to you, your organisation, your members | Usefulness of the Activity |
|--|---------------------------|---|----------------------------|
| <b>Setting remuneration orders</b>           | <i>Rate (1-5)</i>         | <i>Rate (1-5)</i>                                 | <i>Rate (1-5)</i>          |
| <b>Undertaking sector/industry inquiries</b> | <i>Rate (1-5)</i>         | <i>Rate (1-5)</i>                                 | <i>Rate (1-5)</i>          |
| <b>Collective bargaining</b>                 | <i>Rate (1-5)</i>         | <i>Rate (1-5)</i>                                 | <i>Rate (1-5)</i>          |
| <b>Dispute resolution</b>                    | <i>Rate (1-5)</i>         | <i>Rate (1-5)</i>                                 | <i>Rate (1-5)</i>          |

| Activity  | Awareness of the Activity | Relevance to you, your organisation, your members | Usefulness of the Activity |
|---|---------------------------|---|----------------------------|
| Education of participants in Tribunal activities (undertaken by the Fair Work Ombudsman)      | Rate (1-5)                | Rate (1-5)  | Rate (1-5)                 |
| Enforcement activities for the Tribunal's first order (undertaken by the Fair Work Ombudsman) | Rate (1-5)                | Rate (1-5)  | Rate (1-5)                 |

10. Have you been involved in stakeholder consultations with the Tribunal?

Check box:

- a. Yes
- b. No
- c. Uncertain

11. (If yes to Q11) Which stakeholder consultations have you been involved in?

Please tick all applicable boxes.

- a. Fair Work Program
- b. The Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014
- c. Draft Payments for Contractor Drivers Order (including KPMG Research)
- d. Draft Transport (Cash in Transit) Road Safety Remuneration Order 2015
- e. Oil, fuel and gas sector Inquiry
- f. Wharf and Port sector Inquiry
- g. Waste Management Industry Inquiry
- h. Other (please specify)

12. How inclusive did you find the stakeholder consultation process?

Please rank on a scale of 1 (not at all) - 5 (very inclusive).

13. Of the remuneration orders set, or drafted by the Tribunal, please rank on a scale of 1-5 the following:

| Remuneration Order   | Awareness of the Order in the Road Transport Industry | Understanding of the obligations imposed by the Order in the Road Transport Industry | Relevance to you, your company, your members | Relative impact on road safety | Relative economic impact on the road freight industry |
|--|---|--|--|--------------------------------|---|
| Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 | Rate (1-5)  | Rate (1-5)   | Rate (1-5)                                   | Rate (1-5)                     | Rate (1-5)  |
| Draft Contractor Driver Minimum Payments Road Safety Remuneration Order 2016                     | Rate (1-5)  | Rate (1-5)   | Rate (1-5)                                   | Rate (1-5)                     | Rate (1-5)  |
| Draft Transport (Cash in Transit) Road Safety Remuneration Order 2015                            | Rate (1-5)  | Rate (1-5)   | Rate (1-5)                                   | Rate (1-5)                     | Rate (1-5)  |

14. If any, please describe what practices have changed that improve road safety outcomes since the Tribunal's establishment in 2012.

Free text box

15. Other comments?

Free text box

#### 4 Driver Survey

1. As a road freight transport driver, how would you best characterise yourself?

Please select the appropriate box

- a. Employee driver
- b. Contractor-driver
- c. Both
- d. Other (please specify)

If a) or c) is selected, drivers must answer questions 2 and/or 3.

2. (If a) or c) are selected) Please specify under what financial arrangements you are covered.

Please select the appropriate box

- a. Award
- b. Enterprise bargaining agreement
- c. Other (please specify)

3. (If 1c) is selected) What percentage of your time would you estimate you are operating as a contract driver?

Please select the appropriate box

- a. 0-10 per cent
- b. 10-30 per cent
- c. 30-50 per cent
- d. 50-70 per cent
- e. 70-90 per cent
- f. Uncertain

4. Have you heard of the Road Safety Remuneration Tribunal?

Check box:

- c. Yes
- d. No

If no is selected, the survey ends at question 4.

The following information is provided as background for question 5.

The Road Safety Remuneration Tribunal performs a number of activities. These include setting remuneration orders, undertaking inquiries, collective bargaining and dispute resolution.

The Fair Work Ombudsman offers education and monitors compliance relating to the Tribunal's activities.

5. Please rate your awareness of these activities, their relevance to you and whether you consider the performance of these activities useful to yourself and/or the industry.

| Activity                              | Awareness of the Activity | Relevance to you | Usefulness of the Activity |
|---------------------------------------|---------------------------|------------------|----------------------------|
| Setting remuneration orders           | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |
| Undertaking sector/industry inquiries | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |

| Activity  | Awareness of the Activity | Relevance to you | Usefulness of the Activity |
|---|---------------------------|------------------|----------------------------|
| Collective bargaining   | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |
| Dispute resolution  | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |
| Education of participants in Tribunal activities (undertaken by the Fair Work Ombudsman)      | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |
| Enforcement activities for the Tribunal's first order (undertaken by the Fair Work Ombudsman) | Rate (1-5)                | Rate (1-5)       | Rate (1-5)                 |

### First Order

The Tribunal can make Road Safety Remuneration Orders, which change conditions for some road transport drivers.

The Tribunal has released one order to date. This is known as the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014 ('First Order').

6. Does the First Order apply to you?

Check box:

- a. Yes
- b. No
- c. Uncertain

*If b) or c) selected, skip questions 7-10*

7. On a scale of 1-10, how well do you know the obligations placed on you and your employer/hirer by the First Order?

Scale

8. Have you sought advice regarding the First Order?

Check all that apply:

- a. Fair Work Ombudsman information
  - b. Industrial Relations advice body
  - c. Legal advice
  - d. Other (*describe*)
9. Have there been changes in the following areas since the First Order commenced?

Please tick all relevant boxes.

- a. Contracts
  - b. Workplace health and safety training
  - c. Drug and alcohol policy
  - d. Safe driving plans
  - e. Timing of payments to contractor drivers
10. How would you rate compliance with the First Order within the Industry?

Scale (1-10)

### Draft Payments Order

The Tribunal has also released two draft Road Safety Remuneration Orders, which may change conditions for some road transport drivers in the future.

11. Have you seen or heard of the Draft Contractor Driver Minimum Payments Road Safety Remuneration Order 2016 ('Draft Payments Order')?

*Check box:*

- a. Yes
- b. No
- c. Uncertain

12. Does the Draft Payments Order apply to you?

*Check box:*

- a. Yes
- b. No
- c. Uncertain

*If b) or c) selected, skip questions 13-16*

The following information is provided for question 13.

The Draft Payments Order applies to drivers that:

- distribute any supermarket chain goods; and
- drivers that perform long distance operations, where long distance operations is defined as a 500km+ journey carrying any freight.

13. As an estimation, for how much of your driving time do you think you'll be covered by the Draft Payments Order? *Scale*

- a. 0-10 per cent
- b. 10-30 per cent
- c. 30-50 per cent
- d. 50-70 per cent
- e. 70-90 per cent

14. Will your weekly pay increase under the Order?

*Check box:*

- a. Yes
- b. No
- c. Uncertain

15. Have you, or will you seek advice regarding the Draft Payments Order?

*Check all that apply:*

- a. Fair Work Ombudsman information
- b. Industrial Relations advice body
- c. Legal advice
- d. Other (*describe*)

16. How well do you think your employer/hirer will comply with the order?

*Scale (1-10)*

**Draft Cash in Transit Order**

17. Have you seen or heard of the Draft Transport (Cash in Transit) Road Safety Remuneration Order 2015 ('Draft CIT Order')

*Check box:*

- a. Yes
- b. No
- c. Uncertain

18. Does the Draft CIT Order apply to you?

*Check box:*

- a. Yes
- b. No
- c. Uncertain

*If b) or c) selected, **skip questions 19-21***

19. Of the requirements in the Draft CIT Order, which do you think will you or others in the Industry to change current practice?

*Please tick all relevant boxes.*

- a. Pre-employment criminal history and safety checks
- b. Supply of protective equipment to the driver
- c. Contracts
- d. Workplace health and safety training
- e. Drug and alcohol policy
- f. Safe driving plans
- g. Timing of payments to contractor drivers

20. Have you, or will you seek advice regarding the Draft CIT Order?

*Check all that apply:*

- a. Fair Work Ombudsman information
- b. Industrial Relations advice body
- c. Legal advice
- d. Other (*describe*)

21. How well do you think your employer/hirer will comply with the Draft CIT Order?

*Scale (1-10)*

22. Other comments?

*Free text box*

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## ***Appendix C: Regulation of the Road Transport Industry***

This appendix provides more detail as to the regulatory landscape in which the Tribunal operates.

### ***1 National Road Safety Strategy 2011-2020***

The National Road Safety Strategy 2011-2020 (the Strategy) is an intergovernmental initiative with the primary goal of reducing the annual numbers of deaths and injuries on Australian roads by 30 per cent. The strategy embraces the vision that in the long term, no person should be killed or seriously injured on Australia's roads.

At the inception of the Strategy, approximately four people were dying, and 90 people injured on Australian roads every day. Given the importance of heavy vehicle safety as part of broader road safety outcomes, several integral measures are targeted at the heavy vehicle sector. These measures include:

- Increase the effective application of chain of responsibility legislation to prosecute heavy vehicle speeding (including speed limiter) offences, and harmonise legislation to assist cross-border enforcement.
- Developing telematics as a regulatory tool for heavy vehicle speeding.
- Improving the effectiveness of registration sanctions for heavy vehicles that have non-operational speed limiters.
- Break regulations (part of the Heavy Vehicle Braking Strategy)

The strategic document outlining the Strategy notes that 'the [S]trategy is not an implementation plan. The detailed planning required giving effect to the [S]trategy, including funding, legislative and administrative arrangements, will require ongoing work by all governments and their respective transport agencies.'<sup>165</sup> The government regulators, legislation and other initiatives, whose role includes supporting this broad strategy, are discussed below.

### ***2 Commonwealth Departments***

Commonwealth Department of Employment defines the scope of their responsibilities as being 'responsible for national policies and programmes that help Australians find and keep employment and work in safe, fair and productive workplaces.'<sup>166</sup> Therefore the Department of Employment plays a role in road transport industry industrial relations and health and safety.

The Commonwealth Department of Infrastructure and Regional Development plays an important role in ensuring transport infrastructure is sufficient to meet the growing demand for road freight and safety requirements. An important initiative related to heavy vehicle safety, driven by the Department is the Infrastructure Investment Programme, which includes the Heavy Vehicle Safety and Productivity Programme. This programme distributes

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<sup>165</sup> Department of Infrastructure, National Road Safety Strategy 2011-2021  
[https://infrastructure.gov.au/roads/safety/national\\_road\\_safety\\_strategy/files/NRSS\\_2011\\_2020.pdf](https://infrastructure.gov.au/roads/safety/national_road_safety_strategy/files/NRSS_2011_2020.pdf)

<sup>166</sup> Department of Employment website <https://employment.gov.au/> <viewed 5 October 2015>

funding to projects regarding rest areas, parking and decoupling bays, technology trials, road enhancements and projects in the livestock transport industry.<sup>167</sup>

### **3 Commonwealth Legislation and Regulatory Bodies**

Constitutional responsibility for the regulation of road transport, workplace health and safety, and industrial relations lies with state and territory governments. As a result, a major challenge in regulating heavy vehicle safety has been the development of nationally consistent laws.

In the industrial relations space, all state and territory governments, except Western Australia, referred their power to legislate regarding private sector employees to the Commonwealth. Using this power, the Commonwealth established the *Fair Work Act 2009* (Cth). The Fair Work Commission, established under the Act, settles workplace relations disputes, and oversees the creation of the minimum wage order, National Employment Standards, Modern Awards and the negotiation of enterprise bargaining agreements. Modern awards stipulate rates of remuneration, leave entitlements, maximum weekly hours and other employment related conditions.

There are four Modern Awards that govern conditions for employee drivers in Australia;

- Road Transport and Distribution Award 2010
- Road Transport (Long Distance Operations) Award 2010
- Transport (Cash in Transit) Award 2010
- Waste Management Award 2010

Larger companies may also negotiate enterprise bargaining agreements with employees, which modify the conditions of an award, but only where the employee will be made 'better off overall' by these changes. These instruments stipulate the employment conditions that govern employee drivers in the sector.

Protections for independent contractors, such as owner drivers, were created under the *Independent Contractors Act 2006* (Cth). Independent contractors enter into a commercial, not employment relationship, and are therefore given less protection than employees. Under this Act owner drivers may lodge a case with the Federal Court or the Federal Magistrates Court to review contracts and to have them varied or set aside if they are deemed to be too harsh or unfair. In deciding whether a contract is unfair or too harsh, one factor the court considers is whether the total remuneration paid it less than an employee would receive. This is especially important given the general perception that owner drivers are paid less than employee drivers. Other factors considered include the terms under which the contract was made and any evidence of undue influence. The *Competition and Consumer Act 2010* (Cth) also provides a protection for owner drivers, providing an avenue for them to bargain collectively to secure rates of remuneration.

In the road transport and workplace health and safety spheres, state and territory governments have retained legislative power. To promote national consistency the Commonwealth government established the National Transport Commission and Safe Work Australia to develop and assist with the implementation of model legislation in road transport and workplace health and safety respectively. These bodies also coordinate, monitor and evaluate reforms. Whilst the intergovernmental agreements establishing these bodies encourage the adoption of model legislation, there is no obligation to do so. The road transport industry is a priority area for Safe Work Australia, with death and injury rates in

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<sup>167</sup> Department of Infrastructure, Heavy Vehicle Safety and Productivity Programme, <http://investment.infrastructure.gov.au/funding/Heavyvehicles/Index.aspx> <viewed 5 October 2015>

the industry far exceeding other areas. Initiatives have included driver health checks, workplace health and safety guides relevant to the road freight industry.

### **Heavy Vehicle Laws**

A major initiative taken to harmonise national road safety laws in the heavy vehicle contact is the Heavy Vehicle National Law (HVNL), administered by the Heavy Vehicle National Regulator. Heavy Vehicle National Law applies to heavy vehicles over 4.5 tonnes gross vehicle mass, which comprise approximately 3 per cent of all vehicles,<sup>168</sup> and regulates heavy vehicle registration and charges, vehicle standards, mass and loading, compliance and enforcement, driver fatigue, speeding compliance and the Intelligent Access Program. All states and territories have adopted these laws, except Western Australia and the Northern Territory. These laws came into effect on 10 February 2014.

Each state and territory has their own road rules, licence categories, registration procedures and legislation that relate to the trucking industry. Western Australia regulates fatigue management under the *Occupational Safety and Health Act 1984*. Heavy vehicles in the Northern Territory are regulated under the *Motor Vehicles Act 2011*. Fatigue management is regulated under the *Work Health and Safety (National Uniform Legislation) Act 2011*.

Chain of Responsibility is a cornerstone Heavy Vehicle National Law Initiative. Chain of Responsibility laws place an obligation on participants in the supply chain to ensure that the correct steps are taken to stop drivers from speeding, driving fatigued or breaches mass, loading and direction requirements. In particular, supply chain participants cannot make demands that would foreseeably lead to a breach. Supply chain participants are only made liable where a driver is found to be guilty of an offence. These parties include prime contractors of drivers, schedulers, loaders, consignors and operators of the vehicles.<sup>169</sup> Western Australia introduced chain of responsibility provisions separately to HVNL which came into effect on 27 April 2015.<sup>170</sup> Key differences with HVNL include the extension of the Western Australian provisions to light vehicles, but the laws only apply to load and container weight declaration offences and not to fatigue and speed offences.

Under the HVNL, section 17 ensures that HVNL and WHS laws operate together, with the duties imposed by both sets of laws preserved. Additionally, industry has promulgated codes such as the ALC National Logistics Safety Code, that is currently registered in Victoria and which is intended to be registered as a code of practice under the HVNL. Once registered, for the purposes of the National Law, compliance with the Code will be evidence that all reasonably practicable steps were taken to ensure that a particular event involving speed or fatigue did not occur.

## **4 State and Territory Legislation**

As stated above, state and territory governments have legislative powers to enact legislation in all regards to industrial relations, workplace health and safety and roads. Whilst progress has been made towards harmonisation of laws, some key differences remain.

## **5 Workplace health and safety**

State and territory workplace health and safety laws place obligations on employers, hirers and other parties influencing worker activities to ensure the health and safety of workers.

