SAFE TRUCKING AND SUPPLY CHAINS LTD

ALC AUSTRALIAN LOGISTICS COUNCIL
SUPPLY CHAIN EFFICIENCY AND SAFETY

ATA AUSTRALIAN TRUCKING ASSOCIATION

MASTER CODE PROJECT

DEVELOPING A MASTER REGISTERED INDUSTRY CODE OF PRACTICE FOR THE HEAVY VEHICLE NATIONAL LAW

Safe Trucking and Supply Chains Limited

ALC Supply Chain Safety and Compliance Summit

Sydney - 5 and 6 September 2017

‘Safer trucks, safer supply chains, safer Australia’

Mass Dimension Load (MDL) Workshop

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1. Introduction

Evidentiary standards are a key part of best practice safety regulation: they fill in the detail that is lacking in general duties, but do so in a flexible way.

Businesses with sophisticated safety systems can choose not to follow the relevant standard, but must typically be able to demonstrate that their systems achieve an equivalent or better safety outcome.

A decision has been made to generally align the provisions of the Heavy Vehicle National Law (**the HVNL**) with workplace health and safety law.

Legislation has passed the Queensland Parliament making the necessary amendments to the HVNL. These changes are anticipated to commence sometime in 2018.

To assist the 98% of trucking businesses with fewer than 20 employees, as well as off road parties such as consignors and receivers with their HVNL safety obligations, the Australian Logistics Council and the Australian Trucking Association has established a company called **Safe Trucking and Supply Chains Limited** to develop a registered industry code of practice under section 706 of the Heavy Vehicle National Law designed to:

- ☐ cover the common risks relevant to the HVNL, including risks faced by off-road parties such as consignors and receivers;
- ☐ be 50 - 60 pages in length and written in the same style as a model WHS Code;
- ☐ incorporate technical standards and other guidance material such as the load restraint guide by reference, where appropriate;
- ☐ provide general examples of risk controls, so code adopters can develop a customised risk management process for their business; and
- ☐ act as a 'master code' that can be cross referenced by other registered industry code developers as the document that deals with 'common' risks involved in the operation of a heavy vehicle so, that those other codes can deal in greater detail with safety risks specific to their industry.

Safe Trucking and Supply Chains Ltd has received government funding and National Heavy Vehicle Regulator approval to commence the drafting of such a document, with the intention of it being ultimately approved by the Regulator to be a registered industry code of practice.

This will permit code adopters to plead compliance with the code as one of the factors a court may have regard to when considering whether all reasonably practicable steps have been taken to avoid a relevant breach of the Heavy Vehicle National Law.

This means, firstly, having some idea of the changes that are to be contained in the amendments to the HVNL to commence during 2018.

2. Amendments to the HVNL

A new chapter 1A has been added into the HNVL which establishes a broad duty to ensure that a chain of responsibility participant to ensure, so far as is reasonably practicable, the safety of the party's **transport activities** (as defined) relating to the vehicle in a manner somewhat similar to the general duties owed by a person conducting a business or undertaking (a **PCBU**) under WHS law.

This includes the insertion of a requirement for the people who act as the executive of a legal entity (however formed) that is a chain of responsibility participant to show they have taken 'due diligence' to ensure that the entity has complied with HVNL safety duties.

It was always known that the new provisions would impose a general duty on industry participants to ensure all reasonably practicable steps were taken to ensure heavy vehicles were properly maintained and repaired.

However, the relevant definition **transport activities**, is poorly drafted. It brings within the chain of responsibility activities **associated with the use of the vehicle** (**such as maintaining or repairing the vehicle).**

The new Chapter 1A is set out at the end of this paper.

Chapters 3 and 4 of the HVNL (vehicle standards and MDL provisions) remain largely the same, although the 'reasonable steps' and 'mistake of fact' defences are removed in favour of requiring someone to have a 'reasonable excuse' to avoid a conviction.

Chapter 5 of the HVNL (the speeding chapter) is repealed, as is chapter 6 (driver fatigue) with the exception of the duty not to drive whilst fatigued (section 228).

The expectation is that the speed and fatigue management contained in those chapters of the Law have been captured by the new Chapter 1A general duties provisions.

Finally, subsection 261(2) (liability of employer for breach of maximum work requirement) is also repealed whilst subsection 315(2), dealing with who is the responsible party for the driver of a fatigue regulated heavy vehicle is rewritten.

The HVNL requires a registered code of practice to be prepared and presented in a particular way.

It does this through the publication of code registration guidelines.

