

# Understanding & Managing Supply Chain Risk



## Why its Important to You

**4500 charges** laid in NSW

Company fined **\$19.3 million**

45 Directors have been charged.

**90 Police Investigations** in Vic

**Personal  
Fines**

**And**

**Company  
Fines**

**Trucking company that employed killer driver Vincent George fined \$1.3 million**

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SAVE



**Cootes Transport charged with 300 offences in NSW local court**

AM By Sarah Dingle, staff

Updated 19 Feb 2014, 11:38am

**Cootes Transport has been charged with more than 300 offences by New South Wales Roads and Maritime Services (RMS).**

The trucking company is facing 222 charges relating to interstate registration, 86 for operating unsafe vehicles, plus several for mass offences and fuel leaks.



## One in All in!!!

If a body corporate commits a relevant heavy vehicle offence,

**each director** of the body corporate,  
and each person concerned in the  
**management** of the body corporate,

**is deemed** to have also **committed the offence.**

Victoria Road Traffic Act Part 11 200

## Why its Important to You

You can NOT contract  
your way out of your  
liability

**So even if you don't have  
transport but contract them –  
your still liable!**

## Contracting out Prohibited

(1) A term of any contract or agreement that purports to exclude, limit or modify the operation of this Part or of any provision of this Part is void to the extent that it would otherwise have that effect.

Victoria Road Traffic Act Sect 191

# **Section 1 – So What is CoR?**



## What is CoR?

- The correct term is actually Compliance and Enforcement (Chain of Responsibility).
- However it is most common in the East States of Australia for it to be referred to as Chain of Responsibility.
- In Western Australia, they usually refer to it as Compliance and Enforcement or simply C&E.

**Be careful though** – WA has very different legislation to the Eastern States of Australia.

## What is Chain of Responsibility?

CoR requires that all commercial vehicles over 4.5 tonne travelling on roads comply with the legislation, and applies to:

- Weight or total vehicle mass;
- Vehicle dimensions: length, width and weight;
- Driver fatigue and working conditions;
- Vehicle suitability and maintenance; and
- Load restraint.



**Applies too:** All commercial vehicles 4.5 tonne and above, **Except in WA** where it applies to any vehicle used for hire and reward – that could mean even a motor bike in WA. (Pizza and Farmers)



## Objective of CoR Legislation

- To increase public safety on the roads
- To protect public infrastructure
- To create a level playing field by penalising “cheating company's”
- To provide a safer industry for Drivers



### Sobering Facts

Transport drivers  
**16 times** more  
likely to die at  
work than others.

Truck drivers  
account for **25%**  
of all **work**  
related **deaths**.

To encourage parties to the road transport task to adopt **active risk management** strategies to prevent breaches of applicable road laws.



# **Section 2 – Who does CoR apply too?**



# What is the 'chain of responsibility'?

**Note** – directors and corporate managers have personal liability in addition to their company



## Areas of application

- Load restraint
- Mass Management
- Dimensions
- Fatigue
- Speeding
- Drugs & Alcohol & Health (DAH)
- Training
- Equipment suitability
- Equipment maintenance
- Documentation systems
- Subcontractor Assessment
- Operational Infrastructure

## What does this mean to you?

- Your actions or in-actions may contribute to a road law breach
- You are required to take Reasonable Steps to **Predict & Prevent** road law breaches
- All councils and employees are affected by CoR issues and are required to prevent accidents occurring
- CoR relates equally to inbound & outbound vehicles

## Who is covered

- Consignor / Consignee
- Loading & Restraining
- Driving & Driver fatigue
- Mass and dimensions
- Transport Operator

# **Section 3 – Components of CoR**



## CoR Requirements



- Predict and Prevent
- Inaction as culpable as Action
- You need to demonstrate a System
- Your contracts and behaviour do not encourage a Road Law breach
- You need to be able to PROVE your Reasonable Steps Defence



## Inaction and Action

You are just as culpable for your inaction as you are for your action!

