

Settled by the Honourable Chief Justice Kourakis on 28 May 2026
INTERNET VERSION – FOR FULL DISTRIBUTION

IN THE SUPREME COURT

CRIMINAL JURISDICTION

ADELAIDE

THURSDAY, 28 MAY 2026 AT 10.17 A.M.

BEFORE THE HONOURABLE CHIEF JUSTICE KOURAKIS

NO.SCCRM-22-010817

COMCARE

V

CLEANAWAY OPERATIONS PTY LTD

HIS HONOUR IN SENTENCING SAID:

Cleanaway Operations Pty Ltd (**Cleanaway**) was convicted in the Magistrates Court on eight counts of failing to comply with a health and safety duty contrary to s 32 of the *Work Health and Safety Act 2011* (Cth) (**WHS Act**).

Cleanaway appealed against those convictions to this Court. In a judgment delivered on 26 May 2022,¹ I dismissed all of the grounds on which Cleanaway had appealed but held that on Cleanaway's conviction of count 1, counts 3, 5, and 7 should be dismissed on the grounds that the conviction on count 1 gave rise to a plea in bar on those counts. I also held that on the conviction on count 2, counts 4, 6, and 8 must be dismissed on the same ground. Cleanaway now falls to be sentenced on those two remaining counts (counts 1 and 2). The maximum penalty

¹ *Cleanaway Operations Pty Ltd v Philip Hanel (Commonwealth: Comcare)* [2022] SASC 52.

for an offence contrary to s 32 of the WHS Act was, at the relevant time, \$1.5 million.

The collision

Cleanaway is a national waste management, recycling and industrial services company with a range of divisions and sites around Australia. The liquid division of Cleanaway operates vacuum trucks to collect and dispose of liquid waste.

On 18 August 2014, Cleanaway's employee, Darren Hicks, was allocated a vacuum truck with a manual synchromesh transmission. He was tasked to empty residential septic waste tanks in the Adelaide Hills and then to descend the South Eastern Freeway into the city of Adelaide. The South Eastern Freeway descends steeply into Adelaide before coming to the busy intersection where the Freeway intersects with Cross Road, Portrush Road and Glen Osmond Road. On 18 August 2014, there was a sign at the apex of the Freeway's descent warning truck drivers to use a low gear.

Mr Hicks testified that he had driven up the South Eastern Freeway in first or second gear at a speed of no more than 20 kmph.

Mr Hicks commenced the descent down the freeway in the fifth gear of seven. The truck's speed increased from a starting speed of about 60-70 kmph. Mr Hicks travelled some 9 kilometres along the Freeway before reaching the intersection. Mr Hicks applied the footbrake in an attempt to change to a lower gear, but it had little effect because the brake was faulty. Cleanaway was not charged with, and no evidence was led to suggest, a breach of the WHS Act with respect to the

maintenance of the brakes. Rather, the fault lay with its independent technical maintenance contractor.

Despite the operation of the exhaust brakes, the speed increased as the decline became steeper. He applied the foot brake after passing the arrester beds. Within a few seconds of applying the foot brake, the alarm sounded. The truck was, by then, going too fast to change to a lower gear and had passed the arrester beds. By the time Mr Hicks reached the intersection, he had no control over the speed of the truck. The truck reached a speed of 151.9 kmph before it collided with three cars. Mr Hicks suffered serious injuries as a result. One of the occupants of the cars, Louise Compton, also suffered serious injuries, a fractured neck and back, bruising on her brain, and abdominal and chest injuries. Other occupants, Jacqueline Byrne and Thomas Speiss, died from the injuries they sustained.

A Cleanaway employee testified that he and fellow employees were concerned about the safety of driving vacuum trucks down the South Eastern Freeway. The risks of vehicular collisions or other mishaps in the course of negotiating the steep descent of the South Eastern Freeway are well-known to the residents of Adelaide and surrounding areas. The presence of arrester beds brings that risk to the mind of drivers who pass them. The importance of controlling speed, and the use of a low gear by heavy vehicles reflected by the warning sign at the apex, is well known to residents of Adelaide and surrounding areas.

