

Regulating the Work Health and Safety of Australian Road Freight Transport Drivers

SUMMARY REPORT TO THE TRANSPORT, EDUCATION,
AUDIT, COMPLIANCE, HEALTH ORGANISATION (TEACHO) LTD

Summarising key findings of the research project:

**“EVALUATING APPROACHES TO REGULATING WHS IN THE
AUSTRALIAN ROAD FREIGHT TRANSPORT INDUSTRY”**

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SUMMARY REPORT

1. INTRODUCTION.

Work health and safety (WHS) is a significant issue for the heavy vehicle road freight transport industry. The sector has a history of the highest fatalities and serious injury rates of any industry in Australia. While media focuses on drivers killed in road crashes, these represent only a subset of the hundreds of drivers killed or permanently disabled, and thousands more injured, in and around trucks each and every year.

Table 1: Incidence of compensated fatal occupational injury

Year	Compensated fatalities						Compensated non-fatal injuries					
	2009	2010	2011	2012	2013	2014	2009	2010	2011	2012	2013	2014
Total number - RFTW	51	31	25	45	34	36	3,965	3,790	3,785	3,845	4,005	3,650
Incidence rate - RFTW	29.9	19.6	15.6	29.0	20.7	21.0	32.7	31.1	30.2	33.6	31.5	28.7
Incidence rate - all industries	2.4	2.0	1.9	2.0	1.7	1.6	13.5	12.4	12.2	12.1	11.0	9.8
RFTW relative to all industries	12x	10x	8x	15x	12x	13x	2.4x	2.5x	2.5x	2.7x	2.8x	2.9x

(Source: Safe Work Australia 2013a, pp. 7, 13.)

Despite continued improvement in WHS over recent years, trucks remain one of Australia's most dangerous workplaces. Of concern to both workers and employers, the time lost per injury and average cost per injury are steadily increasing, highlighting a failure to prevent higher severity injury and illness.

Table 2: Cost of serious injury claims for road freight transport workers

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Median weeks lost per claim	4.8	5.4	5.0	5.4	5.8	6.0	6.0	6.2	6.3	6.6
Median claim cost	\$5,800	6,700	6,500	7,200	8,700	8,700	8,900	9,100	10,300	10,300

(Source: Safe Work Australia 2013 a,b; 2016b)

Regulation is an important tool in the national effort to ensure the health and safety of truck drivers and others affected by heavy vehicle transport operations. In its broader sense, regulation includes a variety of educational, administrative, accreditation and certification, reputational and other schemes which sit alongside industrial and WHS legislation enforced by the state. These are summarised as:

1. **Voluntary mechanisms:** these take the form of codes of conduct, policies and strategy, and include company WHS policies, industry codes of conduct (eg Retail Logistics Supply Chain Code of Practice/Conduct) and Trucksafe (owned by the Australian Trucking Association).
2. **Market mechanisms:** accreditation and certification systems such as Five Star Trucking, SAFED (in New Zealand) and Bluecard (administered by TEACHO).
3. **Industrial Law:** the network of awards, agreements and tribunals operationalized under the Fair Work Act 2009 (Cth), and recently abolished Road Safety Remuneration Act 2012 (Cth).
4. **WHS Law:** such as the Model Work Health and Safety Act 2011 (Cth) and the National Heavy Vehicle Law (HVNL) (administered by the National Heavy Vehicle Regulator).

This research examines the application of these by looking at the contribution that contemporary modes of WHS regulation make to the health and safety of drivers in this industry. Included in the **Final Report** is a comprehensive review of published research on WHS in the industry, forms of WHS regulation, and the mechanisms either operating, or the subject of policy consideration, in the sector. Also examined was empirical data gathered from surveys of 559 drivers of trucks with a mass of more than 4.5 tonnes. This provided a rich source of information for analysing the perceptions and experiences of truck drivers. This **Summary Report** outlines the key findings and policy recommendations from the research.

2. MAPPING WHS ISSUES FOR HEAVY VEHICLE TRUCK DRIVERS

Patterns of injury and illness for workers in the heavy vehicle road transport industry, reflect recent improvements in WHS, yet continue to demonstrate a disproportionately high number of fatal and permanently damaging injury and illnesses compared to other Australian industries. Analysis reveals these result not only from road crashes but also from incidents while moving in or out of the cabin, or moving around the truck. These include falls from height, lifting or handling heavy objects and being hit by moving vehicles or objects and falls to the same level (trips and slips). In addition, truck drivers bear substantial risks in relation to common health issues such as obesity, heart disease, intestinal problems, arthritis, lung disease, diabetes, effects and interactions of prescribed and non-prescription drugs, sleep disorders, stress and mental health problems. Truck drivers are also more likely than other workers to report being exposed to disease causing hazards such vibration, airborne hazards and sun.¹

Analysis of literature and WHS data reveals a collection of highly interdependent WHS risk factors that exist within organisations and across the supply chain. This complex web of causal relationships offer those seeking to improve WHS in the sector an array of points for intervention. These are mapped in Figure 1. Efforts to eliminate individual risk factors may be undermined by competing pressures from upstream risk factors, recognising the preventative effect of addressing those upstream factors is crucial.

