

## Why the rest of Australia will follow WA's lead in Chain of Responsibility

***LATUS are the recognised Australian specialist's in Chain of Responsibility, Advice, Training and Audits. Engaged by Governments, Associations, Courts and Companies all sizes on CoR matters.***

The most frequent comment we receive, as we travel throughout Western Australia speaking on Chain of Responsibility, conducting risk audits or advising, is that our company is ready for Chain of Responsibility as our Head office in Victoria, NSW, Qld or SA already has Chain of Responsibility policies, procedures and training.

*"We will simply adopt the Head Office stuff on Chain of Responsibility here in WA"*

or

*"Our Head Office says, its ok WA will join the National Heavy Vehicle Regulator"*

If you take that approach you are putting both yourself and your company at real legal risk!

### **WA Chain of Responsibility is Different**

WA legislation applies to **all vehicles** used for commercial benefit or the negation of such benefit NOT just trucks over 4.5 tonne GCM. It literally opens up a Pandora's box of applicable areas within your supply chain. Therefore the Eastern States CoR approaches have extremely limited application, if any.

### **WA Will NOT Join the National Heavy Vehicle Regulator**

Secondly, WA **will not** in the foreseeable future join the National Heavy Vehicle Regulator (NHVR).

WA has a disproportionately high number of road transport movements involving high wide loads. Such transport tasks are needed to support the oil & gas, mining, forestry and cereal sectors, both in terms of inbound equipment and outbound bulk movements. Neither WA, nor for that matter Australia (WA accounts for nearly half of Australia's total export revenue), can afford for such movements to be held up. WA has a system that means transport permits can be issued in less than 48 hours, usually 24 hours. The NHVR is currently taking around a month. So it is unlikely that WA will join the NHVR in the foreseeable future.

In the meantime, **it is more likely that the rest of Australia will adopt WA's approach** to Chain of Responsibility.

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## Why Australia will Adopt WA's Chain of Responsibility Approach

We believe that the rest of Australia will adopt WA Compliance and Enforcement (Chain of Responsibility) Act.

So what makes us say that we believe the Eastern states will take the lead from WA and follow their model for Chain of Responsibility? Let's go back to basics – what was the purpose and objectives of the National Model of Chain of Responsibility?

***To create a risk management approach to the transport task,***

with the following objectives, to:

- Increase public safety on the roads;
- Protect public infrastructure;
- Create a level playing field by penalising “cheating company's”; and
- Provide a safer industry for drivers.

## Understanding the True Transport Task

The transport task in Australia is not the sole domain of heavy vehicles over 4.5 tonnes GCM. Australia's transport task is made up of a fleet of vehicles from cars to road trains. Arguably the greater percentage of the task by frequency of activity is the smaller delivery vehicles. Couriers and utilities delivering goods to sites, often under time pressure due to payment regimes or task pressures.

One risk profiling we conducted started with the client believing they had one single value chain of transport activity. When we had finished the risk profiling, they agreed that there were over 15 separate transport value chains within their business risk profile. Over 70 percent of these transport tasks were undertaken by vehicles under 4.5 tonne, and under our clients influence!

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**Question:** What are you more likely to hit on the road an item has fallen off the back of a ute or from a heavy truck?

### Stray ladder sparks fatal crash on M5

March 8, 2012

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Nick Ralston

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(source: [SMH](#))

Utes or other small load carrying business vehicles are driven by people undertaking a transport task for a commercial reward ( or the negation of reward – ie a Tradie taking his own business equipment to site).

So if they gain a benefit by carrying a load on a public road, why shouldn't they face the same rules as truck drivers over 4.5 tonne and the companies that employ them.

## WA Focuses on the True Transport Risk

If you accept that Vehicles under 4.5 tonne make up a significant proportion of transport task, then why shouldn't they face the same rules as truck drivers over the nominal 4.5 tonne?

- Truck drivers generally know how to secure a load, whereas how many uniquely "secured" loads have you seen on small commercial vehicles and trailers.
- Truck drivers are restricted by the hours they can drive, yet a person driving a vehicle under 4.5 tonne carrying a load can drive as long as they like, and derive a financial benefit for it, whilst potentially endangering the public.

Take the case of a Pizza Shop that promises a \$16 large pizza in 20 minutes or its free. The delivery driver has an inferred element of payment from tips, generally people will hand over \$20 and tell the driver to keep the change. So if the Pizza shop is late making the Pizza, the driver is "forced" to speed in order to get there in less than 20 minutes or no tip. Given tips make a fair percentage of the nightly wages it is a predictable behaviour.

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So if the driver had an accident racing to deliver the pizza and let's say kills someone.

### Who gets charged?

Well in the Eastern States just the driver, the company that had made a marketing promise and created a payment regime that encourages speeding – gets off scott free in the Eastern States (Vic, Tas, NSW, Qld and SA).

### That is not fair!

The theoretical Pizza company is deriving a commercial benefit from the use of Public Roads, and is creating a potential public road safety issue through a marketing promise.

*“marketing makes the brand promise – logistics delivers it”*

*(my only quotable quote)*

That is no different to a Transport Company or user of a Transport company using a public road for commercial benefit. Therefore why should just those using “heavy transport” be penalised.

## WA Chain of Responsibility takes a Road Safety View NOT a limited Heavy Vehicle perspective

WA is taking a “Road Safety” focus to this legislation and not a “road regulatory” stance by eliminating the 4.5 tonne hurdle and applying it to all vehicles used for commercial reward or the negation of it.

Chain of Responsibility should be about ensuring all companies take responsibility for the transport tasks they influence. Think about vehicles under 4.5 Tonne which make up an estimated 60% of our national transport task e.g courier vans, small goods carriers, food service vehicles, builders utes, nursery trucks etc etc.

