Evaluating the Regulation of WHS through Supply Chain Codes of Conduct in the Retail Transport and Logistics Industry.

Author:

Louise Thornthwaite

Centre for Workforce Futures, Macquarie University.

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Contact details:

Louise Thornthwaite

Department of Management
Macquarie University
Sydney Australia
Email: louise.thornthwaite@mq.edu.au

Centre for Workforce Futures

Macquarie University
Sydney Australia
https://www.mq.edu.au/research/research-centres-groups-and-facilities/prosperous-economies/centres/centre-for-workforce-futures

EXECUTIVE SUMMARY

Since the 1980s, voluntary forms of industry regulation have emerged in domestic and global supply chains alongside traditional statutory regimes in a myriad of industries. They have often taken the form of codes and accreditation systems, certifying that a particular business is complying with certain behavioural standards. Typically, these schemes are established by industry bodies as an alternative to government intervention, with the reasoning that the accrediting body's closeness, familiarity and networks in an industry will facilitate more appropriately tailored and effective regulation. Many such systems are designed specifically to improve health and safety within supply chains. In the target population, some resent accreditation as a necessary burden, others laud it. However, there has been little published on their operation and impact generally, and in particular, in the retail transport and logistics industry which has been the focus of this project.

This report examines the operation and impact of industry self-regulation and co-regulation systems in Australia's retail transport and logistics sector. Three schemes are analysed, including the Retail Logistics Supply Chain Code of Conduct, TruckSafe and the National Heavy Vehicle Accreditation Scheme.

The research demonstrates that there is a diversity of business responses to the schemes, from willing engagement, to grudging 'tick a box' compliance, and finally, abstention. Those transport operators that gain accreditation report substantial benefits, particularly in terms of the advice, education and resources that the relevant industry bodies share with firms. They also report enhanced relationships with other firms in the accreditation network, as well as Improvements in health and safety management and outcomes. Regulatory concessions and commercial benefits also have substantial value to participants. However, there are frustrations and challenges associated with code compliance, including an accreditation overload in the industry, the preponderance of symbolic forms of compliance, the lack of enforcement and penalties, audit complacency, and unfair commercial pressures from transport operators that abstain from codes and, indeed, from the health and safety project altogether.

Ultimately, as many in the industry discuss, and research well-documents, it is particular market dynamics that continue to cause disproportionately high levels of fatalities and severe injuries in the retail transport and logistics sector. In the highly competitive road freight transport sector, entry costs are low and there are 47,000 transport businesses. With the combination of road freight transport and retail logistics, the business landscape comprises a few extremely powerful lead firms with the capacity to impose 'take it or leave it' contracts on small and marginal operators. The contracting of the transport task through the supply chain involves layers of outsourcing and sub-contracting, often at non-viable rates.

It is not possible for industry bodies to turn these market dynamics around with codes and accreditation systems. An open and honest dialogue about the market conflicts influencing WHS is required for that. Not surprisingly, therefore, the objectives of existing schemes are far more modest and they have very limited membership coverage. However, addressing the frustrations and limitations of industry participants with the RLSC and the other two schemes examined would enhance and extend the beneficial influence of these accrediting industry bodies that many respondents to this study reported. Moreover, the findings of this Report point to the barriers to WHS which current outsourcing and sub-contracting practices continue to pose.

The Report suggests the following five recommendations for policy consideration:

1. *Enhance Enforcement*: In relation to existing voluntary industry regulatory schemes, compliance could be improved through the adoption of enforcement methods by industry bodies. The prevalence of 'box-ticking' audits and the reliance on simple threats of the revocation of accreditation are insufficient to encourage most operators to meet minimum standards. The industry needs enforcement measures with a visible presence, increased possibility of detection for non-compliance, and staged sanctions, perhaps along the lines of Ayres and Braithwaite's (1992) responsive regulation theory. It is critical, however, that enforcement is carried out equally through the supply chain including on the lead firms, so that those at the tail end of the chain do not bear the brunt of sanctions.

2. *Reduce multiple-auditing*: In the current context, over-auditing and multiple-accreditation demands are disincentives to taking part in voluntary industry regulatory schemes. Simplification of the current range of audit and accreditation demands might encourage more operators to take part, particularly if the various schemes 'talked more to each other' and the mass of private audits was curtailed.
3. *Remove audit complacency*: Codes and accreditation schemes would be enhanced through adoption of a continuous improvement in auditing cycles that facilitates deeper drilling down on WHS behaviours and outcomes in the longer term. In the process, WHS commitments could permeate more strongly through management practice and organisational culture.
4. *Employee participation*: Previous research has highlighted the importance of employee voice to effective WHS management (Bhattacharya and Tang 2012; Nossar et al, 2004) The *Model WHS Act* 'recognises that workplaces have better health and safety outcomes when workers have input before decisions are made about health and safety matters that affect them' (Safe Work Australia, 2016: 2). The voluntary industry regulation schemes examined, essentially operate along unitarist lines, with a unilateral top-down management approach to meeting compliance requirements. Yet, as experience with the *WHS Model Act* demonstrates, employee involvement plays a valuable role.
5. *Open a genuine dialogue within the industry about the real costs of transport*. There is a widespread perception across the retail transport and logistics sector that systemic patterns of activity, including the outsourcing of 'dirty work' to financially marginal operators at unviable rates, by the largest firms, impose pressure through the supply chain to economise on health and safety. Many firms resist succumbing to this pressure, but know that in 'doing the right thing' they are commercial disadvantaged. The fundamental issue at stake is the price allocated to RFT in the supply chain. For transport operators, this is the campfire discussion. Until a genuine dialogue takes place on the real costs of road transportation, health and safety will remain compromised in this sector. This dialogue is something that industry bodies, in their representative role, could consider instigating.

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ABBREVIATIONS

ALC	Australia Logistics Council
ATA	Australian Trucking Association
COR	Chain of Responsibility
FMCG	Fast Moving Consumer Goods
HVNL	Heavy Vehicle National Law
NHVR	National Heavy Vehicle Regulator
NHVAS	National Heavy Vehicle Accreditation Scheme
NLSC	National Logistics Supply Code
RABQSA	Register Accreditation Board (RAB) with the Australia-based Quality Society of Australasia (QSA).
RFT	Road freight transport
RICP	Registered Industry Code of Practice
RLSC	Retail Logistics Supply Chain
TWU	Transport Workers' Union
WHS	Work Health and Safety

SECTION 1. INTRODUCTION

Since the 1980s, voluntary industry regulation has proliferated in many industries across the globe. This has been due to a host of developments, including the ascendancy of free market ideology in politics and economics, along with an embrace by some in the socio-legal and regulatory community of 'alternative' regulation that is more 'responsive' to those being regulated. Pressure on industry by human rights, environmental, trade union and other activist groups to demonstrate accountability and corporate social responsibility, and growing reputational risks for failure have also underpinned the shift. Another key reason for the rising popularity of industry self-regulation has been the increasing domestic and global complexity of supply chains, the difficulties of managing relationships through chains of responsibility and the inability of national governments to regulate sufficiently across the global space.

This report examines the operation and impact of voluntary industry regulation schemes in Australia's retail transport and logistics sector, both self-regulation and co-regulation forms. The objectives of the research project were to provide an evidence-based evaluation of stakeholder perceptions of the purposes, implementation and effectiveness of industry-based self-regulation of work health and safety (WHS) through Codes of Practice, with a particular focus on the Retail Logistics Supply Chain (RLSC) Code of Practice of which the Australian Logistics Council (ALC) is custodian. The RLSC Code pertains to businesses operating in the retail, transport and logistics industries. Through the course of the research, it became apparent that analysing the operation and impact of the RLSC Code required consideration also of other similar forms of voluntary industry regulation in the sector. The project broadened to include two other accreditation systems, TruckSafe and the National Heavy Vehicle Accreditation Scheme (NHVAS). In the course of the research, we interviewed officials from retail organisations and transport operators, half of which were accredited with the RLSC and half were not. All these respondents were accredited with at least one of the regulatory schemes examined, and the majority with two or more. The information gathered on the different accreditation systems has shed a comparative light on their operation and how they are perceived in the industry.

1.1 Industry Context

The importance of improving WHS through the supply chain of the retail transport and logistics industry is underlined by the safety risks present and its safety record. While health and safety data on this specific industry sector is not available, the picture for the road freight transport (RFT) segment is sobering. Of the entire domestic land-based freight task in Australia, 65 per cent is transported by rail and 35 per cent by road (Clth Govt 2018). It is health and safety in the RFT component that attracts most interest.

As a whole, the road transport industry accounts for 5 per cent of the Australian workforce, and employment is growing. The industry also accounts for 17 percent of work-related fatalities and 4 per cent of serious workers' compensation claims (Safe Work Australia, 2018: 2). Of these, 92 per cent of fatalities and 82 per cent of serious injury claims occur in the road freight transport (RFT) sub-sector (Safe Work Australia, 2018: 3). For this reason, the road transport industry has been identified as a national priority in the *Australian Work Health and Safety Strategy 2012-2022* (Safe Work Australia, 2012)

The retail transport and logistics supply chain is multi-faceted and complex. Within Australia, it extends from the ports to the shop counter. This includes numerous participants in warehousing, storage, distribution as well as retail firms and transport operators. In terms of RFT operators alone, businesses range from large multinational companies to sole traders. There are about 47,000 transport businesses in the industry: 89 per cent have one or two trucks, 10 per cent have 3-9 trucks and one per cent have ten trucks or more. Less than 0.5 per cent of fleet operators own 100 or more trucks. The two lead firms are Toll and Linfox: the first has an 8.3 per cent market share, and Linfox, with about 5,000 trucks, has a 4.2 per cent market share (NTC, 2016:24-25; Clth Govt, 2018: 8-9). In the retail industry, there are 5,500 business with 77,000 bricks and mortar locations. In terms of the grocery market, the retail majors are Woolworths with 35.7 per cent of the market and Coles with 33.2 per cent, followed by Aldi (13.2 per cent) and IGA (9.3 per cent).

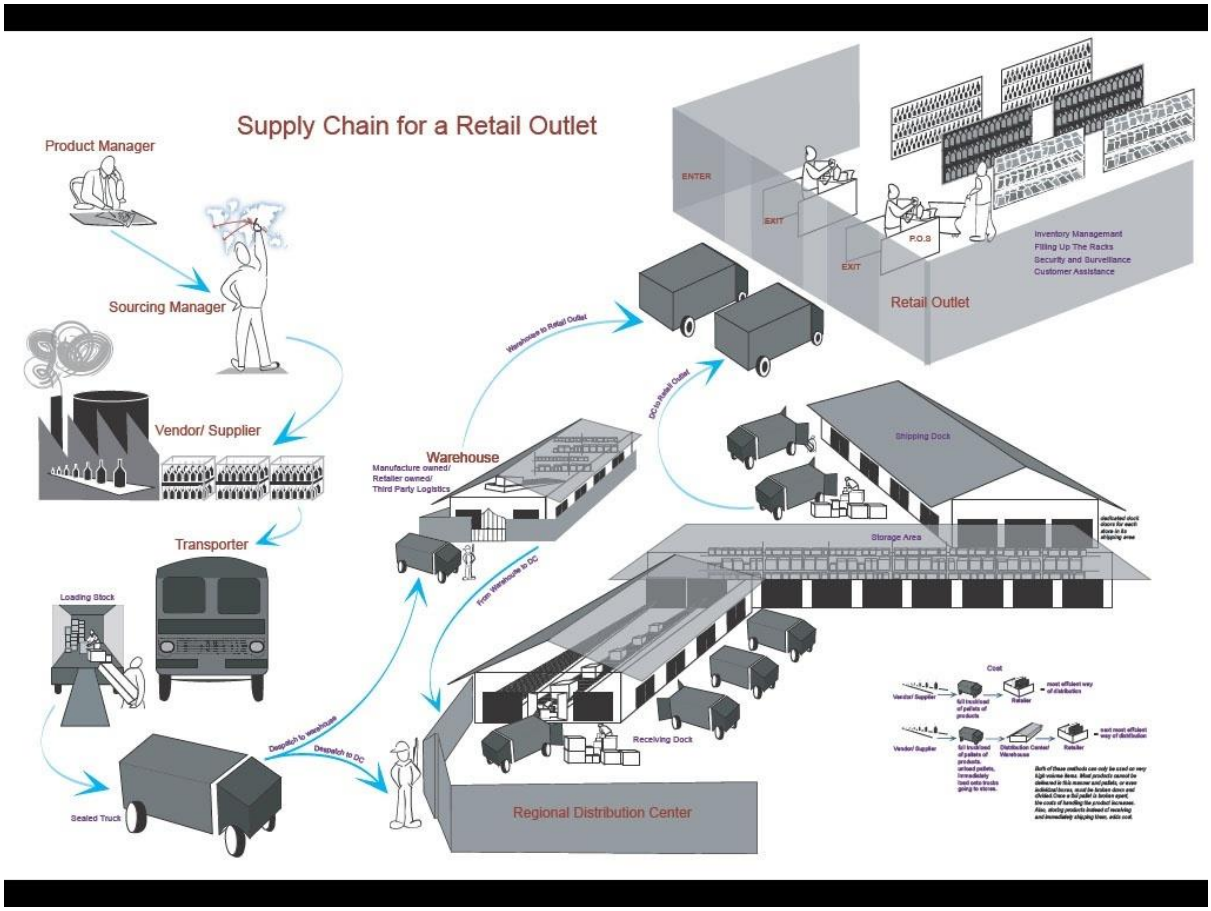


Illustration 1. A depiction of the Retail Transport and Logistics supply chain.

Source. Lehmacher, W. (2016) How does a retail supply chain work? *Quora*, Accessible at: www.quora.com/How-does-a-retail-supply-chain-work.

There are many parties in the retail transport and logistics supply chain, as illustration 1 indicates. The main parties include retailers and vendors or suppliers (eg. manufacturers and primary producers), who may variously be consignors/senders or consignees/receivers, as well as intermodal facilities involved in the transfer of goods from one mode of transport to another (e.g. storage and distribution centres), and transport operators, including the lead firms, prime contractors of drivers, employee drivers and owner drivers.

1.2 Codes of Practices and Accreditation Systems in the Australian Road Freight Transport Industry

The initial focus of this project was the Retail Logistics Supply Chain (RLSC) Code of Conduct and its associated accreditation scheme, established by the Australian Logistics Council (ALC) in 2006. Two other voluntary industry regulation bodies are also examined in this

Report, TruckSafe, which the Australian Trucking Association (ATA) established in 1996 and the National Heavy Vehicle Accreditation Scheme (NHVAS), a federal-state government collaborative initiative which commenced operation in 1999. The NHVAS was administered initially by state road and territory road authorities, and more recently, by the Heavy Vehicle National Regulator.

These three schemes sit alongside other forms of industry regulation including the Western Australian Heavy Vehicle Accreditation Scheme which operates independently of the NHVAS and ISO certification systems such as AS/NZS 4801- Safety Management Systems, OHSAS 18001 -Occupational Health and Safety and PAS 7000 -Supply Chain Management. ISO is an independent non-government organisation which provides internationally recognised certification for a range of standards.

While there are key differences between the RLSC, TruckSafe and NHVAS, there are also many similarities in terms of the content and processes with which they are concerned. These are examined in Section 2 of the Report. Significantly, the objectives of the schemes differ substantially.

- The RLSC Code is 'designed to ensure that those who control or influence the carriage of freight in the retail transport and logistics sector are aware of their responsibilities in the supply chain' (RLSC, 2011).
- Trucksafe 'is a business and risk management system that is aimed at improving the safety and professionalism of trucking operators nationwide. It is based on a set of minimum standards a trucking business should meet for it to be a safe, responsible operation' (TruckSafe, 2010).
- The NHVAS is a formal process for recognising operators who have robust safety and other management systems in place. The NHVAS standards 'establish the responsibilities, policies, procedures and records that will demonstrate an operator's compliance with key elements of heavy vehicle law' (NHVR, 2016).

Thus, while the RLSC Code concentrates on the industry's supply chain, TruckSafe and the NHVAS are centred on heavy vehicle road transport operators. In Section 2, the history, structure, content and application of these three schemes are examined in detail.

All three systems are examples of voluntary industry regulation. Recognising these as regulatory mechanisms is consistent with a broad view of regulation which includes a range of measures 'that attempt to alter behaviour according to defined standards or purposes with the intention of producing a broadly identified outcome or outcomes' (Black, 2001: 1). Under this umbrella sit a range of industry-based forms of regulation, distinct from state legislation (also known as 'command and control regulation'), and distinguished from each other by the degree of independence from state control. These include schemes which may constitute what are known as self-regulation, co-regulation and meta-regulation.

The RLSC Code and TruckSafe are forms of voluntary industry *self-regulation*. Gupta and Lad (1983) define industry self-regulation as:

> 'a regulatory process whereby an industry-level, as opposed to a governmental- or firm-level, organization (such as a trade association or a professional society) sets and enforces rule and standards relating to the conduct of firms in the industry' (Gupta and Lad, 1983: 17).

Schemes are characterised as voluntary self-regulation when the rule-making and enforcement is carried out privately by the firm or industry, independent of direct government regulation (Gunningham and Rees p.365). In these cases, the primary responsibility for formulation and enforcement of standards rests with the industry body. Industry regulatory schemes with which the government has an oversight and/or ratification role are referred to as co-regulation or meta-regulation (Baldwin, Cave and Lodge, 2012). The NHVAS is an example of *co-regulation* because it is housed within the National Heavy Vehicle Regulator which administers the Heavy Vehicle National Law. All three systems constitute voluntary forms of regulation because it is entirely the choice of a firm whether or not to join.

Voluntary industry regulation systems that operate through codes and accreditation essentially regulate behaviour through the mechanism of *authorisation*. That is, the mechanism of providing certification based on the meeting of a code of conduct and associated standards provides authorisation that the organisation has met certain standards and has the capacity and competence to undertake the relevant activity (Freiberg, 2017: 316).