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<sup>168</sup> Australian Bureau of Statistics (2015) *Survey of Motor Vehicle Use 2014*, cat. 9208

<sup>169</sup> National Heavy Vehicle Regulator website – Chain of responsibility <https://www.nhvr.gov.au/safety-accr-credit-compliance/chain-of-responsibility/about-the-chain-of-responsibility> <viewed 5 October 2015>

<sup>170</sup> *Road Traffic (Administration) Act 2008* and the *Road Traffic (Vehicles) Act 2012*.

This is known as the ‘duty of care’ and includes ensuring the work environment, equipment and handling of goods comply with workplace health and safety standards, by making regular compliance checks, educating workers and providing appropriate instructions. Workplace health and safety legislation also prohibits discriminatory, coercive or misleading conduct against a worker for compliance or attempted compliance with safety measures.

### **Industrial relations and owner-driver legislation**

New South Wales, Queensland, South Australia and Tasmania have retained their own industrial relations Acts, which only apply to employees in the State and/or local government sectors. The Western Australian industrial relations has a wider scope, applying to all employees in Western Australia, except those employed by a ‘constitutional corporation’. These set out similar conditions to the *Fair Work Act 2009* (Cth) such as workplace rights, minimum rates of pay and leave.

Since industrial relations legislation primarily offers protection to employees, several states have enacted legislation designed to protect owner drivers. Western Australia and Victoria have established guidelines for owner-driver remuneration under the *Owner Drivers(Contracts and Disputes) Act 2007* and *Owner Drivers and Forestry Contractors Act 2005* respectively.

New South Wales owner-driver remuneration provisions closely reflect the Road Safety Remuneration Tribunal, with some of the Tribunal’s functions modelled from Chapter 6 of New South Wales’ *Industrial Relations Act 1996*. This Act gives the Industrial Relations Commission power to make contract determinations. These stipulate remuneration, leave, termination and dispute resolution procedures, but are only applicable to specific classes of carriage.

### **5 Legislative interaction**

Where there is overlapping legislation, the Act states that terms in Tribunal Orders and other enforceable instruments prevail over provisions in modern awards and enterprise bargaining agreements, where the terms of the Tribunal’s instrument are ‘more favourable’. State and territory legislation regulating the same areas will be void to the extent of any inconsistencies.<sup>171</sup> This relationship is summarised in Figure 33.

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<sup>171</sup> *Road Safety Remuneration Act 2012 (Cth)* ss10 -15

**Figure 33 Interaction between Tribunal determinations and other regulations**

General rule for industrial relations instruments: Road Safety Remuneration Orders will prevail over terms in all other instruments, where the terms of the order are more favourable.

| <b>Employees</b>   | <b>Independent Contractors / Owner Drivers</b>  |
|--|---|
| <p>Industrial relations instruments that cover remuneration and workplace rights:</p> <ul style="list-style-type: none"> <li>• Modern award</li> <li>• Enterprise Bargaining Agreement</li> <li>• Fair Work Commission Agreement</li> <li>• Transitional Agreement</li> </ul> <p>Employees are also afforded basic rights under the National Employment Standards and national minimum wage requirements mandated by the <i>Fair Work Act 2009</i> (Cth)</p> | <p>Independent contractors have less protections than employees.</p> <p>Under the <i>Independent Contractors Act 2006</i> (Cth) a court may review a contract they consider to be harsh or unfair, especially where the total remuneration paid is less than that of a similar worker.</p> <p>The following legislation creates minimum terms, prohibits certain behaviours, stipulates guideline rates and provides a dispute resolution mechanism:</p> <ol style="list-style-type: none"> <li>i. <i>Owner Drivers and Forestry Contractors Act 2005</i> (Vic)</li> <li>ii. <i>Owner drivers (Contracts and Disputes) Act 2007</i> (WA)</li> </ol> <p>Under Chapter 6 of the <i>Industrial Relations Act 1996</i> (NSW) the NSW Industrial Relations Commission impose binding contract terms on parties that bring a dispute.</p> |

General rule for:

- Workplace Health and Safety Legislation
- Heavy Vehicle National laws (legislated)
- Other state and Territory road regulations

Road Safety Remuneration Orders prevail over the following legislation to the extent of any inconsistencies

Where an employee or independent contractor is covered by a Road Safety Collective Agreement and a Road Safety Remuneration Order, the terms of the most recently handed down instrument prevail.

Source: PwC analysis of regulatory regimes

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## **Appendix D: Literature review**

This appendix outline the literature reviewed relating to remuneration and safety outcomes.

### **Road safety and Remuneration**

There are four major studies that find a statistical link between remuneration and road safety. These are set out in Table 10. These studies indicate that a 1 per cent increase in remuneration can lead to a 0.06 per cent to 3.4 per cent decrease in road accident numbers involving crashes.

**Table 10: Studies identifying a link between remuneration and safety**

| <b>Author</b>                         | <b>Result</b>   | <b>Comment</b>   |
|---------------------------------------|---|--|
| Belzer et al (2002) <sup>172</sup>    | Finds strong, statistically significant links between remuneration levels and safety outcomes. Results indicate that a 10 per cent increase in remuneration rates is associated with a reduction in crash numbers of between 9.2 per cent and 34 per cent.  | Study concludes 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 estimates that the relationship between safety and pay probably is better than 2:1.  |
| Rodriguez et al (2006) <sup>173</sup> | Finds that a 1 per cent increase in pay rates from median levels lead to a 1.33 per cent decrease in crash risk. However, the authors note that the size of the effect on crash risk declines with further pay rises and that the relationship between pay rises and accident risk eventually turns negative. | The authors note that increases in remuneration initially reduce crash incidence, but at a declining rate. The U-shaped relationship found to exist between remuneration and safety suggests substantial 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. |

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<sup>172</sup> Belzer, MH., Rodruiguez, DA. and Sedo, SA. (2002) *Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety*, sponsored by Science Applications International Corporation and Federal Highway Transport Safety Administration.

<sup>173</sup> Rodriguez, DA, Targa, F and Belzer MH (2006) *Pay Incentives and Truck Driver Safety: A Case Study*. *Industrial and Labour Relations Review*, Vol 59, No. 2, January 2006.

| Author                                    | Result   | Comment   |
|---|--|---|
| Nafukho et al (2007) <sup>174</sup>       | This study consists of a regression analysis conducted in respect of six variables considered to be related to accident risk, including salary and paid time off. The authors find 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 and Rodriguez studies. Specifically, the six variables were found <i>in total</i> 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, accounting for 0.4 per cent of the variation in accident rates. | Despite the low explanatory power of the compensation variables they demonstrate a strong and positive effect on driver performance, which determines highway safety. However, 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 remunerations - are very different from those of Belzer et al. |
| Monaco and Williams (2010) <sup>175</sup> | Found that a \$0.10/mile increase in pay yielded a 1.76 per cent reduction in accident involvement. Since the average pay rate per mile is 0.313, a 1 per cent reduction in crash rates would require an 18.2 per cent increase in pay. The study also found that drivers paid as a percentage of revenue have an 18 per cent greater accident involvement than those paid on a per mile basis.  | Suggested this study proves remuneration is an ineffective way to induce safety given the large per cent pay increase for a small reduction.  |

Previous economic analyses commissioned by the Department provide a detailed critique of these and further studies.<sup>176</sup> The findings of this critique coupled with our own analysis indicate that:

- directly comparing remuneration and safety does demonstrate statistically significant correlations. However, results vary substantially
- the four most recent papers range in conclusion from a) a very large effect, b) a U-shaped curve, in which a large positive effect of initial remuneration rises eventually turns negative, through to c) and d) with a very small effect

<sup>174</sup> Nafukho, M., Hinton, BE and Graham, CM (2007) *A Study of Truck Drivers and their Job Performance Regarding Highway Safety, Performance Improvement Quarterly* 20(1), pp 65-78.

<sup>175</sup> Monaco, K. and Williams, E. (2000) 'Assessing the Determinants of Safety in the Trucking Industry', *Journal Of Transportation And Statistics*, April 2000.

<sup>176</sup> Jaguar Consulting (2011) *Economic Analysis of Regulating Rates of Payment and Conditions for Safety in the Road Transport Industry*, Revised Final Paper prepared for the Department of Education, Employment and Workplace Relations, August 2011.

- the literature is very limited in size and focuses on employee drivers.

### ***Unpaid Working time***

The regulation of unpaid working time is explicitly listed as a means of achieving ‘safety and fairness’ under s3 of the Act. The rationale behind payments for all working time is that unpaid waiting times reduce the number of hours during which the driver can engage in paid work, creating economic incentives to engage in unsafe practices. Specifically, drivers are more likely to make an overnight trip when fatigued to avoid make up time lost waiting.<sup>177</sup>

### ***Kilometre rates***

Several studies have also considered the link between the type of remuneration and road safety. For example, Thompson and Stevenson (2014) used ‘agent based simulation’ to test for risk factors, and found that ‘piece rate’ incentives increase pressure on drivers, that may lead to riskier decision making such as skipping breaks.

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<sup>177</sup> Wright, L. and Quinlan, M (2008) *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*

## **Appendix E: Regulatory Impact Analysis**

### **1 Methodology**

This section explains how the key costs and benefits were defined and measured. The discussion is largely conceptual, highlighting the key parameters used to monetise the costs and benefits.

This analysis considers the costs and benefits of the System's operation over a 15 year period starting July 2012. Specifically, we quantify the costs and benefits in relation to the Tribunal's enforceable instruments: both the Road Transport Order and the Payments Order (See Table 11)

**Table 11 Costs and benefits quantified in this analysis**

| <b>Item measured</b>    | <b>Costs</b>  | <b>Benefits</b>   |
|-------------------------|---|---|
| Operation of the System | Government funding to the Tribunal and Ombudsman<br><br>Stakeholder participation with the System (e.g. time cost of participating in consultations)  | We assume that the safety benefits stem from the implementation of enforceable instruments (discussed below).   |
| Road Transport Order    | Time cost of implementation and compliance with measures (e.g. time spent changing policies, completing safe driving plans etc.)  | Reduction in fatalities, serious injuries and property damage as a result of a decrease in the number of road accidents.<br><br>We assume the Road Transport Order will decrease accidents by 10 per cent (explanation in section 2 - 2 Benefits).<br><br>We treat additional income earned by drivers (due to the shorter payment period) as a transfer from hirers to drivers.                              |
| Payments Order          | Time cost of implementation and compliance with measures (e.g. time spent changing policies)<br><br>Reduction in producer surplus (measured as business profits) due to higher labour costs, increasing prices and reducing demand for services in the sector | Reduction in fatalities, serious injuries and property damage as a result of a decrease in the number of road accidents.<br><br>We assume a 1.3 per cent decrease in crashes for every 1 per cent increase in driver remuneration (explanation in section 2 - 2 Benefits).<br><br>We treat additional income earned by drivers, due to increased rates of remuneration, as a transfer from hirers to drivers. |

The impact of the Draft Cash in Transit Order has been discussed qualitatively in Chapter 6. The safety and economic impact of collective bargaining agreements and dispute

determinations have not been quantified as there have been no collective bargaining agreements or enforceable instruments following disputes to date.

Costs and benefits derived from these instruments and activities impact the government, the transport industry participants and broader society. Estimated costs include government funding for the operation of the System and compliance costs to industry to meet their obligations under the Orders. Benefits are estimated as the monetised reduction in road accident costs due to improvements in road safety as a result of measures in the Orders.

The approach taken in this analysis was to rely on data inputs, and where information is ambiguous or unavailable, make a conservative estimate using analysis and anecdotal evidence in submissions made to the Tribunal to sense-check these assumptions.

## 2 Benefits

Benefits are estimated as the reduction in road accidents due to improvements in road safety as a result of the Orders. The magnitude of the monetised estimate of the benefits derived from the Road Transport Order and the Payments Order differs. We have estimated the magnitude of the benefits as the percentage decrease in road accidents attributable to the Order. The analysis of data and research used to derive this estimate is explained below.

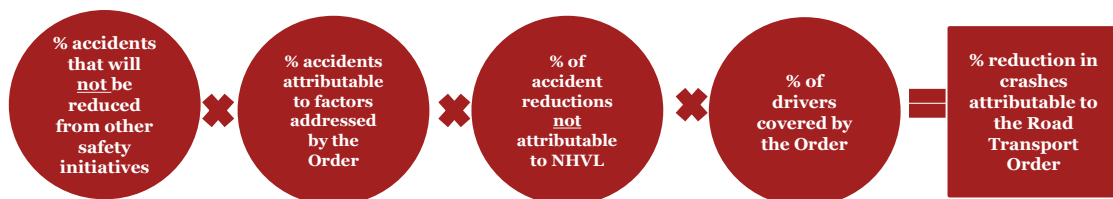
### Road Transport Order – percentage decrease in accidents

The Road Transport Order was assumed to decrease the total number of road accidents in the long distance and supermarket distribution sectors by 10 per cent. The measures in the Road Transport Order target a variety of factors that cause road accidents, including speed and fatigue.

We were unable to find adequate research estimating the percentage decrease in crashes attributable to safe driving plans or drug and alcohol policies, while also considering the concurrent impact of other regulations targeting unsafe practices, such as Heavy Vehicle National Law.

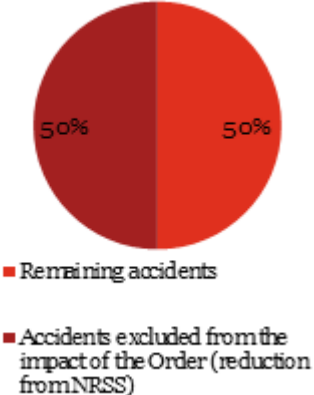
In the absence of this research, we have made an assumption as to the percentage reduction in accidents that could reasonably be attributed to the Road Transport Order, allowing for the operation of concurrent road safety initiatives, the proportion of crashes attributable to factors that are addressed by the Order (such as driving when fatigued, or under the influence of drugs and alcohol), and the coverage of the Order (the proportion of heavy vehicle drivers that are impacted).

**Figure 34: Calculation of the per cent reduction in crashes attributable to the Road Transport Order**



Following the calculation of the maximum number of crashes, we made an assumption as to the proportion of those crashes that could be reasonably attributed to the Order, then subject that assumption to sensitivity testing. This process is set out in Table 12, where the red sections of the chart represent the percentage of crashes potentially attributable to the Order.

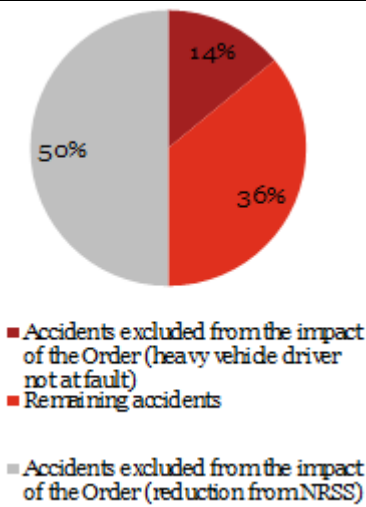
**Table 12: Calculation of the reduction in road accidents attributable to the Road Transport Order**

| Percentage reduction in accidents  | Sources and reasoning  |
|--|--|
|  <p>A pie chart divided into two equal halves, each labeled '50%'. The left half is a darker red, and the right half is a lighter red. Below the chart is a legend with two items: a dark red square followed by 'Remaining accidents', and a light red square followed by 'Accidents excluded from the impact of the Order (reduction from NRSS)'.</p> | <p>Step 1: per cent accidents that will not be reduced through initiatives under the National Road Safety Strategy</p> <p>National Road Safety Strategy 2011-2020 aims to reduce the total number of road accidents in Australia by 3 per cent each year.<sup>178</sup> Using this rate, we assume that at the end of the 15 year period, there will be a 50 per cent reduction in heavy vehicle crashes attributable to initiatives under the strategy.<sup>179</sup></p> <p>This leaves 50 per cent of accidents to be reduced from other government initiatives and changes, such as the National Heavy Vehicle Law, as well as the operation of the Road Safety Remuneration System.</p> |

<sup>178</sup> See the National Road Safety Strategy 2010-20 and the measures of performance at <<http://roadsafety.gov.au/>>

<sup>179</sup> Note: 50% is calculated at a compounded rate of 3% each year, or  $1.03^{15} = 1.5$  (50% increase).

