

AUGUST 2013

“Chain of Responsibility” Legislation

Fact Sheet 1 - Overview



WHAT IS CHAIN OF RESPONSIBILITY?

If you use road transport as part of your business, you share the responsibility of managing the risk.

This means anyone who has control in the transport chain – including the consignor, loader and receiver – can be held legally accountable if, by their actions, inactions or decisions, they cause or contribute to a breach of the road laws.

Put Simply This Means:
Control = Responsibility
= Legal Liability

Why has the chain of responsibility legislation been introduced?

The Chain of Responsibility legislation was passed by the Government of Western Australia in May 2012. The laws have been introduced in the interests of national consistency in order to:

- improve road safety;
- reduce damage to infrastructure;
- promote a 'level playing field' for industry;
- improve deterrence and enforcement; and
- improve business efficiency and compliance

When will the new laws apply?

The legislation is due to take effect in Western Australia in March 2014 and will apply to all vehicles regardless of size.

Viewing the legislation?

The Road Traffic (Vehicles) Act 2012 and the Road Traffic (Administration) Act 2008 are accessible on the State Law Publishers website:

http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_4471_homepage.html

http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_12926_homepage.html

Who is covered by the chain of responsibility?

If you are involved in any of the following road transport activities, you are a party in the 'chain of responsibility' and may be deemed liable in the event of a breach of the road laws:

- + *Consigning* – a person or company commissioning the carrying of goods
- + *Packing* – placing goods in packages, containers or pallets
- + *Loading* – placing or restraining the load of the vehicle
- + *Driving* – the physical act of driving a vehicle
- + *Operating* – operating a business which controls the use of a vehicle
- + *Receiving* – paying for the goods/taking possession of the load

What do I have to do?

Whichever activity you perform in the 'chain', it is important that you take reasonable steps to manage the risk and ensure road safety is not compromised.

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

Further information on the responsibilities of specific parties in the transport chain can be found in the following fact sheets:

- + Consignor/Receiver – Fact Sheet 2
- + Loader/Packer – Fact Sheet 3
- + Driver – Fact Sheet 4
- + Operator/Manager – Fact Sheet 5

Further Information

For more information about the Chain of Responsibility call Main Roads, Heavy Vehicle Operations on 138 HVO (138 486), or visit www.mainroads.wa.gov.au



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Fact Sheet 2 – Consignor / Receiver Responsibilities



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What are my responsibilities?

As a consignor or receiver, you have a responsibility for ensuring goods carried on your behalf:

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

What do I need to do?

Whichever activity you perform in the 'chain', it is important that you take reasonable steps to manage the risk and ensure road safety is not compromised.

There are no limits to the ways 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:

- Regularly reviewing business processes and documenting risk management practices and training.
- Ensuring compliance assurance conditions are included in relevant commercial arrangements with other responsible persons.
- Requesting information about what systems and controls have been put in place by other parties in the chain to ensure compliance.



- Avoiding arrangements that could potentially encourage or reward non-compliance.

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

- you have taken all reasonable steps to prevent a breach; or
- there were no reasonable steps that you could have been expected to have taken to prevent the breach; then - you won't be liable for an offence under the chain of responsibility.

You may be called upon to demonstrate that you have compliance systems and programs in place to manage the risks associated with the use of heavy vehicle transport.

Codes of practice

Various industries have formal codes of practice that document procedures aimed at maintaining consistency and quality control.

In the event of an alleged road transport offence, businesses and individuals may be able to defend their actions on the basis that they were complying with an industry code of practice.

Further information

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Fact Sheet 3 – Loader / Packer Responsibilities

WHAT IS CHAIN OF RESPONSIBILITY?

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What are my responsibilities?

As a loader/packer, you will have a responsibility for ensuring that the vehicle's load:

- Does not exceed vehicle or permitted dimension limits
- Does not cause vehicle or permitted mass limits to be exceeded
- Is placed/secured in a way that it does not become unstable, move or fall off the vehicle
- Is accurately recorded in any manifest and other documentation relating to the load
- When packed in a freight container, does not cause the container's gross weight or safety approval rating to be exceeded.

What do I need to do?

Whichever activity you perform in the 'chain', it is important that you take reasonable steps to manage the risk and ensure road safety is not compromised.

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

Examples of steps that could be taken include:

- Ensuring the processes and practices that manage the risk are documented, including the methods used to control the loading of product and training.
- Having a loading diagram for different types of loads.

