
The Parliament of the Commonwealth of Australia

Advisory report on Bills referred 24 November 2011

**Road Safety Remuneration Bill 2011 and Road Safety
Remuneration (Consequential Amendments and Related
Provisions) Bill 2011**

House of Representatives
Standing Committee on Infrastructure and Communications

February 2012
Canberra

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Membership of the Committee

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Mr Robert Oakeshott MP

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Supplementary Member Mr Darren Chester MP

Committee Secretariat

Secretary Ms Julia Morris

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Terms of reference

On 24 November 2011, in accordance with standing orders 143(b) and 222(a)(iii), the Selection Committee referred the following two bills to the Committee for an advisory report:

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



List of abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AIG	Australian Industry Group
ALC	Australian Logistics Council
ARTIO	Australian Road Transport Industrial Organisation
CCF	Civil Contractors Federation
COAG	Council of Australian Governments
DEEWR	Department of Education, Employment and Workplace Relations
DIT	Department of Infrastructure and Transport
EM	Explanatory Memorandum
NHVR	National Heavy Vehicle Regulator
NRFA	National Road Freighters Association
NatRoad	National Road Transport Operators Association
NTC	National Transport Commission
OHS	Occupational Health and Safety
POAAL	Post Office Agents Association Limited
RIS	Regulatory Impact Statement

RSR	Road Safety Remuneration
RSRO	Road Safety Remuneration Order
SRAG	Safe Rates Advisory Group
TWUA	Transport Workers' Union of Australia



List of recommendations

Recommendation 1

The Committee recommends that the House should consider and pass the bills.

Introduction

- 1.1 On 24 November 2011, the Selection Committee referred two bills to the House Standing Committee on Infrastructure and Communications for inquiry and advisory report:
- the Road Safety Remuneration Bill 2011 (the bill); and
 - the Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011 (the consequential amendments bill).¹
- 1.2 The bills had been introduced into the House of Representatives by the Federal Government the day before.² As a package, they implement a Road Safety Remuneration System for drivers, by establishing a new Road Safety Remuneration Tribunal with the objective of promoting safety and fairness in the road transport industry.³ The Committee understands that ‘Australia is the first country to seek to legislate in respect of dealing with safety and remuneration issues in the road transport industry.’⁴
- 1.3 The Road Safety Remuneration System is the Federal Government’s response to the 2008 National Transport Commission (NTC) report on safe payments in the road transport industry (*Safe Payments* report)⁵ and the

1 House of Representatives, *Votes and Proceedings*, No.83 – 24 November 2011, p. 1149.

2 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13535.

3 Road Safety Remuneration (RSR) Bill 2011, Explanatory Memorandum (EM), p. b.

4 Mr John Kovacic, Deputy Secretary, Workplace Relations, Department of Education, Employment and Workplace Relations (DEEWR), *Committee Hansard*, Canberra, 15 February 2012, p. 24.

5 National Transport Commission (NTC), *Safe Payments: Addressing the Underlying Causes of Unsafe Practices in the Road Transport Industry (Safe Payments report)*, October 2008, <<http://www.ntc.gov.au/filemedia/Reports/SafePaymentsFinalReportNov08.pdf>> viewed 1 December 2011.

2010 Department of Education, Employment and Workplace Relations' (DEEWR) *Safe Rates, Safe Roads* Directions Paper.⁶

- 1.4 This chapter will provide an introduction to the bill and its purpose and background information on the inquiry and its conduct. Later chapters will outline certain issues which were raised during the inquiry. Five appendices contain lists of submissions and exhibits, a list of witnesses who appeared at a public hearing on 15 February 2012, and copies of the bills.

Purpose of the bill

- 1.5 The Explanatory Memorandum (EM) and the second reading speech indicate that the bill is fundamentally about improving the way pay and conditions for truck drivers are derived.⁷ The safety aspects of the bill relate to removing the incentives for drivers to work excessive hours by improving their pay and also providing, in some cases, compensation for delays in unloading cargoes.⁸ It is proposed that this will reduce their chances of having an accident.
- 1.6 The bill will establish a new Road Safety Remuneration Tribunal (Tribunal) and is designed to complement the *Fair Work Act 2009* (Cth), the *Independent Contractors Act 2006* (Cth), current State-based schemes dealing with owner-driver contracts and the forthcoming National Heavy Vehicle Regulator (NHVR) laws.⁹ According to the EM, The Tribunal will be empowered to inquire into sectors, issues and practices within the road transport industry and, where appropriate, determine mandatory minimum rates of pay and related conditions for employed and self-employed drivers by making Road Safety Remuneration Orders (RSROs).¹⁰ Prior to making any RSRO, the Tribunal will have regard to the

6 DEEWR, *Safe Rates, Safe Roads* Directions Paper, 2010, <<http://www.deewr.gov.au/WorkplaceRelations/Policies/SafeRatesSafeRoads/Documents/DirectionsPaper.pdf>> viewed 1 December 2011; DEEWR, 'Road Safety Remuneration System' <<http://www.deewr.gov.au/WorkplaceRelations/Policies/SafeRatesSafeRoads/Pages/default.aspx>> viewed 1 December 2011.

7 RSR Bill 2011, EM, p. b; The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13535.

8 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13537.

9 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13537.

10 RSR Bill 2011, EM, p. b.

impacts it may have on the industry, the economy and the movement of freight.¹¹ The Tribunal will also be empowered to grant Safe Remuneration Approvals and facilitate dispute resolution between drivers, their hirers or employers, and participants in the road transport industry supply chain, about remuneration and related conditions.¹²

- 1.7 The Tribunal will be made up of a mixture of Fair Work Australia members and expert members with qualifications relevant to the road transport industry.¹³ The bill also establishes a compliance regime, to be administered by the Fair Work Ombudsman, for the enforcement of decisions made by the Tribunal.¹⁴

Conduct of the inquiry

- 1.8 Federal, state and territory government departments, and organisations from the road transport and workplace relations industries across Australia were invited to prepare submissions to provide to the inquiry. Media releases were issued on 15 December 2011 and 9 February 2012, and details of the inquiry were also made available on the Committee's website.
- 1.9 The Committee received 29 submissions, 6 supplementary submissions and 19 exhibits to the inquiry. These are listed at Appendices A and B.
- 1.10 The Committee considered that a relatively short timeframe for the inquiry was in order, taking into account the possibility that the bills could be debated in the House before the end of the 2012 autumn sittings, and the fact that the bills are scheduled to commence on 1 July 2012.
- 1.11 A public hearing was held on 15 February 2012. The witnesses who appeared at the public hearing are listed at Appendix C.
- 1.12 Copies of the bills are attached at Appendices D and E.

11 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, pp. 13537–13538.

12 RSR Bill 2011, EM, p. b.

13 RSR Bill 2011, EM, p. b.

14 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13538.

Road Safety Remuneration System

Background to the legislation

- 2.1 As noted in paragraph 1.2, the bills implement a national Road Safety Remuneration System for drivers in the road transport industry. The stated purpose of the Road Safety Remuneration System is ' ... to tackle speed, fatigue and dangerous work practices in the trucking industry – to make Australia's roads safer for all drivers.'¹
- 2.2 The bills were introduced into the House of Representatives by Minister Albanese. In the conclusion of his second reading speech, the Minister noted that:

This bill is the government's response to the report of the National Transport Commission that I commissioned when I became the transport minister, but it is also in response to numerous reports over many years, including the *Burning the midnight oil* report, which was done by the House of Representatives committee, chaired by the member for Hinkler, who is in the chamber today. This has been an issue which has been talked about for a long time, but not acted upon until today.²

1 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport and the Hon. Senator Chris Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations, 'Road Safety Bills', *Media Release AA215/2011*, 22 November 2011.

2 The Hon. Mr Anthony Albanese MP, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 23 November 2011, p. 13538.

- 2.3 The 2008 NTC *Safe Payments* report, referred to by Minister Albanese in his second reading speech, was commissioned by the Australian Transport Council (now known as the Standing Council on Transport and Infrastructure), to provide an evaluation, with recommendations, for the improvement of truck driver payment methods, working conditions and career structures to address safety issues.³
- 2.4 The *Safe Payments* report provided a conclusive statement as to the existence of the link between rates and methods of remuneration and poor safety outcomes, and further stated that, for the first time, the incentives behind safety issues would be addressed when targeting on-road behaviour.⁴ The report concluded that safe payments are an important step for the future of the road transport industry.⁵
- 2.5 The NTC recommended the development of a national framework for the establishment and maintenance of safe payments for employees and owner drivers.⁶
- 2.6 In response to the *Safe Payments* report, and in order to build on the recommendations made in it, DEEWR sought to consult with road transport industry stakeholders to develop possible models for reform.⁷ As part of this process, the Safe Rates Advisory Group (SRAG) was established to provide expert road transport industry advice to DEEWR on policy options for national reform.⁸
- 2.7 This advice resulted in the *Safe Rates, Safe Roads Directions Paper*, which examined the recommendations of the *Safe Payments* report and outlined options for national legislation covering employees' and independent contractors' work, considering impacts on safety, productivity, efficiency and employment levels in the road transport industry.⁹
- 2.8 The *Safe Rates, Safe Roads Directions Paper* proposed options for models of a national tribunal, all with the power to make orders regarding safe rates and related terms in the road transport industry.

3 NTC, *Safe Payments* report, October 2008, Foreword.

4 NTC, *Safe Payments* report, October 2008, Foreword.

5 NTC, *Safe Payments* report, October 2008, p. 47.

6 NTC, *Safe Payments* report, October 2008, pp. 40 and 46.

7 DEEWR, *Safe Rates, Safe Roads Directions Paper*, 2010, p. 3.

8 DEEWR, *Safe Rates, Safe Roads Directions Paper*, 2010, p. 4 and Appendix 2.

9 DEEWR, *Safe Rates, Safe Roads Directions Paper*, 2010, pp. 8 and 28.

- 2.9 The Department sought public comment on its *Safe Rates, Safe Roads* Directions Paper, and received submissions from 45 parties using and affected by the road transport industry.
- 2.10 Of the 45 submissions, 21 supported the establishment of a tribunal with power to set remuneration rates and related conditions for employees, owner drivers and the supply chain,¹⁰ a form of which is proposed in the bill. Fourteen submissions preferred a status quo approach, and ten submissions supported the introduction of a voluntary system of payments for owner drivers and chain of responsibility arrangements.¹¹
- 2.11 Issues and opinions arising from the public consultation included:
- that current and proposed regulatory regimes should be given a chance to work before a new system is introduced;
 - support for the enforcement and development of current regulatory regimes;
 - that it must be made clear how any new system would interact with current and proposed regimes;
 - that there must be no duplication of regulation;
 - suggestions for how a tribunal should calculate safe rates, incorporating all fixed and variable costs;
 - issues that a tribunal should address, such as unpaid waiting times, 'backloading' rates, payment terms and driver cost recovery;
 - concern about the impact increased rates might have across the road transport industry, including decreases in market demand for smaller rural transport operators, and increases in compliance costs;
 - that the legislation should bind all industry participants, including those in the supply chain;
 - that independent contractors should be governed by commercial law and employees by industrial relations law;

10 PriceWaterhouseCoopers Australia, *Road Safety Remuneration System: Regulatory Impact Statement* (RIS), October 2011, pp. 4 and 53, <<http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

11 PriceWaterhouseCoopers Australia, RIS, October 2011, pp. 4 and 53, <<http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

- that modern Awards and contract determinations already address minimum rates of pay in the industry, and the Independent Contractors Act addresses safe rates for owner drivers;
 - alternative ways of improving safety to a safe payments system, such as making demurrage payments mandatory, an enforceable code of practice, licensing systems, and mandatory safe driving plans; and
 - requests for continuing consultation in the development of any proposed national safe payments system, including in the drafting of the legislation.
- 2.12 Support for a tribunal approach came from unions such as the Australian Council of Trade Unions (ACTU) and the Transport Workers' Union of Australia (TWUA), individual drivers and driver groups, including the Australian Road Transport Industrial Organisation (ARTIO).¹²
- 2.13 Preference for a status quo approach came from industry groups and employer representatives, including the Australian Chamber of Commerce and Industry (ACCI), the Australian Trucking Association and the South Australian Road Transport Association.¹³
- 2.14 Support for the introduction of a voluntary system came from the Australian Industry Group (AIG) and the Australian Logistics Council (ALC).¹⁴
- 2.15 The state governments expressed different views. The New South Wales Government and South Australian Government (represented by SafeWork SA) supported a mandatory tribunal approach, the Western Australian Government supported the introduction of a voluntary system, and the Queensland Government withheld its support for any option pending further economic analysis.¹⁵
- 2.16 The SRAG was recalled in October 2011 to assist the Federal Government with finalising its response to the *Safe Rates, Safe Roads* Directions Paper
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12 PriceWaterhouseCoopers Australia, RIS, October 2011, p. 53,
< <http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

13 PriceWaterhouseCoopers Australia, RIS, October 2011, p. 53,
< <http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

14 PriceWaterhouseCoopers Australia, RIS, October 2011, p. 53,
< <http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

15 PriceWaterhouseCoopers Australia, RIS, October 2011, p. 53,
< <http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf>> viewed 23 February 2012.

and the feedback received, resulting in the Road Safety Remuneration System and consequent legislation.

Issues arising in the inquiry

Introduction

- 2.17 Several issues of concern to the industry which had arisen during the public consultation process for the *Safe Rates, Safe Roads* Directions Paper resurfaced in submissions provided to this inquiry, and at the public hearing. These are reflected in the main issues that arose throughout the inquiry, as follows:
- the link between remuneration and road transport safety;
 - the jurisdiction and interaction with other laws and initiatives in the road transport industry; and
 - the challenges of a safe rates system.
- 2.18 The submissions overall took one of two approaches, the first being to comment on road safety in the road transport industry and how it should be improved, the second being to comment on the bill and make suggested changes. Some submissions combined the two approaches.
- 2.19 A common theme that emerged from the submissions and evidence received at the public hearing was the paramount importance of safety in the road transport industry. The methods by which safety could be improved, including by the introduction of the bills, were the contested elements of the inquiry.
- 2.20 The general view that arose in opposition to the bill was that the Tribunal would add an unnecessary layer of regulation, when other measures and laws were already adequately placed to improve safety.
- 2.21 The general view that arose in support of the bill was that the Tribunal was needed to improve safety in the industry, most notably through increasing driver payments.
- 2.22 The Department discussed the intention of the bill as being to complement the range of other measures the Federal Government was taking, and stated that:
- ... what this bill does is address an element of this industry which is not necessarily addressed by those other mechanisms, and that

is the linkage between remuneration and safety practices in the road transport industry.¹⁶

- 2.23 The ACTU agreed with this statement by saying that '... the Bill represents the only initiative that is specifically targeted at the industry's economic factors that influence and incentivise drivers to take risks.'¹⁷
- 2.24 Of all the issues raised in evidence, the link between remuneration and safety was undoubtedly the most prominent.

The link between remuneration and safety

- 2.25 The bill is premised on the assumption that there is a proven causal connection between remuneration and safety. There are mixed views on whether this link has been definitively established.
- 2.26 Many submitters supported this link, including Professor Michael Quinlan, School of Organisation and Management, University of New South Wales. Professor Quinlan has been involved in research into occupational health and safety (OHS) for over 30 years, with his research focusing on how work organisation affects OHS. Professor Quinlan has published research on OHS in the trucking industry since 1997, including a number of reports commenting on the link between remuneration and safety.¹⁸ Professor Quinlan is strongly supportive of the legislation and the establishment of the Tribunal as it '... most clearly addresses the issues raised by the connection between remuneration and safety and provides an entirely workable mechanism for remedying these problems ...'¹⁹
- 2.27 As stated by Mr Michael Kaine, National Assistant Secretary of the TWUA, in his evidence to the inquiry: 'There is not a dearth of evidence; there is an avalanche of evidence in support of this bill.'²⁰

16 Mr Kovacic, DEEWR, *Committee Hansard*, Canberra, 15 February 2012, p. 24.

17 Australian Council of Trade Unions, *Submission 13*, p. 3.

18 M Quinlan FSIA and L Wright QC, *Remuneration and Safety in the Australian Heavy Vehicle Industry: A Review undertaken for the National Transport Commission*, October 2008, <<http://www.ntc.gov.au/filemedia/Reports/RemunSafetyAustHVIndustryNov08.pdf>> viewed 22 February 2012; M Quinlan, *Report of Inquiry into Safety in the Long Haul Trucking Industry*, November 2001, <<http://www.maa.nsw.gov.au/getfile.aspx?Type=document&ID=44257&ObjectType=3&ObjectID=3901>> viewed 22 February 2012.

19 Professor Michael Quinlan, *Submission 1*, p. 17.

20 Mr Michael Kaine, National Assistant Secretary, Transport Workers' Union of Australia (TWUA), *Committee Hansard*, Canberra, 15 February 2012, p. 2.

- 2.28 The TWUA stated, in its supplementary submission, that ‘ ... there is empirical evidence (Belzer et al.) that an increase in rates to driver will result in lowering of crash rates and a reduction in the time a driver will choose to spend on the road ... ’²¹
- 2.29 Professor Michael Belzer, from the Department of Economics, Wayne State University in the United States, is a former professional truck driver, and a scholar with expertise in researching and writing reports on issues associated with trucking operations and truck driver OHS in the United States. Professor Belzer provided a submission to the inquiry, in which he said that:

My research supports the hypothesis that economic deregulation led to heightened competition in the trucking industry, and that while this has resulted in some economic efficiencies, it also has resulted in a substantial decline in truck driver compensation. The increased competition has put substantial stress on commercial motor vehicle operators, and this stress is associated with greater crash risk ... Our research has shown that the lower compensation levels caused by this competition also is associated with greater crash risk. This suggests that while higher pay and lower driver stress leads to safety, the inability of motor carriers to maintain high levels of compensation continues to lead to negative safety and health outcomes. This is evidence of a market failure.²²

- 2.30 The Regulatory Impact Statement (RIS), prepared for DEEWR and presented with the bill, refers to the international evidence supporting the link between remuneration and safety:

There is some research to suggest that the remuneration for drivers is a factor in safety outcomes, however data at this point in time is limited and being definitive around the causal link between rates and safety is difficult. International research has found a correlation between remuneration and safety performance, particularly where very low levels of remuneration are concerned (Rodriguez et al 2006, Nafuko et al 2007 and Belzer et al 2002). An Australian study found that drivers paid by a ‘payment-by-results’ method were twice as likely to report being fatigued on at least

21 TWUA, *Supplementary Submission 12.1*, p. [1].

22 Professor Michael Belzer, *Submission 8*, p. [4].

half of their trips than drivers paid an hourly rate (Williamson et al 2001).²³

- 2.31 The link between remuneration and safety was not supported by some inquiry participants, including the ALC and the AIG. The ALC stated in its submission that the RIS did not support a definitive link between remuneration levels and safety outcomes, and said that the Tribunal should not be established until that link could be proven.²⁴ When questioned at the hearing as to whether the ALC had done any of its own research on the link between road accidents and causes of accidents, Mr Michael Kilgariff, Managing Director, confirmed that it had not.²⁵
- 2.32 The AIG similarly based its objection on a statement made in the RIS (as reproduced above). When questioned at the hearing on its position held prior to the introduction of the bill, and therefore the production of the RIS, Mr Brent Ferguson, Senior Advisor Workplace Relations at AIG stated that:

I think we take the view that the causes of unsafe outcomes in the road transport industry are probably multifaceted. I think we have already heard this afternoon discussion about the fact that, in many instances, incidents of unsatisfactory road safety outcomes may be the fault of the driver of a car rather than a trucking operator. What we have taken issue with is that we do not believe that altering remuneration or remuneration-related conditions can satisfactorily rectify all of those road safety outcomes.²⁶

- 2.33 Mr Ferguson further stated that:

... if the Tribunal results in increased remuneration then arguably drivers may wish to work longer hours in order to gain the benefits of that remuneration. Alternatively they may continue on with whatever unsafe practices they are currently engaging in and simply reap greater rewards ...²⁷

- 2.34 The National Road Transport Operators Association (NatRoad) commented that the Tribunal was being established under circumstances
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23 PriceWaterhouseCoopers Australia, RIS, October 2011, pp. 3-4 and 69, < <http://ris.finance.gov.au/files/2011/11/03-Safe-Rates-RIS1.pdf> > viewed 23 February 2012.

