



Chain of responsibility Consignor/Receiver

Compliance and enforcement in the transport industry

AUGUST 2005

Compliance & Enforcement (C&E)

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They will also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

What is the chain of responsibility?

The chain of responsibility means that anybody, not just the driver and operator, who has control in a transport operation can be held responsible for breaches of road laws and may be 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.

If a breach of road transport law occurs due to your action, inaction or demands, you could be legally accountable.

Put simply this means: Control = responsibility = legal liability

What are my responsibilities?

As a consignor or receiver under C&E you have a responsibility for ensuring that any demands you make do not require a truck driver to:

- Exceed permitted driving hours.
- Fail to have minimum rest periods.
- Exceed the speed limit.
- Carry goods that exceed vehicle dimension limits.
- Carry goods that cause vehicle mass limits to be exceeded.
- Inappropriately carry any goods on your behalf that are not appropriately secured.

If you can show that you did not know and could not have been reasonably expected to know that the road law breach would occur, and that either:

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

You won't be liable for an offence under the chain of responsibility.

What do I need to do?

You should ensure that you can demonstrate that you took reasonable steps to prevent a breach occurring.

There are no limits to the way in which you can do this. What constitutes reasonable steps will vary according to each individual's circumstances.

Examples of steps you could take include:

- Implement compliance assurance conditions in relevant commercial arrangements with other responsible persons.
- Request information about what systems and controls are in place to ensure compliance.
- Ensure that there are no award arrangements which encourage or reward non-compliance.
- Implement active risk management systems.

Individual business or industry sectors may choose to develop industry codes of practice to suit their needs and assist in achieving compliance. The codes could cover contractual arrangements, equipment, staff training and due diligence and quality management systems.



General information

Compliance and enforcement in the transport industry

AUGUST 2005

What is Compliance & Enforcement (C&E)?

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They will also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

The National Transport Commission (NTC), with the assistance of all road agencies and industry representatives, has been developing the C&E legislation for several years. In November 2003 the *National Road Transport Reform (Compliance & Enforcement) Bill* was approved by Australian Transport Ministers. New South Wales (NSW), through the Roads and Traffic Authority (RTA) has been an active participant in this process.

The RTA is committed to the introduction of C&E legislation in NSW. In NSW the national C&E reforms have been incorporated into the *Road Transport (General) Act 2005*. This legislation will allow the RTA to apply a more systematic and strategic approach to enforcement that will ultimately lead to improved compliance and safer roads. See the **Compliance & Enforcement in NSW** fact sheet for more information.

A key part of implementing the C&E reforms is a communication plan to raise awareness and help relevant stakeholders prepare and meet their obligations under the new reforms.

What are the main features of C&E?

- Introduction of the 'chain of responsibility' concept into the regulation of heavy vehicles. All parties in the road transport supply chain have specific obligations under the law to prevent a breach. See the **Compliance & Enforcement in NSW** and the **Chain of responsibility** fact sheet for more information.
- Introduction of a risk-based categorisation of mass, dimension and load restraint offences into minor, substantial and severe

breaches. This recognises that not all offences have the same impact on safety or infrastructure.

- Nationally consistent enforcement powers that reflect law in related areas such as occupational health and safety and environmental protection.
- A range of penalties (for example, formal warnings, improvement notices and prohibition orders) to give courts greater options for targeting the causes of breaches and fostering a culture of compliance within the heavy vehicle industry.
- The 'responsible person' concept will make the reforms applicable to a wide category of relevant people connected with the road transport industry. 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 a journey. A responsible person must provide information about the load and about the identity of other parties in the chain when requested by authorities. The premises of a responsible person may be inspected or searched in limited circumstances. A list of responsible persons can be found in section 20 of the *Road Transport (General) Act 2005*.

What new penalties will be in place under the C&E reforms?

The C&E reforms introduce new penalties to the regulation of heavy vehicle mass, dimension and load restraint requirements.



Information for New South Wales

Compliance and enforcement in the transport industry

AUGUST 2005

How will the NSW specific Compliance and Enforcement (C&E) legislation differ from the national model C&E Bill?

The national model C&E Bill has both essential and desirable aspects. This distinction recognises that each jurisdiction has its own individual legal systems, yet also achieves nationally consistent outcomes. *The Road Transport (General) Act 2005* incorporates most of the nationally agreed C&E package into NSW law.

The bill departs from the national model bill in the following main aspects:

Registered industry codes of practice

While encouraging the development of industry codes of practice the RTA will not be formally registering codes. See 'What is an Industry Code of Practice?' for more information.

