

Understanding road transport Chain of Responsibility rules

ADVISORY

Allaying vehicle speed and mass concerns under Chain of Responsibility legislation

Chain of Responsibility (CoR) legislation has been introduced to tighten the regulation of the road transport industry. It extends potential legal liabilities to off-road parties, including both industry participants and transport users. CoR could be a significant 'sleeper' issue for many commercial entities that currently believe they are unaffected by road transport laws.

According to the National Road Transport Commission, under CoR anyone who has control over a transport task can be held responsible for breaches of the law and may be legally liable for offences committed.

Road transport CoR laws have been in effect in Australian states for several years. However, new national CoR laws came into effect in September 2008. Now is a good time for both transport operators and users to review their potential responsibilities and liabilities under road transport CoR. It is worth noting, too, that state transport authorities are cracking down on CoR compliance.

Who is affected by CoR?

In addition to vehicle drivers and operators, and the employers of operators, certain other parties are definitely covered by CoR, including:

- individuals or entities that schedule goods or passengers for transport by road vehicle
- those responsible for scheduling drivers

- persons supervising the loading or unloading of vehicles, or who manage or operate premises where loading or unloading occurs
- consignors and consignees/receivers of goods
- loaders and unloaders of goods.

In effect, CoR can apply to a wide spectrum of road transport users, including manufacturers, retailers, importers, wholesalers and suppliers of raw materials. CoR extends to load restraints, mass limits, speed, fatigue management, vehicle standards and drug and alcohol use. This fact sheet is concerned specifically with CoR requirements as they affect vehicle speed and mass limits.

Vehicle speeds

Under CoR, each party in the transport chain that can influence whether or not a vehicle exceeds speed limits has a measure of responsibility for ensuring that the transport task does not require or encourage a driver to speed. Chain parties identified in the legislation include employers, prime contractors, operators, schedulers, consignors, consignees and loading managers.

Drivers of heavy vehicles are exempted from the legislation as there are already extensive speeding laws and roadside enforcement measures directed at drivers. However, owner-drivers can be subject to CoR laws in their role as heavy vehicle operators.

Case study

A fast moving consumer goods (FMCG) company loads a third party logistics (3PL) company's B-Double tautliner in Laverton, Victoria for a delivery at Homebush in NSW. The pick-up is at 7:00pm for a 6:00am delivery the following morning. Just outside of Albury the truck is delayed by a three-car pile up. The experienced driver knows that if he is late, his load will miss the cross-dock and his company will incur a penalty. However, using his knowledge of the highway the driver knows he can make up the time between Holbrook and Campbelltown. Just outside of Gundagai he is clocked travelling at 140 kmh.

A year ago the driver would have received an immediate on-the-spot fine for \$360 and have incurred six demerit points. When speeding becomes a CoR offence, an individual could receive a fine of up to \$11,340 while a corporation could be fined up to \$56,700. The parties potentially involved would include the 3PL provider, the FMCG consignor and the retail consignee.

Vehicle mass

The law specifically provides that consignors, packers, loaders and consignees can be held legally liable for breach of vehicle mass, dimension and load restraint requirements. In other words, these off-road parties stand in the same shoes as their on-road counterparts, the driver and the carrier. This gives the relevant authorities the power to target all the parties at fault.

Accurate container weight declarations must be provided by the person (or entity) defined as the 'responsible entity', which is the person (or entity) in Australia who engages the road carrier or offers the container for transport by road in Australia. The requirement is designed to ensure that drivers and vehicle operators receive the correct information to enable selection of an appropriate vehicle to transport the container within the relevant legal mass limits. CoR law extends the definition of the parties required to prevent breaches of road transport mass, dimension and loading laws.

Case study

Grain handlers typically have been receiving products direct from farmers and local 3PLs. They were unconcerned with how the product was actually delivered to their silos. It was not uncommon for delivery vehicles to travel over the legal weight limits. Odds were that overloading would be detected only occasionally. The fines thus incurred were considered just another cost of doing business.

Now consignors, consignees and transport companies are potentially liable for breaches. Recent prosecutions have involved a road train operating at 190 percent of its legal capacity, B-doubles operating at 140 percent of their legal entitlement and rigid three-axle trucks at 157 percent of the legal limit.

One major grain handler was recently investigated and found to have been involved in over 300 overloading infractions during a 3-day audit. The company did not tell delivery drivers to overload their vehicles, but nor did it take any measures to prevent or discourage the overweight deliveries. The company was deemed responsible for the overweight movements and summonses were issued. The potential fines for these offences could exceed \$18 million. The financial cost aside, in these circumstances the potential for serious adverse publicity should also be obvious.

How should businesses respond to CoR?

The first step is to identify when an organisation could be deemed to be part of a CoR and the circumstances in which this could arise. Individuals and organisations can be held legally accountable if their actions, lack of action, or their demands contribute to a breach of the relevant road laws. To avoid liabilities, individuals and organisations need to show that they had taken 'reasonable steps' to avoid breaches. The definition of 'reasonable steps' could include:

- adopting a relevant industry code of practice
- participating in appropriate accreditation schemes
- reviewing business and work practices
- evaluating contracts and commercial arrangements
- conducting reviews, audits and spot checks
- training staff in their obligations under CoR.

The second step involves documenting systems to prove that due diligence is taking place. New software solutions are reducing the development and execution costs of this work. It is vital that potential obligations under road transport CoR laws become part of an organisation's overall risk management framework.

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