24 Australian Logistics Council (ALC), *Submission 21*, pp. 4 and 7.

25 Mr Michael Kilgariff, Managing Director, ALC, *Committee Hansard*, Canberra, 15 February 2012, p. 19.

26 Mr Brent Ferguson, Senior Advisor Workplace Relations, Australian Industry Group (AIG), *Committee Hansard*, Canberra, 15 February 2012, p. 13.

27 Mr Ferguson, AIG, *Committee Hansard*, Canberra, 15 February 2012, p. 14.

in which the extent of any link between remuneration and safety had not been conclusively proven.²⁸ Independent Contractors Australia also rejected the link between pay rates and road transport safety.²⁹ The ACCI continued to:

... express its concern that the underpinning premise of the legislative proposals is that community safety outcomes, such as reduced injuries and fatalities on Australian roads, can be enhanced through better remuneration and conditions for drivers.³⁰

- 2.35 The Australian Trucking Association of NSW suggested a full and comprehensive RIS be made to fully establish any link between remuneration and safety and the full impact on the supply chain including the broader community, as a way to deliver enhanced safety and fairness across the road transport industry.³¹
- 2.36 The Committee considers that there is sufficient evidence to establish the link between remuneration and safety. In addition, the Tribunal will have the power to investigate into the issues that are brought before it, and will have done so prior to preparing its annual work program. The Tribunal will also, if it wishes, have the power to investigate whether or not there is a clearly identifiable or provable link between remuneration and safety in relation to specific issues before it.

Jurisdiction and interaction with other laws and initiatives in the road transport industry

Drivers covered by the bill

- 2.37 Questions arose throughout the inquiry as to the extent of the bill's coverage. The bill applies to all employed and self-employed drivers in the road transport industry. The Department noted that, due to constitutional limitations, it will initially cover approximately 80% of employees and 60% of owner drivers, with the Federal Government intending to expand coverage by exploring the possibility of referrals of power from state governments.³²

28 National Road Transport Operators Association (NatRoad), *Submission 14.1*, p. 12.

29 Independent Contractors Australia, *Submission 4*, p. [1].

30 Australian Chamber of Commerce and Industry (ACCI), *Submission 19*, p. [1].

31 Australian Trucking Association NSW, *Submission 18*, pp. [1]-[2].

32 Mr Kovacic, DEEWR, *Committee Hansard*, Canberra, 15 February 2012, p. 23; DEEWR and the Department of Infrastructure and Transport (DIT), *Submission 24*, p. 6.

2.38 The ALC described the extension of the bill to couriers and cash in transit industries as a 'jurisdictional creep'.³³ When asked at the hearing as to why couriers should be excluded from the ambit of the bill, Mr Kilgariff explained that:

... the deliberations of the safe rates working group and also the work that was undertaken by the National Transport Commission did not cover courier drivers. It was basically restricted to long-haul drivers. Now under the legislation it is quite clear that the scope of the tribunal could go right to the services provided by courier drivers, which in our view has never been part of the debate to date.³⁴

2.39 The Civil Contractors Federation (CCF) commented that the jurisdictional extension to owner drivers was an undesirable policy development.³⁵ NatRoad suggested that the Tribunal should not seek to establish minimum remuneration rates for sub-contract drivers.³⁶ The Post Office Agents Association Limited (POAAL) stated that it was unlikely that the bill would improve road safety for mail contractors.³⁷

2.40 The AIG submitted that employee drivers should not be subject to the bill as they are already protected under the Fair Work Act.³⁸

2.41 Some parties suggested that state-based legislation dealing with the same issues as the bill be repealed. The ALC took the view that the bill should be amended so that it dealt, so far as constitutionally possible, with remuneration issues relating to heavy vehicle drivers, to the exclusion of state laws currently in place.³⁹

2.42 In support of the broad coverage of the bill in relation to all types of drivers in the road transport industry, Mr Tony Sheldon, National Secretary of the TWUA, stated that:

... the essence of the bill goes to the entire transport sector and includes a number of areas of the transport sector that apply, whether it is long distance or short haul. There are inquiries and

33 ALC, *Submission 21*, p. 11.

34 Mr Kilgariff, ALC, *Committee Hansard*, Canberra, 15 February 2012, p. 18.

35 Civil Contractors Federation (CCF), *Submission 23*, p. [8].

36 NatRoad, *Supplementary Submission 14.1*, p. 23.

37 Post Office Agents Association Limited (POAAL), *Submission 20*, p. 3.

38 AIG, *Submission 17*, pp. 19 and 47.

39 ALC, *Submission 21*, p. 12.

statements about both of those sectors and there are inquiries that we are able to furnish regarding the cash in transit industry ...⁴⁰

- 2.43 The Committee understands the concerns of inquiry participants as to the intent of the bill to eventually cover all drivers in the industry. The Committee is concerned, however, that partial coverage may cause confusion in the industry as to which drivers will be under the jurisdiction of the Tribunal. The Committee acknowledges the Department's intention to consult with state and territory governments with a view to making arrangements for referral of powers as soon as possible, so as to limit any confusion amongst industry participants.

Interaction with other laws and initiatives

- 2.44 Mr Kovacic, Deputy Secretary, DEEWR, described the intent of the bill as being complementary to the range of other measures the Federal Government is undertaking:

The National Heavy Vehicle Regulator is one of those initiatives but there is a range of other factors. Investment in roads and those sorts of issues, the changes to the work health and safety laws, the establishment of harmonised laws – they are all factors which collectively can impact on safety in the road transport industry as well as in some other industries. But clearly what this bill does is address an element of this industry which is not necessarily addressed by those other mechanisms, and that is the linkage between remuneration and safety practices in the road transport industry ... Indeed we were very conscious of ensuring that the provisions of this bill very much complemented all of those other sorts of measures. The National Heavy Vehicle Regulator was a particular area of focus in terms of ensuring that complementarity.⁴¹

- 2.45 The ACCI was concerned that the bill would create significant overlap with existing laws, and further that:

... the Government has proceeded by introducing the legislative measures without the co-operation of states and territories and

40 Mr Tony Sheldon, National Secretary, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 3.

41 Mr Kovacic, DEEWR, *Committee Hansard*, Canberra, 15 February 2012, p. 24.

without awaiting the commencement of a range of agreed national industry specific initiatives and strategies.⁴²

- 2.46 The clearly stated intention of the bill is that it will work concurrently with other laws and safety initiatives in the industry and that the Tribunal will take these into account when carrying out its duties. The Department confirmed that any decisions made by the Tribunal are intended to complement other laws and initiatives in the road transport industry.⁴³

Challenges of a safe rates system

- 2.47 In the course of its inquiry, the Committee heard different views on the implications of a safe rates system across the industry. Some inquiry participants proposed alternative safety initiatives, and concerns about the complexity of the new safe rates system were discussed.

Application across the industry

- 2.48 A common view expressed by small transport operators and owner drivers was that other measures would be more valuable to them than imposing a safe rates system across the industry.
- 2.49 Mr Russ Martin, a transport operator based in Queensland and a delegate of the National Road Freighters Association (NRFA), submitted that it would be 'nigh on impossible' to set a safe rate, as the transport industry has so many varied operations.⁴⁴ Mr Martin observed that a maximum 14 day payment period and paid waiting time to unload would be most valuable.⁴⁵ Mr Martin further said that there is a need for regulation of some type in the long haul subcontract industry.
- 2.50 Mrs Terrie Bradley, an owner operator and Secretary of the NRFA from Queensland, did not support a safe rates system across the industry, and stated that the implementation of a safe rate would only serve to disadvantage those who 'work for the right rates now'.⁴⁶ Mrs Bradley further stated that it would be 'nearly impossible to make a "safe rate" across the board as there are so many different facets of our industry'.⁴⁷

42 ACCL, *Submission 19*, p. [1].

43 DEEWR and DIT, *Submission 24*, p. 6.

44 Mr Russ Martin, *Submission 16*, p. [1].

45 Mr Russ Martin, *Submission 16*, p. [1].

46 AJ & T Bradley, *Submission 11*, p. [1].

47 AJ & T Bradley, *Submission 11*, p. [1].

- 2.51 Mr Ricky Finning, Vice President of the NRFA, had a similar view to Mrs Bradley, in that all transport businesses who kept their freight rates at a sustainable viable rate would have trouble doing so when the safe rates scheme is introduced.⁴⁸
- 2.52 The Long Haul Drivers Association suggested that there was no future in regulating rates for owner drivers who did not have the skills to successfully operate a small business.⁴⁹
- 2.53 The ALC stated that the Tribunal was '... an unnecessary extra layer of regulation, when there are already a range of regulatory and non-regulatory schemes in place that adequately deal with driver safety.'⁵⁰
- 2.54 The Committee understands that the Tribunal will make decisions and RSROs that are applicable to different parts of the industry, and that relate to different issues that arise in the industry. This will depend on the issues it has identified in its work program, or issues that are raised in application to the Tribunal by relevant parties.
- 2.55 Whilst the Committee understands the concerns of some submitters that a 'safe rate' could not be set across the industry, and that the rates set might not be sustainable, the Committee is satisfied that the legislation allows the Tribunal to be cognisant of these and other issues raised for its consideration. The Committee understands that the legislation will allow the Tribunal to consider, in the making of a RSRO, supporting evidence, and the effects it may have on all participating, and potentially affected, parties, whether in or outside the industry.

Alternative safety initiatives and complexity

- 2.56 Alternative ways to improve safety in the road transport industry were raised in submissions. Many echoed those raised in the consultation process with DEEWR prior to the introduction of the bills.
- 2.57 The ALC suggested that:
- ... if there were to be changes made to the heavy vehicle national law that is currently being developed, we believe that the safety issues that are proposed to be covered by this law should be picked up by the National Heavy Vehicle Regulator.⁵¹

48 Mr Ricky Finning, *Submission 5*, p. [1].

49 Long Haul Drivers Association, *Submission 2*, p. [2].

50 Mr Kilgariff, ALC, *Committee Hansard*, Canberra, 15 February 2012, p. 16.

51 Mr Kilgariff, ALC, *Committee Hansard*, Canberra, 15 February 2012, p. 20.

- 2.58 The ACCI similarly argued that the Federal Government should progress safety enhancing objectives through agreed national initiatives, including the National Heavy Vehicle laws, and other industry-specific occupational health and safety laws and codes of practice.⁵²
- 2.59 The ALC, noting its opposition to the bill, observed that the NHVR will come into effect from 1 January 2013. Mr Kilgariff claimed that the regulator 'will bring a greater national focus to key safety initiatives such as the chain of responsibility and fatigue management.' Mr Kilgariff further stated that the laws 'need to be given time to be implemented and bedded down.'⁵³
- 2.60 The AIG adopted a similar view to the ALC. Mr Michael Mead, the National Manager, Advocacy & Policy, described the safe rates system, as proposed in the bill, as 'counterproductive' to a range of other new measures, including the NHVR. Mr Mead stated that:
- Ai Group supports the regulatory impact statement's assessment that such laws are currently being bedded down, so further improvements in safety can be expected. These initiatives should be given time to work and their effectiveness assessed before an entirely different approach, as contemplated in the bill, is introduced. The system delivered by the bill will distract government and industry attention away from measures which are directly targeted at improving safety.⁵⁴
- 2.61 Mr Ferguson supported Mr Mead's opening remarks:
- We would say that in order to come to the conclusion that it is not working, the new laws that have been relatively recently introduced which could have an impact on safety, such as the chain of responsibility laws as they are implemented in various jurisdictions around Australia, should be bedded down and given an opportunity to work.⁵⁵
- 2.62 In response to a question on notice from the Committee regarding a definition of 'bedding down', the AIG stated that those subject to the laws needed a sufficient period of time to enable them to come to terms with

52 ACCI, *Submission 19*, p. [2].

53 Mr Kilgariff, ALC, *Committee Hansard*, Canberra, 15 February 2012, p. 16.

54 Mr Michael Mead, National Manager, Advocacy & Policy, AIG, *Committee Hansard*, Canberra, 15 February 2012, p. 12.

55 Mr Ferguson, AIG, *Committee Hansard*, Canberra, 15 February 2012, p. 14.

such provisions and to implement associated changes in their practices, and further said:

It is difficult in precise terms to articulate the length of time that should be given for the 'bedding down' of such laws before their effectiveness is considered given that, as outlined above, there are numerous new regulatory responses to addressing safety. Further, the necessary time frame would also be subject to variables such as the level of government support for educating and enforcing these schemes. It would also be somewhat premature to state a time given that the enactment of some of these laws is still being finalised.

The new harmonised Workplace Health & Safety laws are only partly in place ... COAG has recommended that a review of the laws take place after they have been in operation for five years ... At the very least, any review of the effects of the existing laws should not occur prior to 2018. This will allow any COAG review of the nationally harmonised Workplace Health and Safety laws to occur, and provide a period of five years for the National Heavy Vehicle Law to operate.⁵⁶

- 2.63 The POAAL suggested the need for better contracts to address penalties for unreasonable waiting times, and that an industry code of conduct could address the contract negotiation issues.⁵⁷
- 2.64 The Queensland Government reiterated its argument made in its submission to the *Safe Rates, Safe Roads* Directions Paper, saying that safety in the road transport industry is 'multi-factorial' and should be addressed with a number of intervention strategies, and it did not believe that safe rates were likely to encourage safe work practices.⁵⁸
- 2.65 The CCF noted that '... improving road safety requires a holistic approach rather than being based on a narrow focus upon the method and quantum of remuneration.'⁵⁹
- 2.66 Mr Noel Porter, the owner of Porter Haulage Pty Ltd from Victoria, suggested that uniform regulation across state borders needed to be addressed first.⁶⁰

56 AIG, *Supplementary Submission 17.1*, p. [3].

57 POAAL, *Submission 20*, pp. 5-6.

58 Queensland Government, *Submission 22*, p. [1].

59 CCF, *Submission 23*, p. [5]; AIG, *Submission 17*, pp. 9-11.

60 Porter Haulage Pty Ltd, *Submission 28*, p. [2].

- 2.67 Different sectors of the industry were concerned about the likelihood that the bill would introduce further complexity and cost into an industry that was already heavily regulated. The CCF stated that the RIS should provide a proper analysis of the additional compliance and administrative burden imposed by the legislation, and that further elaboration of a number of statements made in the RIS would be helpful.⁶¹
- 2.68 Mr Ken Wilkie has been an owner operator since 1974 and is a Queensland delegate of the NRFA. In his submission, Mr Wilkie stated that:
- ... a major cost to small operators is the complicated compliance requirements currently demanded by government and its agencies
...
- I object to having an outside entity directing what that entity considers to be a safe return on my effort. The costs of operation within the industry vary considerably between types of operation.⁶²
- 2.69 In his submission, Mr Ross Ingram, a Director of Bonaccord Freight Lines from Victoria, observed that 'industry needs one set of rules to comply with, not seven and it needs to be simple to understand and written in language that is easy to interpret.'⁶³

61 CCF, *Submission 23*, pp. [10]-[11].

62 Mr Ken Wilkie, *Submission 25*, p. [1].

63 Bonaccord Freight Lines Pty Ltd, *Submission 26*, p. [2].

Evidence on details of the bill

Introduction

- 3.1 This chapter reviews particular clauses of the bill where issues were raised throughout the inquiry. The Committee received useful written and oral evidence that directly addressed the legislation and the potential effects of the legislation, and outlines a representation of those views below.

Object

- 3.2 Clause 3 sets out the object of the bill, as follows:

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

- (a) ensuring that road transport drivers do not have remuneration-related incentives to work in an unsafe manner;
- (b) removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices;
- (c) ensuring that road transport drivers are paid for their work, including loading or unloading their vehicles or waiting for someone else to load or unload their vehicles;
- (d) developing and applying reasonable and enforceable standards throughout the road transport industry supply chain to ensure the safety of road transport drivers;

- (e) ensuring that hirers of road transport drivers and participants in the supply chain take responsibility for implementing and maintaining those standards;
 - (f) facilitating access to dispute resolution procedures relating to remuneration and related conditions for road transport drivers.
- 3.3 The ARTIO submitted that the bill should be amended to mandate safety as the overriding factor that must be considered by the Tribunal in exercising any of its functions.¹ The ALC suggested that clause 3 should be amended to make clear that the Tribunal should deal with remuneration matters only, and not related conditions.² NatRoad suggested that the object be amended to allow the Tribunal to impose obligations on drivers.³
- 3.4 The AIG was concerned that the Tribunal would be required to make a RSRO without the applicant in the matter having to prove the causal link between remuneration and safety.⁴
- 3.5 Mr Ingram was concerned as to how the objects of the bill, as outlined in clause 3, were to be implemented and at whose cost. For Mr Ingram, as for some other inquiry participants, a major concern was the chain of responsibility – what would happen when delays occurred that may be ‘the fault of the unloaders and/or the distribution centres’.⁵ Similarly, CCF was concerned that obligations through the supply chain were extensive and wide ranging, and it could mean that civil contractors could incur responsibilities to third parties that they did not directly hire or over whom they had no direct control.⁶ The CCF suggested that further clarification was necessary as to how far the obligations were intended to apply.⁷
- 3.6 The POAAL stated that the object of the bill would only have limited application to mail contractors, as there was little ability for them to reduce their delivery time through dangerous driving practices.⁸

1 Australian Road Transport Industrial Organisation (ARTIO), *Submission 10*, p. 5.

2 ALC, *Submission 21*, p. 10.

3 NatRoad, *Supplementary Submission 14.1*, p. 11.

4 AIG, *Submission 17*, p. 38.

5 Bonaccord Freight Lines Pty Ltd, *Submission 26*, p. [3].

6 CCF, *Submission 23*, p. 12.

7 CCF, *Submission 23*, p. 12.

8 POAAL, *Submission 20*, pp. 3-4.

Definitions

Road transport industry

- 3.7 The bill has a wide-ranging definition of the ‘road transport industry’.
- 3.8 The AIG submitted that the definition of ‘road transport industry’ should be limited to long distance operations in the private transport industry within the meaning of the Road Transport (Long Distance Operations) Award 2010.⁹ The ALC argued that the bill should only cover remuneration issues related to long distance operations.¹⁰

Waiting time and distribution centre

- 3.9 The ARTIO suggested that the definitions of ‘waiting time’ and ‘distribution centre’ should be included in the bill.¹¹ Mr Paul Ryan, National Industrial Advisor of the ARTIO, suggested that a threshold issue arose in respect of the definition of ‘waiting time’:

If I drive a truck or someone behind me drives a truck and they go to the Coles distribution centre, park their truck and go and sit in the canteen and read the newspaper for an hour and a half, that is not waiting time – that is rest time. But, if they are in a queue and they have to maintain control of that vehicle because the queue is inching forward or whatever it might be, there is a prima facie case that they should be paid. Is the transport company being paid? It is the threshold issue that one must ask about.¹²

- 3.10 The Committee notes that, whilst ‘distribution centre’ itself is not defined in the bill, an operator of premises for loading and unloading is defined – in subclauses 9(6)-(8) – in certain circumstances to be a ‘participant in the supply chain’ for the purposes of the bill.
- 3.11 NatRoad further suggested that the definitions of a participant in the supply chain at subclause 9(6) should be expanded to include owners or operators of premises for loading and unloading.¹³ This goes to the broader argument of NatRoad that the bill should be applied to all parties

9 AIG, *Submission 17*, pp. 17-18 and 42.

10 ALC, *Submission 21*, p. 11.

11 Mr Paul Ryan, National Industrial Advisor, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 10.

12 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 10.

