



## **Chain of Responsibility – Frequently Asked Questions**

### **Chain of responsibility; what is it?**

The chain of responsibility refers to the chain of people involved in transporting of goods by road. It extends the liability for road law offences to include several off-road parties who have previously not been liable for such offences. Under the chain of responsibility, every person is held accountable for conduct that affects compliance in a transport operation and may be deemed liable in the event of a breach of the legislation through their actions or inactions.

### **Where did chain of responsibility come from?**

The chain of responsibility concept is the cornerstone of the National Road Transport Reform (Compliance and Enforcement) Bill. The Bill is a set of model provisions developed by the National Transport Commission in consultation with key stakeholders, including Commonwealth, State and Territory road transport agencies, police and the road transport industry.

The Bill provides for the adoption in all jurisdictions of nationally consistent legislation in relation to enforcement powers, risk-based offence classifications, reasonable steps defence, sanctions and penalties, liability and evidentiary provisions.

The Bill establishes a framework for improved compliance outcomes across the road transport industry, ensuring increased road safety, benefits for infrastructure and the environment, and the minimisation of unfair competitive advantage and adverse impacts of road transport on the community.

Australian transport ministers approved the Bill for implementation in all jurisdictions on 3 November 2003.

### **Why has the chain of responsibility legislation been introduced?**

The chain of responsibility legislation has been introduced in Western Australia in the interests of national consistency to replicate the provisions of the National Road Transport Reform (Compliance and Enforcement) Bill. The legislation was passed by the State Government in May 2012. The laws have been introduced in order to:

- provide an effective, efficient and equitable scheme for encouraging compliance with the requirements of the road transport law and for the enforcement of those requirements;
- make a demonstrable, positive change in the on-road behaviour of those involved in the transport industry;
- recognise the off-road parties who affect road transport compliance and making those parties answerable for their acts and omissions; and
- create an environment of accountability and fair competition that offers no incentives for non-compliance and promotes a level playing field.

### **When will the new laws apply?**

The laws will be implemented following the drafting of supporting regulations.

### **Who does the new chain of responsibility legislation apply to?**

The chain of responsibility legislation is applicable to all persons involved in the transportation of goods by road and includes special purpose and light vehicles. In the event of a breach, consignors, drivers, vehicle owner's, loaders, packers, management and company directors, may be held responsible under the legislation. Liability also extends to corporate bodies, unincorporated associations and partnerships.

### **Why is the legislation also being applied to light vehicles?**

Western Australia believes that to gain maximum road safety benefits, it is essential that the chain of responsibility provisions apply to all vehicles regardless of size.

### **What are the potential impacts on my business?**

Parties in the transport and logistics chain will need to ensure they have compliance systems and programs (e.g. training) in place to manage the risks associated with the road transport task..

They are encouraged to review existing procedures to identify any possible areas that may need attention to prevent a breach of mass, dimension and load restraint requirements. Through the use of effective transport management systems, you will need to demonstrate that:

- you are attempting to meet your responsibility to the community for road safety and the protection of public assets;
- you are making ethical business choices in favour of compliance and fair competition;

- you are taking all reasonable steps to prevent breaches of road laws by other parties along the transport logistics chain.

Transport management systems and compliance programs should include provisions for regular monitoring and review to ensure the measures put in place to meet the legal, ethical and community obligations remain effective.

### **What provisions does the new chain of responsibility legislation introduce?**

The chain of responsibility legislation introduces:

- Legal accountability throughout the whole transport chain
- General liability to all involved in the transport and logistics chain
- Additional enforcement powers available to police and transport inspectors
- Categories of risk for breaches
- Reasonable steps defence
- Container weight declarations
- Increased sanctions and penalties.

### **I've been charged with an offence and I am in the chain of responsibility, but do not believe I contributed to the breach. Are there any defences available under the legislation?**

A person charged with an offence will have the benefit of the reasonable steps defence. They will need to demonstrate that they had, within their own roles –

- taken all reasonable steps to prevent the breach; or
- there were no steps that they could have taken, and
- that they could not reasonably have been expected to know about the breach.

### **Reasonable steps are a little vague. How do I take reasonable steps?**

The steps you can take to prevent breaches will vary from business to business. Taking reasonable steps means you can demonstrate that you are:

- Regularly assessing and identifying the risks associated with your activities; and
- Managing those risks.

You can manage those risks by:

- Doing all you can to eliminate the risk; or
- If you can't – do everything you can to reduce or minimise the likelihood of the risk occurring.

