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# Information Bulletin

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## Chain of Responsibility

### Introduction

This bulletin provides information on the pioneering 'chain of responsibility' laws being progressed by the National Transport Commission in conjunction with the road transport industry and all governments.

The aim of the new laws is to ensure that legal liability is imposed on all those in the transport chain who have responsibility for certain tasks where their actions result in an offence.

The laws target speeding, illegal driving and working hours, overloading, exceeding vehicle dimensions and poorly restrained loads. Improved compliance with these and other laws will provide a safer industry for workers in the road transport industry and other road users.

Chain of responsibility is a key initiative targeting those who, by their actions, inactions or demands, put drivers' lives and other lives at risk, and gain an unfair competitive advantage by breaking the law. The principle was developed by the National Road Transport Commission<sup>1</sup> in the early 1990s and is a major component of the Commission's 'smart compliance' approach to ensuring compliance with road transport laws.

### Road Transport Laws – Then and Now

The traditional approach in road transport law in Australia has been to apply legal liability for not operating safely on drivers only, or in some cases owners or operators. Where other parties could be held accountable, this was generally through legally cumbersome 'cause or permit' or 'aid and abet' laws. Prosecution of other parties in the transport chain was rare, and tended to occur only for serious offences.

The major weakness of this approach is that it ignores the actions of many other parties (including 'off-road' parties such as consignors, manufacturers and loaders). Knowingly or unknowingly, the actions (or failure to act) of these parties in the chain can have a major effect on drivers' fatigue, speeding, overloading and load restraint behaviour. Hence, former road transport laws tended to have little, if any, deterrent effect on these parties.

However, under the national approach to road transport laws being progressed by the Commission and now being implemented by States, Territories and the Commonwealth, *all* who exercise control over conduct that affects compliance will have responsibility, and may be made accountable for failure to discharge that responsibility. This includes primary producers, miners, manufacturers, retailers, importers, exporters, tourism operators and all other parties involved in road freight and passenger transport.

This is achieved by the clear identification of the responsibilities of various parties and holding them legally accountable for breaching them. The new approach is far more direct and effective in securing accountability for non-compliance than the previous laws, and enables all parties to know their legal obligations from the outset.

The chain of responsibility laws are designed to apply to all road transport offences, ranging from minor breaches of log book recording to actions contributing to a serious spill of dangerous goods from a truck.

1. The National Road Transport Commission became the National Transport Commission on 15 January 2004.



## Who Should Be Held Responsible?

The principle behind the Commission's 'chain of responsibility' concept is simple:

*Any party who has control in the transport chain can be held responsible and may be made legally liable*

Any party who has control in the transport chain can be held responsible and may be made legally liable

Under chain of responsibility:

*control = responsibility = legal liability*

There are many different activities and parties involved in transport operations. Different parties have sole or shared control of each of these activities and could be held responsible for breaches of road transport laws.

An example of a simple road freight transport chain is:

*consignor => packer => loader =>  
operator => driver => consignee*

Liability for an offence will apply even if persons only receive goods (i.e. the consignee), provided they knew, or ought to have known, that they could only have been supplied those goods by breaching a road transport law.

The legal duties apply both inside and outside a road transport company. Within a company, any person with control over road transport operations could be held *personally* responsible and be subject to large fines. Examples include directors who set general policies, and managers who set rosters or schedules. Outside a company, they apply to consignors, customers and potentially any other party in the transport chain who places unreasonable demands on others in the transport chain.

The application of chain of responsibility does not depend on the nature of the employment or contractual relationship; the provisions apply equally to employees and sub-contractors.

Specific legal defences will apply to ensure that liability is not imposed unfairly. However, parties who should have been aware or should have taken precautions to prevent a breach will be held legally liable, even though they may not have been physically involved in the breach.

Chain of responsibility laws apply in addition to, but complement, other duties required by occupational health and safety, environment, corporations and other laws.

## Demonstration Effect

Wider recognition and enforcement of chain of responsibility is potentially the single most important factor in improving the safety of the freight transport and bus passenger industries.