13 NatRoad, *Supplementary Submission 14.1*, p. 10.

in the supply chain with an ability to influence rates or safety outcomes, as closely as possible reflecting the chain of responsibility provisions of the National Heavy Vehicle laws and the *Workplace Health and Safety Act 2011* (Cth).¹⁴

- 3.12 The Department further elaborated on the issue of these definitions of waiting time and distribution centre, and why they might not have been included in the bill, stating that:

Quite often the sorts of issues around waiting time might depend on the facts of a particular matter, and quite often it might be that there is a matter that is left to the discretion of a tribunal to deal with rather than it being specifically defined.¹⁵

- 3.13 The Committee accepts this explanation by DEEWR, and that issues such as waiting times may differ for different parts of the industry, and may be interpreted differently in different circumstances. The Committee therefore accepts that the Tribunal may consider such matters on a case by case basis.

Road Safety Remuneration Orders

- 3.14 Part 2 of the bill contains provisions about the making of RSROs.

Work program

- 3.15 Subclause 18(3) of the bill provides that in preparing its work program for a year, the Tribunal must consult with industry. The ALC argued that the Tribunal should only be allowed to make RSROs with respect to matters in its work program, and that subclauses 19(3)-(6) – allowing the Tribunal to make RSROs upon application and to refuse to consider applications – should therefore be removed.¹⁶ NatRoad similarly argued that the Tribunal should only hear applications outside its work program in exceptional circumstances.¹⁷

14 NatRoad, *Supplementary Submission 14.1*, pp. 8 and 25.

15 Mr Kovacic, DEEWR, *Committee Hansard*, Canberra, 15 February 2012, p. 23.

16 ALC, *Submission 21*, p. 10.

17 NatRoad, *Supplementary Submission 14.1*, p. 12.

Power to make a Road Safety Remuneration Order

- 3.16 The Tribunal may make a RSRO on its own initiative or on application by specified parties, if it is consistent with the object of the bill.
- 3.17 Paragraph 19(5)(b) provides that the Tribunal may refuse to consider an application for a RSRO for any reason.
- 3.18 The AIG suggested that the Tribunal should have the power to refuse to consider an application if a causal connection between remuneration and safety is not established,¹⁸ therefore not just for any reason.
- 3.19 The AIG also strongly opposed what it saw as an inequitable restriction imposed under paragraph 19(3)(e), on the rights of industrial associations to make applications for RSROs, in comparison to the rights of registered employee associations under paragraph 19(3)(d).¹⁹ Mr Ryan raised a similar concern, stating that:
- At the moment, the way the bill is worded ... in our view gives a free kick to a registered employee organisation. But, for a registered employer organisation, the powers granted to it are slightly different. There must be consistency.²⁰
- 3.20 NatRoad recommended that the Tribunal should be required to inform applicants of the reasons for a refusal to consider an application as part of the requirement for notification at subclause 19(6).²¹

Matters the Tribunal must have regard to

- 3.21 Clause 20 provides for the matters that the Tribunal must have regard to in deciding whether to make a RSRO. Paragraph 20(1)(j) states that any other matter may be prescribed by the regulations. It is not yet clear what the regulations may stipulate.
- 3.22 NatRoad suggested that the matters set out at clause 20 are incomplete, and that, among other suggestions, the following matters should be included:
- Considerations relating to safety including:
- Prevailing trends in safety improvement;
 - The reliability of available safety data;

18 AIG, *Submission 17*, pp. 55-56.

19 AIG, *Submission 17*, p. 54.

20 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, p. 9.

21 NatRoad, *Supplementary Submission 14.1*, p. 11.

- The quantum of any proposed safety improvements and whether or not actual improvements are likely to be measurable;
- Current safety measures, in place or under development that may address the problem;
- Compliance levels with existing safety measures and whether these can be improved through improved enforcement or other measures; and
- Alternative non-regulatory measures that could be pursued.²²

3.23 Many submitters complained about the possible confusion of regulation and differences between regulations in different States. This issue is dealt with in clause 20 of the bill, which states, among other things, that in deciding whether to make a RSRO, the Tribunal must have regard to matters such as:

- the need to avoid any unnecessary overlap with the Fair Work Act and laws that will be prescribed in future, such as the National Heavy Vehicle laws when they are enacted; and
- the need to reduce complexity and for any order to be simple and easy to understand, the intention being to ensure that either the existing complexity in road transport regulation is not increased, or that it is reduced.²³

3.24 The Committee is satisfied that the legislation will allow the Tribunal to take these matters into account in each case that it deals with, and ultimately in any decision that it makes.

3.25 A concern was raised by Mr Kilgariff of the ALC in relation to the possible restriction of parties in adopting more efficient and safer practices once a RSRO is made, as follows:

When an order is made by the Road Safety Remuneration Tribunal in relation to a standard business practice such as fatigue or loading of a truck, a road transport operator will be required to adopt the practices the tribunal imposes. This in effect would mean it would be unlawful for a business to adopt more efficient and safer practices that can and do develop over time ...²⁴

3.26 The Committee considers that the legislation would allow the Tribunal to manage this issue, whether in the way in which the RSRO is drafted, by the use of its review powers, or by allowing parties to apply to the

22 NatRoad, *Supplementary Submission 14.1*, p. 13.

23 RSR Bill 2011, EM, p. 11.

24 Mr Kilgariff, ALC, *Committee Hansard*, 15 February 2012, p. 16.

Tribunal for review of a RSRO. Whatever the practical operation of the Tribunal, the Committee is cognisant of the fact that the object of bill is to *promote safety and fairness in the road transport industry*. Should the Tribunal make orders which restrict industry's capacity for self-improvement, the object of the bill would be contravened.

- 3.27 Transport for NSW, a NSW State Government department, in its submission, raised the possibility of a RSRO being made which is inconsistent with the National Heavy Vehicle laws when they are enacted, and that the RSRO would prevail. Transport for NSW therefore requested further consideration of these issues, and in particular, how industry is to respond to the various requirements to ensure compliance.²⁵
- 3.28 Clauses 10 and 11 of the bill indicate that it is intended to operate concurrently with other specified laws (which the EM proposes will include the National Heavy Vehicle laws when they are enacted) but that an enforceable instrument (defined to include a RSRO) will prevail over any inconsistent state or territory law, to the extent of the inconsistency. These are a common form of provisions that appear in Commonwealth legislation. The Committee notes that paragraph 20(1)(g) obliges the Tribunal to have regard to the need to avoid unnecessary overlap with laws prescribed for the purposes of this paragraph (which the EM also proposes will include the National Heavy Vehicle laws when they are enacted), and is satisfied that the proposed legislation will enable the Tribunal to do so.

Making a Road Safety Remuneration Order

- 3.29 Clause 27 provides for what matters may be covered by a RSRO. It is clear to the Committee that unpaid waiting times, unpaid on-costs, loading and unloading vehicles, and time for payment of invoices are a major source of problems for drivers in the industry. Paragraph 27(2)(c) of the bill explicitly allows for the Tribunal to make RSROs in relation to these matters to address them in favour of drivers.
- 3.30 Unpaid waiting times were discussed throughout the inquiry as a major problem in the industry. Many individual drivers supported the idea of paid waiting times. The POAAL stated that unreasonable waiting times were a problem, but that they could be addressed in the way of better contracts that address penalties for unpaid waiting times, or an industry code for mail contractors.²⁶

25 Transport for NSW, NSW Government, *Submission 29*, p. [1].

26 POAAL, *Submission 20*, p. 5.

- 3.31 Mr Ian Vaughan, a delegate of the TWUA and a truck driver, gave evidence at the hearing in relation to travelling between distribution centres and country stores:

From that warehouse to the store you are given a two-hour window time ... If you are there before that window, you sit and wait. They will not take it before the time. If you are there after it, they jump up and down and go crook and whinge ... I work 72 hours a week. I can be away for 72 hours at a time. And if I get held up it makes my week the pits because I do not know what my family is doing – and you will just cut corners. There is the opportunity there to take risks that you would not normally take.²⁷

- 3.32 Mr Paul Freyer, a Member of the TWUA and truck driver, gave evidence at the hearing in relation to loading and unloading of his vehicle:

We were carting these liquid dangerous goods from Brisbane to Gladstone. It took an hour to load the truck, it took an hour to unload the truck, and we were running a 14-hour book ... the 14-hour book runs on a three-hour break ... They have initially used up two hours of my rest. So the other hour is used to make the log book legal ... I brought this up with my direct boss – I was working for a subcontract – and with the chemical company involved. I was given the bullet over that.²⁸

- 3.33 Mr Frank Black, a Member of the TWUA and truck driver, gave evidence at the hearing that ' ... the idea is that you need to be able to earn your living within your sustainable time – sustainable hours.'²⁹

- 3.34 The AIG stated that the power to make RSROs is extremely broad.³⁰ The ALC said that it is highly undesirable that the Tribunal can make decisions about loading trucks and managing fatigue as this will override any obligations on operators under Work Health and Safety laws and the National Heavy Vehicle laws, and further stated that the power to make RSROs in relation to 'related conditions' should be removed.³¹

- 3.35 NatRoad suggested that orders issued by the Tribunal must be specific for either employee or sub-contract drivers and must reflect the unique considerations required for each.³²

27 Mr Ian Vaughan, Delegate, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 4.

28 Mr Paul Freyer, Member, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 4.

29 Mr Frank Black, Member, TWUA, *Committee Hansard*, Canberra, 15 February 2012, p. 5.

30 AIG, *Submission 17*, p. 62.

31 ALC, *Submission 21*, pp. 8-10.

32 NatRoad, *Supplementary Submission 14.1*, p. 23.

- 3.36 Mr Darryl Pederson, the National President of the NRFA, was concerned that many members of the NRFA that negotiated their rates in accordance with the work they do would be expected to operate at a lesser rate than they currently do, and that may well force operators out of the industry.³³ Mr Pederson also stated that over regulation and inconsistent regulation would have far more effects on the safety of his members.³⁴

Variation of a Road Safety Remuneration Order

- 3.37 Clause 32 provides that, at any time, the Tribunal may vary a RSRO, on its own initiative or by application of certain parties.
- 3.38 The ARTIO was concerned that the bill was not clear about the powers of the Tribunal to review a RSRO within the first few months or years of its operation to ensure that it achieved its objectives and continued to do so.³⁵ Mr Ryan of ARTIO initially raised concerns that as a registered organisation, ARTIO may not be able to apply to the Tribunal to vary a RSRO.³⁶ The Committee observes that in a supplementary submission ARTIO confirmed that clause 32 *would* achieve that aim.³⁷
- 3.39 The Committee notes that a registered employee association or industrial association is allowed to apply for a RSRO to be varied, but a road transport driver is not allowed to apply in his or her own right. The Committee also notes that a road transport driver is allowed to apply for a RSRO to be made (as in paragraph 19(3)(a)), but is not allowed to apply for a RSRO to be varied.

Dispute resolution

- 3.40 The Tribunal may deal with disputes about remuneration and related conditions in certain circumstances, reflected in clauses 40-45.
- 3.41 The ARTIO submitted that there should be a 14 day time limit imposed on a road transport driver to file an application with the Tribunal claiming

33 National Road Freighters Association (NRFA), *Submission 27*, p. [1].

34 NRFA, *Submission 27*, p. [2].

35 ARTIO, *Submission 10*, p. 5.

36 Mr Ryan, ARTIO, *Committee Hansard*, Canberra, 15 February 2012, pp. 10 and 11.

37 ARTIO, *Supplementary Submission 10.1*, p. [1].

dismissal for refusing to work in an unsafe manner, which is consistent with that currently applying in the Fair Work Act.³⁸

- 3.42 The ARTIO supported compulsory arbitration, with binding orders to resolve disputes, and also argued that other supply chain participants should have access to the Tribunal with all decisions being open to review.³⁹
- 3.43 NatRoad submitted that subclause 43(b) should be amended so that drivers did not necessarily have to be involved in disputes involving participants in the supply chain.⁴⁰
- 3.44 The POAAL suggested that clause 42 did not provide an effective or appropriate dispute resolution procedure for disputes involving owner drivers, and that a mandatory code would provide greater protection.⁴¹ Further, POAAL commented that the bill was vague on how disputes may be resolved, timeframes involved and division of costs among the parties, and that a mandatory code of conduct, modelled on the Franchising Code of Conduct would provide greater protection to owner drivers.⁴²

Review of the Act

- 3.45 Part 7 of the bill outlines miscellaneous provisions, which include that a review of the Act will be undertaken three years after its commencement; that is, the review should be started by 1 July 2015 and completed by 31 December 2015.⁴³
- 3.46 While the Committee did not receive specific evidence from inquiry participants as to the operations of all miscellaneous provisions, it considers that the future review of the Act will allow the practical operation of the Tribunal to be thoroughly assessed. The Committee expects that the review process will provide a significant opportunity for all stakeholders to ensure that issues raised and considered throughout this report are addressed.

38 ARTIO, *Submission 10*, p. 7.

39 ARTIO, *Submission 10*, p. 7.

40 NatRoad, *Supplementary Submission 14.1*, p. 17.

41 POAAL, *Submission 20*, p. 5.

42 POAAL, *Submission 20*, p. 5.

43 RSR Bill 2011, EM, pp. 47-48.

Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

3.47 The consequential amendments bill makes a consequential amendment to the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*, to exclude decisions made under the Road Safety Remuneration Bill from the operation of that Act. There were no matters of concern raised in relation to the consequential amendments bill.

Recommendation 1

The Committee recommends that the House should consider and pass the bills.

Ms Sharon Bird MP
Chair
February 2012



Dissenting Report—Mr Paul Neville MP, Mr Paul Fletcher MP, Mrs Jane Prentice MP, Mr Darren Chester MP

- 1.1 The Road Safety Remuneration Bill 2011 and Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011 seek to legislate to provide for 'safe rates' to improve occupational health and safety outcomes for the transport industry and the general public.
- 1.2 A safe rate is generally understood as a proposal for an enforceable rate of remuneration for transport workers, set by the government or other appropriate body, to underpin safety in the heavy vehicle industry in Australia.
- 1.3 The Coalition Members of the Standing Committee on Infrastructure and Communications are concerned by the comparatively high rate of fatalities and serious injuries in the Australian transport industry.
- 1.4 The Coalition members fully support the need for a multi-faceted approach to reduce the accident rate in the transport industry. However, it should be noted that there has been a gradual improvement in the accident and fatality rate in recent years, despite an increase in the national freight task.
- 1.5 The report is a fair and accurate record of the evidence that was received in submissions and during the public hearings but the Coalition Members of the committee reached different conclusions from that evidence.
- 1.6 In assessing the evidence that was submitted, the Coalition members were unconvinced that safe rates will lead to an improvement in road safety outcomes. The finding contained in clause 2.36 of the report is not supported by the Coalition members.
- 1.7 The Coalition members were also concerned that so-called 'jurisdictional creep' (referred to in the Australian Logistics Council submission), which

has seen the proposed Bill extended to include intrastate courier operators, is not supported by the evidence.

- 1.8 In particular, the Coalition members believe the link between remuneration and safety in the transport industry has not been definitively established with conflicting evidence provided in many submissions, as outlined in clause 2.25. Evidence was also received which highlighted the need to allow pending changes under the National Heavy Vehicle Regulator to be fully implemented (from January 2013) and properly assessed before adding another layer of bureaucracy and red tape on the transport industry.
- 1.9 The committee also received evidence which supported an increased focus on improving road infrastructure and enforcement of existing laws and regulations to achieve safety improvements. It was repeatedly put to the committee that other measures would be more valuable in terms of reducing accident rates. The Coalition members support that approach.
- 1.10 The Coalition members of the committee were also conscious of the various submissions which pointed to the existing complexity of rules and regulations and the need to reduce duplication and inconsistencies across state borders. It was feared that adding another layer of bureaucracy would not improve safety outcomes but would lead to increased costs to industry and consumers.
- 1.11 Evidence presented to the committee in relation to loading issues and extended waiting times at distribution centres have the potential to deliver practical outcomes without the introduction of more complex legislation.
- 1.12 Given these concerns, the Coalition members support further efforts to improve occupational health and safety outcomes, particularly fatigue reduction measures, for the transport industry but reject the final recommendation to pass the Bill.

