



AUSTRALIAN LOGISTICS COUNCIL

DRIVING A SEAMLESS SUPPLY CHAIN

ALC POLICY ON **SAFETY** IN THE TRANSPORT AND LOGISTICS INDUSTRY

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THE **AUSTRALIAN LOGISTICS COUNCIL** IS THE PEAK NATIONAL BODY REPRESENTING THE MAJOR AND NATIONAL COMPANIES PARTICIPATING IN THE AUSTRALIAN FREIGHT TRANSPORT AND LOGISTICS SUPPLY CHAIN.

SAFETY IN THE AUSTRALIAN TRANSPORT AND LOGISTICS INDUSTRY

The ALC Vision

In a seamless Australian economy, ALC believes that there should be **one national law** to regulate safety in the Australian Transport and Logistics industry.

ALC endorsed the December 2009 Council of Australian Governments' decision to establish national regulation for maritime safety, rail safety and heavy vehicles.

This means that ALC believes the development of the national rail/marine safety regulators and the current National Heavy Vehicle Laws Consolidation is the best way to develop such a national law.

An Applied Law and not a Model Law for Australia - the National Heavy Vehicle Laws Consolidation

The National Heavy Vehicle Regulator Project Office and the National Transport Commission are developing a consolidation of National Heavy Vehicle Laws into one national law scheduled to commence in 2013 which will bring together all of the elements of operating a heavy vehicle, namely:

- a. heavy vehicle registration;
- b. vehicle standards;
- c. heavy vehicle charges;
- d. mass and loading;
- e. oversize and overmass vehicles;
- f. restricted access vehicles;
- g. higher mass limits;
- h. compliance and enforcement;
- i. heavy vehicle driver fatigue;
- j. heavy vehicle speeding compliance;
- k. intelligent access program; and
- l. alternative compliance.

ALC encourages the development of this consolidation, and believes the law should be identical throughout Australia.

The current heavy vehicles model legislation and the model Rail Safety Bill have been introduced inconsistently throughout Australia – not all jurisdictions adopted all of the provisions of the respective model legislation.

Different laws in different states and territories leads to confusion and adds compliance costs to industry without a clearly identifiable benefit to safety outcomes.

Safety in the Australian T&L industry should therefore be covered by one national law given effect by a single 'applied or template law' - a law passed in one Australian state or territory and adopted in all the others.

Sector specific safety legislation should be contained in sector specific legislation

National workplace health and safety (WHS) legislation is to commence operation in Australia in 2012.

This legislation establishes a duty on all people conducting a business or undertaking (including T&L participants) to eliminate or minimise, so far as is reasonably practicable, health and safety risks to workers or others.

Regulations provide further rules to be followed in high risk industries.

At one stage regulations were being prepared to manage the fatigue management of heavy vehicle drivers – something also dealt with in the National Heavy Vehicle Laws Consolidation,

Having fatigue management of drivers dealt with by two separate regulatory schemes is unnecessary duplication that will not necessarily lead to better driver safety outcomes.

While ALC understands the current intention is now **not** to circulate these regulations with the original tranche of model WHS regulations mooted for release in late 2010, the regulations have been prepared and can be introduced at any time in the future.

Given that by 2013 there **should** be one set of laws governing WHS, rail/marine safety and heavy vehicles it is desirable for ALC to determine how sector specific safety legislation should be developed within a 'seamless' Australian economy.

ALC therefore believes that subordinate WHS legislation, such as regulations, should not duplicate matters dealt with in the National Heavy Vehicle Laws Consolidation such as, for example, fatigue management.

Moreover, in any case WHS legislation dealing with heavy vehicle specific safety issues should not be developed without:

1. a full cost-benefit analysis;
2. full industry consultation; and
3. identification of the reasons why any existing industry specific regulation does not generate the greatest net benefit for the community.

Double jeopardy

It is possible that a particular incident could be considered a breach of the general duties owed by a person engaged in a business or undertaking under WHS law and sector specific safety legislation.