Application of mass dimension and load restraint provisions

The national model bill applies the provisions relating to mass, dimension and load restraint offences only to cases where the load on the vehicle is, or may be, a factor in the breach.

This effectively means that the bill does not apply the categorisation of breaches to dimensions offences where there is no load (for example where a trailer has been configured incorrectly making the vehicle too long).

This distinction will not apply in NSW, meaning that all dimensions breaches will be prosecuted under C&E (and will be determined as minor, substantial or severe) regardless of whether a load is a factor in that breach.

Special mass defences for drivers and operators.

The national model bill allows access to a reasonable steps defence for drivers and operators only in the case of a minor breach. NSW has decided to maintain its current provisions in terms of special mass defences for drivers and operators.

This means no change to the status quo for drivers and operators. The current limited reasonable steps defence where defendants are required to demonstrate either that they have

weighed the loaded vehicle or that they are in possession of sufficient and reliable evidence from which the mass was calculated will remain. It will be available for minor, substantial and severe mass breaches. See 'Will the reasonable steps defence apply to me?' for more information.

What is an industry code of practice and will the RTA register them?

A code of practice is a voluntary and industry-specific document that aims to assist industry and businesses meet their obligations and improve compliance.

Industry and business are encouraged to develop codes of practice that promote practices and systems that will assist parties to comply with road transport regulations.

Codes of practice should be living documents that are adaptable to the particular needs of different industry sectors and able to change to reflect emerging best practices and technologies, and should be owned and maintained by the industry.

Where appropriate, the RTA will liaise in an advisory capacity with industry representatives to assist in the development of such codes. However, the RTA will not be registering industry codes of practice.

Will the reasonable steps defence apply to me?

The national model legislation provides special defences that are tailored to the role and responsibility of each of the parties in the chain. One special defence is known as the 'reasonable



Chain of responsibility

Compliance and enforcement in the transport industry

AUGUST 2005

What is the chain of responsibility (COR)?

For the first time, all parties in the road transport supply chain – the consignor, consignee, packer, loader and receiver, as well as the driver and operator – must take positive steps to prevent a breach of the road transport mass, dimension and load restraint laws.

All those with responsibility for activities that affect compliance with road transport laws may be held legally accountable if they do not meet their obligations. Chain of responsibility legislation recognises the effects of the actions, inactions and demands of off-the-road parties in the transport chain.

For specific information on how the chain of responsibility relates to fatigue management see the **Compliance & Enforcement general information** fact sheet.

What would the RTA look for to trigger a COR investigation?

Triggers the RTA may use to initiate a COR investigation include, but are not limited to:

- Evidence of systemic and habitual breaches.
- Evidence of continued unfair commercial advantage as a result of breaches.
- Road accidents with risks or damage to safety and infrastructure.
- Evidence of unreasonable demands and pressures on other parties in the supply chain to breach.

The Compliance and Enforcement (C&E) legislation does not absolve any party of their obligations to comply with the law, rather it acknowledges the potential contribution of others in the supply chain. Drivers and operators still maintain their current responsibilities to ensure compliance.

Will the RTA pursue parties up the chain?

Chain of responsibility investigations will be a strategic tool used only when appropriate. They will supplement the RTA's current enforcement practices, not replace them. For example, the RTA may target a particular industry sector if evidence suggests that their compliance to mass and dimension or load restraint requirements is poor.

What might be involved in a COR investigation?

A specialist audit and investigations unit will lead COR investigations.

Detailed procedures on how the RTA will carry out a COR investigation are currently being developed. However, a COR investigation may involve any of the following elements:

- Inspecting and searching appropriate business premises or vehicles.
- Requesting compliance related information, documentation records, and names and contact details of other responsible people in the logistics chain.
- Requiring reasonable assistance of relevant parties including for example the interpretation of data and other information.
- Seizing of relevant electronic equipment.



Chain of responsibility

Driver

Compliance and enforcement in the transport industry

AUGUST 2005

Compliance & Enforcement (C&E)

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They will also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

What is the chain of responsibility?

The chain of responsibility means that anybody, not just the driver and operator, who has control in a transport operation can be held responsible for breaches of road laws and may be 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.

If a breach of road transport law occurs due to your action, inaction or demands, you could be legally accountable.

Put simply this means: Control = responsibility = legal liability

What are my responsibilities?