Mr Paul Neville MP
Deputy Chair

Mrs Jane Prentice MP
Member

Mr Paul Fletcher MP
Member

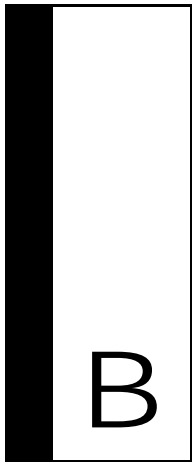
Mr Darren Chester MP
Supplementary Member



Appendix A – List of Submissions

- 1 Professor Michael Quinlan
- 2 Long Haul Drivers Association
- 2.1 Long Haul Drivers Association (SUPPLEMENTARY)
- 3 Dr Philip Laird
- 4 Independent Contractors Australia
- 5 Mr Ricky Finning
- 6 Australian Long Distance Owner & Drivers Association
- 7 Brookfield's Transport Services
- 8 Professor Michael Belzer
- 9 Australian Livestock and Rural Transporters Association
- 10 Australian Road Transport Industrial Organisation
- 10.1 Australian Road Transport Industrial Organisation (SUPPLEMENTARY)
- 11 AJ & T Bradley
- 12 Transport Workers' Union of Australia
- 12.1 Transport Workers' Union of Australia (SUPPLEMENTARY)
- 13 Australian Council of Trade Unions
- 14 National Road Transport Operators Association
- 14.1 National Road Transport Operators Association (SUPPLEMENTARY)

- 14.2 National Road Transport Operators Association
(SUPPLEMENTARY)
- 15 Australian Road Transport Industrial Organisation NSW Branch
- 16 Mr Russ Martin
- 17 Australian Industry Group
- 17.1 Australian Industry Group (SUPPLEMENTARY)
- 18 Australian Trucking Association NSW
- 19 Australian Chamber of Commerce and Industry
- 20 Post Office Agents Association Limited
- 21 Australian Logistics Council
- 22 Queensland Government
- 23 Civil Contractors Federation
- 24 Department of Education, Employment and Workplace Relations
and Department of Infrastructure and Transport
- 25 Mr Ken Wilkie
- 26 Bonaccord Freight Lines Pty Ltd
- 27 National Road Freighters Association
- 28 Porter Haulage Pty Ltd
- 29 Transport for NSW, NSW Government



Appendix B – List of Exhibits

- 1 Australian Livestock and Rural Transporters Association
Submission upon Safe Rates, Safe Roads Directions Paper
(Related to Submission No. 9)

- 2 Australian Road Transport Industrial Organisation NSW Branch
Submission to the Standing Committee on Law and Justice's (Standing Committee) Inquiry into Opportunities to Consolidate Tribunals in NSW
(Related to Submission No. 15)

- 3 Australian Chamber of Commerce and Industry
ACCI Submission to Safe Rates, Safe Roads Directions Paper
(Related to Submission No. 19)

- 4 Long Haul Drivers Association
Partial Submission to the Safe Rates Safe Roads Directions Paper
(Related to Submission No. 2)

- 5 Australian Logistics Council
Fatal heavy vehicle crashes Australia quarterly bulletin Apr-Jun 2011

(Related to Submission No. 21)

6 Transport Workers' Union of Australia

Safe Rates Safe Roads Directions Paper

(Related to Submission No. 12)

7 Transport Workers' Union of Australia

External Influences on health and safety outcomes in NSW long distance trucking

(Related to Submission No. 12)

8 Transport Workers' Union of Australia

Truck Crashes and Work-Related Factors Associated with Drivers and Motor Carriers

(Related to Submission No. 12)

9 Transport Workers' Union of Australia

Fatigue, overtaking top issues for truck drivers

(Related to Submission No. 12)

10 Transport Workers' Union of Australia

NTC Report 2008 Safe Payments: Addressing the underlying causes of unsafe practices in the road transport industry

(Related to Submission No. 12)

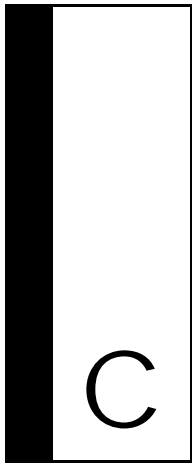
11 Transport Workers' Union of Australia

Remuneration and Safety in the Australian Heavy Vehicle Industry: A Review undertaken for the National Transport Commission

(Related to Submission No. 12)

-
- 12 Transport Workers' Union of Australia
TWU Fair Work Agreement with Star Track Express 2011-2014
(Related to Submission No. 12)
- 13 Transport Workers' Union of Australia
Toward A Safe & Sustainable Transport Industry
(Related to Submission No. 12)
- 14 Transport Workers' Union of Australia
Workforce Challenges in Road Transport
(Related to Submission No. 12)
- 15 Transport Workers' Union of Australia
The Economics of Safety: How Compensation Affects Commercial Motor Vehicle Driver Safety
(Related to Submission No. 12)
- 16 Transport Workers' Union of Australia
Short Trips and Long Days: Safety and Health in Short-Haul Trucking
(Related to Submission No. 12)
- 17 Transport Workers' Union of Australia
Safe Rates Summit: A Safe and Sustainable Transport Industry
(Related to Submission No. 12)
- 18 Transport Workers' Union of Australia
Driver Perspectives on Work, Fatigue and Occupational Health and Safety in the Light and Short Haul Road Transport Sector
(Related to Submission No. 12)

- 19 Transport Workers' Union of Australia
Toll Group TWU Fair Work Agreement 2011-2013
(Related to Submission No. 12)



Appendix C – Public Hearing

Wednesday, 15 February 2012 - Canberra

Transport Workers' Union of Australia

Mr Frank Black, Member

Mr Paul Freyer, Member

Mr Michael Kaine, National Assistant Secretary

Mr Jim McGiveron, National President

Mr Tony Sheldon, National Secretary

Mr Ian James Vaughan, Delegate

Australian Road Transport Industrial Organisation

Mr Laurie D'Apice, National Vice President

Mr Paul Ryan, National Industrial Advisor

Australian Industry Group

Mr Brent Ferguson, Senior Advisor Workplace Relations

Mr Michael Mead, National Manager, Advocacy & Policy

Australian Logistics Council

Mr Kerry Corke, Policy Adviser

Mr Michael Kilgariff, Managing Director

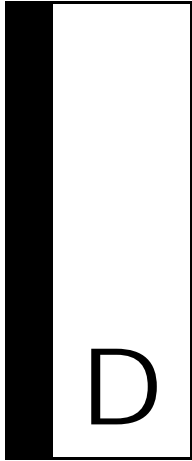
Mr Duncan Sheppard, Communications and Policy Director

Department of Education, Employment and Workplace Relations

Ms Jody Anderson, Branch Manager, Diversity and Flexibility Branch

Mr John Kovacic, Deputy Secretary, Workplace Relations

Mr Henry Lis, Branch Manager, Institutions and Workplace Safety Branch,
Workplace Relations Legal Group



Appendix D – Road Safety Remuneration Bill
2011

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Road Safety Remuneration Bill 2011

No. , 2011

(Education, Employment and Workplace Relations)

A Bill for an Act to make provision in relation to remuneration-related matters to improve safety in the road transport industry, and for related purposes

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1 **A Bill for an Act to make provision in relation to**
2 **remuneration-related matters to improve safety in**
3 **the road transport industry, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**

7 **Division 1—General**

8 **1 Short title**

9 This Act may be cited as the *Road Safety Remuneration Act 2011*.

Part 1 Preliminary**Division 1** General**Section 2**

1 **2 Commencement**

2 This Act commences on 1 July 2012.

3 **3 Object**4 The object of this Act is to promote safety and fairness in the road
5 transport industry by doing the following:

- 6 (a) ensuring that road transport drivers do not have
-
- 7 remuneration-related incentives to work in an unsafe manner;
-
- 8 (b) removing remuneration-related incentives, pressures and
-
- 9 practices that contribute to unsafe work practices;
-
- 10 (c) ensuring that road transport drivers are paid for their work,
-
- 11 including loading or unloading their vehicles or waiting for
-
- 12 someone else to load or unload their vehicles;
-
- 13 (d) developing and applying reasonable and enforceable
-
- 14 standards throughout the road transport industry supply chain
-
- 15 to ensure the safety of road transport drivers;
-
- 16 (e) ensuring that hirers of road transport drivers and participants
-
- 17 in the supply chain take responsibility for implementing and
-
- 18 maintaining those standards;
-
- 19 (f) facilitating access to dispute resolution procedures relating to
-
- 20 remuneration and related conditions for road transport
-
- 21 drivers.
-
- 22

Division 2—Definitions**4 Definitions**

In this Act:

applicable services: see subsection 33(2).

arbitration order: see subsection 44(2).

civil remedy provision: see section 46.

Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest.

compellable person means any of the following:

- (a) a road transport driver;
- (b) the employer or hirer of a road transport driver;
- (c) a participant in the supply chain in relation to a road transport driver, if the driver is involved in a matter the Tribunal is dealing with.

compliance notice: see subsection 76(2).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories; or
- (e) within a Territory.

controlling interest: see subsection 7(4).

Part 1 Preliminary
Division 2 Definitions

Section 4

1 **dual FWA member** means a member of the Tribunal appointed
 2 under paragraph 79(2)(a) or (b).

3 Note: See subsections 97(2) and (3), which require that members appointed
 4 under paragraphs 79(2)(a) or (b) must also be members of Fair Work
 5 Australia.

6 **eligible State or Territory court** means an eligible State or
 7 Territory court within the meaning of the *Fair Work Act 2009*.

8 **enforceable instrument** means any of the following:

- 9 (a) a road safety remuneration order;
 10 (b) a safe remuneration approval;
 11 (c) an arbitration order.

12 **enterprise agreement**: see subsection 12(2).

13 **Fair Work Australia** means the body established by section 575 of
 14 the *Fair Work Act 2009*.

15 **Fair Work Ombudsman** means the Fair Work Ombudsman under
 16 the *Fair Work Act 2009*.

17 **Federal Court** means the Federal Court of Australia.

18 **Full Bench** means a Full Bench of the Tribunal constituted under
 19 section 96.

20 **FWA order**: see subsection 12(2).

21 **General Manager** means the General Manager referred to in
 22 section 112.

23 **hirer**: see section 8.

24 **immediate family**: see subsection 7(4).

25 **industrial association** means an industrial association within the
 26 meaning of the *Fair Work Act 2009*.

27 **industry member** means a member of the Tribunal appointed under
 28 paragraph 79(2)(c).

29 **inspector** means a Fair Work Inspector under the *Fair Work Act*
 30 *2009*.

Section 4

- 1 ***member of the Tribunal*** means a member of the Tribunal
2 appointed under section 79, and includes the President.
- 3 ***modern award*** means a modern award under the *Fair Work Act*
4 *2009*.
- 5 ***organisation*** means an organisation within the meaning of the *Fair*
6 *Work Act 2009*.
- 7 ***participant in the supply chain***: see section 9.
- 8 ***participating driver***: see subsection 33(3).
- 9 ***participating hirer***: see subsection 33(2).
- 10 ***pecuniary penalty order*** means an order made under subsection
11 50(1).
- 12 ***President*** means the President of the Tribunal.
- 13 ***procedural rules*** means the procedural rules of the Tribunal made
14 under section 113.
- 15 ***registered employee association*** means a registered employee
16 association under the *Fair Work Act 2009*.
- 17 ***related conditions*** include matters of a kind referred to in
18 subsection 27(2).
- 19 ***related individual***: see subsection 7(3).
- 20 ***remuneration*** includes a method for determining remuneration.
- 21 ***road safety remuneration order*** means a road safety remuneration
22 order made under Part 2.
- 23 ***road transport collective agreement***: see subsection 33(2).
- 24 ***road transport contract***: see section 8.
- 25 ***road transport driver***: see section 5.
- 26 ***road transport industry*** means any of the following:
-

Part 1 Preliminary
Division 2 Definitions

Section 5

- 1 (a) the road transport and distribution industry within the
2 meaning of the Road Transport and Distribution Award 2010
3 as in force on 1 July 2012;
4 (b) long distance operations in the private transport industry
5 within the meaning of the Road Transport (Long Distance
6 Operations) Award 2010 as in force on 1 July 2012;
7 (c) the cash in transit industry within the meaning of the
8 Transport (Cash in Transit) Award 2010 as in force on 1 July
9 2012;
10 (d) the waste management industry within the meaning of the
11 Waste Management Award 2010 as in force on 1 July 2012;
12 (e) the meaning prescribed by the regulations by reference to a
13 modern award specified in the regulations.

14 ***road transport service*** means a service provided in the road
15 transport industry.

16 ***safe remuneration approval*** means a safe remuneration approval
17 granted under Part 3.

18 ***Territory authority*** means:

- 19 (a) a body corporate established for a public purpose by or under
20 a law of a Territory; or
21 (b) a body corporate:
22 (i) incorporated under a law of the Commonwealth or a
23 State or Territory; and
24 (ii) in which a Territory has a controlling interest.

25 ***transitional instrument***: see subsection 12(2).

26 ***Tribunal*** means the Road Safety Remuneration Tribunal
27 established by section 79.

28 **5 Meaning of *road transport driver*—general**

29 A person is a ***road transport driver*** if:

- 30 (a) the person is an individual to whom section 6 applies (but see
31 subsection 7(2)); or
32 (b) the person is a corporation to which section 7 applies.

6 Meaning of road transport driver—individual

(1) This section applies to an individual (for the purposes of paragraph 5(a)) if:

- (a) the individual engages in the road transport industry by driving a vehicle to transport things by road; and
- (b) the individual does so:
 - (i) as an employee of a constitutional corporation, the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (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; or
 - (iii) under a contract entered into in a Territory; or
 - (iv) under a contract at least one of the parties to which is an individual who is resident in, or a body corporate that has its principal place of business in, a Territory; or
 - (v) for the purposes of a business undertaking of a constitutional corporation; or
 - (vi) for the purposes of the Commonwealth, a Commonwealth authority, a Territory or a Territory authority; or
 - (vii) in the course of or in relation to constitutional trade or commerce.

(2) Without limiting its effect apart from this subsection, subparagraph (1)(b)(ii) also has the effect it would have if the reference to a constitutional corporation were, by express provision, confined to a corporation that has entered into the contract for the purposes of the business of that corporation.

7 Meaning of road transport driver—corporation*Road transport driver—corporation*

(1) This section applies to a corporation (for the purposes of paragraph 5(b)) if:

Part 1 Preliminary
Division 2 Definitions

Section 7

- 1 (a) the corporation engages in the road transport industry by
2 transporting things by road using one or more vehicles
3 supplied by the corporation or a related individual; and
4 (b) the vehicle or each vehicle is mainly driven by a related
5 individual; and
6 (c) the related individual's principal occupation is driving the
7 vehicle or vehicles; and
8 (d) the corporation is a constitutional corporation.

9 *Corporation, not individual, is road transport driver if both could*
10 *apply*

- 11 (2) If a corporation is a **road transport driver**, then despite paragraph
12 5(1)(a), any individual referred to in subsection (1) of this section
13 as a related individual who drives one or more of the corporation's
14 vehicles is taken not to be a **road transport driver**.

15 *Related individual*

- 16 (3) Each of the following individuals is a **related individual** of a
17 corporation:
18 (a) a director of the corporation;
19 (b) a member of the immediate family of a director of the
20 corporation;
21 (c) an individual who, together with members of the individual's
22 immediate family, has a controlling interest in the
23 corporation;
24 (d) a member of the immediate family of an individual who,
25 together with members of the individual's immediate family,
26 has a controlling interest in the corporation.

27 *Controlling interest and immediate family*

- 28 (4) In this Act:
29 **controlling interest** in a corporation means an interest in the
30 corporation that enables the person holding the interest to:
31 (a) control the composition of the board of directors of the
32 corporation; or

Section 8

- 1 (b) cast or control the casting of more than one-half of the
2 maximum number of votes that might be cast at a general
3 meeting of the corporation; or
4 (c) control more than one-half of the issued share capital of the
5 corporation (excluding any part of that issued share capital
6 that carries no right to participate beyond a specified amount
7 in a distribution of either profits or capital).

8 *immediate family* of an individual has the same meaning as
9 *immediate family* has for a national system employee under the
10 *Fair Work Act 2009*.

11 **8 Meaning of *hirer* of road transport driver and *road transport***
12 ***contract***

- 13 (1) A *road transport contract* is a contract for services under which a
14 road transport driver who is an independent contractor is to provide
15 road transport services to the other party to the contract (the *hirer*).
16 (2) A reference to a road transport contract includes a reference to a
17 condition or collateral arrangement that relates to the contract.
18 (3) A road transport contract may be in writing, oral, or partly in
19 writing and partly oral.

20 **9 Meaning of *participant in the supply chain***

21 *Meaning of participant in the supply chain—general*

- 22 (1) A person is a *participant in the supply chain* in relation to a road
23 transport driver if subsection (2), (4) or (6) applies to the person.

24 *Consignor or consignee*

- 25 (2) This subsection applies to a person if:
26 (a) the person is the consignor or consignee of a thing in respect
27 of which a road transport driver is providing road transport
28 services; and
29 (b) any of the following apply:

Part 1 Preliminary
Division 2 Definitions

Section 9

- 1 (i) the person is a constitutional corporation, the
2 Commonwealth, a Commonwealth authority, a Territory
3 or a Territory authority;
4 (ii) the person is an individual who is resident in, or a body
5 corporate that has its principal place of business in, a
6 Territory;
7 (iii) the person is the consignor or consignee for the
8 purposes of a business undertaking of a constitutional
9 corporation;
10 (iv) the person is the consignor or consignee for the
11 purposes of the Commonwealth, a Commonwealth
12 authority, a Territory or a Territory authority;
13 (v) the person is the consignor or consignee in the course of
14 or in relation to constitutional trade or commerce.
- 15 (3) Without limiting its effect apart from this subsection,
16 subparagraph (2)(b)(i) also has the effect it would have if the
17 reference to a constitutional corporation were, by express
18 provision, confined to a corporation that was the consignor or
19 consignee of a thing for the purposes of the business of that
20 corporation.

21 *Intermediary*

- 22 (4) This subsection applies to a person if:
23 (a) the person is party to a contract for the carriage of goods, and
24 that contract concerns the transport of a thing in respect of
25 which a road transport driver is providing road transport
26 services; and
27 (b) any of the following apply:
28 (i) the person is a constitutional corporation, the
29 Commonwealth, a Commonwealth authority, a Territory
30 or a Territory authority;
31 (ii) the contract was entered into in a Territory;
32 (iii) at least one of the parties to the contract is an individual
33 who is resident in, or a body corporate that has its
34 principal place of business in, a Territory;
35 (iv) the contract is for the purposes of a business
36 undertaking of a constitutional corporation;
-

Section 9

-
- 1 (v) the contract is for the purposes of the Commonwealth, a
2 Commonwealth authority, a Territory or a Territory
3 authority;
- 4 (vi) the contract was made in the course of or in relation to
5 constitutional trade or commerce.
- 6 (5) Without limiting its effect apart from this subsection,
7 subparagraph (4)(b)(i) also has the effect it would have if the
8 reference to a constitutional corporation were, by express
9 provision, confined to a corporation that has entered into the
10 contract for the purposes of the business of that corporation.
- 11 *Operator of premises for loading and unloading*
- 12 (6) This subsection applies to a person if the person is a constitutional
13 corporation that operates premises:
- 14 (a) that are used by a road transport driver to load or unload a
15 vehicle; and
- 16 (b) at which an average of at least 5 vehicles are loaded or
17 unloaded on each day (an *active day*) the premises are used to
18 load or unload vehicles.
- 19 (7) In determining whether an average of at least 5 vehicles are loaded
20 or unloaded on each active day for the purposes of
21 paragraph (6)(b):
- 22 (a) have regard to each active day in the previous 12 months; or
23 (b) if the corporation first used the premises to load or unload
24 vehicles less than 12 months ago—have regard to each active
25 day in the period since the premises were first used to load or
26 unload vehicles.
- 27 (8) In subsection (6), a reference to premises includes a reference to a
28 part of premises.
29

Part 1 Preliminary**Division 3** Application of this ActSection 10

1 **Division 3—Application of this Act**2 **Subdivision A—Interaction with other laws**3 **10 Concurrent operation generally intended**

4 (1) This Act is not intended to exclude or limit the operation of any
 5 other law of the Commonwealth or any law of a State or Territory
 6 that is capable of operating concurrently with this Act.

