

## Chapter 2

### Overseas drivers

2.1 This chapter examines the evidence before the committee in relation to heavy vehicles. In particular, it considers drivers of heavy vehicles who are given licences, but do not have the skills required to drive safely on Australia's roads.

#### **Incident on M5 freeway**

2.2 In its interim report, the committee expressed alarm at evidence regarding licenced individuals employed to drive heavy vehicles, who do not have the basic skills necessary to perform the task. It became overwhelmingly clear to the committee that such individuals pose a considerable danger to other road users.

2.3 The committee's inquiry was shaped by knowledge of a major traffic incident on the M5 freeway in Sydney on 5 February 2016. The incident involved a team of two drivers who stopped at the entrance of the M5 tunnel because of the low clearance restriction but were subsequently unable to reverse or decouple the B-double heavy vehicle. The driver partially jack-knifed the vehicle across the highway when attempted to reverse it, thereby bringing traffic to a standstill.<sup>1</sup>

2.4 The incident highlighted a number of structural and economic problems in the transport industry and beyond, including the rights and responsibilities of overseas drivers, malpractice by heavy vehicle trainers and the need for a safety-based drivers' licence regime for visa holders in Australia.

2.5 As a result of this event, the committee continued its comprehensive fact-finding exercise over a number of public hearings and in correspondence with state and federal government departments. The level of responsiveness to the committee's inquiries shown by state and federal institutions varied greatly. Overall, the committee was disappointed by the lack of dialogue between jurisdictions, which reflected a lack of commitment to address these safety concerns, in a proactive and coordinated manner.

2.6 The committee's key findings in relation to the M5 incident are set out in this chapter. These findings have wide-ranging implications for industry and government.

#### ***The incident***

2.7 The state government authority responsible for driver licensing and road safety in NSW is the Roads and Maritime Services (RMS). RMS provided the following account of the M5 incident to the committee:

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1 Mr Mike Stapleton, Department of Transport and Main Roads, Queensland, *Committee Hansard*, 22 March 2016, p. 59.

On 5 February 2016, an over-height B Double combination stopped northbound in lane 4 of the M5 incident Motorway (General Holmes Drive, Kyeemagh). The incident was attended by representatives from RMS, including a number of Inspector Enforcement Officers (IEOs), Traffic Emergency Patrol Staff (TEPS), and NSW Police.

The heavy vehicle was found to be over-height measuring in at 4.6 metres. The driver had stopped before the M5 East Tunnel (which has a 4.4 metre low clearance restriction). While the driver held a Queensland heavy vehicle licence, he was unable to reverse the vehicle to a point where the heavy vehicle could be moved off the Motorway. A TEPS crew member reversed the vehicle to relieve the traffic congestion and allow an investigation to take place.

The vehicle, driver and support driver were escorted by Police and TEPS to General Holmes Drive. It was found that the drivers were working in a "2 Up" arrangement, allowing them to share the driving. Operators use "2 Up" arrangements on [a] long distance trips, reducing the time the vehicle is stopped for rest breaks. It allows the vehicle to be driven almost continuously without a breach of the fatigue management laws.<sup>2</sup>

2.8 The committee asked questions of RMS about the driver's ability to drive the truck away from the scene, given his apparent lack of control of the vehicle. In response, the committee heard that the only lawful method of preventing the driver from leaving the scene would have required police intervention as:

The NSW Police Force was responsible for the driver and the scene. In order to prevent the driver from leaving, Police would have needed a lawful power to detain the driver, and would have needed to demonstrate that use of the power was justifiable and necessary.<sup>3</sup>

2.9 RMS advised that in NSW, 'Police may suspend (but not cancel) licences on the spot, but only for offences such as serious drink driving or high level speeding' and that '[s]erious consideration and consultation would need to be carried out to develop a policy on assessment and lawful on-the-spot revoking of a driver licence'.<sup>4</sup>

2.10 Based on advice from RMS received on 28 February 2017, the committee held a further public hearing in Sydney and invited the NSW Police Force to give evidence. The NSW Police Force declined the committee's invitation, and responded by indicating that Transport for NSW is the lead agency on road safety policy and legislation in that state. Transport for NSW also declined the invitation, stating that there was no additional information it could provide the committee.

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2 Roads and Maritime Services (NSW), additional information, 8 July 2017, p. 1.

