

# Chapter 3

## Heavy vehicle transport: state of the industry

3.1 In the previous chapter, the committee examined the roles of driver, employer, trainer, assessor and state and federal government agencies in the context of a heavy vehicle incident on the M5 Freeway. This exercise sharpened the committee's focus on structural problems that threaten the safety and economic viability of the road transport industry.

3.2 In this chapter, the committee discusses the key issues which indicate that all sectors of the industry may not be thriving including: a high road toll from truck crashes, a shortage of skilled drivers and adverse safety outcomes arising from continued economic pressure.

3.3 Evidence to the inquiry highlighted the need to find economic solutions for the industry. In particular, attention was drawn to the need to accelerate the progress of reform by way of updating the chain of responsibility laws, mandating the use of electronic work diaries and instituting 30 day minimum payment terms. This chapter considers these reforms.

### **An industry in crisis**

#### ***Road toll increases***

3.4 The committee heard startling evidence which indicated that the road toll from truck crashes is at a record high level and is continuing to increase.<sup>1</sup> According to the TWU, in the 10 years to 2014, over 2500 people died in truck crashes on Australia's roads. The committee shares the view of submitters that 'this is not a statistic that should prompt any government to stand idly by'.<sup>2</sup>

3.5 The committee was not surprised to hear that heavy vehicles are 'over-represented in road crash fatalities and injuries' and that 'hospital admissions and injuries are trending upwards'.<sup>3</sup> Toll Group told the committee that approximately '350 truck rollovers are reported each year in Australia'.<sup>4</sup> As the TWU remarked, 'no other industry injures 5350 people per year at the rate of 31 per day'.<sup>5</sup>

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1 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

2 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

3 Toll Group, *Submission 33*, p. 2.

4 Enginistics, *Submission 21*, p. 1.

5 Transport Workers' Union of Australia, *Submission 64*, p. 4.

3.6 The difficulty of attracting and retaining skilled heavy vehicle drivers was repeatedly raised in evidence to this inquiry. This evidence is unsurprising when weighed against the statistics on fatalities. In 2016 'over one in three workplace deaths involved transport workers, with 64 deaths out of the total of 178'.<sup>6</sup> Indeed, Safe Work data indicates that of the 100 people who died at work between 1 January 2017 and 20 July 2017, 42 were employed in the transport, postal and warehousing industry.<sup>7</sup>

3.7 Furthermore, recent data from the Bureau of Infrastructure, Transport and Regional Economics (BITRE) demonstrates a steady increase in fatal crashes involving heavy vehicles:

Fatal crashes involving articulated trucks in the last year have increased by 7.2 per cent compared with the previous year, an increase by an average of 0.9 per cent per year over the three years to March 2017. Fatal crashes involving heavy rigid trucks have increased by 4.1 per cent compared with the previous year, an increase by an average of 2.5 per cent per year over the three years to March 2017.<sup>8</sup>

3.8 During the 12 months to the end of March 2017, 205 people died in 181 crashes involving articulated or heavy rigid trucks. This is a higher fatality rate than that over the previous 12 months when 185 people died in 170 crashes, as shown on the graph that follows.<sup>9</sup>

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6 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

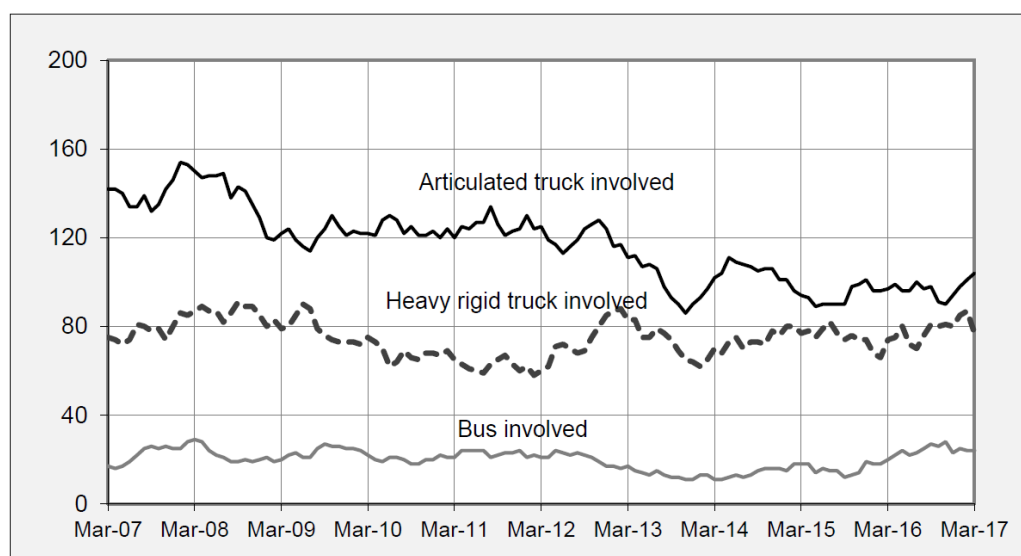
7 Safe Work Australia, *Fatality statistics*, 20 July 2017, <<https://www.safeworkaustralia.gov.au/statistics-and-research/statistics/fatalities/fatality-statistics#year-to-date-2017-preliminary-worker>> (accessed 25 July 2017).