This is undesirable.

ALC believes that where an act or omission constitutes an offence under both the National Heavy Vehicle Laws Consolidation and WHS legislation, the law should make clear that the offender is only liable to be prosecuted under one of the laws and not both.

This would mean that in this area the national heavy vehicle laws would be the same as those contained in the current model Rail Safety legislation.

Role of codes of conduct in legislation

ALC believes that safety outcomes would be enhanced if there are incentives to comply with safety schemes recognised by relevant legislation.

ALC has decided to review current ALC codes of practice so they can be considered for registration under the National Heavy Vehicle Laws Consolidation as a recognised industry code of practice.

If registered, it would mean compliance with the code can be taken as prima facie evidence that all reasonable steps were taken to ensure against a breach of safety legislation created under the new laws.

Similarly, ALC believes that compliance with a code of practice (conduct) or an accreditation scheme such as Basic Fatigue Management and Advanced Fatigue Management should also be taken to be either a discharge (or, at the very least) evidence that may be taken into account when deciding whether all reasonably practicable steps were taken to ensure worker safety under WHS legislation.

ALC will therefore advocate that ALC codes of practice satisfying relevant guidelines be recognised under the National Heavy Vehicle Law Consolidation and WHS law as codes of practice recognised by the relevant legislation.

The Future

As laws affecting the T&L sector are gradually collapsed into one national law, ALC will argue for the adoption of laws that will enhance both productivity and worker safety.

ALC POLICY ON NATIONAL REGULATION OF HEAVY VEHICLES IN AUSTRALIA

The Australian Logistics Council:

1. Recognises that the duties imposed by primary WHS legislation, including in particular the duty to eliminate or minimise, so far as is reasonably practicable, health and safety risks on people conducting a business or undertaking, will always apply to T&L participants.
 2. Notes the National Heavy Vehicle Laws consolidation scheduled to commence in 2013 will bring together all of the elements of operating a heavy vehicle, including the fatigue management of heavy vehicle drivers.
 3. Adopts the policy position that:
 - a. Subordinate WHS legislation such as regulations should not duplicate matters dealt within the National Heavy Vehicle Laws Consolidation such as, for example, fatigue management; and
 - b. Specific WHS legislation dealing with heavy vehicle specific safety issues should not be developed without:
 - i. A full cost-benefit analysis;
 - ii. Full industry consultation; and
 - iii. Identification of the reasons why any existing industry specific regulation does not generate the greatest net benefit for the community.
 4. Confirms that relevant codes of practice (conduct) developed by ALC should be developed into a form capable of recognition under heavy vehicle and WHS law.
- ALC is therefore of the view that:**
1. Compliance with a code of practice (conduct) should be taken as being a discharge of relevant safety duties created by the National Heavy Vehicles Laws consolidation.
 2. Compliance with a code of practice (conduct) should be taken to be:
 - a. A discharge of relevant duties under proposed WHS legislation; or, at the very least,
 - b. 'Evidence of compliance that may be taken into account' when deciding under WHS legislation whether all reasonably practicable steps were taken to ensure worker safety.
 3. ALC codes of practice (conduct) satisfying the relevant Austroads guidelines, be recognised in the National Heavy Vehicle Law consolidation and WHS law as codes of practice recognised by the relevant legislation.
 4. An operator accredited under the National Heavy Vehicle Accreditation Scheme complying with either a BFM fatigue management system or a AFM fatigue management system should be taken as being a discharge of relevant safety duties created by law.
 5. Where an act or omission constitutes an offence both under the National Heavy Vehicle Law Consolidation and WHS Act, the legislation should make clear that the offender is not liable to be punished twice for the offence thus preventing 'double jeopardy'.
 6. Safety in the Australian Transport & Logistics industry should be covered by one national law effected by a single 'applied or template law' adopted in all Australian jurisdictions.
 - a. An 'applied law' is where a law is passed in one jurisdiction and recognised in the laws of the other jurisdictions.