3 Roads and Maritime Services (NSW), answers to additional questions on notice, 28 February 2017 (received 24 March 2017), p. [1].

4 Roads and Maritime Services (NSW), answers to additional questions on notice, 28 February 2017 (received 24 March 2017), p. [2].

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## *The drivers*

2.11 The Department of Immigration and Border Protection confirmed in response to the committee's questioning in March 2016 that the driver of the heavy vehicle was a foreign national and in Australia on a student visa.<sup>5</sup>

2.12 The second driver was confirmed to be 'the holder of a dependent 457 visa, which means his partner was the primary 457 visa holder'. The dependent visa holder was 'not under the same obligations, as far as work goes, as the partner, who would be restricted to the occupation that they were sponsored to work in'.<sup>6</sup>

2.13 The Queensland Department of Transport and Main Roads confirmed that the first driver, an Indian national, had been awarded a licence to drive heavy vehicles in Queensland.<sup>7</sup> As there is no reciprocal arrangement between Australia and India given that 'India is not an Austroads approved country', the driver had to undertake tests to obtain his licence. Mr Mike Stapleton, Acting Director-General, Customer Services, Safety and Regulation at the Queensland department outlined the steps that those from non-recognised countries, including India, would ordinarily undertake to progress to a heavy vehicle licence in Australia:

An Indian licence holder wanting to transfer, for example, an Indian licence that corresponds to a Queensland heavy-rigid HR licence would need to pass both a written road rules test and a Queensland practical driving test in a class HR vehicle. However, we would also recognise a class HR training course delivered by a recognised registered training organisation in a jurisdiction that has adopted the National Heavy Vehicle Driver Competency Framework, which is the national framework, in lieu of a Queensland practical driving test. Both New South Wales and Victoria have adopted these schemes in recent years.<sup>8</sup>

2.14 The Queensland department outlined the driver's progression from having a car licence granted, after sitting written and practical tests, to being granted heavy vehicle licences based on certificates awarded by a Registered Training Organisation (RTO) known as 'ACT Training'. Mr Stapleton explained that:

He had a Queensland class C licence already. He has actually gone to Tweed Heads, undertaken the training and assessment, got a certificate, come back into Queensland and, along with the other drivers, has basically submitted that certificate to get an upgrade of his licence to heavy rigid. And then, about four or five months later, he has then gone and undertaken

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5 Mr Jim Williams, Department of Immigration and Border Protection, *Committee Hansard*, 22 March 2016, p. 21.

6 Mr Robin Gray, Australian Border Force, *Committee Hansard*, 10 November 2016, pp. 15–16.

7 Mr Mike Stapleton, Department of Transport and Main Roads, Queensland, *Committee Hansard*, 22 March 2016, p. 59.

8 Mr Mike Stapleton, Department of Transport and Main Roads, Queensland, *Committee Hansard*, 22 March 2016, p. 58.

more training with the same provider at their Jimboomba Queensland office, and brought that in. And also, when he has actually got the certificate, he has come in and upgraded to multicomination.<sup>9</sup>

2.15 The committee heard that the requirement for the driver to hold a car licence in Queensland for a number of years before upgrading to a heavy vehicle licence could be waived in this instance because:

He had a licence in another country for an equivalent class to the heavy rigid. He actually was able to produce documentation and licences with cancellations to indicate that he had held a licence at that level.<sup>10</sup>

### *Outcome*

2.16 As a result of the 5 February 2016 incident, the driver lost six demerit points, and was 'fined the prescribed amount for each offence (\$630 and \$2,196)'.<sup>11</sup> RMS confirmed that it 'withdrew visiting privileges [into NSW] to the maximum we could in respect of the driver and of the units'.<sup>12</sup> This equated to a '3 month suspension of visiting driver privileges on the driver, banning him from driving in NSW for 3 months'.

2.17 The Department of Immigration and Border Protection later advised the committee that, after conducting a further investigation, the driver's visa was 'cancelled, and he was subsequently removed from Australia'.<sup>13</sup>

2.18 With regard to visa holders, the committee made the following recommendation (Recommendation 16) in its interim report of May 2016, to which the government is yet to respond:

The committee recommends that all visa holders undergo driver skill tests before their heavy vehicle driving licences are recognised in Australia.<sup>14</sup>

### ***Trainer and assessor***

2.19 The committee was able to confirm that an RTO known as 'ACT Training' granted the competency certificates that allowed the M5 drivers to gain heavy vehicle

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9 Mr Mike Stapleton, Department of Transport and Main Roads, Queensland, *Committee Hansard*, 22 March 2016, p.63.