Although the application of chain of responsibility may prove to be more difficult for enforcement agencies than simply 'pinging' the driver, chain of responsibility is very important for accountability and will not be applicable to every breach. Further, it is widely believed that a single successful prosecution of a party further along the transport chain will have a powerful demonstration effect, and far greater impact in improving industry safety, than fining a large number of drivers.

The full implications of chain of responsibility will not be apparent until there has been a series of successful prosecutions. However, the ability to prosecute parties other than drivers and operators is expected to be a strong deterrent and may well have implications for the insurance liability of those parties. These factors alone are expected to result in an overall improvement in compliance.

## Responsibilities of Drivers

Drivers are in control of vehicles on-the-road and have responsibilities to other road users. Chain of responsibility laws won't remove these responsibilities, but they will be clearly defined and limited to those actions and inactions for which drivers reasonably ought to be liable. Special legal defences will exist to ensure that liability is not imposed unfairly.

## Penalties and Sanctions

Administrative sanctions that currently apply or will apply include:

- formal warnings
- infringement notices
- improvement notices.

Court-imposed sanctions that currently apply or will apply include:

- fines
- penalties relating to the commercial benefit derived from offences
- suspension and cancellation of driver licence and vehicle registration
- supervisory intervention orders that require certain actions to be taken to improve compliance with transport laws (e.g. to enter a mass accreditation scheme)
- prohibition orders that will result in banning persons from the industry.

Supervisory intervention orders and prohibition orders will only apply to 'persistent or systematic' road law offenders.

## Chain of Responsibility Legislation

Chain of responsibility laws have been tailored for the national road transport laws detailed below. National policies have been approved in each case, and the laws are in various stages of implementation at a national or State and Territory level.

The table lists some of the specific obligations of each responsible party and the national penalties that apply. It is not comprehensive, and it is important to refer to the laws applying in States and Territories for full details.

### The Road Transport Reform (Compliance and Enforcement) Bill

The national model Road Transport Reform (Compliance and Enforcement) Bill is intended to improve compliance with and enforcement of the heavy vehicle laws relating to registration, licensing, mass and loading, speeding and driving hours and will help the States and Territories give legislative effect to the chain of responsibility principle. Major elements of the model Bill include:

- general liability provisions reflecting the chain of responsibility principle;
- improved enforcement powers to ensure greater accountability right along the transport chain and to enable effective chain of responsibility investigations and proceedings; and
- the extension of chain of responsibility to duties and offences for heavy vehicle mass, dimension and load restraint.

Australian Transport Ministers approved the model Bill in November 2003. As a result, the jurisdictions can commence developing their own legislation to apply the model provisions. The intended timing for the introduction of all jurisdictional legislation is in the first half of 2005.

### 'Responsible person' concept

An important chain of responsibility initiative in the Bill is the 'responsible person' concept. A responsible person is defined very widely in the Bill as any person who has a role or responsibilities associated with road transport. A responsible person has specific duties to ensure that other parties in the transport chain are not misled by false information about any aspect of a consignment or the journey. This person is also required to provide information about the load and about the identity of other parties in the chain when requested to do so by authorities, and the premises of a responsible person may be inspected or searched in limited, but appropriate circumstances.

### Special chain of responsibility provisions for mass, dimension and load restraint

The Bill specifically provides that the consignor, packer, loader and receiver may be held legally liable for a breach of a heavy vehicle mass, dimension load restraint requirement. In this way, these key off-road parties stand in the same shoes as their on-road counterparts, the driver and carrier. This will enable authorities to target the party or parties actually at fault in each case. In some cases, this will result in action being taken against an off-road party or parties, rather than the driver or operator.

Also, the provisions mandate that accurate container weight declarations must be provided by the person defined as the 'responsible entity', namely the person in Australia who engages the road carrier or offers the container for transport by road in Australia. This requirement is to ensure that drivers and road operators receive the correct information to enable selection of the appropriate vehicle to transport the container within the relevant legal mass limits.

These chain of responsibility provisions will oblige all parties in the chain, for the first time, to take positive steps to prevent a breach of the road transport mass, dimension and loading laws, thereby reducing pressures on on-road parties and ultimately leading to improved compliance and safer roads.