Taking “reasonable steps” could include:

- Developing a code of practice
- Reviewing business practices
- Changing commercial arrangements
- Adopting a risk management approach
- Appropriate training policies
- Appropriate supervision; and
- Ensuring responsibilities are known and acknowledged.

### **What is “reasonable”?**

Things to consider when deciding if something is ‘reasonable’ could include:

- Nature of the transport task
- Expertise / experience / training
- Risk management approaches
- Documented policies
- Documented procedures
- Monitoring / auditing – paper trail.

### **Why is the reasonable steps defence not definitive?**

The reasonable steps defence is not new and has been in place in other legislation for many years. As each business is different it would be difficult to define the steps required to comply, therefore, the defence has been structured to provide flexibility by allowing a business to decide what steps they will take to ensure compliance with the law.

**I work in an industry where we conduct quarterly and annual audits, however, we can't audit everyone. Is this considered "reasonable steps"?**

It is not expected that every individual transport task is audited, but by conducting random or targeted audits, and ensuring that these are documented, your reasonable steps defence is more likely to be successful.

**How should I prepare for the implementation of the chain of responsibility?**

All parties in the chain of responsibility should take a risk management approach to the introduction of the legislation. This approach is consistent with other aspects of running a modern and successful business, such as managing cash flow, occupational health and safety, and the quality of the goods and services produced.

Every business in the chain should assess their responsibilities under the legislation and undertake the appropriate steps towards compliance. This could include:

- Seeking legal advice.
- Communicating with customers and colleagues regarding the new laws.
- Assessing training requirements of staff.
- Implementing and documenting appropriate policies, procedures and workplace practices.

**Can I be prosecuted for not having systems or procedures?**

No, under the new laws you can only be prosecuted if you have committed an offence. However, you may be issued an improvement notice if it is believed that your business practices are likely to result in a breach.

**What can I do if there is a dispute between parties in the chain as to whether specific systems or procedures are required?**

Under chain of responsibility, there are no specific systems or procedures that are required by law to be used, meaning that any dispute needs to be resolved by the parties involved.

**What is a freight container?**

The new 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".

### **What is a container weight declaration?**

A container weight declaration for a freight container is a declaration that states (or purports to state) the weight of the freight container and its contents.

A container weight declaration:

- may be in one or more documents or other formats, including in electronic form; and
- may be comprised wholly or partly in a placard attached or affixed to the freight container.

### **What is meant by a “complying” container weight declaration?**

There is no specific format for a container weight declaration. It doesn't even have to be in a single document, but it must contain certain core information in order to be considered a “complying” container weight declaration.

A container weight declaration complies 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
- Any other information required by the regulations and:
- The declaration is readily available to an inspecting police officer or transport inspector

### **How far back in the ‘chain’ should you go with containerised freight?**

If you are importing a container into Australia, you need to ensure that the container weight declaration is correct before the container is transported by road in Australia. This may involve contacting overseas companies and advising them of permissible mass limits.

### **Many containers are packed overseas and loaded to the front. In some cases this will cause overloading on an axle group. What can be done about this?**

If you're aware that this is occurring or is likely to occur, you will need to take steps to ensure that it doesn't result in an overloading offence. This could include weighing the container when it arrives in Australia but before it is transported by road, then communicating with the overseas consignor to rectify any future mass related issues.

## **Is the wharfie part of the chain?**

If you perform one of these activities, then you are considered part of the chain:

- Consigning
- Packing
- Loading
- Driving
- Operating
- Receiving

**I'm a driver in possession of a container weight declaration that, when added to the tare weight of my vehicle, suggests that I am carrying a legal load. If I'm stopped by a transport inspector and it is found that the vehicle is too heavy, will I receive a fine?**

While circumstances will vary, it is usual practice that enquiries will be made by the transport inspector so that a determination can be made about which parties in the chain may be liable for the offence. Where reasonable steps have been taken, evidence of this should be provided to the transport inspector. A fine will only be issued where it is believed that a person has committed an offence.

**Our stevedoring company does not train our staff in load restraint, however, they assist with the loading. Should I stop them?**

As they are assisting the loader they need to be trained or they should cease the practice of offering assistance.

**A container arrives from overseas carrying a large indivisible load. The Container Weight Declaration (CWD) states that container weighs 24tonne, however, it is determined that weight is actually 28tonne. What should we do?**

Where the discrepancy in weight is identified after landing but prior to entering the road network the overload needs to be rectified otherwise you are knowingly committing a breach of the requirements. If the discrepancy is consistently occurring you may need to liaise with the overseas consignor to implement systems to ensure compliance.