10 Mr Mike Stapleton, Department of Transport and Main Roads, Queensland, *Committee Hansard*, 22 March 2016, p.61.

11 Roads and Maritime Services (NSW), answers to questions on notice, 28 February 2017 (received 24 March 2017), p. [2].

12 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, p. 6.

13 Ms Erin Dale, Australian Border Force, *Committee Hansard*, 10 November 2016, p. 15.

14 Rural and Regional Affairs and Transport Committee, *Aspects of road safety in Australia*, Interim report, May 2016, p. viii.

licences in Queensland. It was also made clear that the Queensland Government had taken action since the incident to investigate a number of drivers who had been trained by the same organisation. Mr Stapleton of the Queensland department gave evidence that:

The investigation by Transport and Main Roads determined that the company, which has facilities in New South Wales and Queensland, may have been providing incomplete training and assessment for multicomination licences. The Australian Skills Quality Authority, which is responsible for the auditing of registered training organisations, have also investigated this issue.<sup>15</sup>

2.20 RMS confirmed that its own investigation, '[b]ased on the driver's inability to reverse the vehicle at the scene'<sup>16</sup> revealed problems with the training and assessment of the driver in NSW. RMS provided further detail at a public hearing:

...investigations that we undertook identified that the driver in question had been assessed by an assessor under the New South Wales Heavy Vehicle Competency Based Assessment Scheme. When we investigated, we identified that there was no evidence that the assessor had actually undertaken the assessment to demonstrate that that applicant had the competency required.

...what we identified was that the assessor had exploited a loophole that existed in our online reporting system at the time and that prevented us from identifying whether the training competencies required had been completed.

...the loophole that was exploited was because that assessor held a Queensland licence she was unable to record the assessment within our online reporting system at the time. We have since closed that loop so that cannot occur again. But it meant RMS had no visibility of the assessments that she was undertaking—she was required to manually make the bookings and report the results—and that had not been undertaken.<sup>17</sup>

2.21 The committee heard that following changes to the online reporting system, it would no longer be possible for the assessor in question to avoid scrutiny from RMS. Ms Melinda Bailey, Executive Director of Compliance and Regulatory Services at RMS, explained that:

If they are coming into the New South Wales HVCBA scheme, it does not matter where the assessor's licence is. As long as it is an Australian licence,

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15 Mr Mike Stapleton, Department of Transport and Main Roads, *Committee Hansard*, 10 November 2016, p. 7.

16 Roads and Maritime Services (NSW), answers to additional questions on notice, 28 February 2017 (received 24 March 2017), p. [1].

17 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, pp. 3–4.

it can be managed and captured through the online reporting system. That will prevent this from happening again.<sup>18</sup>

### *Outcome*

2.22 The committee was informed that only a third of drivers who had received certificates of competency by ACT training passed a practical test that allowed them to continue driving heavy rigid (HR) vehicles:

The outcome of this investigation was 114 licence holders being shown cause as to why their licence should not be downgraded and the assessor involved at the Queensland registered training organisation being initially suspended for 12 months. Of the 114 licence holders, 80 had been downgraded, 17 failed a retest, 63 were voluntary downgrades and 34 passed a heavy rigid practical test.<sup>19</sup>

2.23 The committee heard that the individual assessor from ACT Training is no longer 'in the system', as their 'licence was revoked in November 2015 and their New South Wales driver's instructor licence a month later'.<sup>20</sup>

2.24 Mr Stapleton further clarified that while the assessor was suspended for 12 months and would be able to reapply, the Queensland department 'would be taking into account their previous history and what had transpired in making that assessment'.<sup>21</sup>

2.25 The systemic abuse of the training system is discussed further in Chapter 4, as a number of witnesses shared the committee's concern that some trainers and assessors are not operating in the best interests of the industry. For example, when asked how a driver could 'go for assessment for an articulated heavy vehicle licence, clearly without the competency to even back up a B-double or uncouple a B-double', Mr Tony Richens, a heavy vehicle trainer and assessor, commented 'I would say that was done by somebody who was unscrupulous'.<sup>22</sup>

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18 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, p. 4.