Speaking generally, it is commonplace to employ a range of risk mitigating factors to safeguard against the risk of injury. The descent of heavy vehicles down

the South Eastern Freeway is a signal example. The risk is such that reliance on one safety measure alone, for example the brakes, is insufficient to ensure the safe descent of a heavy vehicle. The retardation of acceleration produced by the steep descent by the proper selection of gears is an important additional level of protection. It is not only a safeguard against a catastrophic failure of the brakes, but it also allows the driver to bring a heavy vehicle more quickly under control in order to avoid other risks encountered along the way like other vehicles unexpectedly slowing or changing lanes, or debris strewn along the road.

Mr Hicks was issued an HR class heavy vehicle driver's licence in early July 2014. His training did not include descents as steep as the South Eastern Freeway. Mr Hicks' evidence on what he was taught about gear selection was that:

- it was up to the driver;
- it was a matter of being smart;
- monitor your speed and reus and
- know your truck.

Mr Hicks was not given any more practical and useful tips about gear selection. He had no training or experience in selection for gears in the truck allocated to him on 18 August. What he was told in obtaining his license was therefore of little use. More prescriptive on the job training was plainly required.

Mr Hicks commenced working for Cleanaway on 12 August 2014. Mr Hicks drove a truck with an automatic gearbox on 12 and 13 August around Nuriootpa and Tanunda, with a fellow “buddy” driver present. The buddy driver had no reason to be concerned about Mr Hick’s competence but nothing like the South Eastern Freeway was encountered. A partial assessment of Mr Hicks’ competence to drive a truck with an automatic transmission was conducted on 14 August by a Cleanaway employee, Mr Skinner. There were no steep declines on the route over which his competence was assessed.

The assessment undertaken by Mr Skinner expressly noted that the assessment had not involved use of a manual synchromesh gearbox. Despite the limited assessment Mr Skinner certified Mr Hicks “as competent to operate in all tasks”.

On 15 August 2014, Mr Hicks drove a truck with an automatic gearbox without supervision.

It follows that on 18 August 2018 Cleanaway knew, or ought to have known, that Mr Hicks had no experience with the operation of its manual synchromesh transmission vacuum truck and had not been assessed for his competence to drive such a truck, down a very steep decline, before he was allocated the vacuum truck to drive down the South Eastern Freeway on 18 August 2014.

There was no evidence of any system for the provision of information to those Cleanaway officers who assigned trucks and routes to drivers concerning

their experience or the assessment of their competencies. Indeed, the Cleanaway fleet supervisor gave evidence they had no recollection of their being a risk assessment for the Adelaide Hills or for driving down the Freeway before 18 August 2014. I acknowledge that if Mr Skinner's assessment was made available to the allocating officers his conclusion "competent to operate in all tasks" would have given them an assurance that he could descend the South Eastern Freeway. On the other hand, had his note been tested on a manual synchromesh gearbox. There was no evidence that the allocating officers were instructed to check Mr Skinner's assessments and no evidence that they were given directions on how to deal with inconsistencies within them.

The risk of collision between a vacuum truck and other road users, either vehicles or pedestrians, is obvious. Moreover, the likelihood of serious injury in the event of such a collision, because of the size and momentum of a vacuum truck, is also obvious. Not surprisingly, therefore, a risk assessment by Cleanaway on 20 May 2014 defined interaction between pedestrians and vehicles as a hazard. It recognised that, without control mechanisms, it was likely that such a hazard could come about and have significant consequences.

Only after the collision did a Cleanaway document refer to the need to use the "right gear" when descending the South Eastern Freeway. A draft safety protocol adopted a prohibition on driving heavy vehicles down the South Eastern Freeway unless the driver was first assessed as competent to do so.

The expert, Dr Rechnitzer, who gave evidence in the trial in the Magistrates Court, testified that the fifth gear selected by Mr Hicks was too high for the descent on which he was about to embark. His evidence was accepted by the Magistrate. Cleanaway's appeal against the acceptance of his evidence was dismissed by me. Dr Rechnitzer's opinion was that, as a rule of thumb, the gear selected for a descent should be no higher than the gear necessary to undertake the ascent. It will be remembered that the highest gear Mr Hicks engaged on his ascent was second. The gear selected should allow the speed to be controlled without using the brakes hard. In his opinion the highest gear which might have been used was fourth.