As a truck driver, your responsibilities include ensuring that:

- Your vehicle does not exceed mass limits.
- Your vehicle and load do not exceed dimension limits.
- Your load is appropriately restrained.
- You do not exceed the speed limit.
- You do not tamper with any equipment required to be fitted to the vehicle.
- Driving hours regulations (time spent driving and working) are adhered to.
- Required rest breaks are taken.
- Records of your driving hours are made.

What do I need to do?

As a driver, you need to make sure that your conduct does not compromise road safety or involve breaking the law.

You should know your vehicle's mass. Examples, of ways you can do this include:

- Keeping weighbridge docketts issued to the vehicle you are driving.
- Using on board scales to check your weights.
- Keeping any loading documentation that shows the weight of your load.

You must not exceed the regulated hours for driving and working. Remember that these are maximum hours. You should always rest when tired and have adequate sleep to prevent fatigue.

You should make sure that your vehicle does not exceed legal dimensions.

Your load should be checked to ensure it is properly restrained, even if you are not the person who loaded the vehicle. You should check the adequacy and condition of restraining equipment (chains, ropes, straps etc).

You should make sure you observe the speed limit at all times.

Special defence for drivers

Drivers and operators will have access to a limited defence for mass overloads. This is only if they weighed the vehicle before the journey or they are in possession of sufficient and reliable evidence from which the weight could be calculated.



Chain of responsibility Loader/Packer

Compliance and enforcement in the transport industry

AUGUST 2005

Compliance & Enforcement (C&E)

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They will also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

What is the chain of responsibility?

The chain of responsibility means that anybody, not just the driver and operator, who has control in a transport operation can be held responsible for breaches of road laws and may be 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.

If a breach of road transport law occurs due to your action, inaction or demands, you could be legally accountable.

Put simply this means: Control = responsibility = legal liability

What are my responsibilities?

Under C&E legislation loaders have a responsibility for ensuring the vehicle 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, unsafe, move or fall off the vehicle.

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

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.

If you can show that you did not know and could not have been reasonably expected to know that the road law breach would occur, and that either:

- You have taken all reasonable steps to prevent the breach, or

- There was nothing that you could reasonably have been expected to do to prevent the breach,

Then you may be given the opportunity to prove 'reasonable doubt' on your defence.

What do I need to do?

You should ensure that you can demonstrate that you took reasonable steps to prevent a breach occurring.

There are no limits to the way in which you can do this. What constitutes reasonable steps will vary according to each individual's circumstances.

Examples of steps you could take 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.
- Fitting scales to loading equipment and keeping a 'running' total of the weight of the load for each trip.
- Using a pre-printed form which requires the person in control of packing or loading the goods to verify the accuracy of any records.

Individual business or industry sectors may choose to develop industry codes of practice to suit their needs and assist in achieving compliance. The codes could cover contractual arrangements, equipment, staff training, due diligence and quality management systems.



Chain of responsibility Operator/Manager/Scheduler

Compliance and enforcement in the transport industry

AUGUST 2005

Compliance & Enforcement (C&E)

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They will also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

What is the chain of responsibility?

The chain of responsibility means that anybody, not just the driver and operator, who has control in a transport operation can be held responsible for breaches of road laws and may be 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. If a breach of road transport law occurs due to your action, inaction or demands, you could be legally accountable.

Put simply this means: Control = responsibility = legal liability

What are my responsibilities?

As an operator, manager or scheduler of a business involved in road transport, your responsibilities include ensuring that:

- Rosters and schedules do not require drivers to exceed driving hours regulations or speed limits.
- Vehicle speed limiters are functioning.
- Vehicles do not exceed mass or dimension limits.
- Appropriate restraint equipment is provided and loads are appropriately restrained.
- You keep records of your drivers' activities, including driving, work and rest times.

What do I need to do?

As an operator or an employee of an operator, you need to make sure that your conduct does not compromise road safety or involve breaking the law.

You should implement systems to ensure that the mass of each vehicle is assessed and recorded for each trip.

You should have an auditable system for rostering and scheduling your drivers so that they do not exceed the regulated hours of driving and work, or exceed any speed limits, and that they have sufficient opportunity for rest and sleep to avoid fatigue.

You need to have work practices in place so that vehicles and equipment are kept in good condition and all loads are properly restrained.

If speed limiters are fitted to the vehicles, they must be operating properly.

You should keep records of drivers' activities including driving, working and resting and check that they are complying with the regulations.

Compliance assurance conditions should be included in relevant commercial arrangements with other responsible persons.

Employees should have the necessary information, instruction, training and supervision to enable compliance with relevant laws.