### General extended liability provisions

The Bill also includes enhanced general extended liability offences. Any person who aids, abets, counsels or procures the commission of an offence by another person will be taken to have committed the offence and may be found guilty, even if the principal offender is not found guilty or even prosecuted. Any person who causes or permits the commission of an offence or coerces, induces or offers an incentive to a person to commit an offence will be guilty of an offence.

It will also be an offence to discriminate against a person who has reported or raised concerns about road law breaches, for example, by dismissing an employee who raises concerns about breaches of driving hours requirements.

When one of the parties in the chain of responsibility is a body corporate, there is also potential for a director, company secretary and senior manager to be held personally liable for a breach committed by that body corporate unless the person was not in a position to influence or control the body corporate in relation to that breach, or, if the person was in such a position, took reasonable steps to prevent the breach.



### Driving Hours

The Road Transport Reform (Driving Hours) Regulations 1999 provide a different approach to the application of the chain of responsibility principle in the case of truck and bus driving hours. These laws specify a general duty on all those involved and more specific duties for consignors, employers and drivers.

The Commission is in the process of developing a revised regime the main focus of which will be fatigue management, but which will still include prescribed limits on hours. Special provisions to create a chain of responsibility in relation to driving hours will be developed for future inclusion in the model Road Transport Reform (Compliance and Enforcement) Bill.

### Speeding Heavy Vehicles (‘Three Strikes and You’re Out’)

The Speeding Heavy Vehicle Policy is based on a ‘three strikes and you’re out’ approach. Suspension of registration applies to operators of heavy vehicles detected in excess of 15km/h above the open road speed limit. The three strikes penalty is a staged approach comprising warnings, demonstration or fitting of a speed limiter, and a 28 day or three-month suspension period.

The policy has been implemented in New South Wales, Victoria and South Australia, as well as by the Commonwealth in relation to vehicles operating under the Federal Interstate Registration Scheme.

The Commission is currently reviewing compliance and enforcement measures for speeding heavy vehicles. The review will include consideration of the ‘three strikes’ policy. It is envisaged that special provisions to create a chain of responsibility for speeding heavy vehicle compliance will be developed and, again, the new provisions will then be included in the model Road Transport Reform (Compliance and Enforcement) Bill.

### Dangerous Goods

In the *Road Transport Reform (Dangerous Goods) Act 1995* and the *Road Transport Reform (Dangerous Goods) Regulations 1997*, the responsibilities of each of the parties in the dangerous goods transport chain are defined by drawing a distinction between the *primary* liability of the person responsible for ensuring that a particular requirement is met, and the *secondary* liability of a person who is responsible only to the extent that he or she knew, or reasonably ought to have known, that the obligation was not fulfilled.

Under these laws, packers, loaders, manufacturers, consignors, prime contractors and drivers have defined legal responsibilities that correspond to their respective duties in the loading and transport of dangerous goods. The extent of their liability (primary or secondary) reflects the extent of their control over these duties.

A seventh edition of the Australian Dangerous Goods Code is currently being prepared and it is proposed that the *Road Transport Reform (Dangerous Goods) Regulations 1997* and the *Rail (Dangerous Goods) Rules* will be updated in line with relevant aspects of the model Road Transport Reform (Compliance and Enforcement) Bill.

### What is Happening Now?

There is a range of actions under way by governments, the Commission and the industry to apply chain of responsibility and develop it further. These include the following:



## Enforcement

To date, the main enforcement of the new national chain of responsibility provisions by States and Territories has been taken under the national dangerous goods laws. Included are the following:

- in Queensland - Queensland Transport has investigated and prosecuted some 170 cases involving more than 700 charges against responsible persons under legislation since 2000.

Convictions have been recorded against the likes of transport operators, consignors and loaders for mass, dimension, fatigue and dangerous goods offences.

Queensland Transport has successfully prosecuted a number of major chain of responsibility cases against responsible parties involving serious multiple mass and fatigue offences resulting in substantial fines against corporations and managing directors.

