

February 2017

# Holding Redlich Update

Transport



## Load restraint prosecution update – transport operators, logistics providers and consignors/consignees

We are currently involved in a load restraint prosecution under the Chain of Responsibility (CoR) laws, which serve as a timely reminder to all transport operators, logistics providers and consignees/consignors of the importance of having in place a CoR compliance framework in order to avoid costly prosecution.

In February 2015 a containerised shipment of steel lengths was shipped and imported into Australia. The logistics company for the importer engaged (as Consignor) a transport operator to collect the container from Port Botany. The load was intercepted by RMS, opened and inspected. RMS formed the view that the load was insufficiently restrained and did not meet the Performance Standards set out in the Load Restraint Guide. RMS alleged that the steel lengths were insufficiently secured and were at risk of shifting significantly fore and aft within the container, which could contribute to instability of the heavy vehicle carrying them. Further, RMS observed that a number of steel lengths were suspended in a block stow from the walls/roof of the container by unrated wire and alleged that these lengths were similarly at risk of shifting or breaking their restraining wires and causing vehicle instability.

The container was unstuffed and the load redistributed to two vehicles for delivery, resulting in additional costs to all parties involved.

RMS issued an infringement notice to the transport operator. The transport operator challenged the validity of the infringement notice in Court. The challenge was unsuccessful and the transport operator's fine was increased

and they were ordered to pay thousands in Court costs.

RMS has now commenced a load restraint prosecution against the logistics provider, who booked the transport. In many instances, this could equally have been a prosecution against an importer, distributor or retailer, many of whom book transport to collect goods from ports or warehouses and/or receive goods delivered by heavy vehicle.

Both prosecutions have relied on the deeming of liability provisions under the *Heavy Vehicle National Law* – regardless of whether the transport operator, logistics provider, importer, distributor or retailer were involved in the loading and securing of the container (in this case, they weren't), where a load restraint breach is found, every person along the supply chain for the transport of that load is deemed to have committed a load restraint breach and may be prosecuted, found guilty and fined.

All parties in the Chain must remember the importance of being able to show that they have taken all reasonable steps to avoid breaches. This will include having discussions and/or a contractual compliance framework and compliance standards as amongst supply chain parties (including foreign/domestic suppliers, logistics providers/transport operators and customers). If these measures aren't in place, prosecution and penalties are likely.

So, you need to ask yourself – ‘(a) what contractual compliance obligations have I communicated to each other party in my supply chain and (b) what information have I shared or discussions have I had with them about how I and they manage

CoR compliance along our shared supply chain?’ If you don't have a good answer for this, you are a prime candidate for prosecution if any fault is detected in relation to a load.

**Author:** Nathan Cecil

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### Key contact

**Nathan Cecil**

Partner

**T** +61 2 8083 0429

**E** nathan.cecil@holdingredlich.com

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