


## The HVNL and Chain of Responsibility

ALC Supply Chain Safety and Compliance Summit


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## The General

- CoR is an element of the HVNL
- HVNL is a national\* scheme of Model State laws
- CoR deals with overloading; fatigue management, speeding and load securing
- CoR is enforced by State authorities (eg RMS in NSW)
- CoR/HVNL recognises industry codes of practice as compliance resources


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## Who's in the Chain?

S214 (and s227)

- Driver's employer
- A prime contractor
- An Operator
- A Scheduler
- A Loading Manager
- Consignor
- Consignee
- Loader and Unloader (for fatigue)
- Directors and Officers

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### Overloading

- Chapter 4 imposes \$10,000 fine for severe risk breach

### Load Securing

- Load Restraint Guide.

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### Speeding

- Chapter 5 imposes responsibility for speeding on persons whose business activities influence the conduct of drivers of heavy vehicles.
- Schedulers must take reasonable steps to ensure the schedule does not cause the driver to speed.
- Prohibits entering into an agreement that causes a driver to speed.
- Must take all reasonable steps to ensure business practices do not cause speeding.
- \$10,000 fines.

### Fatigue


- Chapter 6 imposes positive obligation to prevent driving while fatigued.
- Must take all reasonable steps to ensure business practices will not cause a driver to drive while fatigued.
- Objective factors (eg electronic work diary)
- Subjective factors (signs of fatigue such as lack of alertness, inability to concentrate etc).

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## Changes in the pipeline

- Increased Penalties
- Maintenance
- Drugs
- Closer alignment to WHS laws

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## Penalties

- Criminal conviction
- Substantial fines
- Personal liability of officers (inc directors)

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## Executive Officers

- S636(1)
- Column 2 Offences
- EO liable if "knowingly authorised or permitted the conduct".
- S636(2)
- Column 3 Offences
- EO liable if knew or ought reasonably to have known of the conduct OR that there was a substantial risk that the risk would be committed.
- A defence if the EO exercised reasonable diligence to ensure compliance or was not in a position to influence the conduct of the company.

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## Reasonable Steps Defence

Part 10.4 Division 1

- The person did not know and could not reasonably be expected to have known of the contravention concerned AND
- The person took **all** reasonable steps or
- There were no steps the person could reasonably be expected to have taken to prevent the contravention.

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## Recent Cases

- Air Liquide; Doble and Doble Express (load securing)
- Scott's Transport (speeding)

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## Air Liquide

- AL supplied industrial gasses to clients, and retrieved empty cylinders
- It had arrangements with road carriers
- Following a customer request, AL engage Doble Express to deliver full and retrieve empty cylinders
- DE collected empty cylinders first but did not properly secure them
- A fatality resulted

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## Air Liquide

- AL a consignor under HVNL
- AL had no contract with DE and gave DE no instructions in relation to restraining full or empty cylinders
- DE did to attend AL's premises first to collect full cylinders and consignment documentation
- The method of restraint did not comply with the Load Restraint Guide

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## Air Liquide

- Collection of consignment docs a central feature of the usual process because;
  - it meant the carrier was authorised
  - Dangerous goods regs require carrier to carry transport documentation
  - Allowed the consignor to visually assess the carrying vehicle and exercise some control over the carriage

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## Air Liquide

- Departure from standard procedure meant that AL did not know the consignment was being moved by an unapproved vehicle
- After, but not before the proceedings were commenced (2-years after the incident) AL established a national working group to address COR obligations.

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## Air Liquide

- The Working Group had;
  - Cut the number of carriers used;
  - Introduced a safety management process to review COR KPIs which included producing an audit package for carriers and auditing those carriers for compliance
  - Introduced on-line induction training

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## Air Liquide

- Court observed that AL could also have;
  - Engaged with its customers in its quest to ensure safe transport
  - Included relevant terms and guidelines in carriage documentation including non-payment in the event of default by the carrier

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## Doble Express and Doble

- Proceedings against the Company and director
- Late guilty plea by director
- “However at the end of Mr Doble’s evidence, I was left with the clear impression that the notion of the Company and its directors embracing, implementing and maintaining a culture of safety, which would be necessary to prevent a recurrence of this offence in the trucking operations, was not at all understood and did not exist.”

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## COR Compliance

- Analyse your business (where do we fit in the chain? Lines may be a Prime Contactor, a Scheduler, Consignor and Consignee)
- Identify risks (how can we prevent breaches of speeding; overloading; fatigue; securing?)
- Design a policy to address the risks
- **Implement** and monitor the policy

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## So what can we do??

- Adopt a compliance policy at Board level
- Train your staff
- Pre-qualify your contractors (inc load securing)
- Advise your customers
- Review your contracts
- Keep records
- Industry Code of Practice?

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