

Chain of Responsibility and vehicle standards

Technical and Maintenance Conference

Marcus Burke, Project Director – Heavy Vehicle Compliance & Technology

National Transport Commission

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What I'll be covering today

- Background on Chain of Responsibility (CoR) reform
- What is the problem?
- Benefits for industry of a primary duties approach
- Reform Proposals
- What does it mean for operators?
- Next steps



Background

***CoR is fundamentally about safety:
safety of drivers, safety of the community***

Ensuring that those who influence on-road safety are influencing safety positively and can be held appropriately accountable when they don't

The key questions for the CoR review:

- Is the law effective?
- Is the current law clear?
- Does it focus on safety outcomes?



What is the problem?

Stakeholders have identified a number of key issues with the current CoR regime:

- Inconsistencies between the HVNL and other national safety laws
- Inconsistencies of obligations within the HVNL
- Cost and burden to industry of complying
- Reliance on individual offences and incidents to prosecute
- Legislation too prescriptive and complex
- Concerns around burden of proof
- Safety



Outcomes from ministers' meeting May 2015

Agreed the NTC develop detailed policy recommendations on the formulation of primary duties for all current CoR parties, limited to the existing HVNL regulatory framework



Benefits of change

- Clarify and simplify existing CoR obligations
- Assist CoR parties and regulators to better understand and apply the law
- Simplify enforcement
- Better align with Australia's national safety laws
- Reduce red tape and compliance cost



Proposal - primary duties

Operators, prime contractors and employers should have a duty to ensure the safety of their road transport operations (primary duty) limited to the existing regulatory framework of the HVNL.

The primary duty should not increase compliance burden but instead clarify existing obligations and enable a more flexible outcomes-based approach.



Proposal - primary duties

To the extent possible, the primary duty should:

- replace existing CoR requirements on operators, prime contractors and employers;
- include the obligation for operators, prime contractors and employers to ensure the safety of their vehicles, drivers, and the public;
- address the specific safety risks posed to road transport operations by speed, fatigue, mass, dimension and loading, vehicle standards requirements.



Proposal - primary duties – standard of care?

all reasonable steps

OR

so far as reasonably practicable

Proposal – All reasonable steps v reasonable practicability

reasonably practicable, includes —

- (a) likelihood of the hazard or the risk concerned occurring
- (b) degree of harm that might result from the hazard or the risk
- (c) what the person concerned knows, or ought reasonably to know, about —
 - (i) the hazard or risk;
 - (ii) ways of eliminating or minimising the risk;
- (d) the availability and suitability of ways to eliminate or minimise the risk;
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk — the cost associated with available ways of eliminating or minimising the risk (including whether the cost is grossly disproportionate to the risk)



Proposal - maximum penalties

- Maximum penalties for breach of the primary duties to better align with the maximum penalties available under the national safety laws
- Including adoption of a hierarchy of penalties based on the nature of the actual harm or damage caused



Implementation

- Guidance material
- Communication
- Training for authorised officers



Key issues from submissions

Overall, submissions were very supportive of the reform.

Range of views on:

- Structure of duties for off-road parties
- Investigative powers
- Executive officer liability



What does it mean for operators?

- For those already doing the right thing there shouldn't be major changes
- Opportunity to better align your systems and processes for WHS and the HVNL
- Move from a compliance focus to a risk management focus
- Greater flexibility



Next steps

- 6 Nov 2015 – Transport and Infrastructure Council meeting
- Subject to ministerial agreement, a draft Bill to amend the HVNL will be prepared for ministers consideration in May 2016



Further information

Marcus Burke

Project Director – Heavy Vehicle Compliance & Technology

Email: mburke@ntc.gov.au

Thank you

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