- in New South Wales – successful prosecutions brought against prime contractors; and
- in South Australia – infringement notices issued to owners, consignors, drivers and prime contractors.

An investigations team within Department of Transport and Urban Planning (SA) that will work closely with SA Police is being created to undertake investigations against all parties in the chain of responsibility under the model Road Transport Reform (Compliance and Enforcement) Bill.

## Customer Awareness Programme

The Australian Trucking Association has a programme to raise awareness of obligations and responsibilities of parties along the transport and supply chain. An information brochure, *Wake Up Call to Users of the Trucking Industry*, is available from the ATA's Web Site at <http://www.truck.net.au/publications/wakeupcall.pdf> or contact the ATA by phone on (02) 6253 6900 or by e-mail to [ata@truck.net.au](mailto:ata@truck.net.au)

## Transport Contracting

Increasingly, contracts between transport users and providers are incorporating chain of responsibility requirements in their terms and conditions such that breaches of road transport laws could lead to penalties and possibly cancellation of the contracts.

## Work in Progress

Work being progressed by the Commission includes:

- working with road transport agencies on the implementation of the Road Transport Reform (Compliance and Enforcement) Bill. This work includes the preparation of a national communications strategy being led by the Department of Transport and Urban Planning (SA);
- working with road transport agencies to develop administrative guidelines to assist enforcement agencies apply the new laws effectively;
- developing nationally consistent qualification and training standards for enforcement officers through the processes of the Australian National Training Authority;
- reviewing the Driving Hours Regulations to provide stronger chain of responsibility provisions and penalties;
- reviewing approaches to heavy vehicle speed compliance; and
- commencing a study to identify an effective chain of responsibility in the area of vehicle standards.

## What to do about the New Laws

If you or your organisation has a role in the transport chain, it is in your best interests to become familiar with your obligations under the new road transport laws and comply with them.

You may need to change the way you do business, and review policies and procedures related to your use and/or operation of road transport services. This could include things such as reviewing freight loading and unloading times and systems, implementing fatigue management training, reviewing contracts with service providers and customers and adopting risk management standards.

## Where to Get Help

The national road transport laws, and information about them are available on the Commission's Web Site at [www.ntc.gov.au](http://www.ntc.gov.au). For details of the duties and penalties applying in your State or Territory, or for general advice on how to meet your road transport compliance obligations, please contact the organisations listed overleaf.

## Transport Agencies

**Department of Transport and Regional Services,  
Australian Government**  
(02) 6274 7111

**Roads and Traffic Authority, NSW**  
(02) 9218 6888

**VicRoads**  
(03) 9854 2666

**Queensland Transport**  
(07) 3834 2011

**Department of Planning and Infrastructure, WA**  
(08) 9216 8000

**Main Roads WA**  
(08) 9323 4111

**Transport SA**  
(08) 8343 2222

**Department of Infrastructure,  
Energy and Resources, Tasmania**  
(03) 6233 5191

**Department of Urban Services, ACT**  
(02) 6207 5111

**Department of Infrastructure, Planning  
and Environment, NT**  
(08) 8999 5511

## Dangerous Goods Agencies

**Environment Protection Authority, NSW**  
(02) 9995 5000

**Victorian WorkCover Authority**  
(03) 9641 1555

**Queensland Transport**  
(07) 3320 4446

**Department of Industry and Resources, WA**  
(08) 9222 3595

**Workplace Services, SA**  
(08) 8303 0420

**Workcover, Tasmania**  
(03) 6233 7657

**ACT Workcover**  
(02) 6207 6353

**NT Worksafe**  
(08) 8999 5545

## Road Transport Associations

**Australian Livestock Transporters Association**  
(02) 6247 5434

**Australian Road Train Association**  
(02) 6882 2666

**Australian Trucking Association**  
(02) 6253 6900

**NatRoad**  
(02) 6295 3000

**NSW Road Transport Association**  
(02) 9267 8222

**Victorian Transport Association**  
(03) 9646 8590

**Queensland Trucking Association**  
(07) 3394 4388

**Transport Forum WA**  
(08) 9355 3022

**South Australian Road Transport Association**  
(08) 8445 8177

**Tasmanian Transport Association**  
(03) 6244 7436

**Australian Trucking Association, NT**  
(08) 8947 7161

## Unions

**Transport Workers Union**  
(03) 9645 1322

## Legal Advice

For specific queries about the legislation applicable to you, it is suggested you consult a solicitor or the Legal Aid organisation from your State or Territory.