3. The Task for each workshop:

Given the obligations imposed by registration guidelines, the task of this workshop is to determine:

What:

(a) Risks; and

(b) Control measures;

That will

(c) assist a person or business *anywhere* within the chain of responsibility (as a driver, consignor, consignee, scheduler etc.) develop a customised risk management process to manage duties and responsibilities imposed under the Heavy Vehicle National Law in a manner compliant with AS 31000

and that is all – the task is all about the best way that an industry participant can develop their own documented risk assessment process, and nothing else.

Chapters 4(MDL) of the HVNL contains a number of obligations that a code of practice should probably cover. **Given the instructions contained in the Code Registration Guidelines how should risks and ways to manage those risks be described in the registered code to cover the (numerous) obligations contained in these Chapters of the HVNL?**

Please review and add to the controls and examples

Chapter 4 Vehicle operations - mass, dimension and loading

Chain of responsibility participant	**Risk type**	**Control Measure**	**Example**
All Parties NHVL requirement S26C(2)(b)(i) & (iii) Each party must, so far as is reasonably practicable ensure the party's conduct does not directly or indirectly cause or encourage the driver of the heavy vehicle to contravene this Law; or another person, including another party in the chain of responsibility, to contravene this Law. Including, but not limited to: ☐ S96(1) – A person must not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not, comply with the **mass requirements** applying to the vehicle. ☐ S102(1) – A person must	Mass, dimension and loading process	☐ Mass, dimension and loading process ☐ Mass, dimension and loading assurance procedures ☐ System to manage safety and ensure compliance with all requirements of the law	☐ Policy and procedures such that all parties in the chain of responsibility understand their roles and responsibilities regarding their contribution to the safety of the transport activity ☐ Training and awareness of mass, dimension and loading processes and assurance procedures regarding their contribution to the safety of the transport activity so as not to directly or indirectly cause the driver or another party in the chain to breach the law ☐ Process to resolve issues relating to mass, dimension and loading requirements so problems are reported and rectified to prevent or reduce potential harm or loss (risks) by ensuring transport-related activities are safe and prevent breaches of the HVNL, manage risk and maintain a safe road environment

not drive on a road a heavy vehicle that (together with its load) does not, or whose components do not or whose load does not, comply with the **dimension requirements** applying to the vehicle. 111(1) – A person must not drive on a road a heavy vehicle that does not, or whose load does not, comply with the **loading requirements** applying to the vehicle.			
Employer / Prime Contractor / Operator	Mass, dimension and loading process	Mass, dimension and loading process: ☐ System to train all parties in the chain regarding their contribution to the safety of the transport activity (Employer and Operator) Mass, dimension and loading assurance procedures: ☐ System to ensure accuracy of the load weights	☐ Terms of consignment, contracts and agreements do not contain rate structures or incentives or associated performance measures that may reward or encourage parties or the driver to breach mass, dimension and loading requirements directly or indirectly – e.g. overloading ☐ Process to schedule vehicles that have the capability, capacity and equipment to match the mass, dimension and loading requirements, including mass accreditation schemes and route permits ☐ Drivers are provided with accurate load weights and dimensions prior to or at the point of loading e.g. load plans, consignment notes, despatch documents, container weight

		☐ System to ensure compliance with applicable gross and axle weights ☐ System to ensure the accuracy of load positioning ☐ System to ensure loads are properly restrained	declarations etc. ☐ Process to measure load weights and compliance with gross and axle weights – e.g. access to onsite or offsite weighbridge, on-board scales, cubic capacity, sampling program etc. ☐ Accuracy of load positioning… (load plans) ☐ Process to ensure equipment used in the loading process, including load restraint, is fit for purpose, regularly inspected and maintained ☐ Process to maintain mass, dimension and loading requirements during pick-up and delivery of part loads and in transit i.e. compliance with axle weights and proper restraint ☐ Process to monitor mass, dimension and loading requirements is in place and reviewed regularly for both inbound and outbound loads – e.g. mass sampling program, load restraint inspections etc.
Scheduler	Mass, dimension and loading process	Mass, dimension and loading assurance procedures: ☐ System to ensure schedules and routes will not cause the driver to breach the law	☐ Process to schedule the right truck with the right equipment for the right load to suit the mass, dimension and loading requirements ☐ Route (journey) plans take into consideration mass and dimension requirements to ensure the route/infrastructure is suitable for the load and complies with any route permits as applicable

