



ROAD FREIGHT USER'S GUIDE TO:

# Protecting Yourself Under the Chain of Responsibility

Chain of Responsibility (CoR) legislation extends the general liability for offences to road freight consignors, receivers, packers and loaders. Rather than pursue the 'soft target' on the roadside – truck drivers and operators – authorities can investigate along the supply chain and up and down the corporate chain of command. The days of 'all care and no responsibility' are over. This guide sets out some basic steps road freight users should consider to 'protect' against prosecution.

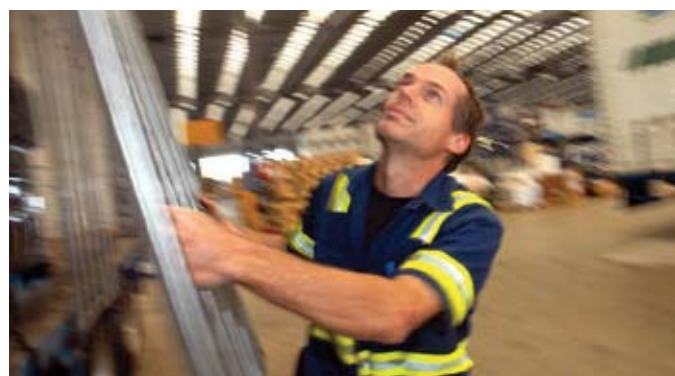
## What is the chain of responsibility?

Drivers and operators have traditionally been the focus of road laws. However, breaches are often caused by the actions of others. Under CoR, complying with the law is a shared responsibility. Anybody – not just the driver – who has control over the transport task can be held responsible for breaches of road laws and may be legally liable.

CoR is similar to the legal concept of 'duty of care' that underpins Occupational Health & Safety (OH&S) law. This approach has long been used by the courts to impose liability in negligence and damages claims.

CoR legislation is already a feature of laws covering mass and dimension limits, load restraint requirements, driving hours and dangerous goods laws (check status with relevant road agencies). The laws are likely to be expanded in the future for fatigue, speeding and vehicle standards.

Penalties and sanctions range from formal warnings to court-imposed fines and penalties relating to the commercial benefit derived from offences. Supervisory intervention orders and prohibition orders banning individuals from the industry can be applied to 'persistent or systematic' offenders.



## What are my responsibilities?

If you exercise control or influence over the transport task you can be held legally liable for your actions, inactions or demands if they have caused or contributed to a breach. The law requires you to take all **reasonable steps** to prevent your conduct from causing or contributing to a breach.

In addition, the law also prohibits you from:

- making demands that you know or ought to know would cause a breach;
- coercing, inducing or encouraging breaches; and
- passing on false or misleading information that could cause a breach.

## What do I need to do?

You should ensure that you can demonstrate reasonable steps are taken to **prevent a breach occurring**. There are no limits to the ways in which you can do this. What constitutes reasonable steps will vary according to each individual's circumstances.

You may need to change the way you do business. Taking reasonable steps could include:

- developing an industry code of practice;
- use of accreditation schemes;
- reviewing your business practices;
- changing your commercial arrangements; or
- adopting a risk management approach.



National Transport Commission



### Industry codes of practice

Compliance with an industry code of practice will help demonstrate you have taken reasonable steps. It is expected individual industries will develop codes of practice to suit their needs. These codes could cover contractual arrangements, equipment, due diligence and quality management systems.

Austrroads has developed guidelines on the preparation of codes of practice. You can find out more at:

[www.austrroads.com.au](http://www.austrroads.com.au)

### Accreditation schemes

There are a variety of audited accreditation and quality schemes already operating in the transport and logistics industries. Using accredited truck operators provides some assurance that your contractors have relevant business systems in place and are managing risks.

Appropriate accreditation schemes which address your specific risk exposures may, therefore, assist you in showing reasonable steps were taken under the chain of responsibility. Current heavy vehicle accreditation schemes include:

#### National Heavy Vehicle Accreditation Scheme (NHVAS)

NHVAS mass and maintenance modules require operators to implement a business system which provides documentary and auditable evidence to prove compliance with the standards. Audits are completed every two years to ensure compliance.

[www.ntc.gov.au](http://www.ntc.gov.au)



### TruckSafe

This is an industry-owned (Australian Trucking Association) business risk management system aimed at improving the safety and professionalism of trucking operators. Its four core modules cover a wide range of transport business activities; including vehicle maintenance, management standards, training and driver/workplace health. A mass management module (equivalent to NHVAS) is also available.

TruckSafe is continually updated to help manage CoR risks, such as load restraint (as part of vehicle trip checks) and dimension compliance. Other aspects include speed management, seat belt use, subcontractor controls, drug and alcohol policies, fitness for duty, fatigue, on-road behaviour and Occupational Health & Safety (OH&S) obligations.

A system of internal reviews requires corrective action and reviews in the event of non-compliance. Documentation controls ensure the existence of an audit trail (audits are completed annually). TruckSafe is complementary to NHVAS, Truckcare and PACIA, with arrangements in place to streamline auditing of multiple schemes.

[www.atatruck.net.au](http://www.atatruck.net.au)

#### Plastics and Chemicals Industries Association (PACIA)

A specialist scheme for chemical transport carriers to demonstrate compliance with the requirements of a full safety systems audit and a partial physical hazard inspection.

[www.pacia.org.au](http://www.pacia.org.au)

### Truckcare

A quality management program developed for livestock transporters.

[www.alta.org.au](http://www.alta.org.au)

#### Hazard Analysis and Critical Control Point (HACC)

Suppliers to the food industry can have their products and services endorsed as food safe under HACCP Australia guidelines.

[www.haccp.com.au](http://www.haccp.com.au)

### Business practices

You should **regularly review** your business practices to ensure that at all times the steps you are taking are reasonable. That way you can ensure your business is not put at risk and all of your business practices are linked to duties under the chain of responsibility.

Some of the steps you may need to consider include:

- ensuring your work practices are not the cause on-road breaches;
- training for staff to ensure they understand their obligations under CoR;
- audits/spot-checks to ensure compliance (eg: monitoring of loading); and
- contingency plans to manage operational issues within the law.

More information on compliance programs is available from the Australian and New Zealand Standard on Compliance Programs (AS/NZS 3806:1998)

[www.standards.org.au](http://www.standards.org.au)

### Commercial arrangements

You can ensure that your commercial relationships do not cause your business to breach chain of responsibility laws by:

- including **compliance assurance conditions** (eg: safety accreditation) in relevant commercial arrangements with other responsible persons;
- **requesting information** about what systems and controls are in place to ensure compliance (eg: policies on drugs, fatigue management etc); and
- **avoiding** arrangements which encourage or reward non-compliance.





### Risk management

A number of risk management standards are available that can assist you in developing business practices to minimise the risks of non-compliance in your business. Some of these standards are linked with **accreditation schemes**; others can be used as tools to help you make your business practices meet your duties under the chain of responsibility.

Some helpful risk management standards include:

The Australian and New Zealand Standard on Risk Management (AS/NZS 4360:1990)

[www.standards.org.au](http://www.standards.org.au)

ISO 9000 quality standards

[www.iso9001qualityassurance.com](http://www.iso9001qualityassurance.com)

### Legal Advice

For specific queries about CoR legislation applicable to you, it is suggested you consult a solicitor or the Legal Aid organisation from your State or Territory.