Self-regulatory and Co-regulatory schemes are often subject to 'third party regulation' through external auditors or other certifiers (Freiberg, 2017). Highlighting the distinction between the three codes examined in this project, while the certification fees charged for accreditation by the RLSC and TruckSafe are earnt by the relevant industry organisation, accreditation charges associated with the NHVAS are paid to the government. In terms of acquiring certification with the RLSC, TruckSafe and NHVAS, all three systems require participants to have undergone an entry audit and regular follow-up audits. These must be conducted by an auditor holding Exemplar Global (previously RABQSA) certification, gained through the Quality Society of Australasia.

1.3 The Wider Regulatory Framework in the Transport and Logistics Industry

The industry-based codes of practice and accreditation systems discussed in this Report sit within a broader framework of WHS regulation in this sector which impose duties and obligations to provide safe workplaces. This framework includes:

- **Individual Company Self-Regulation** such as company codes of conduct;
- **Other Industry Self-Regulation additional to accreditation schemes** such as the Bluecard, an industry-accredited training certificate;
- **Legislation**: The relevant state and national *Work Health and Safety Acts*, the *Heavy Vehicle National Law* 2014 (Cth), and the *Fair Work Act* 2009 (Cth). These are discussed further below.

Accreditation systems such as the RLSC Code, TruckSafe and NHVAS, whether self-regulatory or co-regulatory schemes, occur within the shadow of statutory regulation. It is legislation that has established legally enforceable duties and standards for health and safety, both in Australian workplaces generally and in the retail transport and logistics sector. In this regard, WHS is principally regulated by state and federal Work Health and Safety legislation. Prior to implementation of the *Model Work Health and Safety* Act through much of Australia, each state and territory had enacted their own occupational health and safety laws, imposing enforceable duties of care on employers to provide safe workplaces, and requiring organisations to develop safe work policies, practices and consultative arrangements. Many of these earlier statutes have since been replaced by the *Model Act* which sought to harmonise WHS responsibilities and practices across the country.

As Table 1.1 shows, the Model ***Work Health and Safety Act*** has been enacted in most states and the two territories since 2011, although most jurisdictions have also amended the Model legislation by enacting specific state-based provisions as well. Western Australia and Victoria are still regulated by their traditional Occupational Health and Safety Acts. The WHS laws attach specific duties of care to persons conducting business units, officers, workers and others at workplaces. They also include detailed provision for consultation with workers and their representatives, the resolution of safety concerns and disputes, monitoring, information provision, training and other elements associated with safety management systems. Under the WHS Acts, inspections and investigations are undertaken by specialist state WHS agencies and the laws are enforced by administrative tools such as improvement notices, enforceable undertakings, and civil sanction including prosecutions incurring fines.

Table 1.1: Key Health and Safety legislation pertaining to retail transport and logistics industry.

STATE	General Work Health and Safety Legislation	Specific Heavy Vehicle Legislation
National	Work Health and Safety Act 2011	—
Queensland	Work Health and Safety Act 2011	*Heavy Vehicle National Law Act 2012 (Qld)*
New South Wales	Work health and Safety Act 2011	*Heavy Vehicle (Adoption of National Law) Act 2013*
Victoria	Occupational Health and Safety Act 2004	*Heavy Vehicle National Law Application Act 2013*
Tasmania	Work Health and Safety Act 2012	*Heavy Vehicle National Law (Tasmania) Act 2013*
South Australia	Work health and Safety Act 2012	*Heavy Vehicle National Law (South Australia) Act 2013*
Western Australia	Occupational Health and Safety Act 1984	COR regulated in Road Traffic (Vehicles) Act Road 2012, and Traffic Vehicle (Administration) Act 2008
A.C.T.	Work Health and Safety Act 2011	*Heavy Vehicle National Law (ACT)* Act 2013
Northern Territory	Work Health and Safety (National Uniform Regulation) ACT 2011	–

The ***Heavy Vehicle National Law*** (HVNL) specifically regulates the RFT industry. It applies to trucks weighing more than 4.5 tonnes. Following enactment of the *Heavy Vehicle National Law* (Qld) 2012, most states and territories also adopted the law, except for the Northern Territory and Western Australia (see Table 1.1).

The HVNL and Regulations have essentially provided minimum WHS standards in relation to a range of transport activities, including fatigue management, mass, dimension, loading and vehicle standards. The NHVR which administers the legislation also manages the accreditation system operating under the HVNL, known as the NHVAS, in addition to a Registered Industry Code of Practice (RICP) scheme which details standards in particular areas of the transport industry. Notably, the RLSC Code was an RICP until recently when it was replaced by the Master Codes (discussed later).

The HVNL commenced as a national law in February 2014 and operated on a deemed liability basis. That is, when an on-road offence was detected, other relevant parties in the chain of responsibility (COR) could be deemed liable. Under the Act, COR parties may include employers, prime contractors, operators, consignors, consignees, schedulers, loaders and others. When first enacted, the HVNL generally only contemplated offences against fatigue, speed, mass, dimension and loading of a heavy vehicle.

In the case of a breach of the Act, COR parties could be obliged to prove they had taken all reasonable steps to prevent it occurring. Under this regime, an individual faced a maximum fine of $21,590 in the case of a severe breach of a requirement concerning vehicle mass, $16,190 for a critical work/rest breach and $10,790 for failing to ensure business practices would not cause a driver to exceed a speed limit (the fine for a corporation was a maximum five times this figure).

Amendments to the HVNL in 2017 (effective 1 October 2018) have changed the statutory regime substantially. Before the amendments, parties complied with COR obligations so long as they had taken all reasonable steps, or undertaken all that was reasonably practical to prevent a breach of the HVNL. The amendments have replaced the prior regime of deemed liability for COR parties with a positive duty on them to ensure safe practices. The primary duty creates an obligation where none previously existed under the HVNL. That is, it imposes a broad general duty which, although inclusive of mass, dimension, loading, speed, fatigue and maintenance, is not limited to these breaches. Further, rather than being liable for breaches detected as before, the legislative changes impose an obligation on operators ‘to eliminate and minimise public risks by doing *everything reasonable* to ensure transport-related activities are safe’ (emphasis added. NHVR, 2017: 8). This means that parties in the

supply chain will need to take a strategic preventative approach to managing risks (NHVR 2017, p.5; also, NHVR 2018a).

Civil penalties for breaches of a primary duty are also now much higher than previously, and similar to those under WHS laws, with a maximum fine of $3 million for a corporation and $300,000, or 5 years imprisonment, or both, for a person. Penalties will be determined in accordance with the severity of risk posed by the offence. Enforceable undertakings are also an intervention option as an alternative to prosecution and improvement notices (NHVR, 2017a; NHVR, 2018a).

The third major statute applicable to this area is the ***Fair Work Act*** 2009 (Cth), which establishes a national minimum wage and national employment standards, as well as legally enforceable minimum wages and conditions through modern awards and enterprise agreements. Key relevant modern awards include the Road Transport Distribution Award 2010 and the Road Transport (Long Distance Operations) Award 2010. These modern awards establish minimum weekly and hourly pay rates, as well as overtime, shift and penalty rates for drivers and payments for loading and unloading duties. Enterprise agreements are the primary instrument for upgrading wages and working conditions of eligible truck drivers, above the award rates. Collective agreements in the RFT sector have included higher rates of pay and superannuation, and employer commitments to pay contracted drivers pay rates that do not undercut those of employee drivers. Compliance with modern awards and enterprise agreements depends on the effectiveness of monitoring and enforcement by trade unions and government agencies such as the Fair Work Ombudsman, the latter itself dependent on political decisions concerning its budget.

Importantly, the FW Act applies only to those defined as ‘employees’ under the legislation and hence in the retail transport and logistics industry, it inevitably excludes the large segment of the workforce hired as contractors and sub-contractors. The establishment of the Road Safety Remuneration Tribunal in 2012 was an attempt to regulate the rates paid to those workers in the industry who were hired on contracts of service, rather than as employee drivers. However, this attempt was cut short in 2016 with the abolition of the tribunal (Rawling et al, 2017; Thornthwaite and O’Neill, 2018)

Voluntary industry self-regulation through the RLSC, therefore, is just one part of a complex mix of health and safety regulations in the industry. Each has a different locus of control, but there is also considerable overlap. For this reason, any evaluation of their effectiveness and impact must take into account how the various forms of regulation interact in shaping WHS and also the influence of the different incentive and enforcement systems available, both individually and as mutually reinforcing tools.

1.4 Method

This project was commissioned to provide a qualitative analysis of the operation of a key voluntary industry-based code of practice regulating WHS in the retail transport and logistics industry: the Retail Logistics Supply Chain Code of Practice, administered by the ALC. The objective of the project, in examining the RLSC Code and its associated accreditation system was to explore levels of industry engagement in the Code, implementation issues, participant perceptions of accreditation and its impact, and the scheme's implications for WHS in the sector. More broadly, the project also sought to shed light on the impact of voluntary industry self-regulation on WHS.

As discussed above, the multiplicity of industry accreditation systems operating alongside the RLSC Code made it appropriate to examine two other schemes in addition to the RLSC, TruckSafe (an ATA scheme) and the NHVAS. Another reason for expanding the scope of research was that questions had emerged in relation to the role that the RLSC might play in the future. From 2017, the ALC and ATA have been working together to develop a Master Code to reflect the changes to the HVNL which commenced in October 2018. Registration of the *Master Code*, under the RICP provisions of the Act, would provide an alternative set of standards to the RLSC Code and TruckSafe to which companies might choose to comply. This held the prospect of changing the role of both RLSC certification and that of Trucksafe. Given the existing mix of schemes and impending changes in the regulatory landscape, therefore, this project examined three industry regulation systems rather than one.

The research is based on **three main sources of evidence**. A comprehensive **literature review** was conducted both through the Macquarie University library catalogue and Google. A wide range of search words was used incorporating combinations of the following: road transport,

freight road transport, logistics, supply chain, industry codes of conduct, regulation, self-regulation, occupational health and safety, and work health and safety. In addition to published intellectual literature, the project also drew on industry magazines, newsletters and annual reports. The empirical research also included **documentary evidence** from accrediting/code institutions and other representative organisations, including reports, policy and procedural documents, and correspondence, as well as submissions to government and reports of government inquiries.

The second empirical source included 30 semi-structured **interviews** with key industry participants, including retail firms, transport and logistics businesses, officials from code/accreditation institutions, officials of representative organisations, and an auditor.[1] The focus was on interviewing industry stakeholders and individuals with responsibility for logistics and supply chains, practical engagement with the RLSC Code, and health and safety. With some organisations, several interviews were conducted. This included thirteen interviews with businesses that are signatories to the RLSC Code (No. of firms = 7) and seven interviews with businesses that have not become signatories (No. of firms = 6). In addition, seven interviews were conducted with officials in representative organisations (No = 4), and one with an auditor working with one scheme. Finally, with institutions operating these schemes, we conducted four interviews, two of which were interviews with officials who shared two capacities and hence are included in the counts above.

Interviews were between 38 and 90 minutes in duration. Some businesses were registered with two of the accreditation systems – RLSC, Trucksafe and NHVAS – others with all three. Most also maintained other accreditations. All interviews were taped and transcribed by a reputable transcription agency. Due to commercial sensitivities, respondents are identified in the Report by codes, which are listed in Appendix 1.

A third empirical source of information was the principal researcher's participant observation at a two-day Summit held by the ALC and ATA in September 2018. The Supply Chain Safety Compliance Summit had approximately 280 registered delegates, 44 speakers in the joint sessions, and three workshop sessions. Extensive discussions followed presentations. Each workshop session included five concurrent workshops, which, in sum, included 28 presenters.

[1] Two interviews from a previous project on the RFT industry (Thornthwaite and O'Neill, 2016) that were relevant have been included in this research.

Having observer status at the Summit provided an opportunity to gather valuable insights on industry dynamics, discussions and different viewpoints, as well as have numerous conversations with participants. The participant observation facilitated a crucial contextualization. It provided clues to layers of existing reality, helped to ensure that premature attempts were not made to impose explanations on participants' perspectives and disclosed experiences, and it facilitated deeper understanding of interview responses. During the observation period and following the Summit attendance, the researcher engaged in a process of reflection and analysis, using Silverman's (2008) approach of using questions to review what has been observed and consider its meaning (eg. What do I see going on here? What else is happening in this situation?).

The organisation of interviews with industry participants proved difficult. When we commenced the research, the list of RLSC signatories on the ALC website numbered 78 businesses.[2] We found that two of these businesses were no longer operating. We emailed senior managers in the other 76 businesses, and in most cases sent a follow-up email one week later, but we received only one response. In addition, emails sent to senior officials of ten non-signatory transport operators received no response. In terms of other stakeholders, we used an initial list of eight stakeholder organizations to explore perceptions of employer associations, trade unions and industry accreditation bodies. Of those contacted by email, five failed to respond to introductory emails, but three of those five did respond to third or fourth follow-up emails. Ultimately, interviews were organized largely through contacts the researcher made among transport operators, accreditation institutions, carriers and employer organisations at the ALC-ATA Summit in September. Convenience sampling was used, with the aim being to interview officials from an equal number of RLSC signatory and non-signatory firms.

The interview transcripts were coded according to themes relevant to the project objectives. These themes included: perceptions about the benefits and disadvantages (or limitations) of codes/accreditation schemes, operational challenges, compliance issues, organizational free-riding, and the value of industry self-regulation. Interviews also yielded information on

[2] Subsequently, we found there were 80 signatories – and this is the figure we use in the Report (ALC, 2018c).

perceptions of schemes other than the RLSC, including Trucksafe and the NHVAS, which enabled comparisons of business experience across the examined schemes.

1.5 Organisation of the Report

The remainder of this report is organized in the following way. Section 2 examines the conceptual and empirical literature on the expanding prevalence of industry self-regulation mechanisms alongside traditional command and control legislation from the 1980s. It also looks at issues to do with evaluating such schemes, as well as the factors necessary to the effectiveness of voluntary industry self-regulation and co-regulation.

Section 3 provides a detailed analysis of the three code/accreditation systems covered in this project, including their origins, objectives, content and application. The Master Code is also briefly discussed to provide further context for understanding the regulatory environment. Section 4 discusses the research findings. This includes analysis of the industry coverage and scope of the schemes, perceptions concerning their benefits to industry participants, various experiences of participants and stakeholders, reasons for non-engagement and perceived limitations and disadvantages with the codes/accreditation systems. Finally, Section 5 concludes the report and provides recommendations for policy consideration.

SECTION 2
LITERATURE REVIEW ON VOLUNTARY INDUSTRY REGULATION

Voluntary industry self-regulation has proliferated in the regulatory landscape, alongside a growing diversity of so-called alternative regulatory mechanisms, particularly since the 1980s. This has been a key aspect of the growing regulation of domestic and global supply chains, particularly as global supply chains typically operate outside the regulatory control of any particular country. At much the same time, scholarly research has pointed to the negative implications of supply chain dynamics on labour standards, the environment, and workplace health and safety. However, there has been little empirical research of the roles and impact that voluntary industry supply chain regulation has on WHS and its management.

With the aim of addressing this gap in knowledge, at least in relation to WHS in domestic supply chains, the focus of this study is the RSLC Code, a form of voluntary self-regulation in the Australian retail transport and logistics sector. The Code was established in 2006 by the ALC, a peak representative body in the logistics industry, which has continued to administer the Code and its accompanying accreditation system since. The RLSC Code sits alongside several other voluntary codes of practice in the transport and logistics sector, including TruckSafe and NHVAS, the first being a form of self-regulation like the RLSC Code, and the latter, a co-regulation scheme. The three systems share some similar objectives and features, while also competing for members.

This section of the Report presents an analysis of existing research on voluntary industry regulation, including self-regulation schemes. It begins by examining why there has been a growing reliance on voluntary forms of industry self-regulation and co-regulation in recent years. The section then turns to analyse literature on the implications, including the benefits deriving from these schemes as well as their limitations and disadvantages. The section concludes with a discussion of what research tells us about the requirements for industry regulation to achieve its objectives.

2.1 The proliferation of voluntary industry-based regulation

Industry self and co-regulation are not new phenomena. They have featured in many industries for a considerable time, including in banking, corporate finance, insurance, mass media, advertising and communications (Saurwein, 2011; Gupta and Lad, 1983). Other industries in which such schemes have emerged in recent decades include forestry products, brewing, pharmaceuticals, oil and gas mining, chemicals, coffee, and tourism (O'Rourke, 2003; Wright and RWB, 2006; Hemphill, 2006; Barnett and King 2008; Van Buren and Patterson 2012).

Research identifies particular forces which have driven the embrace of different forms of voluntary industry regulation, alongside the command and control model of state regulation.[3]

Market and political shifts

Hart (2010) attributes the regulatory transformation in part to the political shift toward economic liberalism, particularly from the 1980s, with its emphasis on the importance of the market rather than government intervention in economy and society. This occurred in the context of the weakening of national governments, linked to the ideology-infused reduction in support for state regulation, combined with globalisation and the strengthening economic and political power of multinational corporations (O'Rourke,2003; Windholz and Hodge, 2012). As Weil and Mello's (2007) study of the apparel industry documents, this growth in voluntary industry regulation, at least in relation to labour standards, also emerged in an international setting where no single government body or organisation had authority to regulate workplace conditions. Within the context of changing political ideology, governments increasingly also supported 'private' voluntary strategies and market regulation, because these were seen as more flexible systems which could supplement overworked and under-resourced state agencies. (O'Rourke, 2003: 4; Ayres and Braithwaite, 1992; Short and Toffel, 2010).

[3] While this body of research also examines the emergence of voluntary corporate regulation, as the focus of this project is on industry regulation, arguments pertaining to corporate self-regulation are not pursued.

A changing discourse on law and regulation.

Coterminous with these market and political shifts was a growing critical discourse on traditional regulatory models and particularly the deterrence-punitive models of state legislation which, in the neo-liberal environment, many saw as akin to providing the proverbial sledgehammer to crack a nut (Aalders and Wilthagen, 1997; Short and Toffel, 2010). Critics of business regulation argued that legislation was unable to effect sufficient behavioural change in regulatory targets because it was developed so remotely and with such limited practical understanding of business contexts. The case for self-regulation is based largely on questions of expertise. Regulatory experts claim that levels of industry specific knowledge and expertise are higher, the regulators understand better the regulated parties and accordingly, the regulatory scheme itself is more acceptable, enhancing voluntary compliance (Baldwin, Cave and Lodge 2012). In this sense, industry regulation is identified also with the broader concept of responsive regulation.