**Percentage reduction in accidents** **Sources and reasoning**

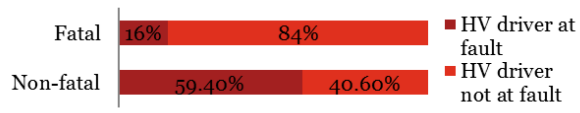


Step 2: per cent heavy vehicle accidents attributable to factors addressed by the Order and NHVL

The Road Transport Order and National Heavy Vehicle Law operate to reduce crashes where the heavy vehicle driver is at fault, not crashes caused by third parties (such as drivers of small cars).

There are a number of academic and research papers that attempt to discern when the heavy vehicle driver is at fault. Safe Work Australia statistics and research from Elkington and Stevenson (2013) found that the percentage of total crashes where the heavy vehicle driver is at fault was 72 per cent and 61 per cent respectively.<sup>180</sup> The National Transport Insurer estimated the number of multi-vehicle accidents where the heavy vehicle driver was at fault in 2013 for accidents involving fatalities, and without fatalities (Figure 35).

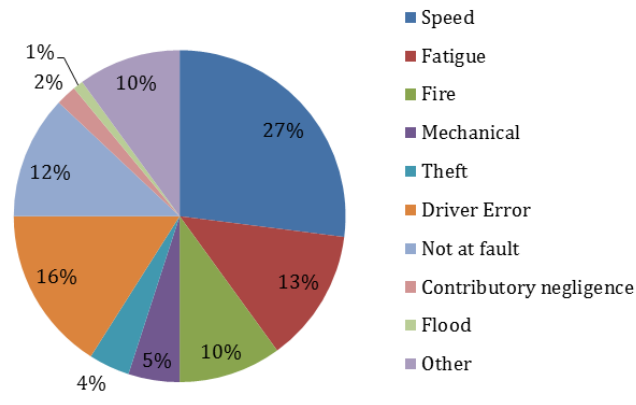
Figure 35: Heavy vehicle driver at fault (multi-vehicle accidents)



Source: National Truck Accident Research Centre 2015, Major Accident Investigation Report, Brisbane

However, multi-vehicle accidents only accounted for 28.2 per cent of all crashes in 2013.<sup>181</sup> Using information regarding the cause of single and multi-vehicle heavy vehicle accidents (Figure 36) to estimate the percentage of time the driver is at fault in all accidents, the driver is at fault in 57 percent of cases (sum of crashes caused by speed, fatigue and driver error, and half of the contributory negligence crashes).

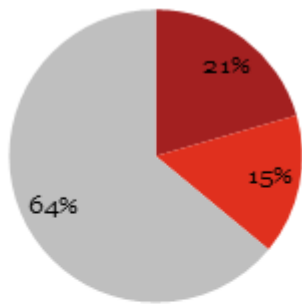
Figure 36: Causes of heavy vehicle accidents



Source: National Truck Accident Research Centre 2015, Major Accident Investigation Report, Brisbane

We have used the highest number of crashes attributable to the driver, 72 per cent, in our analysis. We used this number to maximise the potential reduction in crashes attributable to the heavy vehicle driver, allowing a generous estimation of benefits generated under the Road Safety Remuneration System.

Therefore 36 percent of accidents, or 72 per cent of 50 per cent, can be reduced through heavy vehicle safety initiatives.

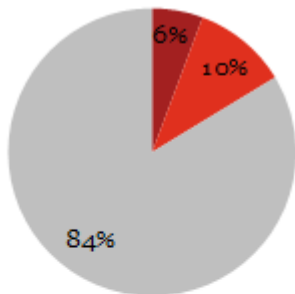


- Accidents excluded from impact of Order (reduction from operation of NHVL)
- Remaining accidents
- Accidents excluded from impact of Order (NRSS and driver not at fault)

Step 3: per cent accidents that will not be reduced by NHVL

It is difficult to estimate the reduction in accidents attributable to the Road Safety Remuneration System and the Heavy Vehicle National Regulator. This is because these regulations often operate to reduce the same types as accidents, such as those caused by driver fatigue. To account for the concurrent operation of National Heavy Vehicle Law, we assume that just over half of the accidents where the driver is at fault are reduced by the National Heavy Vehicle Regulator. This is a conservative estimate, as these accidents can also be reduced through workplace health and safety initiatives or advances in road safety technology.

This leaves 15 per cent of accidents to be reduced by the Road Transport Order, which is 45 per cent of 36 percent. The final step is to reduce the possible reduction in accidents to allow for the fact that the Order does not apply to all heavy vehicle drivers, and will therefore not apply to all accidents.



- Accidents excluded from impact of the order (driver not covered)
- Reduction in accidents attributable to the Road Transport Order
- Accidents excluded from impact of Order (NRSS, NHVL and driver not at fault)

Step 4: per cent drivers of accidents where drivers involved are covered by the Order

According to our analysis, the Road Transport Order covers 65 per cent of drivers.<sup>182</sup> Therefore, the percentage of crashes likely to be attributable to the Road Transport Order is 10 per cent, which is 65 per cent of 15 per cent.

<sup>180</sup> Elkington and Stevenson (2013) *Heavy Vehicle Study* ; Safe Work Australia (2013) *Work-Related Fatalities Involving Trucks, Australia, 2003 to 2012*,

<sup>181</sup> National Truck Accident Research Centre 2015, *Major Accident Investigation Report*, Brisbane

<sup>182</sup> The estimate of 65 per cent of the coverage of the Road Transport Order is described at Figure 41 and surrounding text in this Report. This figure assumes 62 per cent of drivers are long distance drivers under the Road Transport Order (based on survey data in Wright, L. and Quinlan, M. 2008, *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*, which includes responses from 613 drivers in Australia), and 3 per cent of drivers perform supermarket distribution operations (based on market analysis reliant on Coles submission to the Tribunal).

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### **Payments Order - percentage decrease in accidents**

The safety impact of the Payments Order was quantified assuming there was a 1.3 per cent decrease in crashes for every one per cent increase in driver pay. This number is the average of findings from three studies over the last ten years (two overseas studies and one Australian) that quantified a statistically significant relationship between remuneration and safety outcomes. These are explained in more detail below (and in Appendix D: ).

### **Total impact**

In summary, we assumed that the Road Transport Order and Payments Order resulted in a 10 per cent and 18 per cent reduction in the number of crashes.

Road accidents involving rigid and articulated trucks were categorised as those that result in fatalities, serious injury or property damage. Safety improvements were assumed to impact the different types of accidents proportionately, as measures in the Orders are targeted at reducing total accidents not accidents of different levels of severity by removing incentives to speed, drive when fatigued and engagement in other unsafe practices.

For each of the Orders, benefits were quantified as:

*Number of fatalities avoided \* value of a statistical life*

*Number of serious injury road accidents avoided \* average cost of a serious injury road accident*

*Number of property damage road accidents avoided \* average cost of a property damage road accident*

The measurement of the value of a statistical life, cost of a serious injury and property damage following a road accident are discussed in the next section. Our analysis has carefully considered the quantification of these measures, and used Office of Best Practice and Regulation (OBPR) preferred methods where relevant.

Submissions to the Tribunal and survey results suggest that there are downside risks to the benefits calculated in these assumptions, with many participants of the view that the Orders are unlikely to have a substantial safety impact, especially given the lack of compliance in the industry.

In addition to decreased accident costs, drivers will benefit from an increase in income under the Payments Order. These payments are not included in the sum of benefits, as the benefit to drivers as a result of the increase in income comes at a proportionate cost to companies that hire them. Therefore the net impact on welfare is equal to zero.

### **3 Costs**

Costs incurred as a result of the operation of the System are:

- the direct cost to government to fund the operations of the Tribunal, including the support function of the Fair Work Commission, and the Fair Work Ombudsman
- monetised cost of the time spent by stakeholders participating in Tribunal conferences and hearings, making submissions to the Tribunal and complaints to the Ombudsman
- reduced income for road freight companies, and for drivers without work as a result of decreased demand for road freight
- monetised costs of complying with non-remuneration provisions in the Orders including time and the purchase of goods and services.

As noted above, the cost to hirers of owner drivers due to an increase in the cost of labour are treated as a transfer, and have a net economic impact of zero.

## Direct cost to government

Direct cost to government is the sum of money appropriated to fund the operations of the Tribunal and the Fair Work Ombudsman.

The Fair Work Commission, on behalf of the Tribunal, and the Ombudsman provided the total amount of funds received from government over the past four years. Converted to current dollars, these costs were averaged over the four year period to provide costs per year.

The sum of these costs may be conservative; as when the Payments Order is initiated, it is likely the resources need to adequately fulfil the Ombudsman's education and compliance role will increase greatly.

We have not included the costs of putting the System into operation as this is outside the timeframe of our analysis.

## System Participation

Participation in the Tribunal's consultation process and the Ombudsman's compliance process requires considerable resources. Many participants seek in-house or external legal advice, and a few participants have commissioned external parties to engage in research and analysis to support the weight of their findings.<sup>183</sup> In addition to these costs, parties spend time attending and preparing for conferences and hearings and making submissions. Whilst no exact figures were given, parties indicated that Tribunal participation placed considerable constraints on resources.<sup>184</sup>

Since there is no data quantifying the amount spent on legal and consultancy services, this analysis estimates the costs incurred from participating in the Tribunal are time costs, quantified using wages paid which is assumed to include the actual and opportunity costs of time spent on these activities.

The total cost of participating in conferences and hearings has been quantified as:

$$\text{Number of conferences/hearings} * \text{length of conference/hearing (hours)} * \text{number of participants} * \text{average wage}$$

These costs are likely to give a conservative estimate, as most participants are likely to earn above the average wage. There is also considerable preparatory time that goes into each meeting, including consultation, evidence development, in addition to commissioning professional advice, research and analysis as indicated above.

The total cost of making submissions to the Tribunal has been quantified as:

$$\text{Number of submissions} * \text{average number of pages} * 0.5h \text{ per page} * \text{average wage}$$

Again these costs are likely to underestimate the actual expected cost due to a higher wage, increased time per page and increased time per page.

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<sup>183</sup> See, eg, Coles (Deloitte analysis), Retail council and Linfox (external legal representation)

<sup>184</sup> See eg, ALTRA submission, Long Distance Drivers Association submission.

The cost of making complaints to the Ombudsman was quantified as:

$$\text{Number of complaints} \times \text{time to make a complaint and take action} \times \text{minimum wage}$$

The actual costs of participation in the System may vary significantly based on the number of submissions and complaints made, and the number of hearings and conferences held over the forward estimates. Since conservative estimates were used in this section, it is likely costs of System participation will increase over the forward estimates, leaving the conclusion that the costs of the System outweigh the benefits unchanged.

## **Impact of changes to rates of remuneration for owner drivers**

### ***Base case level of remuneration***

The first step in estimating the change in aggregate driver income is to estimate the current level of remuneration received by owner drivers and employee drivers.

This analysis used 2011 Census data, which identifies individual weekly income for 'truck drivers', 'courier drivers' and 'other drivers' (who work over thirty-five hours a week) in the road freight transport industry by engagement type. These are presented as a frequency distribution, i.e. the number of drivers by particular income bands.

### ***Estimation of increase in income***

Under the Payments Order owner drivers in the supermarket freight distribution and the long-haul sectors will be required to be paid per kilometre and hourly rates based on their 'transport worker grade', type of vehicle and trailer, ownership of the vehicle and trailer, and location of work. The cost model formulated by KPMG, upon which the rates in the Order are based, includes separate calculations for labour inputs (time spent driving, waiting, loading etc.), capital inputs (cost of truck repayments and maintenance), and other costs, including a fuel surcharge based on the area of operation.

Given the variety of transport worker grades and vehicle and trailer combinations, the Payments Order contains hundreds of rates potentially applicable to drivers. Data does not exist to accurately determine the proportion of drivers that will receive each rate. Therefore several simplifying assumptions were used in the analysis.

Owner drivers input both their time (labour inputs) and money to purchase vehicles and equipment (capital inputs) to derive income. In contrast, employee drivers only input time to receive income as they do not have to provide their own equipment. To allow for an accurate comparison between the income of owner drivers and employee drivers, we must compare income derived from labour inputs only. This requires two assumptions:

- We used ABS data to estimate current income for owner drivers. ABS income data captures payments received for labour and capital inputs. Income from capital inputs is only derived where the driver has utilised their own funds to purchase the capital. If the driver uses a loan to purchase the equipment, the return on capital returns to the financial institution not the driver. KPMG analysis found that most drivers take out zero deposit 'chattel mortgages', making the initial capital outlay minimal and the

return to capital close to zero.<sup>185</sup> Therefore we assume that owner driver's current income, as recorded in ABS data, is for labour inputs only.

- We used figures in the Road Transport Order to estimate future income for owner drivers. The KPMG model separates payments for labour inputs from payments for capital inputs (operating costs for the vehicle, trailer and fuel). We assume payments for capital inputs exactly cover costs, making the return on capital inputs equal to zero. This allows that payments for labour costs are the only profits received by drivers, making total income a return on labour inputs only.

Several stakeholders have expressed concerns with the accuracy of the costs in the KPMG model, claiming they are too high.<sup>186</sup> As noted above, the Tribunal adjusted the calculation of the rates of remuneration to allow for these errors. Therefore, we have assumed that the rates of payment for capital and operating costs are exactly equal to actual capital and operating costs. As a result, the only profits drivers earn under the Order for the purposes of our modelling is a return to labour inputs, allowing employee and owner driver incomes to be compared before and after the introduction of the Payments Order. Given the extent of the concerns raised as to the inaccuracy of the rates, we have also performed sensitivity testing assuming 10 per cent and 20 per cent increase in this Appendix.

The Payments Order also stipulates a yearly increase in nominal remuneration of 2 per cent. We assume that inflation will be 2 per cent over the period of analysis, such that real wages remain steady over the forecast period.

Since the Payments Order sets minimum rates, we have assumed that only drivers below the threshold will begin to receive the rates stipulated in the Order, and those above the threshold will continue to be paid higher rates. The formula for calculating average weekly income used was:

$$km \text{ travelled in a week} * \text{per km rate} + \text{hours worked in a week} * \text{hourly rate}$$

### ***Change in the composition of the market***

The increase in the cost of hiring owner drivers under changes in the Payments Order will have the following impacts on the economy:

1. Companies substitute owner driver services with employee drivers
2. Owner drivers whose services are still in demand will receive an increase in payments
3. Freight is not transported
4. Freight shifts to another mode

The estimation of these impacts is considered in two steps. First, we estimated the total increase in labour costs – this requires us to consider the company hiring preferences and new payments to drivers to estimate the new number of employee and owner drivers and the new aggregate driver income. Second, we estimated the impact of the increase in costs to freight companies, who will pass some of these costs onto their customers. These customers will then make one of three choices – continue to transport the freight, shift to a different

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<sup>185</sup> KPMG (2015) *Research on minimum payments for contractor drivers*.

<sup>186</sup> See, e.g. Toll submission, Retail Council submission

mode or do not transport the freight. These choices have an impact on freight company profits and the number of drivers employed or hired.

### ***Total increase in labour costs***

The Payments Order stipulates minimum rates of pay for drivers in the supermarket freight distribution sector and long-haul sectors only. Therefore, the Order will increase the relative price of owner drivers. Evidence given in consultations and in submissions, including a survey of South Australian Rural Transport Association's members, found that there will be a large substitution away from owner drivers towards employee drivers.<sup>187</sup>

Using this information, we assume that 40 per cent of owner drivers are hired as employee drivers. This implies a high level of substitutability between owner drivers and employee drivers, which is a reasonable assumption as both sets of drivers require the same skill sets and qualifications. Some owner drivers operate in 'quasi-employee' relationships where they have been contracted to the same hirer for an extended period and may not own their own vehicle. These are the most likely to transfer. At this stage, no drivers have lost their employment or contracts. However, the increase in labour costs will lead to an increase in the price of road freight, which will in turn lead to a reduction in demand for road freight. The reduction in road freight will reduce demand from hirers and employers of drivers for driver services – therefore some drivers will lose their jobs. Freight companies will also lose profits. The methodology used to estimate the reduction in demand for road freight and subsequent effects is discussed below.

### ***Reduction in demand for road freight***

The total increase in the price of road freight was estimated as:

$$\text{percentage increase in labour costs} * \text{labour costs as a percentage of total costs}$$

The reduction in the demand for road freight was calculated as follows:

$$\text{Percentage increased price} * \text{price elasticity of demand}$$

The own price elasticity of demand for road freight was assumed to be relatively inelastic at -0.43, as there are some types of road freight and certain transportation segments where other modes of transportation are not a ready substitute.<sup>188</sup>

Costs incurred as a result of the implementation of the Payments Order are measured in economic terms as the reduction in producer surplus due to decreased demand for road freight services. This accounts for the lost employment and income due to the reduction in demand for road freight. Producer surplus can be approximated using industry profits. The reduction in profits was halved to reflect linear supply and demand curves in the market, and the assumption that half the profits can be reattained through alternate economic activity. This is a standard rule applied in economic analysis.