8 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13. See also Department of Infrastructure and Regional Development (BITRE), *Fatal Heavy Vehicle Crashes Australia –Quarterly Bulletins*, May 2017, <[https://bitre.gov.au/publications/ongoing/fatal\\_heavy\\_vehicle\\_crashes\\_quarterly.aspx](https://bitre.gov.au/publications/ongoing/fatal_heavy_vehicle_crashes_quarterly.aspx)> (accessed 25 July 2017).

9 Department of Infrastructure and Regional Development (BITRE), *Fatal Heavy Vehicle Crashes Australia quarterly bulletin*, Jan–Mar 2017, <[https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin\\_Mar\\_2017.pdf](https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin_Mar_2017.pdf)> (accessed 25 July 2017).

## Fatal crashes involving heavy vehicles, Australia — moving annual total

(Each point shows the number of fatal crashes during the preceding 12 months)



Source: Department of Infrastructure and Regional Development, *Fatal heavy vehicle crashes Australia quarterly bulletin*, Jan–Mar 2017, [https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin\\_Mar\\_2017.pdf](https://bitre.gov.au/publications/ongoing/fhvc/files/Bulletin_Mar_2017.pdf).

3.9 While considering the issue of heavy vehicle driver training at length in Chapter 4, the committee is mindful that other road users have a role to play in reducing the heavy vehicle road toll. Heavy vehicle trainer and assessor, Mr Tony Richens, provided evidence that 'in accidents involving heavy vehicles, 80 per cent of the fault lies with the other vehicle in the accident'.<sup>10</sup> He gave examples of unsafe practices by light vehicle drivers in their interaction with heavy vehicles:

You need only to travel in a heavy vehicle on a public road to see that the majority of car drivers have no understanding of the room required by heavy vehicles to stop, turn or travel through roundabouts and they certainly have no awareness of the vision limitations from the cab of the vehicle<sup>11</sup>

3.10 To improve the awareness of other road users, Road Freight NSW recommended 'a working committee to scope out better ways to educate light-vehicle users and cyclists in their interactions with heavy-vehicle users for the purposes of attaining safer roads'.<sup>12</sup> More specifically, Mr Richens suggested that driving instructors could undergo heavy vehicle training as part of their accreditation, with a view to fostering greater awareness in their students, of heavy vehicles on the roads.

10 Mr Tony Richens, private capacity, *Committee Hansard*, 26 June 2017, p. 3.

11 Mr Tony Richens, private capacity, *Committee Hansard*, 26 June 2017, p. 4.

12 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 2.

He also made the point that caravan drivers could also benefit from education and training about heavy vehicle driving.<sup>13</sup>

### ***Shortage of drivers***

3.11 The committee heard that, alongside the increased freight task, it is relatively difficult for transport companies to find qualified drivers. Mr Simon O'Hara reported back from Road Freight NSW's most recent conference that:

...the prevailing view...is that it is difficult to get truck drivers. It is even harder to find those who are properly qualified and have experience. There is a problem in the industry and it relates to being able to capture younger people coming in. A lot of the older truck drivers have a lot of experience and they are exiting the industry.<sup>14</sup>

3.12 Evidence to the committee suggests that the industry will remain unattractive to younger people, prolonging the shortage of drivers, until such time as its economic viability is assured. Mr Sheldon of the TWU warned that:

Unless we can deal with the economics in an industry that is being driven into the ground—low margins, lack of capacity to train and now, more than ever, a shortage of drivers that is looming. Over the next decade over 40 per cent of drivers will be retiring, and there are not drivers being trained up.<sup>15</sup>

