Dear Reader,

Welcome to the final edition for 2016!

On 6 October 2016, two truck drivers died when their heavy vehicles collided and burst into flames on Lenore Drive at Erskine Park in Sydney’s West. Lenore Drive is a dual carriage-way separated by a median strip. The accident occurred when one of the vehicles crossed the median strip and collided head on with the vehicle driving in the other direction.

At the time of writing, no report has yet been issued. Reports suggest that police have raided the premises of the operator of one of the vehicles, and police have described the operator’s fatigue management practices as “a recipe for disaster”.

It is beyond doubt that the chain of responsibility (CoR) is designed to promote safety and save lives in what is one of the most dangerous industries still in Australia. Incidents such as the one at Erskine Park may never be eradicated entirely but their frequency and likelihood of occurring can be substantially reduced through compliance with CoR. This is not just the responsibility of truck drivers and their employers, but everyone in the heavy vehicle logistics chain.

Until next year, season’s greetings.

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

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**Preventing fatigued driver from taking the road**

Geoff Farnsworth, Editor-in-Chief

Fatigue may be the single greatest factor contributing to death and injury on Australian roads. This is amplified as roads become more congested and vehicle masses increase.

Drivers suffering from fatigue are more likely to:

- make poor decisions and improperly secure their loads;
- speed to keep up with what may be unrealistic schedules;
- respond irrationally when challenged about Chain of Responsibility (CoR) concerns; and
- use drugs.

So what are you doing to prevent fatigued drivers taking to the roads? If the answer is “not sure” or “don’t know”, you may be exposing yourself to significant fines and penalties.

**WHAT ARE YOUR LEGAL OBLIGATIONS?**

The Heavy Vehicle National Law (HVNL) contains a comprehensive legislative framework for managing fatigue.

All parties in the CoR have positive obligations in relation to fatigue. These are:

- Drivers must not drive while impaired by fatigue (maximum penalty is $5,000).
- Every party in the chain must take all reasonable steps to ensure another person does not drive while impaired by fatigue (maximum penalty is $10,000).
- Employers, primary contractors and operators must ensure their business practices will not cause a driver to drive while impaired by fatigue or in breach of the driver’s work and rest hour options (maximum penalty is $6,000).
- Schedulers must take all reasonable steps to ensure that the driver’s schedule will not cause the driver to drive while impaired by fatigue or in breach of work and rest hour options (maximum penalty is $6,000).
- Consignors and consignees must take all reasonable steps to ensure that terms of consignment will not result in, encourage or provide an incentive to the driver to drive while fatigued or in breach of work and rest hour options (maximum penalty is $10,000).

**CALLING OUT** FATIGUED WORKERS

Taking reasonable steps will include ‘calling out’ drivers who appear fatigued.

Signs of fatigue include:

- lack of alertness;
- inability to concentrate; and
- reduced ability to recognise or respond to external stimuli.

Managing fatigue may require significant courage at both the commercial and personal level. A truck driver may not respond well to a suggestion that he or she is not in a fit state to operate a vehicle. The fact is, the driver may not be the right person to make that decision, so operators must err on the side of caution even if it means putting schedules and deliveries in doubt. A driver can be deemed to be fatigued if he or she behaves as if they are fatigued, regardless of whether fatigue is in fact established. This means you should assume that if a driver appears to be fatigued, he or she is.

Operators should welcome and encourage feedback from customers about their drivers, and customers must be prepared to sack operators who present fatigued drivers.

Systems that may encourage fatigue will be infectious. Operators should welcome and encourage feedback from customers about their drivers, and customers must be prepared to sack operators who present fatigued drivers.

Until next year, season’s greetings.

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

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**HELPDESK QUESTION OF THE MONTH**

Does the HVNL apply to private roads? (answer on page 7)

For questions regarding your current issue, or to get answers from our Helpdesk, email us at: helpdesk@coradviser.com.au

Username: Transport2016 Password: fatigue

To access this edition online and for free downloads, go to www.coradviser.com.au
Changes to HVNL closer

Jeff Salton, Content Editor, Partner Press

Queensland’s Minister for Transport, Stirling Hinchliffe, has introduced to Queensland Parliament a Bill for an Act to amend the Heavy Vehicle National Law Act 2012 (HVNL) and has nominated the Transportation and Utilities Committee to consider the Bill.