The term *responsive regulation* refers to a model of enforcement based on the regulator and regulatees having an ongoing relationship through which the regulator nurtures and builds ethical standards and develops the capacity of the regulation target to change their own behaviour (Freiberg, 2017). The work of Ayres and Braithwaite (1992) on *responsive* regulation, and that of Gunningham et al. (1998) on *smart* regulation, are representative of discussions in fields of law and regulation at the time which provided conceptual support for the shift in regulatory patterns. The discourse focused heavily on developing more informal, localised solutions to sit alongside the command and control model.

Legal and regulation scholars did not argue that voluntary forms of regulation should wholly replace legislation, but rather suggested a set of complementary, reinforcing mechanisms (Gunningham et al, 1998). Their work proposed new forms of regulation 'capable of bridging the gap between the state and the market, harnessing intermediary players and processes and acting in reflexive ways to promote various forms of regulated self-regulation' (Walters et al, 2016: 35).

Supply chain complexity and growth

The proliferation of voluntary industry regulation mechanisms has also been coterminous with the development of more complex supply chains, both domestic and global (Saurwein, 2011; Quinlan 2011). Supply chains

> 'are an elaborate set of successive contractual arrangements designed to provide a good or service from the producer to the principal organisation. It is a network, with contract conditions and oversight so that the principal can retain control of the quality and timeliness of the goods provided' (Quinlan, 2011: 1; see also Wright and Kaine, 2015).

Quinlan (2011) and the EU-OSHA (2012) have pointed out that elaborate supply chains are a long-established feature of industries like agriculture, construction, textile, clothing and footwear, manufacturing and transport. However, more recently they have become increasingly common and complex in other sectors, including telecommunications, defence, mining and retail logistics. Research suggests that, in relation to supply chains, the need for alternative forms of regulation is linked to the fragmented and dispersed nature of work, and new levels of interdependence and strategic alliances within networks leaving traditional government regulation ill-equipped to monitor compliance on their own or persuade the adoption of uniform standards through these complex chains (Lad and Caldwell, 2009; Walter and James, 2011).

Public expectations

Another factor underpinning the growing attraction of firms to alternative forms of regulation, was the heightening of public expectations in relation to socio-political rights and standards from the 1980s (Windholz and Hodge, 2012). Many industries came increasingly under the spotlight for poor labour standards, environmental practices, health and safety disasters and other issues, on the domestic and international stage. As pressure groups called for increased corporate accountability and for firms to behave in more socially responsible ways, pressures built within industry representative bodies to develop solutions that fit the neo-liberal, free market model of eschewing state intervention (Weil and Mello 2007; Lad and Caldwell, 2009; Hart 2010). O'Rourke noted also that, for many groups interested in strengthening socio-political rights and standards, 'nongovernmental

regulation was attractive as a *supplemental* system of monitoring and enforcement' (emphasis added. O'Rourke, 2003: 5). In response, numerous corporations and industries developed voluntary private codes of conduct ostensibly to influence organisational responses on particular issues including wages, working conditions and work health and safety.

Reputational Concerns

Scholars have also argued that adopting a code reflects a firm's strategic desire to acquire and/or maintain a positive reputation within their institutional environment. Wright and Rwabizambuga (2006), for instance, observe that such codes reposition or reinforce an organisation's reputation by assuring stakeholders that the business is operating responsibly, and by distinguishing its reputation from competing, perhaps rogue firms.

This notion of how reputational concerns motivate self-regulation has been explored in the theory of reputational commons. According to Barnett and King (2008), firms share a 'reputational commons' where the reputation of the group and those who compose it are intertwined, and one firm's actions influence the judgments that observers make of another firm or the industry as a whole. In this context, self-regulation emerges to constrain individual actions that might harm an industry as a whole. An example in the RFT industry is where a major accident involving one transport operator can increase reputational harm through the industry. Forming a self-regulatory institution can protect reputational commons in several ways. These include protecting the reputation of members against the whole; protecting members from harm caused by bad neighbours; diverting sanctions for noncompliance from those who are members; and pre-empting new state regulation covering the industry (Barnett and King, 2008; Wright and Rwabizambuga, 2006).

However, Walters and James (2011) research cautions that, in relation to health and safety in supply chains, reputational pressures are only one contributory factor motivating organisations to behave responsibly. They noted that 'only rarely will OHS concerns alone constitute grounds for meaningful supply chain action' (Walter and James 2011: 992). While supply chain pressures work to improve the focus on health and safety when there are substantial reputational and legal risks, they argued, other crucial factors engendering an interest in WHS include close and dependent supply relations, external regulatory pressure,

meaningful scrutiny from external agencies, and action from civil society groups (Walters and James, 2011; Walters, 2009; Bhattacharya and Tang, 2012).

2.2 Supply Chains, WHS and Industry Regulation

The relationship between supply chain structures and adverse WHS is well documented. Research has charted the degradation of work and working conditions in domestic and global supply chains in many industries, including construction, clothing and textiles, and food processing (Mayhew and Quinlan, 1997; Nossar et al, 2004; Van Buren and Patterson, 2012; James et al, 2015). Much of the literature has found that, in relation to health and safety, various work arrangements associated with supply chains including outsourcing,[4] subcontracting and multi-tier contracting arrangements have a substantial negative effect (Quinlan, 2011; Gregson et al, 2015).

James et al (2007: 166) identify the dynamics of supply chains in terms of a rational business logic. That is, through the network, firms seek to drive down costs, increase productivity and transfer business risk using external providers to achieve these outcomes. A key force in supply chain development is the potential to obtain services or goods more cheaply through contracting and multi-tiered sub-contracting arrangements (Gregson et al, 2015: 606). In this context, the larger and financially stronger parties at the supply chain apex impose contractual terms that squeeze the margins of contracted parties below, in the process neglecting WHS in those firms (James et al, 2007: 169; Gregson et al, 2015). For the smaller operators, their ability to invest in WHS is limited by the narrow profit margins under which they operate, due to the contract prices imposed by large clients (James et al 2007: 169)

According to Quinlan (2011: 1), three aspects of supply chains affect OHS:

- *Economic/reward pressures*- on contractors and subcontractors leading to greater work intensity and safety-compromising practices;

[4] Outsourcing is defined as: 'the act of obtaining goods or services from individuals or organisations outside of a firm's boundaries, when those goods or services could be created internally by a firm's own employees or managers' (Davis-Blake and Broschak (2009), cited in Wright and Kaine, 2015: 487).

- *Disorganisation* -associated with characteristics common to subcontracting such as poorer communication, lower training standards and the inability of workers to organise collectively; and
- *Regulatory failures or gaps* - where regulatory mechanisms fail to address all participants in the supply chain or enforce standards.

However, research also points to the potential for powerful supply chain actors to use their market power to improve WHS in the chain (Walters et al, 2016; Bhattacharya and Tang, 2012; Raj Reichert, 2012). James et al (2007) argue that those at the supply chain apex can promote increased legal compliance down the chain because they have more sophisticated WHS knowledge and expertise, and can influence the management decisions of contracting firms through the power to terminate contracts and inflict financial loss. At the same time, lead firms themselves are reachable by enforcement agencies and therefore likely to experience enforcement while also being sensitive to the reputational damage involved (James, Johnstone et al, 2007:176). Gupta and Lad (1983) argued, though, that the outcome of industry self-regulation depends on how power is structured. They found that if one or several firms have too much power over the others, they will benefit disproportionately from the self-regulation and smaller firms are likely to see little benefit for themselves from involvement in the schemes.

Essentially, existing research on the specific adverse WHS problems associated with supply chains, however, indicates that the causes are fundamentally economic in nature because they are linked to the pricing of contracts by leading firms (Robinson, 2010; Lin-Hi and Blumberg, 2017). Outsourcing and sub-contracting are business arrangements pursued specifically to reduce the costs of goods and services (Wright and Kaine, 2015). Not surprisingly, research shows that ongoing efforts by major retailers to drive down costs compromise the working conditions of already vulnerable workers through the retail supply chain (Robinson, 2010).

2.3 Empirical Research on Voluntary Industry Regulation and WHS in Practice

Little empirical research has been conducted on industry self-regulation schemes, and even less on schemes that apply to health and safety in supply chains. O'Rourke (2013: 10) wrote

of voluntary industry regulation that, firms naturally assert that these systems respond effectively. Gunningham and Rees (1997) contended, 'there is growing evidence of a range of circumstances where self-regulation … can be a remarkably effective and efficient means of social control' (p.363). However, there has been very little systematic evaluation of these regulatory mechanisms, and most of the evidence available focuses on why industry bodies establish forms of self-regulation and why firms might take part.

Schneiberg and Bartley observe that, 'scholarship on new regulatory forms has produced far more empirical research on their rise and character than on their translation into practice' (in Short and Toffel, 2010: 365). Rather, the literature explores what self-regulation *might* achieve (the promise and limitations) but not what actually happens (Short and Toffel, 2010: 362). Thus, there is a paucity of evidence in relation to whether, for example, these regulatory mechanisms actually improve WHS.

Similarly, on the drivers of successful self-regulation, scholars propose certain factors. For instance, Van Buren and Patterson (2012) hypothesise that industry self-regulation is more likely to respond to stakeholder concerns in certain situations, such as when there are one or two large firms that play a central role in defining standards for an entire industry, and an industry scheme itself is viewed as legitimate. Again, however, Van Buren and Patterson do not provide empirical evidence in relation to their hypotheses.

This sub-section draws on empirical research in two areas: accreditation schemes in the Australian RFT industry and the Responsible Care Program in the US chemical industry. Literature on the Australian accreditation scheme is discussed because it is one of the focuses of the present research project. We focus on the chemical industry code in the US because, of all such Codes worldwide, this has perhaps attracted the most qualitative analysis (Howard et al, 1999; King and Lenox, 2000; Barnett and King, 2008).

Accreditation in Australian Road Freight Transport

Reflecting the limited body of research on industry regulation more broadly, there has been negligible qualitative analysis of accreditation systems in Australia's RFT sector. In terms of the involvement of firms, the research confirms that the numbers of those seeking accreditation are so small that a critical mass of commitment is 'not self-evident' (Mooren et al, 2012: 9) Assessment of the effectiveness of industry codes and accreditation in

improving WHS is confined largely to quantitative data sourced in 2008 and 2009. This is based on limited measures including crash rates,[5] insurance claims and vehicle defect rates. In this regard, Baas and Taramoeroa (2008), found that when comparing vehicles accredited with TruckSafe and NHVAS with non-accredited vehicles, accreditation may reduce crash and claims rates. They indicate that accredited vehicles recorded an average of 50 per cent to 75 per cent fewer crashes. With TruckSafe, a 57% reduction in insurance claims is reported for firms within two years of accreditation (Baas and Taramoeroa, 2008). However, Jansen (2009) found that there is no significant difference in major defect rates for vehicles in alternative compliance schemes compared to non-accredited vehicles. Baas and Taramoeroa (2008) also cautioned that the causal direction is not clear: that is, the (limited) better performance of accredited businesses may reflect the fact that those with good safety practices are more likely to pursue accreditation in the first place.

The only comprehensive analysis of voluntary self-regulation in Australia's road freight transport industry, Walker's (2012; 2016) studies of stakeholder perceptions of the NHVAS system. Walker found the view widespread that NHVAS is effective in motivating some firms towards better compliance, and for those involved, it enhances the dialogue between industry and regulators about safety. However, Walker concluded that overall, the growth in dialogue and interest was modest, and, moreover, NHVAS had achieved little in terms of improving safety outcomes (Walker 2016: 86).

Walker also found that amongst industry participants in NHVAS, there was a diversity of behavioural/compliance responses ranging from willing compliance to deceptive ritualism. He identified a culture within NHVAS, in which many participants engaged in front end ritualistic behaviour (p.82) and 'free riding' in practice (Walker, 2016: 82). Without systems of 'robust regulatory backup', Walker argued,

> 'firms readily engage in ritualistic participation, often documenting compliance to scheme standards for the benefit of inspectors or third-party auditors, whilst failing to change operational practices to align with requirements' (Walker, 2016: 76)

[5] As Thornthwaite and O'Neill (2016, 2018) have shown, crash rates are an insufficient measure of health and safety in RFT. Essentially these only capture accidents that are on-road and result in crashes, which constitute a negligible proportion of accident and injuries in the industry.

In addition, regulators often engaged in 'ritualistic entry audits' as well as failing to provide much follow-up in terms of monitoring and enforcement (Walker, 2016: 82). For Walker, this enabled transport operators to satisfy the appearance of compliance through audits, without fundamentally changing behaviours and delivering safe practices in workplaces.

In sum, the research on these RFT accreditation schemes reveals the following issues. First, accreditation systems appear to have, at best, a positive impact on crash insurance claims rates. Second, audits and compliance in the industry are characterised widely by symbolic ritualism. However, a potential benefit of the schemes is that they appear to improve the dialogue around safety between regulators and members/participants.

The Responsible Care Program in the US Chemical Industry

The Responsible Care Code is a voluntary industry scheme in the US to regulate environmental, health and safety activities of chemical companies. It constitutes ten principles and six codes of responsibility which together, address over 100 practices. Four of the six codes concern management within the firm: process safety, employee health and safety, distribution and product stewardship. Two other elements address how firms interact with suppliers and customers: these are, community awareness and emergency response, and pollution prevention (Howard et al, 2000).

Research on this program indicated three important findings. First, reflecting the latitude that companies have in the specific ways they implement a Code, there was considerable variation in how companies applied it, and how organisational members interpreted the importance of the six elements (Howard et al 1999). Second, there was a pattern in the way many firms differentially implemented the internal and external elements of the code. That is, there was a wide adoption of the two externally focused elements, with organisations engaging in strong imitation or mimesis in relation to practices adopted. In contrast, with the internal elements, which included WHS, firms implemented standards with much less uniformity and rigour (Howard et al, 1999).

Third, research highlighted that the perceptions that senior management have of a Code influences the way in which their firms adopt them. Howard et al (1999) identified four different implementation patterns: describing firms as drifters, promoters, adopters and

leaders. The four patterns constituted a continuum in terms of engagement with the Code, from low adoption by Drifters, who viewed the Code as cumbersome and unhelpful and essentially ignored it, to Leaders, in which the Code established a new way of thinking in terms of supply chain management and a continuous improvement culture (Howard et al, 1999). However, the value of this typology is limited by the fact that it suggests that all changes adopted in environmental safety standards in the studied firms were attributed to the Code, rather than considering a more complex pattern of influences.

Fourth, firms participating in the Code did not appear to improve their environmental performance more than non-members (King and Lenox, 2000). Moreover, researchers pointed out that the scheme relied heavily on peer pressure and that compliance was often gauged entirely through self-reporting (Barnett and King, 2008). Several scholars suggest that this indicated the need for such Codes to have third party certification and explicit sanctions which could be delivered independent of the industry body (King and Lenox, 2000; Barnett and King, 2008).

In sum, therefore, research on this self-regulation system pertaining largely to environmental standards in the US chemical industry suggests two key issues in relation to patterns of implementation. First, firms differ substantially in levels of commitment to Codes, according to perceptions of the Code's value and the reputational risks involved. Second, such codes do not necessarily enhance the conformity of firms with standards, particularly in the absence of independent third-party certification and enforcement.

2.4 The Benefits and Detriments of Voluntary Industry Self-Regulation.

In the literature on industry self-regulation, there is considerable discussion of the possible benefits and detriments for firms from engaging in these schemes generally, and in relation to impacts on WHS in particular. The six main benefits proposed include:

- *Establishing new norms of behaviour for industry participants.* The process of seeking certification with a voluntary industry scheme enables individual firms within the industry to recognise shared normative concerns, select standards that they accept as practicable and appropriate, and internalise responsibility for compliance. This also helps to build a collective identity among businesses within the industry. This in turn provides the potential for peer pressure to enforce the new norms and raise behavioural

standards, potentially beyond the letter of the law. In addition, new normative scripts help to replace previous custom and practice, through informing and justifying new industry imperatives. This creates an ethical floor for industry members which can both guard against irregular or unethical behaviour and make those who do not conform appear as deviants (Van Buren and Patterson, 2012; Howard et al, 1999; Gunningham, 2011; Gunningham and Rees, 1997; Short and Toffel, 2010).

- *Developing industry-sensitive approaches to WHS.* Proponents suggest industry self-regulation leads not only to new norms, but also management norms in relation to WHS that are more acceptable to firms. Approaches can be more sensitive and flexible in relation to market circumstances, and cost less, contributing to a perception that they are more democratic, appropriate and credible. This enhances the legitimacy of the standards and reduces resistance to regulation (Gunningham and Rees, 1997; O'Rourke, 2003; Gunningham et al, 1998).
- *Providing signals concerning WHS commitment to the market.* Many scholars and commentators argue that forms of industry regulation such as accreditation systems provide a signal to the market for firms that they are taking the right action in relation to health and safety. This facilitates access to contracts and better markets. In addition, they argue, for the industry as whole, accreditation systems help to provide a somewhat unified message to stakeholders of how an industry is responding to its social responsibilities (Walker, 2016).
- *Building capacity through sharing of knowledge and tools.* Industry regulation schemes enable a pooling of knowledge and resources, including practical expertise, to facilitate the development and effective implementation of policies and practices within individual organisations. This knowledge sharing means that each firm need not develop strategies from scratch (Lin-Hi and Blumberg, 2017; Van Buren and Patterson, 2012; Gunningham and Rees, 1997).
- *Industry regulation schemes are often associated with commercial benefits and regulatory concessions*, such as access to large public sector contracts, fee discounts and tax reductions which can provide substantial commercial advantages to members (Leyden, McIntyre and Moore, 2004).
- *Reducing the demands on State-funded bodies.* For State regulators, a focus on less interventionist approaches frees up scarce government resources. Not only might

voluntary schemes avoid the need for further government regulation, it may also enable a redeployment of resources to enforcement activities (Gunningham et al, 1998; Sethi and Emelianova, 2006).