19 Mr Mike Stapleton, Department of Transport and Main Roads, *Committee Hansard*, 10 November 2016, p. 7.

20 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, p. 4.

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

22 Mr Tony Richens, *Committee Hansard*, 26 June 2017, p. 7.

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**Compliance actions: training and assessment**

2.26 After establishing the facts of the M5 incident, the committee was keen to ensure that the actions of ACT Training had come under appropriate scrutiny in both NSW and Queensland.

2.27 The committee was informed that as at February 2017, RMS had undertaken an investigation and 'two follow-up audits' of ACT Training, with the result that 'they were issued with a caution in respect of their oversight of that assessor'. RMS notified the committee that it had also 'strengthened the accreditation agreement to make sure that these oversight expectations are much clearer going forward'.<sup>23</sup>

2.28 In response to questioning about whether RMS had reported the incident to the Australian Skills Quality Authority (ASQA), responsible for regulating RTOs, Ms Bailey of RMS told the committee that she was not aware of whether RMS reported it to ASQA. She further clarified that at 'that stage last year when that incident happened in February 2016, the assessor had already been terminated from the scheme'.<sup>24</sup>

2.29 Across the border in Queensland, ACT Training came under further scrutiny from the Department of Transport and Main Roads (TMR), who referred the case to ASQA. Mr Stapleton, told the committee that:

Two actions happened. The first action was we, as TMR, went and audited the trainer assessors that were at that facility—the particular individual who worked there and at Tweed Heads, which is the extent of our ability to audit, because we audit the trainer assessors. As we mentioned before, ASQA did an audit of the RTO. They found some minor discrepancies, and the RTO have worked with them to rectify those discrepancies. ASQA have written to us to advise us that those issues have been resolved.<sup>25</sup>

2.30 The committee has ongoing concerns about the level of scrutiny that is applied to heavy vehicle driving assessments conducted by RTOs. Mr Tony Sheldon, National Secretary of the Transport Workers' Union (TWU) gave evidence that the committee's inquiry following the M5 incident had:

...shone a light on fraud and how easy it is for people to obtain licences to drive vehicles in this country. That is of course if they know the right places to go to, which, in this case, are the wrong places to be trained.<sup>26</sup>

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23 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, p. 4.

24 Ms Melinda Bailey, Roads and Maritime Services, New South Wales, *Committee Hansard*, 15 February 2017, p. 6.

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

26 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

2.31 Accordingly, issues surrounding heavy vehicle training and compliance, including ASQA's scrutiny role, is discussed further in Chapter 4.

### **Employer**

2.32 The committee heard evidence from Scott's Transport, the reported operators of the vehicle involved in the incident on the M5 Freeway. Scott's Transport stated that the incident was a breach of contract obligations by subcontractor SPS Transport Pty Ltd:

The driver who was involved in the incident that occurred on the M5 Freeway in Sydney on 5 February 2016 was engaged by SPS Transport Pty Ltd to tow Scotts Transport Industries trailers pursuant to terms and conditions set out in the Scotts Transport Industries Sub-contractor Agreement. The driver was required to transport freight from Petrie in Queensland to Botany in New South Wales.

The driver was provided with a Safe Journey Plan by Scotts Transport Industries and did not comply with that Plan as he was travelling "off route" when the incident occurred.

As a consequence, SPS [Dhaliwal] Pty Ltd was in breach of its obligations to Scotts Transport Industries.<sup>27</sup>

2.33 Mr Darren Williams, Chief Executive Officer of Scott's Transport, provided evidence that, as well as ending a number of subcontracting relationships (including with SPS) the company had made adjustments to its subcontracting arrangements, such as testing drivers in-house. Mr Williams further explained that:

We also have a process in place where we—I would have to be frank and say we lost confidence in the licensing system. We went through and made it a part of the engagement of drivers that they had been driving for a year. We also wanted them to submit to having been to an RTO, which definitely concerns me from what you have just said about the Tweed Heads thing. On top of that, we decided that rather than trust that we would put any new drivers through testing of our own prior to working for any of the accredited subcontractors.<sup>28</sup>

2.34 In-house testing conducted by Scott's Transport revealed that one in ten drivers lacked key skills in heavy vehicle driving. The Safety and Compliance Manager at Scott's, Mr Phillip Forster elaborated:

We are giving them a coupling and no-coupling test, and we are making them back their B-doubles 30 metres in a straight line. In the time frame we have been doing it, we are finding that about 10 per cent of the drivers we are testing cannot do it.<sup>29</sup>

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27 Scott's Transport Industries Pty Ltd, *Submission 77*, p. 1.