# NATIONAL CHAIN of RESPONSIBILITY – DUTIES and PENALTIES

## PARTIES

For precise definitions of the parties listed below, consult the applicable legislation.

- Consignor:** a person who consigns goods for transport, including (but not limited to)-
- a rail, air or sea freight forwarder
  - a manufacturer
  - an importer
  - a customs agent
  - a person who arranges for the transport of goods (including those entering Australia)
  - a carrier who consigns goods for transport by other carriers
  - an Australian agent of an overseas-based consignor

**Any party who engages a road operator to transport a freight container or who offers a freight container for road transport – ‘responsible entity’**

**Packer:** a person who places items in packages, containers, pallets, etc

**Loader:** a person who places or restrains the load on the vehicle or combination, including (but not limited to)-

- a professional loading agent
- a stevedoring company
- a rail, air or freight forwarder
- a principal contractor
- a subcontractor
- a person who controls the loading facility

**Driver:** a person who drives a heavy vehicle, combination or commercial bus

## DUTIES

For full details of the relevant duties, consult the applicable legislation

- DG** Not consign dangerous goods for transport by road if it is known or reasonably ought to be known that any of the requirements relating to packaging, tank or container, equipment, stowage or segregation of goods, information, documentation or licensing requirements is not met
- DH** Not engage someone to transport goods by road if it is known or reasonably ought to be known that the driver would or would be likely to commit a core driving hours offence, a driving record offence or a speeding offence
- C+E** Upon the direction of an authorised officer or police officer provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance
- MDLR** Take reasonable steps to prevent a contravention of the heavy vehicle mass, dimension and load restraint requirements or the safe working limits of freight containers; provide a container weight declaration; not provide any false or misleading transport documentation or other information about the goods

**MDLR** Ensure that the road carrier and/or driver is provided with an accurate container weight declaration

**DG** Various duties relating to the safe packaging and appropriate marking of dangerous goods for transport by road

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**MDLR** Take reasonable steps not to provide any false or misleading transport documentation or false or misleading information about the goods, container, package or pallet

**DG** Various duties relating to the safe loading of dangerous goods in approved tanks or containers, and in packages that can be safely transported by road

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**MDLR** Take reasonable steps to prevent a contravention of the heavy vehicle mass, dimension and load restraint requirements; not provide any false or misleading documentation or other information about the goods, vehicle, combination or load

**DG** Not drive a vehicle transporting dangerous goods if it is known or reasonably ought to be known that any of the requirements relating to packaging, tank or container, equipment, stowage or segregation of goods, information, documentation or licensing requirements is not met

**DH** Ensure the maximum driving time or maximum work time is not exceeded; comply with the required minimum rest time and the applicable recording, notification and log book requirements

**C+E** Upon the direction of an authorised officer or police officer, stop the vehicle, keep it stationary or move the vehicle to the location specified by the officer; provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**MDLR** Take reasonable steps to prevent a contravention of the heavy vehicle mass, dimension and load restraint requirements; comply with duties relating to container weight declarations; not knowingly or recklessly provide false or misleading information about the goods, vehicle, combination or load

**SHV** Ensure that speed limiters are functioning effectively

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**MDLR** Take reasonable steps to prevent a contravention of the heavy vehicle mass, dimension and load restraint requirements; comply with duties relating to container weight declarations; not knowingly or recklessly provide false or misleading information about the goods, vehicle, combination or load

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**MDLR** Not knowingly or recklessly engage in any conduct that induces or rewards a breach of the heavy vehicle mass, dimension and load restraint requirements

**DG** Various duties not to use a tank, vehicle or equipment to transport dangerous goods unless tank is approved and the vehicle and equipment comply with applicable requirements and vehicle is insured

