

CHAIN OF RESPONSIBILITY GUIDELINES

10.1 OVERVIEW

- 10.1.1 If you consign, pack, load or receive goods as part of your business, you could be held legally liable for breaches of road transport laws even though you have no direct role in driving or operating a heavy vehicle. In addition, corporate entities, directors, partners and managers are accountable for the actions of people under their control. This is the ‘Chain of Responsibility’ (CoR).
- 10.1.2 Although legal approaches are still evolving, there is a move away from the sole focus on the individual operator to a more inclusive approach that considers the legal responsibility of other players such as managers, contractors and consignors.
- 10.1.3 The principle behind the ‘Chain of Responsibility’ is that any party which has control in a transport operation can be held responsible and may be made legally liable. It is closely related to the principle of ‘duty of care’, found in occupational health and safety legislation.
- 10.1.4 **Duty of Care / Due Diligence** - ‘Duty of Care’ is an important legal concept that has long been used by the courts to impose liability in negligence or damages claims. Duty of care has more recently been introduced in Occupational Health and Safety legislation in each state.
- 10.1.5 Occupational Health & Safety legislation imposes general duties of care in the workplace. The primary duty is to ensure a safe operating environment. Responsibilities under occupational health and safety legislation are broad and include subcontractors.
- 10.1.6 Chain of Responsibility means that anybody – not just the driver – who has control in a transport operation can be held responsible for breaches of road laws and may be made legally liable. In other words, if you use road transport as part of your business, you share responsibility for ensuring breaches of road laws do not occur.
 - 10.1.6.1 So, if a breach of road transport law occurs due to your action, inaction or demands, you may be legally accountable.

Put simply, this means:

Control = Responsibility = Legal Liability
- 10.1.7 **There are many stakeholders covered by the chain of responsibility** - If you are involved in any of the following road transport activities you, may be held responsible for breaches of road laws:
 - **Consigning** – a person or company commissioning the carrying of goods. The term covers freight forwarders, loading agents, manufacturers and importers.

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| Document Title: | Excerpt from Team Transport & Logistics – Policy and Operational Manual | | | | |
| Prepared By: | Ron Beaumont | Version No: | 1.1 | Document Code: | POPMan |
| Reviewed By: | Kylie Wilkinson | Date Created: | 01/06/2019 | Review Frequency: | 12 Months |
| Approved By: | Steve Skinner | Page No: | 1 of 6 | Review Date: | 01/06/2023 |
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- **Packing** – in cases of pre-packed loads, placing goods in packages or containers or pallets.
- **Loading** – placing or restraining the load on a vehicle.
- **Carrying** – controlling the use of the vehicle for the transport of the load by road.
- **Driving** – the physical act of driving a heavy vehicle.
- **Operating** – operating a business which controls the use of a heavy vehicle.
- **Receiving** – paying for the goods/taking possession of the load.

10.1.8 You also have a legal obligation not to coerce, induce or encourage a breach of road transport laws.

10.1.8.1 In addition to ensuring compliance with road laws, you have to take reasonable steps to make sure that you do not pass on to other parties any false or misleading information about a vehicle or its load.

10.1.8.2 If you victimise an employee or contractor who raises concerns about actual or possible breaches of road transport laws, you have also committed an offence.

Further information on the responsibilities of specific parties in the transport chain is provided below:

- Loader / Packer
- Driver
- Consignor/Receiver

10.1.9 **Corporate and management liability** - Under the legislation, a corporation, partnership or other body corporate can be found guilty of an offence under the chain of responsibility.

10.1.9.1 Corporate liability applies to a corporation, partnership or other body corporate if:

- The organisation is a party in the chain of responsibility, e.g. consignor; or
- An employee of the organisation is a party in the chain of responsibility e.g. packer or loader.

Where a corporation, partnership or other corporate body has been found guilty of an offence, anyone who is involved in the management of the organisation may also be personally liable for the same offence.

10.1.10 **Enforcement powers** - Search, seize and inspect powers in all States including Queensland, support the enforcement of the chain of responsibility. These laws allow authorised officers and police officers to:

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- Inspect and search heavy vehicles and premises associated with road transport.
- With the authority of a search warrant, enter premises, vehicles etc., and seize computer hardware, files and any other associated documents that they believe will aid them in their prosecution for Chain of Responsibility.
- Direct a person associated with road transport to provide documentation and items relating to heavy vehicle compliance.
- Require a driver or other responsible person to provide reasonable assistance to an inspector or police officer and to state the person’s name, home address and business address.
- Require a person to provide details regarding any other person who is associated with a heavy vehicle or its load, and to give information to help identify the driver.