However, scholars and industry commentators also suggest several detriments and shortcomings to voluntary industry regulation. Four of these are:

- *A tendency for symbolic commitments* rather than comprehensive changes to business practice. Hart (2010: 586) observed that many businesses are likely to adopt instrumental rather than normative orientations and thus, 'to perform within a narrow range around a regulatory norm.' Other research suggests that industry regulation bodies and individual firms can engage in a form of 'window dressing' or 'sham' compliance, giving the appearance of regulation, and therefore warding off more direct, effective government intervention. Criticised behaviours include the adoption of weak standards, an ineffective, tokenistic compliance, a lack of rigorous auditing, laissez-fair application, ineffective enforcement and weak sanctions (Lin-Hi and Blumberg, 2017; Howard et al, 1999; Gunningham and Rees, 1997; Wright and Kaine, 2015; Short and Toffel, 2010). Commentators have noted, moreover, that those signed up to voluntary forms of regulation can downplay or disregard them when economic pressures tighten (Walters and James, 2011; Bhattacharya and Tang, 2012)
- *Inadequate sanctions and under-enforcement.* The voluntary nature and flexibility associated with industry regulation means that the industry bodies administering them typically lack much discretion or authority to impose meaningful sanctions on non-compliant participants (Freiberg, 2017).
- *Undermining government and trade union interventions to protect WHS.* Commentators suggest private industry regulatory schemes are an attempt to delegitimate and free industry from state regulation while also crowding out independent forms of worker protection. From the perspective of industrial relations theory, the regulation performs a unitarist function, demonstrating sufficient managerial commitment to WHS to 'buy out' the union impulses of workers (O'Rourke, 2003). As Locke et al (2013: 523) argued, these programmes 'displace government and union interventions and are designed not

to protect labour rights or improve working conditions, but rather to limit the legal liability of global brands and prevent damage to their reputations'.[6]

- *Commercial Disadvantages from Free-Riding.* Research has also pointed to the problem of free-riding whereby industry participants that abstain from self-regulation schemes have a cost advantage over ethical participants. For example, in the textile, clothing and footwear industry, Nossar et al (2004: 14) observed, 'less ethical retailers who refused to 'volunteer' could consequently benefit commercially from the exploitation of outworkers that more ethical retailers had agreed to forego'.
- *More critically, scholars also suggest that private vested interests and voluntary regulation may be mutually incompatible.* In their study of the Chinese toy industry, Lin-Hi and Blumberg (2017) wrote that, because Brand Buyers were committed primarily to low prices, short delivery times and high flexibility, they routinely outsourced to achieve those goals, in the process evading responsibility for the costs of improving WHS. Lin-Hi and Blumberg pointed out that, until industry customers made a concrete commitment to responsible sourcing practices in the toy industry, factories that demonstrate a commitment to responsible practices are at a commercial disadvantage. Cragg (2005) argues that pursuit of self-regulatory mechanisms may, indeed, be duplicitous. He wrote:

> 'Self-regulation based on voluntary standards of conduct is not simply bound to be ineffective; it is also profoundly deceptive. By advocating self-regulation as an effective alternative to regulation by democratic institutions, corporations are moving the task of setting standards from the public arena, where motivations and principles are subject to public scrutiny and debate, to private control, where the dominant and dominating motivation is governed by private (financial) interest' (in Hart, 2010, p.587)

2.5 Evaluating the effectiveness of industry self-regulation

In the existing research literature there is little discussion on how to evaluate the effectiveness of voluntary industry regulation. O'Rourke (2003) identifies a number of

[6] Note, though, that Locke et al (2013) found in countries where state labour standards were poorly enforced, private regulation such as industry supply chain regulation could provide a valuable substitute for national law.

criteria including legitimacy, rigour, accountability, transparency, independence of monitors and other criteria. However, O'Rourke's suggestions are limited because the criteria are concerned only with process, not outcomes.

An alternative is to measure effectiveness in terms of compliance, which may be viewed as the target population's compliance with the regulations (OECD, 2000; Freiberg, 2017). Van Buren and Patterson (2012) note that some commentators judge success in terms of the proportion of firms in the industry which have subscribed to a regulatory scheme, or the system's impact in influencing firms to adopt a consistent set of standards. For others, success is linked to the extent to which regulation lead to standards of practice which exceed those that legislation imposes; that is, behaviour that goes beyond compliance. For Van Buren and Patterson (2012) public perceptions of the regulation as functional and effective are also significant.

Regulatory studies have demonstrated that, compliance depends on three factors: understanding, willingness and ability (OECD, 2000). Understanding and ability both depend on the skills, knowledge and other resources available to firms, including whether they have dedicated staff with the expertise to fulfil the regulatory requirements. Firms may be unwilling to comply because they consider compliance too costly, legalistic or difficult (OECD, 2005). Willingness may also vary according to the prospects and consequences of 'free riding'. Industry participants make calculations about the risks of being reported, detected, inspected, and sanctioned (Thornthwaite and O'Neill, 2016).

Freiberg (2017) argues that in certain economic or social contexts, non-compliance may be inevitable or, at least, understandable. He links this to market forces: where there is substantial conflict with market forces, compliance can be infeasible for many in an industry. That is:

> 'market forces that make it difficult to both comply and remain financially viable will create an environment where non-compliance is highly probable, and enforcement will either drive regulatees out of business or force the activities underground … Economic factors will loom large where, in a specific industry, the regulatory environment makes it difficult for the regulatee to remain economically viable and consequently must break the law in order to survive' (Freiberg, 2017: 390).

This suggests that, in certain markets, voluntary forms of regulation are unlikely to be effective in widely changing behaviour towards desired objectives. Notably, Freiberg (2017) illustrates his argument by reference to the Australian RFT industry, arguing that the widespread regulatory non-compliance characterising it is the product of the *economics of the industry*. He points to the small margins, fierce competition, power imbalances between small operators and lead firms, and the lead firms 'taking advantage of the competitive environment to keep rates low' (Freiberg, 2017: 390; see also NTC, 2013: 37).

In considering the effectiveness of industry regulation schemes in improving health and safety, it is also important to distinguish between the objectives of particular schemes, as reflected in the codes and safety issues they address, and what might be considered best practice in WHS. Substantive achievement of regulatory objectives is a useful measure of compliance with the regulations themselves. However, to achieve best practice may require a different focus, and involve distinct behaviours and actions than those associated with complying with a specific code.

Why might there be a distinction between the objectives of an industry-based code and accreditation scheme and broader health and safety goals? Applying the public policy concept of problematisation (Bacchi, 2012) to regulatory policy, we argue that regulations are developed to match the problem that has been identified (see also Sheehy and Feaver, 2015). The regulatory content and methods used will vary depending on how the problem has been conceived and framed. Thus, for instance, the safety of transport operators can be measured in terms of fatalities and crashes, or instead, the myriad of injuries represented in workers' compensation claims. Similarly, the risks that transport operators face may be framed in terms of fatigue, speeding, unsafe loads and unsafe vehicles or they may be framed in terms of employee wellbeing and income security. The way in which the problem is constituted frames the way in which regulations are designed and the objectives which regulators hold for them. Accordingly, while evaluation against the specific objectives and criteria established for a particular regulatory scheme is an entirely legitimate exercise when attempting to identify its impact more broadly, the constitution of the problem is also a critical consideration.

2.6 Factors required for effective industry supply chain regulation

Research on voluntary industry self-regulation and co-regulation suggests a host of factors that are important to achieving effective OHS supply chain regulation. Given the limited empirical research on these systems, many of these factors are the subject of hypothesis rather than being substantiated by evidence. Nonetheless, they provide a valuable list of considerations to support critical analysis of existing schemes.

- Many theorists argue that voluntary industry supply chain regulation is not a substitute for comprehensive **legal regulation**. Indeed, among regulation theorists the view is widespread that, 'neither state regulation nor private voluntary regulation functions effectively in isolation, and thus a combination of private and public interventions is necessary to tackle these issues' (Trubeck and Trubeck in Locke et al, 2013: 520; Kolben, 2007). Walters et al (2016) research on the regulation of WHS in the merchant shipping supply chain confirmed this, finding that effectiveness required there to be a wider institutional framework of state regulation and surveillance. Similarly, James et al (2015) in their comparison of construction and maritime industries, found the presence of a substantial degree of command and control regulation, along with state monitoring and enforcement, crucial to positive WHS management through supply chains.

- A related issue is whether for industry self-regulation to be effective, **surveillance systems and penalties** for non-compliance are necessary. Some argue that the institutional structure of self-regulation can control behaviour effectively through peer pressure, reputational shaming, normative pressures, and mimesis or the transference of accepted practice through imitation (Nash and Ehrenfeld, 1997). However, King and Lenox's (2000) research on the US chemical industry Responsible Care Program discussed earlier in this Section, found that effective voluntary industry regulation is difficult to maintain without explicit sanctions. Yet on this issue, Short and Toffel (2010) argue that sanctions can also dampen normative motivations. Similarly, Ayres and Braithwaite (1992) note the potential negative impact of penalties and sanctions on goodwill and intrinsic motivations.

Other research also supports the argument that the enforcement activities of regulators strongly influence the effectiveness of regulatory schemes. Walker's (2016) study of the NHVAS in Australia's RFT industry, confirmed this view, identifying that random audits and follow-up enforcement were essential to achieving small firm compliance with accreditation schemes. He observed that, in an intensely competitive market, small firms lacking access to training and the resources to implement compliance strategies, will cut corners, take risks and engage in symbolic compliance, unless there is a real threat of detection.

- The effective of industry self-regulation schemes also varies according to **the nature of the standards and their evaluation**. Commentators have argued the importance of schemes containing clearly enunciated, binding minimum standards with outcome-oriented measures (Nossar et al, 2004; Sethi and Emelianova, 2006; Saurwein, 2011). For instance, Raj-Reichert's (2012) study of global supply chain governance in the electronics industry, highlighted the valuable role of techniques, such as certification, standards, codes and audits in enabling a form of checklist governance. He noted that, in his case study, the focus on assessing the frequency and completion of activities fell short of evaluating their quality, outcomes or impact.

- Gunningham (2011) argues that a necessary condition for pure self-regulation to be effective is a strong natural **coincidence between the public and private interest** in establishing self-regulation. This community of interest may occur where, for instance, there is a widespread perception in an industry that future prosperity or even survival is dependent upon some form of collective self-control (see also Saurwein, 2011).
- A common theme is **the importance of leading firms** in encouraging organisations below them in the supply chain to embrace industry regulation. Thus, scholars argue, for a scheme to succeed in regulating an industry, the large firms with greatest market power and the greatest reputational vulnerability must be held accountable for supply chain outcomes (James et al, 2015; Weil 2009; Nossar et al, 2004) Research has, however, revealed that the motivations of lead firms to influence

supply chain WHS may be conditional on a range of factors (Walters and James, 2011; Lakhani e al, 2013). First, goods and services must be of a complex and critical nature that potentially gives rise to significant risks of supply failure and business damage. Second, purchasers must face significant financial and reputational risks as a result of potential legal liabilities and the campaigning and monitoring of trade unions and other social interest groups.

Third, leading firms must possess a substantial influence through the supply chain (Walter and James, 2011; Walters 2009; Lakhani et al 2013). Bhattacharya and Tang's (2012) research on shipping carriers showed that the motivation levels of lead firms to influence WHS management on ships varied according to the level of control they had over the shipping carrier. In their case studies, Bhattacharya and Tang (2012) found that this level of control differed according to the composition of cargo, and specifically, the proportion of the ship's cargo associated with the lead firm. Thus, when the lead firms were oil majors contracting entire tankers they had a strong and straightforward influence over the carriers, whereas consumer goods firms that hired space on a ship carrying goods for numerous firms had a more arm's length role and no single client exerted a dominant influence. In addition to these conditions, Bhattacharya and Tang (2012) suggest, it is not the concern to improve safety as such that motivated the conduct of inspections and monitoring on ships by lead firms. Rather it was the economic losses such disasters incur and the public image issues associated with the media coverage (Bhattacharya and Tang, 2012).

- Another factor that commentators identify is important to effective management of OHS in supply chains is meaningful **worker participation**. Bhattacharya and Tang's (2012) research points out that not only are opportunities for employee voice crucial, but it is also vital that employers actively consider workers' concerns. James et al (2015) note the value of enabling third parties like trade unions to engage in enforcement action. This suggests the need for trade union or worker representation in the development of industry regulation mechanisms and in their implementation and monitoring. A commitment to worker involvement thus requires a pluralist approach to regulation. More than a decade ago, Nossar et al (2004: 24) noted in

> Australia that this ‘raises critical policy issues in a climate where union influence has been diminishing in many industrialised countries.’

In sum, the existing body of research indicates that potentially there are considerable benefits to be gained from voluntary industry regulation, but also key limitations. In terms of compliance and, ultimately the implications of a regulatory scheme for WHS, the nature of the market itself in a particular industry may pose the greatest challenge. However, there has been very little empirical analysis of industry self-regulation and co-regulation schemes, and much of what is written about them is hypothetical rather than evidence-based, reinforcing the need for qualitative individual case studies as well as comparative research.

SECTION 3.
INDUSTRY CODES AND ACCREDITATION FOR WHS in AUSTRALIAN RETAIL TRANSPORT AND LOGISTICS

This Section examines three schemes which have members in the retail transport and logistics sector: the RLSC, TruckSafe and the NHVAS. The analysis includes the evolution of each system, and the structures and processes through which accreditation is achieved. At the end of the section, the RICP provisions in the HVNL and the Master Codes are also examined briefly. These Codes, registered with the NHVAS in 2018, are almost certain to impact the industry penetration of the other Codes.

3.1 The Evolution of the RLSC Code of Practice

The RLSC Code was created by the Australian Logistics Council (ALC) in 2006. Before discussing the Code in detail, this sub-section explains the history of the ALC and its involvement in industry self-regulation.

The Australian Logistics Council (ALC)

The ALC refers to itself as the peak national body for Australia's transport and logistics industry (ALC 2010a). It aims to be the nationally recognised voice of Australia's freight transport and logistics supply chain, the leading advocate of appropriate regulation in the sector and to promote greater recognition in the government and community of the industry's contribution to the economy (ALC 2011a).

The ALC was established by the Australian Government as a partnership with transport and logistics supply chain stakeholders, including the Transport Workers' Union (TWU). Its governance structure has changed over time, with the ALC currently managed by a Council, comprising senior representatives of member firms, customers and government, and an Executive Committee responsible for its ongoing work program. Originally, the Commonwealth Department of Transport and Regional Services provided secretarial support. In 2008, the federal government announced it would take a step back so that the ALC could become self-supporting, and the ALC subsequently established itself as an independent corporation. In 2009, the ALC relocated to Canberra to reposition itself for lobbying reach, and establish the organisation as the primary source of information on

freight transport and logistics issues in the national policy realm. A year later, it achieved self-funding status. In 2010 also, following an ALC leadership change, the TWU was expelled from the ALC (ALC, 2010a; 2011c).

A key focus of the ALC has been the development and promotion of what it calls industry-driven solutions to COR obligations through the National Logistics Supply Chain (NLSC) Code of Practice (which can apply to all logistics and transport companies in the supply chain, regardless of industry), and its constituent Codes. The first of the ALC's Codes, the RLSC Code, was launched in November 2006, followed by the Australian Steel Industry Logistics Safety Code in 2008. By 2013, the ALC had four codes under the NLSC umbrella: the two newest ones were the Coal Seam Gas Logistics Safety Code (SCG LSC) and the Electrical Cable Logistics Safety Code (ECLSC). These codes of practice were accompanied by an accreditation system. In the case of the RLSC Code, the associated accreditation scheme focused on the whole supply chain, whereby retail firms, logistics companies and transport operators could, by completing an audit, qualify to become a Code signatory (ALC, 2010b; 2014).

Since the roll out of the Heavy Vehicle National Law (HVNL) in 2012-2013, the ALC has also worked to ensure its Codes were registered under the Registered Industry Codes of Practice (RICP) provisions in the HVNL (ALC, 2014). From 2015, a major focus for the ALC has been the upcoming legislative amendments to the HVNL, which became effective on 1 October 2018. As discussed in Section 1, the amendments have introduced primary duties of care through the COR for RFT vehicles, putting in place a national regulatory focus on the chain of responsibility through this particular industry's supply chain. Together with the ATA, the ALC formed a joint company – Safe Trucking and Supply Chains Ltd – to develop a code of practice capable of meeting these new requirements under the HVNL. This has now been registered in the form of four Master Codes under the co-regulatory NHVAS (discussed below). The project received $200,000 funding and other support from the Commonwealth Government, and direct industry input on its contents (ALC, 2018: 35).

The ALC membership base in the transport and logistics industry is small, the number of members varying between 43 and 64 since 2010. However, its membership includes the

largest retailers, fast moving consumer goods producers (FMCG) and transport operators. While almost all top tier transport and logistics operators are members, many of the largest tier 2 and tier 3 operators have also joined. In terms of accreditation with the RLSC Code, there were 80 signatories in 2018, including 6 FMCG companies, 6 retail companies, and 68 transport operators (ALC, 2018c).

Development of the RLSC

The ALC began drafting the RLSC Code in 2005 in response to requests of large retailer members Woolworths and Coles, who had in turn been pressed by the TWU to build accountability both at the retail supply chain apex and through the chain of responsibility to address health and safety issues at driver level.

The Code was developed in consultation with senior representatives from the retail, transport and logistics industries, including the TWU. With its focus on the supply chain, the Code was to be different than other existing accreditation schemes which centred on transport operators. In becoming signatories, organisations would answer audit questions according to the role they played in the supply chain.

Through the consultations, the TWU opposed certain elements of the proposed Code, arguing that while it gave a sense that safety was a priority, in practice this was a partial priority only. For the TWU, the Code would provide a flawed checklist for lawful conduct, because it focused on the consequences not the causes of poor WHS in the sector. That is, the code would set standards on such matters as driver fatigue, safe loading, load restraints, and regular truck maintenance, whereas, in practice, it was sharp contractual pressures in the industry that caused risks and injuries. Unfair tendering practices, contractual penalties for lateness, and other hiring provisions caused the long hours, fatigue, poor loading, and unsafe vehicles, and until these economic realities were addressed, the TWU argued, the health and safety of drivers would remain compromised (TWU, 2006).