3.13 The committee is aware that not all transport industry players are resorting to hiring practices that jeopardise the safety of the industry. On the contrary, the industry is largely comprised of honest and experienced operators who know that safe practices are better for business. As the Queensland department told the committee:

Our understanding is that Australian trucking companies actually have a preference for people holding an Australian licence, and that is due to the cost of the machinery that they are handing over. They seek to have the highest skilled people possible.<sup>16</sup>

3.14 Unless addressed, however, the industry's ageing workforce has consequences that extend beyond the economics of the industry as it loses the 'safer culture around the older truck drivers'.<sup>17</sup> Mr Sheldon observed that the 'squeeze in transport' has had 'heartbreaking results' as unskilled and unsafe drivers find themselves in situations similar to that of the M5 incident:

This squeeze sees companies hiring drivers through the loopholes you have discovered, who are so unskilled they cannot unhitch trucks or reverse

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13 Mr Tony Richens, private capacity, *Committee Hansard*, 26 June 2017, p. 4.

14 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 5.

15 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 17.

16 Mr Mike Stapleton, Department of Transport and Main Roads, *Committee Hansard*, 10 November 2016, p. 8.

17 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 5.

them, holding up traffic for hours on one of our busiest thoroughfares. It sees labour agreements to bring in overseas workers so they can be paid less.<sup>18</sup>

### ***Committee view***

3.15 The committee is strongly of the view that the high road toll amongst transport workers is unacceptable and that the increasing number of road fatalities involving heavy vehicles must be addressed.

3.16 The committee encourages all levels of government to continue to dedicate resources to driver education, and to highlight the specific conditions created by heavy vehicles on our roads. Further, the committee notes that vehicle design has a role to play, as 'modern cars are designed with indicators that can be very hard to see from the elevated position of a truck'.<sup>19</sup>

3.17 In the committee's view, a connection can be made between the rising heavy vehicle road toll and an increasing number of non-traditional delivery services including Amazon and UberFreight. The committee heard that these services may not share the wider industry's commitment to safety. Specifically, the committee is alarmed by 'initiatives' such as Amazon's two-day delivery guarantee which prioritises speed of delivery over safety, while also raising consumer expectations about how fast their goods can arrive.<sup>20</sup>

3.18 In an industry where low profit margins place considerable financial pressures on truck drivers while at the same time, demands on them continue to grow, the 'two-day turnaround' has a significant impact on industry safety and profitability. As Mr Sheldon from the TWU noted:

If you are driving an unprofitable business with the intent of driving down prices, driving down costs in an industry that has low margins then it is extremely dangerous, and a two-day turnaround in this country is extremely dangerous.<sup>21</sup>

3.19 If Australia is to arrest the rising road toll involving heavy vehicles, it must continue to build skills and expertise in the transport industry while fostering a greater awareness of heavy vehicle driving conditions among light vehicle drivers. It is imperative that younger heavy vehicle drivers have the opportunity to learn safe practices from their experienced peers. To facilitate this, governments must work together to make heavy vehicle driving a safe and attractive career path.

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18 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

19 Mr Tony Richens, private capacity, *Committee Hansard*, 26 June 2017, p. 4.

20 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 18.

21 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 17.

3.20 The committee strongly encourages governments to consider adopting measures which encourage younger drivers to seek employment in the heavy vehicle industry. To this end, the committee encourages the Australian Government to work with its state and territory counterparts and industry to establish an attractive traineeship or apprenticeship scheme.

### **Addressing supply chain issues**

3.21 In addition to incentives for younger drivers to enter the transport industry, witnesses told the committee that there is a critical need to look at structural and economic reform to address supply chain issues. Mr Salvatore Petrocchio of the National Heavy Vehicle Regulator articulated that:

...when economic times are tougher, one of the areas that sometimes is compromised in the industry is maintenance—and there is the impact that then has on the heavy vehicle itself. As the economic pressures become greater and the ability for an operator to make ends meet diminishes, some things have to give.<sup>22</sup>

3.22 Likewise, the TWU warned that when economics is allowed to drive safety practices 'you are then driving people to their death'. Mr Sheldon explained:

If you drive down to the lowest cost—that is the lowest cost you will get—in the trucking industry that means both sweating the capital invested in the truck and sweating the driver. When you sweat the drivers and sweat the capital invested in the truck, you see the sorts of incidents that occurred at the M5 and the airport tunnel. You see the incident only 12 months beforehand where two people were incinerated after a refuelling truck blew into flames and subsequently the company was found to have been sweating the capital.<sup>23</sup>

3.23 These examples highlight the need to have an effective regulatory model and stronger accountability measures throughout the supply chain. Mr Sheldon considered what was required to prevent a reoccurrence of the M5 incident:

There needs to be an accountability system for looking at low-cost contracts in a transport industry which is highly squeezed on margins, which then turns to drivers' wages and conditions being reduced or, I would suggest, bogus employment and engagement of immigrant workers on visa arrangements...The government previously abolished a system of safe roads which ensured wealthy retailers and manufacturers were held to account over exploitation in supply chains. This had the capacity to be extended to the exploitation of visa holders.<sup>24</sup>

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22 Mr Salvatore Petrocchio, National Heavy Vehicle Regulator, *Committee Hansard*, 26 October 2015, p. 36.

23 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 15.

24 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

3.24 The link between supply chain issues and safety has been well understood for the best part of a decade. As far back as July 2008, federal, state and territory transport ministers meeting as the Australian Transport Council (now the Transport and Infrastructure Council) requested that the National Transport Commission (NTC), an independent statutory body, investigate and report on driver remuneration and payment methods in the transport industry. This work included an examination of:

- the impact of driver remuneration and payment methods on safety risks and outcomes within the heavy vehicle transport industry; and
- how chain of responsibility obligations can be applied.<sup>25</sup>

3.25 Reporting in October 2008, the NTC found that 'further reforms are needed to address the underlying economic factors which create an incentive for, or encourage, unsafe on-road practices'.<sup>26</sup> It recommended that ministers endorse 'a system of safe payments for employees and owner-drivers...reinforced by appropriate chain of responsibility provisions in model road transport law'.<sup>27</sup>

3.26 After further consideration by the government's Safe Rates Advisory Group,<sup>28</sup> the framework for a safe payments system was given legal effect in 2012 under the Road Safety Remuneration Tribunal (the tribunal).<sup>29</sup>

### ***Road Safety Remuneration Tribunal***

3.27 The committee remains troubled by the government's decision to abolish the Road Safety Remuneration Tribunal by legislation on 19 April 2016, at a time when the transport industry most needed regulatory support.

3.28 Mr Sheldon of the TWU expressed little optimism when considering the state of the industry and the lost opportunity to improve safety arrangements:

It is an industry in crisis, yet the only intervention that has been made so far is to tear down the one body that had the ability to investigate and enforce safety arrangements. That was the Road Safety Remuneration Tribunal.<sup>30</sup>

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25 National Transport Commission, *Safe payments*, 1 July 2015, <<https://www.ntc.gov.au/archive/safe-payments/>> (accessed 14 September 2017).

26 National Transport Commission, *Safe payments: addressing the underlying causes of unsafe practices in the road transport industry*, October 2008, <[www.ntc.gov.au/Media/Reports/\(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8\).pdf](http://www.ntc.gov.au/Media/Reports/(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8).pdf)> (accessed 14 September 2017), p. [vii].

27 National Transport Commission, *Safe payments: addressing the underlying causes of unsafe practices in the road transport industry*, October 2008, <[www.ntc.gov.au/Media/Reports/\(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8\).pdf](http://www.ntc.gov.au/Media/Reports/(98BF9D12-47C6-5EAF-EEA8-BCE6B19EAEB8).pdf)> (accessed 14 September 2017), p. 43.

28 Department of Education, Employment and Workplace Relations, *Safe rates: safe roads: Directions paper*, 2010, p. 4.

29 *Road Safety Remuneration Act 2012*, s. 79 (repealed 19 April 2016).