The reduction in demand for road freight will also impact upon the profits of road freight companies. We assume industry profits as a whole decrease proportionately to the reduction in freight. This analysis excludes the profit impact on ancillary operators, who may choose to reduce the amount of road freight, reducing the number of goods or services sold and therefore reducing profits. Given the diverse nature of ancillary operators and variety of demand factors that feed into the decision to reduce road freight, the impact on these

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<sup>187</sup> South Australian Rural Transport Association (verbal comms) 14 October 2015

<sup>188</sup> Productivity Commission (2006) *Road and Rail Freight Infrastructure Pricing, Inquiry Report 41* Productivity Commission, Melbourne

operators was not quantified. However it can be readily assumed adding this analysis would add weight to the argument that the costs of the Payments Order far outweigh the benefits.

### **Impact of non-remuneration provisions**

Non-remuneration related conditions were estimated using the OBPR regulation impact tool. This tool analyses the impact on small, medium and large businesses, and individuals.

Given the variable and highly unknown cost of seeking legal and industrial relations advice those figures were also excluded from the modelling. They are instead discussed qualitatively in the economic impact section of this report. These costs are potentially significant, and therefore the outcome that costs exceed benefits will remain unchanged.

Given the lack of available evidence supporting the cost of compliance, this report includes 'best case scenario' analysis of compliance costs later in this section. Costs quantified on a per company basis and anecdotal evidence submitted to the Tribunal suggests these costs will be significantly higher. Therefore, the compliance burden calculations here are reasonable.

**Table 13: Calculation of compliance costs**

| <b>Obligation under the Orders</b>                  | <b>Calculation</b>   |
|---|--|
| Keep records and monitor compliance <sup>189</sup>  | Assume no initial compliance cost.<br>Ongoing cost = that all businesses effected spend approximately one hour a week managing their records and generally monitoring compliance.<br>In reality, the compliance costs depends on the record keeping systems currently in place, including whether systems are automated, and whether the firm decides to automate systems to reduce the increased compliance burden. |
| Workplace health and safety training <sup>190</sup> | Initial cost = time spent training employees and hired owner drivers * average wage<br>Ongoing cost = time spent training employees and hired owner drivers * rate of attrition* average wage  |
| Drug and alcohol policy <sup>191</sup>              | Initial cost = time spent developing a drug and alcohol policy* average wage + time spent training employees and hired owner drivers * average wage<br>Ongoing cost = time spent training employees and hired owner drivers * rate of attrition* average wage  |
| Safe driving plans <sup>192</sup>                   | Ongoing cost = no. of trips per company * 0.25hours* average wage<br>Assume that 50 per cent of large companies and 20 per cent of medium sized companies already have safe driving plans.   |

<sup>189</sup> Records will be kept by companies so that there is evidence in case of an audit.

<sup>190</sup> Road Transport Order cl 11

<sup>191</sup> Road Transport Order cl 12

<sup>192</sup> Road Transport Order cl 10

| <b>Obligation under the Orders</b>           | <b>Calculation</b>   |
|--|--|
|  | Note: 15 minutes per safe driving plan was based on anecdotal evidence given in stakeholder submissions. Actual figures may be higher.   |
| Contract Requirement <sup>193</sup>          | Initial cost = time spent changing each contract*number of contracts*average wage<br>Ongoing cost = time spent changing each contract*number of contracts*rate of attrition*average wage   |
| Supply chain contracts <sup>194</sup>        | Assume no initial cost.<br>Ongoing cost (checking plans) = no. of trips per company * 0.25hours* average wage<br>Ongoing cost (audit) = time spent on audit*average wage<br>This analysis assumes there is one supply chain participant involved in each contract. This figure is therefore likely to be substantially higher.   |
| Display of relevant materials <sup>195</sup> | Assume costs insignificant and therefore equal to zero.  |
| Paid leave <sup>196</sup>                    | Assume that hirers will be able to attain another contractor for the period of leave at minimum cost, as is standard practice now.   |
| Rates of payment – implementation costs      | Approximate cost of implementing new payment systems +cost of hardware (GPS systems etc).<br><br>These costs are based on submission to Tribunal from a large freight company. <sup>197</sup> Assume medium sized businesses costs are 10 per cent of the large businesses, and small businesses costs are 5 per cent.<br><br>Assumed that 20 per cent of large companies, 50 per cent of medium sized companies and 70 per cent of small companies will need to change their current systems. |

### **Distribution of costs and benefits**

Costs and benefits were distributed to the parties as shown in Table 14. These distributions were made using a variety of assumptions which will be discussed in more detail in the next section.

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<sup>193</sup> Road Transport Order cl 7

<sup>194</sup> Road Transport Order cl 8

<sup>195</sup> Draft Payments Order cl 8.

<sup>196</sup> Draft Payments Order cl 12.

<sup>197</sup> Booth Transport (October 2015) *Submission regarding the Draft Payments Order*

**Table 14: Distribution of costs and benefits**

| <b>Stakeholder</b>  | <b>Costs</b>   | <b>Benefits</b>   |
|---|--|---|
| Hire and reward operators   | Compliance costs<br>Increase cost of labour<br>Engagement with the system<br>Lost profits due to decreased demand for road freight | Not applicable  |
| Ancillary operators   | Compliance costs<br>Increase cost of labour<br>Engagement with the system  | Not applicable  |
| Drivers   | Lost income due to lost jobs as a result of decreased demand for road freight<br>Engagement with the system                        | Increased income due to higher wages  |
| Consignors, Consignees and other 'supply chain participants'      | Increase in cost of freight (passed on from freight companies)   | Not applicable  |
| Consumers   | Increased cost of goods (passed on from consignors and ancillary operators)  | Not applicable  |
| Industry groups, employee representatives and other participants* | Engagement with the system   | Not applicable  |
| Government  | Not applicable   | Increased income tax receipts (net of job losses)<br>Decreased hospital costs |
| Other individuals   | Not applicable   | Decreased cost of road accidents  |

\*Excludes companies and drivers (assumed 1 per cent of submission costs are borne by drivers, and 30 per cent are borne by freight companies).

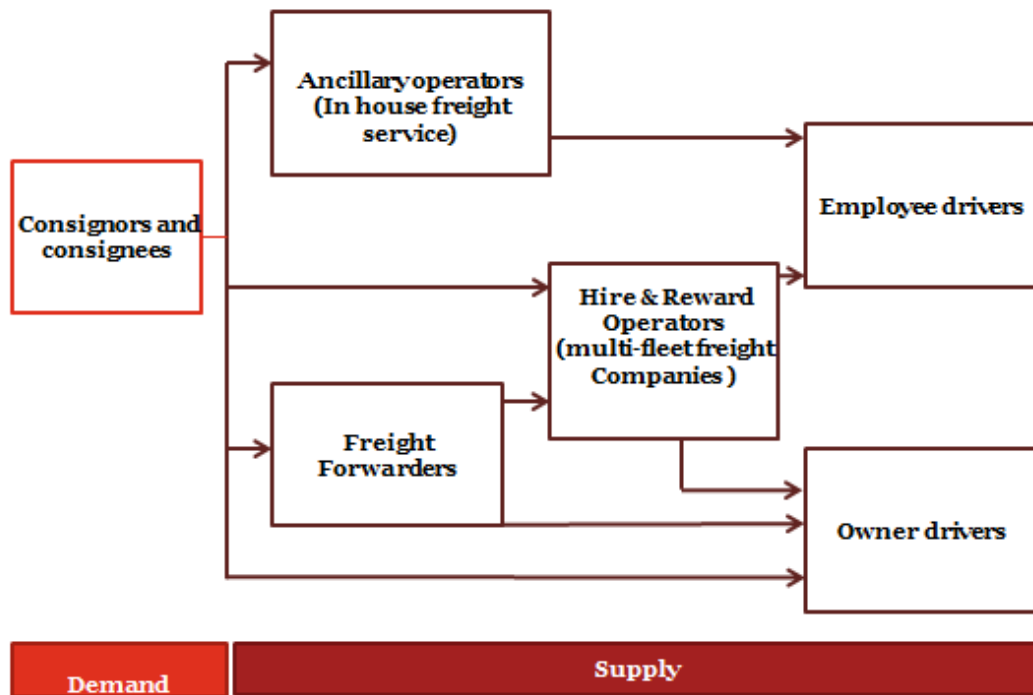
#### 4 Data Inputs and Assumptions

This section identifies the key data and assumptions that are used to estimate the costs and benefits identified in the previous section.

##### Composition of the Market

The basic structure of the supermarket distribution and long-haul road transport markets is shown below (Figure 37).

Figure 37: Composition of the market



Source: Adapted from BITRE 2003, Working paper 60: An overview of the Australian Road Freight Transport Industry, Canberra (p.3).

The parties in the market structure illustrated above are defined as follows:<sup>198</sup>

**Consignors and consignees** demand road transport services where the consignor is the sender of the goods and the consignee receives the goods (e.g. supermarkets, manufacturers and distributors). These parties are often referred to as 'supply chain participants' in this report, in accordance with the terminology used by the Tribunal.

**Ancillary operators** own and operate 'in house' transportation fleets rather than contracting out transportation services.

**Freight forwarders** act as intermediaries between a consignor and the person transporting the freight. Freight forwarders often facilitate multi-modal

<sup>198</sup> Bureau of Infrastructure, Transport and Regional Economics (2003) *Working paper 60: An overview of the Australian Road Freight Transport Industry* p.4

transportation, and may operate their own fleet, engage larger freight companies or engage owner drivers directly.

**Hire and reward operators** are freight companies that directly contract with the consignor or freight forwarder, and have a fleet of trucks such that they have employee drivers or engage owner drivers. Note that hire & reward operators with a one truck fleet are classified separately as owner drivers for the purpose of our analysis.

**Owner drivers** or independent contractors are one truck fleet hire and reward operators that either contract directly with consignors, or sub-contract with freight forwarders or larger freight companies. Contractors may supply their own equipment (commonly known as a 'painted' sub-contractor) or supply their own vehicle and/or trailer.

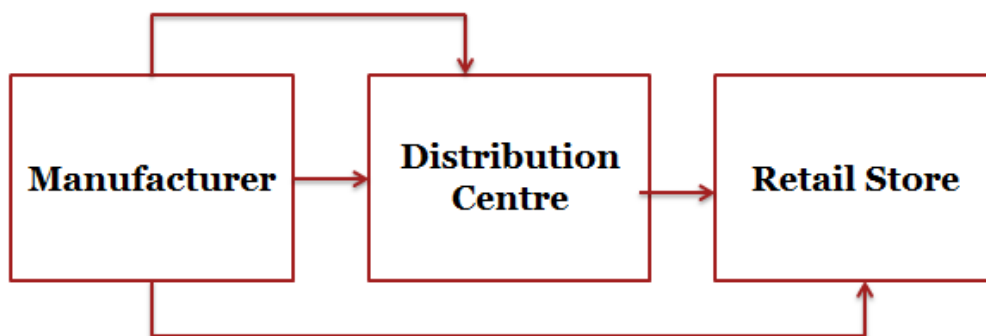
**Employee drivers** are engaged by hire and reward operators through an employment contract.

These parties either demand or supply road transportation services. The Act empowers the Tribunal to regulate other parties within the supply chain. The Tribunal may place obligations on employers and hirers of road transport drivers, including ancillary and hire and reward operators, and other 'supply chain participants'. Supply chain participants are defined under the Act as a consignor or consignee, intermediary or operator of premises for loading and unloading. Operators of premises for loading and unloading are operators of premises where road transport drivers unload and load vehicles, and where an average of at least five vehicles is loaded or unloaded on each 'active' day. Intermediaries are all other parties to supply chain contracts.

This analysis quantifies the impact of the operation of the System on consignors, consignees, ancillary operators, hire and reward operators, drivers and other supply chain participants. The impact on operators of premises for loading and unloading, freight forwarders, intermediaries and only supply chain participants is not considered separately.

In the supermarket distribution chain the party organising the transportation of the freight may be either the manufacturer, distribution centre or the retail store (Figure 38). There may also be several parties organising the transportation of raw materials and other inputs to the manufacturer. This structure implies that the number of supply chain participants is potentially large. This is considered when calculating compliance costs.

**Figure 38: Typical road freight supply chain in the supermarket sector**



Source: Deloitte Access Economics (2013), *Market analysis of the Australia road freight transport sector*, prepared for Coles Supermarkets Australia

### Number of businesses

There were 48,659 businesses operating in the road freight transport sector in June 2014. This analysis assumes all companies are hire and reward operators, including owner drivers. The number of businesses was used in the analysis to calculate compliance costs incurred by industry.

**Table 15: Businesses operating in road freight at end of financial year**

| Location                     | Non Employing (number) | 1-19 Employees (number) | 20-199 Employees (number) | 200+ Employees (number) | Total (number) |
|------------------------------|------------------------|-------------------------|---------------------------|-------------------------|----------------|
| New South Wales              | 6,947                  | 8,203                   | 291                       | 18                      | 15,459         |
| Victoria                     | 6,628                  | 6,267                   | 213                       | 21                      | 13,129         |
| Queensland                   | 5,174                  | 4,668                   | 283                       | 17                      | 10,142         |
| South Australia              | 1,987                  | 1,220                   | 89                        | 4                       | 3,300          |
| Western Australia            | 3,108                  | 2,071                   | 154                       | 6                       | 5,339          |
| Tasmania                     | 364                    | 336                     | 21                        | 0                       | 721            |
| Northern Territory           | 129                    | 122                     | 14                        | 0                       | 265            |
| Australian Capital Territory | 146                    | 152                     | 6                         | 0                       | 304            |
| Currently Unknown            | 0                      | 0                       | 0                         | 0                       | 0              |
| Total - Australia            | 24,483                 | 23,039                  | 1,071                     | 66                      | 48,659         |

Source: ABS June 2014 Counts of business cat. 8165.0.

There is a high concentration of small operators in the market, reflected in the statistic that approximately 70 per cent of all operators have only one truck in their fleets and approximately 24 per cent have two to four trucks. Less than 1 per cent of operators have more than 100 trucks in their fleet.<sup>199</sup>

### Number of drivers

There were approximately 253,000 people employed in the road transport industry as of August 2015.<sup>200</sup>

There are 200,042 drivers in the industry, mainly comprised of truck drivers.<sup>201</sup> Delivery drivers were included in this figure as the Road Transport Order and Payments Order potentially include these drivers, especially grocery deliverers.<sup>202</sup>

The number of drivers in the industry was estimated using 2011 ABS Census Data,<sup>203</sup> then assumed to have grown by 7 per cent in with the increase in the road freight task growth to

<sup>199</sup> National Transport Insurance (2014) *NTI's Guide to the Trucking Industry*.

<sup>200</sup> ABS September 2014 *Labour Force, Australia, Detailed, Quarterly cat. 6291.0.55.003*

<sup>201</sup> Australian Bureau of Statistics 2012, *2011 Census - Australia, Individual Income (weekly) (INCP) and Occupation 93 (ASCO2) (OCC93P) by Employment Type (EMTP) and Industry of Employment (ANZSICo6) (INDo6P)*.

<sup>202</sup> See ABS ANSIC Occupational classifications for more detail. Used definitions "truck driver", "delivery driver" and "unclassified transport driver".

<sup>203</sup> Australian Bureau of Statistics 2012, *2011 Census - Australia, Individual Income (weekly) (INCP) and Occupation 93 (ASCO2) (OCC93P) by Employment Type (EMTP) and Industry of Employment (ANZSICo6) (INDo6P)*.