**As a consignor, is it our responsibility to check if a vehicle is suitably rated if they are coming to pick up a container?**

Yes, as a consignor you are a party in the chain and therefore need to take reasonable steps to ensure breaches do not occur. A reasonable step would be to ensure that vehicles being loaded with your goods are suitably rated for the task.

**Under chain of responsibility I thought you needed to have a non-conformance system in place?**

Whilst a non-conformance system would be advantageous, there is no specific requirement under the laws to have one in place. However, it would be a reasonable step for you to inform other parties of any possible offence that you become aware of.

**Who will be enforcing the new chain of responsibility legislation?**

Primarily, police officers and transport inspectors will be enforcing the new laws. Transport inspectors and police in other jurisdictions may also be able to exercise certain powers in Western Australia.

**What additional powers do officers have under the new laws?**

The new laws gives police and transport inspectors enhanced inspection and investigation powers.

**Vehicles** can be stopped, have their movement directed, be moved by the police officer or inspector, examined, searched, vacated and grounded. The officer can also direct that mass, dimension and loading breaches be rectified.

**Premises** can be entered, inspected and searched, and documents and information can be seized or copied. Persons at the premises can also be directed to assist in any enquiries and searches.

**People** may be directed to provide their name and other personal details, produce their driver's licence, produce documents and records, and are obliged to provide any other relevant information.



**What are the impacts if I conduct business cross border in relation to offences and investigations?**

Police and transport inspectors in other States may be able to exercise certain powers in Western Australia, and police and transport inspectors here may be able to exercise powers in other States. This will enable investigations to be conducted throughout Australia.

**We currently have WA Heavy Vehicle Accreditation (WAHVA), do we need to put other systems or processes in place?**

WAHVA will cover some elements of the new laws, however, you will need to ensure your current systems and processes make provision for tasks which require compliance with mass, dimension and loading requirements. You may also consider seeking specialist advice to assist your business.

**I work as a grain sampler, can I be picked up in the chain?**

The role of a grain sampler is not identified as part of the chain.

**Our company, a freight forwarder, doesn't load vehicles or control their movement. How do we fit into the chain?**

You will need to make an assessment to ensure that your business activities do not fall within the definition of a driver, co-driver, loader, packer, vehicle owner, consignor or receiver. If not, then you will not have any direct liability for breaches that occur on the road.

Despite this, indirect liability may arise if your company coerces, induces or offers an incentive to another person to commit a breach.

**Can you expand on victimisation of the driver or an employee?**

There are protections under the laws whereby an employer must not dismiss, injure or alter a contract to the detriment of an employee or contractor because that person complained to their employer, a colleague, union or any public agency about a possible offence, or provided information during the investigation of an offence.

### **Are pilots included in the 'chain'?**

If a vehicle which a pilot is accompanying is involved in an offence, the pilot may not be liable. A pilot will only be committing an offence if they urge another person (e.g. a driver) to commit an offence.

### **A vehicle attends the site and has roadworthiness issues. The driver advises my company that he/she is transporting the load anyway. What should I do?**

Depending on the severity of the roadworthiness issues, you may wish to refuse to load the vehicle. Otherwise, you should keep a record of the incident, including the details of the driver and vehicle, any discussions with the driver or owner of the vehicle and report the matter to Main Roads WA or the Police.

### **What is being done to promote the new CoR legislation to small suppliers or businesses?**

Government has engaged with as many companies and businesses as possible that may be impacted by the new legislation including the Small Business Corporation, Chamber of Minerals & Energy, Chamber of Commerce & Industry, WA Port Authorities, industry associations and transport operators.

Radio, magazine and newspaper are additional promotional activities that have either occurred or are scheduled.

### **What else is the Government doing to promote the new CoR legislation to operators or companies who haven't attended the information sessions?**

Information is readily available on the Main Roads WA website and USB thumb drives containing the presentations and other useful information is available on request.

Radio, magazine and newspaper are additional promotional activities that have either occurred or are scheduled.

Prior to and after implementation the transport inspectors will continue to educate drivers and businesses on their CoR responsibilities as part of their on road enforcement activities.

### **It appears as though the larger companies will be targeted by the new CoR legislation. This may result in suppliers choosing to engage smaller operators?**

That will not be the case as the CoR legislation is aimed at the systematic and persistent offenders and will be applied across all vehicle types and industry segments.