The RLSC Code was launched in November 2006 with five members, the retail majors Woolworths, Coles, Metcash and transport giants Toll and Linfox. The Australian Food and Grocery Council, National Transport Commission and ATA were also involved. While voluntary, the code was intended to be a requirement of doing business with the major retailers (ALC, 2011a). The big retailers could not contractually require carriers to become

signatories but they could encourage them. The RLSC Code soon had 60 signatories, and had grown to 80 signatories by 2018.

The ALC explained the need for the RLSC Code in terms of the growing complexity of supply chains in the retail transport and logistics sector. While suppliers (such as FMCG manufacturers and primary producers) had become less likely to control delivery tasks, the ALC argued, the responsibility of transport operators for delivering product to retail stores (and particularly, distribution centres) was growing. There was a blurring of traditional lines of control, as the responsibilities of warehousing firms and retailers increased, and trucking carriers often had less control over the condition of loads (ALC 2011a). In this context, the RLSC Code was intended to assist all parties in the retail transport and logistics sector to meet their responsibilities for safety through the supply chain. (ALC 2011a)

The RLSC Code is voluntary and applies to firm by way of an auditing and accreditation process. It prescribes minimum levels of operational behaviour to assist those in the supply chain to manage their obligations under road transport laws and WHS legislation (ALC, 2016a). The ALC is the custodian and administrator of the Code and the RLSC Audit Tool. (ALC 2011a; ALC 2016a)

The Code has three parts (ALC, 2011a, 2016a). These include:

1. A *10-point Code of Practice* to which signatories commit. Table 2.1 lists nine of these points, the tenth point is that 'This Code and the RLSC Code of Practice Guidelines are intended to be read together' (Appendix A);
2. A set of *operational and administrative guidelines* including the supply chain activities to which the Code applies (see Table 2.1), and the application and auditing requirements to become a signatory;
3. A *responsibility matrix* which details responsibilities for each supply chain role (RLSC, 2013). This maps the 10 elements which are audited against three key roles: consignor, carrier and consignee.

TABLE 3.1 The Health and Safety Focuses of the Three Codes.

	RLSC	TRUCK SAFE	NHVAS
Launched	2006	1996	1999
Custodian Organisation	Australian Logistics Council (ALC)	TruckSafe P/L – as subsidiary of the Australian Trucking Association (ATA)	State Road Transport Agencies until 2013 when National Heavy Vehicle Regulator assumed the role (NHVR)
	'The RLSC is a voluntary scheme led by industry that is designed to ensure that all participants are aware of their responsibilities in the supply chain when they control or influence the carriage of freight' (RLSC, 2011 6).	TruckSafe accreditation is based on a set of minimum standards a trucking business should meet for it to be a safe, responsible operation. (Trucksafe/ATA, 2010: 2)	These modules include standards that … establish the responsibilities, policies, procedures and records that will demonstrate an operator's compliance with key elements of heavy vehicle law concerning vehicle maintenance, vehicle mass and driver fatigue (NHVR, 2016)
Code of Conduct*	Signatory commits to: • Recognise and accept COR obligations to maintain safe operations; • Comply with relevant road transport laws; • Not knowingly making or meeting any demand or requirement that would cause a breach of transport law; • support development of Industry Codes of conduct and practice; • Ensure processes, programs, policies and training demonstrate reasonable steps to comply with relevant law; • cause new contracts to include Code compliance; • accept that cost alone should not be the deciding factor in meeting Code obligations;	Commits accredited operator to ensure: • Vehicle roadworthiness and design compliance; • driver health and health screening; • commitment to ongoing training; • safe, professional and legal business conduct of business; • compliance with State OHS law requirements; • sufficient driving time, speed limiters, and lawful loading;	NHVAS is an accreditation system with no Code of Conduct underpinning it directly. The Voluntary Accreditation modules each include demonstration of a management system in relation to: • Maintenance Management - demonstrating that vehicles are appropriately inspected, serviced, repaired and maintained. • Mass management - demonstrating that the legal mass of vehicles is appropriately controlled for both axle mass and gross mass • Basic Fatigue Management (BFM) - demonstrating that driver fatigue is

	• actively support the NTC to develop nationally uniform regulation; • Accept that obligations include queuing and scheduling, loading and unloading facilities and equipment, well maintained, appropriately designed and equipped vehicles, fatigue management, driver health and safety and security requirements generally.	• driver specific compliance in terms – drivers to observe all relevant road and driving hours laws, operate vehicles safely, notify employer if not fit for duty.	appropriately controlled via schedules, driver rostering, fitness for duty, management monitoring and controls. • Advanced Fatigue Management (AFM) meeting the BFM standard and applies additional standards for driver health, work environment, management practices and operational limits.
Operational Matters Covered	• Scheduling and transit times • Time slot management • Safe loading practice including mass, dimension and load restraint • Driver Fatigue Management including driver health and fitness for duty • Speed compliance • Vehicle safety	• Management Standards • Maintenance Standards • Training • On road compliance incl. safety management systems, mass, dimension, load restraint, speed management, driving hours and fatigue. • Fitness for duty and driver Health • Animal Welfare (optional)	Mass Management Maintenance Management Basic Fatigue Management Advanced Fatigue Management

Sources: ALC (2011b); TruckSafe (2010: 2); NHVR (2016: 5)

Note: * See Appendices 2 and 3 for copies of the original RLSC and TruckSafe Code of Conducts.

As Table 3.1 shows, the RLSC Code applies to six operational matters, including scheduling, queuing and time slot management, loading practices (in terms of mass, dimension and load restraint), fatigue, speed and vehicle safety. While agreeing to comply with relevant laws and COR responsibilities, signatories must also make a commitment to: 'Accelerate the journey from legal compliance to safety best practice' (ALC, 2016a: 1). They also agree to ensure their firm's processes, programs, policies and training demonstrate reasonable steps to comply with relevant law, and that they will not knowingly make or meet any demand or requirement that would cause a breach of transport laws (Appendix 2).

RLSC accreditation is based on an initial entry audit, followed by annual compliance audits conducted by a third-party auditor from one of six auditing firms approved by the ALC. Auditors are required to hold Exemplar Global (formerly RABQSA) certification. Auditors are restricted to conducting two audits sequentially at any specific facility. The audit compliance regime includes five types of audit: an entry audit, compliance audit, reasonable enquiry audit, triggered audit and partnership audit review.[7] The entry audit is a full compliance audit, comprising 127 questions, of which 73 are compulsory. New applicants must achieve 100 per cent compliance against the 73 compulsory questions. The compliance audit, comprising the 127 questions, must then be completed at all facilities within 180 days (ALC, 2016a). Then sites undergo annual compliance audits against 127 audit questions (and must continue to achieve 100 per cent compliance with the 73 compulsory ones) (RLSC, 2011c; 2013; 2016b).

In September 2011, the RLSC Code was officially registered as a Code of Practice by VicRoads under Victoria's *Road Safety Act* 1986. The effect of this registration was that RLSC accreditation could constitute a legal defence in all jurisdictions, not just in Victoria. Accreditation isn't a 'get out of jail free' but it improves a firm's legal defence (ALC, 2012; ALC, 2016a).

By 2018, the RLSC Code's industry penetration had not grown much beyond the 2006 level. The 80 signatories largely remained the retail giants, Woolworths and Coles, and the larger

[7] A reasonable enquiry audit is a self-assessment audit that any supply chain party can access online to measure their performance against the predetermined set of compulsory questions. The partnership audit review can be conducted during or following the audit by contracting parties to identify gaps or deficiencies and develop action plans to address them (RLSC , 2016).

transport companies. Thus, despite several promotional drives in the intervening years (ALC 2012; 2013; and 2015), accreditation had remained confined to a small segment of the industry. In October 2018, with the Master Code coming into operation under the Heavy Vehicle National Law, the RLSC Code was set to be withdrawn.

3.2 Trucksafe

TruckSafe is an accreditation system established and administered by the Australian Trucking Association. Like the RLSC code/accreditation system, TruckSafe is a voluntary form of industry self-regulation. Unlike the RLSC Code's supply chain focus, TruckSafe centres on specific activities of transport operators. This sub-section will begin by explaining how the ATA came to establish TruckSafe.

First established in 1989, as the Road Transport Forum, the ATA provides public policy advocacy for trucking operations. Formally re-launched as the ATA in 1992, the organisation was set up in response to major transport accidents which occurred in the late 1980's including the 'worst trucking accident in the nation's history', when a semi-trailer on the wrong side of the road crashed into a bus near Grafton (NSW), killing 21 passengers and injuring 22 others (Walker, 2012: 16). There was a growing recognition that WHS for drivers had to improve, and that transport operators had to take more responsibility as part of mainstream due diligence, rather than ad hoc afterthoughts (RLSC 2013).

The ATA's membership comprises a variety of organisations, including state and sector-based RFT employer associations, transport operators (from owner drivers to national transport operators) and the TWU (ATA 2007). The organisation has a stated commitment to improving safety, health, fatigue and professionalism in the industry. In this context, in the 1990s, it began an *Industry Culture Reform* process. A key ATA objective has been to provide "industry solutions to regulatory problems". To this end, it established TruckSafe as an 'alternative compliance' program in 1996.

TruckSafe emerged from a process of research and development by the ATA, beginning with a project conducted in 1993 on fatigue management strategies among freight road transport drivers. In 1996, Queensland Transport and the ATA together developed and launched a state-based pilot fatigue management program. This evolved into the first module of TruckSafe (Mooren and Grzebieta, 2012).

The TruckSafe accreditation scheme now has five modules administered according to a 19-point Code of Conduct (see Table 3.1). The scheme is administered by TruckSafe P/L, a wholly-owned subsidiary of the ATA. Accreditation is granted by the TruckSafe Industry Accreditation Council (TIAC) (TruckSafe, 2010). Trucksafe currently has 226 accredited members (Trucksafe, 2018).

All the modules are compulsory, with the exception of the animal welfare one. The modules include:

1. Workplace and driver health;
2. Vehicle maintenance;
3. Workplace and driver Training;
4. Management; and
5. Animal Welfare.

Modules 1-4 reflect requirements now also established under the HVNL. These are that all parties with control or influence over the transport task are responsible for complying with Chain of Responsibility (COR) obligations and must take reasonable steps to prevent breaches of mass, dimension, loading, speed and fatigue laws. The modules provide a set of minimum standards for trucking operators to demonstrate that they have a safe workplace. In addition, the Management Module involves ensuring an operator has a documented and implemented safety management system. According to the ATA, the Management Module together with Workplace and Driver Health, are intended to ensure that legislated WHS standards and requirements are met (TruckSafe, 2010).

In terms of operational matters, there is considerable similarity between TruckSafe and the RLSC Code (see Table 3.1). As with the RLSC Code, mass, dimension, load restraint, speed, driving hours and driver fatigue and driver health are central to TruckSafe. The major difference between the two is that TruckSafe operational matters extend to a commitment to training and the development of management safety standards. Also, akin to the RLSC scheme, TruckSafe members can access detailed standards and accreditation guidelines to assist them to meet the certification requirements. This includes a manual providing business compliance guidelines and sample policies and procedures.

As with both the RLSC Code and NHVS (discussed below), TruckSafe Accreditation is gained through an audit process. There are five forms of audit: an entry audit, six-month audit, renewal compliance audit, triggered audit and random audits. Like the RLSC scheme, approved independent auditors for Trucksafe must be Exemplar Global (formerly RABSQU) certified (Mooren and Grzebieta, 2012).

3.3 Schemes under the Heavy Vehicle National Law

The National Heavy Vehicle Accreditation Scheme

The third system examined, the NHVAS, is an accreditation scheme which evolved out of a series of pilot programmes collaboratively run by the NRTC and State road authorities to improve aspects of WHS in the RFT industry. The scheme is distinguished from RLSC and TruckSafe accreditation because it is a form of industry co-regulation rather than self-regulation. Established in 1992, through state and territory government cooperation, the NRTC had embarked on a policy and regulatory reform agenda focused on the following: vehicle operating standards (noise and emissions); transport capacity and productivity (increased vehicle size, carrying capacity and extending road access); safety; and compliance and enforcement (Walker, 2016: 77).

The NHVAS grew out of major collaborative initiatives between RFT stakeholders in several states. The Victorian Roads Authority, together with the NRTC, police, road transport operators and others, started a pilot accreditation scheme in Victoria on mass management in 1995. This was known as the Mass Management Accreditation Pilot (MMAP). Similarly, the NSW Department of Road and Maritime Services embarked on a maintenance management pilot (Leyden et al, 2004). The following year, Queensland Transport and the ATA began the pilot program on fatigue management which subsequently formed the basis of TruckSafe (Mooren and Grzebieta, 2012).

Following the assessed success of MMAP and the NSW pilot, in 1997, Australia's Transport Ministers approved a new National Heavy Vehicle Accreditation Scheme (NHVAS) with 3 modules: mass management, maintenance management and fatigue management. Operators could seek accreditation in all or any module and accreditation would be granted mutual recognition in other states and territories (Leyden et al, 2004). Launched in 1999, the scheme was administered by state and territory road transport authorities (Baas and

Taramoeroa, 2008). The 1997 Ministerial decision implementing the NHVAS also accepted that membership with any other industry scheme which adopted common standards and audit practices would allow operators automatic accreditation with the relevant NHVAS module or modules (Leyden et al, 2004 p. 3; Baas and Taramoeroa, 2008).

The NHVAS now administers four accreditation modules:

- Mass management
- Maintenance management
- Basic Fatigue Management
- Advanced Fatigue Management.

Like TruckSafe, NHVAS is concerned only with transport operators. As with the other accreditation schemes, there is an ongoing audit regime. The business rules and standards that define the operational detail of each NHVAS module are referenced in the national legislation (the HVNL). NHVAS has been implemented in all Australian jurisdictions except Western Australia, the A.C.T., and the Northern Territory.[8] By comparison with RLSC and TruckSafe accreditation, the NHVAS covers a very limited range of operational matters - mass, vehicle maintenance and fatigue - and there is no code underpinning the approach that operators might take to complying with the largely technical requirements (see Table 3.1).

As noted earlier, in relation to Trucksafe, the audit requirements for NHVAS and Trucksafe are very similar. The qualification requirements for auditors and types of audits are the same (entry audit, six monthly audit, renewal compliance audit, triggered audit and random audits). As with TruckSafe, an NHVAS auditor can only carry out two consecutive audits with the same firm, a strategy directed at strengthening audit independence and avoiding capture. In addition, for the first two years of 'entry' into the NHVAS, an annual audit is required and audits thereafter are biennial (NHVR, 2017b; Walker, 2016: 79; Mooren and Grzebieta, 2012).

[8] In 2001, WA introduced its own mandatory accreditation scheme for all vehicles operating in WA. It has a more frequent audit cycle than NHVAS (Leyden et al, 2004). There are also a number of commodity-specific schemes in the plastics and chemical industry (PACIA Carrier), food transport industry (HACCAP) and livestock transport (Truckcare) (Baas and Taramoeroa, 2008).

To reduce the complications of multiple-auditing, the ALC and TruckSafe negotiated a mutual recognition of auditing standards so that, once an operator was TruckSafe accredited, the ALC would recognise the operator as RLSC-compliant. Similarly, TruckSafe and NHVAS developed a single auditor-reporting format (Baas and Taramoeroa, 2008). A few differences remain between the auditing systems: RLSC auditors are chosen from the companies with which the ALC has an existing relationship; with TruckSafe, operators are assigned an approved auditor; and with the NHVAS, operators can select their own auditor (Mooren and Grzebieta, 2012).

Of the three schemes examined, the NHVAS has the largest membership and it is growing. Around 90,000 vehicles have gained accreditation for at least one module. In 2016, this included the vehicles owed by about 7,200 transport fleets, and the scheme was growing (Walker, 2016: 79). Nonetheless, overall industry coverage still remains low, with approximately 10 per cent of Australian fleets accredited with NHVAS (Walker, 2016: 84).

Registered Industry Codes of Practice Under the HVNL.

In its role of administering the HVNL, and in addition to the NHVAS, the NHVR has also coordinated the development, assessment and registration of Registered Industry Codes of Practice (RICP) for the heavy vehicle industry. Along with the HVNL amendments effective from October 2018, the RICP provisions were modified. Currently, the purpose of an RICP is to establish standards and procedures for parties in the COR to identify, analyse, evaluate and mitigate general risks associated with meeting obligations under the HVNL. An RICP may be created for any industry whose activities fall under the HVNL. This could include shipping, freight forwarding, exporting and importing, retailing, wholesaling, manufacturing, service industries, mining and resources, primary production and RFT.

To qualify for registration, an RICP must be approved by the NHVR under section 706 of the HVNL. An RICP is intended to require and assist operational compliance with HVNL provisions by each party in the chain of responsibility. Individuals, groups or corporations can freely adopt an RICP to develop a compliance and safety risk management process that addresses their HVNL obligations. As such, an RICP can be used to tailor business risk management to suit the specific needs of individual organisations (NHVR 2017b).

An RICP is intended particularly to help businesses better understand risks, effective controls and best practices within their industry. As with other codes of conduct in the retail transport and logistics sector, an RICP provides a guide to operators on how they can comply with behavioural standards to meet contractual requirements and/or contribute to legal defences. Any business or participant in the transport and logistics supply chain can adopt an RICP by downloading the particular Code from the NHVR website and implementing within their firm, the policies and processes that would comply (NHVR, 2017b). However, to provide assurance of compliance with an RICP, firms essentially need to participate in an auditing scheme that other industry participants consider credible and legitimate.

3.4 Commercial Benefits and Regulatory Concessions of Accreditation Systems

With each of the Industry Codes/Accreditation schemes, there are commercial benefits in the form of market access and regulatory concessions available to those certified. Table 3.2 documents the benefits available under RLSC and TruckSafe accreditation and the NHVAS. A common benefit is that certification with each scheme provides some assurance of a defence to legal actions. As Table 3.2 shows, beyond that, the NHVAS has the strongest pull in terms of regulatory concessions.