The Magistrate concluded:

I accept the evidence of Dr Rechnitzer regarding the circumstances of the incident of 18 August 2014. In particular that the vehicles reduced braking capacity due to defective brakes was 'exacerbated' by the fact that the vehicle was in fifth of seven gears resulting in little retardation from engine braking meaning the vehicle could 'run away' and reach high speeds. This conclusion accords with Dr Rechnitzer's observations of the condition of the brakes and the account given by Hicks. It is apparent from Hicks' evidence that despite the fact he had selected fifth gear which had initially held the speed of the vehicle, once the gradient increased the speed of the vehicle was not constrained but increased. This caused Hicks to apply the brakes along with the fact the 80km/h zone was approaching. After this the brakes failed and the vehicle was then unrestrained (both by brakes and gears). It became out of control.

The inherent risks to which I have referred, and the safety rules identified by Dr Rechnitzer, for negotiating a steep descent, highlight the importance of proper training. Mr Hicks was inexperienced. Cleanaway knew or ought to have known how inexperienced he was when he was employed. For that reason, a thorough assessment of his competency was critical. In contesting the charges Cleanaway contended before the Magistrate, and again on appeal, that it was entitled to rely on the fact that Mr Hicks was licenced. That submission was not only devoid of

legal merit but, having been made on the instructions of Cleanaway, showed a lack of insight by Cleanaway and a superficial understanding of its obligations.

Most parents take the time, after their children have obtained a standard passenger vehicle licence to train and instruct them in handling more hazardous conditions in which they propose to drive for the first time. For example, driving on a country road, driving at night, or driving in particularly wet conditions. The provision of a driver's licence for heavy vehicles by regulatory authorities is the authorisation needed to commence the on-the-job training, for specific tasks with a specific employer, which is almost always necessary to achieve that level of competence which ensures the safety of other workers and the public.

The objective seriousness of the charged offences

On counts 1 and 2, the Informant, alleged, in particular 9, the failure to maintain the following reasonably practicable system of work:

- 9 Fail to maintain a system of working whereby Darren Hicks was prevented from driving vacuum trucks without supervision until his competence to drive all vehicles he may be required to drive in the course of his work was properly determined by the defendant, including the assessment by the defendant of Darren Hicks' competence in the task of driving a truck with a manual gearbox.

It is implicit in particular 9, and was expressly the Informant's case at trial, that the system which ought to have been maintained was one which prevented Mr Hicks from driving a vacuum truck down the South Eastern Freeway until he was assessed as competent to do so. The relevant omission was the failure to have a system which assessed Mr Hicks' competence to drive the manual synchromesh vacuum truck down the South Eastern Freeway before he was allocated that truck and route.

Cleanaway relies on the following finding of the Magistrate for the purposes of determining the objective seriousness of the contravention:

An assessment by the defendant itself of the competence of the driver Hicks to perform the identified task would have given the defendant direct knowledge of his level of competence to undertake those tasks. The assessment may have revealed that he was indeed competent to undertake the tasks. It may also have disclosed that he was not competent to undertake those tasks in the sense that deficiencies which could have been addressed were revealed. Until the defendant conducted such an assessment however, its knowledge of Hicks' competence to undertake those tasks was limited to the fact that he had satisfied the examiners and obtained an unrestricted licence. The suggested measure would have provided the opportunity to check for any deficiencies in the driver's competence to undertake the tasks. It would have provided a safeguard to the defendant before Hicks was assigned tasks on 18 August 2014. By failing to take that step, the defendant failed to minimise the risk. It failed to minimise the possibility of death or serious injury as a result of a vehicular collision.

First, Cleanaway contended that the Magistrate there acknowledged that the proposed measure did no more than require Cleanaway to repeat the competency assessment to drive a manual vehicle that Mr Hicks had successfully achieved some weeks earlier. The Magistrate neither expressly nor implicitly acknowledged any such thing. The reference to the grant of the unrestricted licence was only to make the point that until conducting its own assessment, Cleanaway's "knowledge" of Mr Hicks' competence to undertake the tasks which it was allocating to him was limited to the bare knowledge of the grant of the licence. It could not have known from the bare grant of the licence anything about Mr Hicks' competence to drive the vacuum truck down the South Eastern Freeway in a way which discharged his, and Cleanaway's, duty of care to other road users.

The Magistrate was not making any assessment of the objective seriousness of the contravention. The Magistrate was not then sentencing and, indeed, never sentenced Cleanaway.

