Hi, I’m Geoff Farnsworth, Editor-in-Chief of the *CoR Adviser*.

The concept of chain of responsibility (CoR) resulted from work done by the National Transport Commission in the mid-2000s to increase safety and compliance in the road transport industry. In 2013, it was incorporated into the Heavy Vehicle National Law (HVNL) – making it relevant for anyone involved in the supply chain who has influence over how goods are delivered or received by heavy vehicle.

My colleague, Michael Selinger, has created this introduction to CoR to help you and your employees understand how CoR works and why it’s so important to your business. This guide provides important information regarding your CoR obligations and offers practical tips to improve the safety and productivity of your workforce.

The CoR Adviser is a monthly newsletter and dedicated email helpdesk service designed to keep you up-to-date with developments in Australia’s complex road transport and chain of responsibility laws and how they affect you. On top of that, you will have access to our experts for one-on-one support in navigating the sometimes confusing CoR landscape.

Our goal is to help you understand your legal obligations – and how you can comply with those obligations. If you would like to know more about the CoR Adviser or would like to subscribe, visit CoRadviser.com.au.

Warm regards,

Geoff Farnsworth
Partner, Holding Redlich
Editor-in-Chief, CoR Adviser

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### About the Author

Michael Selinger LLB, BA (Hons) (ANU) is Editor-in-Chief of the Health & Safety Handbook. Michael is a Partner of Holding Redlich. He practices in all areas of workplace relations with a special focus on occupational health and safety.

Michael’s expertise includes:

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- occupational health and safety;
- protection of confidential information and restraints of trade;
- employment contracts;
- the *Fair Work Act 2009* and the interpretation of industrial instruments;
- transmissions of business;
- company restructuring;
- internal workplace investigations; and
- dealing with investigations by regulatory agencies.

Michael acts for a diverse range of clients, including construction and manufacturing companies, media, educational and not-for-profit organisations, and government bodies.
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WHAT IS THE CHAIN OF RESPONSIBILITY?

DEFINITION: CHAIN OF RESPONSIBILITY

Chain of responsibility (CoR) laws apply to everyone involved in transport by heavy vehicle. They set out legal requirements for anyone in the supply chain who has influence over how goods are delivered or received.

The following parties have obligations under chain of responsibility laws (see page 4 for more information):

- **operators** who operate a business that dispatches goods by heavy vehicle;
- **employers** who engage someone to drive a heavy vehicle;
- **workers** who:
  - schedule transportation by heavy vehicle; or
  - are responsible for **dispatching goods** by heavy vehicle;
- **loading managers** responsible for loading goods onto a heavy vehicle;
- **packers** of heavy vehicles;
- **drivers** of heavy vehicles;
- people who **order or receive goods** delivered by heavy vehicle; and
- directors and officers of companies in the supply chain.

DEFINITION: HEAVY VEHICLE

A heavy vehicle is a motor vehicle or trailer that has a gross vehicle mass (GVM) greater than 4.5 tonnes.

All States and Territories, except Western Australia and the Northern Territory, have agreed to apply the model Heavy Vehicle National Law (HVNL) to be administered by the National Heavy Vehicle Regulator (NHVR), which is an independent regulator.
The NHVR can be contacted via telephone on 1300 MYNHVR (1300 696 487) or via email at info@vhvr.gov.au.

**IMPORTANT:** WA and the NT have separate legislation governing heavy vehicles and their road transport regulators regulate those laws. Western Australia is shortly to introduce its own chain of responsibility legislation similar to the HVNL. However, this will not apply to fatigue or speeding offences.

This law imposes a duty on each person in the chain of responsibility to:

- identify and assess risks and do what they can to eliminate or minimise those risks; and
- repeat this risk identification and assessment process annually, and whenever a significant change has occurred.

A number of matters still remain the responsibility of State and Territory road transport regulators, including:

- heavy vehicle registration;
- licensing;
- carrying dangerous goods; and
- conducting training, tests and endorsements related to these functions.
Everyone involved in the supply chain of delivery by heavy vehicle must take responsibility for how goods are delivered or received, as outlined in the following flowchart:

**OPERATOR:** The person who operates or manages the business that is dispatching goods by heavy vehicle must ensure that:
- drivers’ activities, e.g. work and rest times, are recorded and that those records are kept;
- rosters are planned to ensure that drivers do not exceed the permitted number of driving hours;
- vehicle speed limiters are working;
- loads do not exceed dimension or mass limits; and
- loads are properly restrained.