### **Is there protection under chain of responsibility for less experienced or new employee's?**

Lack of experience is a risk management issue not a basis for reasonable steps. Employees should have the required skills or undertaken the required training to ensure they are capable of performing the task required without breaking any laws.

### **As an import/export broker how do we overcome the issue of not being able to accurately verify the mass of a container?**

Compliance with mass, dimension and load restraint requirements is nothing new, all the new laws do is make other parties in the 'chain' responsible if a breach occurs on the road. You should ensure that you have what you believe to be an accurate and reliable container weight declaration and where an overloaded container is identified the issue should be raised with the consignor or other parties in the 'chain' where required.

### **Is a Container Weight Declaration (CWD) required when transporting an empty container?**

Where a consigned freight container is offered for transport a container weight declaration is required to ensure that the driver is aware of the weight of the container. Generally, an empty container will not fall within the definition of a consigned freight container. Where a container is empty and the weight of the empty container is identified in a placard attached to the container no separate declaration will be required in WA.

### **How do you know which party in the 'chain' is responsible for penalties?**

This will be dependent on the information supplied (usually by the driver in the first instance), evidence obtained and the outcome of any subsequent investigation.

### **Is there a fine for the first offence?**

All offences are can result in a fine. Application of penalties will greatly depend on the circumstance and severity of the offence.

### **How do I ensure that the transport company has the correct system in place? Will a declaration from the company suffice?**

When entering into a contractual agreement you may include special provisions relating to this. However, it is important to remember that legal obligations under road laws cannot be contracted out or delegated to other parties.

**Will the new laws impact the Harvest Mass Management Scheme (HMMS)?**

The HMMS scheme will remain the same.

**How does an operator with a one tonne ute, for example, assess the mass?**

The operator will need to ensure that the product being loaded does not exceed the vehicles Gross Vehicle Mass (GVM).

**As a loader I'm concerned about responsibility for road worthiness of a vehicle. It seems that we have more responsibility now?**

The loader of a vehicle is not responsible for the condition of vehicles. As a loader, you are only liable for breaches relating to mass, dimension and loading requirements, not defects.

Depending on the severity of the roadworthiness issues, you may wish to refuse to load the vehicle. Otherwise, you should keep a record of the incident, including the details of the driver and vehicle, and report the matter to Main Roads WA or the Police.

**Do the transport inspectors need to obtain a warrant to inspect or search a premise or business?**

The Road Traffic (Administration) Act 2008, Section 54 and Section 55 describes the circumstances in which a premise or business may be either inspected or searched. A warrant is required for the search of premises if it is used predominately for residential purposes.

**If a vehicle arrives at a "receiver" overloaded, what should they do?**

The "receiver" needs to take action to correct the overload and the vehicle should not be permitted to continue travelling. However, if the vehicle has reached the final destination and is being unloaded, then action needs to be taken to ensure the prevention of any further breaches.

**As a loader, if I was to tell a driver who has a vehicle with road worthiness issues, such as bald tyres, broken lights etc. that I'm not loading him/her, they will travel to the next pit/yard and may get loaded.**

You may need to keep a register of the incident describing what advice you gave to the driver. You have no authority to detain the driver and the information can be provided in confidence to Main Roads WA who may be able to monitor the vehicle and take action where appropriate. If all

pit/yards were to take the same action against the driver (refusing to load) then this will contribute in ensuring that vehicles with road worthiness issues are kept off the roads (level playing field).

**Is the cost to implement a CoR system expensive?**

Systems, processes and procedures required to ensure compliance with the new laws will vary from business to business, and so will the cost of their implementation. Some may choose to invest in a professionally developed system, whilst others may already have a system in place that they have established themselves. Whichever system you implement, you will need to keep written records in the event you need to prove that you took reasonable steps to prevent breaches from occurring.

**Are the WA Police being trained on the new laws?**

Yes, Main Roads WA is working in collaboration with the WA Police that will ensure their police officers are included in the training.

**Will there be an increase in the number of light vehicles being intercepted by Main Roads WA transport inspectors?**

Main Roads WA currently intercepts both light and heavy vehicles for mass, dimension and loading breaches and this will continue with the introduction of the new CoR legislation.

**I work for a company that loads vehicles. Where can I find information on the correct placement and restraint of loads?**

The *Load Restraint Guide* provides drivers, owners, operators, consignors, vehicle manufacturers, equipment manufacturers and suppliers with the basic safety principles that should be followed to ensure the safe carriage of loads.