The paragraph is a step in the Magistrate's reasoning for finding that there had been a contravention of counts 1 and 2. The Magistrate was addressing whether competence assessment was a necessary and reasonably practicable measure to take in order to ensure the safety of its employees and others. The Magistrate found that an assessment was a reasonably practicable measure to discover whether Mr Hicks, having obtained his licence, was competent to undertake the tasks he would be allocated or whether further training was necessary. That is what the Magistrate meant when he said, "It may also have disclosed that he was not competent to undertake those tasks in the sense that the deficiencies which could have been addressed were revealed".

Building on that misunderstanding and misconstruction of the Magistrate's reasons, Cleanaway, in its written sentencing submissions, contended:²

In relation to the impact of the omission on the risk, the Magistrate recognized that an assessment by Cleanaway may or may not have resulted in the identification of any deficiency in Mr Hick's driving. That finding confirms the fact that there was no evidence capable of proving other than, if specifically assessed by Cleanaway, Mr Hicks would have demonstrated his competency to drive a manual vehicle, including down steep inclines, as he had done to achieve his Certificate of Competency when using a more difficult "road ranger" manual gear box when subjected to the stringent statutory testing and assessment regime, over two days by the accredited instructors and assessors.

(Footnote omitted)

The observation in [297] of the Magistrate's reasons are not a finding that it was not proven that Mr Hicks lacked the competency to safely drive the manual synchromesh vacuum truck down the steep incline of the South Eastern Freeway.

² Defendant's Written Submissions, FDN 18, At [32].

If that fact had not been proved, Cleanaway's failure to assess his competency would not have been proved to expose any person to a risk of serious injury.³

The Magistrate found at [366] through the findings of Dr Rechnitzer that Mr Hicks should have used a lower gear in order to drive down the freeway safely:

Reasonably practicable steps would have included ... instruction and training to the driver on how to travel safely down the route including low gear selection without need of brakes except in an emergency ...

The evidence of Dr Rechnitzer established that Mr Hicks should have used a lower gear. Mr Hicks selected a dangerously high gear which therefore exposed motorists, pedestrians, and workers to a risk of injury. It follows that he was not competent to drive the vacuum truck safely down the South Eastern Freeway. If he had been assessed by Mr Skinner for driving a vacuum truck down the Freeway that deficiency would have been revealed.

Cleanaway also attempted to reduce the objective seriousness of the offence by reference to other factors which impacted upon the risk to which persons were exposed when Mr Hicks drove the vacuum truck down the South Eastern Freeway.

Cleanaway first pointed to the physical condition of the vehicle. Cleanaway made the point that:⁴

... whilst the condition of the brakes plainly had a substantial impact upon increasing the risk, no allegation is made that Cleanaway's repair and maintenance systems were other than appropriate, comprehensive and compliant.

(Footnote omitted)

³ See *Cleanaway Operations Pty Ltd v Philip Hanel (Commonwealth: Comcare)* [2022] SASC 52 at [34]-[40].

⁴ Defendant's Written Submissions, FDN 18, At [24].

That is certainly so. However, that is not a significant factor in mitigation. As I earlier observed, the importance of a number of levels of safety and a range of safeguards, and in this context, safeguards around the training of the drivers of heavy vehicles, like the vacuum truck, is important precisely because there might be a mechanical defect in the vehicle.

Cleanaway next referred to other measures it had in place in respect to driver competency. They included:

- Trained and licenced drivers adhering to road rules.
- Fatigue management policy in place.
- Drivers told not to use phone while driving.
- SLAM (Stop, Look, Assess, Manage) procedure.
- Regular driving assessments where hazard awareness and distraction avoidance are assessed.

Cleanaway contended that it had implemented those measures thereby significantly reducing the risk of a vacuum truck colliding with other road users. Again, that is not a significant factor or a circumstance in mitigation. If Cleanaway had shown a complete disregard for safety by having no such policies, the offending is likely to have been aggravated. Importantly, all those safety measures depend on a base level of competence on the part of the driver, in respect of the regular driving assessments.

Cleanaway also relies, by way of mitigation, on the partial assessment of Mr Hicks in either an automatic vehicle or a seven-speed synchromesh gearbox with a buddy driver. He did not attempt a steep descent on any of those occasions. It is not a matter substantially in mitigation that Mr Hicks was assessed in vehicles and on routes other than the route on which he was assigned on that day, and in respect of which he did not have the competence to drive safely.

