

# USING CONTRACTORS

A BRIEF GUIDE FOR TRANSPORT OPERATORS





## WHAT IS A CONTRACTOR?

A contractor is someone you ask to do work for you who is not one of your employees.

Contractors include workers visiting your workplace to do a job (e.g. a tradesperson) and those you sub-contract work to (e.g. another transport company or self-employed driver).

It is important to note that there are a range of factors which determine the existence of an employment relationship for purposes such as workers' compensation and superannuation. In some cases, just because the driver has an ABN or is called a subcontractor does not mean they actually are one.

Both you and the contractor have responsibilities under work health and safety laws. The contractor may also be a party in the Chain of Responsibility under the Heavy Vehicle National Law (HVNL).

This means that you must work together to ensure safety risks associated with the work you are asking the contractor to do are eliminated, or if this is not reasonably practicable, minimised. See NatRoad's [Safety Management in Chain of Responsibility guide](#) on how to do this.

The extent of your duty depends on the degree of influence of control you each have over the work. The nature of the work and level of risk will determine what you need to do to manage the safety of contractors.

For example, for a one-off job such as an electrician coming to your business to install a power point, it may be sufficient to explain relevant site rules and accompany them to the location where the job needs to be done. You may also need to cooperate with the electrician to ensure electricity is isolated while they carry out the work.

Contractors such as labour-hire or self-employed persons who are part of your day-to-day operations will require more comprehensive safety management.

For example, if you engage another transport operator to carry out deliveries for you over a period of time you should enter into more formal contract arrangements.

Contractors should meet your safety requirements. For example, your contract terms may include that the drivers the contractor uses may be subject to your drug and alcohol testing program.

A contractor may also operate under their own safety management system or procedures where you have assessed they are appropriate and meet the safety standards established by work health and safety laws and the HVNL as a minimum.

Problems can arise when there is further subcontracting unless there are good arrangements between all parties. You may wish to set down rules for subcontracting.



# WHAT YOU NEED TO DO WHEN HIRING CONTRACTORS

## 1. IDENTIFY THE JOB

Identify all aspects of the work you want the contractor to do. Consider the health and safety implications of the job. Provide potential contractors with this information and make sure they know and understand the performance standard you expect of them. You could include this information in the job specification.

## 2. SELECT A SUITABLE CONTRACTOR

You will need to satisfy yourself that the contractor you choose can do the job safely. This means asking questions about their compliance with the HVNL and work health and safety laws, their skills and experience and their system for managing safety. The level of enquiries you make should be determined by the level of risks and the complexity of the job.

### **Questions you could ask potential contractors include:**

- ▶ What arrangements will you have for managing the work? For example, who will be responsible, how will the work be supervised, what checks and maintenance are carried out on vehicles and equipment?
- ▶ Will you be using subcontractors and, if so, how will you check they can do the work safely?
- ▶ What is your recent safety performance and how is that recorded? For example, how many work-related incidents and injuries have you had, and have you detected any breaches of the HVNL and WHS laws?
- ▶ What skills and experience do you have in this type of work? Do you have any independent assessment of your competence?
- ▶ Do you have a safety procedure for the job which identifies all the risks and includes the measures needed to control those risks?
- ▶ What insurances do you have?

### **You should ask for evidence to support what you have been told, for example:**





- ▶ Vehicle maintenance records
- ▶ Work diaries
- ▶ Licenses
- ▶ Insurance policies
- ▶ Risk assessments or safety manuals
- ▶ Contact names for previous jobs the contractor did so that you can check how they performed

### 3. ASSESS THE RISKS OF THE WORK

Both you and the contractor need to discuss the risks that may arise from each other's work:

- ▶ What can harm people - i.e. what hazards you are likely to encounter?
- ▶ Who might be harmed and how?
- ▶ How will you control the risks?

If you are engaging a contractor to carry out a transport activity, you should consider:

 Vehicle	 Loads	 Driver	 Route
<ul style="list-style-type: none"><li>• Capacity and suitability Roadworthiness</li><li>• Maintenance</li><li>• In-vehicle monitoring devices (e.g. speed limiters, IAP)</li></ul>	<ul style="list-style-type: none"><li>• Weights</li><li>• Load restraint</li><li>• Design of loading and unloading sites</li><li>• Availability and suitability of loading equipment</li></ul>	<ul style="list-style-type: none"><li>• Licenses</li><li>• Fitness for work</li><li>• Fatigue monitoring</li><li>• Competency</li></ul>	<ul style="list-style-type: none"><li>• Road conditions</li><li>• Scheduling</li><li>• Permits and notices</li><li>• Rest stops</li><li>• Emergency procedures</li></ul>



Don't assume that contractors will be aware of all risks,  
even if they seem obvious to you.