The main economic advantage associated with RLSC accreditation is that it enhances opportunities for transport and logistics operators to win contracts with lead retailers. TruckSafe provides several benefits in terms of qualifying status for large Queensland Government contracts, fuel tax credits and insurance premium discounts. The NHVAS provides for a range of regulatory concessions, each module having specific advantages attached to it, as Table 3.2 shows. Notably, prior to the establishment of the NHVAS, it was TruckSafe that provided some of these concessions, a function which shifted with introduction of the new government scheme. The NHVAs regulatory concessions not only provide substantial commercial opportunities, but also embody substantial penalties for losing accreditation (Leyden et al, 2004; Interview C7).

Table 3.2. Regulatory Concessions and Commercial Benefits of Accreditation

RLSC	TRUCKSAFE	NHVAS Modules
Contributes to legal defence.	Contributes to legal defence	Contributes to legal defence
Potential commercial benefit - winning and retaining contracts with Large Retail Customers and Lead Transport Companies (Prime contractors).	Insurance Premium discounts with the firm, National Transport Insurance	For *fatigue management* modules: More flexibility in driving and working hours, allowing for (among other things) work of up to 14 hours in a 24-hour period For *maintenance management* module: exemption from annual vehicle inspections in states where these were mandatory and lower incidence of on-road enforcement.
	Recognised quality system for purposes of Queensland Government tendering and service delivery	For *mass management* accreditation • Access to higher mass limits for tri-axle vehicles equipped with road friendly suspensions. (this commercial incentive makes it a disadvantage to be non-accredited) • Access to certain parts of the road network for larger vehicles that are not accessible to those non-participating.
	Eligibility for Australian Fuel Tax Credit	Eligibility for Australian Fuel Tax Credit

Sources. Leydon et al (2004); ALC (2011b); NHVAS (2018b); Trucksafe (2010.

3.5 Development of the Master Codes[9]

Recent amendments to the HVNL and the associated development of the Master Codes under the RCIP provisions are significant to consideration of the future industry code/accreditation landscape. To explain these developments, this sub-section draws on some of the history of the HVNL, the RICP provisions, and the evolution of the Master Codes.

When first enacted, the HVNL generally only contemplated offences against fatigue, speed, mass, dimension and loading of a heavy vehicle. Following the Amendments which came into effect in 2018, the HVNL now mirrors the Model Work Health and Safety Act in key respects. [10] Aligning with the model law, the HVNL now imposes a primary duty of care on

[9] The Codes which the ALC and ATA have negotiated are commonly known as a single Master Code, but they actually constitute four separate codes. In this Report, they are referred to as the Master Codes.
[10] see discussion of the *Model WHS Act* in Section 1 of this Report.

each party in the transport chain of responsibility to ensure the safety of transport activities relating to their vehicles. The legal test is that the party has taken steps 'so far as is reasonably practicable' to identify, assess and remove any public risk (NHVR, 2018a).

Although this primary duty is still inclusive of mass, dimension, loading, speed, fatigue and maintenance, it is no longer confined to such matteres. The law now also imposes on the executives of a legal entity a safety duty requiring the exercise of due diligence to ensure compliance. Prior to these legislative amendments, where the NHVAS accreditation scheme had provided narrow WHS assurance in relation to accreditation for its four modules, the ALC (through RLSC) and ATA (through TruckSafe) had offered a broader WHS assurance, the ALC in terms of the chain of responsibility, and TruckSafe, in relation to safety management systems.

Given that the HVNL amendments meant that it would now cover more of the same ground as the RLSC and TruckSafe, the ALC and ATA commenced a process of negotiation to create a code (subsequently called the Master Code) under the RICP provisions discussed earlier. This led ultimately to the development of 4 Master Codes, each incorporating the concepts of duties of care and a risk-based framework in relation to a particular set of operational issues: first, fatigue; second, mass, dimension and loading; third, speeding; and fourth, vehicle standards and maintenance (NHVR, 2018b).

Until recently, there were six transitionally registered Codes of Practice under the NHVR, including the RLSC Code. On 1 October 2018, the registration of these ceased. In their place, there are currently seven Codes of Practice under development, including the four Master Codes (see Table 3.3).

While the ALC and ATA, have had differing objectives than the NHVAS, not least because they are custodians of industry self-regulation mechanisms rather than the NHVAS co-regulation mechanism (under the helm of government), they have also been in competition. This collaboration to develop a Master Code under the RICP scheme has ensured that the two industry bodies continue to play a prominent representative role for their members in contributing to the framework and standards to apply under the revamped national road transport law. As it did with the RLSC Code, the Transport Workers' Union has critiqued the Master Code development for once again being 'as silent as the grave on the distorted

economics of our industry. It is like painting a house to hide the fact that the house is falling own (Kaine, 2018).

Table 3.3. Industry Codes of Practice under development, October 2018

PROPOSED TITLE	ORGANISATION
Crane Industry Road Safety Code of Practice	The Crane Industry Council of Australia (CICA)
Forestry Log Haulage Registered Code of Practice	Australian Forest Contractors Association (AFCA)
Managing Effluent in the Livestock Supply Chain	Australian Livestock and Rural Transporters Association
Master Registered Code of Practice (Fatigue)	Australian Logistics Council (ALC) and Australian Trucking Association (ATA)
Master Registered Code of Practice (Mass, Dimension and Loading)	Australian Logistics Council (ALC) and Australian Trucking Association (ATA)
Master Registered Code of Practice (Speeding)	Australian Logistics Council (ALC) and Australian Trucking Association (ATA)
Master Registered Code of Practice (Vehicle Standards & Maintenance)	Australian Logistics Council (ALC) and Australian Trucking Association (ATA)

Source: NHVR (2018b)

To provide assurance of compliance with the Master Code, businesses will continue to need credible audits. The path remains open, therefore, for industry organisations such as the ALC and ATA to contribute by providing an auditing service for the Master Codes, perhaps leading to accreditation under their traditional schemes, and combined with other services such as advice and guidelines.

SECTION 4. RESEARCH FINDINGS

The research findings from this project are based on interviews, participant observation and documentary sources, as outlined in Section One. In addition to discussing schemes with which they were accredited, many respondents drew comparisons between systems, and these are included. With NHVAS and TruckSafe the most subscribed schemes, not surprisingly, most comparisons dwelt on them. The discussion of findings is organised around the research questions: first, the industry coverage and WHS scope of industry accreditation; second, the perceived benefits of codes/accreditation systems; third, how participants and stakeholders experience the codes in practice; fourth, the reasons for engagement or non-engagement by industry members; and fifth, the perceived detriments and limitations of involvement in industry regulation schemes.

4.1 Industry coverage and WHS scope of industry code/accreditation.

In Section 2, participation rates in the three accreditation schemes - RLSC, TruckSafe and NHVAS - were detailed. These figures are reproduced below in Table 4.1. The vastly different rates of membership are no doubt due to many factors. However, scheme objectives play a critical role. Essentially, the NHVAS is a system designed to provide an entry barrier that assures governments that the transport operators who will acquire the associated regulatory concessions and benefits can demonstrate they have met some minimum safety standards. The regulatory concessions the NHVAS provides are of considerable value to many transport operators. It is also a scheme that enables operators to engage only with the modules that provide the concessions and benefits they seek.

Table 4.1. Scheme Participation Levels

RLSC	TruckSafe	NHVAS
80 signatories in 2018	226 accredited members in 2018	7,200 transport fleets (including 90,000 vehicles) in 2016 (Walker, 2016: 84)

Significant costs are associated with accreditation to each scheme, including audit fees, certification fees, and staff time involved in preparing for accreditation, monitoring and compliance. However, NHVAS is the cheapest of the three systems, because the fees for

certifying module completion are almost negligible and operators can choose the number of modules they complete.

In contrast to the NHVAS, TruckSafe has no regulatory concessions (except a fuel tax credit) and few economic benefits to offer members. However, TruckSafe has a loyal following within the industry among large and medium fleet operators. One respondent asserted: 'TruckSafe is the bible in our business' (Interview C4A). It is perhaps not surprising that the RLSC has the fewest members, given that its focus is on a specific market segment, the retail transport and logistics sector. In this sector, the retail majors and largest transport and logistics firms have consistently remained RLSC signatories. The perception is commonly shared among transport and logistics operators, even those registered with the Code, that holding RLSC accreditation is a distinct advantage for firms seeking to contract with, and remain contracted to retail majors.

It is important to note also that there are substantial differences between the three schemes in terms of their objectives and the operational matters they cover (these are mapped in Table 3.1). Consistent with its brief to cover an entire supply chain, the RLSC Code aims to encourage participants across the retail transport and logistics industry to make a commitment to ensuring that they meet the legal obligations for WHS applicable to their position in the chain, and to adopt a sense of responsibility for safety through the COR. The TruckSafe system has a more limited industry scope – truck operators – and the focus is on specific aspects of transport operation that produce risks and hazards. However, its accreditation requirements extend also to a broad compliance with WHS law and with the establishment of safety management systems. In contrast, NHVAS is confined simply to three specific operational matters: mass, maintenance and fatigue management

4.2 Perceived benefits of codes/accreditation

The research identified a host of perceived benefits of accreditation. Most of the benefits were mentioned in relation to every system, while some were raised in relation to one or two. The nine main benefits are listed below:

- *Regulatory Concessions constituting commercial benefits*: While the RLSC and TruckSafe essentially cannot offer regulatory concessions, the NHVAS does. Most

respondents, regardless of which schemes they were accredited with, identified NHVAS regulatory concessions as a significant and valuable benefit.

- *Market benefits:* Transport operators noted that RLSC accreditation increased the potential for contracts with the Retail Majors. Operators felt confident that, when tendering to lead retailers, their accreditation was seen to provide operational credibility and an assurance of their due diligence on WHS. While retail firms and large transport firms cannot force operators to become signatories, there appeared to be confusion among some transport operators concerning whether lead retail firms could make RLSC accreditation a contractual condition. None of the respondents mentioned the market benefit that TruckSafe provides in terms of qualifying for public sector contracts.
- *Legal Benefit:* The RLSC, TruckSafe and NHVAS have all achieved the standing of being taken into consideration in a legal defence during court actions. Stakeholders' perceptions about the merits of this vary, some criticising it as a 'get out of jail free card' and others lauding it as a 'legal shield'. However, for many transport operators, it appears to provide some welcome reassurance.
- *Improved workplace health and safety*: A common theme among respondents accredited with each scheme was that the process of complying with the codes and audits also contributed to substantial improvements in WHS in their organisations. This might seem an obvious claim, but it is not necessarily the case that firms achieve such improvements. Indeed, some stakeholders would dispute that codes and accreditation systems do improve safety. However, many of the transport operators asserted that the industry regulation had facilitated their firm's compliance not only with the Codes but, more generally, with WHS laws. They credited this improvement to several aspects of the regulatory systems including the WHS knowledge which regulators conveyed, the benchmarks, materials and guidelines provided, and the assistance which the audit process gave in terms of the practical application of WHS standards.
- *Educative Function*: Linked to the point above, many respondents also commented that codes/accreditation performed a valuable educative role by providing:
    - Clear precise benchmarks and standards;
    - Information on 'the rules of the game';

- A gap analysis tool;
- Guidance and direction on the practical aspects of how to implement standards;
- Assistance with establishing in-house auditing systems;
- Information on how to document and keep records on policies and actions, and how to meet reporting requirements; and
- Helping employers and staff unfamiliar with WHS policy formation to compose policies.

- *Engaging in the Auditing process of itself carries benefits*. As one respondent commented: 'every audit will find something but that's an opportunity to get better, it's not something that we shy away from' (Interview, RC2: 6) Some of the benefits of audits mentioned were:
  - It requires managers to adopt discipline in relation to data collection, record keeping and regular reviews;
  - It provides a set of external eyes that help identify issues and ensure reviews and policy development are sufficiently comprehensive;
  - Regular systematic scrutiny facilitates the identification of needed improvements and provides feedback on progress from audit to audit.
- *Relationship building and networking* within the industry. For many respondents, it was the broader involvement opportunities with two of the accrediting bodies – the RLSC/ALC and TruckSafe/ATA - that had also proved valuable. Individuals and firms had built strong working relationships through such events as:
  - Networking functions and opportunities;
  - Training forums;
  - Information sessions; and
  - Industry Symposiums
- *Knowledge sharing among firms*. Linked to the relationship-building above, many respondents observed that a useful outcome of both RLSC and TruckSafe accreditation was the generosity that evolved between accredited firms, including that:
  - Larger firms provide advice to smaller firms on policy and process;

- Firms engage in the sharing of systems and experiences to do with monitoring, reporting and other processes; and
- Ideas on policy and practice and also on improvements are shared, accreditation encouraging a much freer exchange of ideas than is commonly associated with fiercely competitive market contexts.

- *Facilitating implementation & change management* within organisations. Several respondents commented that industry-based accreditation provided an umbrella under which to encourage management and worker buy-in on WHS policy and practice within organisations. Being able to claim changes as necessary to meet industry requirements also helps managers to quell fear and resistance. As one respondent noted:

> 'For me, I really like being in the systems for the discipline of it because you can use the need for that discipline well in your business. You can say to your staff, we have to make sure we're following this process because we will be audited on it' (Interview, C 4A: 8)

4.3 Participant and stakeholder experiences with codes/accreditation

The responses of lead firms and those below them in the supply chain, as well as other stakeholders, indicated that experiences with the RLSC, TruckSafe and NHVAS vary according to location in the supply chain.

Lead Firms: The key issue is the assurance of health and safety systems in contracting firms.

Lead retailers and top tier transport and logistics firms generally appear not to consider accreditation systems much of a burden for themselves. Even though the sheer size of the auditing task may pose difficulties, with large cadres of managers to look after compliance, logistics, health and safety, risk management, transport, and supply chain management, these companies generally have the expertise and resources to meet accreditation standards with ease. For the lead firms, the key concern appears to be gaining an assurance that transport operators they use as prime contractors have implemented the WHS standards required by the relevant Code.

In this regard, respondents claimed that having faith in the auditor and auditing process used by contracting firms was crucial. Representatives of lead firms commented that 'the quality of the audit is only as good as the auditor' and 'with audits, you get what you pay for'. Respondents from lead firms commented that often, with contracted operators, they don't know who the auditor is, what auditing framework has been used, and whether the auditing was done on a just-in-time basis or as part of a continuous improvement approach. With reference to the RLSC, respondents commented favourably on the ALC's approach of having a permanent set of auditors, which meant that they (the 'customers') could have faith in RLSC audits and be confident that certain standards of safety practices were in place.

Operators lower in the supply chain suggested that the concern of lead firms with assurance also lay beneath the often-articulated preference among them for contracted operators to have several accreditations because this signalled a greater breadth and depth of WHS practice than would a single accreditation. For the lead firms, they perceived, multiple accreditations indicated that an operator was following a more holistic or rigorous approach to WHS than was the case with other businesses.

Lower Tier Firms and Operators

For firms operating below the retail majors and top tier transport and logistics companies, a number of operational experiences with industry regulation raised concerns. The three most commonly raised themes concerned the prevalence of multi-accreditation and auditing, symbolic compliance and instrumentalism, and the lack of code enforcement.

Multi-Auditing and Accreditation.

A major issue of concern for these businesses was multi-auditing and its impact. Most respondents commented on the pressure owners and managers of transport firms felt to achieve certification with more than one scheme simply to gain the particular commercial benefits and/or regulatory concessions that the various system provided. As Table 3.2 in Section 3 demonstrated, satisfying accreditation requirements with the RLSC has been perceived to be a route to contracting with the retail majors. The ALC and retail majors have certainly promoted this argument. Thus, for any operator that has successfully tendered to lead retail firms or aspires to break into that market, being a signatory to the RLSC assumes prominence. NHVAS accreditation potentially provides a larger range of regulatory

concessions, depending on the number of modules completed. These concessions improve various commercial options for work in the industry (eg. in terms of the lawful working hours in long distance operations) while also being essential to gaining contracts for that work. With TruckSafe, there are few concessions beyond the fuel tax credit (for which NHVAS accredited operators also qualify), except for lower insurance premiums (through one insurance firm) and, in Queensland, qualification to tender for large government contracts.

To gain access to all available commercial benefits and regulatory concessions of value to them, ultimately firms need multiple accreditations. Respondents also noted that while multi-accreditation through the formal schemes was problematic, audit overload and complexity issues were exacerbated by the activities of individual customers that often imposed their own private audits on operators, as an additional form of assurance of legal compliance. Thus, depending on the number of contractual arrangements they have, an operator might have to facilitate up to 30 audits each year. One respondent noted: 'all this additional layering does, is just keep adding to our overheads and just how we function. Yet we will see these cowboys getting away with it. That will always be the way' (Interview, C7: 24). Another commented

> 'I have the phenomenon where I've got eight companies who are asking me to come and have participation in a chain of responsibility session with them so their companies can spell out to us how they want our chain of responsibility to match what their systems are… Well that's fine, but we're already RLSC accredited and NHVAS accredited, Western Australia main roads accredited' (Interview, C3W: 5).

Respondents identified a range of problems associated with multi-accreditation:

- *Audit Overload or Over Auditing*: Each scheme requires entry audits and ongoing regular audits. Thus, each year operators engage in numerous audits which, for the most part, duplicate each other;
- *Administrative Complexity*: Each scheme has different requirements in terms of standards and reporting formats. This also poses challenges in keeping reporting and information systems up to date and the time involved in fulfilling and documenting every requirement for each scheme;

- *The multiple audits tie compliance staff to their desks* with monitoring and reporting functions, reducing the time for other compliance activity, both in the workplace and of a strategic nature;
- *Inadequate Recognition of Accreditation Equivalency*: Different firms specify different accreditation schemes as a requirement (eg one retailer customer may require a transport operator to have RLSC accreditation, while another may require TruckSafe accreditation). While the industry bodies that manage the three accreditation schemes have agreed to recognise equivalency for similar components across the schemes, the 'customers' may not accept completely that accreditations are equivalent, leading to the requirement for multi-accreditation. There is also a widespread practice of lead firms conducting their own assurance audits on contract operators, both where operators fail to hold accreditation with particular schemes, and as an additional audit. Major firms identified systems they use to provide assurance of OHS due diligence in the absence of contracted parties holding particular accreditations. Carriers lower in the supply chain also identified how their customers audited them. The audit processes of the primary firms vary in levels of rigour from desk audits, to site/equipment audits, with or without the inclusion of self-assessment schemes which include quite rigorous self-auditing followed by site visits.