Indeed, the submissions fail to acknowledge the critical failures which exposed so many to the risk of serious injury or death. The first failure was Mr Skinner's certification of Mr Hicks' competence to operate in all tasks when he had not been so assessed. The second was that Cleanaway did not direct its officers responsible for assigning drivers to trucks and routes not to assign any Adelaide Hills contract work to a driver who had not been assessed as competent to drive safely down the South Eastern Freeway. Systems of work which prevented both failures might have been operationally inconvenient for Cleanaway but were necessary.

Cleanaway also relied by way of mitigation on its compliance with industry norms. That submission fails to recognise that the WHS Act applies statutory norms which are not the captive of industry practices. Meeting industry practice may well be an answer to an allegation that the offence was an aggravated one but is not a substantial matter in mitigation. The industry as a whole and each individual business conducting an operation has a responsibility to meet the statute.

The manifest purpose of ss 17 to 32 of the WHS Act is to make safety front of mind and to foster an environment which prioritises the systemic elimination of the risk of injury or death. The requirement to take all reasonably practicable measures to ensure safety requires an active, and not merely reactive, much less supine, approach to the identification and mitigation, if not elimination of risks to the safety of workers and others. On sentencing for a criminal breach of s 33 of the WHS Act not only must the sentence reflect and address the employer's culpability for the particular exposure to harm which is the subject matter of the charge, but perhaps even more importantly, the sentence must be sufficient to deter future breaches by encouraging the defendant, and other employers, to diligently establish dynamic systems which safeguard workers and others from unnecessary risk.

In *Dotmar Epp Pty Ltd v The Queen*,⁵ Priest JA described the assessment of the gravity of the seriousness of an offence against the WHS Act in this way:⁶

Hence, in determining the gravity or seriousness of the offence, the sentencing court must assess, first, the extent of the departure from the duty owed; secondly, the extent of the risk to health and safety thereby created; and, thirdly, the likelihood or risk of particular harm resulting. Put another way, in a case such as the present, the gravity or seriousness of a breach is to be measured by reference to the potential consequences of the breach; the extent of the evidenced disregard for the safety of employees; and the risk of the potential consequences of the breach materialising.

(Footnotes omitted)

Applying that matrix to the circumstances of this case, the offence is a relatively serious one. First, the extent of the departure from the duty is great.

⁵ [2015] VSCA 241.

⁶ *Dotmar Epp Pty Ltd v The Queen* [2015] VSCA 241 at [23].

Cleanaway assigned Mr Hicks to drive a heavy vehicle down the steep decline of the South Eastern Freeway without taking steps to ensure that he was competent to safely traverse that route. Secondly, the risk to health and safety thereby created was of the greatest magnitude. Death and serious injury to Mr Hicks and to other road users were well within the scope of the risk thereby created as is demonstrated by a rudimentary understanding of the forces involved in moving heavy vehicles and by the very result in this case. I accept that the likelihood or risk of the harm actually suffered in this collision, the deaths of two motorists and serious injury to three others, was not great, but the likelihood of some, albeit fewer, and or less serious injuries, was great. A minor collision or collisions may well have resulted from a failure to keep the truck within speeds in which Mr Hicks could more quickly have controlled, slowed or brought the truck to a standstill.

To apply the alternative expression of the test in the paragraph cited from the judgment of Priest JA, the extent of the evident disregard for the safety of employees and others is great. Cleanaway allowed a practice to develop whereby drivers were certified as competent for all tasks on incomplete assessments. Cleanaway allowed a system in which the Adelaide Hills contract work, which included descending the South Eastern Freeway, to be allocated to drivers who had not yet been assessed as competent to safely traverse that route.

Cleanaway also relied on the time which had elapsed between the offending and its sentence. Much of that time was the result of Cleanaway's unmeritorious denial of its culpability. It is difficult to imagine that a corporation like Cleanaway

was much burdened by the lapse of time. Certainly, it pales into insignificance in comparison to the anguish the delay has caused the victims of its offending.

Victim impact statements

Crystal Spiess, the daughter of Mr Spiess who was killed in the collision with the vacuum truck, referring to the protracted time that the prosecution had taken. She stated, “My grief and sadness has been prolonged and feels never-ending”. She described the personal loss of her father in this way:

His absence changed the way I raised my children and altered the course of our daily routines. The years of delay have also marked my children's childhoods, hearing about court updates and waiting for justice for a man they barely remember but still miss.