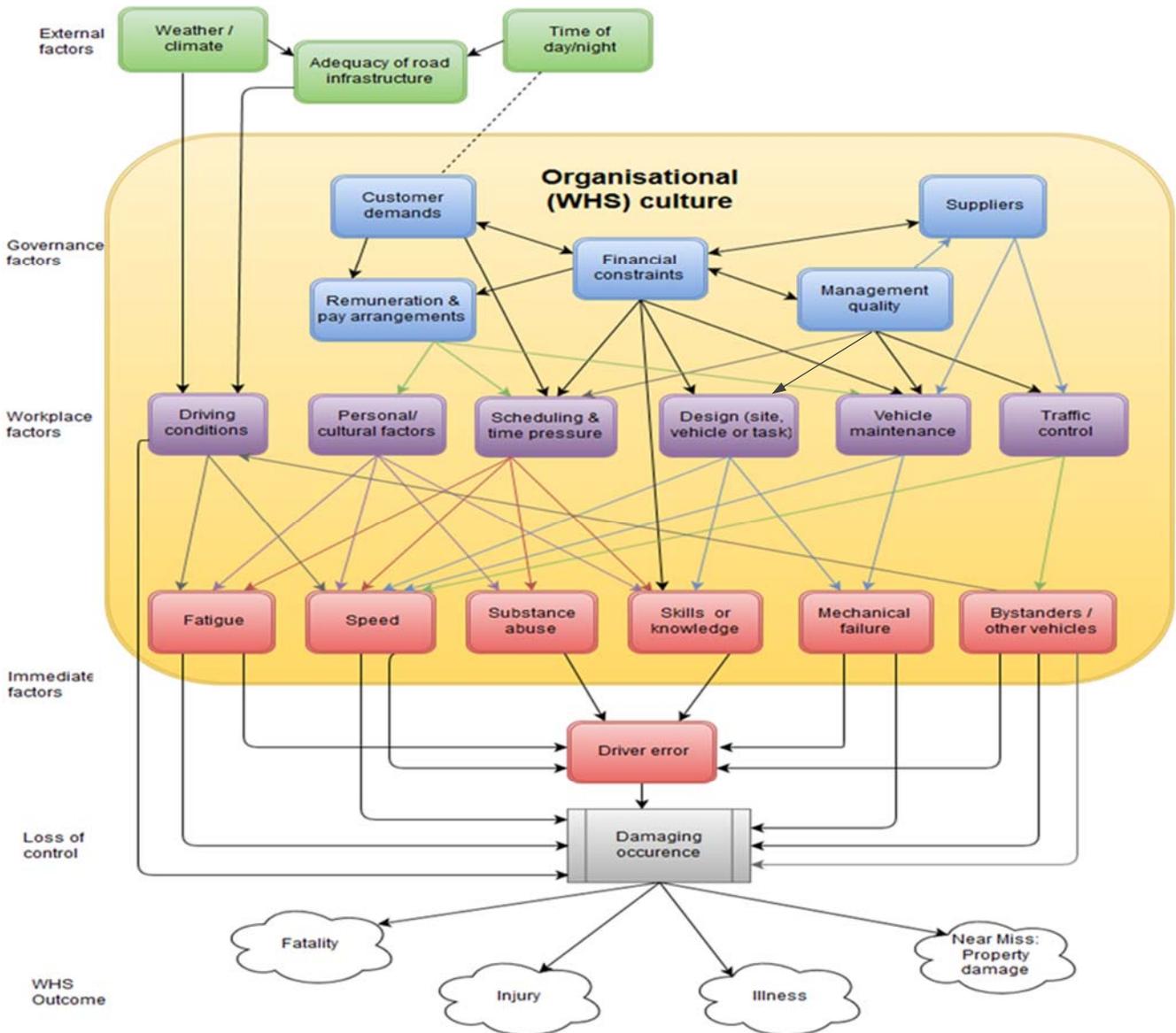


Figure 2. Mapping risk factors for injury and illness to heavy vehicle truck drivers

3. REGULATING WHS FOR TRUCK DRIVERS

The complexity of the causal map (Figure 2 above) illustrates why an individual drivers' commitment to working safely, while critically important, is unlikely to be sufficient to ensure WHS. Those in control of work must exercise substantial due diligence with regard to the WHS of workers engaged by the business and along its supply chain. This has important implications for the design of each of the four types of regulation identified above: voluntary mechanisms, market mechanisms, industrial Law and WHS Law.

In Australia, the regulation of labour (industrial law) and WHS standards (WHS law) for truck drivers is complicated by three factors.

1. **The legislative powers of the Commonwealth Government are limited by the Constitution.** On issues such as WHS where each State has autonomy, efforts to seek nationally uniform laws require the Federal Government to rely on state and territory jurisdictions to enact 'model' laws as consistently as possible. In the absence of harmonisation, the WHS rules and sanctions that currently apply in the heavy vehicle road transport supply chain are inconsistent and depend upon the jurisdiction in which the individual is driving. This not only makes it harder to understand the current rules but also leads to perverse outcomes. For instance, drivers constrain their speed where there are point-to-point speed cameras and then 'catch up' on schedules in jurisdictions with few/no cameras where the calculated risk of detection is low.
2. **The segmentation of this workforce by employment arrangement and firm size²** also presents a challenge for governments in regulating the WHS of truck drivers. The truck driving workforce includes owner-drivers, permanent and casual employees, subcontractors and labour hire drivers. Drivers in any category may work for a single company or various companies. Employing companies vary from large organisations, such as Linfox and Toll, to small family-owned businesses. This segmentation has implications for the bargaining power, authority and control of participants. For government, it also presents challenges in regulating health and safety because, given limited constitutional powers, it is difficult for the federal government to regulate the wages and working conditions of the different workforce groups uniformly.
3. **The considerable variation in remuneration systems applying to truck drivers.** Truck drivers can variously be paid hourly, daily or weekly rates; the latter two with or without overtime payments. Alternatively, they may be paid flat rates for each load carried or a piece rate for each trip based on kilometres travelled or tonnage carried. Different remuneration methods may impose different pressures on working patterns which, in turn, impact differently on WHS outcomes, and may require different regulatory solutions. For instance, payment systems based on hourly rates provide an incentive to drive for longer periods, while those based on piece rates provide an incentive to drive both faster and longer³.

Direct comparisons of regulatory systems between countries are difficult to make because of legal, socio-political, cultural, economic and other differences. However, research shows⁴ that truck driver safety in Australia compares poorly with the US and other western countries including Canada, France, Germany, New Zealand, Sweden and the United Kingdom. This may signal the importance of regulatory systems to safety outcomes. Comparisons are drawn most commonly with the US where there are notable differences between the US and Australian regulatory systems. For example, US drivers must be audited against safety specific criteria within 18 months of commencing work, whereas no such system exists in Australia⁵, regulation of truck driver working hours is more stringent in the US, with hours-of-service limits significantly lower, and information about accreditation, safety ratings and compliance are publicly available in the US⁶.

4. KEY RESEARCH FINDINGS: SURVEY

The research examined responses from 559 heavy vehicle truck drivers to a survey exploring their perceptions and experiences with existing WHS regulation and its impact on their work environment and the work they do. While a detailed analysis of these results is presented in the Final Report, this Summary Report presents key findings and includes some observations regarding links between driver safety and a range of factors, including different employment arrangements, remuneration methods and working hours.

4.1. Research sample

Of the 559 drivers to complete the survey, the majority 441 (79%) were employees and 118 (21%) were owner drivers. Reflecting the aging profile across the sector, only 12% of drivers were under 35 years of age, while 40% were over 55 years. Over half reported having more than 20 years driving experience. Importantly, almost one in five (19%) owner drivers were under 35, compared to just over one in ten (11%) employee drivers. Finally, 92% of employee drivers worked for a single employer (8% for multiple employers). In contrast, 29% of owner drivers contracted to multiple organisations.

In terms of their work, 25% drove a rigid vehicle; 57% a semi-trailer; and 18% a B-Double or road train. While over half the respondents were based in NSW (302 drivers), 21% were based in Victoria, 11% in Queensland, 6% in Western Australia, 5% in South Australia and 2% from Tasmania and the Australian Capital Territory. While 24% of drivers worked across multiple jurisdictions most/all of the time, 50% of respondents never/rarely drove interstate. As well, 46% of drivers worked primarily in a metropolitan area, whereas 28% never/rarely drove in cities.

4.2. Drivers' experience - incidents associated with fatal and disabling injury

Most drivers reported having personally experienced one or more of those hazardous events that are most commonly associated with fatal and permanently damaging injury. For example:

- More than half (52%) had either fallen or slipped out of the truck cabin, with one in five (20%) doing so in the past 12 months. Slightly less, 45% had fallen off the cab, trailer or loading dock.
- A significant number also reported having driven into a stationary object (42%), a moving vehicle (27%), or a stationary vehicle (20%) or alternatively, having walked into things (37%), or having been hit by falling objects (32%) or by a moving vehicle (15%). One in ten drivers reported having had experienced a major crash (rollover).

These responses may under-represent the risk drivers face due to the potential for under-reporting (poor recall of past injuries or incidents) and failure to include near misses. For example, one driver stated,

- *"Hit by moving vehicles? No... but many near misses. All the time"*

Curiously, employee drivers were more likely than owner drivers to report experiencing some hazardous events, such as driving into a stationary object (45% vs 34%) or into a moving vehicle (29% vs 16%), and being hit by moving vehicles (16% vs 10%) or falling objects (33% vs 28%).

4.2.1 Incident experience and risk perception:

Most truck drivers underestimate the potential for serious injury to result from those types of incidents that have most frequently been associated with fatal and disabling injury. However, among drivers, personal experience *of an incident contributes strongly to level of risk perception.*

- Drivers who had not experienced that type of incident perceived it as unlikely to cause serious injury (except for rollovers).
- Drivers who had experienced one or more of the identified incidents were also more risk aware across the range of hazards.