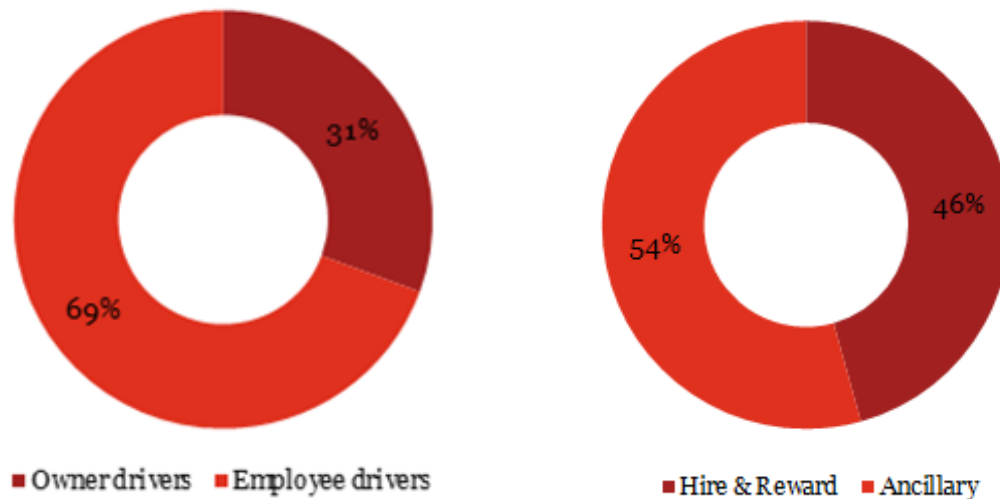
June 2014.<sup>204</sup> Over the forward estimates, the number of drivers was also assumed to increase proportionately to the increase in road freight task.

To formulate the base case (the state of the market before the Orders come into effect), we assumed that over the forward estimates, the number of drivers will increase proportionately to the increase in road freight task. This allows us to calculate the number of job losses from increased rates of remuneration under the Payments Order.

Driver numbers were also assumed to increase proportionate to the increase in freight task over the evaluation period, subject to changes in demand attributed to higher owner driver remuneration under the Payments Order.<sup>205</sup>

The composition of the labour market for road transport drivers can be divided by engagement type (Figure 39) and employer or hirer type (Figure 40).

**Figure 39: Drivers by engagement type**     **Figure 40: Drivers by employer or hirer type**



Source: BITRE (2003) Overview of transport sector     ABS (2011) Census of population and housing

These estimates as to the number of owner drivers are broadly in line with industry estimates of less than 70,000 owner drivers.<sup>206</sup> Other data sources as to the number of owner drivers suggest the number can vary between 20,000-150,000.<sup>207</sup> The number of owner drivers will impact the magnitude of the cost and benefit impacts modelled in this report, but will leave the final outcome unchanged.

<sup>204</sup> ABS (2015) *Survey of Motor Vehicle use*. The total number of tonne kilometres driven by freight vehicles increased by 7% from 2011 to 2014. Note that this data is released every two years, a mid-point was used for January.

<sup>205</sup> BITRE (2011) *Road freight estimates and forecasts in Australia: interstate, capital cities and rest of state*

<sup>206</sup> BITRE (2003) *Working paper 60: An overview of the Australian Road Freight Transport Industry*, Canberra.

<sup>207</sup> Jaguar Consulting (2011, p. 46); Employment Research Australia (2013) *The Other Half: Self-employment in Transport & Logistics in Australia – A scoping study for TALC*

The number used in our analysis is slightly lower than the number of 231,900 truck drivers used in PwC's 2011 RIS.<sup>208</sup> Reasons for this discrepancy are based on different data sources. As above, the higher number of total drivers would impact the magnitude of the cost and benefit impacts modelled in this report, but will leave the final number engaged.

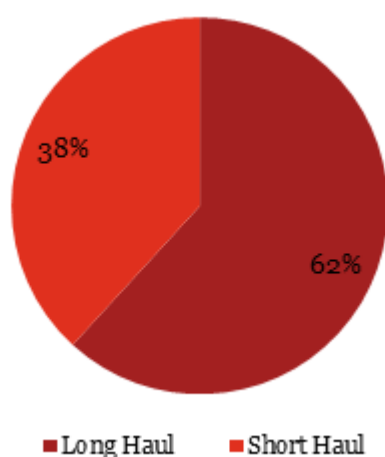
### Composition of the driver market

Drivers can be further classified based on the distance of their freight movement, or by the type of freight they move. Both of these classifications have been used by the Tribunal to place obligations on a sector of the Road Transport Industry under the Road Transport Order and Payments Order.

The number of drivers per classification is difficult to accurately quantify. The Bureau of Infrastructure, Transport and Regional Economics (BITRE) recognises this information gap, stating 'because of the breadth and diversity of freight, detailed freight data is generally costly to collect, and even where data is collected, commercial confidentiality can limit the availability of more detailed information required to inform planning.'<sup>209</sup>

The proportion of long haul and short haul drivers is estimated based on a survey conducted by Wright and Quinlan (2008) which includes responses from 613 drivers in Australia.<sup>210</sup> Of the sample, 379 (61.8 per cent) drivers indicated over 90 per cent of their assignments belong classified as long distance operations and therefore assumed to be the long haul drivers.<sup>211</sup>

**Figure 41: Drivers by distance**



Source: Wright, L. and Quinlan, M. 2008, *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*.

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<sup>208</sup> 2011 RIS driver numbers were based on information provided by the Department from non-published ABS data

<sup>209</sup> BITRE (2014) *Freightline 1 p. 1*

<sup>210</sup> Wright, L. and Quinlan, M. 2008, *Safe payments – addressing the underlying causes of unsafe practices in the road transport industry*.

<sup>211</sup> Under the Road Transport Order and Payments Order, long distance operations are defined as 'any interstate operation, or any return journey where the distance travelled exceeds 500 kilometres and the operation involves a vehicle moving livestock or materials whether in a raw or manufactured state from a principal point of commencement to a principal point of destination.' It is unclear how closely the definition in the study aligns with this one.

This analysis makes a simplifying assumption that all drivers affected in the supermarket distribution market, defined below, are ‘short-haul’.

There are two key methods for determining the proportion of drivers in the market by freight type. Method 1 uses kilometres travelled per year to determine the overall size of the market. Deloitte analysis found that as Woolworth’s freight task is approximately 400 million per year, and they have 43 per cent share of the market, the overall supermarket freight as a proportion of total freight is 1.6 per cent. Using updated figures - Woolworths market share of 40.2 per cent<sup>212</sup> and total freight task<sup>213</sup> of 62,754 million kilometres - leaves the size of the supermarket sector unchanged at 1.6 per cent of the total road freight sector.

Alternatively, the composition of the market can be estimated based on expenditure. Coles submitted that they spent \$431 million on road freight in 2011-12. Given they have a market share of 31.8 per cent, the supermarket freight sector spends approximately \$1.36 billion on road freight. This is equal to \$1.43 billion in June 2014. Since total revenue to the road transport sector in the year ending June 2014 was \$53.82 billion,<sup>214</sup> the percentage of road freight attributable to supermarkets is calculated as 2.7 per cent.

Method 2, the revenue method, was used in this analysis. The freight method has not been used, as the number of kilometres travelled is likely to underestimate the number of drivers affected given much of supermarket distribution is short distance.

Given the broad application clauses in the Road Transport Order and Payments Order, the proportion of the road transport market captured by the provision 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’ may be larger than 2.7 per cent. This is because 70 per cent of Coles’ and 50 per cent of Woolworth’s inbound freight is organised by manufacturers, with the price of freight included in the total price of the goods transported.<sup>215</sup> Sensitivity testing, that assumes the supermarket freight sector is twice as large as 2.7 per cent, with half of freight organised directly by supermarket companies and the other half organised by manufacturers is included later in this section.

**Table 16: Composition of the market**

| Item measured                           | Kilometre method | Expenditure method |
|---|------------------|--------------------|
| Supermarket freight (narrow definition) | 1.6 per cent     | 2.7 per cent       |
| Supermarket freight (broad definition)  | 3.2 per cent     | 5.4 per cent       |

Source: Deloitte Access Economics 2013, *Market analysis of the Australia road freight transport sector*, prepared for Coles Supermarkets Australia; ABS 2015, Survey of Motor Vehicle Use cat. 9208.0.

ABS also provides some data as to the composition of the market by freight task. Since these categories are quite broad, the above method was preferable in this analysis.

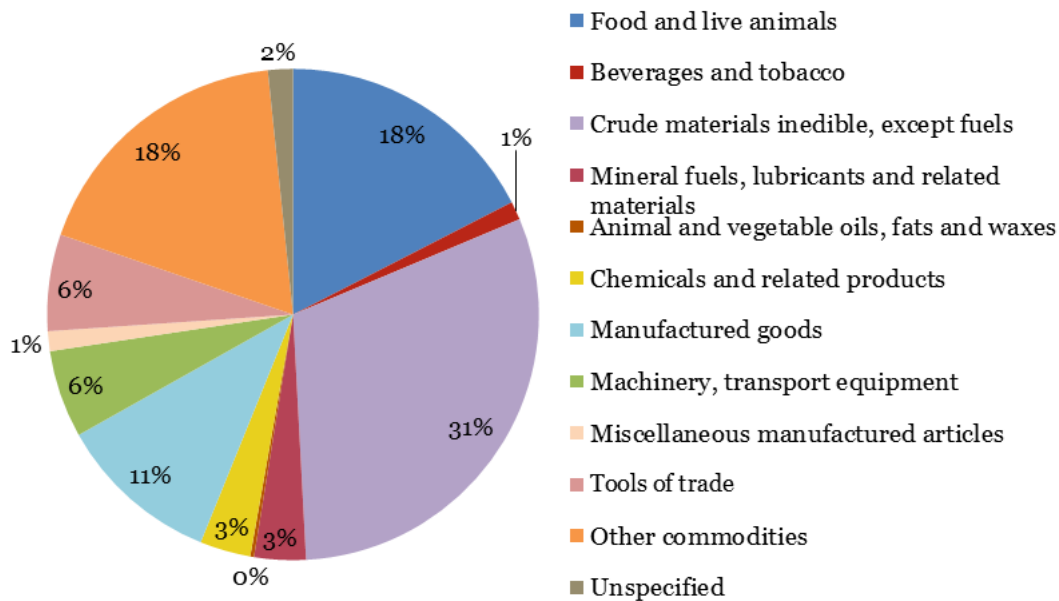
<sup>212</sup> IBIS World (2015) *Supermarkets and Grocery Sector*, Report G4111

<sup>213</sup> ABS (2015) *Survey of Motor Vehicle Use cat. 9208.0* Table 1. Includes distance travelled by light commercial vehicles, rigid trucks and articulated trucks.

<sup>214</sup> ABS (2013-2014) *Australian Industry cat. 8155.0*.

<sup>215</sup> Coles (1 August 2013) Submission to the Draft Road Safety Remuneration Order, accessed at <<http://www.rsrt.gov.au/default/assets/File/Subs%20on%20draft%20RSRO/Coles.pdf>> p.45

**Figure 42: Commodities carrier by freight type**



Source: ABS October 2015, Survey of Motor Vehicle Use in Australia cat.9208.0.

**Coverage**

Constitutional limitations prevent the Tribunal from regulating all participants in the industry. PwC’s 2011 RIS assumed approximately 90 per cent of employee drivers and 60 per cent of owner drivers will be impacted by the provisions in the Act.

This analysis takes a slightly different approach, focusing on coverage of the sectors regulated under the Orders as opposed to the road transport industry as a whole. Coverage of the Orders in the supermarket distribution and long-haul sub sectors are assumed to be 100 per cent for both owner and employee drivers.

Since all supermarket freight companies are ‘constitutional corporations’,<sup>216</sup> all drivers and entities that engage in a road transport service with these companies are covered by the Road Transport Order and Payments Order.<sup>217</sup>

<sup>216</sup> Constitutional corporations have a well-established legal definition as a “foreign, trading or financial corporation”. Note:

- 1) A corporation formed within the Commonwealth is essentially a legal entity registered under the Corporations Act 2001 or established directly by an Act of Commonwealth, State or Territory Parliament. Any propriety limited company (Pty Ltd) or a publicly listed company (Limited) is a corporation. A corporation is a legal entity separate to the individuals who make up the corporation. A corporation can sue, be sued, hold property and enter into contracts; and
- 2) To be a constitutional corporation, a substantial or significant proportion of the corporation’s activities must be trading or financial. Trading essentially refers to the business of buying, selling, exchanging or bartering goods and services or being engaged in the business of commerce. Financial dealings essentially refers to acts such as borrowing, lending, banking or insurance and the provision of management and advisory services in relation to financial matters

Therefore all four major supermarket chain companies that make up over 90% of the market are constitutional corporations. See the ASIC register for more evidence as to their incorporation.

<sup>217</sup> Road Transport Order cl 3 provides that a road transport driver is (a) an individual, other than a related individual of a corporation who drives one or more of the corporation’s vehicles, who engages in the road transport industry by driving a vehicle to transport things by road, provided the individual does so:

- (i) as an employee of a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or

It is likely that that most businesses engaging in long-haul freight are either engaging in 'constitutional trade or commerce' by providing interstate road transport services, or are being engaged or hired by a 'constitutional corporation'.<sup>218</sup> Since a large proportion of long haul freight is demanded by large companies to take their goods from key ports interstate to other major cities this is a reasonable assumption.<sup>219</sup>

Note that this does not mean coverage of all employee and owner drivers under the Act is equal to 100 per cent. However for these two discrete sub sectors, the coverage is very high, so is assumed to be 100 per cent. Intrastate short-haul distributions engaged by unincorporated companies are the least likely to fall under these provisions.

## Costs

### *Driver remuneration – current*

Owner driver and employee driver income was estimated using detailed information provided in the 2011 Census, extrapolated to the base year dollars.

**Table 17: Number of drivers in each income bracket**

| <b>Income extrapolated to 2015 dollars</b> | <b>Employee drivers</b> | <b>Owner managers of incorporated</b> | <b>Owner managers of unincorporated</b> |
|--|-------------------------|---------------------------------------|---|
| Nil income                                 | 1,030                   | 205                                   | 347                                     |
| \$1-\$149                                  | 2,242                   | 392                                   | 767                                     |
| \$150-\$249                                | 3,935                   | 721                                   | 1,669                                   |
| \$250-\$399                                | 6,671                   | 1,256                                 | 2,988                                   |
| \$400-\$599                                | 17,482                  | 3,698                                 | 6,898                                   |
| \$600-\$799                                | 29,605                  | 4,423                                 | 6,039                                   |
| \$800-\$999                                | 33,043                  | 3,788                                 | 4,411                                   |
| \$1,000-\$1,299                            | 31,873                  | 3,618                                 | 3,678                                   |
| \$1,300-\$1,599                            | 18,621                  | 2,348                                 | 2,068                                   |
| \$1,600-\$1,999                            | 13,257                  | 2,202                                 | 1,861                                   |
| \$2,000 or more                            | 5,604                   | 2,169                                 | 1,734                                   |
| Average weekly income                      | \$1,149.55              | \$1,165.29                            | \$971.81                                |
| Average yearly income                      | \$59,776.40             | \$60,594.96                           | \$50,534.05                             |

Source: ABS (2011) Census of population and housing

The average weekly income was calculated by taking the midpoint of each income bracket (in base year dollars) multiplying by the number of drivers in each bracket for all brackets then

(ii) under a road transport contract the other party to which is a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority;

<sup>218</sup> The interpretation of constitutional trade and commerce under s51(i) of the Constitution is multifaceted and contentious, but can be assumed to include the transportation of livestock, goods and other wares interstate.

<sup>219</sup> IBIS World (2015) *Road freight transport in Australia*, Report I4610

dividing by the total number of drivers in the market. This was done for each type of driver, and for the market as a whole.

This data was segmented into drivers above and below the long-haul and supermarket distribution rates of pay mandated under the Payments Order.

### ***Driver remuneration under the Payments Order***

In 2015, the Tribunal commissioned KPMG to create a cost model that quantified the amount drivers should be paid to cover costs. The cost model took into account a variety of cost components (see Table 18). These rates vary depending on the driver's 'Transport Work Grade', whether a trailer and/or vehicle is supplied by the driver, the type of trailer and/or vehicle and a fuel loading depending on the area of operation.

**Table 18: Cost breakdown in the KPMG model**

| <b>Type</b>                | <b>Detail</b>  |
|----------------------------|--|
| Labour and on-costs        | Labour, casual loading and allowances from the Road Transport and Distribution Award 2010 or Road Transport (Long Distance Operations) Award 2010, as at 1 January 2014, plus self-funded superannuation costs of 9.5 per cent |
| Finance                    | Costs of financing vehicles and trailers   |
| Fuel and oil               | Diesel fuel (based on average 2013-14 prices), engine oil and AdBlue® costs  |
| Registration and insurance | Registration and insurance costs for vehicles and trailers   |
| Tyres                      | Costs of replacing tyres as they wear out, based on current market prices  |
| Maintenance                | Maintenance and repair fees for vehicles and trailers, on a per kilometre basis  |
| Administration             | Cost of administrative tasks, including accounting, a mobile phone and a laptop for business use   |
| Other                      | Other business costs contractor drivers pay, such as licensing, telematics, accreditation, training courses, vehicle washing and ASIC fees   |

Source: KPMG 2015, *KPMG Guidance Material – Cost model outputs (per hour and per kilometre rates)*, prepared for the research project on minimum payments for road transport contractor drivers p.3.