• Loading in accordance with the NTC *Load Restraint Guide 2004*.

• Operating a weighbridge or loading equipment fitted with scales and keeping a 'running' total of the weight of the load for each trip.

• Using a pre-printed form that requires the person in control of the packing or loading of goods to verify the accuracy of any records.

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

- You have taken all reasonable steps to prevent a breach; or
- There were no reasonable steps that you could have been expected to have taken to prevent the breach;

Then - you won't be liable for an offence under the chain of responsibility.

You may be called upon to demonstrate that there are compliance systems and programs in place to manage the risks associated with the loading and packing of heavy vehicles.

Codes of practice

Various industries have formal codes of practice that document procedures aimed at maintaining consistency and quality control.

In the event of an alleged road transport offence, businesses and individuals may be able to defend their actions on the basis that they were complying with an industry code of practice.

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Fact Sheet 4 - Driver Responsibilities



WHAT IS CHAIN OF RESPONSIBILITY?

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What are my responsibilities?

As a driver, you are responsible to ensure that:

- Your vehicle does not exceed mass limits
- Your vehicle and load do not exceed dimension limits
- Your load is appropriately restrained.

What do I need to do?

You need to take reasonable steps to demonstrate that you are managing the risk to ensure road safety is not compromised.

There are no limits to the ways 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:

- Knowing the mass ratings and dimension limits of the vehicle and complying with a load management system, which may include a loading diagram for different types of loads.
- Having the vehicle weighed, or its weights assessed by other means, and dimensions measured before departing.
- Using on-board scales to cover situations where there are no weighing facilities.
- Checking for any movement of the load while in transit and carrying loading documentation (e.g. weighbridge dockets) in the vehicle.

- Checking that the load is restrained in accordance with the performance standards contained within *the Load Restraint Guide 2004*, along with the adequacy and condition of restraining equipment (straps, chains, ropes, twist locks, etc.)

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

- you have taken all reasonable steps to prevent a breach; or
- there were no reasonable steps that you could have been expected to have taken to prevent the breach;

Then - you won't be liable for an offence under the chain of responsibility.

Codes of practice

Various industries have formal codes of practice that document procedures aimed at maintaining consistency and quality control.

In the event of an alleged road transport offence, businesses and individuals may be able to defend their actions on the basis that they were complying with an industry code of practice.

To which vehicle types does the new legislation apply?

To gain maximum road safety benefits, it is essential that the legislation apply to all vehicles regardless of their size.

Therefore, in Western Australia the legislation will also apply to light vehicles so that all parties in the transport chain can be held accountable for their actions.

Further information

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Fact Sheet 5 – Operator / Manager Responsibilities



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What are my responsibilities?

As an operator or manager of a business involved in road transport, you need to ensure all loads are properly restrained and do not exceed mass and dimension limits.

What do I need to do?

You need to take reasonable steps to demonstrate that you are managing the risk to ensure road safety is not compromised. Examples of steps you could take include:

- Having documented compliance systems and programs in place, including information, instruction, training and supervision for all employees involved in the transport chain under your control.
- Conducting regular reviews of procedures and processes to ensure they remain relevant to the business and address any shortcomings.
- Monitoring and reviewing work practices to ensure employees are following procedures and appropriately skilled to the tasks, and equipment is being kept in good order.
- Ensuring compliance assurance conditions are included in relevant commercial arrangements with other responsible persons.
- Requesting information about what systems and controls have been put in place by other parties in the chain to ensure compliance.
- Avoiding arrangements that could potentially encourage or reward non-compliance.

Reasonable defence for an owner or operator

Under the Chain of Responsibility legislation, an owner or operator has the benefit of a reasonable steps defence.

An owner or operator will not be held liable for a chain of responsibility offence, if the owner or operator can establish that the vehicle was being used at the time by:

- An employee who was acting outside the scope of his or her employment; or
- An agent or contractor (in any capacity) of the owner or operator who was acting outside the scope of the agency; or
- Any other person who was not entitled to use the vehicle.

Codes of practice

Various industries have formal codes of practice that document procedures aimed at maintaining consistency and quality control.

In the event of an alleged road transport offence, businesses and individuals may be able to defend their actions on the basis that they were complying with an industry code of practice.

Further information

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“Chain of Responsibility” Legislation Fact Sheet 6 – Breach Categories

WHAT IS CHAIN OF RESPONSIBILITY?