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties, certain documents and information as well as reasonable assistance

**DH** Not roster driving, work or rest time or allow a driver to drive a heavy truck or commercial bus if it is known or reasonably ought to be known that the driver would or would be likely to commit a core driving hours offence; manage drivers’ driving, work and rest times to ensure compliance with the requirements; ensure employees attend approved training courses; keep proper records in respect of required medical examination and training for employees

**C+E** Upon the direction of an authorised officer or police officer, provide name, place of abode and business address, the identity of other responsible parties certain documents and information as well as reasonable assistance; not to dismiss or victimise an employee or contractor who is assisting with or reporting breaches

**DG** Not transport dangerous goods by road if it is known or reasonably ought to be known that any of the requirements relating to packaging, tank or container, equipment, stowage or segregation of goods, information, documentation or licensing requirements is not met; keep proper records in respect of required medical examinations and training for employees

**DG** Not manufacture a tank or container other than in accordance with an approved design; attach a compliance plate to the tank, or mark an IBC, in accordance with requirements

**DG** Ensure the transfer of dangerous goods in accordance with the requirements; maintain and inspect hose assemblies, keep certain records

**C+E** Upon the direction of an authorised officer or police officer, provide certain documents and information, name, place of abode and business address, the identity of other responsible parties and reasonable assistance

**DG, DH, SHV, C+E, MDLR** Potentially, all duties that are applicable to bodies corporate under all the national road transport laws

## PENALTIES

Maximum court fines and infringement (on-the-spot) penalties specified below apply to individuals. Unless otherwise stated, the maximum amount applicable to companies is 5 times the amount specified for individuals (‘corporate multiplier’).

**DG** Infringement penalties are \$100-\$600; maximum court fines are \$1,500-\$3,000

**DH** Maximum court fine of \$1,500

**C+E** Maximum court fines are \$2,000-\$10,000

**MDLR** Infringement penalties are \$250-\$1,200 (with no corporate multiplier); maximum court fines for a first offence are \$750-\$6,000 plus up to \$500 for every 1% over 120% overloading; for second and subsequent offences the minimum court fines are equivalent to the applicable infringement penalties and the maximum court fines double

**MDLR** Infringement penalties are \$800; maximum court fines are \$4,000

**DG** As for consignor

**C+E** As for consignor

**MDLR** As for consignor

**DG** As for consignor

**C+E** As for consignor

**MDLR** As for consignor

**DG** As for consignor

**DH** Maximum court fines are \$500-\$1,500

**C+E** As for consignor

**MDLR** As for consignor

**SHV** Three strikes and you are out penalty: from a warning, fitting or inspection of speed limiter to 28 day or 3 month suspension of registration

**C+E** As for consignor

**MDLR** As for consignor

**C+E** As for consignor

**MDLR** As for consignor

**DG** Infringement penalties are \$100-\$600; maximum court fines are \$1,000-\$3,000

**C+E** As for consignor

**DH** Maximum court fines of \$500-\$1,500; grounds for cancellation of employer’s registration as a TFMS employer for some offences

**C+E** As for consignor

**DG** Infringement penalties are \$100-\$600; maximum court fines are \$500-\$3,000

**DG** Infringement penalties are \$100-\$600; maximum court fine of \$3,000

**DG** Infringement penalties are \$100-\$600, maximum court fines are \$500-\$3,000

**C+E** As for consignor

**DG, DH, SHV, C+E, MDLR** Penalties applicable to individuals in respect of the offence committed by the company

## LEGEND

- DG** The Road Transport Reform (Dangerous Goods) Act 1995 and Regulations 1997
- DH** The Road Transport Reform (Driving Hours) Regulations 1999
- SHV** Management of Speeding Heavy Vehicle Policy
- C+E** Road Transport Reform (Compliance and Enforcement) Bill
- MDLR** Road Transport Reform (Compliance and Enforcement) Bill

**Note:** The information provided is of a general nature. It does not purport to represent all of the duties contained in the relevant road transport legislation. Please refer to legislation in your jurisdiction to obtain your specific obligations and penalties.