A source of irritation to some respondents was that, as their auditing requirements were snowballing, the big firms were retreating from regular RLSC audits. At least one retail major, for instance, had ceased to engage in the ongoing annual audits required to maintain RLSC accreditation at a number of sites, instead rescheduling them as biennial or triennial events. This had creating some scepticism about the Code, given that contracted carriers who were signatories were still required to undertake annual RLSC audits as well as the additional site audits that retails firms sometimes imposed.

Symbolic and Instrumental Compliance.

Another issue commonly raised in interviews was the prevalence of symbolic audit compliance activities by many firms and their auditors, which contrasted with the conscientious due diligence of other firms. In particular, most respondents reported a perception that there was a widespread tendency for operators to engage in a 'tick and flick

culture' of 'box ticking', based on rudimentary desk auditing rather than active site and equipment inspections.

Significantly, none of the respondents made this comment about the RLSC. Most of the criticisms about 'desk auditing' were concerned with the NHVAS. Many respondents observed that, unlike TruckSafe, which 'looks at the trucks', NHVAS auditors often did not even sight the trucks when providing accreditation for the maintenance module. One respondent asserted that, 'with maintenance management, they only audit the paperwork, so businesses don't actually have to fix faults' (Interview, EA2: 4). Another respondent noted, of NHVAS accredited operators, that while 30–40 per cent of the businesses are working in the way the procedures suggest and genuinely managing a proper WHS regime, 'the remainder have a manual they have paid for, read once, put on the shelf and left' (Interview C2A: 8).

However, several respondents also criticised TruckSafe, asserting that it, too, often constituted 'a tick and flick exercise about the processes the business has in place to do the things it has to do – mechanical, servicing ...'.(Interview, TU1: 11). Several respondents noted that, rather than being about safety, Trucksafe is about the process of 'getting the emblem for the truck' and demonstrating that 'your company is meeting legal requirements'. One respondent observed that the broader consequence of this ritualistic behaviour, is that it leads to a 'lowest common denominator' approach by firms, creating a slippery slope in relation to health and safety, whereby, due to the competitive pressures, others in the industry inevitably imitate the more instrumental operators.

Lack of Enforcement

For many respondents, the lack of enforcement mechanisms in codes/accreditation systems is a negative aspect. When deciding to seek accreditation, firms know that as industry systems they will lack ongoing external monitoring, enforcement and sanctions. It is the 'voluntary' nature of the schemes that make them attractive to many in the industry. Audits are the only concrete means used to monitor compliance and the withdrawal of accreditation remains the only real sanction available. While termination can have a substantial impact in terms of the loss of NHVAS-associated regulatory concessions, with RLSC and TruckSafe accreditation, the risks are limited essentially to a (potential) reduction in commercial opportunities.

The insignificance of penalties for the largest companies was identified as a particular weakness of the Codes. As one respondent observed:

> 'There has got to be a whole supply chain perspective. Every player in the supply chain needs to be upholding the standards and then there needs to be penalties. They need to be firmer penalties than being struck off the register' (Interview C1A: 12).

Many respondents noted the need for penalties substantial enough to 'bite' the lead firms. Several also commented on the need for a higher possibility of detection: two respondents noting that, currently, surveillance occurs only is when a disaster occurs.

For those firms which have invested in accreditation, the lack of enforcement emerges as a distinct weakness of industry self-regulation system for several reasons. As one respondent observed: First, there is a common frustration among transport operators, in relation to all the Codes that because compliance is not enforced, in practice, they have no assurance of the actual WHS practices implemented by 'accredited' businesses through the supply chain. This seems to be particularly the case with the NHVAS. Several respondents commented, for example, that because auditors do not sight the trucks when approving them for the maintenance module, lead contractors have little confidence about the quality of vehicle maintenance among NHVAS-accredited operators they engage.

Second, several respondents asserted that, since retail majors had unilaterally reduced the regularity of their own auditing (discussed above), they had less confidence in the health and safety standards at distribution centres and the other loading depots which the lead retail firms controlled. Third, there was a perception that soft audits were often conducted when contracts were renewed, potentially diminishing the rigour of implementation standards and trust in certification.

Other experiences

A number of other issues with codes/accreditation were also raised. First, maintaining compliance can be difficult for various operational reasons. Some of these include: staff turnover, because this regularly requires considerable onboarding of new managers and employees to ensure consistency with standards; the need for frequent updating of training

programs to maintain currency with legislative changes; and, finally, the difficulty of keeping up with legal change.

A second source of concern arose in relation to privacy issues. One challenge, for instance, was to do with sharing audits during tendering processes with customers who are not signatories/accredited. In this highly competitive industry, several respondents questioned the wisdom of providing full disclosure on their own audited arrangements to other operators, in the absence of knowing how that knowledge would be used.

A third issue concerned perceptions that code/accreditation bodies provided insufficient specific guidance on the practical aspects of implementing standards. While many respondents applauded the detailed guidelines and information provided by accreditation bodies, for some, there was too little guidance on precisely how to action requirements. Fourth and finally, several respondents commented on a perceived complacency with audit tools that characterises existing accreditation systems. They argued that audit tools provided by industry bodies tended not to be revisited once established, the process thus becoming routinised and stale over time. This was perceived as antithetical to a continuous improvement process that might seek to improve WHS over the longer term.

4.4 Reasons for non-engagement by industry participants

Given the low rates of industry penetration by all three schemes, we asked respondents why so many businesses abstained. The main reasons given were that many transport operators simply lacked the resources to invest in accreditation, and that, essentially the economics of the industry supported this decision.

Many respondents identified as a barrier the **time** and **financial costs** incurred in pursuing accreditation, particularly for smaller operators. Many respondents observed that smaller fleets and owner drivers operated at such low rates and tight margins that accreditation costs constituted a significant burden, one that was heightened by the multiple accreditation syndrome in the industry. In addition, smaller firms, particularly the 'mum and dad operators,' typically lacked the expertise in terms of knowledge base, skills and business tools to understand and meet audit requirements. Some also mentioned that without a compliance department or a dedicated officer to oversee the accreditation function, many operators were unable to complete the project. This meant that the owners and managers

of many businesses would also be concerned about what an external auditor might find if allowed through the doors.

Another common theme concerning non-engagement was that smaller operators are under little pressure to acquire accreditation because of the **economics of the industry**. It was commonly acknowledged by respondents that the largest, most powerful organisations in the sector rely heavily on using non-accredited operators, because they are cheaper. Respondents noted that, to meet their commercial objectives, the leading firms routinely contracted out some of their transport requirements to companies lower in the chain, knowing that those firms were not accredited and/or did not comply with WHS laws. As one third tier transport operator noted:

> 'The customers we have, the ones that are engaging us directly, they're interested in whether or not *we* are accredited … Who we use from then on to handle the work, my blunt view is … even though they would ask the question when things go wrong, they probably honestly turn a blind eye'. (emphasis added. Interview C3: 5)

Several of the transport operator respondents, employer associations and trade union officials presented this as a systemic aspect of the industry. The lead firms routinely contract much of the work out as a way of 'flexing up', meeting seasonal variations in demand, and keeping prices down. In that sense, they are consciously externalising safety and legal compliance problems to contractors down the line. This is not restricted to a small proportion of the transport and logistics function. Several interviewed transport operators asserted that some of the largest retail and transport firms contract out about 55 per cent of their work down the supply chain, including most of the long-distance market in Australia.

4.5 Perceived limitations and disadvantages to membership

Comprehensiveness of the scheme

Respondents commonly compared the schemes according to the comprehensiveness of their approach to health and safety. Operators accredited with the RLSC Code and/or TruckSafe recognised these as supporting the development of WHS more broadly than the NHVAS. This is not surprising, given the RSLC Code's emphasis on the chain of responsibility,

and TruckSafe's larger number of modules. Several TruckSafe members referred to the accreditation system as having a 'whole of business' approach. Respondents were clearly aware that the NHVAS was limited to a few operational aspects of transport and logistics that impacted on WHS. However, most respondents acknowledged that in relation to the RLSC and TruckSafe, meeting accreditation requirements was not equivalent to complying with broader WHS legislation. One commented that:

> 'RLSC actually misses a complete requirement for testing the carrier around safety management systems. It technically only looks over mass load CLR, all those components and completely misses how the business is actually addressing leadership and commitment, resources organisation, to actually manage the safety of their drivers' (Interview RC1A: 3).

A number of respondents discussed their firm's deeper commitment to WHS, and expressed the view that, given the depth of their safety management programs, accreditation had not changed their approach to WHS.

Commercial Disadvantages and Free Riding

A key issue which employer association officials, trade union officials and transport operators raised, was that accreditation imposes costs that the economically marginal and unscrupulous operators avoid. Further, as a number of operators noted, free riding is facilitated by the willingness of the largest industry participants to contract to non-accredited firms that accept work at cheaper prices. Participants referred to this as the 'dirty work' and 'spot work' in the industry – work that is poorly paid and subject to 'dodgy' timelines and loads. Dirty work is won by undercutting prices and then sub-contracting it to operators lower in the chain who contractually indemnify the prime contractor/customer. One respondent commented:

> 'Spot carriers are these people who – the mums and dads who basically freelance and they're the ones that worry me the most because they're the ones that are most vulnerable … they'll come in and fill a gap … and they're pushing their equipment to the brink to make a buck and break even' (Interview CW3: 11)

As several respondents observed, this dirty work is typically performed by the smaller businesses with fewer than five trucks that lack the capacity to engage with sophisticated accreditation schemes. These small operators make up about 70 per cent of the industry. Some respondents reflected that, when non-accredited businesses in the market undercut contract rates by 20-30 per cent, in response to price squeezing by lead firms, the result is that accredited operators, those 'trying to do the right thing', must compete at lower margins for contracts.

However, as an official from one of the lead transport firms noted:

> 'You've got to be able to flex your costs … I mean if you set the place up for peak capacity you'd go out of business in no time fast, because the margins in this business are quite slim. So, you've really got to try to set yourself up with a fixed cost base that meets above the lowest level but away from the top level of operation. Then you fill that gap with either casual employees or subcontractors' (Interview, C1B: 23)

Many interviewees commented that, given these economic dynamics, accreditation and audit schemes are simply unable to improve health and safety dramatically across the industry. Two respondents referred to the 'campfire discussion' which occurs informally, about how market conflicts in the industry are creating a fractured pattern of WHS compliance, with many businesses systematically avoiding responsibility for it. For some respondents this was a source of considerable frustration, as it stained the reputations of all operators including those with a serious commitment to WHS.

Several transport operators also noted that, in addition, to the non-accreditation of many firms at the supply chain lower end because of their marginal economic status, a portion of operators are simply unwilling to engage in accreditation schemes for two connected reasons: there is no compulsion, and non-accreditation enables them to operate at cheaper prices and, therefore, attract the dirty work.

In conclusion, the research findings present a complex picture in relation to voluntary industry regulation, particularly in the context of a fiercely competitive market in which outsourcing is widespread and systemic. The purpose of regulation is to change behaviours, but where the economic reality is that the most powerful firms are benefiting from the

industry's existing outsourcing and subcontracting dynamics, inevitably the overall impact of voluntary industry regulation will be limited. Nonetheless, in terms of providing encouragement, guidance, tools and resources to businesses to adopt and maintain standards across a range of operational activities, codes and accreditation administered by industry bodies appear to play an important role for those who choose to take part.

SECTION 5. CONCLUSIONS AND RECOMMENDATIONS

Rates of workplace fatalities and serious injury in the RFT and logistics sector are the highest for any industry in Australia. It is not surprising, therefore, that improving safety in this industry is a national priority under the *Australian Work Health and Safety Strategy 2012-2022* (Safe Work Australia, 2012: 17). At the same time, research has shown that for many of the industry's workers, and in many firms, there is a substantial level of safe management practice. Many transport and logistics businesses have undergone a massive culture change in recent decades, which is reflected in comprehensive safety management systems (Thornthwaite and O'Neill, 2016). There is also a complex web of regulatory arrangements, seeking to shape behaviours with the objective of enhancing WHS outcomes. This includes both state regulation and a range of alternative mechanisms, comprising forms of industry regulation both with government involvement and entirely voluntary self-regulatory schemes. In the RFT sector, recent legislative amendments to the HVNL have brought it closer to the model WHS Act, imposing direct enforceable duties on parties in the COR. This has also prompted development of new codes, the Master Codes, which provide a risk framework and more comprehensive outline of COR responsibilities than previous codes.

The focus of this report is on three industry regulation mechanisms that provide codes of conduct and accreditation systems: the RLSC Code and TruckSafe, both of which are forms of voluntary industry *self-regulation,* and the NHVAS, a *co-regulatory* industry scheme. As noted in Section One, these sorts of schemes essentially regulate behaviour through authorisation: that is, the accreditation system provides a formal authoritative statement by a private body (eg ALC, ATA) or government agency (eg NHVR) that members have demonstrably met specific standards (Freiberg, 2017: 304, 316).

Previous sections of this Report have examined the existing body of research on the operation and impacts of industry self- and co-regulation, the evolution of accreditation schemes in the Australian retail transport and logistics sector and their content and application, and the empirical findings of this report. This section discusses the findings and their implications before making some policy recommendations.

5.1 Discussion

The primary objective of this project has been to elucidate perceptions of the operation and impact of the RLSC Code, the authorisation scheme specifically developed for the retail transport and logistics sector. However, the research has focused on three schemes. The other two systems, TruckSafe and NHVAS, regulate transport operators. Where the RLSC pertains to the retail transport and logistics sector, the other two are confined largely to the RFT industry. Examining three systems has enabled a broader, comparative analysis of the contribution that voluntary industry regulation makes to WHS. The expanded focus is useful because, as industry developments since the inception of this project came to pass, the RLSC Code's future was increasingly in doubt. Whether the RLSC Code is transformed or killed off, though, the popularity of industry regulation suggests that it will remain part of the landscape.

The contribution of codes and accreditation systems to health and safety in supply chains

It is important to note at the outset that there is little uniformity in the way that firms respond to codes and accreditation schemes. Research on the Responsible Care Program in the US chemical industry identified that the considerable latitude in how a code can be implemented leads to firms taking very different approaches in their policy development and compliance (Howard et al, 1999). The present research similarly found diverse ways in which participants implemented the three schemes. It is clear in the Australian retail transport and logistics sector that while some firms are highly committed to complying with codes, for example, many have a more symbolic 'tick a box' approach, and many more abstain entirely.

Overall, the empirical research has shown that industry stakeholders perceive a number of benefits, challenges and limitations with the three accreditation systems. Most of the benefits identified are consistent with the published literature. For instance, respondents found schemes useful in establishing norms of acceptable behaviour in relation to particular activities which impact on WHS, providing a signal to the market of their health and safety commitments and building capacity for WHS management through the sharing of knowledge and tools, both by industry bodies and between firms. In his research on the

NHVAS, Walker (2016) highlighted the importance of the dialogue which formed between the industry and regulators. What this study points to, in addition, is the value that participants attach to the relationship and network building among competing firms, and the sharing of ideas between firms in this highly competitive market environment, that emerges from involvement in an industry accreditation system.

However, alongside the benefits, industry participants also had criticisms. Some of the key challenges and frustrations they identified include the tendency for many firms to engage in symbolic, ritualistic commitments, the commercial pressures associated with the wide prevalence of accreditation abstainers, and the perceived inadequacy of sanctions and enforcement. These concerns are consistent with findings in the existing body of research on industry self-regulation (Howard et al, 1999; Saurwein, 2011; Walters and James, 2011; Short and Toffel, 2010)

Another issue identified in this research, which the existing body of literature on voluntary industry regulation does not discuss, however, is multi-accreditation and the challenges of over-auditing. In Australia, the prevalence of multiple WHS auditing has arisen first, because multiple industry accreditation systems exist with overlapping membership scope, and second, because the lead firms and prime contractors have also developed their own private systems for auditing businesses with which they contract. The result is an industry in which regulatory mechanisms compete for the same members and there is a view among prime contractors that having multiple certificates indicates superior health and safety compliance. In addition, numerous large and medium-sized firms attempt to demonstrate their own diligence by making sure that both accredited and non-accredited companies with whom they contract have a satisfactory level of WHS standards. Ultimately this means that firms which are 'doing the right thing' have to do the right thing many times over, acquiring audit-fatigue along the way.

Limitations are also structured into the programs both in terms of their objectives and content. As Thornthwaite and O'Neill (2016) mapped out, the mix of hazards and risks in the retail transport and logistics industry is extremely complex. It includes:

- *external environmental factors* such as road infrastructure and the weather;

- *governance factors* including leadership, management, customer demands, financial restraints and remuneration;
- *workplace factors* such as maintenance, scheduling, loading, vehicle maintenance and workplace design features; and
- *immediate factors* including fatigue, speed, mechanical failure, driver error, and bystanders and other vehicles (Thornthwaite and O'Neill 2016: 16)

All three code/accreditation schemes focus management efforts around developing policy and practice in relation to specific dimensions of the workplace that can contribute to risk and hazards. These commonly include some of the workplace factors and some of the immediate factors mentioned above, particularly dimensions such as speeding, fatigue, vehicle maintenance, and loading practices. The RLSC goes further than TruckSafe and NHVAS with its whole of supply chain focus. The RLSC and TruckSafe also both incorporate a general requirement for businesses to comply with relevant WHS laws, although this is neither monitored nor enforced. Yet none of the schemes claim to address all the hazards and risks pertinent to health and safety in the industry's workplaces.

Market forces and the requirement for strong code leadership by lead firms

The literature identifies that a key condition for the effectiveness of industry self-regulation, is the importance of lead firms in encouraging an engagement with industry codes/accreditation (James et al 2015; Weil 2009; Nossar et al 2004; Walters 2009). Given the resources and expertise at their disposal, lead firms are easily able to satisfy the reporting requirements of accreditation systems themselves. However, currently, in this industry, with the market realities of heavy competition and price squeezing by prime contractors (Freiberg, 2017), the firms with most bargaining power do not appear to be playing a leadership role in promulgating or, indeed, modelling the objectives of the RLSC (or other industry codes) through the supply chain.