Minister Hinchliffe told Queensland Parliament the recommended amendments to the Bill follow extensive consultation undertaken by the National Transport Commission (NTC) with State and Territory transport authorities, police agencies and heavy vehicle industry representatives.

As host jurisdiction for the Act, the Queensland Parliament must first consider and pass amendments to the national law before they can be applied by participating jurisdictions – NSW, Victoria, South Australia, Tasmania and the ACT, which have already adopted the HVNL.

Notable wording changes requested in the Bill suggest replacing the term ‘take all reasonable steps’ with ‘so far as is reasonably practicable’, to better communicate the requirement of compliance while maintaining a reasonable excuse defence.

Minister Hinchliffe said the provisions in the HVNL were based on the national model compliance and enforcement laws agreed by ministers in 2008.

“The changes contained in this bill will bring the national law into line with the primary duties approach taken in other national safety legislation, including the model Work Health and Safety Act (WHS Act) and the Rail Safety National Law,” he said.

“These reforms amend the national law so that each party in the chain of responsibility has a primary duty of care, so far as reasonably practicable, to ensure the safety of their transport activities. In addition, executive officers are required to exercise due diligence to ensure their operations comply with this primary duty,” the Minister said.

He added that while terms and concepts such as ‘reasonably practicable’ and ‘due diligence’ are new to the national law, they are familiar to transport operators.

The proposed amendments are designed to harmonise safety initiatives within the national law with the WHS Act by using the same framework and principles.

Failure to ask questions can be extremely costly

Geoff Farnsworth, Editor-in-Chief

I am regularly asked: “We don’t operate vehicles. To what extent can I rely on my transport provider to look after chain of responsibility (CoR) compliance?”

The short answer is, you can’t. If you are a party in the CoR for heavy vehicles, then you have personal responsibilities that you cannot contract out of, even where you rely heavily on your third party freight provider.

If you have taken all reasonable steps in your contracts and business practices to address your CoR obligations, it may be that your liability can be significantly limited, but it cannot be avoided all together. This is the very essence of the CoR concept.

This is well illustrated in the case Endycott (Roads and Maritime Services) v Rapid Access Australia Pty Ltd (2012). That case involved a prosecution against Rapid Transport Australia Pty Ltd (Rapid) under the predecessor of the Heavy Vehicle National Law (HVNL). Rapid had leased its customer, Bulga Coal Management Pty Limited, a large elevated work platform (EWP). At the end of the contract Rapid made arrangements for its retrieval by carrying contractor, Griffith Transport.

Griffith’s driver took a heavy vehicle combination – prime mover and trailer – to the mine site, placed the EWP on the trailer and commenced the journey from the mine site. The driver had a permit to operate at over normal height, the limitation being 5m. But the load exceeded 5m and, near Maitland, it destroyed a bridge as it passed under it.

The bridge took about two years to restore at a cost of more than $1.7 million. Rapid’s liability arose from its status as a consignee of the platform. The prosecution said that Rapid did not make enquiries of the carrier, or anybody at the business in relation to the competence and experience of the driver who was allocated for the particular job.

At no time, until after the incident, was Rapid even aware of the identity of the driver. It was said that Rapid ought to have made arrangements with the carrier to make sure that persons of appropriate qualifications or training would make the collection, which made rise to the accident.

The Judge concluded that “the relatively inactive role of Rapid and the facts surrounding the accident do not exclude its liability.” The Judge also observed that Rapid had offered to its carrier/contractor instruction and training for the carrier’s drivers. That offer was not taken up, and Rapid did not seek to enforce it. Hence it was left in the situation of having not done so, it was ignorant of the capacity and experience of the person who actually performed the task on the day in question.