4.3. Drivers' experience - WHS training

Training is an important enabler of WHS and can address a range of topics including fatigue, technical driving skills, work design, driver attitudes and behaviours, and specific and general hazard awareness. Critically, WHS training must enable workers to *recognise* those *hazards* likely to cause serious injury. This enables workers to *understand* why each safety rule is enacted and how it fosters WHS, and to *respond* appropriately to unexpected WHS threats. The latter is important as the work lacks predictability and it is impossible to devise safety rules to adequately cover every situation. Yet, despite continuing poor safety outcomes, prior research had suggested training in the Australian trucking industry was less than other industries⁷.

The current survey (See Table 3) established the diversity of WHS training truck drivers are receiving and explored associations between this training and drivers' experience and perceptions of WHS hazards/risk.

Table 3: WHS training that truck drivers have received/undertaken

Training type	Owner drivers		Employee drivers		All drivers N = 559
	For one contractor N=84	Multiple contractors N=34	For one employer N=404	For multiple employers N=37	
Employer instructions / inductions	83 %	58 %	84 %	75 %	82.0%
On the job training	63 %	50 %	72 %	53 %	67.8%
Toolbox talks	58 %	22 %	67 %	42 %	61.3%
Formal driver training	36 %	36 %	47 %	44 %	44.4%
Bluecard	40 %	33 %	40 %	42 %	39.6%
Union training	20 %	14 %	31 %	17 %	27.3%
No training	8 %	8 %	4 %	6 %	5 %

(Note: Respondents indicated each type of training provided and some recorded multiple types).

4.3.1 Training and risk perception:

- Almost all drivers had participated in at least one form of WHS training, and most, in multiple forms.
- Drivers working for a single organisation have far greater access to WHS training, and in particular, greater access to job/site specific training, than those working across multiple organisations.
- *WHS training is generally associated with stronger and more accurate risk perceptions*: that is, drivers with less training are *more likely to underestimate* the risk associated with high-consequence hazards.
- Drivers who have undertaken a *formal, external course of WHS and/or driver training* are:
 - less likely to have experienced those incidents most commonly associated with fatal injury and
 - more likely to identify WHS risks related to work design issues, such as poor maintenance or poor scheduling, than those who have done only informal, employer-based training.
- Drivers who had only participated in *informal training opportunities*, such as toolbox talks or on-the-job training, were more likely to perceive hazards as very/likely to cause injury than those engaging only in formal education; possibly because the former had experienced higher rates of serious incidents such as rollovers, falling/slipping out of the cab, off the truck or loading dock, hit by vehicles etc.

In addition to WHS specific training, many drivers commented on the need for greater emphasis also on generic driver skills training; particularly given the aging demographic profile of truck drivers. For example,

“Trainee Truck drivers should be treated as apprentices. The skill level of drivers is falling under commercial pressures while the responsibilities are increasing. Giving someone a full HC or MC license today without a competent understanding of state and federal laws, maintenance, vehicle operation, load restraint, dangerous goods handling, transport and storage, record requirements, accident and survival training ... We don't expect pilots of large commercial planes to guess their job. Yet we send green drivers out, including some who cannot speak or read English, onto our highways with 50, 60 and some places 100t+ juggernauts.”

4.4. Drivers' experience - safe work practices

A majority of drivers experience safe work practices at most workplaces. This includes well designed schedules that aligned with fatigue requirements and allowed drivers to take advantage of rest facilities; well managed loading areas that provided formal WHS instructions, spotters and traffic management, assistance with (un)loading, adequate room to manoeuvre, and access to steps and ladders as needed; and an overall management commitment to WHS. Importantly, a majority of drivers also report having at least some control over critical aspects of their work.

However, the experience is less positive for a small but significant minority of drivers. Over a third of owner drivers (35%) and 16% of employee drivers reported that their *work schedules or routes rarely, or never, aligned with mandatory fatigue requirements* (see Table 4). Many also revealed a lack of control with almost one in five owner drivers (18%) and one in nine employee drivers (12%) reporting that they *could not refuse an unsafe schedule* and one in seven owner drivers (16%) and one in 11 employee drivers (9%) reporting that they *could not refuse an unsafe load*. Furthermore, while basic safety provisions are provided at many worksites, a substantial proportion of workers do not have access to these supports. As one driver reflected,

“As an owner driver you can to a degree pick your work and its safety environment. However, the general consensus is that “there is the work, if you don’t do it then someone else will” I have mouths to feed so I am responsible and therefore have to be responsible but practical.”

“There are good employers and some really crooked ones. Unroadworthy trucks, poor equipment condition, crap working conditions - if you don’t like it leave (try that if you are married with children and a mortgage).”

Table 4: Control over WHS - schedules and loading and unloading sites.

Statements about work design and control over safe work	OWNER DRIVERS			EMPLOYEE DRIVERS			N
	Always/often	Some-times	Rarely/ Never	Always/often	Some-times	Rarely/ Never	
Scheduling							
Mandated rest breaks fit my schedules and routes	56%	9%	35%	72%	12%	16%	498
I can safely meet my schedules	66%	15%	18%	70%	16%	14%	498
I have input into my schedules	51%	22%	27%	42%	19%	39%	498
I plan rest breaks to take advantage of good facilities	55%	23%	22%	72%	12%	16%	499
Loading							
Sites are designed safely – with adequate room to manoeuvre and separate people and vehicles	34	27	36	40	29	30	473
A spotter is available to guide the driver into position	18	18	64	11	21	64	469
A person is available to stop/manage other traffic	17	21	60	12	22	62	464
Assistance with (un)loading is provided as needed	38	21	38	33	25	39	458
Safe steps or ladders are provided where needed	29	24	41	43	25	29	456
Site managers ensure I check my load’s dimension, mass and restraints	40	19	28	47	20	26	115
Site managers encourage me to refuse an unsafe load	43	13	31	41	18	36	115

Drivers gave specific examples of work design problems; many related to scheduling. One ‘dangerous goods’ carrier wrote of the undue pressure on drivers when deliveries are scheduled from interstate by people who have poor knowledge of local traffic conditions, peak hours, driving and parking restrictions etc. Others reported,

“[Company A] has put a lot of pressure on drivers to work fast and unsafe, meet their targets. I was almost killed one time. Told my supervisor. [I’m] not with [them] anymore”.

“Within smaller interstate companies... it is normally the managers, supervisors and allocators that are the ones telling you to break the law and to rot the system to get the freight through on time.”

Many drivers also reported working excessive hours each week and some commented on the influence of rotating schedules on high workloads. For example,

“There is also the rotating shifts day then night you get used to one shift then you have to completely change your body clock to another time zone and the body says you should be in bed sleeping ... It feels like jet lag all the time and not only working 12 hour shift that's not counting driving to and from work. A lot of drivers spend at least an extra 1 and a half hours extra driving to and from work. I personally all up have a 14 hour day or night 5 to 6 days a week and you only get 1 weekend off ... a month.”

Others pointed to the issue of delays at distribution centres, ports and other delivery points. For example,

“DC's [Distribution Centres] are the worst for delaying drivers for hours but if a driver turns up late (over 30 min) for a delivery time slot they are told to rebook the delivery. Companies like [X], including all their subsidiary companies, attitudes for driver safety will only change when they are forced to be responsible for the delays and extra problems they cause. If these large companies had to pay for delays over 30 minutes they would have to employ more staff and drivers would be compensated for their delays.”