30 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

3.29 The committee expressed the strong view in its interim report that the repeal of the tribunal was a retrograde step for road safety in Australia. This view was informed by evidence of sustained low margins and poor safety practices in the industry caused by the power imbalance between clients and operators.<sup>31</sup> Throughout the inquiry, the committee heard evidence in support of the tribunal, including from drivers, their families and road transport companies.<sup>32</sup>

3.30 The TWU argued that the opportunity to address the economic and safety issues (that are entwined in the heavy vehicle industry) was lost with the tribunal's abolition, and noted that the tribunal:

...could have dealt directly with the training initiatives, the training requirements and obligations on clients as well as transport operators, and gone to the core question of the economic imperatives that drive unsafe practices, with the intent of bringing in a level playing field for everybody in the market so that skill, ability and entrepreneurship were what won contracts, rather than exploitation.<sup>33</sup>

3.31 The tribunal had made two enforceable orders that applied to road transport drivers in supermarket distribution or long distance operations. The first, the *Road Transport and Distribution and Long-Distance Operations Road Safety Remuneration Order 2014*, imposed health and safety and contract obligations, including safe driving plans and contracts. It also required owner drivers to be paid by transport operators within 30 days of work carried out. The order applied from 1 May 2014 until 12 am on 21 April 2016.<sup>34</sup>

3.32 The second order, the *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*, had effect from 4.15 pm on 7 April 2016 to 12 am on 21 April 2016. It provided minimum pay rates and unpaid leave for contractor drivers.<sup>35</sup>

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31 Transport Workers' Union, *Submission 64*, p. 3. See also Mr Peter Anderson, Victorian Transport Association, *Committee Hansard*, 3 July 2015, p. 29.

32 Transport Workers' Union of Australia, *Submission 64*, p. 4. See also Victorian Transport Association, *Submission 65*, p. 2; National Independent Trucking Association, *Submission 9*, p. 2; Mr Steven Corcoran, *Submission 25*; Mr Cameron Dunn, FBT Transwest, *Committee Hansard*, 2 July 2015, p. 38; Mr Salvatore Patrocitto, National Heavy Vehicle Regulator, *Committee Hansard*, 26 October 2015, p. 36; Mr Ian King, Western Australian Road Transport Association, *Committee Hansard*, 18 February 2016, p. 27.

33 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 13.

34 Fair Work Ombudsman, Road Safety Remuneration System, <<https://www.fairwork.gov.au/about-us/legislation/road-safety-remuneration-system>> (accessed 18 September 2017). The tribunal ceased to exist as at 21 April 2016.

35 Department of Employment, *Discussion Paper: The Road Safety Remuneration System*, March 2016, p. 2.



3.33 Since the abolition of the tribunal and its orders, the committee has seen little progress towards a resolution of the significant issues that were advanced under its stewardship. The committee heard that owner or contractor drivers still face considerable economic pressure, which can lead them to accept inferior contract terms and less than safe working conditions. Mr Sheldon gave evidence that:

There are owner-drivers who certainly take a great deal of pride in saying no, but, when you are economically pressured and stressed, whether you are a transport operator of a fleet or an owner-driver, you put your hand up to take the load rather than lose your house and lose your business. That sort of economic pressure is what needs to be dealt with. In a lot of those reports, owner-drivers are usually on the worst receiving end of pressure and exploitation.<sup>36</sup>

3.34 In the committee's view, urgent and cooperative action is required across government to address, in particular, the issues of payment terms, chain of responsibility legislation and the use of electronic work diaries.

#### *Committee view*

3.35 In order to advance safety in the industry, the committee recommends that the Australian Government organise a series of industry-led roundtables for the purposes of formulating recommendations for government on the establishment of an independent industry body. This industry body should be empowered to enforce supply chain standards while also setting and enforcing sustainable, safe rates for the transport industry.

#### **Recommendation 7**

**3.36 The committee recommends that the Australian Government convene a series of industry-led roundtables to make recommendations to government to establish an independent industry body which has the power to formulate, implement and enforce supply chain standards and accountability as well as sustainable, safe rates for the transport industry.**

#### *Payment terms*

3.37 The abolition of the tribunal is, in the committee's view, a lost opportunity to address the pervasive issue of payment terms for heavy vehicle drivers. The tribunal's second order, *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016* regulated conditions for contractor drivers and provided a minimum remuneration schedule. Amongst other requirements, the order set new conditions for

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36 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 16.

payment. It required contractor drivers to be paid within 30 days of the work being undertaken.<sup>37</sup>

3.38 The matter of payment terms was one of the key issues for the industry. The ATA had informed the committee in 2015 that the terms of payment had been '[g]rossly deficient'.<sup>38</sup>

3.39 Mr Cameron Dunn of Australian transport company FBT Transwest gave evidence that when dealing with larger companies, businesses such as his were 'being pushed out to 120 days in terms of payments', which had a substantial impact on cash flow.<sup>39</sup> He explained that during the period that he was not receiving such payments, which was a considerable length of time, his company still had to meet its financial obligations to staff and service providers. By way of comparison, Mr Dunn noted that his company paid drivers within seven days, tow operators within 14 days and the fuel bills within 30 days.<sup>40</sup>