Hannah Pash, another of Mr Spiess’ daughters, said:

Eight years is too long to wait for justice.

I relive that tragic day every time I see it in the media and receive court updates.

I fear every week that the cleanaway trucks drive down my street to collect the bins. If there is a reported crash whilst my husband is out on the roads in normal day to day drives it triggers me.

I delay school drop off so I can avoid being there at the same time as the garbage removal.

Lousie Compton who was very seriously injured in the collision simply stated, “Life will never be the same”.

Other convictions

Cleanaway was sentenced in the District Court on 19 April 2017 on one count of breaching s 32 of the WHS Act.⁷ The offence occurred on 25 July 2013 at its premises at Wingfield.

⁷ *Comcare v Transpacific Industries* (unreported, District Court of South Australia, Davison DCJ, 19 April 2016).

The circumstances of the offence are these. In December 2012, Cleanaway developed in its laboratory a process to distil a solvent from a chemical waste product. On 25 July 2013, the commercial distillation of the substance from waste was undertaken. The employee responsible for the operation of the still was told that laboratory trials had revealed that 70 per cent of the mixture would be expected to be recovered from the distillation process and that the temperature at which there would be a conversion was between 220 and 240 degrees Celsius. In fact, the laboratory technicians had determined that the still should be maintained at an extraction temperature of approximately 163 degrees. Under their protocol, it was prohibited and unsafe for the still to be heated above 220 degrees. Over four hours in the morning of 25 July 2013, the temperature of the still was gradually increased to 240 degrees Celsius.

When the still was dropped and the vacuum release valve opened there was a large explosive rush of air and a large flame that enveloped an employee standing nearby. The worker was pushed backwards about one metre; his entire body was covered in a splash of the undistilled material. Fortunately, he was wearing the recommended safety clothing, and he suffered only a right wrist sprain.

Cleanaway's own investigation revealed that the laboratory processes and in particular the heat limits for the distillation of the product were only communicated to the plant operators verbally. There was no documentation of the procedure including specification of temperature controls. The Judge observed:

Cleanaway does have in place, procedures, policies and training. However, none of these processes appear to have been adequate to avoid the serious incident that occurred on 25 July.

The Judge also observed that a fire had occurred as a result of the distillation of waste substances on 31 May 2010. Cleanaway's own investigation of that explosion and fire noted that procedures and documentation were out of date and had not been formalised.

The Judge concluded that there was a significant departure by Cleanaway from its statutory duty. She observed:

Cleanaway is a well-resourced company where the risks in relation to dropping stills are well-known. Previously, it had experienced a similar workplace situation that should have heightened its awareness in relation to the risks associated with this process. All of the technical information was available to properly assess the risks and implement a safe work environment. It seems that those who were responsible for having provided the relevant information have not done so.

The information was not provided to those on the ground about the associated hazards of the substances, the extracted waste product of the resultant solvent and deposition products. There were a number of practical steps that could have been taken to have removed or at least mitigated the risks associated with the relevant distillation

The Judge imposed a fine of \$650,000 after reducing a notional fine of \$850,000 her Honour would have imposed but for Cleanaway's plea of guilt.

I observe that the critical failure in respect of the still explosion was of a similar kind to the failure in this case. Despite the existence of some documented safety procedures, their application to Cleanaway's day to day operations was haphazard.

Cleanaway was convicted in February 2025, following a guilty plea to s 32 of the WHS Act.⁸ This offence resulted from a fire that occurred during the operation of a machine, causing the machine's operator to catch fire and suffer serious burns. Cleanaway was found to have failed to ensure that the cables attached to the machine were secure, install an appropriate guard over relevant parts of the machine, and implement a Safe Work Method Statement. The Magistrate imposed a fine of \$300,000, after reducing a notional fine of \$400,000 which her Honour would have imposed but for the plea of guilty.