**EMPLOYER:** A person who engages someone to drive a heavy vehicle must take all reasonable steps to ensure that their business practices do not cause the driver to drive:
- in breach of work and rest requirements;
- in breach of speed requirements; or
- while fatigued.

**SCHEDULER:** The person who schedules transportation by heavy vehicle must ensure that the schedule allows the driver to:
- stay within the speed limit;
- keep within the permitted number of driving hours; and
- have minimum rest periods.

**LOADING MANAGER:** The person who loads goods into a heavy vehicle must ensure that the vehicle’s load:
- remains within dimension or mass limits; and
- is stable and not able to move or fall.

**PACKER:** The person who packs goods into a heavy vehicle must:
- document the loads and make sure that the documentation is accurate; and
- ensure any goods packed in freight containers are within the container’s gross weight or safety approval rating.

**DISPATCHER:** The person who dispatches goods for delivery by heavy vehicle must ensure that the delivery will not require the driver to:
- inappropriately secure the load;
- transport goods that exceed vehicle dimension or mass limits;
- exceed the permitted number of driving hours;
- fail to have minimum rest periods; or
- exceed speed limits.

**DRIVER:** A driver of a heavy vehicle must:
- ensure that the vehicle remains within the dimension or mass limits;
- ensure the load is properly restrained;
- ensure all required equipment is appropriately fitted to the vehicle;
- take the required rest breaks;
- observe driving hours regulations and speed limits; and
- drive safely and responsibly.

**RECEIVER:** The person who is responsible for ordering or accepting the delivery by heavy vehicle must ensure that the delivery will not require the driver to:
- inappropriately secure the load;
- transport goods that exceed vehicle dimension or mass limits;
- exceed permitted driving hours;
- fail to have minimum rest periods; or
- exceed speed limits.
WHERE ARE YOUR CHAIN OF RESPONSIBILITY OBLIGATIONS FOUND?

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>Heavy Vehicle National Law Act (ACT) 2013</td>
</tr>
<tr>
<td>NSW</td>
<td>Heavy Vehicle National Law (NSW)</td>
</tr>
<tr>
<td>NT</td>
<td>Not yet commenced.</td>
</tr>
<tr>
<td>QLD</td>
<td>Heavy Vehicle National Law Act 2012 (Qld)</td>
</tr>
<tr>
<td>SA</td>
<td>Heavy Vehicle National Law Act 2013 (SA)</td>
</tr>
<tr>
<td>TAS</td>
<td>Heavy Vehicle National Law Act (TAS) 2013</td>
</tr>
<tr>
<td>VIC</td>
<td>Heavy Vehicle National Law Act 2013 (Vic)</td>
</tr>
<tr>
<td>WA</td>
<td>Road Traffic (Vehicles) Act 2012 (WA)</td>
</tr>
</tbody>
</table>

WHAT HAPPENS IF YOU BREACH YOUR CHAIN OF RESPONSIBILITY REQUIREMENTS?

The Heavy Vehicle Regulator in your State or Territory can gather evidence to ensure you are meeting your chain of responsibility requirements.

**IMPORTANT:** The legislation recognises that all those with responsibility for activities that affect compliance with the road transport laws may be held legally accountable if they do not meet their obligations due to their actions or inactions.

The transport regulator can initiate a formal investigation into any of the parties within the chain of responsibility. This commonly happens if there is:

- evidence of systemic and habitual breaches, including speeding and overloading;
- road accidents or damaged safety infrastructure resulting from poor load securing;
- evidence of continued unfair commercial advantage because of breaches such as speeding or overloading; or
evidence of unreasonable demands and pressures on other parties in the supply chain to breach the chain of responsibility legislation, e.g. imposing delivery schedules which will require vehicles to speed or drivers to risk fatigue.

If an investigation is initiated, this can involve:

- inspecting and searching relevant business premises or vehicles;
- requesting compliance-related information, such as documents, contact details and other records;
- requiring assistance to interpret data and information; and/or
- seizing electronic data and equipment.

**CAUTION:** If you refuse to allow a transport regulator to search your premises, they can apply to obtain a search warrant from a magistrate.

**ENFORCEMENT BY THE TRANSPORT REGULATOR**

There is a wide range of administrative and court-imposed penalties that the transport regulator can seek for a breach of the chain of responsibility requirements.

The legislation distinguishes between first-time offenders and repeated offenders, with more serious sanctions for those who persistently break the law.

For example, transport regulators can issue:

- improvement notices that identify the improvements a business should make to their systems to ensure compliance with the law;
- warnings if there is a minor breach and certain requirements are satisfied;
- infringement notices, which can be an alternative to court proceedings for a serious offence;
supervisory intervention orders;
licensing and registration sanctions;
prohibition orders; and
penalties.