7 (2) In particular, this Act is not intended to exclude or limit the
 8 operation of:

9 (a) the *Fair Work Act 2009*; or

10 (b) the *Independent Contractors Act 2006* (but see section 14); or

11 (c) Chapter 6 of the *Industrial Relations Act 1996* of New South
 12 Wales (and any other provision of that Act to the extent that
 13 it relates to, or has effect for the purposes of, a provision of
 14 Chapter 6); or

15 (d) the *Owner Drivers and Forestry Contractors Act 2005* of
 16 Victoria; or

17 (e) the *Owner-Drivers (Contracts and Disputes) Act 2007* of
 18 Western Australia; or

19 (f) a law of a State or Territory that is specified in regulations
 20 made for the purposes of this paragraph, to the extent that the
 21 law is so specified.

22 (3) However, this section is subject to the other provisions of this
 23 Subdivision.

24 **11 Interaction of enforceable instruments with State and Territory**
25 **laws**

26 An enforceable instrument prevails over a law of a State or
 27 Territory, to the extent of any inconsistency.

1 **12 Interaction of enforceable instruments with other**
2 **Commonwealth instruments (employees)**

3 (1) A term of a modern award, an enterprise agreement, an FWA order
4 or a transitional instrument has no effect in relation to a road
5 transport driver to whom an enforceable instrument applies to the
6 extent that the award, agreement, order or instrument is less
7 beneficial to the driver than a term of the enforceable instrument.

8 (2) In this Act:

9 *enterprise agreement* means an enterprise agreement made under
10 the *Fair Work Act 2009*.

11 *FWA order* means an order of Fair Work Australia made under the
12 *Fair Work Act 2009*.

13 *transitional instrument* means a transitional instrument within the
14 meaning of the *Fair Work (Transitional Provisions and*
15 *Consequential Amendments) Act 2009*.

16 **13 Interaction of enforceable instruments with road transport**
17 **contracts (independent contractors)**

18 A road transport driver who is an independent contractor is entitled
19 to be provided, by the required provider under an enforceable
20 instrument that applies to the driver, with at least the remuneration
21 and related conditions in the enforceable instrument, regardless of
22 the terms of any road transport contract to which the driver is
23 party.

24 **14 Interaction with the *Independent Contractors Act 2006***

25 For the purposes of paragraph 15(1)(d) of the *Independent*
26 *Contractors Act 2006*, an enforceable instrument that applies to a
27 road transport driver whose services contract is being reviewed
28 under that Act is a matter the Court under that Act might (but is not
29 required to) think relevant.

Part 1 Preliminary
Division 3 Application of this Act

Section 15

1 **Subdivision B—Miscellaneous**

2 **15 Act binds Crown**

- 3 (1) This Act binds the Crown in each of its capacities.
- 4 (2) However, this Act does not make the Crown liable to be prosecuted
5 for an offence.
- 6 (3) To avoid doubt, subsection (2) does not prevent the Crown from
7 being liable to pay a pecuniary penalty under section 50.

8 **16 Act not to apply so as to exceed Commonwealth power**

- 9 (1) Unless the contrary intention appears, if a provision of this Act:
- 10 (a) would, apart from this section, have an application (an
11 *invalid application*) in relation to:
- 12 (i) one or more particular persons, things, matters, places,
13 circumstances or cases; or
- 14 (ii) one or more classes (however defined or determined) of
15 persons, things, matters, places, circumstances or cases;
16 because of which the provision exceeds the Commonwealth's
17 legislative power; and
- 18 (b) also has at least one application (a *valid application*) in
19 relation to:
- 20 (i) one or more particular persons, things, matters, places,
21 circumstances or cases; or
- 22 (ii) one or more classes (however defined or determined) of
23 persons, things, matters, places, circumstances or cases;
24 that, if it were the provision's only application, would be
25 within the Commonwealth's legislative power;
- 26 it is the Parliament's intention that the provision is not to have the
27 invalid application, but is to have every valid application.
- 28 (2) Despite subsection (1), the provision is not to have a particular
29 valid application if:
- 30 (a) apart from this section, it is clear, taking into account the
31 provision's context and the purpose or object underlying this
32 Act, that the provision was intended to have that valid

Section 17

- 1 application only if every invalid application, or a particular
2 invalid application, of the provision had also been within the
3 Commonwealth's legislative power; or
4 (b) the provision's operation in relation to that valid application
5 would be different in a substantial respect from what would
6 have been its operation in relation to that valid application if
7 every invalid application of the provision had been within the
8 Commonwealth's legislative power.
- 9 (3) Subsection (2) does not limit the cases where a contrary intention
10 may be taken to appear for the purposes of subsection (1).
- 11 (4) This section applies to a provision of this Act, whether enacted
12 before, at or after the commencement of this section.

17 Acquisition of property

14 This Act, or any instrument made under this Act, does not apply to
15 the extent that the operation of this Act or the instrument would
16 result in an acquisition of property (within the meaning of
17 paragraph 51(xxxi) of the Constitution) from a person otherwise
18 than on just terms (within the meaning of that paragraph).
19

Part 2 Road safety remuneration orders
Division 1 Preparation of annual work program

Section 18

1 **Part 2—Road safety remuneration orders**

2 **Division 1—Preparation of annual work program**

3 **18 Tribunal must prepare and publish a work program each year**

- 4 (1) Before the end of each year of its operation, the Tribunal must
5 prepare a work program for the next year.
- 6 (2) The work program must identify the matters the Tribunal proposes
7 to inquire into in the next year of its operation, with a view to
8 making a road safety remuneration order in relation to any or all of
9 those matters. The matters identified may be any or all of the
10 following:
- 11 (a) a sector or sectors of the road transport industry;
12 (b) issues for the road transport industry or a sector of the
13 industry;
14 (c) practices affecting the road transport industry or a sector of
15 the industry.
- 16 (3) In preparing its work program for a year, the Tribunal must consult
17 with industry.
- 18 (4) The Tribunal must publish its work program on the Tribunal's
19 website and by any other means the Tribunal considers appropriate.
- 20 (5) A work program prepared under subsection (1) is not a legislative
21 instrument.
22

1 **Division 2—Power to make a road safety remuneration**
2 **order**

3 **19 Power to make a road safety remuneration order**

- 4 (1) The Tribunal may make a road safety remuneration order under
5 this Part consistent with the object of this Act.

6 Note: See section 27 for what the order may deal with.

7 *Tribunal may make order on its own initiative*

- 8 (2) The Tribunal may make the order on its own initiative if the order
9 is in relation to a matter identified in its work program.

10 *Tribunal may make order on application*

- 11 (3) The Tribunal may make the order on application by any of the
12 following whether or not the order is in relation to a matter
13 identified in its work program:

- 14 (a) a road transport driver;
15 (b) an employer or hirer of a road transport driver;
16 (c) a participant in the supply chain in relation to a road transport
17 driver;
18 (d) a registered employee association that is entitled to represent
19 the interests of a road transport driver to whom the order will
20 apply;
21 (e) an industrial association that is entitled to represent the
22 interests of a road transport driver, employer or hirer of a
23 road transport driver or participant in the supply chain in
24 relation to a road transport driver, if:
25 (i) the person or each person whose interests the industrial
26 association claims to be representing by making the
27 application has consented to the making of the
28 application; and
29 (ii) the Tribunal has permitted the application to be made.

- 30 (4) An application that relates to a matter not identified in the
31 Tribunal's work program must relate to a matter that is capable of

Part 2 Road safety remuneration orders**Division 2** Power to make a road safety remuneration order**Section 20**

1 being included in the Tribunal's work program under subsection
2 18(2).

3 *Tribunal may refuse to consider application*

4 (5) The Tribunal may refuse to consider an application under
5 subsection (3):

- 6 (a) if the application relates to a matter not identified in the
7 Tribunal's work program—because the Tribunal considers
8 that it is not appropriate to deal with the matter at the time; or
9 (b) for any other reason.

10 (6) The Tribunal must notify the applicant of any refusal by the
11 Tribunal to consider an application.

20 Matters the Tribunal must have regard to

13 (1) In deciding whether to make a road safety remuneration order, the
14 Tribunal must have regard to the following matters:

- 15 (a) the need to apply fair, reasonable and enforceable standards
16 in the road transport industry to ensure the safety and fair
17 treatment of road transport drivers;
18 (b) the likely impact of any order on the viability of businesses in
19 the road transport industry;
20 (c) the special circumstances of areas that are particularly reliant
21 on the road transport industry, such as rural, regional and
22 other isolated areas;
23 (d) the likely impact of any order on the national economy and
24 on the movement of freight across the nation;
25 (e) orders and determinations made by the Minimum Wage
26 Panel of Fair Work Australia in annual wage reviews and the
27 reasons for those orders and determinations;
28 (f) any modern awards relevant to the road transport industry
29 (see subsection (2)) and the reasons for those awards;
30 (g) the need to avoid unnecessary overlap with the *Fair Work*
31 *Act 2009* and any other laws prescribed for the purposes of
32 this paragraph;
33 (h) the need to reduce complexity and for any order to be simple
34 and easy to understand;

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- 1 (i) the need to minimise the compliance burden on the road
2 transport industry;
- 3 (j) any other matter prescribed by the regulations for the
4 purposes of this paragraph.
- 5 (2) For the purposes of paragraph (1)(f), each of the awards referred to
6 in the definition of *road transport industry* (including an award
7 referred to in regulations made for the purposes of paragraph (e) of
8 the definition) is taken to be relevant to the road transport industry.

21 Publication of research

- 9
- 10 (1) The Tribunal must publish any research undertaken or
11 commissioned by the Tribunal for the purposes of determining
12 whether to make a road safety remuneration order or the terms in
13 which any order should be made, so that submissions can be made
14 under section 24 addressing issues covered by the research.
- 15 (2) The publication must be on the Tribunal's website and by any
16 other means the Tribunal considers appropriate.
17

Part 2 Road safety remuneration orders**Division 3** Preparing and consulting on draft road safety remuneration orderSection 22

1 **Division 3—Preparing and consulting on draft road safety**
2 **remuneration order**3 **22 Tribunal to prepare and consult on draft order**4 Before making a road safety remuneration order, the Tribunal must
5 prepare and consult on a draft of the order in accordance with this
6 Division.7 **23 Publication of draft order**8 The Tribunal must publish the draft of the order on the Tribunal's
9 website and by any other means the Tribunal considers appropriate.10 **24 Affected persons and bodies to have a reasonable opportunity to**
11 **make and comment on submissions for draft order**12 (1) The Tribunal must ensure that the following persons have a
13 reasonable opportunity to make written submissions to the Tribunal
14 for its consideration in relation to the draft of the order:15 (a) all persons and bodies likely to be affected if a road safety
16 remuneration order based on the draft were to be made;17 (b) any person or body prescribed by the regulations for the
18 purposes of this paragraph.

19 (2) The Tribunal must publish all submissions made to the Tribunal.

20 (3) However, if a submission made by a person or body includes
21 information that is claimed by the person or body to be confidential
22 or commercially sensitive, and the Tribunal is satisfied that the
23 information is confidential or commercially sensitive, the Tribunal:

24 (a) may decide not to publish the information; and

25 (b) may instead publish:

26 (i) a summary of the information which contains sufficient
27 detail to allow a reasonable understanding of the
28 substance of the information (without disclosing
29 anything that is confidential or commercially sensitive);
30 or

Section 25

- 1 (ii) if the Tribunal considers that it is not practicable to
 2 prepare a summary that would comply with
 3 subparagraph (i)—a statement that confidential or
 4 commercially sensitive information in the submission
 5 has not been published.
- 6 (4) The Tribunal must ensure that all persons and bodies likely to be
 7 affected if a road safety remuneration order based on the draft were
 8 to be made have a reasonable opportunity to make comments to the
 9 Tribunal on the material published under subsections (2) and (3),
 10 for its consideration.
- 11 (5) The publishing of material under subsections (2) and (3) must be
 12 on the Tribunal’s website and by any other means the Tribunal
 13 considers appropriate.
- 14 (6) A reference in this Act (other than in this section) to a submission
 15 under this section includes a reference to a summary or statement
 16 referred to in paragraph (3)(b).

17 **25 Hearings in relation to draft order**

18 The Tribunal may, but is not required to, hold a hearing in relation
 19 to the draft of the order.

20 Note: See section 88.

21 **26 Finalising draft order**

- 22 (1) The Tribunal may make any changes it thinks appropriate to the
 23 draft of the order, before making a road safety remuneration order
 24 based on the draft.
- 25 (2) The Tribunal may decide that no road safety remuneration order is
 26 to be made based on the draft. If the Tribunal does so, the Tribunal
 27 must publish notice of the decision on its website and by any other
 28 means the Tribunal considers appropriate.
 29

Part 2 Road safety remuneration orders**Division 4** Making road safety remuneration orderSection 27

1 **Division 4—Making road safety remuneration order**2 **27 Making road safety remuneration order**3 *What the order may deal with*

4 (1) If the Tribunal decides to make a road safety remuneration order,
 5 the Tribunal may make any provision in the order that the Tribunal
 6 considers appropriate in relation to remuneration and related
 7 conditions for road transport drivers to whom the order applies.

8 (2) Without limiting subsection (1), the Tribunal may make provision
 9 in the order in relation to any of the following:

10 (a) conditions about minimum remuneration and other
 11 entitlements for road transport drivers who are employees,
 12 additional to those set out in any modern award relevant to
 13 the road transport industry (see subsection 20(2));

14 (b) conditions about minimum rates of remuneration and
 15 conditions of engagement for road transport drivers who are
 16 independent contractors;

17 (c) conditions for loading and unloading vehicles, waiting times,
 18 working hours, load limits, payment methods and payment
 19 periods;

20 (d) ways of reducing or removing remuneration-related
 21 incentives, pressures and practices that contribute to unsafe
 22 work practices.

23 (3) The order may impose requirements, in relation to a matter for
 24 which provision is made, on any or all of the following:

25 (a) an employer or hirer of a road transport driver to whom the
 26 order applies;

27 (b) a participant in the supply chain in relation to a road transport
 28 driver to whom the order applies.

29 *Content of the order*

30 (4) The order must specify:

31 (a) the road transport drivers to whom the order applies; and

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- 1 (b) the persons on whom any requirements in the order are
 2 imposed; and
 3 (c) a commencement date for the order or a series of
 4 commencement dates (see subsection (5)); and
 5 (d) an expiry date for the order (which must not be later than 4
 6 years after the commencement date).
- 7 (5) The order may take effect in stages (as provided in the order) if the
 8 Tribunal considers that it is not feasible for the order to take effect
 9 on a single date.

10 *Publication of order*

- 11 (6) The Tribunal must publish the order on the Tribunal's website and
 12 by any other means the Tribunal considers appropriate.

13 **28 Persons on whom requirements are imposed must not contravene**
 14 **order**

15 A person on whom a road safety remuneration order imposes a
 16 requirement must not contravene the requirement.

17 Note: This section is a civil remedy provision (see Division 1 of Part 5).

18 **29 Expiry of order**

19 A road safety remuneration order ceases to have effect at the end of
 20 the expiry date specified in the order.

21 **30 Road safety remuneration orders to be made by Full Bench**

22 The function of making road safety remuneration orders under this
 23 Part is to be performed by a Full Bench of the Tribunal.
 24

Part 2 Road safety remuneration orders**Division 5** Variation and review of road safety remuneration orderSection 31

1 **Division 5—Variation and review of road safety**
 2 **remuneration order**

3 **31 Review of road safety remuneration order**

- 4 (1) The Tribunal must review a road safety remuneration order at some
 5 time in the period of 12 months ending on the expiry date specified
 6 in the order.
- 7 (2) After reviewing the order and before the expiry date, the Tribunal
 8 must revoke the order and do one of the following:
- 9 (a) replace it with a road safety remuneration order in the same
 10 terms except for a new expiry date (which must be no more
 11 than 4 years after the date the replacement order is made);
 12 (b) replace it with a road safety remuneration order in different
 13 terms;
 14 (c) not replace it.
- 15 (3) The Tribunal must ensure that the following persons have a
 16 reasonable opportunity to make written submissions to the Tribunal
 17 for its consideration in relation to action the Tribunal proposes to
 18 take under subsection (2):
- 19 (a) all persons and bodies likely to be affected by the proposed
 20 action;
 21 (b) any person or body prescribed by the regulations for the
 22 purposes of this paragraph.
- 23 (4) Section 21 applies in relation to research undertaken or
 24 commissioned for the purposes of deciding on a proposed action
 25 under subsection (2).
- 26 (5) Subsections 24(2) to (6) apply in relation to submissions made in
 27 relation to the proposed action, as if they were submissions made
 28 under subsection 24(1).

29 **32 Variation of road safety remuneration order**

- 30 (1) At any time before the expiry date specified in a road safety
 31 remuneration order, the Tribunal may vary the order:
 32 (a) on its own initiative; or

Section 32

- 1 (b) on application by a person referred to in subsection (2).
- 2 (2) The Tribunal may vary the order on application by any of the
3 following:
- 4 (a) an employer or hirer of a road transport driver to whom the
5 order applies;
- 6 (b) a participant in the supply chain in relation to a driver to
7 whom the order applies;
- 8 (c) a registered employee association that is entitled to represent
9 the interests of a road transport driver to whom the order
10 applies;
- 11 (d) an industrial association that is entitled to represent the
12 interests of a road transport driver, employer or hirer of a
13 road transport driver or participant in the supply chain in
14 relation to a road transport driver, if:
- 15 (i) the person or each person whose interests the industrial
16 association claims to be representing by making the
17 application has consented to the making of the
18 application; and
- 19 (ii) the Tribunal has permitted the application to be made.
- 20 (3) In deciding whether to vary the order, the Tribunal must have
21 regard to the matters in section 20.
- 22 (4) Before varying the order, the Tribunal must prepare and consult on
23 a draft of the variation in accordance with Division 3, as if
24 references in that Division to making an order were references to
25 varying an order.
- 26 (5) Subsection (4) does not apply if the Tribunal considers that the
27 variation is minor or technical.
28

Part 3 Safe remuneration approvals in relation to certain collective agreements involving independent contractors

Section 33

1 **Part 3—Safe remuneration approvals in relation to**
 2 **certain collective agreements involving**
 3 **independent contractors**
 4

5 **33 Power to grant a safe remuneration approval**

6 (1) The Tribunal may grant a safe remuneration approval for a road
 7 transport collective agreement if the Tribunal is satisfied of the
 8 matters in section 34.