*"Under the new regulatory framework, those other parties in the transport chain who by their **actions, inactions or demands** put drivers and other road users at risk and gain unfair commercial advantages may also be committing an offence and be liable to substantial penalties."*



## You are also Prohibited from

Whilst the law requires you to take **reasonable steps** to prevent your conduct from causing or contributing to a breach, it also **prohibits** you from:

- Making demands that you know or ought to know would cause a breach;
- Entering into contracts that you know or ought to know would cause, encourage or give an incentive for a breach;
- Coercing, inducing or encouraging breaches, and
- Passing on false or misleading information that could cause a breach.

# Section 4 – CoR Penalties





Priors: Nil.  
Costs: Nil.

*'To be used as a guide only'*

#### Summary:

The Corporate Ac  
transporting bulk commodities s  
states of Victoria, New South W

The accused is the  
prime movers with tri-axle A & 1  
kg's Gross Vehicle Mass (GVM)  
driver these fatigue regulated vel

The accused is an  
Victorian accreditation number V  
Modules.

As the result of se  
Corporation attended at the offic  
Part 9 of the Road Safety Act 19  
of its employed drivers for the p  
request and provided work diary  
relevant period, including a list o  
period.

This information  
Information was provided by the  
fatigue regulated vehicle combin  
Part 10A of the Road Safety Act

Letters of invitatio  
drivers, they have not been return  
four.

A total of 85 brea  
fatigue regulated heavy vehicles:

- Exceeding 14 hours work
- Exceeding 14 hours work
- Exceeding 14 hours work
- Exceeding the 84 hour w
- Possessing purported wor

- 1- RSA 1910 100 penalty Units x33 = \$386,100
- 2 -RSA 1910 250 penalty Units x12 = \$351,000
- 3- RSA 1910 500 penalty Units x7 = \$409,500
- 4- RSA 1910 100 penalty Units x 2 = 23,400
- 5 -RSA 1910 50 penalty Units x 2 = \$11,500
- 6 -RSA 1910 500 penalty Units x3 = \$175,500
- 7 -RSA 1910 500 penalty Units x7 = \$409,500
- 8 -RSA 191ZB 500 penalty Units x19 = \$1,111,500

**Total 85 Charges**

**Total maximum for all offences =  
\$2,787,500**

2)

contacted per  
tigue related  
d its Compliance  
May 2010.

nager offered the

## Case # 1

### **Company Director will “Live with shame” after fatal smash –**

A County Court Judge has told a company director he would have to live with the shame of failing to ensure a truck which killed a motorist had effective brakes.

In sentencing 59-year-old South Gippsland man Lance William Jobling, Judge Leo Hart said the May 2002 crash on the West Gate Freeway off ramp had left Jobling in dire financial circumstances, on medication and with post traumatic stress disorder.

Mr Jobling was convicted and fined \$20,000 and ordered to undertake 200 hours of unpaid community work.

Company directors have clear responsibilities under the Occupational Health and Safety Act, as do employers. They must ensure they fulfil their obligations and act on information they have concerning safety.”

“In terms of the transport industry, this is the second major prosecution in as many months.”

***With a criminal record he could no longer hold a position as Director***

## Case # 2

Canberra Transport company, Allbulk Landscaping Supplies Pty Ltd, was convicted and fined a total of \$130,000 at the Shepparton County Court on March 24 after pleading guilty to two Occupational Health and Safety Act charges after a crash near Cobram killed four people.

The truck's driver was gaoled, but the company was charged as it required the driver to work excessive hours without adequate breaks.