Subsequent systemic improvement

An affidavit of Matthew Goodman, the head of Health, Safety and Regulatory Compliance for Cleanaway, was received for the purposes of sentencing. Mr Goodman deposed that in October 2014 Cleanaway employed 4,169 workers in Australia. Its operations were located in 222 sites in metropolitan, rural and remote areas across Australia. At the time of the incident, Cleanaway operated 2,800 trucks with a workforce of 1,000 drivers in its national fleet. Its workforce has significantly increased since 2014. Its profit after tax in 2025 was \$156 million. Plain it has the financial capacity to pay a fine of the order prescribed for a breach of s 33 of the WHS Act. observe that the size of Cleanaway's cartage operations in 2014 demand robust and entrenched safe systems of work. Its revenue allowed it to invest in developing those systems. There is no good reason for the failure to implement such systems.

⁸ *R v Cleanaway Operations Pty Ltd*, (unreported, Magistrates Court of New South Wales, Magistrate Graham, 6 February 2025).

On the other hand, Mr Goodman deposed that the following safety measures were implemented by Cleanaway during 2013:

- Employees at all levels were trained on how to identify health and safety risk, how to prepare a risk assessment and how to prepare a work?
- Cleanaway delivered regular training on matters effecting work health and safety in accordance with a training plan.

Mr Goodman described Cleanaway's response to the collision. The day after the incident it grounded its entire national fleet on 19 August 2014. On the same day, Comcare issues a prohibition notice prohibiting Cleanaway from operating any of its heavy vehicle until each vehicle was inspected. The inspections revealed that Cleanaway's contractor at the Wingfield site had not properly inspected or maintained the brakes of the vacuum tanker truck driven by Mr Hicks. Cleanaway terminated its agreement with that contractor.

Mr Goodman deposed to the following change in the training for, and allocation of drivers traversing the South Eastern Freeway:⁹

Before being permitted to drive unsupervised, all new drivers are accompanied by a Driver Trainer or Branch Unit Instructor on a route, either down the South Eastern Freeway or the Golden Way, to verify the new driver has the necessary driving skills to perform a safe descent down a steep hill. In addition, every two years all drivers at the Wingfield site are required to complete the same down-hill assessment as part of their re-fresher training.

This includes drivers using vacuum tankers trucks and with the transmission type of the vacuum tanker being determined by the licence qualification of each individual driver (i.e. automatic or manual).

This requirement to verify that the new driver has the necessary driving skills to perform a safe descent down a steep hill and for re-fresher training to be conducted for descending

⁹ Affidavit of Matthew Simon Goodman made on 8 December 2025, FDN 17 at [48]-[50].

down a steep hill has been implemented nationally for those drivers that are required to perform these driving duties. This is in addition to the measures that were in place at the time of the incident, some of which are described at paragraph 24 above.

More generally, Cleanaway significantly improved its cultural approach to safety in 2023:

51. In July 2023, Cleanaway launched the 'Respect@Cleanaway' program and then in 2025 financial year, Cleanaway launched Respect '2.0'. This program involved several initiatives which focused on leadership accountability and cultural change surrounding safety, including the following:
 - a. CEO-led sessions attended by over 650 leaders, setting out expectations around creating a safer and more respectful workplace.
 - b. Frontline training rolled out face-to-face with practical, scenario-based learning.
 - c. The introduction of a Sexual Harassment Prevention Plan, and an updated Domestic and Family Violence plan.

Health and Safety Performance

52. Cleanaway has attained ISO Certification pursuant to ISO45001 (Safety). Certification under ISO45001 is a globally recognized, structured system for managing workplace health and safety that demonstrates:
 - a. Hazards are systematically identified, assessed, and controlled.
 - b. Processes are in place to meet WHS obligations and reduce regulatory risk.
 - c. Safety is embedded in decision-making, with active involvement from management and workers.
 - d. Clear objectives, KPIS, and audits ensure safety performance is measured and improved.
 - a. Regular reviews and updates driving ongoing enhancement of safety outcomes.
53. Cleanaway has developed a Fleet & Asset Strategy with a vision to create industry leading safety and environment performance, safe reliable assets, and a culture of learning. In the 2025 financial year, Cleanaway fulfilled a number of elements of its HSE Strategy, including but not limited to:
 - a. Developed a new HSE Induction for all new Cleanaway employees, including frontline workers.
 - b. Introduced a HSE critical risk & assurance program to raise risk awareness and commence verification of risk controls.