4.4.1. Task variability

Another important aspect in the design of a safe work environment for truck drivers is the variability of work that drivers do. The survey results revealed that, for most drivers, multiple aspects of work were often unfamiliar. For example:

“I work as a casual and nearly every task is my first time on a site or task, so much higher stress levels... Working casual is better than no work, but a wretched existence with different tasks and sites etc!”

Table 5: Task Variation for heavy vehicle drivers

Work environment - variable	Owner drivers			Employee drivers		
	Rarely- Never	Some- times	Mostly- Always	Rarely- Never	Some- Times	Mostly- Always
Load and unload at different destinations	10	14	76	21	20	59
Drive different routes	14	25	61	19	27	54
Carry different types of freight	38	24	38	40	24	35
Drive different trucks of the same type	70	25	5	29	37	34
Drive different types of truck	74	21	5	41	38	21

The analysis revealed that *drivers who routinely drove different trucks were significantly more likely to perceive injury risk associated with truck design, poor vehicle maintenance, or unfamiliarity than drivers who never drove different types of truck.* However, there was limited difference in injury risk perceptions for those drivers who did or did not load and unload at different locations.

Nevertheless, drivers cited the general variation in safety requirements and procedures across workplaces, as an issue because of the need for multiple inductions and the challenge in recalling which site had which rules. Specific examples included the need for a Standard or Code of Practice to address the confusion created by variations from site to site in the width and colour of the lines around loading bays and walkways;

“Everyone has a different Picasso... many make sense but some... you need a refresher course each time...”
“Every yard is totally different.”

4.4.2. Access to rest facilities

Rest breaks were an issue of concern to many drivers, with 77% perceiving inadequate rest times and breaks as a WHS risk and 67% perceiving inadequate rest facilities as a WHS risk. Access to safe and shaded parking, adequate rest facilities, showers and clean toilets was an issue for both short and long

haul drivers; although long haul drivers were most vocal, even identifying particular stretches of highway that needed attention.

“Facilities on the road can be very poor. There is a distinct lack of safe rest areas with basic facilities like toilets”

“No toilet facilities (with showers) Parking Bays are too small There are too many caravans camping in the Bays”

“Better rest area facilities needed - with more accessible healthy food options.”

4.5. Remuneration structures and driving hours

Prior research has demonstrated strong links between working hours, remuneration methods and the safety of heavy vehicle truck drivers⁸. Evidence suggests performance-based payment systems contribute heavily to excess driving hours, speed dangerous driving and drug use, all of which compromise safety⁹.

Despite this, survey data revealed only 6.2% of drivers were paid a flat rate per day or week. In contrast, most owner drivers were paid job-based rates and most employee drivers were paid hourly-based rates. Many drivers criticised the practice of payment for kilometres driven, in particular. One labelled the kilometre rate, “the cancer in our industry” while another commented,

“They should do away with kilometre rates and pay drivers hourly which will take the pressure off drivers to not put things in their books and get paid for the hours they actually work”.

Table 6: Remuneration of Truck Drivers

Answer	Owner drivers	Employee drivers	All drivers
	N = 114	N = 433	N = 547
Flat rate per day or week	10.6 %	5.1 %	6.2 %
Flat rate per truck load carried	20.2 %	3.7%	7.1 %
Flat rate per km, pallets or weight	50.9 %	27.3 %	32.2 %
Day or weekly rate plus overtime	5.2 %	9.7 %	8.8 %
Hourly rate	36.8 %	65.8 %	59.8 %
Other (please specify)	0.9 %	1.2 %	1.1 %

* Note > 100% as drivers working for multiple companies received different types of remuneration

We found no significant difference in the relationship between job- or hourly- based pay arrangements and total hours worked. Notably, both are piece rates which can incentivise longer working hours. Subsequently, and consistent with broader evidence of long working hours among heavy vehicle truck drivers, the study found that 82% of drivers worked more than 50 hours each week, and almost two in five of these, reported working over 60 hours each week. The cohort most likely to work part time (i.e. 21-40 hours per week) were owner drivers contracting across multiple companies. Almost half the employee drivers reported that they work moderate to considerable overtime (41-60 hours per week - with most citing the higher end of that range) and owner drivers were more likely than employee drivers to report working excessive hours (61-80 hours per week).

Table 7: Weekly working hours by employment arrangement

Work hours per week	Owner driver (single company) N=79	Owner driver (multi-companies) N=18	Employee driver (single company) N=350	Employee driver (multi-companies) N=49	Average, all drivers N=496
<20 hours	1.3%	5.6%	1.1%	4.1%	1.6%
21-40 hrs	10.1%	16.7%	9.4%	10.2%	9.9%
41-60 hrs	38.0%	27.8%	49.1%	49.0%	46.6%
61-80 hrs	40.5%	38.9%	29.1%	30.6%	31.5%
81+ hours	10.1%	11.1%	11.1%	6.1%	10.5%

Many drivers, including a surprising number of employees on hourly rates, reported that substantial components of this work was unpaid. Owner drivers were more likely than employees to be unpaid for time spent loading / unloading (42% vs 14%), queueing (45% vs 22%), waiting (54% vs 24%), refuelling (76% vs 24%) or conducting maintenance checks or repairs (89% vs 26%). Although one employee noted:

"I have worked for over 20 different company's and not one of them paid the proper award. They all rip off drivers for their own profit or competitive edge. Wage policy should be audited like all other compliance modules in the transport industry."

"There will always be a divide in the road transport industry until all drivers are paid a proper wage for all the work they do."

Many drivers lamented the 'perfect storm' impacting remuneration in the industry, brought about by downward cost pressures imposed by large companies at the top of the supply chain and the willingness of some transport businesses to undercut others by charging rates below 'break-even'. For example,

"Large customers seem to be able to dictate the rates they will pay and when their freight will be delivered without a thought for the person delivering the goods."

"Pressure comes from customers screwing down. Transport to cheaper rates. The driver is the weak link as all other costs are fixed. So the driver gets screwed!"

"Companies are undercutting and passing [cost pressures] on to drivers - their profits are low - trying to squeeze it out of drivers to improve their profits."

"Big companies/customers enforcing reduced rates which in turn "flow downhill" to employees receiving less work and less pay... This is one of the key issues behind work place accidents ... Large transport companies reducing their price for tenders/contracts so they "win the job" which again effectively causes "cost cutting" in operations by reduced maintenance, less assistance in workplace environment, purchasing cheaper equipment to do the hard work (being penny wise and pound foolish)." "Cheaper rates result in a fall in work standards"

"No matter how much you try to go forward there will always be under cutters and big transport companies will use them to save money – squeez[ing] the owner driver out and send[ing] them broke"

"Get rid of the shonky operators so we can get better rates"

4.6. Perceptions of the regulatory system

Survey respondents offered feedback regarding their experiences and perceptions of various aspects of the regulatory system. These ranged from specific comments about compliance with particular aspects of safety management systems to broader observations about changes in the quality of interactions with regulators over time. For example, one driver stated that: "30 years has seen improvements, e.g. RTA." Overall, drivers welcomed opportunities to genuinely improve safety across the industry and acknowledged the potential for effective regulation to eliminate "shonky", "rogue" and "illegal" operators. Nevertheless, many remained frustrated by a perceived focus, in the name of safety, on issues that were unrelated, or poorly related, to safety outcomes.