*"Our message to these people is that they will be held accountable in the event of a serious safety incident"*

*"While most in the industry are striving to meet their legal and moral obligations some do not.*

*"Failing to ensure trucks are properly maintained puts drivers and other members of the public at risk. If you cannot carry out this basic task, you should not let your vehicles on the road"*

## Penalties CoR

- Fines for Multiple offences
  - Mass
  - Dimensions
  - Restraint
  - Loading
  - Data/information access

### **Corporate Accelerator**

**Can be up to 5 times base  
Fine(s) for corporations/Councils  
+ 200 – 400 hours community service**



## Penalties CoR

- Commercial Benefits Penalty orders
  - Retrospective commercial benefit X 3
- Licensing and Registration Sanctions
  - Driver Licence
  - Registration
- Supervisory Intervention Orders –
  - (e.g. Schedulers/despatches/planners)
  - Systematic or persistent offender
- Prohibition Orders

## When is a system not a System?

**An objective was to create a Risk Management approach to Chain of Responsibility by parties in the Chain.**

*The Magistrate fined the transport operator in excess of \$1.25m and ordered Scott's to pay the costs of NSW Road and Maritime Services (RMS) in the amount of \$100,000.*

*The fines were issued to the company, and to Peter Anderson (Manager) and Ray Scott (Director of Scott's Group of Companies) personally.*

*In handing down the fines, the Court observed that Scott's policies and procedures governing speed management were inadequate and, in particular, **noted that its Driver Induction and Training Handbook was:***

***".... unlikely to be read, understood or acted upon by a driver***

*The Court was critical of the company's failure to act in response to a string of speeding offences which had been brought to its attention.*

## Important CoR aspects

- CoR includes everyone who is involved across the supply chain in vehicle road transport 4.5 tonnes and over, (except WA where it applies to all commercial vehicles).
- Compliance with CoR legislation is the ability to demonstrate that “**Reasonable Steps**” have been taken. “Reasonable Steps” means that actions have been taken to prevent or predict a breach.
- CoR applies equally to inbound and outbound loads.

## Important CoR aspects

- Using sub-contractors or out-sourcing transport **does NOT** remove the CoR obligations.
- It is incumbent on a business to ensure that a subcontractor has procedures in place and can demonstrate compliance with all the regulations under the Chain of Responsibility act.

# Section 4 – Interpreting

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ADVICE EDUCATION COMPLIANCE

## What are “Reasonable Steps”

To comply with the CoR you must be able to demonstrate that you have taken “reasonable steps” to prevent a breach from occurring in your workplace resulting from one of your or your employees’ activities.

The National Model Legislation only allows for a Reasonable Steps defence to be used for **minor breaches**.

## Demonstrating Reasonable Steps

In order to demonstrate that you have taken reasonable steps some actions you can take include:

- Identifying and assessing risks;
- Taking steps to eliminate, manage or prevent the risk; and
- Monitoring and reviewing risk management processes.



**Prove it**



## Examples of Reasonable Steps

- ✓ Participating in the development of an industry code of practice;
- ✓ Use of accreditation schemes where your processes and procedures are audited for compliance with the Legislation;
- ✓ Reviewing your business practices;
- ✓ Changing your commercial arrangements and including CoR clauses in all Contracts; *and*
- ✓ Adopting a risk management approach to CoR

## Have you taken Reasonable Steps?

- ✓ Audit survey September 2014
- ✓ Eastern states
- ✓ 205 companies surveyed

Summary of respondents	#	%
Total Companies Surveyed	205	100.0%
Companies with complete responses	138	67.3%
Companies with <u>only</u> incomplete responses	21	10.2%
Ones with no responses	46	22.4%

## Have you taken Reasonable Steps?

✓ Compliance level

Summary of responses	#	%
Total Companies with complete responses	138	100.0%
Achieving a high level of compliance	0	0%
Achieving a borderline level of compliance	18	13%
Companies non-compliant	120	87%

## Have you taken Reasonable Steps?

- ✓ Australian Design Rules (ADR)
- ✓ Have vehicles undergone ADR surveys?
- ✓ Recent survey results of 60 vehicles assessed to ADR
  - ✓ 37% failed ADR compliance requirements and Road Worthy requirements

# Silver Lining



## Silver Lining

- ✓ Most companies install CoR over their systems
- ✓ This is a “band aid” approach
- ✓ A cost to the business
  
