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HEAVY VEHICLE NATIONAL LAW OBLIGATIONS INCLUDE THE CONSTRUCTION INDUSTRY

Contractors, are you aware of your legal obligations under the Heavy Vehicle National Law?

The Heavy Vehicle National Law (HVNL) requires, companies and their directors to ensure, so far as is reasonably practicable, the safety of the party's transport activities. The "supply chain" liabilities apply to corporate entities, directors, partners, and managers, who are all responsible and accountable for their transport activities.

Contractors are required to warrant their compliance with the "Heavy Vehicle National Law" and detail how they meet the chain of responsibility obligations. This newsletter is a guide to the legislation and how a contractor meets its "Chain of Responsibility" obligations.

The National Heavy Vehicle Regulator (NHVR) is the administrative body that has the authority of setting laws for Heavy Vehicle National Law (HVNL). The Heavy Vehicle National Law is set out in Schedule to the Heavy Vehicle National Law act 2012(QLD) and it applies through being adopted in other states and territories, including the heavy vehicle national law NSW within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW).

Chain of Responsibility (CoR) is a term that places legal duties on anyone in the supply chain who influences how goods are delivered or received, the CoR act relates specifically to workers involved in transport activities relating to heavy vehicles (**Refer to Annexure 1** "transport activity").

The primary duty under the CoR act defined that each party in the chain of responsibility for a heavy vehicle must ensure, so far as is reasonably practicable to:

A. Eliminate public risks and to the extent, that it is not reasonable to eliminate public risks, minimise the public risks; and

B. Ensure the party's conduct does not directly or indirectly cause or encourage the driver to contravene this law or to exceed a speed limit or any other person including in the chain of responsibility to contravene this law.

The "**so far as is a reasonably practicable test**" considers and weighs up relevant matters including:

- the likelihood of the risk occurring
- the degree of harm
- what the person knows about the risk
- ways to remove or reduce the risk and whether they are feasible
- whether the costs are proportionate to the risk.

Safety of transport activities relating to a heavy vehicle is the shared responsibility of each party in the chain of responsibility for the vehicle. The level and nature of a party's responsibility depending on the functions the person performs or is required to perform, the nature of the public risk created and the party's capacity to control, eliminate or minimise the risk.

s5 of the CoR act contains a list of who is considered a party in the Chain of Responsibility (CoR) for heavy a vehicle (**Refer to Annexure 1**).

In short, the definition contains any person who has any control or responsibility for any transport activity such as: consigning, packing, loading, or receiving goods as part of business practices and making decisions, associated with the use of a heavy vehicle on a road.

THE APPLICATION OF THE ACT TO THE CONSTRUCTION INDUSTRY

The legal obligations of the companies in the construction industry are outlined in different provisions of the HVNL act. The main activities that create the chain of responsibility obligations under the act include business practices, and making decisions, which are associated with the use of a heavy vehicle on a road (the full definition of the parties in the supply chain is provided under s5 of the HVNL).

The retention of transport services for various purposes, including the delivery of materials, is an essential aspect of all construction projects. Parties in the construction industry must plan an effective risk management process for compliance with the act under the construction contract.

OFFENCES

The HVNL maintains a large number of regulatory offences that apply to drivers and other parties. The key areas targeted by CoR are Vehicle standards, Speeding, Access, Mass requirements and Fatigue Breaches.

Heavy fines apply, up to \$3 million for a corporation and \$300,000 or five-year imprisonment (or both) for the individual can apply for the significant breaches.

CODES OF PRACTICE

A Registered Industry Code of Practice (RICP) is a resource that helps parties in the chain of responsibility to ensure the safety of their transport activities. It provides information about the risks associated with heavy vehicle transport and recommends a range of measures that can be implemented to eliminate or minimise those risks. By adopting the right measures, a CoR party improves the safety of their business and is well on the way to meeting its primary duty obligations.

FAILING TO COMPLY WITH THE DUTY

Any CoR breach may offend the HVNL, to defend against such a breach the party in breach will need to prove that the party took all the reasonable steps to ensure that everyone in the chain acted according to the CoR act provisions.

The breaches are categorised under the act as Minor risk breach, Substantial risk breach, Sever risk breach, and Critical risk breach.

In case of a breach, the penalties could include warnings, prohibitions order improvement notice, fines and imprisonment.

KEY TAKEAWAY

- companies must achieve CoR compliance and adopt a Code of practice. The code of practice is resource that helps parties in the chain of responsibility ensure the safety of their transport activities. It provides information about the risks associated with heavy vehicle transport and recommends a range of measures that can be implemented to eliminate or minimise those risks. By adopting the right measures CoR party improves the safety of their business, and is well on the way to meeting their primary duty obligations. In 2022, the NHVR revised its [Guidelines for preparing and registering Industry Codes of Practice \(PDF, 402KB\)](#) (the Guidelines). New codes of practice must comply with the Guidelines in order to be registered. The NHVR has also published an [Introduction to Industry Codes of Practice \(PDF, 559KB\)](#), to explain how codes of practice are used, and how they are developed.

- Companies, and their officers must ensure every party in the supply chain is aware of their responsibilities under the HVNL.
- All the parties in the supply chain must take reasonable steps to manage the risk associated with the CoR regime. However, it should bear in mind taking reasonable steps is not sufficient to defend against breach of the CoR provisions and heavy penalties may be enforced.
- All the parties should be aware that they are personally liable to ensure compliance with the CoR provisions.

Annexure 1

Definitions under S5 of the Heavy Vehicle National Law Act 2012

"- transport activities mean activities, including business practices and making decisions, associated with the use of a heavy vehicle on a road, including, for example—

- (a) contracting, directing or employing a person—*
 - (i) to drive the vehicle; or*
 - (ii) to carry out another activity associated with the use of the vehicle (such as maintaining or repairing the vehicle); or*
- (b) consigning goods for transport using the vehicle; or*
- (c) scheduling the transport of goods or passengers using the vehicle; or*
- (d) packing goods for transport using the vehicle; or*
- (e) managing the loading of goods onto or unloading of goods from the vehicle; or*
- (f) loading goods onto or unloading goods from the vehicle; or*
- (g) receiving goods unloaded from the vehicle.*

The act defines that a party to the supply of chain responsibility maybe each person who can influence or control the transport chain including:

- a) An employed driver and employer driver 'self-employed driver and a prime contractor for the driver.*
- b) consignors/senders and consignees/receivers of the goods for transport*
- c) exporters and importers*
- d) primary producers*
- e) drivers (including a bus driver or an owner-driver)*
- f) prime contractors of drivers*
- g) operators of a transport company*
- h) schedulers of goods or passengers for transport and the schedulers or allocators of drivers*
- i) loaders and unloaders of goods*
- j) loading managers (loading/unloading supervisors) or managers of the premises where this occurs. "*

"party in the chain of responsibility, for a heavy vehicle, mean each of the following persons-

- (a) any employed driver and an employer of the driver;*
- (b) self-employed driver and prime contractor for the driver;*
- (c) an operator of the vehicle;*
- (d) a scheduler for the vehicle;*
- (e) a consignor of any goods in the vehicle;*
- (f) a consignee of any goods in the vehicle;*
- (g) a packer of any goods in the vehicle;*

(h) a loading manager for any goods in the vehicle;
(i) a loader of any goods in the vehicle;
(j) an unloader of any goods in the vehicle”