28 Mr Darren Williams, Scott's Transport Industries, *Committee Hansard*, 22 March 2016, p. 69.

29 Mr Phillip Forster, Scott's Transport Industries, *Committee Hansard*, 22 March 2016, p. 69.



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### *Outcome*

2.35 The committee noted the commitment of Scott's Transport to do 'everything that we can to weed these guys out of our system', including requiring subcontractors to give notification if any of their drivers are on visas.<sup>30</sup>

2.36 The Department of Immigration and Border Protection confirmed that further actions were taken to ensure that the employer was aware of visa verification services:

The department liaised with Scott's Transport and SPS Dhaliwal Pty Ltd, the businesses associated with the truck driver, to build awareness of the requirements and to encourage them to access the department's free visa entitlement verification online service, which allows employers to check work entitlements of prospective employees. I can confirm that both Scott's Transport and SPS Dhaliwal Pty Ltd have subscribed to this service.<sup>31</sup>

### *Visa system*

2.37 The committee has urged the Department of Immigration and Border Protection to launch an urgent investigation into the misuse of student visas to employ people in the transport industry.<sup>32</sup> The committee's interim report noted that truck driving is not a permissible occupation on the consolidated sponsored occupations list for the temporary work (skilled) visa (subclass 457) program.<sup>33</sup>

2.38 The committee was notified by the Department of Immigration and Border Protection on 14 April 2016 that:

The Department is currently undertaking investigative activity in regards to misuse of the student visa program targeting employers, education providers and other facilitators of breaches under the *Migration Act (1958)* and associated regulations.<sup>34</sup>

2.39 The point was also made, however, that '[a]t any given time we have, approximately, between 350,000 to 400,000 students studying in Australia' which is '30 per cent...of the total number of temporary visa holders in Australia'.<sup>35</sup>

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30 Mr Darren Williams, Scott's Transport Industries, *Committee Hansard*, 22 March 2016, p. 71.

31 Ms Erin Dale, Australian Border Force, *Committee Hansard*, 10 November 2016, p. 15.

32 Rural and Regional Affairs and Transport References Committee, *Aspects of road safety in Australia*, Interim report, May 2016, pp. 56–57.

33 Mr Jim Williams, Department of Immigration and Border Protection, *Committee Hansard*, 22 March 2016, p. 16.

34 Ms Christine Dacey, Department of Immigration and Border Protection, correspondence received 14 April 2016.

35 Mr Greg Martin, Department of Immigration and Border Protection, *Committee Hansard*, 10 November 2016, p. 16.

2.40 In the absence of further correspondence from the Department of Immigration and Border Protection, the committee remains concerned that a number of underqualified drivers may be in Australia on temporary visas.

2.41 Mr Sheldon, National Secretary of the TWU, characterised the M5 incident as a case of the drivers being 'exploited' and put at risk in 'the most dangerous industry in the country':<sup>36</sup>

In this example these two drivers were unskilled and inappropriately put behind a wheel, and I certainly greatly expect that they were being exploited. Obviously, they were put at heavy risk, as every other road user was. This is a cocktail in an industry that has 40 per cent of all road transport related deaths, which is highly sweated, on extremely low margins and at the beck and call of some of the most powerful clients in this country.<sup>37</sup>

2.42 The TWU drew attention to the systemic nature of the problem, describing it as 'ludicrous' that we 'are expecting exploited workers from overseas—under the fear of either being deported or caught out in breaches of the arrangements—to somehow turn around and stand up against these sorts of economic pressures'.<sup>38</sup> Mr Sheldon described the incident as 'a snapshot of the race to the bottom of the trucking industry'.<sup>39</sup>

### ***Committee view***

2.43 The findings of this investigation raise serious concerns about the safety of the Australian travelling public which must be examined by both state and federal authorities. Weaknesses and loopholes in the visa system continue to allow its beneficiaries to exploit or be exploited by unscrupulous operators in the transport industry, at the expense of safety, while also undermining the reputation and professionalism of Australia's transport industry. The committee is not yet convinced that relevant policy settings and integrity measures have been adequately adjusted in response to the committee's concerns about fraud in the visa caseload.