- ✓ Installing a system/culture within the business
- ✓ This will reduce costs
  
- ❑ Case Studies

## Case Study #1 – Base Case

- Company “X”
- Poor customer service
  - Product shortages
  - Performance only making 7% of target
  - Average late days = 9.1
  - Delivery variance 124 units to 1704 (target 1000)
  - “Freebies” to placate irate customers
- Failing to meet compliance standards
- Internal “Fix” high cost
  - Increased overtime for drivers
  - Increased overtime for planning staff
  - Increase in administrative cost



## Case Study #1 – Research phase

- Company “X”
- Gap Analysis highlighted significant failures
  - Poor route planning
  - Poor customer intelligence gathering
  - Delivery performance impacted by poor scheduling
  - Poor training
  - Variations to process

## Case Study #1 – Outcomes

- Company “X”
- Improved planning and scheduling
  - Consistency
  - Training
  - Systems
- Improved customer data collection
  - Actually asking “hard” questions
  - Recording and analysing results
- Improved honesty
  - Advising customers of what actually can be achieved
  - Internal honesty about performance levels
  - Ensuring consistency

## Case Study #1 – Outcomes

- Company “X”
- Reduced costs by:
- \$250,000 P.A. per site (*Avg*)
- 9 major sites
- **\$2.25m P.A.**
  
- Symptomatic outcome
- CoR Compliance

## Case Study #2 – Base Case

- Company “Y”
- Inventory/Revenue leakage
  - Deliveries not recorded and charged
  - Returns
  - Re-entry into warehouse inventory
- Failing to meet compliance standards
- Internal “Fix” high cost
  - Secondary docket system
  - Control staff
  - Control system

## Case Study #2 – Research phase

- Company “Y”
- Product counter movements
- Futile movements
- Lack of real information for customers
- Miss information to customers
- Assumption of customer requirements

## Case Study #2 – Outcomes

- Company “Y”
- Consolidation of capability data
  - Determination of logistics chain capacity
  - Definition of logistics chain capacity
  - Publication of logistics chain capacity
- Matching sales to Logistics Chain capability
  - Maximising capability
  - Not over exceeding capacity of Logistics Chain
- Logistics Chain communication
  - Open communication within logistics chain members

## Case Study #2 – Outcomes

- Company “Y”
- System development cost \$135k
- Reduced costs by:
  - \$605k P.A.
  - Net saving year 1 = \$470K
- Symptomatic outcome
- CoR Compliance

# What do you need to do?

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## Primary Components

- Chain of Responsibility Awareness
- Load Restraint
- Mass Management and Dimensions
- Fatigue Management
- Speed Control & Management
- Driver Health
- Drugs & Alcohol
- Equipment Suitability
- Equipment Maintenance
- Documentation
- Subcontractor Control & Assessment
- Operational Facilities
- Corrective Action System

## Primary Steps

- Policy
- Procedure
- Training
- Implementation
- Application

## Elements Matrix

CoR Item	Policy	Procedure	Training	Implement	Apply
Chain of Responsibility Awareness					
Load Restraint					
Mass Management and Dimensions					
Fatigue Management					
Speed Control & Management					
Driver Health					
Drugs & Alcohol					
Equipment Suitability					
Equipment Maintenance					
Documentation					
Subcontractor Control & Assessment					
Operational Facilities					
Corrective Action System					

## Heuristic – Magic 2 Hour Rule

- If there is an investigation and you can find all the answers and documentation within 2 hours, it is likely you will be left alone.
- If you can't then a further investigation will often ensue.
- See Checklist

## Where do you sit? - Checklist

- Review each component Versus each step
- If you have everything in place with all documentation then score 9
- If you have little or nothing in place then score 1
- If between the two make an assessment and select a number.

## Remember

It is incumbent on companies to have in place auditable systems that demonstrate to authorities their compliance with legislation in an ongoing and consistent manner!

Do you know your risk exposure?

Don't wait for a prosecution to find out!

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