

ALERT

7 MARCH 2014

Chain of responsibility – national road transport laws for heavy vehicles

If you consign, pack, load or receive goods as part of your business, you could be held liable for breaches of road transport laws – even if you had no direct role in driving or operating a heavy vehicle – according to the newly commenced Heavy Vehicle National Law (HVNL).

Under the HVNL's chain of responsibility (CoR) provisions, if you exercise (or could exercise) control or influence over any transport-related task, you are captured by the laws and have a responsibility to ensure that the road transport laws are not breached. In this way, the CoR provisions are similar to the legal concept of 'duty of care' that underpins work health and safety law.

Specifically, the HVNL introduces the concept of a 'responsible person' – making the laws applicable to a wider category of people connected with the road transport industry than ever before. Each person in the supply chain has a general duty to take all reasonable steps to ensure a heavy vehicle driver can perform their duties without breaching road transport laws. The legislation also prescribes specific responsibilities for drivers, loaders/packers/loading managers, operators/managers/schedulers and consignor/

consignees. Importantly, a person may have more than one duty by virtue of being in the supply chain in more than one way.

The model laws

For businesses that operate across multiple jurisdictions, the harmonised laws mean that you will no longer be required to navigate the rules and comply with the sometimes inconsistent requirements of each jurisdiction (with the exception of Western Australia, which has so far refused to adopt the new laws). Please note that the laws have not yet commenced in the Northern Territory and the Australian Capital Territory, but are expected to do so in the near future.

The HVNL is one set of laws for heavy vehicles (over 4.5 tonnes) that cover, among other things, vehicle accreditation, load restraints, driver fatigue management and speed limit management. The HVNL also introduces a new national driver work diary and a single structure for fees for access permits, and expressly prohibits people in the supply chain from making terms of consignment or work/employment contracts that will result in, encourage, reward or



provide an incentive for a driver or other party in the supply chain to break any road transport laws.

It is important to note that the HVNL does not affect laws relating to heavy vehicle registration, inspections, driver licensing and all matters related to the carriage of dangerous goods – these will remain the responsibility of state and territory authorities.

For all businesses that have permits in force, it is important to note that these permits will continue to have effect as if they were made under the HVNL and will remain current for the same routes and with the same conditions until their expiry or replacement under the national access framework (whichever comes first). New permit applications will need to be made through the National Heavy Vehicle Regulator (**Regulator**).

Offences

There are around 330 offences under the laws. The HVNL recognises that not all offences have the same impact on safety or infrastructure and accordingly some offences have been scaled according to their road safety risk. That is, offences regarding fatigue management, mass, dimension and loading and speed compliance will fall within classes ranging from minor to critical, with critical breaches attracting the largest penalties.

For some (though not all) offences, the HVNL makes available a 'reasonable steps' defence for persons in the supply chain if they can show they did not know or could not reasonably have been expected to know that a breach had occurred. In making out this defence, a person will also have to prove they took all (and not just some) reasonable steps to prevent the breach or there were no

reasonable steps they could have taken to prevent the breach. In reality, this defence may be difficult to establish.

State and territory police and authorised officers will continue to enforce heavy vehicle offences under the HVNL.

Practical considerations

The HVNL is now fully operational in almost all states and compliance is mandatory. Any employer or contractor that is involved in road transport or uses road transport services is likely to be considered part of the CoR with obligations under the new legislation.

Businesses should:

- assess whether they are part of the road transport CoR (as well as which people within their organisation have specific responsibilities);
- assess their responsibilities under the legislation (by identifying and assessing aspects of the activities which the business supervises that could lead to an offence); and
- undertake the appropriate steps toward compliance.

These steps will likely include (among other things) ensuring that equipment and work systems are maintained, implementing and documenting policies, procedures and workplace practices, and ensuring that staff are adequately trained in such policies, procedures and workplace practices. We recommend that businesses also include compliance and assurance terms in relevant commercial arrangements with other responsible persons.

Want to republish any of this article?

If you would like to republish any part of this article in your staff newsletter or elsewhere please contact our Marketing team on **+61 3 9608 2168**

Disclaimer

This article is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.

Images

All images are used courtesy of www.freedigitalphotos.net



For further information please contact

Louise Houlihan, Partner
Phone (direct) **+61 3 9608 2273**
Mobile **+61 409 835 809**
Email l.houlihan@cornwalls.com.au



Dean Katz, Senior Associate
Phone (direct) **+61 3 9608 2253**
Mobile **+61 413 497 225**
Email d.katz@cornwalls.com.au