

TOPIC: CHAIN OF RESPONSIBILITY – CHANGES TO THE HEAVY VEHICLE NATIONAL LAW

Summary:

Amendments to the *Heavy Vehicle National Law* (HVNL) were passed in the Queensland Parliament in December 2016 and are expected to commence in mid-2018.

The changes involve a new chapter directed at chain of responsibility parties and the principle of shared responsibility. They include a primary duty on chain of responsibility parties to proactively ensure the safety of transport activities, thereby replacing a number of specific offences that automatically impose liability on a party when breaches are detected.

The new provisions also include a 'due diligence' obligation on executive officers of entities with a primary duty, and prohibit requests and contracts that would cause a driver or chain of responsibility party to breach fatigue requirements or speed limits.

Key Details:

How will the changes impact on chain of responsibility (CoR) parties?

The law recognises that other parties may be responsible for offences committed by the drivers and operators of heavy vehicles. The new CoR laws focus on managing risk in the same way as work health and safety (WHS) laws do. This means that parties in the chain need to actively identify hazards, assess and control the risks related to their transport activities, rather than reacting when there's a possible breach of the law.

Who are the parties in the chain?

The list of parties in the chain of responsibility remains the same. A **party in the chain of responsibility** for a heavy vehicle means:

- If the vehicle's driver is an employed driver – an employer of the driver
- If the vehicle's driver is a self-employed driver – a prime contractor for the driver
- An operator of the vehicle
- A scheduler of the vehicle
- A consignor and consignee of any goods in the vehicle
- A packer of any goods in the vehicle
- A loading manager
- A loader and unloader

A person may be a party in the chain in more than one way, e.g. they may have duties as the employer, the operator and the consigner of goods. More than one person can also have a duty for the same activity, e.g. loading a truck. Each person must discharge their duty to the extent of their capacity to influence and control that activity and the associated risks.

Duties cannot be transferred to someone else.

What must the parties do?

Each party must ensure, so far as is **reasonably practicable**, the safety of the party's **transport activities** relating to the vehicle, including by:

- eliminating **public risks** and, to the extent it is not reasonably practicable to do so, minimise the public risks; and
- ensuring the party does not directly or indirectly cause or encourage the driver of the heavy vehicle or another person to

breach the HVNL, or the driver to exceed a speed limit.

Public risk means a safety risk, or a risk of damage to road infrastructure.

The definition of *transport activities* is broad and means all activities, including business practices and making decisions, associated with the use of a heavy vehicle on the road. For example, if an operator of a vehicle engages a mechanic to maintain or repair the operator's vehicle, then the operator is responsible for ensuring, so far as is reasonably practicable, the maintenance or repair is undertaken to a standard that will not create public risks.

Other transport activities may include consigning and packing goods for transport, loading, unloading and receiving goods from the vehicle.

Meeting the duty will require a shared understanding of what the hazards and risks of the transport activity are and what each party in the chain of responsibility will do to control the risks. You will need to identify the other parties in the chain whose actions and decisions affect the safety of your transport activities, consult and cooperate with them, and coordinate activities to ensure the safety measures you each put in place work effectively together. Ensure any contracts clearly specify who is responsible for what.

What does 'reasonably practicable' mean?

The 'reasonably practicable' standard of care is also used in WHS laws and takes into account the wide variety of situations that exist in workplaces. It means that what can reasonably be done in the particular circumstance, weighing up all relevant matters, including:

- the likelihood of a safety risk or damage to road infrastructure happening; and the harm that could result from such a risk or damage
- what the person knows, or ought reasonably to know, about the risk or damage and the ways of removing or minimising the risk
- the availability, suitability and cost associated with the available ways of removing or minimising the risk.

Industry codes of practice, reputable technical standards and publications developed by regulators provide guidance to parties in the chain on risk management practices and what is reasonably practicable. Under the HVNL changes, registered Industry Codes of Practice can be used by a court to show what is known about a hazard or risk, risk assessment or risk control and what is reasonably practicable in the circumstances to which the code relates.

What do executives need to do?

An 'executive' of a business must exercise *due diligence* to ensure the business complies with the primary duty. It applies to executive directors and officers of a corporation, partners of an unincorporated partnership and management members of an unincorporated body.

In order to meet the due diligence obligation executives must take reasonable steps to keep up to date with knowledge about safe practices, to ensure that the business has resources available and processes in place to manage risk, respond to incidents and to verify that these resources and processes are provided and used. If an executive fails to exercise due diligence, they can be held personally liable, even if the company they work for is not convicted of an offence relating to the duty.

What are the penalties for failing to comply with the primary duties?

There are three categories of penalty based on whether there was a risk of death or serious injury/illness, not on whether actual harm occurred.

Category 1:	Category 2:	Category 3:
Recklessly exposing an individual to a risk of death or serious injury/illness without a reasonable excuse	Exposing an individual, or a class of individuals, to a risk of death or serious injury/illness	Person contravenes the primary duty
Penalty: Corporation: \$3m Individual: \$300k / 5 years jail	Penalty: Corporation: \$1.5m Individual: \$150k	Penalty: Corporation: \$500k Individual: \$50k

What other changes have been made to the HVNL?

New provisions introduce enforceable undertakings as an enforcement option and as an alternative to prosecution. An authorised officer can sign this agreement stating that the party in breach of their obligations will take specific steps to comply with the law. An enforceable undertaking is not available where a party commits a category 1 offence.

Where a party does not comply with an undertaking the Regulator can seek a court order directing the party to do so. A maximum

penalty of \$10,000 can also be imposed for a failure to comply with an undertaking.

The new laws also:

- Provide additional information gathering powers for authorised officers, including police, in relation to a possible contravention of the primary duty of care
- Introduce self-clearing defect notices as an additional type of defect notice for defective vehicles that do not pose a safety risk or if the vehicle's number plate is obscured. There is no requirement for the heavy vehicle to be presented for inspection to have the notice cleared.
- Amend the definition of 'mass management system' in section 457 to allow for other measures to weigh a vehicle and its load in addition to the use of mechanical devices. This will align with the other ways of calculating mass permitted by the mass management standards and business rules. The amendment also removes the requirement to record reductions in load each time a load is changed after a journey is commenced.

For more information:

Updates are provided through www.natroad.com.au and NatRoad social media.