

General information



COMPLIANCE AND ENFORCEMENT IN THE TRANSPORT INDUSTRY
JUNE 2009

What is Compliance and Enforcement (C&E)?

The C&E reforms are a framework for the regulation of the heavy vehicle industry and other participants in road transport. Their general objectives are to improve compliance outcomes for road safety, infrastructure and the environment, while minimising the adverse impacts of road transport on the community. They also help create a level playing field for industry by making it more difficult for those that operate outside of the law to gain a competitive advantage.

In November 2003 the National Road Transport Reform (Compliance & Enforcement) Bill was approved by Australian Transport Ministers. New South Wales (NSW), through the Roads and Traffic Authority (RTA), was an active participant in this process.

The RTA is committed to the C&E legislation in NSW. In NSW the national C&E reforms have been incorporated into the *Road Transport (General) Act 2005*, which commenced in October 2005. This legislation allows the RTA to apply a more systematic and strategic approach to enforcement that will ultimately lead to improved compliance and safer roads. See the Compliance & Enforcement in NSW fact sheet for more information.

What are the main features of C&E?

- Introduction of the 'chain of responsibility' concept into the regulation of heavy vehicles. All parties in the road transport supply chain have specific obligations under the law to prevent a breach. See the Compliance & Enforcement in NSW and the Chain of responsibility fact sheets for more information.
- Introduction of a risk-based categorisation of mass, dimension, load restraint and fatigue offences into minor, substantial and severe breaches, and a further critical breach for fatigue. This recognises that not all offences have the same impact on safety or infrastructure.
- Nationally consistent enforcement powers that reflect law in related areas such as occupational health and safety and environmental protection.

- A range of penalties (for example, warnings, improvement notices and prohibition orders) to give courts greater options for targeting the causes of breaches and fostering a culture of compliance within the heavy vehicle industry.
- The 'responsible person' concept will make the reforms applicable to a wide category of relevant people connected with the road transport industry. A responsible person has specific duties to ensure that other parties in the transport chain are not misled by false information about any aspect of a consignment or a journey. A responsible person must provide information about the load and about the identity of other parties in the chain when requested by authorities. The premises of a responsible person may be inspected or searched in limited circumstances. A list of responsible persons can be found in section 20 of the *Road Transport (General) Act 2005*.

What new penalties are in place under the C & E reforms?

The C&E reforms introduced new penalties to the regulation of heavy vehicle mass, dimension, load restraint, fatigue and speed.

The reforms included penalties which aim to encourage a culture of compliance within the heavy vehicle industry, and to act as a better deterrent to those who have in the past been willing to break road transport laws to gain a commercial advantage.

Penalties are both administrative and court imposed and can be tailored to address specific types of offences. For example, the C&E legislation distinguishes between first

time offenders and systemic offenders with more serious sanctions for those who persistently break the law.

Examples of administrative penalties the RTA may issue include:

- Improvement notices – which identify improvements a business can make to its systems to ensure compliance.
- Warnings – where it is a minor breach and certain requirements are satisfied.
- Infringement notices – can be an alternative to court proceedings for a less serious offence.

Courts will still issue fines as well as having the ability to impose:

- Supervisory intervention orders.
- Licensing and registration sanctions.
- Prohibition orders.
- Commercial benefits penalties.

In addition body corporates may have a five times multiplier imposed on their fine.

What are container weight declarations and do I need one?

A container weight declaration accurately states the weight of the freight container and its contents. All containers must have one.

The C&E legislation mandates that accurate container weight declarations must be provided by the person defined as the responsible entity, namely the person in Australia who engages the road carrier or offers the container for transport by road in Australia. Without a container weight declaration, a driver is not to transport the container.

The legislation is designed to ensure that drivers and road operators receive the correct information to enable the selection of the appropriate vehicle to transport the container within the relevant legal mass limits.

How do the C&E reforms apply to fatigue, speed and driving hours requirements?

The enhanced enforcement powers relating to searching and inspecting of vehicles and premises will apply to the fatigue and speed management provisions in the Road Transport (General) Regulation 2005.

This means that the RTA is able to gather evidence to ensure that the current fatigue and speed management requirements of employers, consignors and other people in the chain of responsibility are being met.

Does the C&E legislation affect accreditation schemes like NHVAS and Trucksafe?

The C&E legislation does not affect accreditation schemes such as Trucksafe and NHVAS. These schemes are consistent with C&E objectives. Some accreditation modules, for example those relating to training and staff management, may prove useful in the development of codes of practice that industry will use to demonstrate their best efforts to comply with the regulations.

How should I implement the C&E reforms?

All parties in the chain of responsibility should take a risk management approach to the introduction of the C&E 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. To find out if you are in the chain, see the Compliance & Enforcement in NSW and the Chain of responsibility fact sheets.

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

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

Where can I find out more information about C&E?

Visit the RTA website www.rta.nsw.gov.au (including information on heavy vehicle driver fatigue reforms.)

Visit the National Transport Commission website www.ntc.gov.au

Email the RTA on compliance_and_enforcement@rta.nsw.gov.au