2.44 These issues are systemic in nature and must be addressed accordingly. Toward the end of its inquiry, the committee received further evidence that the M5 incident was not the only instance where companies have used the visa system to cut costs in the transport industry. The committee was notified at its public hearing on

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

37 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 14.

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

39 Mr Tony Sheldon, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

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26 June 2017, of an application by transport company Northline Pty Ltd for a labour agreement to bring 60 overseas forklift drivers into Australia on 457 visas.<sup>40</sup>

2.45 The TWU expressed concern about Northline engaging forklift drivers on 457 visas, particularly given that 'the company had not tried very hard to recruit forklift drivers locally' and that in any instance, '[t]raining to become a forklift driver just takes two days'.<sup>41</sup> It was Mr Sheldon's view that:

Northline had not tried to recruit [local] forklift drivers and there were no specific skills that they were seeking. Northline just wanted a labour agreement to bring in overseas workers so, I would argue, they could pay them less.<sup>42</sup>

2.46 Northline provided a response to the committee that:

The forklift operators that have come to Australia as part of Temporary Work (Skilled) Subclass 457 visa programme are skilled forklift operators who are already trained in how to load unpalletised general freight, which is our core business. These employees are "skills assessed" before any offer of employment is made. The employees are required to attend a recognised training facility in Australia for the sole purpose of gaining an Australian forklift licence. The skills required to load unpalletised general freight is rarely achieved by attending a two-day forklift training course.<sup>43</sup>

2.47 When questioned at a public hearing in 29 August 2017, the Department of Immigration and Border Protection advised the committee that while Northline had made an application, 'no labour agreement has been entered into'.<sup>44</sup> Northline's response, however, suggests to the committee that earlier applications may have met with more success. Indeed, according to Mr Sheldon, this instance was the third labour agreement that Northline had sought in order to bring low-skilled forklift drivers into the country. He suggested that one such agreement had been granted, and 16 overseas forklift drivers had been brought in.<sup>45</sup>

2.48 While an unfavourable outcome may have been prevented in Northline's most recent application, the committee is concerned that some companies in the transport

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40 Mr Tony Sheldon, National Secretary, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

41 Mr Tony Sheldon, National Secretary, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

42 Mr Tony Sheldon, National Secretary, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

43 Additional information provided by Northline Pty Ltd, 31 July 2017, p. 2.

44 Ms Christine Dacey, Department of Immigration and Border Protection, *Committee Hansard*, 29 August 2017, p. 13.

45 Mr Tony Sheldon, National Secretary, Transport Workers' Union, *Committee Hansard*, 26 June 2017, p. 12.

industry continue to see labour agreements as a valid alternative to recruiting and training Australian workers.

### ***Committee view***

2.49 The committee acknowledges that combating visa fraud, illegal work and the exploitation of foreign workers in the transport industry is a large and multi-faceted task. The committee appreciates that cross-jurisdictional efforts are currently underway across government to identify and eliminate the exploitation of foreign workers. It also encourages the Department of Immigration and Border Protection to keep it informed of progress with regard to the ongoing operations of Taskforce Cadena.

2.50 Further, the committee intends to closely follow the outcomes of the cross-agency Migrant Workers' Taskforce. The Taskforce is required to consider 'particular industries or groups of vulnerable migrant workers where there are systemic problems with exploitation and underpayment'.<sup>46</sup>

2.51 While acknowledging the many legitimate operators who are doing the right thing by their employees, the committee sees the potential for road transport to join those industries in which exploitation and underpayment are rife. Accordingly, the committee considers that the visa issues in the transport industry must be considered by the Migrant Workers' Taskforce or examined separately by the Department of Immigration and Border Protection.

### **Recommendation 4**

**2.52 The committee recommends that, if not adequately addressed through the recommendations of the Migrant Workers' Taskforce, the Department of Immigration and Border Protection comprehensively review visa arrangements to address systematic or organised abuse in the transport industry.**

### **Overseas drivers' licence recognition**

2.53 In view of calls for greater standardisation of driver licensing around the country,<sup>47</sup> the committee has given further consideration to the issue of overseas drivers automatically being granted heavy vehicle licences in Australia.