Also a source of frustration was the plethora of regulation to which drivers were subject. One driver quickly sketched what he perceived as the regulatory burden (see Figure 2). These ranged from his employer's code of conduct, policies and systems (and again by numerous other employers when on their sites to load and unload; each with different rules, practices and expectations) to a "whole range of Government regulation" which sat over the top. The latter comprised different regulators at local, State and Federal levels. Each council has its own rules for certain roads that were "closed" to heavy vehicles. The various regulators for health and safety, roads and transport enforce regulations that differs in each State and Territory, with an inspectorate that included WHS inspectors, road and traffic inspectors, ports and maritime inspectors and police. Sitting above was the National Heavy Vehicle Regulator. "You can't keep up with the rules" he said.

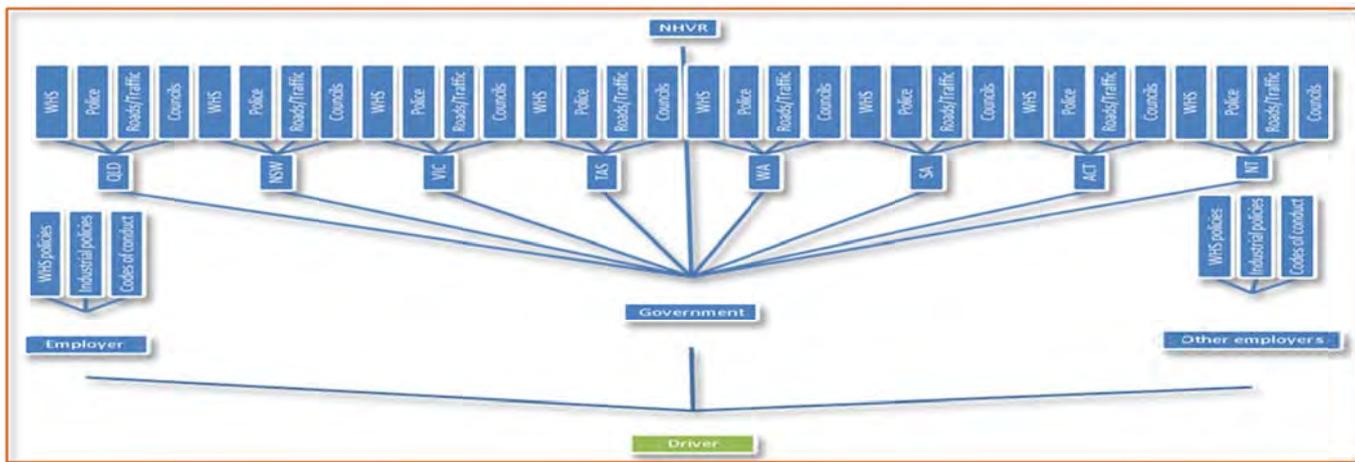


Figure 2: A driver’s perspective of the regulatory burden on drivers

Further, the fragmentation of safety-related responsibilities across so many different regulators was perceived to have negative implications for investigations and enforcement. As one driver lamented,

“Terms like Chain of responsibilities, freight contracts, Fair work tribunal are bandied around but they mean next to nothing in reality.”

4.6.1. Compliance with Safety Management Systems

Most drivers had experienced various elements of safety management systems, such as training, safe work instructions, safety resources such as ladders, spotters and personal protective equipment, management commitment and safety audits. Two thirds of drivers reported being given formal WHS instructions on work safety and that their company/contractor enforces WHS policies at worksites. One commented that:

“Larger multi national companies that I have worked for monitor and carry out internal audits to ensure compliance to OH&S and statutory government regulations.”

Table 8. Drivers perceptions of safety management systems

Responses to the statement:	Employee drivers					Owner drivers				
	Strongly agree	Agree	Unsure	Disagree	Strongly disagree	Strongly agree	Agree	Unsure	Disagree	Strongly disagree
The company / lead contractor gives formal instructions about how to work safely on site	22%	41%	15%	22%	7%	22%	28%	12%	18%	20%
The company / lead contractor enforces the rules outlined in their WHS training (and policies)	30%	34%	13%	23%	8%	26%	36%	12%	18%	8%
The company is more interested in ticking the boxes to look compliant than actively ensuring my safety	23%	21%	17%	39%	18%	25%	26%	18%	15%	16%
The company / lead contractor is happy for drivers to bend the safety rules when they are out on the road	13%	19%	14%	54%	31%	20%	16%	20%	22%	22%

Nonetheless, there is also widespread scepticism among drivers about company commitments to WHS in practice and expressed disappointment at the lack of genuine consultation with drivers over safety issues. A number of respondents highlighted how the policies adopted to improve safety at worksites can sometimes present new and unanticipated safety hazards that should be open to review, and where necessary, policy revision.

“The employers basically pay lip service to suggestions for service improvement.” “ Drivers are treated like idiots”

A large minority claimed their employer/contractor is happy to bend the rules and more interested in ticking compliance boxes than genuine enforcement. For example, drivers commented:

"In 26 years of driving heavy rigid vehicles I have had numerous companies pretend to be safety conscious but in reality they only worry about the appearance of the company not the actual safety of the employees much less subcontractors."

"Within smaller interstate companies, ie with less than 50 trucks, it is normally the managers, supervisors and allocators that are the ones telling you to break the law and to rort the system to get the freight through on time."

"There are too many companies and drivers out there willing to bend rules and turn a blind eye just so the job gets done, so until we get rid of these unsafe practices and the people that are willing to do them there will always be that element of something going wrong."

4.6.2. Perceptions of fatigue laws

A substantial number of drivers also expressed scepticism about the efficacy of various regulations that impact directly on drivers. In particular, regulation relating to fatigue and rest breaks drew many comments. On the one hand, some drivers were openly supportive of the need to address fatigue by regulating driving hours. Yet many were highly critical of the level of prescription and the inflexibility of rules that failed to support the variety of transport routes and range of individual 'body clocks'.

"The Work Diary and rules that apply create more dangerous situations than it saves. How can a book tell when I am tired and need a rest. Need greater flexibility to manage our own fatigue levels. Currently you have to rest when you're not tired and then drive when you are feeling doughie because the book says its ok and you have k's to make up because of being parked on the side of the road trying to sleep."

Some drivers questioned whether roadside inspections by regulators genuinely target safety issues and breaches, and were similarly sceptical about the likelihood of detection. Comments suggested many infringements were "more about revenue raising than safety" enforcement.

Over two thirds of drivers also perceived a likely or very likely association between injuries and 'inadequate rest times and breaks' (77%) or 'inadequate toilets and rest facilities' (68%) and expressed clear concerns about being required to stop and rest, given the poor availability and quality of rest stops and rest facilities (as discussed in section 4.4).

4.6.3. Attitudes toward Chain of Responsibility (CoR)

Drivers were generally very supportive of the concept of CoR regulation and its (unrealised) potential to improve WHS. However, many expressed disappointment in a lack of CoR enforcement and reported that, despite their relative lack of power to control arrangements at worksites, drivers continue to bear the brunt of the WHS regulation compared to participants higher in the CoR. For example:

"COR rules should be / applied to the top of Chain first so that they comply with the rules and regulations and their obligations. Instead its the little person at the bottom of the chain (ie. employees, drivers, owner drivers, forklift drivers etc) copping the full brunt of the laws. By the time it gets part way up the chain all is forgotten. The employers, companies and Government need to be held accountable"

"Chain of Responsibility laws are never enforced!!"

"Owner drivers have been forced to become Pty. Ltd. companies so responsibilities shift from large freight companies, and they safeguard themselves from any blame for anything that may happen."