9 (2) A *road transport collective agreement* is an agreement under
 10 which:

11 (a) road transport drivers who are independent contractors and
 12 with whom a hirer or potential hirer of the drivers proposes to
 13 contract for the provision of road transport services (the
 14 *applicable services*); and

15 (b) the hirer or potential hirer of the drivers (the *participating*
 16 *hirer*);

17 agree about remuneration and related conditions for applicable
 18 services provided to the participating hirer.

19 (3) The agreement must specify the road transport drivers with whom
 20 the participating hirer proposes to contract and the basis on which
 21 they became part of that group. The drivers specified are the
 22 *participating drivers*.

23 Note: The effect of a road transport collective agreement is not limited to
 24 participating drivers if a safe remuneration approval is granted for it:
 25 see section 36.

26 **34 Matters about which the Tribunal must be satisfied**

27 The Tribunal must not grant a safe remuneration approval for a
 28 road transport collective agreement unless the Tribunal is satisfied
 29 that:

30 (a) a road safety remuneration order that applies to the
 31 participating drivers is in effect; and

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-
- 1 (b) a majority of the participating drivers would be better off
2 overall when providing applicable services if the agreement
3 applied than if the order applied; and
4 (c) a majority of the participating drivers have approved the
5 agreement; and
6 (d) if the agreement is to last for more than one year—the
7 agreement contains an appropriate method for adjusting
8 remuneration during the period of the agreement.

35 Grant of safe remuneration approval

- 9
- 10 (1) If the Tribunal decides to grant a safe remuneration approval for a
11 road transport collective agreement, the Tribunal must state in
12 writing that the Tribunal is satisfied that the remuneration and any
13 related conditions in the agreement are adequate to ensure that road
14 transport drivers do not have remuneration-related incentives to
15 work in an unsafe manner.
- 16 (2) In addition to the statement in subsection (1), the approval must:
17 (a) specify the participating hirer; and
18 (b) specify the remuneration (including any method for adjusting
19 remuneration during the period of the agreement) and any
20 related conditions in the agreement; and
21 (c) specify the applicable services; and
22 (d) state that the participating hirer is required to provide at least
23 the specified remuneration and related conditions to any road
24 transport driver providing applicable services to the hirer;
25 and
26 (e) specify an expiry date for the approval (which must not be
27 more than 4 years from the date of the statement).
- 28 (3) The Tribunal must:
29 (a) give a copy of the approval to the participating hirer and each
30 of the participating drivers; and
31 (b) publish the approval on the Tribunal's website and by any
32 other means the Tribunal considers appropriate.

Part 3 Safe remuneration approvals in relation to certain collective agreements involving independent contractors

Section 36

1 **36 Effect of safe remuneration approval**

- 2 (1) The participating hirer specified in a safe remuneration approval
3 must not provide remuneration or related conditions to a road
4 transport driver providing applicable services to the hirer that are
5 less beneficial than the remuneration or related conditions specified
6 in the approval.

7 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- 8 (2) Subsection (1) applies in relation to a road transport driver
9 regardless of whether the driver was a participating driver in
10 relation to the agreement to which the approval relates.

11 **37 Relationship with road safety remuneration orders**

- 12 (1) A road safety remuneration order that is in effect at the time the
13 Tribunal grants a safe remuneration approval has no effect in
14 relation to a road transport driver who provides applicable services
15 to the participating hirer.

- 16 (2) If a road safety remuneration order takes effect after a safe
17 remuneration approval is granted, the approval ceases to have
18 effect in relation to a road transport driver who provides applicable
19 services to the participating hirer, to the extent that the
20 remuneration or related conditions specified in the approval are
21 less beneficial to the driver than a term of the order that applies to
22 the driver.

23 **38 Expiry of safe remuneration approval**

24 A safe remuneration approval ceases to have effect at the end of
25 the expiry date specified in the approval.

26 **39 Safe remuneration approvals to be granted by dual FWA
27 member or Full Bench**

28 The function of granting safe remuneration approvals under this
29 Part is to be performed by, at the President's discretion:

- 30 (a) a dual FWA member; or
31 (b) a Full Bench of the Tribunal.

1 **Part 4—Disputes about remuneration and related** 2 **conditions**

4 **40 Tribunal may deal with disputes about remuneration and related** 5 **conditions**

- 6 (1) The Tribunal may deal with a dispute if:
7 (a) section 41, 42 or 43 applies to the dispute; and
8 (b) an application is made by:
9 (i) a party to the dispute; or
10 (ii) an industrial association that is entitled to represent the
11 interests of a party to the dispute, if the party has
12 consented to the making of an application by the
13 association.
- 14 (2) The Tribunal may choose to deal with 2 or more disputes together
15 (regardless of which of sections 41, 42 and 43 applies to each
16 dispute).

17 **41 Disputes involving employee road transport drivers**

18 *Dispute between employee and employer*

- 19 (1) The Tribunal may deal with a dispute between a road transport
20 driver who is an employee and the employer of the driver if the
21 dispute is about remuneration or related conditions provided by the
22 employer that could affect whether the driver works in an unsafe
23 manner. The parties to the dispute are the driver and the employer.

24 Note: Disputes involving drivers who are employees may also be dealt with
25 under the *Fair Work Act 2009* (see section 595 of that Act).

26 *Dispute between employee and former employer*

- 27 (2) The Tribunal may deal with a dispute between a road transport
28 driver and a former employer of the driver if:
29 (a) the dispute is about the former employer dismissing the
30 driver; and

Part 4 Disputes about remuneration and related conditions

Section 42

1 (b) the driver contends that the dismissal was mainly because the
2 driver refused to work in an unsafe manner.

3 The parties to the dispute are the driver and the former employer.

4 *Interaction with Fair Work procedures*

5 (3) A road transport driver who has applied to the Tribunal under
6 section 40 in relation to a matter must not make an application or
7 complaint under the *Fair Work Act 2009* in relation to the same
8 matter, unless the application to the Tribunal has been withdrawn
9 or has failed for want of jurisdiction.

10 (4) A road transport driver who has made an application or complaint
11 in relation to a matter under the *Fair Work Act 2009* must not
12 apply to the Tribunal under section 40 in relation to the same
13 matter, unless the application or complaint under the *Fair Work*
14 *Act 2009* has been withdrawn or has failed for want of jurisdiction.

15 **42 Disputes involving independent contractor road transport drivers**

16 *Dispute between independent contractor and hirer*

17 (1) The Tribunal may deal with a dispute between a road transport
18 driver who is an independent contractor and the hirer of the driver
19 if the dispute is about remuneration or related conditions in a road
20 transport contract between the driver and hirer that could affect
21 whether the driver works in an unsafe manner. The parties to the
22 dispute are the driver and the hirer.

23 *Dispute between independent contractor and former hirer*

24 (2) The Tribunal may deal with a dispute between a road transport
25 driver who is an independent contractor and a former hirer of the
26 driver if:

- 27 (a) the dispute is about the former hirer terminating the road
28 transport contract; and
29 (b) the driver contends that the termination was mainly because
30 the driver refused to work in an unsafe manner.

31 The parties to the dispute are the driver and the former hirer.

43 Disputes involving participants in the supply chain

The Tribunal may deal with a dispute that is about practices of one or more participants in the supply chain in relation to a road transport driver if:

- (a) the employer or hirer of the driver contends that the practices affect the employer's or hirer's ability to provide remuneration or related conditions to the driver that do not provide incentives to work in an unsafe manner; and
- (b) the driver and employer or hirer have applied to the Tribunal under section 40.

The parties to the dispute are the driver, the employer or hirer and the participant or participants in the supply chain whose practices the dispute relates to.

44 How Tribunal may deal with disputes

- (1) If the Tribunal decides to deal with the dispute, it may deal with it as the Tribunal considers appropriate, including in the following ways:
 - (a) by mediation or conciliation;
 - (b) by making a recommendation or expressing an opinion;
 - (c) if the parties to the dispute agree—by arbitrating (however described) the dispute.
- (2) If the Tribunal arbitrates the dispute, the Tribunal may make any order (an *arbitration order*) that the Tribunal considers appropriate to ensure that the driver does not have remuneration-related incentives to work in an unsafe manner.
- (3) An arbitration order may impose the requirements specified in the order on any or all of the following:
 - (a) a party to the dispute;
 - (b) if there is a participant in the supply chain in relation to the road transport driver who is not a party to the dispute but who has agreed to be bound by the outcome of the arbitration—that participant.
- (4) A person on whom an arbitration order imposes a requirement must not contravene the requirement.

Part 4 Disputes about remuneration and related conditions**Section 45**

1 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

2 **45 Disputes about safe remuneration to be dealt with by dual FWA**
3 **member**

4 The function of dealing with disputes under this Part is to be
5 performed by a dual FWA member.
6

Part 5—Compliance**Division 1—Civil remedy provisions and orders****Subdivision A—Applications for orders****46 Civil remedy provisions**

- (1) A provision referred to in column 1 of an item in the table in subsection (2) is a *civil remedy provision*.
- (2) For each civil remedy provision, the persons referred to in column 2 of the item may, subject to sections 47 and 48 and Subdivision B of this Division, apply to:
- (a) the Federal Court; or
 - (b) the Federal Magistrates Court; or
 - (c) an eligible State or Territory court;
- for orders in relation to a contravention or proposed contravention of the provision, including the maximum penalty referred to in column 3 of the item.

Note: See also subsection 47(4).

Civil remedy provisions

Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Maximum penalty
1	Section 28	(a) a driver to whom the order applies; (b) a person on whom the order imposes a requirement, if the person is affected by the contravention or will be affected by the proposed contravention; (c) a registered employee association; (d) an industrial association; (e) an inspector	60 penalty units

Part 5 Compliance**Division 1** Civil remedy provisions and orders

Section 47

Civil remedy provisions			
Item	Column 1 Civil remedy provision	Column 2 Persons	Column 3 Maximum penalty
2	Subsection 36(1)	(a) a road transport driver who is providing applicable services to the participating hirer; (b) the participating hirer; (c) a registered employee association; (d) an industrial association; (e) an inspector	60 penalty units
3	Subsection 44(4)	(a) a party to the dispute to which the arbitration order relates, if the person is affected by the contravention or will be affected by the proposed contravention; (b) a registered employee association; (c) an industrial association; (d) an inspector	60 penalty units
4	Subsection 76(6)	an inspector	30 penalty units
5	Subsection 115(3)	(a) the person to whom the costs are payable; (b) a registered employee association; (c) an industrial association	60 penalty units
6	Subsection 119(1)	(a) a road transport driver; (b) an inspector	30 penalty units
7	Subsection 119(2)	(a) a road transport driver; (b) an inspector	30 penalty units

1

2 **47 Limitations on who may apply for orders etc.**

3 (1) The following persons may apply for an order under this Division,
4 in relation to a contravention or a proposed contravention of a civil
5 remedy provision, only if the person is affected by the
6 contravention, or will be affected by the proposed contravention:

Section 48

- 1 (a) a road transport driver;
 2 (b) an employer of a road transport driver;
 3 (c) a hirer of a road transport driver;
 4 (d) a participant in the supply chain in relation to a road transport
 5 driver.
- 6 (2) A registered employee association may apply for an order under
 7 this Division, in relation to a contravention or a proposed
 8 contravention of a civil remedy provision, only if:
 9 (a) the contravention affects a person or the proposed
 10 contravention will affect a person; and
 11 (b) the association is entitled to represent the interests of the
 12 person.
- 13 (3) An industrial association may apply for an order under this
 14 Division, in relation to a contravention or proposed contravention
 15 of a civil remedy provision, only if:
 16 (a) the contravention affects a person or the proposed
 17 contravention will affect a person; and
 18 (b) the association is entitled to represent the interests of the
 19 person; and
 20 (c) the person has consented to the association making the
 21 application.
- 22 (4) The regulations may prescribe a person for the purposes of an item
 23 in column 2 of the table in subsection 46(2). The regulations may
 24 provide that the person is prescribed only in relation to
 25 circumstances specified in the regulations.

48 Time limit on applications

27 A person may apply for an order under this Division in relation to a
 28 contravention of a civil remedy provision only if the application is
 29 made within 6 years after the day on which the contravention
 30 occurred.

31 Note: For time limits on orders relating to underpayments, see subsection
 32 49(4).

Part 5 Compliance**Division 1** Civil remedy provisions and ordersSection 49

1 **Subdivision B—Orders**2 **49 Orders that can be made**3 *Federal Court and Federal Magistrates Court*

4 (1) The Federal Court or the Federal Magistrates Court may make any
5 of the following orders if the court is satisfied that a person has
6 contravened, or proposes to contravene, a civil remedy provision:

- 7 (a) an order granting an injunction, or interim injunction, to
8 prevent, stop or remedy the effects of a contravention;
9 (b) an order awarding compensation for loss that a person has
10 suffered because of the contravention;
11 (c) any other order the court considers appropriate.

12 Note: For the court's power to make pecuniary penalty orders, see
13 section 50.

14 *Eligible State or Territory courts*

15 (2) An eligible State or Territory court may order a person to pay an
16 amount to or on behalf of another person if the court is satisfied
17 that:

- 18 (a) the person was required to pay the amount to or on behalf of
19 the other person under this Act or an enforceable instrument;
20 and
21 (b) the person has contravened a civil remedy provision by
22 failing to pay the amount.

23 Note: For the court's power to make pecuniary penalty orders, see
24 section 50.

25 *When orders may be made*

26 (3) A court may make an order under this section:

- 27 (a) on its own initiative during proceedings before the court; or
28 (b) on application.

Section 50*Time limit for orders in relation to underpayments*

- (4) A court must not make an order under this section in relation to an underpayment that relates to a period that is more than 6 years before the proceedings concerned commenced.

50 Pecuniary penalty orders

- (1) The Federal Court, the Federal Magistrates Court or an eligible State or Territory court may, on application, order a person to pay to the Commonwealth a pecuniary penalty that the court considers is appropriate if the court is satisfied that the person has contravened a civil remedy provision.

Note: Column 3 of the table in subsection 46(2) sets out the maximum penalty that the court may order the person to pay.

Determining amount of pecuniary penalty

- (2) The pecuniary penalty must not be more than:
- (a) if the person is an individual—the maximum number of penalty units referred to in the relevant item in column 3 of the table in subsection 46(2); or
 - (b) if the person is a body corporate—5 times the maximum number of penalty units referred to in the relevant item in column 3 of the table in subsection 46(2).

Recovery of penalty

- (3) The pecuniary penalty is a civil debt payable to the Commonwealth.
- (4) The Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

No limitation on orders

- (5) To avoid doubt, a court may make a pecuniary penalty order in addition to one or more orders under section 49.

Part 5 Compliance**Division 1** Civil remedy provisions and ordersSection 51

1 **51 Interest up to judgement**

- 2 (1) This section applies to an order (other than a pecuniary penalty
3 order) under this Division in relation to an amount that a person
4 was required to pay to or on behalf of another person under this
5 Act or an enforceable instrument.
- 6 (2) In making the order the court must, on application, include an
7 amount of interest in the sum ordered, unless good cause is shown
8 to the contrary.
- 9 (3) Without limiting subsection (2), in determining the amount of
10 interest, the court must take into account the period between the
11 day the relevant cause of action arose and the day the order is
12 made.

13 **Subdivision C—General provisions about civil remedies**14 **52 Contravening a civil remedy provision is not an offence**

15 A contravention of a civil remedy provision is not an offence.

16 **53 Involvement in contravention treated in same way as actual
17 contravention**

- 18 (1) A person who is involved in a contravention of a civil remedy
19 provision is taken to have contravened that provision.
- 20 (2) A person is *involved in* a contravention of a civil remedy provision
21 if, and only if, the person:
- 22 (a) has aided, abetted, counselled or procured the contravention;
23 or
24 (b) has induced the contravention, whether by threats or
25 promises or otherwise; or
26 (c) has been in any way, by act or omission, directly or
27 indirectly, knowingly concerned in or party to the
28 contravention; or
29 (d) has conspired with others to effect the contravention.

54 Proceedings may be heard together

A court may direct that 2 or more proceedings for civil remedy orders are to be heard together.

55 Civil evidence and procedure rules for proceedings relating to civil remedy provisions

A court must apply the rules of evidence and procedure for civil matters when hearing proceedings relating to a contravention, or proposed contravention, of a civil remedy provision.

56 Civil proceedings after criminal proceedings

None of the Federal Court, the Federal Magistrates Court or an eligible State or Territory court may make a pecuniary penalty order against a person for a contravention of a civil remedy provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

57 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil remedy provision are stayed if:
- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the civil proceedings) may be resumed if the person is not convicted of the offence. Otherwise:
- (a) the civil proceedings are dismissed; and
 - (b) costs must not be awarded in relation to the civil proceedings.

58 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is substantially the same as conduct constituting a

Part 5 Compliance**Division 1** Civil remedy provisions and orders**Section 59**

1 contravention of a civil remedy provision regardless of whether a
2 pecuniary penalty order has been made against the person.

3 **59 Evidence given in proceedings for penalty not admissible in**
4 **criminal proceedings**

- 5 (1) Evidence of information given or evidence of production of
6 documents by a natural person is not admissible in criminal
7 proceedings against the person if:
- 8 (a) the person previously gave the evidence or produced the
9 documents in proceedings for a pecuniary penalty order
10 against the person for a contravention of a civil remedy
11 provision (whether or not the order was made); and
12 (b) the conduct alleged to constitute the offence is the same, or
13 substantially the same, as the conduct alleged to constitute
14 the contravention.
- 15 (2) However, subsection (1) does not apply to criminal proceedings in
16 relation to the falsity of the evidence given by the person in the
17 proceedings for the pecuniary penalty order.

18 **60 Civil double jeopardy**

19 If a person is ordered to pay a pecuniary penalty under a civil
20 remedy provision in relation to particular conduct, the person is not
21 liable to be ordered to pay a pecuniary penalty under some other
22 provision of a law of the Commonwealth in relation to that
23 conduct.

24 Note: A court may make other orders, such as an order for compensation, in
25 relation to particular conduct even if the court has made a pecuniary
26 penalty order in relation to that conduct (see subsection 50(5)).

27 **61 Course of conduct**

- 28 (1) For the purposes of this Part, 2 or more contraventions of a civil
29 remedy provision referred to in subsection (2) are, subject to
30 subsection (3), taken to constitute a single contravention if:
- 31 (a) the contraventions are committed by the same person; and
32 (b) the contraventions arose out of a course of conduct by the
33 person.