As explained in the methodology, our analysis uses rates for labour inputs only. KPMG calculated labour costs to include casual loading (25 per cent), allowances (industry disability and overtime allowances - long distance only at 15 per cent) and superannuation (9.5 per cent).

These labour costs were sourced by KPMG from the *Road Transport and Distribution Award 2010* and *Road Transport (Long Distance Operations) Award 2010*. Therefore the impact of payments for labour inputs under the model is to increase owner driver pay to be the same as long distance employee drivers, however contractor drivers receive an additional casual loading which is paid as casual workers, and analogously contractor workers, do not have the same protections and entitlements as employees.

**Table 19: Labour costs estimated in KPMG model**

| <b>Transport Worker Grade</b> | <b>Distribution operations Standing rate (per hour)</b> | <b>Distribution operations Running rate (per km)</b> | <b>Long distance operations Standing rate (per hour)</b> | <b>Long distance operations Running rate (per km)</b> |
|-------------------------------|---|--|--|---|
| 1                             | \$24.11   | \$0.00   | \$0.00   | \$0.45  |
| 2                             | \$24.72   | \$0.00   | \$0.00   | \$0.46  |
| 3                             | \$25.03   | \$0.00   | \$0.00   | \$0.47  |
| 4                             | \$25.49   | \$0.00   | \$0.00   | \$0.47  |
| 5                             | \$25.80   | \$0.00   | \$0.00   | \$0.48  |
| 6                             | \$26.10   | \$0.00   | \$0.00   | \$0.50  |
| 7                             | \$26.48   | \$0.00   | \$0.00   | \$0.50  |
| 8                             | \$27.25   | \$0.00   | \$0.00   | \$0.52  |
| 9                             | \$27.70   | \$0.00   | -  | -   |
| 10                            | \$28.39   | \$0.00   | -  | -   |

Source: KPMG 2015, *KPMG Guidance Material – Cost model outputs (per hour and per kilometre rates)*, prepared for the research project on minimum payments for road transport contractor drivers p.6.

Given the limited variance between these rates, we used an average standard rate for distribution operations of \$26.11 per hour, and a rate for long distance operations of \$0.48/km. The Transport Worker Grades that dictate the variance in the rates are included in Table 20. In using an average hourly rate, there is an implicit assumption that there are an equal number of drivers in each category. The composition of the freight vehicles in use in Australia is a useful proxy for determining the actual number of workers in each category. Note that using these numbers to estimate the actual average rates would have a small material effect on the outcomes given by the model.

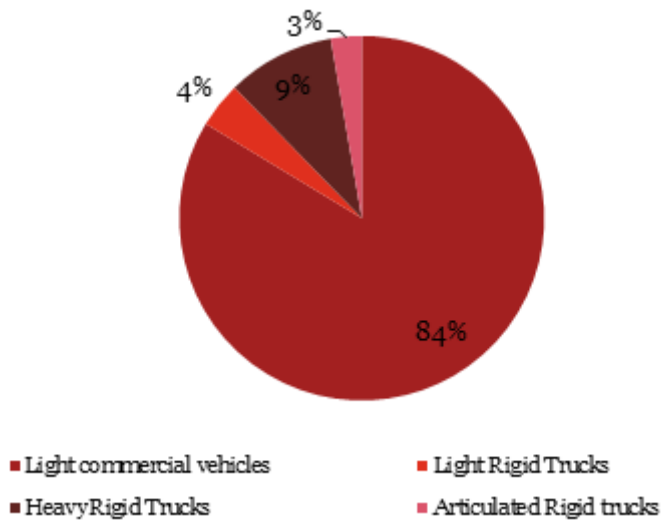
**Table 20: Transport Worker Grade**

| <b>Grade</b> | <b>Distribution operations</b>   | <b>Long distance operations</b>   |
|--------------|--|---|
| 1            | General hand, greaser and cleaner, motor driver's assistance, loader courier.  | Driver of two axle rigid vehicle up to 13.9 tonnes GVM. Capacity up to eight tonnes.  |
| 2            | Driver of a rigid vehicle (including a motor cycle) not exceeding 4.5 GVM  | Driver of three axle rigid vehicle over 13.9 tonnes GVM. Capacity over eight and up to 12 tonnes.   |
| 3            | Driver of a two-axle rigid vehicle or any other rigid vehicle exceeding 4.5 tonnes, but not exceeding 13.9 tonnes GVM  | Driver of four axle rigid vehicle over 13.9 tonnes GVM, or driver of rigid vehicle and heavy trailer combination with GCM of 22.4 tonnes or less, or driver of articulated vehicle with GCM of 22.4 tonnes or less. |
| 4            | Driver of a three-axle rigid vehicle exceeding 13.9 tonnes GVM   | Driver of rigid vehicle and heavy trailer combination with GCM over 22.4 tonnes but not more than 42.5 tonnes, or driver of articulated vehicle with GCM over 22.4 tonnes   |
| 5            | Driver of a rigid vehicle with four or more axles and a GVM exceeding 13.9 tonnes, or driver of a rigid vehicle and heavy trailer combination with three axles and a GCM of 22.4 tonnes or less, or driver of an articulated vehicle with three axles and a GCM of 22.4 tonnes or less | Driver of rigid vehicle and heavy trailer combination with GCM over 42.5 tonnes but not more than 53.4 tonnes, or driver of double articulated vehicle with GCM 53.4 tonnes or less (includes B doubles)            |
| 6            | Driver of a rigid vehicle and a heavy trailer combination with more than three axles and a GCM greater than 22.4 tonnes, or driver of an articulated vehicle with more than three axles and a GCM greater than 22.4 tonnes   | Driver of rigid vehicle and trailer(s), or double articulated vehicle with GCM over 53.4 tonnes (includes B-doubles)  |
| 7            | Driver of a double articulated vehicle up to and including 53.4 tonnes GCM   | Driver of road train or triple articulated vehicle exceeding 94 tonnes GCM.   |
| 8            | Driver of a rigid vehicle and trailer(s) or double articulated vehicle exceeding 53.4 tonnes GCM including B-Doubles   | Multi-axle trailing equipment.  |
| 9            | Driver of a rigid vehicle with trailer combinations or articulated vehicle with trailer combinations exceeding 94 tonnes GCM   |   |
| 10           | Driver of a multi-axle platform trailing equipment with a carrying capacity in excess of 70 tonnes   |   |

Source: KPMG 2015, *KPMG Guidance Material – Cost model outputs (per hour and per kilometre rates)*, prepared for the research project on minimum payments for road transport contractor drivers p.7.

In summary, Table 20 shows that the number of drivers in each grade depends on the vehicle driven. Figure 43 suggests over half of the distribution operations will fall in categories 1-3, whilst long distance operations, generally carried out by articulated trucks, will fall into brackets with higher rates.

**Figure 43: Composition of registered freight vehicles in Australia**

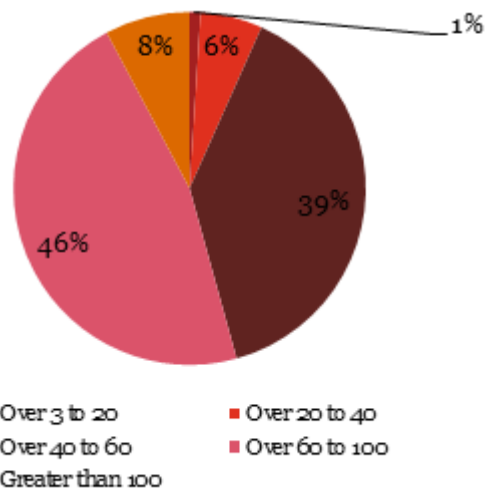
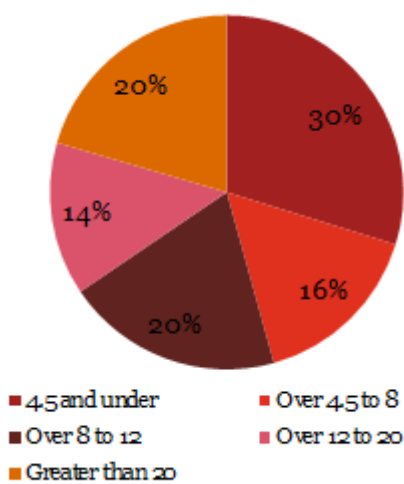


Source: ABS (2015) Motor Vehicle Census, Australia, 31 Jan 2015 cat.9390.0.

**Figure 44: Freight task carried (GVM)**

**Rigid Trucks**

**Articulated Trucks**



Source: ABS (2015) Motor Vehicle Census, Australia, 31 Jan 2015 cat.9390.0.

Source: ABS (2015) Motor Vehicle Census, Australia, 31 Jan 2015 cat.9390.0.

The Payments Order also requires that these rates increase at 2 per cent. Our analysis has assumed that consumer price inflation will be an average of 2 per cent over the forward estimates, making the impact on real prices of this requirement equal to zero.

## **Hours worked**

We have assumed an average of 40 hours worked based on 2011 Census data. Research from the Tribunal broadly supports this view, finding drivers worked a median of 41 – 42.5 hours depending on their vehicle type.<sup>220</sup> Evidence as to actual hours worked in the industry is highly varied. Information collected by the Tribunal suggests drivers can work anywhere from 3.3-75.8 hours for a rigid vehicle, and 4.3-86.72 hours for semi-trailers.<sup>221</sup>

Submissions to the Tribunal have expressed concerns that this number is too low, estimating actual numbers at 50-65 paid hours per week.<sup>222</sup> Section 6 of this Appendix includes sensitivity testing, adopting the assumption that a 60 hour week is worked.

## **Waiting times**

The Payments Order requires drivers are paid for all hours the driver is providing a 'road transport service'. Clause 11 stipulates that this includes, but is not limited to:

- (a) each hour, or part thereof, during which the contractor driver is required by the hirer to be at the disposal and/or direction of the hirer; and*
- (b) each hour, or part thereof, that the contractor driver spends in taking a fatigue or rest break required by law; and*
- (c) each hour, or part thereof, that the contractor driver is, or is assisting or supervising another person who is:*
  - (i) driving a vehicle used in the provision of the road transport service; and/or*
  - (ii) queuing and/or waiting, whilst in control of the vehicle used in the provision of the road transport service; and/or*
  - (iii) loading things onto or unloading things from the vehicle and/or a trailer used in the provision of the road transport service, including tarping, installing or removing gates and the operation of on-board cranes, or waiting for someone else to do so; and/or*
  - (iv) cleaning, inspecting, servicing or repairing a vehicle and/or a trailer supplied by the hirer that is used in the provision of the road transport service; and/or*
  - (v) inspecting or attending to a load on the vehicle and/or a trailer used in the provision of the road transport service; and/or*
  - (vi) refuelling the vehicle used in the provision of the road transport service; and/or*
  - (vii) recording information or completing a document as required by law or otherwise in relation to the vehicle and/or a trailer used in the provision of the road transport service; and/or*
  - (viii) waiting in a location because of a natural disaster (eg flood or bushfire) or other emergency.*

The analysis in this report made a simplifying assumption that payments for all these times equates to 10 hours of unpaid work per week. A study by Elkington and Stevenson (2013) found that the average work day was 11 hours, which equated to approximately 9 hours of

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<sup>220</sup> <http://www.rsrt.gov.au/default/assets/File/research/InfoRTOperatorrecords.pdf>

<sup>221</sup> <http://www.rsrt.gov.au/default/assets/File/research/InfoRTOperatorrecords.pdf>

<sup>222</sup> Border Express (2015) *Submission to the Draft Payments Order* p.4; Toll (2015) *Submission to the Draft Payments Order*

unpaid work per week.<sup>223</sup> The outcome of a 2011 Transport Workers Union survey is broadly consistent with this, finding ‘48 per cent of drivers report almost one day a week in unpaid waiting time. For delivery drivers, it is more than 10 hours a week.’<sup>224</sup> The inclusion of all ‘road transport service’ time defined in the Order may make this number higher. This number was also subject to sensitivity testing below.

### ***Kilometres travelled***

The ABS 2015 Survey of Motor Vehicle Use stipulates the average number of kilometres travelled annually by vehicle type. This analysis made the simplifying assumption that rigid vehicles are engaged in short distance transport only, and articulated vehicles are engaged in long distance transport only. This assumption was also used in the KPMG analysis.

There are roughly 2.5 registered rigid and articulated vehicles per driver according to our analysis and ABS data. Therefore, to attain the average number of kilometres travelled per driver, the average number of kilometres per rigid vehicle and articulated vehicle needs to be multiplied by a factor of 2.5. The result is shown in Table 21.

**Table 21: Average number of kilometres travelled per driver**

| <b>Time period</b> | <b>Short-haul</b> | <b>Long-haul</b> |
|--------------------|-------------------|------------------|
| Yearly             | 56,488            | 224,347          |
| Weekly             | 1,177             | 4,674            |

Source: ABS 2015, *Survey of Motor Vehicle Use cat.9208.0*

Whilst these figures are higher than the assumptions of 30,000 and 150,000 kilometres per year used in the KPMG model,<sup>225</sup> they are broadly consistent with submissions to the Tribunal suggesting long distance drivers drive an average of 200,000-300,000 kilometres per year.<sup>226</sup>

### ***Second round effect – decrease in demand for road freight***

According to BITRE estimates, road freight is quite responsive to changes in price, with the price elasticity of demand estimated to be around -0.9.<sup>227</sup> However, another study that explores non-bulk inter-capital road freight found that it was relatively price inelastic, as road transport is often the only overall practical alternative in these circumstances.<sup>228</sup> Similarly the Productivity Commission found that all road transport was relatively price inelastic estimating an own price elasticity of -0.43.<sup>229</sup> The analysis in our report used -0.43

<sup>223</sup> Elkington and Stevenson (2013) *Heavy Vehicle Study*

<sup>224</sup> Transport Workers Union (2013) Submission to the Second Annual Work Program, accessed at <[http://www.rsrt.gov.au/default/assets/File/2nd\\_AWP/Submissions/TWU\\_8Oct2013\\_sub.pdf](http://www.rsrt.gov.au/default/assets/File/2nd_AWP/Submissions/TWU_8Oct2013_sub.pdf)>

<sup>225</sup> KPMG (2015) *KPMG detailed guidance material*, research project on minimum payments for road transport contractor drivers

<sup>226</sup> Toll Holdings Ltd (2015) *Submission to the Draft Payments Order* p.19; Australian National Retailers Association (2015) *Submission to the Draft Payments Order* p.20

<sup>227</sup> BITRE (2003) *Overview of road freight sector*

<sup>228</sup> Australian intercapital freight demand: An econometric analysis, David Mitchell, Australasian Transport Research Forum 2010 Proceedings 29 September – 1 October 2010, Canberra, accessed at <<http://www.patrec.org/atrf.aspx>>

<sup>229</sup> Productivity Commission 2006, *Road and Rail Freight Infrastructure Pricing*, Inquiry Report 41, Productivity Commission, Melbourne

as a conservative assumption. We note that higher price elasticity of demand for road freight will result in higher costs due to a larger decrease in profits.

## Benefits

### Reduction in crashes

The total number of fatal crashes and fatalities for articulated and rigid vehicles were identified in BITRE data.<sup>230</sup> For serious injury figures, a ratio of 4.48 serious injuries to each fatality was adopted from Jaguar Consulting.<sup>231</sup> Following a similar approach, a multiplier of 22.58 was adopted to estimate property damage crashes from fatal and serious injury crashes estimated from the NSW Centre for road safety *Heavy Vehicle Fatal Crash Trends and Single Vehicle Heavy Truck Crash Characteristics*.<sup>232</sup> This methodology is consistent with the 2011 PwC RIS, however the property damage numbers used are higher reflecting better collection of data.