Rapid was ultimately fined $10,000 (having paid $300,000 towards the repair of the bridge). This is a significant illustration of the fact that consignors and consignees still need to work closely with their transport operators, particularly where sensitive and specialised freight is concerned.
Research shows that safety can be infectious

Amanda Warmerdam is a researcher at RMIT. While at the Monash University Accident Research Centre, Amanda studied Australian workplace safety where workers are required to drive vehicles as part of their roles. She and co-author Dr Sharon Newman were the inaugural winners of National Road Safety Partnership Program’s ARSC2016 Best Paper – Implications for Improving Workplace Road Safety.

In this article for CoR Adviser she explains how her research shows that safety and productivity go hand-in-hand and how finding the right safety motivation – for employers and workers – is the secret to productive and safe workplaces. She believes the findings from her research can be applied to the heavy vehicle transport industry.

Research in Australia shows a definite link between speed and injury and death on our roads. Regular speeding in any work-related vehicle should be viewed as a bad work practice. Bad work practices are just the same as bad behaviour. Constantly speeding can be viewed in the same light as drivers who talk on mobile phones but don’t get caught. The longer they ‘get away with it’ just reinforces their bad behaviour. They convince themselves that their actions are not unsafe and that they’re probably just better drivers or smarter than the rest of us.

Similarly, non-compliant companies that appear to not value their workers’ safety are less likely to voluntarily change their behaviours.

The road authorities have determined that for this group of drivers and companies, the only way to motivate them to stop this dangerous behaviour is through hefty penalties – rather than rewarding them for stopping and putting their own or other road-users’ safety first.

STICK AND CARROT

In this instance, road authorities choose the ‘stick’ rather than the ‘carrot’ to motivate companies and, in particular, drivers to do the right thing and keep the roads safer.

Driving a heavy vehicle is considered to be one of the most dangerous jobs in Australia. Yet the focus of blame on heavy vehicle drivers solely for road crashes in which they are involved needs to shift because too often the external pressures applied to drivers, such as a high level of exposure to the road environment and tight delivery schedules, are ignored.

For example, a recent US study of 1265 truck drivers revealed:

- 24% of drivers reported a near miss in the past seven days;
- 68% of non-crash injuries were not reported to employers;
- 73% of drivers reported unrealistically tight schedules;
- 24% often continued driving despite fatigue, bad weather, or heavy traffic because they needed to deliver or pick up a load at a given time;
- 6% never wore a seatbelt;
- 36% were often frustrated by other drivers on the road;
- 35% often had to wait for access to a loading dock; and
- 15% did not feel that safety of workers was a high priority with their management.

Traditionally, research has focused on demographic (i.e. age, experience) and behavioural (i.e. drink driving, fatigue) factors contributing to injuries and death. There is a growing impetus to understand the broader organisational and system-wide factors that generate hazardous situations. There is a need for research and practice to better capture the complex system of factors influencing crashes.

WHERE’S THE REWARD?

In the heavy vehicle transport industry, there appears to be a lack of reward for companies that strive to be compliant in the area of chain of responsibility (CoR). Instead, there is almost a disincentive for compliant companies due to additional costs incurred through additional ‘back-office’ duties and obligations to avoid contracts with companies in the supply chain that don’t adhere to their CoR obligations.

There needs to be more motivation for companies trying to do the right thing by their drivers and other road-users. But instead of waiting for the authorities to introduce a system of reward (rather than penalty), companies should start introducing their own positive reinforcement schemes for workers who strive to do the right thing by implementing and obeying safe work systems and policies.

Research we conducted in Australian organisations demonstrated that employees who drive for work-related purposes who perceived that their supervisors and senior managers valued and prioritised their safety, reported safer working behaviour.

One way managers demonstrated their value and concern for safety was through having face-to-face discussions. This was done to show the workers that the company was genuinely interested in keeping them safe at work.

VALUED WORKERS

Beyond safety, there are links in the research between workers feeling genuinely valued and productivity. This research suggests that workers will utilise their discretionary input if they feel valued in the workplace.

But the research also shows that companies wishing to promote driver/safety worker need to be consistent with their safety messages.