Consignor / Consignee	Mass, dimension and loading process	Mass, dimension and loading process: ☐ System to train all parties in the chain regarding their contribution to the safety of the transport activity Mass, dimension and loading assurance procedures: ☐ System to ensure accuracy of the load weights ☐ System to ensure compliance with applicable gross and axle weights ☐ System to ensure the accuracy of load positioning ☐ System to ensure loads are properly restrained (Consign ors)	☐ Terms of consignment, contracts and agreements do not contain rate structures or incentives or associated performance measures that may reward or encourage the driver to breach mass, dimension and loading requirements directly or indirectly – e.g. overloading ☐ Employers / Operators / Drivers are provided with accurate load weights and dimensions prior to or at the point of loading e.g. load plans, consignment notes, despatch documents, container weight declarations etc. ☐ For sealed loads, Employers / Operators / Drivers are provided with loads declaration, akin to container weight declaration etc. ☐ Process to measure load weights and compliance with gross and axle weights – e.g. access to onsite or offsite weighbridge, on-board scales, cubic capacity, sampling program etc. ☐ Accuracy of load positioning… (load plans) ☐ Process to ensure equipment used in the loading process, including load restraint, is fit for purpose, regularly inspected and maintained (Consignors) ☐ Process to maintain mass, dimension and loading requirements during pick-up and delivery of part loads i.e. compliance with axle weights and proper restraint ☐ Process to monitor mass, dimension and loading requirements is in place and reviewed

			regularly for both inbound and outbound loads – e.g. mass sampling program, load restraint inspections etc. ☐ Process to make reasonable enquiries as to monitor the effectiveness of Employer / Prime Contractor / Operator mass, dimension and loading management systems and adherence to the same As applicable, process to develop and provide industry specific guidance on load positioning and restraint
Packer	Mass, dimension and loading process	Mass, dimension and loading assurance procedures: ☐ System to ensure accuracy of the packaged good's weights including container weights ☐ System to ensure the accuracy of itemisation/identification of packaged goods ☐ System to ensure packaged goods are properly secured System to ensure packaging remains operative and serviceable	☐ Drivers are provided with accurate load weights and dimensions at the point of loading e.g. consignment notes, despatch documents, container weight declarations etc. Process to ensure packaged goods, unitising and containment systems are capable of supporting the weight of the load, withstanding load movement forces described in the Performance Standards and robust enough to withstand handling (e.g. being handled by forklifts)

Loading Manager / Loader / Unloader	Mass, dimension and loading process	Mass, dimension and loading assurance procedures: ☐ System to ensure accuracy of the packaged good's weights including container weights ☐ System to ensure compliance with applicable gross and axle weights ☐ System to ensure the accuracy of load positioning System to ensure loads are properly restrained	☐ Drivers are provided with accurate load weights and dimensions at the point of loading e.g. consignment notes, despatch documents, container weight declarations etc. ☐ Process to measure load weights and compliance with gross and axle weights – e.g. access to onsite or offsite weighbridge, on-board scales, cubic capacity, sampling program etc. ☐ Loads are suitably prepared to prevent breaches of the HVNL, manage risk and maintain a safe road environment – e.g. including livestock ☐ Accuracy of load positioning… (load plans) ☐ Process to maintain mass, dimension and loading requirements during pick-up and delivery of part loads i.e. compliance with axle weights and proper restraint ☐ As applicable, follow and provide industry specific guidance on load positioning and restraint to drivers
Executive Officers (of all parties)	Mass, dimension and loading process	Mass, dimension and loading process: ☐ Ensure that a system to train all parties in the chain regarding their contribution to the safety of the transport activity is	☐ Governance process that verifies the effectiveness of mass, dimension and loading assurance procedures

		in place Mass, dimension and loading assurance procedures: ☐ Ensure that a system to ensure accuracy of the load weights is in place ☐ Ensure that a system to ensure compliance with applicable gross and axle weights is in place ☐ Ensure that a system to ensure the accuracy of load positioning is in place ☐ Ensure that a system to ensure loads are properly restrained is in place	

Any technical references referred to in a registered code must be 'freely available'. **What sort of references should be included into the registered code and why? Are Australian Standards regarded as 'freely available' (given they are somewhat dear for small operators (cf. the larger operators for which the cost would not be considered as 'dear'?**

Name of reference document	**Identification of the risk that the document will assist to manage**
AS/NZS ISO 31000:2009 Risk Management — Principles and Guidelines,	Risk Management - provides principles, framework and a process for managing risk.
	Speed
	Fatigue
National Transport Commission (NTC) Load Restraint Guide 2004	Mass, dimension and loading Load restraint
	Vehicle Standards

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