

MemberUpdate

UPDATE 13 of 17 • 04 September 2017

TOPIC: Chain Of Responsibility Laws

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

Why you should read this...

1. Changes to the Heavy Vehicle National Law (HVNL) are coming
2. You need to know not just “How does my **company comply** with its obligations under the HVNL?” but also “How do **I comply with my** obligations under the HVNL?”
3. Traders and Merchants who book or consign freight have risk under the new Laws
4. You need to take steps to ensure parties you do with business will also be compliant

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A. Purpose:

GTA have been advised that GTA Members should improve their awareness of the upcoming changes to Chain of Responsibility (CoR) Laws. This Member Update is the commencement of this process.

B. Chain of Responsibility Changes:

From mid-2018 the Heavy Vehicle National Law (HVNL) is due to change significantly. The amendments to the existing legislation will more closely align with workplace health and safety laws including potential assessment for compliance.

GTA members are advised to prepare for this change and ensure your business is ready. The new laws make it clear it is the responsibility of all parties in the supply chain to understand and assess their risks, and ensure they are complying with the law.

C. Positive Duty

The amendments to the [Heavy Vehicle National Law \(HVNL\)](#) provide that every party in the supply chain has a “positive duty” to ensure safe practices, rather than the current legislation where a party is deemed liable for breaches only if they are detected.

A “positive duty” is an obligation for any party in the supply chain to eliminate and minimise public risks by doing everything reasonable to ensure transport related activities are safe. Company executive officers will have a “due diligence” obligation to ensure parties in the CoR actively prevent breaches, eliminate any arrangements that may cause or encourage another to break the law and comply with their requirements under the law.

This creates a fundamental change around compliance; with directors and executives needing to ask not just “How does the **company comply** with its obligations under the HVNL?” but also “How **do I comply with my** obligations under the HVNL?”

All parties that have control or influence over the transport task are responsible for complying with the Heavy Vehicle National Law (HVNL). In the grain industry, this can include (and is not limited to):

- Loaders of grain, eg BHCs, farm operators, container packers
- Carriers of grain
- Logistics coordinators
- Grain sellers and buyers under ‘delivered’ contracts
- Unloaders of grain
- Packers
- Consigners
- Consignees
- Executive Management

Penalties for breaches of a primary duty will apply and be similar to the workplace health and safety laws. These being:

- a maximum fine of \$3 million for a corporation
- \$300,000 or five-year imprisonment, or both, for a person.

D. Legislation Coverage

There are 10 prime areas that the CoR legislation covers, which are:

- Mass Management
- Dimensions
- Fatigue
- Speed control & management
- Drugs & Alcohol & Driver Health

- Equipment suitability & maintenance
- Documentation & Training
- Subcontractor/Supplier Control & Assessment
- Operational facilities

E. Policy & Procedures

Compliance in these areas is critical and requires business policy and procedures combined with active implementation to eliminate and minimise public risks. All parties must do everything reasonable to ensure transport related activities are safe. This also applies for all parties in the supply chain that you do business with. It is imperative companies ensure aligned businesses are also compliant.

GTA members should consider a review of your current Policy and Procedures that focus on the risks and risk assessments in the supply chain to ensure that the business is prepared to manage its “primary duty” obligation.

F. Primary Duties

Section 26C stipulates as the primary duty that each CoR Party for a heavy vehicle must ensure, so far as is reasonably practicable, the safety of the party’s transport activities relating to that vehicle.

This introduces the concepts of **reasonable practicability**, and **transport activities**.

Reasonably practicable is defined as follows:

reasonably practicable, in relation to a duty, means that which is, or was at a particular time, reasonably able to be done in relation to the duty, weighing up all relevant matters, including:

- (a) the likelihood of a safety risk, or damage to road infrastructure, happening; and
- (b) the harm that could result from the risk or damage;
- (c) what the person knows, or ought reasonably to know, about the risk or damage; and
- (d) what the person knows, or ought reasonably to know, about the ways of:
 - (i) removing or minimising the risk; or
 - (ii) preventing or minimising the damage; and
- (e) the availability and suitability of those ways; and
- (f) the cost associated with the available ways, including whether the cost is grossly disproportionate to the likelihood of the risk or damage.

Transport activities is defined as follows:

transport activities means activities, including business practices and making decisions, associated with the use of a heavy vehicle on a road, including, for example:

- (a) contracting, directing or employing a person:
 - (i) to drive the vehicle; or
 - (ii) to carry out another activity associated with the use of the vehicle (such as maintaining or repairing the vehicle); or
- (b) consigning goods for transport using the vehicle; or
- (c) scheduling the transport of goods or passengers using the vehicle; or

- (d) packing goods for transport using the vehicle; or
- (e) managing the loading of goods onto or unloading of goods from the vehicle;
- (f) loading goods onto or unloading goods from the vehicle; or
- (g) receiving goods unloaded from the vehicle.

G. Duty of the Executive of legal entity

As foreshadowed above, section 26D provides that if a legal entity has a duty under 26C, the executive of that entity must exercise due diligence to ensure the legal entity complies with that duty.

These are significantly expanded obligations. This is not contingent on any proceedings being taken against the legal entity. Due diligence (for the purposes of section 26D) is defined as follows; due diligence includes taking reasonable steps:

- (a) to acquire, and keep up to date, knowledge about the safe conduct of transport activities; and
- (b) to gain an understanding of:
 - (iii) the nature of the legal entity's transport activities; and
 - (iv) the hazards and risks, including the public risk, associated with those activities; and
- (c) to ensure the legal entity has, and uses, appropriate resources to eliminate or minimise those hazards and risks; and
- (d) to ensure the legal entity has, and implements, processes:
 - (v) to eliminate or minimise those hazards and risks; and
 - (vi) for receiving, considering, and responding in a timely way to, information about those hazards and risks and any incidents; and
 - (vii) for complying with the legal entity's duty under section 26C; and
- (e) to verify the resources and processes mentioned in paragraphs (c) and (d) are being provided, used and implemented.

H. Contracts and Terms of Consignment

Traders and merchants who book road freight to collect or deliver loads of grain must ensure that contracts and terms of consignment (such as delivery times) will not result in or encourage a driver to speed or drive while fatigued.

I. Industry Code of Practice

Industry-developed registered codes of practice (assessed by the regulator and registered as compliant) can help identify what is known about a hazard or risk, and the risk control (or business systems) that can assist achieving compliance with the new laws.

If an industry adopts a registered code of practice, and a business is aligned with the code, this may assist in showing a court the business is effectively addressing its primary duty within the chain of responsibility, as known risks will have been identified and control measures will have been installed.

As registering a code with the HVNR is a relatively complex, costly and demanding process, the GTA Transport, Ports

and Storage committee will consider the feasibility (including funding and cost/benefit analysis) of whether the GTA Transport Code of Practice may be reviewed and amended to become complaint and potentially registered with the Heavy Vehicles National Regulator.

This would mean all grain related businesses, large or small will have a common code and system to follow.

J. Further Information

Further information can be found at NHVR [website](#)

GTA will seek to provide further information to Members and plans to conduct *Chain of Responsibility Information Seminars* as part of the GTA Industry Training and Development program.

Visit the GTA website for full details.