Section 61

- 1 (2) The civil remedy provisions are the following:
- 2 (a) section 28 (which deals with contraventions of road safety
- 3 remuneration orders);
- 4 (b) subsection 36(1) (which deals with contraventions in relation
- 5 to safe remuneration approvals);
- 6 (c) subsection 44(4) (which deals with contraventions of
- 7 arbitration orders).
- 8 (3) Subsection (1) does not apply to a contravention of a civil remedy
- 9 provision that is committed by a person after a court has imposed a
- 10 pecuniary penalty on the person for an earlier contravention of the
- 11 provision.
- 12

Part 5 Compliance**Division 2** Jurisdiction and powers of courtsSection 62

1 **Division 2—Jurisdiction and powers of courts**2 **Subdivision A—Jurisdiction and powers of the Federal Court**3 **62 Conferring jurisdiction on the Federal Court**

4 Jurisdiction is conferred on the Federal Court in relation to any
5 civil matter arising under this Act.

6 **63 Exercising jurisdiction in the Fair Work Division of the Federal
7 Court**

8 The jurisdiction conferred on the Federal Court under section 62 is
9 to be exercised in the Fair Work Division of the Federal Court if:

- 10 (a) an application is made to the Federal Court under this Act; or
11 (b) a writ of mandamus or prohibition or an injunction is sought
12 in the Federal Court against a person holding office under
13 this Act; or
14 (c) a declaration is sought under section 21 of the *Federal Court
15 of Australia Act 1976* in relation to a matter arising under this
16 Act; or
17 (d) an injunction is sought under section 23 of the *Federal Court
18 of Australia Act 1976* in relation to a matter arising under this
19 Act; or
20 (e) an appeal is instituted in the Federal Court from a judgement
21 of the Federal Magistrates Court or a court of a State or
22 Territory in a matter arising under this Act; or
23 (f) proceedings in relation to a matter arising under this Act are
24 transferred to the Federal Court from the Federal Magistrates
25 Court; or
26 (g) the Federal Magistrates Court or a court of a State or
27 Territory states a case or reserves a question for the
28 consideration of the Federal Court in a matter arising under
29 this Act; or
30 (h) the President refers, under section 95 of this Act, a question
31 of law to the Federal Court; or
32 (i) the High Court remits a matter arising under this Act to the
33 Federal Court.

64 No limitation on Federal Court's powers

To avoid doubt, nothing in this Act limits the Federal Court's powers under section 21, 22 or 23 of the *Federal Court of Australia Act 1976*.

65 Appeals from eligible State or Territory courts

Appeals from original decisions of eligible State or Territory courts

- (1) An appeal lies to the Federal Court from a decision of an eligible State or Territory court exercising jurisdiction under this Act.
- (2) No appeal lies from a decision of an eligible State or Territory court exercising jurisdiction under this Act, except:
 - (a) if the court was exercising summary jurisdiction—an appeal, to that court or another eligible State or Territory court of the same State or Territory, as provided for by a law of that State or Territory; or
 - (b) in any case—an appeal as provided for by subsection (1).

Appeals from appellate decisions of eligible State or Territory courts

- (3) An appeal lies to the Federal Court from a decision of an eligible State or Territory court made on appeal from a decision that:
 - (a) was a decision of that court or another eligible State or Territory court of the same State or Territory; and
 - (b) was made in the exercise of jurisdiction under this Act.
- (4) No appeal lies from a decision to which subsection (3) applies, except an appeal as provided for by that subsection.

Leave to appeal not required

- (5) It is not necessary to obtain the leave of the Federal Court, or the court appealed from, in relation to an appeal under subsection (1) or (3).

Part 5 Compliance**Division 2** Jurisdiction and powers of courtsSection 66

1 **Subdivision B—Jurisdiction and powers of the Federal**
 2 **Magistrates Court**

3 **66 Conferring jurisdiction on the Federal Magistrates Court**

4 Jurisdiction is conferred on the Federal Magistrates Court in
 5 relation to any civil matter arising under this Act.

6 **67 Exercising jurisdiction in the Fair Work Division of the Federal**
 7 **Magistrates Court**

8 Jurisdiction conferred on the Federal Magistrates Court under
 9 section 66 is to be exercised in the Fair Work Division of the
 10 Federal Magistrates Court if:

- 11 (a) an application is made to the Federal Magistrates Court under
 12 this Act; or
 13 (b) an injunction is sought under section 15 of the *Federal*
 14 *Magistrates Act 1999* in relation to a matter arising under this
 15 Act; or
 16 (c) a declaration is sought under section 16 of the *Federal*
 17 *Magistrates Act 1999* in relation to a matter arising under this
 18 Act; or
 19 (d) proceedings in relation to a matter arising under this Act are
 20 transferred to the Federal Magistrates Court from the Federal
 21 Court; or
 22 (e) the High Court remits a matter arising under this Act to the
 23 Federal Magistrates Court.

24 **68 No limitation on Federal Magistrates Court's powers**

25 To avoid doubt, nothing in this Act limits the Federal Magistrates
 26 Court's powers under section 14, 15 or 16 of the *Federal*
 27 *Magistrates Act 1999*.

Subdivision C—Small claims procedure**69 Applicants may choose small claims procedure**

- (1) Proceedings are to be dealt with as small claims proceedings under this section if:
- (a) a person applies for an order (other than a pecuniary penalty order) under Division 1 from a magistrates court or the Federal Magistrates Court; and
 - (b) the order relates to an amount that another person is required to pay under this Act or an enforceable instrument; and
 - (c) the person indicates, in the manner prescribed by the regulations or by the rules of the court, that he or she wants the small claims procedure to apply to the proceedings.

Limits on award

- (2) In small claims proceedings, the court may not award more than \$20,000.

Procedure

- (3) In small claims proceedings, the court is not bound by any rules of evidence and procedure and may act:
- (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.
- (4) At any stage of the small claims proceedings, the court may amend the papers commencing the proceedings if sufficient notice is given to any party adversely affected by the amendment.

Legal representation

- (5) A party to small claims proceedings may be represented in the proceedings by a lawyer only with the leave of the court.
- (6) If the court grants leave for a party to the proceedings to be represented by a lawyer, the court may, if it considers appropriate, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.

Part 5 Compliance**Division 2** Jurisdiction and powers of courts**Section 70**

- 1 (7) For the purposes of this section, a person is taken not to be
 2 represented by a lawyer if the lawyer is an employee or officer of
 3 the person.

4 *Representation by an industrial association*

- 5 (8) The regulations may provide for a party to small claims
 6 proceedings to be represented in the proceedings, in specified
 7 circumstances, by an official of an industrial association.
- 8 (9) However, if small claims proceedings are heard in a court of a
 9 State, the regulations may so provide only if the law of the State
 10 allows a party to be represented in that court in those
 11 circumstances by officials of bodies representing interests related
 12 to the matters in dispute.

13 **Subdivision D—Miscellaneous**

14 **70 Costs only if proceedings instituted vexatiously etc.**

- 15 (1) A party to proceedings (including an appeal) in a court (including a
 16 court of a State or Territory) exercising jurisdiction under this Act
 17 may be ordered by the court to pay costs incurred by another party
 18 to the proceedings only in accordance with subsection (2).
- 19 (2) The party may be ordered to pay the costs only if:
 20 (a) the court is satisfied that the party instituted the proceedings
 21 vexatiously or without reasonable cause; or
 22 (b) the court is satisfied that the party's unreasonable act or
 23 omission caused the other party to incur the costs; or
 24 (c) the court is satisfied of both of the following:
 25 (i) the party unreasonably refused to participate in a matter
 26 before the Tribunal;
 27 (ii) the matter arose from the same facts as the proceedings.

28 **71 No imprisonment for failure to pay pecuniary penalty**

- 29 (1) A court (including a court of a State or Territory) may not order a
 30 person to serve a sentence of imprisonment if the person fails to
 31 pay a pecuniary penalty imposed under this Act.

Section 72

1 (2) This section applies despite any other law of the Commonwealth, a
2 State or a Territory.

3 **72 Regulations dealing with matters relating to court proceedings**

4 The regulations may provide for the fees to be charged in relation
5 to proceedings in a court (including a court of a State or Territory)
6 under this Act.
7

Part 5 Compliance
Division 3 Fair Work Ombudsman

Section 73

1 **Division 3—Fair Work Ombudsman**

2 **Subdivision A—Role of Fair Work Ombudsman**

3 **73 Functions of the Fair Work Ombudsman**

4 The Fair Work Ombudsman has the following functions:

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

20 **74 Exercise of compliance powers**

- 21 (1) An inspector may exercise compliance powers within the meaning
22 of the *Fair Work Act 2009* (other than a power under section 715
23 or 716 of that Act) for the purpose of determining whether this Act
24 or an enforceable instrument is being or has been complied with.
- 25 (2) For the purposes of the *Fair Work Act 2009*:
- 26 (a) a purpose referred to in subsection (1) is taken to be a
27 compliance purpose; and
- 28 (b) a civil remedy provision under section 28 or subsection
29 36(1), 44(4), 76(6) or 119(1) or (2) is taken to be a civil
30 remedy provision.

75 Referring matters to the Fair Work Ombudsman

- (1) The General Manager may refer a matter to the Fair Work Ombudsman for investigation if:
- (a) the General Manager has reason to believe that a person has not complied with an enforceable instrument in relation to another person; and
 - (b) the General Manager does not believe that the persons are able to resolve the matter themselves.
- (2) The General Manager must inform the persons, in writing, if the General Manager refers the matter to the Fair Work Ombudsman.
- (3) The General Manager must inform the Fair Work Ombudsman about any action taken or information obtained by the General Manager in relation to the matter.

Subdivision B—Compliance notices**76 Compliance notices***Application of this section*

- (1) This section applies if an inspector reasonably believes that a person has contravened a term of an enforceable instrument.

Giving a compliance notice

- (2) The inspector may give the person a notice (a **compliance notice**) requiring the person to do the following within such reasonable time as is specified in the notice:
- (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
 - (b) produce reasonable evidence of the person's compliance with the notice.

Content of compliance notice

- (3) A compliance notice must also:
- (a) set out the name of the person to whom the notice is given; and

Part 5 Compliance
Division 3 Fair Work Ombudsman

Section 76

- 1 (b) set out the name of the inspector who gave the notice; and
 2 (c) set out brief details of the contravention; and
 3 (d) explain that a failure to comply with the notice may
 4 contravene a civil remedy provision; and
 5 (e) explain that the person may apply to the Federal Court, the
 6 Federal Magistrates Court or an eligible State or Territory
 7 Court for review of the notice on either or both of the
 8 following grounds:
 9 (i) the person has not committed a contravention set out in
 10 the notice;
 11 (ii) the notice does not comply with subsection (2) or this
 12 subsection; and
 13 (f) set out any other matters prescribed by the regulations.

14 *Relationship with civil remedy provisions*

- 15 (4) An inspector must not apply for an order under Division 1 of this
 16 Part in relation to a contravention of a civil remedy provision by a
 17 person if:
 18 (a) the inspector has given the person a compliance notice in
 19 relation to the contravention; and
 20 (b) either of the following subparagraphs apply:
 21 (i) the notice has not been withdrawn, and the person has
 22 complied with the notice;
 23 (ii) the person has made an application under section 77 in
 24 relation to the notice that has not been completely dealt
 25 with.

26 Note: A person other than an inspector who is otherwise entitled to apply for
 27 an order in relation to the contravention may do so.

- 28 (5) A person who complies with a notice in relation to a contravention
 29 of a civil remedy provision is not taken:
 30 (a) to have admitted to contravening the provision; or
 31 (b) to have been found to have contravened the provision.

32 *Person must not fail to comply with notice*

- 33 (6) A person must not fail to comply with a compliance notice given
 34 under this section.
-

Part 5 Compliance
Division 4 Right of entry

Section 78

1 **Division 4—Right of entry**

2 **78 Right of entry for suspected contravention of this Act or**
3 **enforceable instrument**

4 The reference in subsection 481(1) of the *Fair Work Act 2009* to a
5 suspected contravention of that Act or a term of a fair work
6 instrument is taken to include a reference to a suspected
7 contravention of this Act or an enforceable instrument.
8

Part 6—Road Safety Remuneration Tribunal**Division 1—Establishment and functions of Tribunal****79 Establishment of Tribunal**

- (1) The Road Safety Remuneration Tribunal is established by this section.
- (2) The Tribunal consists of:
- (a) the President; and
 - (b) at least 2 and no more than 4 persons who are experienced in workplace relations matters; and
 - (c) at least 2 and no more than 4 persons who have knowledge of, or experience in, one or more of the following fields:
 - (i) transport and logistics;
 - (ii) driving in the road transport industry;
 - (iii) business, industry or commerce;
 - (iv) work health and safety in the road transport industry.

80 Functions of Tribunal

The Tribunal has the following functions:

- (a) to make road safety remuneration orders under Part 2;
- (b) to grant safe remuneration approvals in relation to road transport collective agreements under Part 3;
- (c) to deal with certain disputes relating to road transport drivers, their employers or hirers and participants in the supply chain under Part 4;
- (d) to conduct research into remuneration-related matters that may affect safety in the road transport industry;
- (e) any other function prescribed by the regulations or another law of the Commonwealth.

81 Tribunal has privileges and immunities of the Crown

The Tribunal has the privileges and immunities of the Crown.

Part 6 Road Safety Remuneration Tribunal
Division 1 Establishment and functions of Tribunal

Section 82

1 **82 Protection of Tribunal members**

2 A member of the Tribunal has, in performing his or her functions
3 or exercising his or her powers as a member of the Tribunal, the
4 same protection and immunity as a Justice of the High Court.
5

1 Division 2—Performance of functions of Tribunal**2 Subdivision A—Role of the President****3 83 Role of President in performance of functions**

4 The President is responsible for ensuring that the Tribunal
5 performs its functions efficiently and effectively.

6 Subdivision B—Applications to Tribunal**7 84 Dismissing applications**

- 8 (1) Without limiting when the Tribunal may dismiss an application,
9 the Tribunal may dismiss an application if:
- 10 (a) the application is not made in accordance with this Act; or
 - 11 (b) the application is frivolous or vexatious; or
 - 12 (c) the application has no reasonable prospects of success.
- 13 (2) The Tribunal may dismiss an application:
- 14 (a) on its own initiative; or
 - 15 (b) on application.

16 Subdivision C—Performance of functions**17 85 Performance of functions generally**

- 18 (1) In performing its functions, the Tribunal:
- 19 (a) may regulate the conduct of its proceedings as it sees fit and
20 is not bound to act in a formal manner; and
 - 21 (b) is not bound by the rules of evidence and procedure in
22 relation to any matter it is dealing with (even if it conducts a
23 hearing in relation to the matter).
- 24 (2) The performance of the functions of the Tribunal is not affected by
25 reason only of there being a vacancy in the membership of the
26 Tribunal, unless the vacancy is in the office of the President.

Part 6 Road Safety Remuneration Tribunal
Division 2 Performance of functions of Tribunal

Section 86

1 **86 Powers of Tribunal to perform functions**

- 2 (1) The Tribunal may, except as provided by this Act, inform itself in
3 relation to matters it is dealing with in any manner it considers
4 appropriate.
- 5 (2) Without limiting subsection (1), the Tribunal may inform itself in
6 the following ways:
- 7 (a) by requiring a compellable person to attend before the
8 Tribunal;
- 9 (b) by inviting, subject to any terms and conditions determined
10 by the Tribunal, oral or written submissions (see for example
11 subsection 24(1));
- 12 (c) by requiring a compellable person to provide copies of
13 documents or records, or to provide any other information to
14 the Tribunal;
- 15 (d) by taking evidence under oath or affirmation in accordance
16 with the regulations (if any);
- 17 (e) by conducting inquiries;
- 18 (f) by undertaking or commissioning research;
- 19 (g) by conducting a conference (see section 87);
- 20 (h) by holding a hearing (see section 88).

21 **87 Conferences**

- 22 (1) For the purposes of performing a function of the Tribunal, the
23 Tribunal may direct a compellable person to attend a conference at
24 a specified time and place.
- 25 (2) If a Full Bench is performing the function, the President is
26 responsible for conducting the conference. Otherwise, the dual
27 FWA member performing the function is responsible.
- 28 (3) The conference must be conducted in private, unless the person
29 conducting the conference directs that it be conducted in public.
- 30 (4) If the conference is to arbitrate a dispute under Part 4, then despite
31 subsections (1) and (3):
- 32 (a) the Tribunal must not direct a person to attend the conference
33 unless the person is a party to the dispute; and

Section 88

- 1 (b) the person conducting the conference must not direct that it
2 be conducted in public.

88 Hearings

- 4 (1) The Tribunal is not required to hold a hearing in performing
5 functions under this Act.
- 6 (2) If the Tribunal holds a hearing in relation to a matter, the hearing
7 must be held in public, except as provided by subsection (3).
- 8 (3) The Tribunal may make the following orders in relation to a
9 hearing that the Tribunal holds if the Tribunal is satisfied that it is
10 desirable to do so because of the confidential nature of any
11 evidence, or for any other reason:
- 12 (a) orders that all or part of the hearing is to be held in private;
13 (b) orders about who may be present at the hearing;
14 (c) orders prohibiting or restricting the publication of the names
15 and addresses of persons appearing at the hearing;
16 (d) orders prohibiting or restricting the publication of, or the
17 disclosure to some or all of the persons present at the hearing
18 of, the following:
- 19 (i) evidence given in the hearing;
20 (ii) matters contained in documents before the Tribunal in
21 relation to the hearing.
- 22 (4) Subsection (3) does not apply to the publication of a submission
23 made to the Tribunal for consideration in determining whether to
24 make a road safety remuneration order or take a proposed action
25 under subsection 31(2) (see subsections 24(3) and 31(4)).

89 Offences in relation to attendance before Tribunal*Required to attend*

- 28 (1) A person commits an offence if:
29 (a) the person has been required to attend before the Tribunal;
30 and
31 (b) the person fails to attend as required.

Part 6 Road Safety Remuneration Tribunal
Division 2 Performance of functions of Tribunal

Section 90

1 Penalty: Imprisonment for 6 months.

2 *Oath or affirmation*

- 3 (2) A person commits an offence if:
 4 (a) the person attends before the Tribunal; and
 5 (b) the Tribunal requires the person to take an oath or make an
 6 affirmation; and
 7 (c) the person refuses or fails to be sworn or to make an
 8 affirmation as required.

9 Penalty: Imprisonment for 6 months.

10 *Questions or documents*

- 11 (3) A person commits an offence if:
 12 (a) the person attends before the Tribunal; and
 13 (b) the Tribunal requires the person to answer a question or
 14 produce a document; and
 15 (c) the person refuses or fails to answer the question or produce
 16 the document.

17 Penalty: Imprisonment for 6 months.

18 *Defence of reasonable excuse*

- 19 (4) Subsection (1), (2) or (3) does not apply if the person has a
 20 reasonable excuse.