"I was fined for overload. The load was sealed. I was not permitted to unseal it, yet I had to sign for it"

4.6.4. Attitudes toward WHS laws

The provision of safe work was clearly important to drivers. Yet, when asked about the likelihood of injury, more drivers identified an **external factor**, 'other drivers on the road' (89% of respondents) than any other risk factor. They called on a need for better risk awareness education, not just for truck drivers, but to ensure car drivers better understand the needs of heavy vehicles. For example,

“People in cars and on motor bikes regularly cause accidents by cutting in front close or overtaking on the left hand side of all trucks reducing safe stopping distances for the truck driver. This requires more effort and skill from the truck driver to brake and stop in an emergency situation and usually ends in an accident. More driver education is required.”

Notably, more drivers identified **personal factors**; ‘being distracted/poor concentration’ (87%), ‘rushing’ (86%), ‘being tired’ (85%) as a safety risk; than recognised **work design factors** such as ‘poor or tight schedules’ (82%), ‘inadequate rest time/rest breaks’ (76%), ‘poor vehicle maintenance’ (74%), ‘inadequate training’ (71%), ‘inadequate rest facilities’ (68%) and ‘lack of familiarity with the route’ (68%) etc. Inadequate understanding of the range of WHS risk factors and of the WHS obligations on supply chain participants has implications for drivers’ ability to recognise breaches of WHS regulation.

Nevertheless, the vast majority of drivers consider that they would report breaches of WHS laws, although there is considerable variation in terms of who they would notify. Most drivers indicated they would report safety concerns to the employer/contractor or DC/customer. Owner drivers appeared less likely than employees to take such concerns to a union. Very few drivers wanted to report breaches of law to government agencies. The issues most likely to be reported externally (to Government or unions) were “being pressured to falsify a work diary”, “being underpaid”, and “being pressured to do unsafe work”.

4.6.5. Why drivers don’t report WHS concerns

The survey also found that while most drivers felt able to use the enforcement arms, many are reluctant to report regulatory breaches: the key reasons including fear of retribution, fear of being caught up with legal proceedings, and the belief that complaints would fall on ‘deaf ears’. As one driver commented,

“Nothing is done when it is reported. The company don’t really want to know. They just want the job done and you back on the road doing more work”

Table 9: Reasons why owner drivers are reluctant to report unsafe practices.

Respondent	Owner driver N=86 (73%)	Employee drivers N=231 (52%)	Total drivers N=317 (57%)
Fear of retribution	33 %	75 %	64 %
- No work / being black-banned	42 %	63 %	58 %
- Reduced work opportunities	35 %	33 %	34 %
- Less desirable work / conditions	34 %	24 %	27 %
- Fear of teasing, harassment or assault	10 %	19 %	16 %
No point, no one listens	24 %	17 %	19 %
Fear of being dragged into legal processes	11 %	10 %	10 %
Drivers don’t care / don’t have time	8 %	11 %	10 %

Many drivers described an entrenched retribution culture in terms of employers, contractors and major clients inflicting financial injury, bullying, intimidating and victimising drivers for speaking up about safety issues. Drivers described their personal experience of voicing safety concerns, to their detriment.

“I have in the past reported very serious safety incidents and vehicle conditions and in the past it has cost me my employment. Regardless of the company or size, as a driver, reporting any breaches of law or safety will see you black listed in the industry. I have even told various government agencies about when and where these breaches will occur only to have them notify the company to tell them that they are going to be doing a check. It is absolutely rife ... all that happens is I get a horrible name in the industry and don't get work.”

“if you report [safety issues] then the work dries up” and “You do not get picked to do any more loads”

The retribution culture in the industry exacerbates this vulnerability, reinforcing the reluctance of drivers to complain. Consequently, this group held negative views about their work. For example:

*“Nothing is changing, its getting worse not better.” “The industry has become shit over the years.”
“This industry is fucked”*

5. DISCUSSION

The survey confirms that some companies are actively working to ensure the health and safety of their workforces and many drivers are positive about their health and safety at work. However, a substantial segment of truck drivers effectively form an under-class of neglected drivers in the industry. For this group, management lacks an effective commitment to WHS and drivers have limited, if any, options for voicing safety concerns.

The survey revealed that a substantial number of owner drivers, casual/contractor drivers and some employee drivers share similarly poor safety conditions at work, characterised by unsafe loading sites, schedules and loads, not being paid for essential work activities other than driving, and very long working hours. Their associated vulnerability is reflected in a shared inability to refuse an unsafe load or schedule, and fear of speaking up about safety. What the findings clearly show is that, while some drivers perceive an overall improvement in WHS regulation, a greater number are more pessimistic about their safety at work.

Efforts to ensure WHS in the heavy vehicle road transport industry involve a complex mix of regulatory mechanisms which provide a range of measures to encourage compliance and deterrence. In recent years, the mix has come to include several forms of regulation with a potential to reach all levels of the CoR. These have improved WHS for many heavy vehicle truck drivers. However, significant gaps and limitations remain in WHS regulation in this industry. We identified seven key challenges to the effectiveness of WHS regulation in this industry in Australia.

5.1. The regulation is too complicated.

It is not surprising that, given the way in which WHS regulations in this industry have developed incrementally over time, the current mix of regulations is too complicated. There is considerable actual and perceived overlap in the current mix both between methods and across different legal jurisdictions. Yet, at the same time, each type of regulation performs a valuable role, relying on a variety of compliance incentives and sanctions to encourage safer workplaces for truck drivers. With the current regulatory structure, no single measure has sufficient scope to 'cover the field'. The complicated mix of regulations, however, raises a particular policy problem: how to simplify WHS regulation in the sector, without jeopardising WHS outcomes.

The overlaps also present challenges for enforcement with regard to WHS breaches in the sector. This is highlighted, for example, by the overlapping jurisdiction of agencies that investigate and enforce safety breaches associated with a major truck crash; including state government agencies such as Police, Road Transport Departments and Worksafe, as well as national bodies such as NHVR and Comcare.

5.2. Significant gaps in regulatory remain.

While the regulatory mix is too complicated, significant gaps also remain. For example, since the RSRT was abolished, there has been no regulatory mechanism that can eliminate existing incentives for overly tight scheduling, unpaid work, and rates that are below cost recovery, for owner drivers. It is these scheduling and payment characteristics that incentivise excessive driving hours and speeds, and, for owner drivers, reduce time and resources for fleet maintenance. Another gap exists in regard to licensing arrangements; linked to a universal requirement for formal training for truck drivers. Our findings have established that, although informal toolbox training and inductions can add value in terms of raising drivers' general WHS risk awareness, these are insufficient. In contrast, formal driver training can not only improve driver quality but also reduce actual experience of high-consequence hazards.

5.3. Some regulations are proving more problematic in practice than perhaps anticipated.

Fatigue laws illustrate the problematic nature of some regulations in practice. The HVNL requires drivers to comply with maximum work and minimum rest limits on journeys, and also imposes on CoR parties a responsibility to take all reasonable steps to prevent drivers exceeding these limits. This has reduced the number of drivers reporting fatigue (NTC, 2012a). However, this research suggests the fatigue laws, especially the regulation of rest breaks during journeys, is proving too prescriptive, and not taking individual needs sufficiently into account. For example:

"Fatigue rules are a joke. Night sleeps in particular, might make sense to a driver living/sleeping in the truck, but the requirement for 2 night sleeps a week (7 hours between 10pm & 8am) do not take into account any time spent getting ready for work or travelling to work. Personally, a night sleep requires me to start 1 hour late one day per week. Still get up at the same time (2am) have time for an extra cup of coffee, then drive an hour to work ... Makes more sense to me to be able to get home earlier in the afternoon, so I can get stuff done that I need to do outside of work, & still get to bed at a reasonable time!"