For instance, it’s no good holding a toolbox talk and telling drivers that you are really concerned about their safety and then issuing them with a new work schedule that ignores rest breaks and encourages drivers to speed and to drive while fatigued in order to meet deadlines.

SOURCES


How to: Respond to an improvement notice

Nathan Cecil, Partner, Holding Redlich

The Heavy Vehicle National Law (HVNL) gives regulators a mixed bag of enforcement tricks. Some, such as infringement notices and court prosecution, are punitive. Others are intended to be remedial. One example of a remedial enforcement tool is an improvement notice.

An improvement notice is a formal notice issued under s 572 of the HVNL. The notice identifies areas at risk of breaching the HVNL in your business operations, and requires you to take steps to address the issue.

WHO MAY ISSUE AN IMPROVEMENT NOTICE?

Under the HVNL, enforcement powers are exercised by ‘authorised officers’. Authorised officers are those who are formally appointed by the National Heavy Vehicle Regulator (NHVR), typically from the ranks of:

- the NHVR;
- State or Territory police officers; and
- State or Territory road safety authority officers, e.g. RMS, VicRoads, Main Roads.

Not all authorised officers are empowered to issue an improvement notice. Only those authorised officers who are formally authorised under their terms of appointment can issue an improvement notice.

WHEN CAN AN IMPROVEMENT NOTICE BE ISSUED?

An improvement notice can only be issued where an authorised officer:

- reasonably believes that you/your business has contravened or is contravening a provision of the HVNL; and
- under the circumstances, that it is likely that the contravention will continue or be repeated.

**CAUTION**: If you fail to respond to an improvement notice, you can be fined a maximum of $10,000 for an individual and $50,000 for a corporation.

WHAT MUST BE INCLUDED IN AN IMPROVEMENT NOTICE?

An improvement notice must be issued in the approved form and must set out the following:

- that the authorised officer reasonably believes that a contravention has occurred or is occurring;
- that the authorised officer reasonably believes that the contravention will likely continue or be repeated;
- the reasons for the above belief;
- that you/your business are required to take steps to stop the contravention from continuing to occur or occurring again, or address the matters or activities giving rise to the contravention;
- the time within which you/your business must take the above steps;
- how you/your business is to report to the authorised officer to satisfy them that you/your business has taken the above steps; and
- your rights to a review of or an appeal of the decision to issue you/your business with the improvement notice.

An improvement notice is not required to set out the steps that you/your business is required to take to address the contravention and stop it from occurring or occurring again. However, an improvement notice may set out the steps suggested by the authorised officer.

WHAT MUST YOU DO IN RESPONSE TO AN IMPROVEMENT NOTICE?

If you receive an improvement notice, you must take the steps set out in the notice and/or take other steps to address the contravention and stop it from occurring or reoccurring. This must be done within the timeframe set out in the improvement notice.

While the improvement notice may set out recommended steps, you are not bound to take those steps. You can take other steps that have the same remedial outcome. However, you may have to justify how these steps are equivalent to the ones recommended to satisfy the authorised officer and obtain a clearance certificate.

Steps could include changing your business practices or transport documentation and contracts, or providing additional information, instruction, training and supervision to staff.

The improvement notice must allow you at least 7 days to take those steps and respond to the authorised officer. However, that period can be shortened if it is reasonably practicable for you to take those steps sooner, and doing so would not result in greater cost or interruption to your business. So, it is very important that you consider and respond to an improvement notice as soon as possible.

The improvement notice will set out how you are to report back to the authorised officer, usually through a dedicated email address.

**IMPORTANT**

**REMEMBER**

If you fail to respond to an improvement notice, you can be fined a maximum of $10,000 for an individual and $50,000 for a corporation.

**W**

**HAT IF YOU NEED MORE TIME TO RESPOND TO AN IMPROVEMENT NOTICE?**

The time mandated for compliance with an improvement notice can be very short, typically 7 days. Where the compliance period is too short to develop and implement a sufficient response, you may be able to seek an extension of time for compliance with the improvement notice.