- c. Introduced a HSE cultural change framework, a simple common language to support a shift in mindsets and behaviours.
- d. Introduced a single action plan to improve Cleanaway's approach to land transport and Chain of Responsibility, including progressing plans surrounding In-Vehicle Monitoring Systems ('IVMS').
- e. Developed a new Safe Control of Work standard, including guidelines and tools.
- f. Introduced a standardised company Management of Change (MoC) process.
- g. Designed and delivered a new 'Stronger Together' HSE Leaders Program.
- h. Implemented a new Process Safety Framework, identification of safety critical elements, consistent reporting protocols, and delivering the FY24-25 Hazardous Areas project.
- i. Implemented a new computerised maintenance management system for fixed asset maintenance, both corrective and preventive.
- j. Efficiently delivered fixed asset and fire infrastructure services resulting in improved fire response and reduced fire severity.
- k. Deployed Branch Environmental Compliance Toolkits to operationalise regulatory licence requirements at each site.
- l. Implemented a step change in Cleanaway's approach to HSE investigations, learning and governance incorporating Human and Organisational Principles (HOP).
- m. Designed a new industry best practice Frontline HSE Representative Program.
- n. Implemented a new CWY Crisis & Emergency Plan, to ensure a structured and consistent approach to crisis and emergency response and preparedness.
- o. Introducing a Cleanaway Management System to function as a 'single source of truth' for all company policies, standards guidelines.

Ongoing prioritisation of safety

- 54. Cleanaway has a set number of priorities related to HSE for the 2026 and 2027 financial years and beyond, contained in its Fleet and Asset Integrity Plan. These priorities are as follows:
 - a. HSE Critical Risks & Assurance.
 - b. Safe Control of Work.
 - c. Land Transport and IVMS.
 - d. Contractor Management.
 - e. Line of Fire/Manual Handling.

f. Process Safety and Fire Risk Reduction.

55. Cleanaway are also implementing additional measures to accelerate its health and safety priorities, including an increased focus on driving and tracking Visible Safety Leadership, and new local HSE Traction Metrics to measure implementation effectiveness.

Critical Risk Program

56. In August 2023, Cleanaway commenced its Critical Risk Program, which encompasses personal and process safety, and environment risks. ‘Critical risks’ are high consequence events that could result in serious injury or impact to people, the environment, or Cleanaway’s assets.
57. The Critical Risk Program focuses on raising awareness and understanding of the causes of critical risk events, the preventative and mitigative controls, and establishing ongoing monitoring and assurance to prevent potential incidents. The objective of the program is to enable Cleanaway leaders and frontline workers to make effective risk-based decisions to prevent high-consequence HSE events. Key initiatives of the program include:
- a. Simplified standards and guidance that clarify minimum mandatory requirements for Cleanaway employees.
 - b. The introduction of a ‘risk bowtie’ visual tool for use at Cleanaway’s branches that details the event, preventative and mitigative controls.
 - c. Simple first and second line of defence assurance for each risk to verify the effectiveness of controls.
 - d. Embedding updated safe control of work processes including risk assessments, work instructions and training.
58. To date, there have been over 2,000 field assessments completed using the Critical Risk Program.

Land Transport Action Plan

59. Cleanaway has also implemented a Land Transport Action Plan. The objective of this Plan is to ensure the safe operation of Cleanaway’s fleet and enable its drivers to manage the risks encountered whilst operating heavy vehicles. Key focus areas of this plan include:
- a. A strategic fleet replacement program.
 - b. Improving the level of vehicle technology deployed across the fleet, including IVMS.
 - c. A refreshed Chain of Responsibility (CoR) training for leaders, frontline and support roles to ensure a consistent understanding of CoR requirements.
 - d. Standardised tools and assurance to ensure compliance with CoR requirements.

- e. Commencing a driver simulator training pilot to enhance driver training experience.

Sentencing

The changes outlined by Mr Goodman manifest a dynamic and anticipatory safety-first culture. I have reduced the fine I would have otherwise imposed but for the significant systemic safeguarding implemented since.

The fine I impose must be greater than the fine imposed in the District Court in 2017, to reflect the more pervasive system risk and the greater exposure to risk. Cleanaway's prior offending increases the relative need for personal deterrence and precludes the leniency which might have been afforded to a first offender.

I impose a single penalty pursuant to section 4K of the *Crimes Act 1914* (Cth) on counts 1 and 2, and I impose a fine of \$1,100,000. The single penalty reflects the culpability of both counts in that the breach exposed both Cleanaway's workers and the general public to the risk of serious injury or death.

ADJOURNED 10.19 A.M.