The guide can be purchased from Main Roads WA at a cost of \$8.00 or can be downloaded for free from the National Transport Commission's website.

<http://www.ntc.gov.au/viewPage.aspx?documentid=00862>

**Can load restraint be included when a driver is assessed for an "MC" licence?**

Load restraint is not included as part of the driver license requirements. Training needs to be sourced from a registered training provider. It is an employer's responsibility to ensure that

drivers have received adequate training or have the required skills to secure loads on vehicles safely and lawfully.

### **Where can I find details about the penalties?**

Section 30 of the *Road Traffic (Vehicles) Act 2012* describes the penalties for offences of mass, dimension and loading requirements.

### **I pick up tomatoes and watermelons and the mass can vary daily and I have no way of the verifying the mass. Are any public weighbridges being reopened?**

There are a number of public weighbridges in Western Australia. It is your responsibility to ensure that you comply with all mass requirements. You should ensure that the consignor of the goods provides you with accurate and reliable evidence of the weight of their goods before they are transported.

A list of public weighbridges can be obtained from the National Measurement Institute <http://www.measurement.gov.au/TradeMeasurement/Licensees/Pages/PublicWeighbridgeLicensees.aspx>

### **To assist in managing the mass of general freight, can Main Roads WA offer industry a scheme similar to the Harvest Mass Management Scheme (HMMS)?**

In 2014 Main Roads WA will release a new Accredited Mass Management Scheme (AMMS) that will provide industry with an efficient concessional loading scheme. Operators will be required to establish a mass management plan that will enable them to accurately control their vehicle loading, within the allowable mass tolerances.

### **How do the new laws impact on a driver who picks up a backload?**

As with existing laws, the driver can be prosecuted under the new laws and it also provides avenues for other parties in the chain to be investigated and prosecuted.

### **What happens to a driver who is provided paperwork that suggests that all mass requirements are being complied with, but then is stopped by a transport inspector and is found to be overloaded?**

Drivers are still responsible for ensuring that the vehicle they are driving complies with all mass, dimension and loading requirements. However, under the new laws, other parties in the chain can also be held responsible. The driver needs to ensure that the paperwork provided is accurate

and reliable evidence of the weight of the load and must take all other reasonable steps to ensure that the vehicle and load is within limits.

**I'm a furniture removalist and have no way of assessing the load. What should I do?**

You need to take steps to ensure that mass breaches do not occur. That is your responsibility. Consideration may need to be given to other options available such as installing in-vehicle scales to ensure compliance with both gross and axle group mass requirements.

**Do all vehicles require a manifest?**

No, only vehicles transporting a consigned freight container will require a manifest, in the form of a complying container weight declaration.

**If a vehicle travels on a private road or on private property, does the owner of the road or land become part of the chain of responsibility?**

No, the road or land owner is not in the chain of responsibility.

**The load restraint course doesn't cover mass or dimension requirements. Is there a training course that is available?**

Transport associations or industry related training providers may be able provide training or otherwise develop a load plan would assist in ensuring compliance with mass and dimension requirements.

**Is shrink wrapping alone a suitable method of restraint for a pallet?**

It is unlikely that shrink wrapping alone will meet loading requirements. A load on a vehicle must be secured so that it is unlikely to fall from the vehicle or be dislodged from where it was initially loaded. Generally, shrink wrapped pallets will need to be strapped to the vehicle as well.

**I only warehouse products, am I in the chain of responsibility?**

If you fall under the definition of a receiver and/or consignor you will form part of the chain of responsibility.

**I use a transport company to do all my work, so it's their problem, right?**

Not true, if you are the consignor of goods you are part of the 'chain' and are responsible for mass, dimension and offences that occur on the road. You will need to take reasonable steps to prevent offences from occurring in order to prevent being held liable.

**I am in the manufacturing business, not transport, so is it my concern?**

If a product moves in and out of your factory you are part of the chain and will need to take reasonable steps to ensure that breaches do not occur on the road.

**I'm a driver and the companies loading instructions appear to be unsafe?**

Your concerns need to be discussed with the company and all parties need to find a common ground that ensures loading practices are safe.

**Where can I go to get more information?**

The Main Roads WA website hosts all the information you will require about the new laws. Simply go to <https://www.mainroads.wa.gov.au/UsingRoads/HeavyVehicles/Compliance/Pages/CoR.aspx>

You may also wish to enquire by calling Main Roads WA Heavy Vehicle Operations on 138 HVO (138 486).