



Chain of Responsibility – Frequently Asked Questions

Chain of Responsibility; what is it?

The Chain of Responsibility extends the legal liability of road law offences to include everyone involved in the transportation of goods by road. 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, inactions or decisions.

Where did Chain of Responsibility come from?

Chain of Responsibility 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 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.

The Australian Transport Ministers approved the provisions of the Bill for implementation in 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 a Chain of Responsibility of 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 are expected to be implemented in March 2014 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 light vehicles. In the event of a breach, consignors, drivers, operators, freight handlers and loaders, packers, receivers, prime contractors, senior 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 so that all parties in the transport chain that are able to influence compliance outcomes for light vehicles can also be held accountable for offences.

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 operation and use of heavy vehicle transport. They are encouraged to review existing procedures to identify any possible areas that may need attention to prevent a breach of the mass, dimension and load restraint requirements. Through 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 avoid contributing to a breach of road law by other parties along the transport logistics chain.

Compliance programs should include a routine monitoring component to ensure the measures put in place to meet the legal, ethical and community obligations remain effective.

What changes 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 a breach under the Chain of Responsibility, but do not believe I am liable. Are there 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, and / or that there were no reasonable steps that they could have been expected to have taken to prevent the breach, or that there was no way that they could reasonably be expected to know about the breach.

How do I take “reasonable steps”?

Taking reasonable steps or diligence 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 as ‘reasonable’ could include:

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

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 one that states (or purports to state) the weight of the freight container and its contents.

Subject to the regulations, a Container Weight Declaration:

- may be comprised in one or more documents or other formats, including being in electronic form; or
- without limiting the above, may be comprised wholly or partly in a placard attached or affixed to the freight container.

What constitutes a complying Container Weight Declaration?

There is no specific format for a Container Weight Declaration. It does not even have to be a single document, but it must contain certain core information.

A Container Weight Declaration complies with the legislation 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.

Who will be enforcing the new Chain of Responsibility legislation?

The laws empower various parties to undertake enforcement action. Primarily, these are:

- Police Officers
- Authorised Officers (commonly referred to as “Transport Inspectors”).

What additional powers do officers have under the Chain of Responsibility laws?

The Chain of Responsibility legislation gives authorised officers certain inspection and investigation powers over vehicles, premises and people in order to enforce the mass, dimension and load restraint requirements.

Vehicles can be stopped, have their movement directed, moved (by the authorised officer), examined, searched, vacated and grounded. The officer can also order through the issue of a notice that breaches in vehicle standards must 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 ordered to assist in any enquiries and searches.

People may be required to divulge their name and personal details, produce documentation and driver’s licence, and are obliged to provide any other relevant information (within the scope of the law).

Where can I go to obtain more information?

The Main Roads WA website hosts all the materials you require on the legislation. Simply go to <https://www.mainroads.wa.gov.au/UsingRoads/HeavyVehicles/Compliance/Pages/CoR.aspx>

Additionally, there will be a number of state wide briefing sessions, and information will also be freely available from multiple locations and in formats that will help you clearly understand the reforms. You may also wish to enquire by calling Main Roads WA Heavy Vehicle Operations on 138 HVO (138 486).