In addition, there is a mismatch between the regulatory requirements for rest breaks and the provision of adequate rest facilities on the roads. Many respondents raised concerns about this. For instance:

"Driver rest facilities both on country and metro roads are severely lacking.eg : showers, toilets, shade, and when available dirty or unpleasant due to the general public accessing. Heavy Vehicle drivers, in particular interstate drivers should have exclusive access to these facilities."

"There is never enough truck stops or safe zones on the side of long highways during long journeys."

"Better rest area facilities needed - with more accessible healthy food options."

5.4. Difficulties in enforcement are an issue that spans the regulatory mix.

Different forms of regulation are designed to change attitudes and behaviour in different ways, enabling diverse paths for enforcement (see Appendix 1). Yet, there are also enforcement deficiencies with each mechanism. This research has established, for example, that despite employers having legislated responsibilities to design and ensure safe work, many drivers continue to experience unsafe practices. The relatively recent introduction of the *National Heavy Vehicle Law* may prove a game changer in this space, but its success will hinge on its ability to enforce safe work practices and safe design principles across the supply chain. At present, and because of the relative simplicity of imposing fines on drivers compared to the investigatory requirements for most other forms of enforcement, drivers appear to bear a disproportionate burden of sanctions for WHS breaches.

5.5. The complex array of enforcement measures in the sector could be rationalised.

As Appendix 1 indicates, while education and persuasion form the base of the enforcement pyramid, and criminal penalties sit at the apex (but apply only to the WHS Act), multiple measures have accumulated in the pyramid's mid-section. Appendix 1 charts the sanctions available in this mid-section. Sanctions include: licence suspension and revocation, accreditation and regulatory concessions; potential adverse economic, market and informational / reputational impacts; supervision through orders, notices and enforceable undertakings; and of course, fines. Sanctions have been added to the mix over time to reach different members of the supply chain, and particularly those towards the top of the CoR. However, policymakers could consider rationalising these sanctions, and the regulation strategies underlying them.

5.6. WHS regulation increasingly prioritises bureaucratic forms of safety system assurance over an assurance of safety in practice.

This is particularly the case where forms of accreditation are based on documentary evidence that employers, contractors and other supply chain organisations have implemented specified WHS policies and practices. Typically, an accrediting body conducts audits to ensure continued compliance, and regulatory concessions and other economic incentives follow accordingly. However, these systems are weighted towards those who can afford bureaucratic compliance. The danger is that this advantages larger companies with the resources to meet the documentary assurance process. However, research has

not shown that accredited operators necessarily have better safety performance than others¹⁰. Many respondents noted that, both 'good companies' and 'shirkers' appear able to achieve accreditation, consequently devaluing these schemes. An additional limitation with voluntary industry codes are the potential conflicts of interest that exist for industry bodies, such as the Australian Logistics Council and Australian Trucking Association, between promoting safety and representing members' competing commercial interests. To reassure industry participants that compliance is maintained in practice, more independent processes of assurance are needed. What form might this take? Specific suggestions from drivers include having inspectors follow trucks from loading yards from time to time, and ensuring that companies do not receive advance warning of inspections.

5.7 Voluntary regulation on its own is not the solution: strong state regulation is necessary.

As prior research has noted¹¹, this industry is particularly susceptible to regulatory non-compliance. Three general reasons are identified for non-compliance¹²; lack of knowledge, ability and willingness. Our interviews with key corporate stakeholders, indicated a common view that the complexity of the regulatory mix inhibits knowledge and hence participants' ability to comply because there are so many rules and reporting requirements. Yet, while precise regulatory details vary, the essential norms and expectations of identifying and controlling WHS risk are shared across them. Arguably, participants at the higher CoR levels are not greatly impeded by a lack of regulatory *knowledge* and *ability*. In this industry, the most crucial reason for non-compliance would therefore appear to be *willingness*.

In terms of willingness to comply, research suggests that WHS regulations have varying levels of acceptance among CoR participants. This is partly due to a lack of understanding of WHS risk factors, which education and training across the CoR could address. Willingness is also reflected in the risk calculations of CoR parties concerning the likelihood of injury, of detection and the severity of sanctions. That is, the calculated probability of inspection, detection and sanction all strongly influence participants' willingness to comply.

Also contributing to noncompliance are practical difficulties of enforcement. Regulators face considerable hurdles meeting the legal requirements involved in investigating breaches, attributing liability and proving criminal fault¹³. It is particularly difficult for regulators to sanction those participants at the top of the CoR who effectively control the nature of work in the industry. It is easier to impose sanctions at the bottom – particularly on drivers. It is not surprising, therefore, that fines are overwhelmingly the most commonly imposed penalty, and it is drivers who bear the brunt of these.

Second, arguably, the ultimate penalties are too low to incentivise behavioural change among parties at the CoR apex. As Table 1 indicates, the maximum fine (for a Body Corporate) is \$1.5 million for each breach under the WHS Act. Possible fines under the HVNL are substantially lower (\$21,320 for each conviction). Third, evidence suggests courts tend to impose fines much lower than those available and are making little use of other financial sanctions such as commercial benefit penalties, compensation orders and publicity orders. Experts caution that tough sanctions should operate as a benign big gun, for use only with the most recalcitrant operators¹⁴. They observe that prosecutions can be counter-productive, particularly when imposed on firms that consider themselves to be 'good guys'. Further, the risk and probability of sanction are critical to deterrence. Specific experiences of deterrence are more effective than general deterrence. Moreover, research demonstrates that, for enforcement to be effective, it must impact those directly responsible for breaching regulations¹⁵. For senior executives and managers, personal liability is a key motivator of compliance. Yet enforcement rarely reaches them directly.

Despite the limited use of 'big gun' sanctions, however, there have been notable successes enforcing the CoR. For example, data from Roads and Maritime Services in NSW suggests that a coordinated approach to enforcing speed limits has reduced speeding and fatal crashes dramatically. Through education, targeted operations, point-to-point speed cameras and other strategies in NSW, the volume of heavy vehicles (over 12 tonnes) detected above 105 km/h dropped from 54,000 to 4,000 between 2011-2015)¹⁶.

6. POLICY RECOMMENDATIONS

This Report makes the following key policy recommendations to improve WHS regulation in the heavy vehicle truck driving sector:

6.1. Improve knowledge of WHS risk and injury causation through the CoR

Immature perceptions concerning the reasons injuries occur are undermining attempts to make workplaces safer. Despite all the evidence on fatal and disabling injuries and illnesses in this industry, a sizeable portion of industry participants lack an adequate understanding of WHS risk identification and mitigation. Many also fail to appreciate the multi-factoral dynamics of causation both within organisations and across the supply chain. Moreover, some employers/employees and policymakers continue to reject available evidence, favouring voluntary regulation and clinging to administrative controls and simplistic views that essentially 'blame the victims'. Efforts to better educate drivers and employers is critical.

6.2. Improve data collection to inform evidence-based policy

To facilitate both education initiatives and evidence-based policymaking on WHS in this industry, there is an urgent need for the longitudinal collection of comprehensive, consistent and more nuanced data on the WHS experiences of both employee and owner/contractor drivers, the incidence of injury and illness in the sector and the causative factors involved. Three elements that have traditionally been neglected are particularly important here. First, data needs to address the existing lack of information about the injury experience of owner drivers and sub-contractors, two groups generally excluded from workers' compensation datasets. Second, a more thorough and consistent/comparable collection of data across jurisdictions is urgently required. Third, comprehensive longitudinal data on prosecutions and other enforcement, including administrative arrangements and orders, is needed. Further, this data needs to be accessible to researchers and key data and analysis must be publicly available.