### ***Heavy Vehicle National Law and chain of responsibility***

3.40 As discussed in the committee's interim report, most Australian jurisdictions adopted the Heavy Vehicle National Law (HVNL) as a uniform model for aspects of heavy vehicle regulation in 2014, with the result that fatigue management and certain vehicle standards now benefit from a national approach.<sup>41</sup>

3.41 In 2015, the committee heard that work to adopt the HVNL in Western Australia and the Northern Territory was ongoing.<sup>42</sup> The committee reaffirms its recommendation that the West Australian and Northern Territory governments work towards adoption.

3.42 The HVNL is administered by the independent National Heavy Vehicle Regulator (NHVR) which has policy responsibility for a range of work, and health and safety issues in the heavy vehicle industry, including the obligations referred to as the

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37 Subclause 9.4, *Contractor Driver Minimum Payments Road Safety Remuneration Order 2016*, Road Safety Remuneration Tribunal, 18 December 2015, <<https://www.fairwork.gov.au/ArticleDocuments/967/contractor-driver-minimum-payments-road-safety-remuneration-order-2016.docx.aspx>> (accessed 14 September 2017)

38 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 14 August 2015, p. 15.

39 Mr Cameron Dunn, FBT Transwest, *Committee Hansard*, 2 July 2015, p. 38.

40 Mr Cameron Dunn, FBT Transwest, *Committee Hansard*, 2 July 2015, p. 39.

41 Rural and Regional Affairs and Transport References Committee, *Aspects of Road Safety in Australia*, Interim report, p. 60.

42 Rural and Regional Affairs and Transport References Committee, *Aspects of Road Safety in Australia*, Interim report, p. 60.

'chain of responsibility'.<sup>43</sup> Toll Group's submission explained the chain of responsibility as applied in the HVNL:

The heavy vehicle national law incorporates the concept of 'chain of responsibility' (CoR) which imposes duties and obligations on all parties in the supply chain to ensure safe on-road outcomes. In deciding whether operators have taken reasonable steps to manage speed, fatigue, and mass, dimension and load restraint, regulators and enforcers are required to consider the 'measures available' and the 'measures taken' to manage those risks.<sup>44</sup>

3.43 After undertaking an industry consultation process in 2016, the NHVR announced that changes to the Chain of Responsibility (CoR) laws will be introduced in mid-2018 which 'aim to complement heavy vehicle and national workplace safety laws, and place a positive duty of care on all heavy vehicle supply chain parties'. The NVHR announced a series of national information sessions for businesses to introduce two new tools, the 'Chain of Responsibility Gap Assessment Tool' and 'Introduction to Risk Management – A Heavy Vehicle Industry Guide'.<sup>45</sup>

3.44 The committee recognises the potential for HVNL reforms to increase awareness and application of the chain of responsibility. Many witnesses were also in favour of such reforms. The ATA put forward a view that this will reduce what it sees as 'red tape' in the current HVNL:

The chain of responsibility laws in the heavy vehicle national law states are being reformed...They will involve a dramatic reduction in absolutely ridiculous prescriptive red tape in those laws.<sup>46</sup>

3.45 Mr Simon O'Hara of Road Freight NSW described chain of responsibility legislation as 'part of the push for safety and greater compliance', and outlined the organisation's role in running successful roadshows in NSW on the legislation alongside the NHVR.<sup>47</sup> At the same time, he acknowledged that it was hard to reach those operators who do not comply, stating:

The point I would make to you is that those operators that attend the chain of responsibility seminars are the ones that do want to comply. There is a whole other part of the industry that possibly has a different view.<sup>48</sup>

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43 National Heavy Vehicle Regulator, *About the chain of responsibility*, <<https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/about-the-chain-of-responsibility>> (accessed 14 September 2017).

44 Toll Group, *Submission 33*, p. 10.

45 National Heavy Vehicle Regulator, *Changes to the chain of responsibility*, <<https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/changes-to-chain-of-responsibility>> (accessed 14 September 2017).

46 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 5.

47 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 3.

48 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 8.