A key reason appears to be the economic realities of the industry. Freiberg (2017: 390) has discussed how compliance with regulation, 'is likely to be lower when the regulatory regime is in conflict with market practices.' This may occur in industries where, for many operators, to remain financially viable, they must break the law. Drawing on research by the National Transport Commission in 2013, Freiberg (2017) argues that the RFT industry in Australia

constitutes an example of this conflict between market forces and regulatory compliance. He notes that, in this context of fierce competition and small financial margins, non-compliance is endemic and widespread. The research findings in this report about symbolic compliance and abstention from accreditation by smaller operators supports that conclusion.

However, it is important to note that the well-resourced lead firms at the supply chain apex themselves contribute to the creation and maintenance of these market conflicts. This is because the lead firms engage in contract arrangements with operators lower in the supply chain, in full knowledge that they are neither accredited with one of the industry schemes, nor have the capacity or financial resources to afford comprehensive safety management systems. This occurs despite the fact that as RLSC signatories, the lead firms have committed not to 'knowingly make or meet any demand or requirement that would cause us to breach road transport laws applying to our operations' (RSC Code, Appendix 2). One respondent in this project observed, 'you simply won't get the better, smarter, properly managed accredited operators to do that work' (Interview, EA 2: 13). However, with 70 per cent of the industry comprising businesses that own fewer than five trucks, there are many operators to take up this demand.

To change this pattern of behaviour in a meaningful way, there needs to be a 'whole of supply chain' commitment to upholding WHS standards by the lead firms. In the retail transport and logistics industry, this would also require a substantial change in custom and practice, such that firms that lead the supply chain not only encourage participation in codes/accreditation systems, as they currently do, but also abstain from contracting with businesses that are non-compliant (both with the law and with voluntary codes). It would also require the payment of viable contract rates to enable the currently marginal firms to meet industry safety standards. This would, of course, have economic implications for those lead firms which are, as Freiberg (2017: 390) noted,' currently 'taking advantage of the competitive environment to keep rates low'.

Other Factors Contributing to Effectiveness

In addition to the issue of market conflicts, scholars have pointed to other features important to effective industry regulation. These include the importance of outcomes-

focused audits, ongoing monitoring, and effective penalties (Short and Toffel 2010; Saurwein 2011; Raj-Reichert 2012). In this project, too, a number of respondents criticised the lack of these features in the three industry schemes examined. They noted that the audits in each scheme assessed for the existence of policies and procedures, rather than actual behavioural outcomes at workplaces. That is, the focus appears to be on documented evidence of process, and not levels of WHS in reality.

In terms of monitoring, participants indicated the need to increase the probability of detection for non-compliance, and the risks attached to it, through monitoring and penalties. In his study of the NHVAS, Walker (2016) proposed the need for random audits and follow-up enforcement. A number of respondents in this study also called for the commitment of more resources to enforcement by industry bodies as well as government, and for stronger sanctions, particularly sanctions that would, as some respondents suggested, 'bite' the lead firms.

Another dimension that commentators have associated with effective industry self-regulation on WHS issues is worker participation (James et al 2-15; Bhattacharya and Tang 2012; Nossar et al 2004). In the case of the RLSC and the other accreditation schemes examined, the codes make no mention or provision for employee consultation or engagement.[11] This contrasts with the model WHS legislation, which imposes a requirement on those managing business units to consult with workers and their representatives on WHS, including through specific representative structures. A lack of employee involvement in the auditing and accreditation process reduces the prospects for the associated reflection on policies, procedures, practices and auditing to become part of an organisation's DNA, rather than just something about which managers in key WHS, compliance and risk roles are aware and engaged.

Previous studies have emphasised the importance of reputational risk to firm's decisions to become accredited to, and comply with industry self-regulation (Wright and Rwabizambuga, 2006; Barnett and King, 2008). Walters and James' (2011) cautionary tale is that

[11] As noted earlier, the ALC consulted with the Transport Workers' Union (TWU) while developing the RLSC in 2006, but since 2010 has had no union membership. The TWU is a longstanding member of the ATA (TruckSafe's custodian).

reputational pressures constitute only one of many factors motivating action on WHS, alongside such factors as external regulatory pressures and monitoring by external agencies. In terms of WHS in the retail transport and logistics sector, reputational risk is likely to be most strongly associated with highly visible incidents, the trucking disasters that draw media attention.

This research on the RLSC and TruckSafe suggests that the importance of reputational risk may vary considerably by a firm's location in the supply chain. While many small operators working in the economically marginal segment of the industry may not register much reputational risk, many other transport operators of all sizes appear to be strongly concerned about their reputation for safety. Two reasons for this are the reliance of these firms on gaining work from leading firms, and the closeness of their relationships with their employed or otherwise hired truck drivers.

However, it is possible that in the main, reputational risks may not greatly concern some of the lead firms at the supply chain apex, partly because of their sheer dominance in the sector, and also because they are very unlikely to be publicly implicated when a trucking disaster occurs. As discussed in Section 2, previous research has indicated that major firms are unlikely to be motivated to take a leading role in supply chain WHS unless severe reputational and economic risks are involved (Bhattacharya and Tang, 2012; Lakhani et al, 2013; Walter and James, 2011). In this industry, when accidents occur, the remoteness of the retail giant shields them from the media publicity, while throwing the limelight on the transport operators and, more personally, the driver.

Evaluating effectiveness

Evaluating the effectiveness and impact of the RLSC Code and the other two schemes is difficult for many reasons, one of which is that their industry coverage is so small. The influence of industry self- and co-regulation mechanisms on behaviours could go well beyond immediate membership levels, but concrete engagement in an accreditation scheme would seem to be an important indicator. The proportion of retail transport and logistics industry firms that have become signatories to the RLSC, by any estimation, is tiny. Membership does include the lead firms, including the largest retail majors and transport and logistics companies, but the vast mass of operators in the industry are absent. The

same can be said of TruckSafe and NHVAS accreditation levels, although NHVAS appears to have about 10 per cent industry penetration among RFT fleets (Walker, 2016).

It is important to note that the impact of voluntary industry self-regulation inevitably is limited by its voluntary nature and specific founding objectives. As this research has indicated, codes and accreditation schemes perform important WHS awareness-raising, advisory and educative roles for members, but their objectives are limited. The overarching safety risk in the industry remains the market conflicts which render WHS non-compliance inevitable for many firms (Freiberg 2017). In the interviews we conducted, employer association and trade union officials stressed the economic dynamics underlying the high risk, injury and fatality rates in the sector. Transport operators also emphasised the pervasiveness of outsourcing and sub-contracting and its deleterious impact on WHS. In his research on the NHVAS, Walker (2012: 18) similarly observed that: 'the vast majority of industry participants face significant competitive pressures to engage in hazardous and risky behaviours'. Research by the National Transport Commission (2013) also drew this conclusion.

These competitive market pressures are reflected in the low freight rates earnt by marginal operators in the industry. Yet, as the history of the Road Safety Remuneration Tribunal between 2012 and 2016 has demonstrated, there continues to be resistance in the industry to efforts by government to regulate the rates paid for transport. This remains a contentious issue, even as the evidence mounts demonstrating the connection between remuneration and health and safety in the transport segment of the retail transport and logistics sector (Belzer et al, 2002; Thornthwaite and O'Neill, 2016 and 2018).

5.2 Concluding Comments

During the course of this project, transport operators, employer group officials and trade union officials all commented on the extent of subcontracting by lead firms to marginal transport operators which lacked the expertise, business tools and financial resources to invest in either WHS or accreditation systems. It is important to stress that industry self- and co-regulation cannot solve the problems of market competition currently entrenched in the

retail transport and logistics industry. This requires a broader and deeper dialogue among the sector's stakeholders.

What cannot be underestimated, is that, for many existing stakeholders, voluntary industry regulation performs substantial beneficial roles in terms of guiding WHS compliance in relation to specific business activities, entrenching the discipline of auditing, providing a context in which relationships are built and knowledge is shared among networked participants, and reducing resistance to change. These benefits sit alongside the market and regulatory advantages that flow from accreditation. At the same time, however, these forms of regulation have limitations and disadvantages, some of which stem from:

- The multiplicity of formal and informal audits that pervade the sector;
- The lack of outcome-focused measures;
- The pervasiveness of symbolic, instrumental compliance and tired audit cultures;
- A lack of enforcement of minimum standards by industry regulatory bodies;
- A paucity of meaningful sanctions to encourage compliance and deter non-compliance
- Failure to hold the lead firms accountable for WHS through the supply chain

In sum, we found, as have others before us, that the need remains for strong command and control regulation alongside self- and co-regulation (Kolben, 2007; Locke et al, 2013; James et al, 2015). While voluntary codes and accreditation systems can supplement strong state regulation, they cannot replace the need for legislation tailored to the specific WHS needs of the industry, backed by well-resourced enforcement mechanisms and the authority to discipline the largest firms with meaningful sanctions.

5.3 Recommendations

The findings of this project point to some key matters for strategic policy consideration to improve health and safety outcomes in the retail transport and logistics industry. Recommendations include:

1. *Enhance Enforcement*: In relation to existing voluntary industry regulatory schemes, compliance could be improved through the adoption of enforcement methods by

industry bodies. The prevalence of 'box-ticking' audits and the reliance on simple threats of the revocation of accreditation are insufficient to encourage most operators to meet minimum standards. The industry needs enforcement measures with a visible presence, increased possibility of detection for non-compliance, and staged sanctions, perhaps along the lines of Ayres and Braithwaite's (1992) responsive regulation theory. It is critical, however, that enforcement is carried out equally through the supply chain including on the lead firms, so that those at the tail end of the chain do not bear the brunt of sanctions.

2. *Reduce multiple-auditing*: In the current context, over-auditing and multiple-accreditation demands are disincentives to taking part in voluntary industry regulatory schemes. Simplification of the current range of audit and accreditation demands might encourage more operators to take part, particularly if the various schemes 'talked more to each other' and the mass of informal, private audits was curtailed.
3. *Remove audit complacency*: Codes and accreditation schemes would be enhanced through the adoption of a continuous improvement in auditing cycles that facilitates deeper drilling down on WHS behaviours and outcomes in the longer term. In the process, WHS commitments could permeate more strongly through management practice and organisational culture.
4. *Employee participation*: Previous research has highlighted the importance of employee voice to effective WHS management (Bhattacharya and Tang 2012; Nossar et al, 2004) The *Model WHS Act* 'recognises that workplaces have better health and safety outcomes when workers have input before decisions are made about health and safety matters that affect them' (Safe Work Australia, 2016: 2). The voluntary industry regulation schemes examined, essentially operate along unitarist lines, with a unilateral management top-down approach to meeting compliance requirements. Yet, as experience with the *WHS Model Act* demonstrates, employee involvement plays a valuable role.
5. *Open a genuine dialogue within the industry about the real costs of transport*. There is a widespread perception across the retail transport and logistics sector that systemic patterns of activity, including the outsourcing of 'dirty work' to financially marginal operators at unviable rates, by the largest firms, impose pressure through

the supply chain to economise on health and safety. Many firms resist succumbing to this pressure, but know that in 'doing the right thing' they are commercially disadvantaged. The fundamental issue at stake is the price allocated to RFT in the supply chain. For transport operators, this is the campfire discussion. Until a genuine dialogue takes place on the real costs of road transportation, health and safety will remain compromised in this sector. This dialogue is something that industry bodies could consider instigating.

APPENDIX ONE. Coded List of Interviews.

TRANSCRIPT	ORGANISATION TYPE	RLSC ACCREDITED	CODE
1	EMPLOYER ASSOCIATION		EA1
2	EMPLOYER ASSOCIATION		EA2
3	INDUSTRY BODY		IB1
4	INDUSTRY BODY		IB 2A
5	INDUSTRY BODY		IB 2B
6	RETAILER/CUSTOMER	YES	RC 1A
7	RETAILER/CUSTOMER	YES	RC 1B
8	RETAILER/CUSTOMER	YES	RC 1C
9	RETAILER/CUSTOMER	YES	RC 2
10	CARRIER/LOGISTICS		CW 1A
11	CARRIER/LOGISTICS		CW 1B
12	CARRIER/LOGISTICS		CW 2
13	CARRIER/LOGISTICS	YES	CW 3
14	CARRIER	YES	C 1A
15	CARRIER	YES	C 1B
16	CARRIER	YES	C 1C
17	CARRIER	YES	C 2A
18	CARRIER	YES	C 2B
19	CARRIER		C 3
20	CARRIER	YES	C 4A
21	CARRIER	YES	C 4B
22	CARRIER		C 5
23	CARRIER		C 6
24	CARRIER		C 7
25	CARRIER	YES	C 8
26	UNION		TU 1
27	UNION		TU 2
29	UNION		TU 3
30	AUDITOR		AUD

APPENDIX 2. RLSC Code of Practice

Retail Logistics Supply Chain "10 Point Code of Practice"

RLSC RETAIL LOGISTICS SUPPLY CHAIN

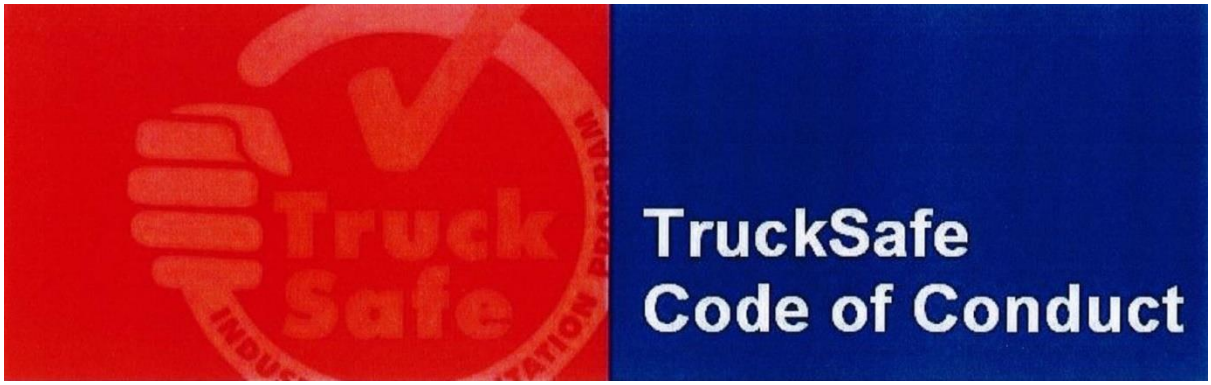
Recognising the need for a safe and efficient transport function, in our interests, and in the wider interests of public benefit and safety, we adopt and agree to this Code of Practice and its Guidelines.

1. *We recognise and accept our obligations in the transport chain of responsibility to maintain and promote safe operations.*
2. *We undertake to comply with all road transport laws applying to our operations.*
3. *We, as manufacturers, suppliers, retailers or logistics suppliers, will not knowingly make or meet any demand or requirement that would cause us to breach road transport laws applying to our operations.*
4. *We will actively support the development of appropriate industry Codes of Conduct, Codes of Practice and Guidelines for the purpose of promoting compliance with road transport laws.*
5. *We will also ensure that we have in place suitable and adequate processes, programs policies and training so that we can demonstrate that we have taken reasonable steps to comply with all relevant laws.*
6. *We recognise and accept that our obligations include queuing and scheduling requirements, loading and unloading facilities and equipment, well maintained, appropriately designed and equipped vehicles, fatigue management, driver health and safety and safety and security requirements generally.*
7. *We will cause all new contracts or arrangements between us to include compliance with this Code of Practice as a material requirement.*
8. *We recognise and accept that cost alone should not be the determining factor in meeting our obligations under this Code.*
9. *We will actively support and assist the National Transport Commission to meet its responsibility to develop appropriate uniform or nationally consistent road transport regulation and operational reforms.*
10. *This Code and the Retail Logistics Supply Chain Code of Practice Guidelines are intended to be read together.*

AUSTRALIAN LOGISTICS COUNCIL

RLSC RETAIL LOGISTICS SUPPLY CHAIN

APPENDIX 3. TruckSafe Code of Conduct



Roadworthiness

1. All nominated vehicles operated by the accredited operator must be maintained in a safe and roadworthy condition as outlined in the TruckSafe standards and the Vehicle Standards Regulations.

Regulations

2. All vehicles are to be maintained in compliance to the appropriate Australian Vehicle Standards and Design Rules (AVSRs and ADRs).
3. No driver shall be required to drive a mechanically unsafe vehicle at any time.

Driver Health

4. All drivers are to participate in the health screening program as detailed in the standards.
5. Drivers identified, as "Not Fit to Drive" must not be allowed to continue driving.

Training

6. The accredited operator must maintain commitment to ongoing training as outlined in the standards.

Management

7. The accredited operator must conduct all business in a safe, professional and legal manner.
8. An accredited operator as well as their employees must be familiar with and address their respective duty of care requirements in accordance with the applicable state/territory Work Health and Safety legislation.
9. Drivers must be afforded sufficient time to conduct trips in a legal, compliant and safe manner.
10. Vehicle's speed limiters shall be maintained to the legal requirement as specified by ADR 65/00 and must in no way be tampered with.
11. Vehicles shall not be, in any manner knowingly overloaded.
12. Prime contractors must not, by their actions or requirements, knowingly force or coerce subcontractors to break the law.

Driver Specific

13. Drivers must notify their employer if they are not fit for duty prior to commencing their shift.
14. Drivers are expected at all times to obey Road Transport Laws.
15. Drivers are expected to obey the applicable driving hours specific to the state/s of operation in accordance with legislation and take all reasonable steps to manage their fatigue and not drive with high levels of drowsiness.
16. Drivers, where practical, must practice and maintain safe load restraint practices.
17. As the ambassadors of the road transport industry, drivers shall operate their vehicle in a safe and professional manner with consideration to all other road users.
18. Drivers agree to notify their employer or operator immediately should the status or conditions of their driver's license change in any way.

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