2.54 In its interim report, the committee expressed concern at the ease by which overseas drivers can get behind the wheel of the largest and most dangerous vehicles in Australia. In most states and territories, temporary overseas visitors may drive all

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46 Department of Employment, Minister's Media Centre, *Migrant Workers Taskforce*, <[https://ministers.employment.gov.au/sites/mmc\\_employment/files/documents/161003\\_migrant\\_worker\\_taskforce\\_-\\_terms\\_of\\_reference.pdf](https://ministers.employment.gov.au/sites/mmc_employment/files/documents/161003_migrant_worker_taskforce_-_terms_of_reference.pdf)> (accessed 6 September 2017), p. 1.

47 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 6; Mr Stephen Lee, *Submission 81*, pp. 3–4.

classes of vehicles that their overseas licence authorises, including heavy vehicles.<sup>48</sup> This means that a number of overseas drivers do not apply for Australian licence equivalents and are not subject to driver skill or knowledge tests. Accordingly, the committee again recommends that all visa holders undergo driver skill tests in Australia before their heavy vehicle drivers' licences are recognised.

## **Recommendation 5**

**2.55 The committee recommends that all visa holders with heavy vehicle driving licences undergo driver skill tests before their heavy vehicle driving licences are recognised in Australia.**

2.56 The committee urges the Australian Government to work with its state and territory counterparts through the TIC to give effect to this recommendation. As a first step, the committee encourages consideration of the Australian Trucking Association (ATA) recommendation that the use of all overseas drivers' licences in Australia be capped at a year. In the ATA's view, this would be consistent with Australia's international obligations:

...our view is that the use of an overseas drivers licence in Australia, as opposed to someone from overseas getting an Australian licence, should be capped at a year. This is consistent with our treaty obligations under the 1949 convention on road traffic. Secondly, the states where there is still a loophole enabling someone to attempt an Australian driving test, fail and then continue driving on an overseas licence needs to be closed.<sup>49</sup>

2.57 The committee noted with interest the ATA's view that Australia's obligations under the 1949 Convention on Road Traffic are directed to the carriage of passengers by overseas drivers rather than driving for commercial activities.<sup>50</sup>

2.58 In its interim report, the committee further identified a loophole that allows overseas drivers to drive unassessed in Australia and, in some cases, even to retain their driving privileges after failing Australian tests. Mr Bill McKinley, Chief of Staff, ATA, explained how this can occur:

...in South Australia, Western Australia and the Northern Territory, if you are driving on a foreign licence—say, you are in Australia on a UK licence—and you undertake an Australian driving test for whatever reason and fail, you can then walk out of the failed driving test, get back into your car and drive off again on your overseas licence.<sup>51</sup>

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48 Australian Trucking Association, *Supplementary Submission 38.2*, p. 1.

49 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 6.

50 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 7.

51 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 8 August 2017, p. 6.

### **Committee view**

2.59 The committee accepts the evidence that driving on Australian roads requires knowledge of a unique set of conditions, and that few overseas drivers would be equipped with this knowledge.<sup>52</sup>

2.60 To provide overseas drivers with the best chances of success on our roads, the committee recommends that all jurisdictions adopt a consistent approach to licensing. In particular, where a driver with an overseas licence does not pass an Australian driving test, the committee is of the view that their ability to continue driving on our roads should be immediately curtailed.

2.61 Longer term, the committee considers that jurisdictions should investigate a solution that would consistently limit the amount of time that overseas drivers are able to rely on their overseas licence in place of an Australian equivalent. This could be achieved in a way that is consistent with Australia's treaty obligations. A uniform, term-limited approach would discourage the use of overseas licences for commercial driving activities, and strengthen the engagement of all overseas drivers with Australian standards of road safety.

### **Recommendation 6**

**2.62 The committee recommends that legislation in South Australia, Western Australia and Northern Territory be amended (consistent with other state and territory jurisdictions) to ensure that overseas drivers who fail a driving test are no longer allowed to use their overseas licence to drive in Australia.**

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52 Mr Bill McKinley, Australian Trucking Association, *Committee Hansard*, 22 March 2016, p. 37; Toll Group, *Submission 33*, p 7.