3.46 Mr O'Hara underlined the 'need for chain of responsibility to be properly applied', pointing to a 'deficit in legislation' that saw an Australian company fined for the non-compliant actions of an overseas counterpart.<sup>49</sup>

#### *Electronic work diaries*

3.47 It was brought to the committee's attention that recent NHVL reforms do not address the use of electronic work diaries (EWDs) to monitor and record the work and rest times of heavy vehicle drivers.<sup>50</sup> The committee's interim report noted strong support for the use of electronic work diaries as a method of reducing fatigue.<sup>51</sup> The NHVR submitted in 2015 that:

Electronic work diaries are fundamental to risk management and safety data for the regulator. They are an early step towards the future policy framework being pursued by the regulator, where operators and drivers will be able to access increased productivity benefits in exchange for access to continuous-monitoring technology that allows full risk-based assessment of individual trucks, drivers and operators.<sup>52</sup>

3.48 The committee's interim report encouraged the widespread use of electronic work diaries throughout the industry on a voluntary basis, noting advice that the necessary legislative arrangements were already in place:

In November 2014 the Transport and Infrastructure Council endorsed the necessary legislative amendments to the Heavy Vehicle National Law for the implementation of Electronic Work Diaries. The NHVR is currently working to progress arrangements for the implementation of this technology.<sup>53</sup>

3.49 More recently, the NHVR website announced the regulator's intention to 'commence the assessment and approval process for EWDs as a voluntary alternative to written work diaries in late 2017'.<sup>54</sup>

3.50 Given that the use of electronic work diaries appears to have broad industry support and legislative backing, the committee strongly encourages the NHVR to complete the overdue assessment and approval process as a matter of urgency.

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49 Mr Simon O'Hara, Road Freight NSW, *Committee Hansard*, 26 June 2017, p. 3.

50 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 5.

51 Senate Rural and Regional Affairs and Transport References Committee, *Aspects of Road Safety in Australia*, Interim report, p. 61. See also Mr Tony Richens, *Committee Hansard*, 26 June 2017, p. 4.

52 Mr Salvatore Petrocchio, National Heavy Vehicle Regulator, *Committee Hansard*, 26 October 2015, p. 31.

53 Department of Infrastructure and Regional Development, *Submission 51*, p. 24.

54 National Heavy Vehicle Regulator, *Electronic work diaries*, <<https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/electronic-work-diaries-ewds>>, (accessed 14 September 2017).

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### *Committee view*

3.51 The committee has heard the call for 'proactive regulation introduced by people with knowledge and understanding of the industry',<sup>55</sup> and sees the need for an open dialogue between the transport industry and regulators to maintain the priority and momentum of significant reforms.

3.52 The TWU agreed on the need to bring the respective parties together.<sup>56</sup> Mr Sheldon made the point, however, that despite the best intentions of industry, there would be new industry players who would have a disruptive effect:

For all the good people that will sit around the table, with a ruthless disregard for the law, it is obvious that Amazon and Uber Freight coming into this market will drive the market to its furthest logical consequences, which will be more injuries and deaths and exploitation.<sup>57</sup>

3.53 The committee views the emergence of new players as an even stronger incentive to build consensus through a cooperative and industry-led forum. Recognising that regulators and industry already agree on safety as the first priority, the committee considers that their collective expertise and goodwill could be channelled into the resolution of now well-documented supply chain issues.

3.54 With two jurisdictions working towards implementation of the HVNL, and broad agreement on a range of reform measures, the committee sees great potential for industry to drive the policy agenda and improve safety outcomes in a permanent fashion.

3.55 To this end, the committee recommends that the Australian Government take steps to organise a number of industry forums for the purposes of developing recommendations to strengthen the HVNL. Informed by the recommendations of the roundtables, the government should then amend the HVNL and thereby address the outstanding supply chain issues.

### **Recommendation 8**

**3.56 The committee recommends that the Australian Government convene a series of industry-led roundtables to make recommendations to government on ways to strengthen the Heavy Vehicle National Law.**

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55 Mr Tony Richens, private capacity, *Committee Hansard*, 26 June 2017, p. 4. See also Mr Michael Humphries, Australian Driver Trainers Association, *Committee Hansard*, 26 June 2017, p. 22.

56 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 16.

57 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 18.

## **Recommendation 9**

**3.57** The committee recommends that, informed by industry roundtables, the Australian Government amend the Heavy Vehicle National Law to address issues throughout the supply chain in the transport industry including chain of responsibility, minimum payment terms of 30 days and electronic work diaries.