10. 2 LOADER / PACKER

10.2.1 Loaders / Packers have a responsibility for ensuring the vehicle’s load:

- Does not exceed dimension limits.
- Does not cause vehicle mass limits to be exceeded.
- Is placed in a way that it does not become unstable, move or fall off the vehicle.

10.2.2 Packers will have a responsibility for ensuring that documentation about the vehicle’s load is not false or misleading.

10.2.3 Packers will also need to make sure that any goods packed in a freight container do not cause the container’s gross weight or safety approval rating to be exceeded.

10.2.3.1 If Loaders / Packers can show that they did not know and could not have been responsibly expected to know that the road law breach would occur, and that either:

- They have taken all reasonable steps to prevent the breach, or
- There was nothing that they could reasonably have been expected to do to prevent the breach, they will not be liable for an offence under the chain of responsibility.

10.2.4 Loaders / Packers need to ensure that they can demonstrate that they have taken reasonable steps to prevent a breach occurring.

10.2.4.1 There are no limits to the ways in which they can do this. What constitutes reasonable steps will vary according to each individual’s circumstances.

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Examples of steps that can be taken include:

- Having a loading diagram for different types of loads to ensure axle weight limits are not exceeded.
- If the vehicle's weight cannot be accurately assessed at the time of loading, under-load for the first trip and verify the weight at some stage of the journey. Subsequent loads can be adjusted accordingly.
- Fit scales to loading equipment and keep a 'running' total of the weight of the load for each trip.
- Use a pre-printed form which requires the person in control of packing or loading the goods to verify the accuracy of any records.

10.2.5 Compliance with an industry Code of Practice will demonstrate that they have taken all reasonable steps. It is expected that individual industries will develop Codes of Practice to suit their needs.

10.2.5.1 These Codes could cover contractual arrangements, equipment, due diligence and quality management systems, e.g. TruckSafe.

10.3 DRIVER

10.3.1 Drivers have a responsibility for ensuring that they:

- Adhere to the driving hours regulations (time spent driving and working).
- Take the required rest breaks.
- Record driving hours as required (time sheet).
- Ensure the vehicle does not exceed the mass limits.
- Ensure the vehicle and load do not exceed dimension limits.
- Ensure the load is appropriately restrained.
- Adhere to the speed limits.
- Do not tamper with any equipment required to be fitted to the vehicle.

10.3.2 Drivers need to make sure their conduct does not compromise road safety or involve breaking the law.

Drivers must know their vehicle's mass.

Examples of ways to do this include:

- Keeping weighbridge dockets issued to the vehicle.
- Using on-board scales to check the weights.
- Keeping any loading documentation that shows the weight of the load.

Drivers must:

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- Not exceed the regulated hours for driving and working. Remember that these are maximum hours.
- Always rest when tired and have adequate sleep to prevent fatigue.
- Make sure the vehicle does not exceed legal dimensions.
- Check the load to ensure it is properly restrained, even if the driver is not the person who loaded the vehicle.
- Check the adequacy and condition of restraining equipment (chains, ropes, straps etc).
- Observe the speed limit at all times.
- Perform a Pre-Start Check on each vehicle before operating.

10.4 CONSIGNOR / RECEIVER

10.4.1 Consignors / Receivers have a responsibility for ensuring that any demands made do not require a truck driver to:

- Exceed permitted driving hours.
- Fail to have minimum rest periods.
- Exceed the speed limit.

10.4.2 Consignors / Receivers have a responsibility for ensuring goods carried on their behalf:

- Do not exceed vehicle dimension limits.
- Do not cause vehicle mass limits to be exceeded.
- Are appropriately secured.

10.4.2.1 If Consignors / Receivers can show that they did not know and could not have been responsibly expected to know that the road law breach would occur, and that either:

- they have taken all reasonable steps to prevent the breach, or
- there was nothing that they could reasonably have been expected to do to prevent the breach,

.... they will not be liable for an offence under the chain of responsibility.

10.4.3 Consignors / Receivers need to ensure that they can demonstrate that they have taken reasonable steps to prevent a breach occurring.

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10.4.3.1 There are no limits to the ways in which they can do this. What constitutes reasonable steps will vary according to each individual’s circumstances.

Examples of steps that can be taken include:

- Compliance assurance conditions in relevant commercial arrangements with other responsible persons.
- Request information about what systems and controls are in place to ensure compliance.
- Avoid arrangements which encourage or reward non-compliance.

10.4.4 Compliance with an industry Code of Practice will demonstrate that they have taken all reasonable steps. It is expected that individual industries will develop Codes of Practice to suit their needs. These Codes could cover contractual arrangements, equipment, due diligence and quality management systems, e.g. TruckSafe.

We must ALL be part of the SOLUTION – NOT the problem!

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