6.3. Address the complexity of WHS regulation in this industry.

The complexity of WHS regulation in this industry impedes understanding of rights and obligations and potentially muddies the waters in relation to compliance and enforcement. While well-resourced organisations can afford legal and administrative expertise, for smaller participants in the supply chain it can be difficult to stay well informed. For wilfully noncompliant and/or recalcitrant operators, the complexity is also used to excuse the neglect of WHS. A clearer picture of the demarcations between different mechanisms would facilitate comprehension and compliance, and the identification and monitoring of non-compliance.

6.4. Improve enforcement and accountability.

Regulation is only as valuable as its enforcement and the accountability of parties. Improving the willingness of CoR participants to comply with the regulations must be a policy priority. This Report addresses three areas for further policy development to improve enforcement and accountability. First, more consistent and regular enforcement of regulations on parties at all levels of the CoR is required. This also requires a review of resources currently available to enforcement agencies. Second, whistleblower and industrial protections must be made available to truck drivers to facilitate the reporting of regulatory breaches. Third, retention of a range of regulatory mechanisms and sanctions remains critical, including those schemes designed to change attitudes and behaviour through strategies other than legislation. Examples include *structural* regulation such as 'point to point' cameras, appropriately assured *certification* and *accreditation* systems, and *informational* mechanisms which provide adverse publicity to recalcitrant parties. Here, further consideration of regulatory schemes operating in other western countries, such as safe driver licensing systems and market-oriented star rating systems, is recommended.

6.5. Close the significant gaps in regulation.

The competitive nature and cost structures of this industry are such that, in the absence of regulation, positive safety outcomes for drivers are extremely unlikely even with the most enlightened employers. This means that gaps in regulation almost inevitably will lead to accidents, injuries and disease. The critical present gap requiring policy development is the lack of regulation which places responsibility on those higher in the CoR to ensure safe structures of remuneration of truck drivers. With the RSRT's abolition, the first attempt to address this issue systematically ended.

Nonetheless alternative mechanisms have also demonstrated substantial success in addressing certain types of dangerous driving. The NSW Roads and Maritime Services has pursued an integrated strategy in administering the HVNL which has included adoption of a Joint Taskforce approach to speed enforcement, Zero Tolerance on truck modifications, and installation of weighbridges to enforce mass limits on repeat offenders and point-to-point cameras and other screening mechanisms on the roads. Further, while currently, there are no WHS mechanisms in Australia's heavy vehicle road transport sector which advance or limit market opportunities to CoR participants based on their compliance histories, this strategy has been pursued elsewhere. For example, the strategy has been highly successful in the United States, albeit that it concentrates only on restricting access to government contracts.

6.6. Ensure drivers have appropriate WHS and Driving skills

Both formal driver training and formal WHS training of drivers is essential to improving driving skills, risk perception and hazard prevention. While informal forms of WHS training within organisations, including regular toolbox talks, raise awareness of WHS risk, evidence suggests formal training courses in WHS and driving skills by competent, independent providers is more likely to reduce WHS damage to workers in this sector. We recommend that a review of the training and licencing of drivers be conducted, with consideration given to the implementation of compulsory training prior to occupational entry.

6.7. Address the segmentation in the safety experience of drivers

Reaching the long tail of 'neglected drivers' identified in this Report must become an urgent policy focus. It is not sufficient for employers, contractors and client organisations to hold WHS accreditation under law and codes of practices if, simultaneously, a substantial minority of their drivers are excluded from safe work systems and practices. For some truck drivers, particularly those for whom a clear WHS duty of care is immediately obvious and indisputable, such as full-time employees, conditions have improved considerably in recent years as WHS legislation and other regulatory mechanisms commenced operation. Management provisions for their safety have become more comprehensive, pervasive and entrenched.

Other groups, however, in particular, owner drivers, casual/contractor drivers and a small but significant portion of employee drivers, have profited far less from WHS regulatory initiatives. Rather than benefiting from overlapping WHS responsibilities of organisations along the supply chain, these workers are falling through the gaps. Less attention is paid to their safety by participants across the CoR, and accordingly they encounter significantly more risk at work. Policymakers must continue to build the focus on regulatory mechanisms that reach most effectively across the CoR to influence the design and delivery of safe, healthy and productive work for all drivers and thus provide the most just solutions.

7. CONCLUSION

Despite significant advances in WHS in this industry in recent decades, substantial segments of its workforce remain at considerable risk of serious injury and illness. This risk is linked to a range of features of the work and the labour market – including employment arrangements, remuneration systems, working hours, task variability, control and autonomy, access to training, and management policies, practices and resources. This is a complex phenomenon. So too, existing models of regulation and enforcement are complex and overlapping. While the regulatory mix presents a heavy regulatory burden for truck drivers, the accountability and enforcement of compliance across the supply chain, particularly for those at higher levels of the CoR, remains inadequate. Moreover, even as some companies are actively working to ensure WHS, a substantial underclass of employee, owner and contracted drivers continue to experience unsafe working conditions. These include unsafe loading sites, schedules and loads, and risk factors such as long working hours and lack of payment for work activities other than driving.

There are strong arguments that specific experience of regulatory enforcement, whether through fines, adverse publicity, revocation of accreditation or other methods, has a strong impact on those in the supply chain who are responsible for ensuring safe and healthy work. Enforcement, accountability and the careful but strategic use of sanctions within enforcement pyramids are crucial, particularly in the heavy vehicle road transport industry, due to its hazardous and extremely competitive nature.

Ayres and Braithwaite¹⁷ claimed that 'for the responsive regulator, there are no optimal or best regulatory solutions, just solutions that respond better than others to the plural configurations of support and opposition that exist at a particular moment in history'. Currently, in the Australian heavy vehicle road transport industry, for those at the bottom of the chain, the sanctions are very substantial, but their level of dependence on those higher in the chain limits the deterrence effect. The conclusion of this report is that, it is those regulatory solutions that reach most deeply across the layers of the CoR that will provide the most just solutions.

APPENDIX 1

Appendix 1: The Enforcement Pyramid pertaining to each of the Six Modes of Regulation

REGULATORY STRATEGY	SANCTIONS	CODES OF CONDUCT	BLUECARD	5 STAR TRUCKING & SAFED	FW Act	RSRT	HVNL	WHS Act
CRIMINAL/ INCAPACITATION	1.Conviction and/or Term of imprisonment 2.Prohibition from holding roles in industry.						X	X
CIVIL	Compensation orders and any other order the court considers appropriate					X		
CIVIL	Fines				X Max fine \$33,000	X Max fine \$6,600	X Max fine \$21,320	X Max fine \$1.5 million (Body Corporate)
ADMINISTRATIVE	Notices, prohibitions, orders & court-imposed undertakings				X	X	X	X
AUTHORISATION	The suspension or revocation of: <ul style="list-style-type: none"> • Licences • Accreditation • Certification • Registration 		X	X			X	
INFORMATIONAL	Reputational sanctions	X		X			X	X
TRANSACTIONAL /or MARKET	Largely confined to regulatory concessions in Australian Road Transport context			X			X	
ECONOMIC	Discounts and regulatory concessions			X			X	
STRUCTURAL	Physical / process design requirements (also sometimes linked to accreditation)						X	X
EDUCATION AND PERSUASION		X	X	X	X	X	X	X

ENDNOTES

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