21 Note: A defendant bears an evidential burden in relation to the matter in
 22 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

23 **90 Confidential evidence**

- 24 (1) The Tribunal may make an order prohibiting or restricting the
 25 publication of the following in relation to a matter before the
 26 Tribunal (whether or not the Tribunal holds a hearing in relation to
 27 the matter) if the Tribunal is satisfied that it is desirable to do so
 28 because of the confidential nature of the evidence, or for any other
 29 reason:
 30 (a) evidence given to the Tribunal in relation to the matter;
-

Section 91

- 1 (b) the names and addresses of persons making submissions to
2 the Tribunal in relation to the matter;
- 3 (c) matters contained in documents lodged with the Tribunal or
4 received in evidence by the Tribunal in relation to the matter;
- 5 (d) the whole or any part of its decisions or reasons in relation to
6 the matter.
- 7 (2) Subsection (1) does not apply to the publication of a submission
8 made to the Tribunal for consideration in determining whether to
9 make a road safety remuneration order or take a proposed action
10 under subsection 31(2) (see subsections 24(3) and 31(4)).

Subdivision D—Representation by lawyers and paid agents**91 Representation by lawyers and paid agents**

- 13 (1) Except as provided by subsection (2) or the procedural rules, a
14 person may be represented in a matter before the Tribunal
15 (including by making an application or submission to the Tribunal
16 on behalf of the person) by a lawyer or paid agent only with the
17 permission of the Tribunal.
- 18 (2) The Tribunal's permission is not required for a person to be
19 represented by a lawyer or paid agent in making a written
20 submission under section 24 or 31.
- 21 (3) For the purposes of this section, a person is taken not to be
22 represented by a lawyer or paid agent if the lawyer or paid agent:
23 (a) is an employee or officer of the person; or
24 (b) is an employee or officer of an industrial association that is
25 representing the person.

Subdivision E—Appeals**92 Appeal of decisions**

- 28 (1) A person who is aggrieved by:
29 (a) a decision of a dual FWA member to grant, or refuse to grant,
30 a safe remuneration approval in relation to a road transport
31 collective agreement under Part 3; or

Part 6 Road Safety Remuneration Tribunal
Division 2 Performance of functions of Tribunal

Section 93

- 1 (b) a decision of a dual FWA member in relation to a dispute
 2 being dealt with under Part 4;
 3 may appeal the decision with the permission of the Tribunal.
- 4 (2) The person may appeal the decision by applying to the Tribunal.
- 5 (3) A Full Bench must:
 6 (a) decide whether to grant permission to appeal the decision;
 7 and
 8 (b) if the Full Bench decides to grant permission—hear the
 9 appeal in accordance with section 94.
- 10 (4) Without limiting when permission to appeal may be granted, a Full
 11 Bench must grant permission if the Full Bench is satisfied that it is
 12 in the public interest to do so.

93 Staying decisions that are appealed

- 14 (1) The Full Bench may order that the operation of the whole or part of
 15 the decision be stayed, on any terms and conditions that the Full
 16 Bench considers appropriate, until a decision in relation to the
 17 appeal is made or the Full Bench makes a further order.
- 18 (2) An order under subsection (1) in relation to the appeal may be
 19 made by:
 20 (a) the Full Bench; or
 21 (b) the President.

94 Process for appealing decisions

- 23 (1) The Full Bench may deal with an appeal in any manner it considers
 24 appropriate, including by holding a hearing or conducting a
 25 conference.
- 26 Note: See sections 87 and 88.
- 27 (2) The Full Bench may:
 28 (a) admit further evidence; and
 29 (b) take into account any other information or evidence.

Section 95

- 1 (3) The Full Bench may do any of the following in relation to the
2 appeal:
3 (a) confirm, quash or vary the decision;
4 (b) make a further decision in relation to the matter that is the
5 subject of the appeal;
6 (c) refer the matter that is the subject of the appeal to a dual
7 FWA member and:
8 (i) require the member to deal with the subject matter of
9 the decision; or
10 (ii) require the member to act in accordance with the
11 directions of the Full Bench.

95 Referring questions of law to the Federal Court

- 12
13 (1) The President may refer a question of law arising in a matter being
14 appealed to the Full Bench for the opinion of the Federal Court.
15 (2) A question of law referred under subsection (1) must be
16 determined by the Full Court of the Federal Court.
17 (3) The Full Bench may make a decision in relation to the matter even
18 if the Federal Court is determining the question of law, except if
19 the question is whether the Tribunal may exercise powers in
20 relation to the matter.
21 (4) Once the Federal Court has determined the question, the Full
22 Bench may only make a decision in relation to the matter that is
23 not inconsistent with the opinion of the Federal Court (if the Full
24 Bench has not already done so).
25 (5) However, if the Full Bench has made a decision in relation to the
26 matter that is inconsistent with the opinion of the Federal Court,
27 the Full Bench must vary the decision in such a way as to make it
28 consistent with the opinion of the Federal Court.

Part 6 Road Safety Remuneration Tribunal
Division 2 Performance of functions of Tribunal

Section 96

1 **Subdivision F—Organisation of Tribunal**

2 **96 Constitution of Full Bench**

- 3 (1) If a function of the Tribunal may or must be performed by a Full
4 Bench of the Tribunal, the Full Bench is to consist of either:
5 (a) 3 members of the Tribunal, being the President, one dual
6 FWA member and one industry member; or
7 (b) 5 members of the Tribunal, being the President, 2 dual FWA
8 members and 2 industry members.
- 9 (2) The President is to determine how many and which members of the
10 Tribunal form part of a Full Bench.
- 11 (3) A decision of a majority of the members on the Full Bench
12 prevails.
13

Division 3—Members of Tribunal**Subdivision A—Appointment of members of Tribunal****97 Appointment**

- (1) The members of the Tribunal are to be appointed by the Governor-General by written instrument for a period not exceeding 5 years.
- (2) The person appointed as the President must also be a Deputy President of Fair Work Australia.
- (3) The persons appointed for the purposes of paragraph 79(2)(b) must also be Deputy Presidents or Commissioners of Fair Work Australia.

98 Basis of appointment of industry members

An industry member of the Tribunal holds office on a part-time basis.

Note: Members of the Tribunal who are dual FWA members are permitted to hold dual appointments under section 632 of the *Fair Work Act 2009*.

Subdivision B—Terms and conditions of members of Tribunal**99 Outside employment of industry members**

An industry member must not engage in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.

100 Remuneration

- (1) A dual FWA member is not to be paid any remuneration or allowances in relation to the member's office as a member of the Tribunal.
- (2) An industry member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of

Part 6 Road Safety Remuneration Tribunal**Division 3** Members of Tribunal**Section 101**

1 that remuneration by that Tribunal is in operation, the member is to
2 be paid the remuneration that is prescribed by the regulations.

3 (3) An industry member is to be paid the allowances prescribed by the
4 regulations.

5 (4) This section has effect subject to the *Remuneration Tribunal Act*
6 1973.

101 Leave of absence

8 A dual FWA member is allowed to be absent from the Tribunal
9 during any period of recreation leave or any other leave of absence
10 to which the member is entitled under section 639 of the *Fair Work*
11 *Act 2009*.

102 Disclosure of interests

13 (1) This section applies if:

14 (a) a member of the Tribunal (other than the President) is dealing
15 with, or will deal with, a matter; and

16 (b) the member has or acquires any interest (the *potential*
17 *conflict*), pecuniary or otherwise, that conflicts or could
18 conflict with the proper performance of the member's
19 functions in relation to the matter.

20 (2) The member must disclose the potential conflict to the President.

21 (3) If the member does so, the member may only deal, or continue to
22 deal, with the matter with the President's approval.

23 (4) The President must direct a member of the Tribunal not to deal, or
24 to no longer deal, with a matter if:

25 (a) the President becomes aware that the member has a potential
26 conflict in relation to the matter (whether or not because of a
27 disclosure referred to in subsection (2)); and

28 (b) the President considers that the member should not deal, or
29 should no longer deal, with the matter.

Section 103

- 1 (5) To avoid doubt, subsection (4) applies to a member even if the
2 President has previously given approval to the member under
3 subsection (3).

4 **103 Termination of appointment on grounds of misbehaviour or**
5 **incapacity**

6 The Governor-General may terminate the appointment of a
7 member of the Tribunal if an address praying for the termination,
8 on one of the following grounds, is presented to the
9 Governor-General by each House of the Parliament in the same
10 session:

- 11 (a) proved misbehaviour;
12 (b) the member is unable to perform the duties of his or her
13 office because of physical or mental incapacity.

14 **104 Suspension on grounds of misbehaviour or incapacity**

15 *Governor-General may suspend member*

- 16 (1) The Governor-General may suspend a member of the Tribunal
17 from office:
18 (a) for misbehaviour; or
19 (b) if the member is unable to perform the duties of his or her
20 office because of physical or mental incapacity.

21 *Statement of grounds*

- 22 (2) The Minister must cause to be tabled in each House of Parliament,
23 within 7 sitting days of that House after the suspension, a statement
24 identifying the member and setting out the ground of the
25 suspension.

26 *Resolution by a House of Parliament*

- 27 (3) A House of the Parliament may, within 15 sitting days of that
28 House after the day the statement has been tabled in it, declare by
29 resolution that the appointment of the member should be
30 terminated.

Part 6 Road Safety Remuneration Tribunal**Division 3** Members of Tribunal**Section 105**

1

Suspension terminates

2

- (4) If a House does not pass a resolution in that way, the suspension terminates.

3

4

Appointment to be terminated

5

- (5) If each House of the Parliament passes a resolution in that way, the Governor-General must terminate the appointment of the member.

6

7

Suspension not to affect entitlements

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- (6) The suspension of a member under this section does not affect any entitlement of the member to be paid remuneration and allowances in accordance with this Act.

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105 Termination of appointment for bankruptcy, etc.

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The Governor-General must terminate the appointment of a member if:

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- (a) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or

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- (b) the member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

20

21

- (c) the member fails, without reasonable excuse, to comply with section 102 (disclosure of interests).

22

23

106 Termination of appointment for outside employment

24

The Governor-General must terminate the appointment of an industry member if the member engages in paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 99).

25

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107 Automatic cessation of appointment for loss of qualification

- (1) If the President ceases to be a Deputy President of Fair Work Australia, the President's appointment to the Tribunal ceases on the same day.
- (2) If a person appointed for the purposes of paragraph 79(2)(b) ceases to be a Deputy President or Commissioner of Fair Work Australia, the person's appointment to the Tribunal ceases on the same day.

108 Resignation

- (1) A member of the Tribunal may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

109 Other terms and conditions of members

A member of the Tribunal holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

110 Acting appointments

- (1) The Minister may, by written instrument, appoint a person who is qualified for appointment as a particular kind of member of the Tribunal to act as a member of that kind:
- (a) during a vacancy in the office of a member of that kind (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member of that kind:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The appointment must be for a specified period of not more than 12 months.

Part 6 Road Safety Remuneration Tribunal
Division 3 Members of Tribunal

Section 111

1 Note: For rules that apply to acting appointments, see section 33A of the
2 *Acts Interpretation Act 1901*.

3 **Subdivision C—Miscellaneous matters relating to members of**
4 **Tribunal**

5 **111 Disclosure of information by Tribunal**

6 The Tribunal may disclose information acquired by the Tribunal in
7 the course of performing its functions or exercising its powers if
8 the President reasonably believes:

- 9 (a) that it is necessary or appropriate to do so in the course of
10 performing the Tribunal's functions or exercising the
11 Tribunal's powers; or
12 (b) that the disclosure is likely to assist in the administration or
13 enforcement of a law of the Commonwealth, a State or a
14 Territory.
15

Division 4—General Manager and consultants**112 Role of General Manager of Fair Work Australia**

- (1) The General Manager of Fair Work Australia has the function of assisting the President in ensuring that the Tribunal performs its functions efficiently and effectively.
- (2) The General Manager has power to do all things necessary or convenient to be done for the purpose of performing his or her function.
- (3) In particular, the General Manager is to assist the President in ensuring that the Tribunal performs its function under paragraph 80(d) and may engage persons having suitable qualifications and experience as consultants for this purpose.
- (4) The President may direct the General Manager as to the manner in which the General Manager is to perform his or her functions or exercise his or her powers.
- (5) The direction may be of a general nature or may relate to a particular matter.
- (6) The General Manager must comply with the direction except to the extent that compliance with the direction would be inconsistent with the General Manager's:
 - (a) performance of functions or exercise of powers in relation to Fair Work Australia; or
 - (b) performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to Fair Work Australia; or
 - (c) performance of functions or exercise of powers under the *Public Service Act 1999* in relation to Fair Work Australia.
- (7) If a direction is in writing, the direction is not a legislative instrument.

Part 6 Road Safety Remuneration Tribunal**Division 5** Miscellaneous matters relating to TribunalSection 113

1 **Division 5—Miscellaneous matters relating to Tribunal**2 **113 Procedural rules**

- 3 (1) After consulting the other members of the Tribunal, the President
4 may, by legislative instrument, make procedural rules in relation
5 to:
- 6 (a) the practice and procedure to be followed by the Tribunal; or
7 (b) the conduct of business in relation to matters the Tribunal is
8 authorised to deal with.
- 9 (2) Without limiting subsection (1), the procedural rules may provide
10 for the following:
- 11 (a) the requirements for making an application to the Tribunal;
12 (b) the circumstances in which a lawyer or paid agent may make
13 an application or submission to the Tribunal on behalf of a
14 person who is entitled to make the application or submission;
15 (c) the form and manner in which, and the time within which,
16 submissions may or must be made to the Tribunal;
17 (d) the procedural requirements for making decisions of the
18 Tribunal;
19 (e) the form and manner in which the Tribunal gives directions
20 and notifies persons of things;
21 (f) who is notified by the Tribunal of things;
22 (g) the manner in which conferences are to be conducted.
- 23 (3) To avoid doubt, subsection (1) includes the power to make
24 procedural rules in relation to any functions conferred on the
25 Tribunal by any other law of the Commonwealth.

26 **114 Regulations dealing with Tribunal matters**

27 The regulations may provide for any matter that the procedural
28 rules may provide for.

29 Note: Regulations prevail over procedural rules if inconsistent (see
30 subsection 121(2)).

115 Costs

- (1) A person must bear the person's own costs in relation to a matter before the Tribunal.
- (2) However, the Tribunal may order a person to bear some or all of the costs of another person in relation to an application to the Tribunal if:
- (a) the Tribunal is satisfied that the person made or responded to the application vexatiously or without reasonable cause; or
 - (b) the Tribunal is satisfied that it should have been reasonably apparent to the person that the person's application or response had no reasonable prospect of success.
- (3) A person on whom an order imposes a requirement to pay costs must not contravene the requirement.

Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

116 Annual report

- (1) The President must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Tribunal during that year.
- Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.
- (2) To avoid doubt, subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

117 President must provide certain information etc. to the Minister and Fair Work Ombudsman

- (1) The President must provide the Minister and the Fair Work Ombudsman with:
- (a) copies of any enforceable instrument made or granted by the Tribunal; and
 - (b) the information and copies of documents prescribed by the regulations;
- by the time, and in the form, prescribed.

Part 6 Road Safety Remuneration Tribunal
Division 5 Miscellaneous matters relating to Tribunal

Section 117

- 1 (2) The regulations may prescribe information and documents relating
2 to or derived from information that:
3 (a) is publicly available; and
4 (b) relates to matters the Tribunal is authorised to deal with.
5

1 **Part 7—Miscellaneous**

3 **118 This Act is a workplace law**

4 This Act is a workplace law for the purposes of the *Fair Work Act*
5 *2009*.

6 Note: See section 341 of the *Fair Work Act 2009*.

7 **119 Employer and hirer obligations in relation to records**

- 8 (1) A person who is the employer or hirer of a road transport driver
9 must make, and keep for 7 years, records of the kind prescribed by
10 the regulations in relation to each road transport driver the person
11 employs or engages.

12 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- 13 (2) The records must:
14 (a) if a form is prescribed by the regulations—be in that form;
15 and
16 (b) include any information prescribed by the regulations.

17 Note: This subsection is a civil remedy provision (see Division 1 of Part 5).

- 18 (3) The regulations may provide for the inspection of those records.

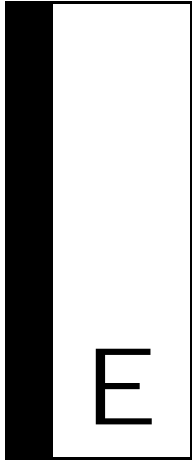
19 **120 Review of this Act**

- 20 (1) The Minister must cause a review of the operation of this Act to be
21 started by 1 July 2015.
- 22 (2) The review must be completed by 31 December 2015.
- 23 (3) The persons who undertake the review must give the Minister a
24 written report of the review.
- 25 (4) The report must be published on the website of the Department and
26 by any other means the Minister considers appropriate.

Part 7 Miscellaneous**Section 121**

1 121 Regulations

- 2 (1) The Governor-General may make regulations prescribing matters:
- 3 (a) required or permitted by this Act to be prescribed; or
- 4 (b) necessary or convenient to be prescribed for carrying out or
- 5 giving effect to this Act.
- 6 (2) Regulations made under this Act prevail over procedural rules
- 7 made under this Act, to the extent of any inconsistency.



Appendix E – Road Safety Remuneration
(Consequential Amendments and Related
Provisions) Bill 2011

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Road Safety Remuneration
(Consequential Amendments and
Related Provisions) Bill 2011**

No. , 2011

(Education, Employment and Workplace Relations)

**A Bill for an Act to make consequential
amendments and provide for other matters in
connection with the *Road Safety Remuneration Act
2011*, and for related purposes**

Contents

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1 **A Bill for an Act to make consequential**
2 **amendments and provide for other matters in**
3 **connection with the *Road Safety Remuneration Act***
4 ***2011*, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Road Safety Remuneration*
8 (*Consequential Amendments and Related Provisions*) Act 2011.

9 **2 Commencement**

10 This Act commences at the same time as the *Road Safety*
11 *Remuneration Act 2011*.

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.
6

Schedule 1—Amendments

1
2

Administrative Decisions (Judicial Review) Act 1977

3

1 Paragraph (a) of Schedule 1

4

5 After “*Fair Work (Transitional Provisions and Consequential*
6 *Amendments) Act 2009*,” insert “*the Road Safety Remuneration Act*
7 *2011*,”.
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Schedule 2—Application provisions

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1 Disputes involving employee road transport drivers

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For the purposes of subsection 41(2) of the *Road Safety Remuneration Act 2011*, the reference in paragraph 41(2)(a) to a former employer dismissing a driver is a reference to a dismissal that happens after the commencement of that Act.

2 Disputes involving independent contractor road transport drivers

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For the purposes of subsection 42(2) of the *Road Safety Remuneration Act 2011*, the reference in paragraph 42(2)(a) to a former hirer terminating a road transport contract is a reference to a termination that happens after the commencement of that Act.