However, an extension will not likely be granted if there is a real and continuing risk of breaches occurring during the extension period, so you may have to satisfy the authorised officer that no breaches are likely to occur during the extension period or implement a temporary stop-gap solution.

**CASE STUDY:**

PORT BOTANY STEVEDORES

As part of a compliance push in 2010-2011 in relation to cargo operations within the Port Botany precinct, Roads and Maritime Services NSW (RMS) conducted observations of loading practices for goods imported into Australia that were to be distributed from the port throughout Australia, and intercept inspections of loaded vehicles leaving the port.

The operation revealed a mass breach rate of 26% across 234 intercept inspections. As a result, RMS identified that overmass breaches had occurred in the past and were likely to continue to occur.

RMS issued improvement notices to some of the stevedore operators within the port, requiring them to take steps to address the past mass breaches and likely continuing occurrence of vehicles being loaded overmass.

The stevedores were identified as ‘Loaders’ within the Chain of Responsibility (CoR) and thereby subject to the duty on all parties in the CoR to take all reasonable steps to avoid breaches.

Partially in response to the improvement notices, the stevedores introduced weigh bridge facilities in the port, and the port and stevedore operators developed business rules for identifying and rectifying overloading.

**Continued on page 5**
Continued from page 4

**Template: Request For More Time To Respond To An Improvement Notice**

The template below can be downloaded and edited to suit your company’s needs and is an example of a response businesses can send to the enforcement agency that issued the improvement notice.

[Your letterhead or logo]

[Address to the enforcement agency who issued the notice]

[Send by the method set out in the notice – an email response address is usually provided]

Attention: [authorised officer who issued the notice]

**Improvement Notice [number] dated [date] – request for extension of time to comply**

We refer to the above Improvement Notice issued in respect of [describe the contravention set out in the notice].

The Improvement Notice requires us to comply within [number] days. It is not reasonably practicable for us to comply within [number] days, so we write to seek an extension of time to comply and a corresponding amendment of the Improvement Notice under s 574 of the HVNL.

The reason(s) why it is not reasonably practicable for us to comply within [number] days [is/are] [set out reason/s why you are unable to comply within the stated time.] Examples include:

1. Compliance with the notice requires us to undertake a reassessment of our business practices and risk of repeat occurrence of the contravention identified, and develop and implement long-term suitable controls to avoid any recurrence. The time provided for compliance does not give us sufficient time to do so, including seeking input from third-party expert consultants.

2. We have identified that compliance with the Improvement Notice will require us to communicate with each of our [number] suppliers, including overseas suppliers, in relation to the contravention identified and the measurers required to be put in place by them to prevent any such contravention from occurring in future. Owing to the large number of suppliers, it will take us longer to correspond with them, including addressing any questions that they may have.

As such, we request a further [period] within which to comply with the Improvement Notice. We request that you issue an amended Improvement Notice under s 574 of the HVNL.

To reduce any risk of any further occurrence during the extension period, we have: [set out any interim stop-gap measures that you have implemented whilst you work up a final solution.]

Examples include:

- increased our rate of spot checks on compliance from [number]% to [number]%;
- implemented an immediate system of compliance checking for [nature of the contravention identified in the notice] on all loads before they depart our site; and
- already communicated and actively engaged with our top [number] of suppliers, who account for [number]% of our volume of goods moved by heavy vehicle.

Given that the compliance period for the Improvement Notice expires on [date], we request your urgent consideration of this request and your response by [date].

If you have any questions concerning this request, please contact [name] on [telephone number] or [email address].

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**Sacked for breaching ‘no kids in trucks’ policy**

Jeff Salton, Content Editor Portner Press

A long distance truck driver risked jeopardising a contract with Toll by carrying his children in his truck while making a delivery between Adelaide and Mildura. He was sacked by his employer, C.J Curran & S.L Curran, contractors for Toll, for disobeying Toll’s policies.

Following an induction at Toll’s Adelaide depot, the transport business-owners told the driver that he must abide by certain Toll policies, including a policy on Unauthorised Passengers, which stated: “Toll IPEC does not permit passengers, particularly children, to travel in heavy vehicles at any time. Contractors must not operate for or on behalf of Toll IPEC whilst carrying passengers.”