How many of them consider themselves in the transport industry?

“Consider a tradie contracted by a builder, who in turn is contracted by a project management company on behalf of a client. Who has a contract bonus if the job finishes ahead of time. To finish earlier the tradies work longer and harder on the job, because they may have a bonus attached.

The tradie loads his ute with materials and tools for a job in the early morning works all day plus over time, chucks his stuff in the back and drives home. Is the tradie deriving a commercial benefit by carrying a load

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on the public road, is the tradie trained or obligated by the contracting companies to secure the load, to meet fatigue rules or dimension rules (ie pipes or timber sticking out either end of the vehicle)?

The answer is no in the Eastern States (Qld, Vic, NSW, and SA) but yes in WA.

The theoretical tradie above poses a public road safety risk through unsecured loads just as much as a heavy vehicle, arguably more because the tradie isn't trained in load restraint nor conscious of it like a Transport driver.

How many businesses, eg landscaping, retail hardware, farmer retail, construction would think to ensure that they took reasonable steps in ensuring a safe approach to the transport tasks being undertaken on their behalf?

The short answer is probably NONE!

When a company does the right thing, it is penalised because other companies can "cheat" knowing that provided the vehicle is under 4.5 tonne they are safe from prosecution, the driver can wear it!

Except in WA where not just the driver but those influencing the transport task can be charged under Chain of Responsibility.

**WA's approach therefore is a broader Road Safety view not just a limited focus on "heavy" transport.**

## Financial Incentive for State Governments

The second reason that we believe that the Eastern States will adopt WA's Chain of Responsibility approach is financial.

It is a financial fact that Australia's State Governments increasingly lack the GST revenue to fund their commitments. So aside from Federal Government special purpose funds, often with strings attached, State Governments need to look for revenue from other sources.

***Victoria is forecasting nearly \$750 million from Road Traffic fines in 2014/15 – without it their budget would be deeply in the red.***

Aside from the moral arguments, State Governments stand to benefit significantly by expanding the Chain of Responsibility laws to include all vehicles used for commercial benefit or the negation of commercial benefit (ie using own vehicle to deliver or take goods via public roads to a site where they will be used for commercial gain).

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There is a limit to how many more speed and red light camera's or Police booking quotas that State Governments can introduce.



- *Leaves/Sickness/Light Duties/PCAW/Relieving/Permanent Office/Cell roles/Extended Court etc.*
- These are your 5 week absolute minimum bench mark targets:
- **5 arrests**
  - **5 reports**
  - **2 DUI/PCA's on AP**
  - **9 traffic contacts (tins-expiation or caution/defects/any traffic contact not on apprehension report)-these should all be MRBT's too**

Leaked Internal Police Email reported in the South Australian Press August 2014. (source [Adelaide Advertiser article](#))

Whereas Chain of Responsibility fines offer State Governments a potential bonanza.

Just one recent Chain of Responsibility case delivered a fine in NSW of over \$1.3 million. State Treasurers will begin to realise the revenue potential – its far more politically palatable to increase fines under the guise of Public Safety than it is to increase fees and charges on public services.

It should be noted that Victoria Police are already inspecting vehicles under 4.5 tonne as part of their broader Chain of Responsibility maintenance compliance.

## Civil Litigation Lobby

The second reason we believe that the rest of Australia will adopt the WA model for Chain of Responsibility is influence from the civil litigation sector.

The Chain of Responsibility legislation creates a potential framework for the Litigation Lawyers to construct civil actions against individuals and companies. Similar to the introduction of OHS laws where Civil litigation lawyers have used the duty of care provision to promote cases seeking significant compensation payouts.

Chain of Responsibility laws makes anyone or any company who has influence over the transport task potentially liable. Using this, Civil Litigation lawyers could well draw in larger companies with bigger balance sheets who may have had varying degrees of influence over the transport tasks in to Civil Litigation claims.

An expansion of the laws to include all vehicles for hire and reward or the negation of such, would mean a field day for civil litigation, given the number of road accidents or incidents involving smaller vehicles.

It would not be surprising to see this highly influential sector bring its muscle to bear on state governments to expand the application of Chain of Responsibility, like WA.

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## So Will WA join the NHVR approach or Australia join WA's Approach to Chain of Responsibility?

That may sound like a silly phrasing of the question, but it's not.

Because if the rest of Australia adopts the broader WA road safety approach to Chain of Responsibility, then the NHVR will be very limited in its influence over Chain of Responsibility. The limitation being that NHVR only focuses on heavy vehicles and generally just those identifying with the Transport industry. Whereas applying the broader WA approach means other sectors of the economy are directly drawn in to the Chain of Responsibility regulatory requirements, ie broader retail, agri-business, construction to name but a few.

***"retail hardware stores in WA now have to think about how they let customers load and leave their sites"***

Secondly, never under-estimate the power of the Civil Litigation sector, especially when there is money to be made and that over a quarter of all Australian politicians are lawyers.

Finally, it is more likely the rest of Australia will join WA's Chain of Responsibility approach – for one big reason - revenue.

Paul Keating once famously said ***"never stand between a state Premier and a bucket of money"***.

Given the broader application of Chain of Responsibility beyond just the Heavy Transport, means even more potential multi-million dollar fines across multiple sectors of the economy reaching state revenues, it will be hard to see State Treasurers not leading the drive for "Road Safety". With responsibility for the broader Chain of Responsibility road transport safety being given to the respective State Government Transport/ Main Roads departments, rather than the NHVR.

So back to the question will the WA change its laws on Chain of Responsibility or will the rest of Australia adopt WA's – we think the latter.

For more details contact [camd@latus.edu.au](mailto:camd@latus.edu.au) or call 1300 008 386

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