## 4. CONTROL THE RISKS

Decide what you each need to do to manage the risks before the contractor starts work. The measures you put in place should be consistent with the level of risk. The greater the risk, the more you need to do.

### **Consider:**

- ▶ Who will be responsible for the work and what do you expect them to do?
- ▶ Who will supervise the work and how?
- ▶ How will the work be done and what precautions will be taken?
- ▶ What activities should not be done?
- ▶ What safety equipment is to be used and who will provide it?
- ▶ What are the arrangements for stopping the work, if there are serious safety concerns?
- ▶ How will incidents be reported?
- ▶ What records need to be kept?
- ▶ What action will be taken if the contractor does not follow the agreed safety measures?

You may need to provide information, instructions and training to contractors to enable them to carry out the work safely.

Once you have agreed how to control the risks, be clear about who will do what and when. Ensure contract terms do not lead to unsafe work or cause a driver to exceed speed limits or breach fatigue requirements.



## 5. COOPERATE AND COORDINATE

You and the contractor must work together and coordinate your activities, to make sure the work can be done safely. One way of doing this is to communicate with each other regularly.

## 6. MONITOR AND SUPERVISE THE WORK

Once the work has started, make sure you keep a check on how the work is going against what you have agreed. Provide feedback to the contractor on any safety issues and their performance.





# SAMPLE LETTER TO CONTRACTORS

We have included a sample letter that you can adopt when sub-contracting drivers to clarify the chain of responsibility requirements and check their compliance.

Dear [Subcontractor],

It is a requirement of [business name] that all subcontractors comply with their duties as a party in the chain of responsibility under the Heavy Vehicle National Law (HVNL). This law recognises that the responsibility for ensuring the safety of transport activities is shared between various parties in the supply chain.

Each party must take positive steps to prevent offences relating to heavy vehicle mass, dimension, load restraint, fatigue and speeding.

To meet our duties as a prime contractor under the chain of responsibility, [business name] will:

- Inform sub-contractors carrying out the transport task of the nature and type of goods for transportation
- Inform sub-contractors of our safety requirements and policies and discuss any safety issues that may arise including how they will be dealt with
- Check that heavy vehicles and their loads comply with relevant mass, dimension and load restraint requirements
- Provide sub-contractors with any necessary training, instruction and supervision
- Ensure our business practices, including contracts and agreements, do not require or encourage drivers to:
  - o exceed the speed limits
  - o exceed regulated driving hours
  - o fail to meet the minimum rest requirements
  - o drive while impaired by fatigue.

As a sub-contractor to [business name], you have responsibilities as an operator under the chain of responsibility to ensure that your actions or inactions do not cause or encourage the driver of the heavy vehicle or another person to contravene the HVNL. Your key responsibilities are outlined in the attached checklist. Please complete this form and return it me at your earliest convenience.

We need to verify your compliance with fatigue, mass, maintenance and speeding requirements and may contact you for further information.

Yours sincerely,

[Name and position]

<b>Subcontractor name:</b>			
<b>Business address:</b>			
<b>Phone:</b>		<b>Mobile:</b>	
<b>Period of Contract:</b> ___/___/___ to ___/___/___			
<b>Job description:</b>			
<b>Driver's license:</b>			
<b>Insurance Type</b>	<b>Insurer</b>	<b>Policy number</b>	<b>Policy dates</b>
<b>Operator responsibilities (attach relevant documents)</b>		<b>✓</b>	<b>✗</b>
Systems are in place to identify, assess and control safety risks			
Loads are securely restrained and correctly positioned, in accordance with the Load Restraint Guide			
Equipment used to restrain loads is appropriate and well maintained			
Load weights are accurate			
Suitable vehicles and/or combinations are used for all loads			
Heavy vehicles and their loads comply with relevant mass and dimension limits			
Vehicles are roadworthy, well maintained and fitted with properly functioning speed limiters			
Drivers are provided with relevant documentation (e.g. permits, notices) including a complying Container Weight Declaration for containers before starting a journey			
Driver fitness for duty is assessed			
Drivers' activities, including work and rest times are monitored and accurately recorded			
Your driver's schedule and your business practices do not require or encourage drivers to:			
• exceed the speed limits			
• exceed regulated driving hours			
• fail to meet the minimum rest requirements			
• drive while impaired by fatigue.			
[Business name] is immediately notified of any dangerous conditions, unsafe behaviour or non-compliance			

I agree to abide by the safety standards set out under Work Health and Safety legislation, the Heavy Vehicle National Law and those set by [business name].

Signature: \_\_\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_\_\_



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