Another Toll policy: ‘Conditions of entry to site’ included the requirement that “Children under 15 are not permitted into the operational areas.”

The driver had previously read through Toll’s 6-page policy document and signed that he understood Toll’s requirements in March 2016.

**THE JOURNEY**

Some hours prior to the trip from Adelaide to Mildura on 12 July 2016, the driver and his boss exchanged text messages. In the conversation, the driver was told a new driver would accompany him to be inducted at Adelaide at Toll’s HQ.

The driver responded: “Looks like full truck have kids with”. His boss replied one hour later: “Toll’s policy is no kids remember”.

When it was discovered by his employer that the driver had children in his truck when he made the delivery to Toll, he was summarily dismissed from his employment because of his breach of the policy. His employer said the driver committed a serious breach of health and safety procedures and posed a potential threat to the company’s contract with Toll and hence a threat to the viability of the business.
How to: Respond to a notice to provide information

Dilip Ramaswamy, Solicitor, Holding Redlich

Under the Heavy Vehicle National Law (HVNL), authorised officers and inspectors are afforded a broad range of powers to ensure the safety of all parties within the supply chain, and ensure that parties in the Chain of Responsibility (CoR) are taking ‘all reasonable steps’ to avoid breaches. To monitor compliance activity, the National Heavy Vehicle Regulator (NHVR) is able to require parties in the CoR to provide information on certain aspects of their CoR duties.

The HVNL allows authorised officers, for compliance purposes, to require a ‘responsible person’ for a heavy vehicle to give the officer:

- information about the vehicle, or any load or equipment carried or intended to be carried by the vehicle; or
- personal details known to the responsible person about any other responsible person for the vehicle.

**DEFINITION: RESPONSIBLE PERSON**

A ‘responsible person’ for a heavy vehicle includes the owner, driver, operator, consignor, packer, loader, unloader, consignee, weighbridge operator and scheduler.

For example, a responsible person who is associated with a particular vehicle may be required to provide information about the current or intended journey of the vehicle, including:

- the location of the start or intended start of the journey;
- the route or intended route of the journey; or
- the location of the destination or intended destination of the journey.

**IMPORTANT**

You must comply with a notice to provide information. The legislation also notes that the privilege against self-incrimination is not a valid reason for failing to respond.

WHY DOES THE NHVR REQUIRE PARTIES TO PROVIDE INFORMATION?

To a large extent, the NHVR seeks information from parties across the CoR as part of its role in monitoring compliance with CoR obligations. Other reasons include to:

- enable the NHVR to obtain the relevant information to make regulatory and enforcement decisions;
- enable the NHVR to obtain evidence in a form that can potentially be used in court proceedings; and
- encourage disclosure. People providing assistance to the NHVR in response to a notice cannot be sued for making that disclosure. Also, if people make a public interest disclosure to the NHVR, they may be protected from reprisal: exposure of their identity; and civil, criminal or administrative liability for making the disclosure.

4 TIPS WHEN PROVIDING INFORMATION

Providing information to the NHVR can be a daunting task, as this information can often be used for a number of purposes that can result in fines and penalties for non-compliance. Here are some tips to help you when responding to a notice:

1. **Any notice to provide information should spell out explicitly the relevant documents you must produce.** If the request contained in the notice is very broad or vague, you can inform the NHVR of this, and request that it be changed and made more specific.

2. **Do not hide or destroy documents or information simply because it may reveal information that is unfavourable to you.** The NHVR will often know what they are looking for and non-compliance with this may result in severe fines and penalties.

3. **Have an open line of communication with the NHVR and authorised officers.** They may often be able to shed further light on the nature of documents or information sought.

4. **Some documents may be commercially privileged from production and not required to be disclosed, e.g. legal advice.**

**IMPORTANT**

For the defence to be successful, ALL reasonable steps must have been taken – not just some.

The NHVR will often require the party to demonstrate that they took reasonable steps and a notice to provide information will go a long way in determining whether all reasonable steps were taken.