**Table 22: Crashes involving articulated trucks**

| Location  | Fatal crashes | Fatality | Property damage | Serious Injury |
|-----------|---------------|----------|-----------------|----------------|
| ACT       | 2             | 2        | 16              | 9              |
| NSW       | 29            | 32       | 254             | 143            |
| QLD       | 26            | 32       | 254             | 143            |
| VIC       | 25            | 27       | 215             | 121            |
| NT        | 0             | 0        | 0               | 0              |
| SA        | 10            | 12       | 95              | 54             |
| WA        | 6             | 6        | 48              | 27             |
| TAS       | 4             | 5        | 40              | 22             |
| Australia | 102           | 116      | 2303            | 520            |

**Table 23: Crashes involving rigid trucks**

| Location  | Fatal crashes | Fatality | Property damage | Serious Injury |
|-----------|---------------|----------|-----------------|----------------|
| ACT       | 0             | 0        | 0               | 0              |
| NSW       | 21            | 21       | 167             | 94             |
| QLD       | 9             | 9        | 72              | 40             |
| VIC       | 23            | 29       | 230             | 130            |
| NT        | 0             | 0        | 0               | 0              |
| SA        | 10            | 15       | 119             | 67             |
| WA        | 10            | 11       | 87              | 49             |
| TAS       | 3             | 3        | 24              | 13             |
| Australia | 76            | 88       | 1716            | 394            |

<sup>230</sup> BITRE (2014)- Fatal Heavy Vehicle Crashes Australia

<sup>231</sup> Jaguar Consulting (2011, p. 32)

<sup>232</sup> See NSW Centre for road safety (January 2014) *Heavy Vehicle Fatal Crash Trends and Single Vehicle Heavy Truck Crash Characteristics* <http://roadsafety.transport.nsw.gov.au/downloads/heavy-truck-crash-data0114.pdf> viewed 2 November 2014

The analysis in this paper assumes that a 1 per cent increase in remuneration leads to a 1.7 per cent decrease the number of road accidents. This is based on an aggregate of the findings in 3 of the 4 studies listed below. This is similar to the 2011 RIS which assumed the relevant elasticity for all segments and crash types is a ten per cent increase in remuneration will lead to 20 per cent reduction in crash rates – assuming that current remuneration is not substantially below the industry median as per the literature.

Nafuko et al was not used as this study estimated what proportion of the reduction in crashes in the study were due to pay, and did not quantify the actual decrease in accidents following incremental increases. These studies, with the additional of Monaco and Williams (2010), are similar to what is included in the 2011 RIS.

**Table 24: Studies on the safety impact of increased remuneration**

| <b>Author</b>                         | <b>Result</b>   | <b>Comment</b>   |
|---------------------------------------|---|--|
| Belzer et al (2002) <sup>233</sup>    | Finds strong, statistically significant links between remuneration levels and safety outcomes. Results indicate that a 10 per cent increase in remuneration rates is associated with a reduction in crash numbers of between 9.2 per cent and 34 per cent   | Study concludes 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 estimates that the relationship between safety and pay probably is better than 2:1.  |
| Rodriguez et al (2006) <sup>234</sup> | Finds that a 1 per cent increase in pay rates from median levels lead to a 1.33 per cent decrease in crash risk. However, the authors note that the size of the effect on crash risk declines with further pay rises and that the relationship between pay rises and accident risk eventually turns negative.   | The authors note that increases in remuneration initially reduce crash incidence, but at a declining rate. The U-shaped relationship found to exist between remuneration and safety suggests substantial 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. |
| Nafukho et al (2007) <sup>235</sup>   | Study consists of a regression analysis conducted in respect of six variables considered to be related to accident risk, including salary and paid time off. The authors find that the six variables all have statistically significant impacts on accident risk. However, the extent of the relationship between the remuneration variables and accident | Despite the low explanatory power of the compensation variables they demonstrate a strong and positive effect on driver performance, which determines highway safety. However, 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 remunerations - are very different  |

<sup>233</sup> Belzer, MH., Rodruigez, DA. and Sedo, SA. (2002) *Paying for Safety: An Economic Analysis of the Effect of Compensation on Truck Driver Safety*, sponsored by Science Applications International Corporation and Federal Highway Transport Safety Administration. Available at <www.ilir.umich.edu/SweatshopsOnWheels/PayAndSafetyReport.pdf>

<sup>234</sup> Rodriguez, DA, Targa, F and Belzer MH (2006) *Pay Incentives and Truck Driver Safety: A Case Study* Industrial and Labour Relations Review, Vol 59, No. 2, January 2006.

<sup>235</sup> Nafukho, M., Hinton, BE. and Graham, CM (2007) *A Study of Truck Drivers and their Job Performance Regarding Highway Safety* Performance Improvement Quarterly 20(1), pp 65-78.

| Author                                    | Result  | Comment  |
|---|---|--|
|   | risk was found to be substantially smaller than the relationships estimated in the Belzer and Rodriguez studies. Specifically, the six variables were found <i>in total</i> 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, accounting for 0.4 per cent of the variation in accident rates.         | from those of Belzer et al.  |
| Monaco and Williams (2010) <sup>236</sup> | Found that a \$0.10/mile increase in pay yielded a 1.76 per cent reduction in accident involvement. Since the average pay rate per mile is 0.313, a 1 per cent reduction in crash rates would require an 18.2 per cent increase in pay. The study also found that drivers paid as a percentage of revenue have an 18 per cent greater accident involvement than those paid on a per mile basis. | Suggested this study proves remuneration is an ineffective way to induce safety given the large per cent pay increase for a small reduction. |

As noted above, previous economic analyses commissioned by the Department provide a detailed critique of these and further studies.<sup>237</sup> The findings of this critique coupled with our own analysis indicate that:

- directly comparing remuneration and safety does demonstrate statistically significant correlations. However, results vary substantially.
- the four most recent papers, summarised above, show a) a very large effect, b) a U-shaped curve, in which a large positive effect of initial remuneration rises eventually turns negative, c) and d) a very small effect,
- the literature is very limited in size and focuses on employee drivers.

The impact of non-remuneration measures was assumed to have a 10 per cent reduction in the annual number of road accidents. This value has been subject to sensitivity testing in further in this section

### **Crash rates**

We have assumed that the likelihood of being involved in a road freight accident is independent of the driver's engagement type,<sup>238</sup> distance driven,<sup>239</sup> or freight carried.<sup>240</sup>

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<sup>236</sup> Monaco, K. and Williams, E. (2000) *Assessing the Determinants of Safety in the Trucking Industry* Journal Of Transportation And Statistics, April 2000

<sup>237</sup> Jaguar Consulting (2011)

## ***Monetising the benefits from the reduction in crashes***

Our analysis adopts the following values:

- value of statistical life (VoSL) at \$4.2 million;
- value of serious injury at approximately 10 per cent of the VoSL;<sup>241</sup>
- property damage costs at approximately \$12,256.78.<sup>242</sup>

The OBPR's Guidance Note on VoSL argues that an appropriate base case figure for VoSL is \$4.2 million. This figure is based on research by Abelson<sup>243</sup>. This figure is based on meta-analyses of relevant research, using Willingness to Pay (WTP) methodologies.

We have assumed that value of a serious injury (VoSI) is a function of VoSL which is independent to the time or duration of injury. Extrapolation of the BITRE data suggests the possible value of VoSI is approximately 10 per cent of the VoSL. This approach is preferred to alternatives because it is comprehensive and it effectively adopts a consistent WTP approach to valuing both fatalities and injuries.

Property damage costs were estimated using BITRE 2006 data, converted to base year dollars.

### **Compliance costs**

Compliance costs were calculated by estimating the compliance burden placed on individuals and small (zero or less than 20 employees), medium (200-100 employees) and large (200+ employees) businesses.<sup>244</sup>

The OBPR regulatory burden tool guidelines recommends using the average hourly wage of \$37.40 where there may be multiple industry participants and pay grades.<sup>245</sup>

### **Safe driving plans**

The number of safe driving plans were calculated based on the average number of trips taken per year, using ABS data and assuming that only rigid and articulated vehicle data is used.

This assumes safe driving plans are only required for vehicles over 4.5tonnes, which is comprised of 70 per cent of rigid trucks and 99 per cent of articulated trucks. We will assume that the number of light commercial vehicles over 4.5tonnes is equal to zero. Since safe driving plans only apply to long distance trips or supermarket distribution trips, we assume

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<sup>238</sup> NATRoad (2011) *Natroad response to the 'Safe rates, safe roads' Directions paper* (confirmed by analysis of studies in 2014 Jaguar Report).

<sup>239</sup> National Transport Insurer (2015) *Serious Crash Investigation*

<sup>240</sup> Elkington and Stevenson (2013) *Heavy Vehicle Study*

<sup>241</sup> BITRE (2006) *Cost of road crashes in Australia 2006* Research report 118

<sup>242</sup> BITRE (2006) *Cost of road crashes in Australia 2006* Research report 118

<sup>243</sup> Abelson, P (2007) *Establishing a Monetary Value for Lives Saved: Issues and Controversies*, Paper prepared for the Office of Best Practice Regulation.

<sup>244</sup> Used ABS categorisations

<sup>245</sup> Department of Prime Minister and Cabinet *Regulatory Burden Measurement*, accessed at <[http://www.dpmc.gov.au/sites/default/files/publications/005\\_Regulatory\\_Burden\\_Measurement\\_Framework\\_1.pdf](http://www.dpmc.gov.au/sites/default/files/publications/005_Regulatory_Burden_Measurement_Framework_1.pdf)>

all articulated truck trips are long distance and 2.7 per cent of rigid truck trips are for supermarket freight purposes, as discussed above. Calculations are shown in Table 25.

**Table 25: Number of freight movements per year**

| Measurement           | Rigid Trucks<br>(over 4.5gtm) | Articulated Trucks<br>(over 4.5gtm) |
|-----------------------|-------------------------------|-------------------------------------|
| Total number of trips | 3,500,495                     | 43,414,033                          |

Source: ABS 2015, Survey of Motor Vehicle Use

These calculations give a total of 46,914,528 trips per year. This is an average of 1,537 trips per business in the long distance and retail sectors and 332 trips per driver. Remembering that this excludes trips taken by light commercial vehicles in relation to supermarket freight distribution, this estimate is conservative. This analysis assumes the cost of the supply chain participant of signing off on the contract is zero.

### ***Training and contract amendments***

The ongoing costs of training and contract amendments were calculated using an estimated rate of attrition of 13 per cent.<sup>246</sup> Evidence suggests that due to the aging workforce the average number of drivers retiring and therefore new drivers being retrained may be higher.<sup>247</sup> Submissions to the Tribunal are broadly consistent with this finding, estimating a cost of \$90 per driver.<sup>248</sup>

### ***Supply chain contracts***

The cost of supply chain contracts is difficult to assess. Coles' submission to the Tribunal estimated that Coles manages up to 1.404 million contracts per year. Using Coles' market share of 31 per cent, this assumes 4.53 million contracts exchanged per year in the supermarket freight distribution industry.<sup>249</sup> Due to a lack of information as to the number of contracts in the long haul sector, this analysis assumes there is one contract per freight movement of an articulated truck, significantly lower than Coles' analysis to avoid an overestimation of costs. There are risks this number is higher or lower, depending on the number of supply chain participants whom are party to each contract, and if contracts cover several freight movements in a year.

### ***Payment Systems***

The cost of updating systems to comply with the Order was adapted from a submission to the Tribunal regarding the Draft Payments Order. This analysis assumes initial costs of \$120,000 to develop software, \$17,000 to increase data capacity storage and \$4,000 per owner driver for the installation of GPS units. Outsourcing the maintenance of these systems

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<sup>246</sup> Australian Human Resources Institute (2014)  
[http://www.brw.com.au/p/leadership/staff\\_turnover\\_rates\\_drop\\_as\\_more\\_7HILgrKCB4sH9BNoxW6fuL](http://www.brw.com.au/p/leadership/staff_turnover_rates_drop_as_more_7HILgrKCB4sH9BNoxW6fuL)

<sup>247</sup> Department of Transport Victoria 2010, *A workforce strategy for road freight drivers: background paper* p.16.

<sup>248</sup> Draft Road Safety Remuneration Order, <http://www.rsrt.gov.au/default/assets/File/decisions-files/2013rsrtfb7.htm#materialsafedrivingplans>

<sup>249</sup> Coles (1 August 2013) Submission to the Draft Road Safety Remuneration Order, accessed at <<http://www.rsrt.gov.au/default/assets/File/Subs%20on%20draft%20RSRO/Coles.pdf>>

will cost \$25,000 per year.<sup>250</sup> Since this submission was made by Booth Transport, a company with over 250 drivers (100+ contractors) it is assumed that costs for medium sized businesses with an average of 30 employees is 10 per cent, and costs for smaller companies are 5 per cent. It is also assumed that a certain proportion of companies in each size bracket are already compliant.

### **Direct costs**

#### ***Direct cost of Tribunal***

The direct cost of the Tribunal is estimated as the average amount of funding provided by the government over the last four years (Table 26) (Tribunal funding is managed through a cost centre under the Fair Work Commission (FWC)). This is assumed to be constant over the period of analysis.

**Table 26: Costs of the Tribunal to government**

| <b>Costs</b>              | <b>2012-13</b> | <b>2013-14</b> | <b>2014-15</b> | <b>2015-16</b> | <b>Average yearly cost</b> |
|---------------------------|----------------|----------------|----------------|----------------|----------------------------|
| Appropriation to the FWC* | -\$2,925,962   | -\$2,617,625   | -\$2,495,000   | -\$2,382,011   | -\$2,605,150               |

Source: Fair Work Commission Submission, \*includes an efficiency dividend, and adjusted to \$ 2015

#### ***Direct cost of Fair Work Ombudsman***

The direct cost of the Fair Work Ombudsman's (FWO) functions under the Act is estimated as the average amount of funding provided by the government over the last four years (\$5.3 million in 2015 dollars) This is assumed to be constant over the period of analysis.

**Table 27: Costs of the Fair Work Ombudsman to government**

| <b>Costs</b>             | <b>Annual average</b> |
|--------------------------|-----------------------|
| Appropriation to the FWO | -\$1,325,000          |

Source: Fair Work Ombudsman

## ***3 Results***

The results of this regulatory impact analysis have been used to better inform our understanding of the cost effectiveness of the System. As discussed, we have concluded that the costs incurred under the operation of the System and the implementation of the Road Transport Order and Payments Order likely outweigh potential benefits. Therefore this System is not cost effective in its current form.

These results are modelled over fifteen years of operation starting 2012-13, and measured in 2014-15 dollars using 7 per cent discount rate to determine NPVs.

This section presents the streamed incremental benefits and costs of the options. These are combined to generate the option BCRs and NPVs.

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<sup>250</sup> Booth Transport (2015) Submission Draft Payments Order, accessed at [http://www.rsrt.gov.au/default/assets/File/3rd\\_AWP/draft-Payments-RSRO/Booth-Transport-submission-draft-payments-RSRO-141015.pdf](http://www.rsrt.gov.au/default/assets/File/3rd_AWP/draft-Payments-RSRO/Booth-Transport-submission-draft-payments-RSRO-141015.pdf)

**Table 28: Summary of results**

| <b>Order Type</b>    | <b>BCR</b>  | <b>NPV<br/>(billion<br/>dollars)</b> |
|----------------------|-------------|--------------------------------------|
| Road Transport Order | 0.31        | - 1.8                                |
| Payments Order       | 0.66        | - 0.4                                |
| <b>All orders</b>    | <b>0.38</b> | <b>- 2.3</b>                         |

**Table 29: Incremental regulatory costs (Million Dollars)**

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Total incremental regulatory costs of All Orders | -4    | -60   | -282  | -434  | -578  | -524  | -524  | -524  | -524  | -524  | -524  | -524  | -524  | -524  | -524  |

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Cost to government   | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  | -4.0  |
| Cost to stakeholder participants                           | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  | -0.1  |
| Total incremental regulatory costs of Operating the System | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  | -4.1  |

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Compliance costs   | -     | 56    | 278   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   |
| Total incremental regulatory costs of the Road Transport Order | 0     | -56   | 278   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   | 315   |

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Compliance costs   | 0     | 0     | 0     | -73   | -218  | -164  | -164  | -164  | -164  | -164  | -164  | -164  | -164  | -164  | -164  |
| Reduced profits  | -     | -     | -     | -41   | -41   | -41   | -41   | -41   | -41   | -41   | -41   | -41   | -41   | -41   | -41   |
| Total incremental regulatory costs of the Payments Order | 0     | 0     | 0     | -114  | -259  | -205  | -205  | -205  | -205  | -205  | -205  | -205  | -205  | -205  | -205  |

**Table 30: Incremental benefits (Million Dollars)**

| Measure    | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| All Orders | 0     | 0     | 83    | 226   | 219   | 212   | 206   | 200   | 194   | 194   | 194   | 194   | 194   | 194   | 194   |

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Reduction in fatalities                                | 0     | 0     | 55    | 54    | 52    | 50    | 49    | 47    | 46    | 46    | 46    | 46    | 46    | 46    | 46    |
| Reduction in serious injuries                          | 0     | 0     | 25    | 24    | 23    | 23    | 22    | 21    | 21    | 21    | 21    | 21    | 21    | 21    | 21    |
| Reduction in property damage                           | 0     | 0     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     | 3     |
| Total incremental benefits of the Road Transport Order | 0     | 0     | 83    | 81    | 78    | 76    | 74    | 71    | 69    | 69    | 69    | 69    | 69    | 69    | 69    |

| Measure  | FY 13 | FY 14 | FY 15 | FY 16 | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | FY 24 | FY 25 | FY 26 | FY 27 |
|--|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Reduction in fatalities                          | 0     | 0     | 0     | 96    | 93    | 91    | 88    | 85    | 83    | 83    | 83    | 83    | 83    | 83    | 83    |
| Reduction in serious injuries                    | 0     | 0     | 0     | 43    | 42    | 40    | 39    | 38    | 37    | 37    | 37    | 37    | 37    | 37    | 37    |
| Reduction in property damage                     | 0     | 0     | 0     | 6     | 5     | 5     | 5     | 5     | 5     | 5     | 5     | 5     | 5     | 5     | 5     |
| Total incremental benefits of the Payments Order | 0     | 0     | 0     | 145   | 141   | 136   | 132   | 128   | 124   | 124   | 124   | 124   | 124   | 124   | 124   |

These costs include the regulatory cost to government for the operation of the System, the cost to stakeholders of System participation, the cost incurred from complying with the regulations and the cost of lost producer surplus due to decrease demand for road freight.