CAUTION: Courts can also impose criminal convictions and issue fines for a significant number of offences, with penalties ranging from $3,070 to $150,000 for a single offence.

Case Law

In Roads & Maritime Services NSW (RMS) v Zaens Pty Ltd (2014), a magistrate imposed a combined fine of $1.3 million on Zaens Pty Limited, trading as Lennons Transport, for 197 speeding offences.

The prosecutions followed a triple fatality involving a Lennons truck on the Hume Highway in January 2012. The Court found that the business did not have proper anti-speeding policies and procedures in place and that it failed to take reasonable steps to prevent drivers from speeding. The business was also ordered to pay RMS’s legal costs in the amount of $100,000.

HOW CAN YOU DEFEND A BREACH OF CHAIN OF RESPONSIBILITY REQUIREMENTS?

You may be able to defend a breach of chain of responsibility requirements if you can prove you have taken reasonable steps to ensure that heavy vehicles are not operated in contravention of road transport laws.

You will also need to be able to prove that you took all reasonable steps to prevent the breach from occurring.

IMPORTANT: For the defence to be successful, all reasonable steps must have been taken, not just some.
You can also avoid liability if you can show that the vehicle was being driven by a person acting outside his or her designated tasks or by another person who was not entitled to drive the vehicle.

The steps your business should take to comply with the reasonable steps defence are very similar to your obligations under health and safety legislation. They involve undertaking hazard identification and risk assessment, and implementing risk controls.

CHECKLIST: 10 STEPS TO COMPLY WITH THE REASONABLE STEPS DEFENCE

Some of the steps you can take to comply with the reasonable steps defence include:

- Conduct regular audits of timesheets and work diaries.
- Implement processes to be used in response to unexpected delays or issues.
- Regularly review your business activities, processes and policies to see how best to manage any outcomes and prevent offences from occurring.
- Allow time for driver rest breaks.
- Allow some leeway for unexpected traffic delays.
- Ensure that container weights and loads will not exceed vehicle mass or dimension limits.
- Put systems in place to ensure that loads are secure and remain stable for the entire journey.
- Establish processes that address relevant codes of practice.
- Train and instruct workers on relevant policies and procedures, e.g. fatigue management, speed limit compliance, and loading and unloading goods.
- Implement effective incident investigation processes so that if a breach does occur, it can be prevented from happening again.
HOW TO DEVELOP A CHAIN OF RESPONSIBILITY COMPLIANCE POLICY

It is best practice for a business to have a written compliance policy outlining chain of responsibility obligations. This should be adopted by the board and recorded in the minutes.

Ensure that the policy contains:

- a statement that the company will comply with its chain of responsibility obligations, and detail how it will comply;
- appointment of a chain of responsibility compliance officer. This role could form part of a director’s or CEO’s responsibility, or could be a separate full-time position;
- an agreement that regular compliance reports will be tabled at all meetings, which will identify any breaches and steps taken to remedy those breaches; and
- a commitment to establishing an ongoing chain of responsibility training program and a description of the sanctions the business will impose for failing to comply with the company’s policy.

Please refer to page 10 for a template chain of responsibility compliance policy.
CHAIN OF RESPONSIBILITY COMPLIANCE POLICY

Commitments of the Company

[Name of employer] (the Company) values the health and safety of its workers and is committed to providing a safe workplace. This compliance policy provides a framework to ensure that the Company and its workers cooperate to ensure that compliance with chain of responsibility obligations are met.

Responsibilities of the Company

The Company will, to the extent that it is reasonably able to do so:

- implement systems and processes to achieve compliance with the chain of responsibility laws;
- take all reasonable steps to ensure that the systems are maintained, including implementing adequate supervision and auditing the systems;
- ensure that regular compliance reports will be tabled at all board meetings, which will identify any breaches of the chain of responsibility laws and steps taken to remedy those breaches;
- appoint a chain of responsibility compliance officer to monitor this policy; and
- implement a chain of responsibility training program.

Responsibilities of workers

Workers are required to:

- follow the systems and processes implemented by the Company in relation to chain of responsibility laws;
- follow all reasonable directions from the Company regarding compliance with those laws; and
- report any incidents or breaches of the chain of responsibility laws or the systems and processes implemented by the Company.

Sanctions for breaching this policy

The Company takes the chain of responsibility obligations seriously. Any breach of this policy may result in disciplinary action.

Additional information

Further information on this policy can be obtained from the compliance officer.

[contact details of compliance officer]

Signed: ____________________________

Date: ___________________
About Portner Press

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