Some documents may be commercially privileged and don’t need to be disclosed to the authorities.
Each month we publish some of our top questions from the CoR Adviser Helpdesk. To ask your question today, email: helpdesk@coradviser.com.au.

Please note: All identifying details are removed for reasons of confidentiality.

Whether your concerns are about recent legislative changes, difficulty ensuring compliance of others in the supply chain, or the steps you need to take to protect yourself, our team of lawyers is ready to answer your questions.

**Heavy Vehicle National Law application for private roads**

**Q** Our company owns a number of private properties that contain roads. I would like to know whether the Chain of Responsibility (CoR) legislation would apply to vehicles operating on private roads.

**A** Section 8 of the Heavy Vehicle National Law (HVNL) defines a ‘road’ as an ‘area that is open to and used by the public for the driving or using of motor vehicles’. A ‘road-related area’ is also defined as:

- an area that divides a road; or
- a footpath, shared path or nature strip adjacent to a road; or
- a shoulder of a road; or
- a bicycle path or another area that is not a road and that is open to the public and designated for use by cyclists or animals; or
- an area that is not a road and that is open to, or used by, the public for driving, riding or parking motor vehicles.

It would therefore appear that roads on private property (whether farms or company sites) will not be ‘roads’ for the purposes of the HVNL. It is also noteworthy that the heavy vehicle mass limits and dimension requirements under Part 4.3 specify that a breach of CoR occurs if a person drives “on a road”. Although driving an overloaded or overweight vehicle may not be in breach of the HVNL, it may be in breach of other laws including health and safety legislation.

**Obligations to drivers who are employed by others**

**Q** We act as a consignor in the supply chain and operate a dispatch warehouse. In operating such a warehouse, we often interact and work with drivers who are not employed by us. What is our general CoR obligation to these drivers in relation to fatigue?

**A** The HVNL imposes a duty on all parties in the Chain for a fatigue-regulated heavy vehicle to take all reasonable steps to ensure that a person does not drive the vehicle while that person is impaired by fatigue. If you consign, pack, load or receive goods as part of your business, you could be held legally liable for breaches of road transport laws even though you do not drive a heavy vehicle. Therefore, it is not relevant whether these drivers are employed by you given you are working with them on a transport-related task.

The way in which a party can satisfy its CoR obligations depends on the operational and procedural aspects of your business, so it is necessary for you to work out within your business what measures are needed.

Some useful measures that should be adopted include ensuring that drivers are given schedules with specified rest periods; training all relevant staff to identify signs of fatigue; and verifying (to the greatest extent possible) that any regular road operators you use have compliance measures in place to prevent their drivers driving a vehicle while impaired by fatigue.

**Making enquiries of other parties in the chain**

**Q** As a party in the supply chain, my understanding is that we need to be making ‘reasonable enquiries’ of the other parties in the chain to ensure they are complying with their obligations under the CoR. However, I am not able to determine how detailed these enquiries have to be and what the regulator will expect us to show if we are ever required to prove that we made enquiries. Please assist.

**A** The HVNL requires most parties, including consignors, packers and schedulers, to make reasonable enquiries and be satisfied that certain other parties in the CoR comply with their relevant obligations. Unfortunately, similar to the ‘all reasonable steps’ defence, the HVNL has not defined what ‘reasonable enquiries’ may be.

A good starting point is to regularly check the NTC website at www.ntc.gov.au. The site usually provides various checklists for different parties in the chain, which may provide useful tips for the extent of your enquiries.

For example, if you are an operator/manager/scheduler, your enquiries should focus on:

- identifying whether rosters and schedules require drivers to exceed driving hours regulations or speed limits;
- liaising with drivers to ensure drivers do not work while impaired by fatigue or drive in breach of their work or rest options;
- ensuring loads are appropriately restrained with appropriate restraint equipment; and
- requesting copies of relevant CoR policies of prime contractors to ensure they have procedures in place.

Ultimately, you need to feel satisfied from your enquiries that the other parties in the CoR that you deal with are compliant with the relevant rules.