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To maximise consistency of enforcement actions throughout Australia and to reflect more accurately the impact of breaches on road safety, damage to infrastructure and unfair competition, categories of risk have been developed –

- Minor
- Substantial
- Severe



Breakpoints for mass and dimension

Breach category breakpoints for each of the mass and dimension requirements are –

	Minor	Substantial	Severe
Mass	Less than 105% of maximum permitted mass	Equal to or greater than 105% and less than 120% of the maximum permitted mass	Equal to or greater than 120% of the maximum permitted mass
Length	Less than 350mm over the maximum permitted length	Equal to or greater than 350mm and less than 600mm over the maximum permitted length	Equal to or greater than 600mm over the maximum permitted length
Width	Less than 100mm over the maximum permitted width	Equal to or greater than 100mm and less than 150mm over the maximum permitted width	Equal to or greater than 150mm over the maximum permitted width
Projection	Less than 40mm over the maximum permitted projection	Equal to or greater than 40mm and less than 80mm over the maximum permitted projection	Equal to or greater than 80mm over the maximum permitted projection
Height	Less than 150mm over the maximum permitted height	Equal to or greater than 150mm and less than 300mm over the maximum permitted height	Equal to or greater than 300mm over the maximum permitted height

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Fact Sheet 7 – Container Weight Declarations

WHAT IS CHAIN OF RESPONSIBILITY?

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What is a freight container?

The legislation defines a freight container as:

“a re-usable container of the kind mentioned in *Australian / New Zealand Standard AS/NZS 3711.1:2000, Freight containers – Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one or more modes of transport.”

Container Weight Declaration

A ‘Container Weight Declaration’ for a freight container is one that states the weight of the freight container and its contents.

Subject to the regulations, a Container Weight Declaration:

- may be comprised in one or more documents or other formats, including being in electronic form; or
- without limiting the above, may be comprised wholly or partly in a placard attached or affixed to the freight container.

Complying Container Weight Declaration

There is no specific format for a Container Weight Declaration. It does not even have to be a single document, but it must contain certain core information.

A Container Weight Declaration complies with the legislation if it contains the following information:

- the weight of the freight container and its contents;
- the number and other particulars of the freight container necessary to identify the container;
- the name, home address or business address in Australia of the ‘responsible entity’;
- the date of the declaration;

The Container Weight Declaration is to be made available to an authorised officer who may seek to verify the information contained in the declaration there and then in the presence of the consigned freight container, whether by examining documents located in or on the vehicle or by obtaining the information by other means.

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Fact Sheet 7 – Container Weight Declarations



Who is responsible?

The responsible entity must provide the operator or driver with a complying Container Weight Declaration before transport of the container begins. In relation to a freight container, a 'responsible entity' is:

- (a) the person who consigned the container for transport by road in the relevant jurisdiction if the person was in Australia at the time of consignment; or
 - (b) if there is no person as described in paragraph (a) above, the person who (being in Australia) on behalf of the consignor, arranged for the transport of the container by road in the relevant jurisdiction; or
 - (c) if there is no person as described in paragraphs (a) and (b) above, the person who (being in Australia) physically offered the container for transport by road in the relevant jurisdiction.
- **Consignor** – The consignor (e.g. importer, freight forwarder, shipping agent, etc.) must prepare a complying Container Weight Declaration (electronically or printed) and provide a copy for the road transport operator or driver before the container can be transported by road. For imported containers, the consignor is the person who imports the container into Australia.
 - **Drivers** – A person must not drive a vehicle loaded with a freight container in Western Australia unless the driver has been provided with a complying Container Weight Declaration. While on the road, drivers must keep a copy of the Container Weight Declaration with the container at all times and produce the declaration to an authorised officer when requested.
 - **Operators** – An operator who arranges for a freight container to be transported in Western Australia must make sure the driver of a vehicle is given a complying Container Weight Declaration before commencing the journey. If another road (or rail) carrier is to further transport the container, then the operator must provide a declaration to that carrier by the time the container is received.
 - **Consignee** – A consignee (e.g. buyer, purchaser, receiver, etc.) must not induce or reward a breach of mass, dimension or load restraint requirement. A consignee will be regarded as participating in such behaviour if they knew or ought reasonably to have known that:
 - A complying Container Weight Declaration was not provided; or
 - Information about the container's weight and contents provided in the Container Weight Declaration was false or misleading.

Further information

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