

## How will the NSW specific Compliance and Enforcement (C&E) legislation differ from the national model C&E Bill?

The national model C&E Bill has both essential and desirable aspects. This distinction recognises that each jurisdiction has its own individual legal systems, yet also achieves nationally consistent outcomes. *The Road Transport (General) Act 2005* incorporates most of the nationally agreed C&E package into NSW law.

The bill departs from the national model bill in the following main aspects:

### Registered industry codes of practice

While encouraging the development of industry codes of practice the RTA will not be formally registering codes. See 'What is an Industry Code of Practice?' for more information.

### Application of mass dimension and load restraint provisions

The national model bill applies the provisions relating to mass, dimension and load restraint offences only to cases where the load on the vehicle is, or may be, a factor in the breach.

This effectively means that the bill does not apply the categorisation of breaches to dimensions offences where there is no load (for example where a trailer has been configured incorrectly making the vehicle too long).

This distinction will not apply in NSW, meaning that all dimensions breaches will be prosecuted under C&E (and will be determined as minor, substantial or severe) regardless of whether a load is a factor in that breach.

### Special mass defences for drivers and operators

The national legislation allows access to a reasonable steps defence for drivers and operators only in the case of a minor breach. NSW has decided to maintain its current provisions in terms of special mass defences for drivers and operators.

This means no change to the status quo for drivers and operators. The current limited reasonable steps defence

where defendants are required to demonstrate either that they have weighed the loaded vehicle or that they are in possession of sufficient and reliable evidence from which the mass was calculated will remain. It will be available for minor, substantial and severe mass breaches.

See 'Will the reasonable steps defence apply to me?' for more information.

### What is an industry code of practice and will the RTA register them?

A code of practice is a voluntary and industry-specific document that aims to assist industry and businesses meet their obligations and improve compliance.

Industry and business are encouraged to develop codes of practice that promote practices and systems that will assist parties to comply with road transport regulations.

Codes of practice should be living documents that are adaptable to the particular needs of different industry sectors and able to change to reflect emerging best practices and technologies, and should be owned and maintained by the industry.

Where appropriate, the RTA will liaise in an advisory capacity with industry representatives to assist in the development of such codes. However, the RTA will not be registering industry codes of practice.

### Will the reasonable steps defence apply to me?

The national legislation provides special defences that are tailored to the role and responsibility of each of the parties in the chain. One special defence is known as the 'reasonable steps defence' (RSD). It is available for some parties in certain circumstances.

If applicable, the person is required to demonstrate that they:

- Did not know and could not reasonably be expected to have known of the breach concerned.  
AND
- Had taken all reasonable steps to prevent the breach, where there were steps the person could reasonably be expected to have taken.

Off-road parties (consignors, consignees, loaders, packers and receivers of loads) will have access to an RSD. The C&E legislation sets out a list of possible factors that might constitute reasonable steps.

On-road parties (drivers and operators) will have access to an RSD only in the case of minor dimension and load restraint breaches. This is to cover those times when even though complying with sensible, reasonable business practice an unforeseen breach still occurs.

In the case of mass, drivers and operators will retain access to the current limited RSD that applies in NSW.

It is important to note that with all these defences the burden of proof rests with the defendant. The different arrangements for different parties recognise the fact that the chain of responsibility is about appropriate responsibility, not equal responsibility.

### **Will compliance with codes of practice assist in a reasonable steps defence?**

The RTA supports efforts by industry to develop codes of practice to assist both on and off road parties in identifying, analysing and managing their risks and increasing compliance. While any defendant may use an effective code as evidence of meeting all reasonable steps, compliance with a code will not be taken to mean automatic compliance with the law.

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

Visit the RTA website [www.rta.nsw.gov.au](http://www.rta.nsw.gov.au)

Visit the National Transport Commission website [www.ntc.gov.au](http://www.ntc.gov.au)

Email the RTA on [compliance\\_and\\_enforcement@rta.nsw.gov.au](mailto:compliance_and_enforcement@rta.nsw.gov.au)