The number of crashes avoided and the reduction of crash costs is assumed for the purposes of quantifying the scenarios to be proportional to the size of relevant sectors. These crash cost savings are incremental to the expected improvements in road safety expected with the National Road Safety Strategy 2011-2020 which aims to reduce fatalities by up to 30 per cent over the decade.

Over the evaluation period it is assumed that a 10 per cent reduction in crashes as a result of measures in the Road Transport Order will result in NPV \$0.6 billion in crash cost savings. The Payments Order is expected to increase aggregate driver income, the sum of employee and owner driver income, by approximately 15 per cent, which at a 1.3 per cent decrease in crashes for every one per cent increase in wages will result in an 18 per cent decrease in crashes and NPV \$0.9 billion in benefits. Given that approximately 16 per cent of fatal heavy vehicle crashes are attributed to driver fault, the combination of the reduction in crashes as a

result of these measures likely overstates total benefits, supporting our conclusion that the System is highly unlikely to be viewed as cost effective.

## 6 Sensitivity Testing

The regulatory impact analysis found that there is a low BCR and negative NPV for all regulatory combinations. This implies that the operation of the System is not economically viable. Impact analysis also shows that business operators will be disproportionately affected by the changes.

A range of sensitivity analyses were undertaken on the central case results above, including the variation of the:

- Discount rate
- Number of drivers covered by the provisions
- Safe rates

Note that analysis as to the maximum reduction of crashes was conducted using best case scenario testing.

### Discount rate

Sensitivity analysis using alternative discount rates is presented in Table 31 below where the rates are changed to 5 per cent and 10 per cent rather than 7 per cent in the modelled main case.

**Table 31: Changed discount rate**

| Order Type           | NPV (billion dollars) 5 per cent | NPV (billion dollars) 10 per cent |
|----------------------|----------------------------------|-----------------------------------|
| Road Transport Order | - 2.0                            | -1.6                              |
| Payments Order       | - 0.5                            | -0.4                              |
| All Orders           | - 2.5                            | -2.1                              |

The result shows that a lower discount rate lowers the BCR and NPV, and the higher discount rate has the opposite effect. This implies that net costs are realised later in the forward estimates (post 2016/17).

### Number of drivers covered by the provisions

The number of drivers in the supermarket distribution chain is difficult to quantify given the ambiguity as to what raw materials transported for eventual sale in supermarkets are included in the chain. Below are the results assuming there is double the amount of drivers in the supermarket distribution sector.

**Table 32: Changed number of drivers**

| Order Type           | BCR  | NPV (billion dollars) |
|----------------------|------|-----------------------|
| Road Transport Order | 0.32 | -1.8                  |
| Payments Order       | 0.64 | -0.3                  |
| All Orders           | 0.38 | -2.2                  |

These changes has a minimal impact on the outcome of the modelling, since supermarket distribution drivers only make up a small percentage (3 per cent of 65 per cent) of the drivers in the market that are assumed to be covered by the Orders.

### Safe rates

Our analysis compares current payments for labour inputs (income estimated using ABS data) with income under the Payments Order (calculated as payments for labour inputs under the KPMG model, assuming 10 per cent 'premium' to account for additional profits to drivers stemming from the miscalculation of operating and operating costs).

The analysis below considers the impact on BCR and NPV if we assume 10 and 20 per cent increases in owner driver remuneration above the increases already considered in the model. These higher payments would occur in reality if the actual operating costs for the vehicle, trailer and fuel are equal to estimated operating costs estimated in the KPMG analysis.

**Table 33: Changed assumption as to driver remuneration**

| <b>Order Type</b>    | <b>BCR at 10 per cent</b> | <b>NPV (billion dollars) at 10 per cent</b> | <b>BCR at 20 per cent</b> | <b>NPV (billion dollars) at 20 per cent</b> |
|----------------------|---------------------------|---|---------------------------|---|
| All orders           | 0.37                      | -2.4  | 0.37                      | -2.4  |
| Road Transport Order | 0.31                      | -1.8  | 0.31                      | -1.8  |
| Payments Order       | 0.62                      | -0.5  | 0.61                      | -0.5  |

The change in remuneration to drivers has opposing effects - there is a change in costs to hirers and employers, and a decrease in benefits (as decreases in income will reduce the safety benefits). The changes above indicate that the magnitude of the change in benefits is greater than the change in costs, such that a reduction in driver remuneration leads to a net benefit, and an increase in driver remuneration leads to a net cost. This impact only occurs at the margin, as in practice there is not a linear relationship between income and decreases in road accidents. When driver income is tested assuming a 20 per cent increase on labour inputs, benefits are generated based on a 21 to 24 per cent decrease in crashes. For reasons explained in more detail below, it is highly unlikely a reduction of crashes of this magnitude would be achieved. Therefore, we are confident in our analysis that costs imposed by the Payments Order are likely to outweigh benefits.

## 7 Best Case Scenarios

This section defines and presents the results of an additional scenario. This analysis quantifies the maximum reduction in crashes needed for benefits of the Road Transport Order to outweigh the costs.

This is defined as a 'best case' scenario. It should be noted that this differs from the sensitivity analyses identified earlier. Unlike sensitivity analyses, scenarios imply the alteration of multiple variables concurrently. It should be further noted that PwC does not endorse this scenario as containing reasonable assumptions and/or likely or reasonable outcomes, but rather has included them for illustrative purposes to demonstrate the sensitivity of the modelling and the assumptions used.

**Table 34: 21 per cent reduction in crashes**

| <b>Order Type</b>    | <b>BCR</b> | <b>NPV<br/>(billion<br/>dollars)</b> |
|----------------------|------------|--------------------------------------|
| Road Transport Order | 0.98       | -1.2                                 |
| Payments Order       | 0.64       | -0.5                                 |
| All orders           | 0.54       | -1.7                                 |

Our analysis shows that an approximate 20 per cent reduction in crashes is necessary for the BCR to be greater than 1 under the Road Transport Order. Given that a maximum of 16 per cent of fatal crashes are attributed to driver fault,<sup>251</sup> the vast array of factors that can influence fault and stakeholder concerns as to the ability of the Order to have any safety impact, we are confident this reduction cannot be attained and therefore costs outweigh benefits.

Our analysis also indicates that no matter how high wages are raised the benefits will not outweigh the costs for the Payments Order. This is because benefits are tied to an increase in wages, and for every benefit as a result of an increase in the wage there is a proportionate cost as a result of decreased producer surplus. A one per cent increase in payments would have to lead to more than a two per cent decrease in crashes to justify the Order. Only one study has made this finding, however the study focused on a section of the market rather than the market as a whole. Therefore this ratio of over 2:1 was likely to be as a result of good drivers moving to better paid positions rather than an actual increase in net safety outcomes. Given this analysis, we are reasonably confident that the costs outweigh the benefits.

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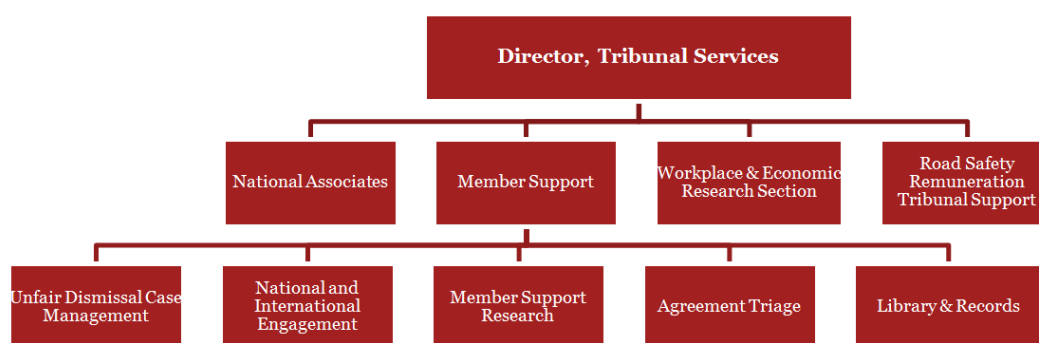
<sup>251</sup> National Transport Insurer (2015) *Major Crash Investigation Report*

## Appendix F: Costs, funding and outputs

The work of the Tribunal is funded through an appropriation to the Commission. The Commission provides administrative support to the Tribunal through a dedicated team and a shared services model. As of October 2012, the Tribunal had two dedicated Commission staff (one Executive Level 2, and one supporting Australian Public Service 6 officer) that provide direct administrative assistance to the Tribunal.

This team (Road Safety Remuneration Tribunal Support) sits within the Tribunal Services Branch of the Commission.

**Figure 45: Organisational Chart of the Tribunal Services Branch**



Source: Response to information request from Tribunal

Other administrative functions of the Tribunal are carried out by staff of the Commission through an integrated shared services model, as required under the Act. Commission staff also provide the following services to the Tribunal, as part of an integrated model of service delivery:

- IT services
- Human resources services
- Communications and media support
- Research
- Library
- In-house legal services, and
- Administration

Support for the Tribunal is also heavily drawn from the Workplace and Economic and Research Section of the Commission. This team has a mix of specialist qualifications and research experience in economics, statistics, law, social research and wage fixation.

The Tribunal’s President has the capacity to direct the General Manager of the Commission,<sup>252</sup> allowing services to be provided on an ‘as needed’ basis. Time spent by staff on tasks for the Tribunal under the shared services model is not quantified due to the high administrative burden given ‘staff routinely move between activities to support the Commission and the Tribunal on a daily basis’. To ensure quality of service delivery, the President may raise concerns with services provided through the General Manager.

Table 35 presents the departmental funding of the Tribunal appropriated to the Commission to administer its functions. The figures outlined are subject to the efficiency dividends imposed on APS agencies. The efficiency dividends in the years to date have been 4 per cent in 2012-13, one and 0.25 per cent in 2013-14 and 1.25 percent in 2014-15. There is no information to compare the budgeted funding with actuals.

**Table 35: Tribunal Funding**

| <b>Funding allocation</b>                           | <b>2012-13</b> | <b>2013-14</b> | <b>2014-15</b> | <b>2015-16</b> |
|---|----------------|----------------|----------------|----------------|
| Road Safety Remuneration Tribunal (Million Dollars) | 2.8            | 2.5            | 2.5            | 2.4            |

Source: Fair Work Commission response to information request

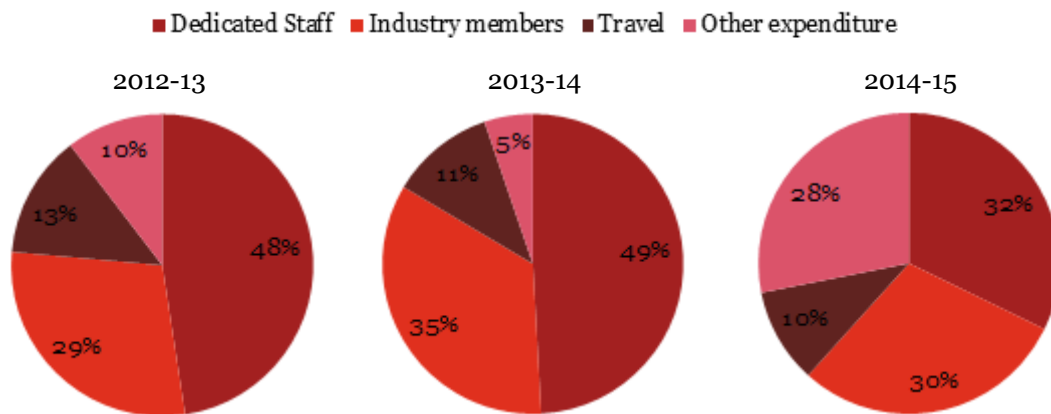
The Commission was unable to provide a detailed breakdown of expenditure on all services. This is because transactional expenses relating to the provision of services and support to the Tribunal are routinely costed against functional areas within the Commission rather than the Tribunal. Expenditure that was readily attributable to the Tribunal was provided (see Figure 46). Known expenditure in the ‘other’ category includes advertising of the Draft Payments Calculator (less than \$12,565 as not mentioned in the annual report), and a \$250,000 procurement to develop the payments to contractor drivers cost model.<sup>253</sup>

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<sup>252</sup> *Road Safety Remuneration Act 2012* (Cth) s 112

<sup>253</sup> Australian Government tender website <https://www.tenders.gov.au/?event=public.cn.view&CNUUID=D27916CC-EA4C-59D6-46F424F76886291C> <viewed 15 November 2015>

**Figure 46: Expenditure by the Tribunal (breakdown)**



The majority of the Tribunal’s expenditure appears to be on staffing of Commission and Tribunal members, with a small amount of expenditure on travel. This is consistent with our understanding of the Tribunal’s model as all shared services, including research and website maintenance, were excluded from the detailed breakdown. There was an increase in ‘other expenditure’ in 2014-15 due to the purchase of consultancy services. PwC is unable to make an assessment as to the proportional balance of expenditure as the Commission was unable to provide a detailed breakdown of expenditure, and ‘in-kind’ support provided to the Tribunal under the shared services model is not costed.

The outputs of the Tribunal as recorded in the Tribunal’s quarterly reports are summarised in Table 36.

**Table 36: Summary of Tribunal outputs**

| Information about road safety remuneration orders  | Numbers |
|--|---------|
| The number of applications for an order to be made under section 19 of the Act   | 9       |
| The total number of applications for an order which the Tribunal refused to consider under subsection 19 (5) of the Act    | 0       |
| The total number of orders made under section 19 of the Act (including orders made on the Tribunal's own initiative)       | 1       |
| The number of drafts of orders prepared under section 22 of the Act  | 1       |
| The number of drafts of orders that the Tribunal prepared, but decided not to make into orders under section 26 of the Act | 0       |
| The number of orders reviewed under section 31 of the Act, and the action taken in relation to each order reviewed         | 0       |
| The number of orders varied under section 32 of the Act, and the reasons for each variation                                | 0       |

| Information about applications for approval of road transport collective agreements            | Numbers |
|--|---------|
| The number of applications for approval of a collective agreement under section 32A of the Act | 1       |
| The number of approvals given under section 32A of the Act                                     | 0       |

| Information about disputes   | Numbers |
|--|---------|
| The total number of applications for the Tribunal to deal with a dispute under section 40 of the Act | 18      |
| The number of applications to which subsection 41 (1) of the Act applies                             | 5       |
| The number of applications to which subsection 41 (2) of the Act applies                             | 0       |
| The number of applications to which subsection 42 (1) of the Act applies                             | 10      |
| The number of applications to which subsection 42 (2) of the Act applies                             | 4       |
| The number of applications to which section 43 of the Act applies                                    | 2       |

| Other information  | Numbers |
|--|---------|
| The number of applications dismissed by the Tribunal under section 84 of the Act | 2       |

Source: Quarterly Reports September 2012- June 2015

The Tribunal has completed three annual work programs and has drafted its fourth annual work program. The Tribunal has also started the following inquiries, none of which have been finalised:

- Payments for road transport drivers
- Oil, fuel and gas sector
- Cash in transit
- Waste management
- Wharf and port sector

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