

Article Information

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Understanding your role within the chain of responsibility

Recent amendments to the Heavy Vehicle National Law now place a primary duty on each party in the chain of responsibility to ensure the safe operation of heavy vehicles.

Recent amendments to the Heavy Vehicle National Law (HVNL) in Queensland from 1 October 2018, now place a primary duty on each party in the chain of responsibility (CoR) for a heavy vehicle to ensure, so far as is reasonably practicable, the safety of the party's transport activities relating to the vehicle.

This is a significant development as it now provides that heavy vehicle operators can be liable for failing to implement CoR practices, irrespective of whether an accident or incident has even occurred. For that reason, it is imperative that all parties within the chain understand the obligations imposed upon them by these amendments.

Who is a party?

Designated parties within the chain of responsibility include (amongst others): the **employer** of the driver, the **operator** of the vehicle, and the **scheduler** of the vehicle.

While the first two parties are to be expected, the chain also imposes a primary duty upon the scheduler of the vehicle. A person is considered to be a 'scheduler' if they plan the transport of any goods or passengers, or schedule the work and rest times of a driver. As a result, non-management personnel working within the operations team are now equally liable within the chain.

Drivers of heavy vehicles are not within the chain of responsibility and accordingly cannot attract liability as a party in the chain (but can potentially be found liable for other breaches of this law, as well as health and safety law).

What is required by those in the chain?

Each party in the chain must ensure, so far as is reasonably practicable, the safety of that party's transport activities relating to the heavy vehicle.

In doing so, each party within the chain is required to undertake reasonable steps to eliminate and minimise the risks associated with the operation of a heavy vehicle. Additionally, each party must ensure that they do not directly or indirectly cause or encourage the driver to contravene the HVNL or exceed a speed limit, or cause or encourage another person (including a party in the chain) to contravene the HVNL.

The safety of transport activities relating to a heavy vehicle is the shared responsibility of each party in the chain of responsibility for that vehicle.

What if I have more than one duty?

A person may have more than one duty because of the functions they perform within a business. Where this is the case, the person retains the responsibility for each duty and must discharge each duty to the extent that they have the capacity to influence and control the matter, or would have had that capacity but for an agreement purporting to limit or remove that capacity. Importantly, any duty cannot be transferred to another person.

Examples of prohibited requests

A person must not ask, direct or require the driver of a heavy vehicle or a party in the chain of responsibility to do anything

which would have the effect of causing the driver:

- To exceed a speed limit.
- To drive a heavy vehicle while impaired by fatigue.
- To drive a heavy vehicle while in breach of the driver's work and rest hours option.
- To drive a heavy vehicle in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest option.

Expanded definition of executive officers

Another significant development is the expanded definition of an 'executive officer'. Aside from a company director, an executive officer also includes any person who is concerned or involved in the management of a company, regardless of their official title or whether they are a director of the company. Importantly, an executive officer may be convicted of an offence irrespective of whether a prosecution has been brought against the company (such as their employer) or not.

What is required of executive officers?

Executive officers are required to exercise due diligence to ensure that the legal entity of which they are an executive officer, complies with the HVNL. As such, executive officers must take reasonable steps:

- To acquire and maintain knowledge about the safe conduct of transport activities.
- To gain an understanding of the legal nature of the legal entity's transport activities - including the hazards and risks associated with these activities.
- To ensure the legal entity adopts appropriate measures to eliminate or mitigate those hazards and risks.
- To ensure the legal entity implements processes: to eliminate and mitigate those hazards and risks, for receiving, considering and responding to information about those hazards and risks and any other incidents, and for complying with the legal entity's safety duties.
- To guarantee that these measures and processes are implemented and observed.

Penalties

Penalties have significantly increased and are now aligned with existing penalties under work health and safety law in Queensland.

The maximum penalties for each category of offence are as follows:

- Category 1 - Reckless breach of duty creating risk of death or serious injury or illness
 - Individual: \$300,000 fine or 5 years' imprisonment or both.
 - Company: \$3,000,000 fine.
- Category 2 - Breach of duty creating risk of death or serious injury or illness
 - Individual: \$150,000 fine
 - Company: \$1,500,000 fine.
- Category 3 - Other breach of duty
 - Individual: \$50,000 fine.
 - Company: \$500,000 fine.