

# Seyfarth Shaw Australia Safeguard Series

Michael Kilgariff  
Managing Director - Australian Logistics Council

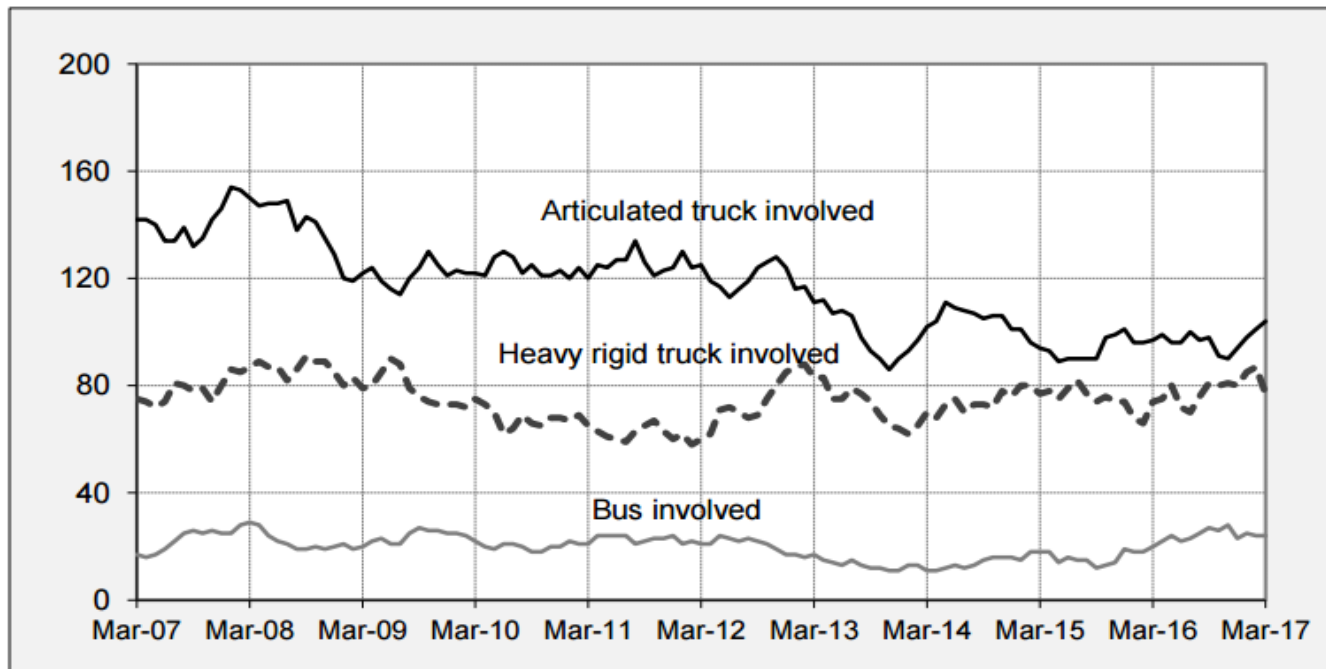
15 June 2017



# The scale of the problem...

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

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



Source: BITRE Quarterly Bulletin, May 2017



## The challenge is significant

- Safe Work Australia's May 2017 *Road Transport Industry Profile* notes that the industry remains a high risk one.
- The road transport industry accounts for 2% of the Australian workforce, yet accounted for 17% of work-related fatalities in 2015.
- Of fatalities, almost half were single-vehicle crashes, and 72% occurred on country roads.



# The Australian Logistics Council

## Corporate members





# ALC AUSTRALIAN LOGISTICS COUNCIL

SUPPLY CHAIN EFFICIENCY AND SAFETY

## Associates



## Strategic partnerships



## National sponsors



## Do you know your chain of responsibility obligations?

- ✓ As a director, YOU are part of the chain under the Heavy Vehicle National Law.
- ✓ YOU could be found guilty if a driver speeds or is fatigued in trying to meet deadlines that you had a role in setting.



## Heavy Vehicle National Law (HVNL)

- Currently instituted in all states and territories except the Northern Territory and Western Australia.
- Governs vehicles over 4.5 tonnes to ensure a safe manner of operation.
- Incorporates the ‘Chain of Responsibility’.



## Chain of Responsibility

- If you consign, pack, load or receive goods as part of your business, you could be held legally liable for breaches of the Heavy Vehicle National Law.
- Corporate entities, directors, partners and managers are accountable for the actions of people under their control.
- The aim of the Chain of Responsibility is to make sure everyone in the supply chain shares equal responsibility for ensuring breaches of the law do not occur.





## Consigners and Consignees

- Consignors and consignees are required to take all reasonable steps to ensure that drivers don't speed or drive whilst fatigued.
- If a driver is found to be in breach of speed and fatigue laws, everyone involved in setting the schedule for the driver is also held to account.
- The current maximum penalty is \$10,000.
- This responsibility is extended to directors who either authorised, or knew or ought to have reasonably known about unsafe transport requirements.



## What can you do as a director?

- ✓ Have a well-documented set of procedures requiring goods to be sent or received in a manner that doesn't compel a driver to operate illegally.
- ✓ Institute board reporting mechanisms to measure and oversee the effectiveness of the procedures.
- ✓ Having in place appropriate procedures will become more important in the future.



# Amendments to Heavy Vehicle National Law (HVNL)

- Will impose a primary duty of care on all supply chain participants to ensure, as far as reasonably practicable, the safety of a ‘road transport operation’.
- Executive officers to have primary duties regime applied to them with the imposition of a positive due diligence obligation.
- The legislation is expected to commence mid-2018.



## If your company...

- operates a heavy vehicle; or
- loads a heavy vehicle; or
- drives a heavy vehicle; or
- sends or receives goods on a heavy vehicle and you can influence how deliveries are made

**You** will have the same responsibilities to ensure that the Chain of Responsibility under the HVNL is not breached.

This reinforces the need to have documented road transport practices and board reporting mechanisms to oversee compliance.



# Registered Industry Codes of Practice



ALC is working with the ATA to develop a registered industry Master Code, to provide practical guidance in complying with Chain of Responsibility requirements.

Demonstrating compliance with such codes could be used as evidence that reasonable steps have been taken to ensure the discharge of safety obligations under the Chain of Responsibility



## Conclusion

- Executive officers such as company directors can be held accountable for the actions of those under their charge.
- Demonstrating compliance with the Chain of Responsibility guidelines will become more important.
- The law is there to remove incentives for unsafe behaviour.