**NHVR technical working group objectives**

**Q** I have read that the NHVR has established a technical working group to focus on key CoR issues. Could you expand upon the objectives of the group?

**A** The technical working group has been created to provide input into the delivery of improvements to coupling safety. The group contains experts from across the heavy vehicle industry that will assist delivery of the NHVR’s safety strategy, which was released in August this year. There is likely to be significant input from bodies like the Heavy Vehicle Industry Australia, Australian Trucking Association, Commercial Vehicle Industry Association Australia, Truck Industry Council and subject matter experts.
What caused the death of a truck driver?

Shortly before 11:30pm on 23 May 2013, Albert Constable was driving a Mac Trident Prime Mover and towing an empty tanker trailer east on Parramatta Road, Croydon. As the truck approached the intersection with Croydon Road, it suddenly swerved across the median strip and ploughed into a commercial building on the southern side of the road. Mr Constable was dead by the time paramedics arrived at the scene a short time later. He was 63 years old.

So begins the NSW Coroner’s report (dated 31 January 2014) into the death of Albert Constable to try to establish why the truck suddenly swerved across the road.

THE FACTS

Mr Constable was a subcontractor to a large national company that specialised in food grade tanker trucks. Before the accident, Mr Constable had driven from his home in Newcastle to collect a tanker trailer from Prestons. He then drove to Glebe Island transport terminal to have the tanker filled, then delivered the load to one of various centres around NSW.

The coroner heard from various witnesses including Mr Constable’s family, his doctor, the police and the first people to respond.

DID THE VEHICLE CAUSE THE ACCIDENT?

The coroner considered whether any mechanical issues had contributed to Mr Constable’s death. The coroner accepted a report prepared by the NSW Police Engineering Investigation department. The report found:

- there were no mechanical defects or component failures that may have contributed to the collision occurring; and
- all the damage detected on the truck and trailer was consistent with damage sustained from the collision.

DID THE DRIVER’S HEALTH OR FATIGUE CAUSE THE ACCIDENT?

At the time of his death, Mr Constable was 63 and had worked in heavy vehicle transport for more than 30 years.

Mr Constable was also suffering from hypertension but the coroner concluded that this condition was also being appropriately treated at the time of his death.

Finally, Mr Constable was also suffering from diabetes but the coroner concluded again that his condition was being well managed. Apart from evidence that Mr Constable had lost 3 kilograms, there is no evidence of Mr Constable’s weight at the time of his death. Specifically addressing the issue of fatigue, the investigator reviewed the deceased’s driving log book, which showed that 6 days before the fatal crash, on 17 May 2013, Mr Constable did not drive at all. In the ensuing 5 days, he drove a total of just under 4,000 kilometres and on average rested, or at least was not driving, for 12 hours each day.

The coroner accepted Ms Constable’s evidence that her husband was very fastidious about complying with fatigue management obligations, as was the company they contracted with.

A legal representative of the company that insured the vehicle submitted that the likely cause of the accident was a combination of Mr Constable’s ailments becoming acute at an inopportune time. The coroner rejected this submission principally on the basis that Mr Constable’s conditions appeared to have been adequately managed, and his regular medical examinations as mandated by the RTA and his employer concluded he was fit to drive.

OUTCOME

The coroner ultimately concluded that the most likely cause of the accident was momentary inattention as Mr Constable approached the stationary vehicles and the evasive action he took when he realised a collision was imminent.

Mr Constable’s case is sadly not surprising or unusual. Truck drivers are the victims of their circumstances, not the cause.

Long-distance truck driving is not an occupation that promotes fitness. It is perhaps incongruous that the coroner did not consider that momentary inattention might be evidence of fatigue particularly in a 63-year-old truck driver with a medical history of hypertension and depression.

The last person to engage with Mr Constable while he was alive was the operator at Prestons where he collected the tanker trailer from the yard. If there was such a person, he or she did not give evidence.

Nor did the “large national company” give evidence of its fatigue management policy or compliance with CoR.

The Chain of Responsibility tells us that this accident is in no way Mr Constable’s fault.