



Chain of Responsibility update

ALC Supply Chain Safety & Compliance Summit

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National Transport Commission

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What I'll be covering today

- Background on Chain of Responsibility (CoR) reform
- What is the problem?
- Benefits for industry of a primary duties approach
- Discussion Paper Proposals
- Next steps

Background

**CoR is fundamentally about safety:
safety of drivers, safety of the community**

Ensuring those that influence on-road safety are held appropriately accountable.

The key questions for the CoR review:

- Is the law effective?
- Is the current law clear?
- Does it focus on safety outcomes?

Background

Extensive consultation process:

- Sept 2012 – Industry letter to Australian transport ministers
- Late 2012 – Taskforce established
- July 2013 – NTC releases CoR Issues Paper
- Feb 2014 – NTC Assessment of Options Paper released
- June 2014 – Taskforce report
- Nov 2014 – NTC releases Duties Review Discussion Paper
- **May 2015 – Ministers give in-principle support for recommendations**

Outcomes from ministers' meeting May 2015

- **Agreed** the NTC develop detailed policy recommendations on the formulation of primary duties for all current CoR parties, limited to the existing HVNL regulatory framework
- **Noted** that the primary duties regime will apply to executive officers
- Ministers to consider in November 2015

What is the problem?

Stakeholders have identified a number of key issues with the current CoR regime:

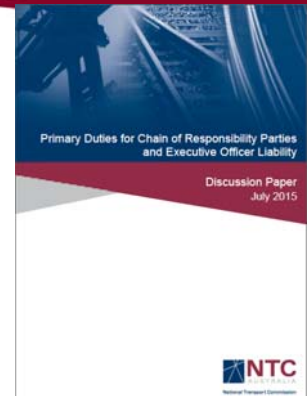
- Inconsistencies between the HVNL and other national safety laws
- Inconsistencies of obligations within the HVNL
- Cost and burden to industry of complying
- Reliance on individual offences and incidents to prosecute
- Legislation too prescriptive and complex
- Concerns around burden of proof
- Safety

Benefits of change

- Clarify and simplify existing CoR obligations
- Assist CoR parties and regulators to better understand and apply the law
- Simplify enforcement
- Better align with Australia's national safety laws
- Reduce red tape and compliance cost

Discussion Paper

- Set out proposals for implementing a primary duties approach
- Strong support for overall reform and key elements



Proposal – primary duties - example

- NTC draft proposal 1 - Primary duty on operators, prime contractors and employers*
- Operators, prime contractors and employers should have a duty to ensure the safety of their road transport operations (primary duty) limited to the existing regulatory framework of the HVNL;
 - The primary duty should not increase compliance burden but instead clarify existing obligations and enable a more flexible outcomes-based approach;
 - To the extent possible, the primary duty should:
 - replace existing CoR requirements on operators, prime contractors and employers;
 - include the obligation for operators, prime contractors and employers to ensure the safety of their vehicles, drivers, and the public;
 - address the specific safety risks posed to road transport operations by speed, fatigue, MDL, vehicle standards requirements; and

Proposal - primary duties – standard of care

Standard of care to apply (NTC draft proposal 9)

EITHER

so far as reasonably practicable - consistent with the standard applied in the national safety laws;

OR

all reasonable steps - as currently used in the HVNL

Proposal – All reasonable steps v reasonable practicability

reasonably practicable, includes —

- likelihood of the hazard or the risk concerned occurring
- degree of harm that might result from the hazard or the risk
- what the person concerned knows, or ought reasonably to know, about —
 - the hazard or risk;
 - ways of eliminating or minimising the risk;
- the availability and suitability of ways to eliminate or minimise the risk;
- after assessing the extent of the risk and the available ways of eliminating or minimising the risk — the cost associated with available ways of eliminating or minimising the risk (including whether the cost is grossly disproportionate to the risk)

Proposal - maximum penalties

- Maximum penalties for breach of the primary duties to better align with the maximum penalties available under the national safety laws
- Including adoption of a hierarchy of penalties based on the nature of the actual harm or damage caused

Proposal - executive officer liability

NTC asked to examine existing executive officer liability provisions in the HVNL, including the burden of proof.

In May 2015, ministers agreed to reduce the number of offences to which executive officer liability applies.

Asked the NTC to provide detailed recommendations, including on how the proposed primary duties regime should apply to executive officers.

Implementation

- Guidance material
- Communication
- Training for authorised officers

Key issues from submissions

Overall, submissions were very supportive of the reform. Range of views on:

- Structure of duties for off-road parties
- Investigative powers
- Executive officer liability

Next steps

- 7 August – submissions closed
- 6 Nov 2015 – Transport and Infrastructure Council meeting
- Subject to ministerial agreement, a draft Bill to amend the HVNL will be prepared for ministers consideration in May 2016

Further information

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Thank you

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