

SAFE TRUCKING AND SUPPLY CHAINS LTD



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’

Vehicle Standards – Maintenance Workshop

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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.

1. Amendments to the HVNL

A new chapter 1A has been added into the HVNL 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.

2. 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

It was known the new 2018 legislation would bring within the terms of the HVNL a duty to ensure the 'maintenance' of vehicles. However, the legislation does it by using the transport activities definition to include activities associated with the use of the vehicle such as maintaining and repairing the vehicle.

What sort of risk types and control measures should be discussed in a registered code of practice in relation to the maintenance and repair of vehicles, bearing in mind the Law draws a distinction between 'maintain' and 'repair'?

Are there any activities that are similar to ('such as') maintenance and repair that require risk types and control measures discussed in a registered industry code of practice?

Function	Risk Type	Control Measure	Example
Maintenance			

Repair			
Activities similar to ('such as') maintenance and repair			

Chapters 3 (Vehicle Standards) 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

Chain of responsibility participant	Risk type	Control Measure	Example
<p>All Parties</p> <p>Impacts of changing CoR laws</p> <p>The safety of all road users hinges upon the proper maintenance of heavy vehicles.</p> <p>Many of the more serious injury and fatality crashes of recent times have resulted from poor or ineffective maintenance regimes.</p> <p>Recognising the role that all parties can play in highlighting and responding to defective or unsafe vehicles, the law will soon require positive action from any party that can influence or control vehicle standards.</p> <p>All parties in the supply chain will have to either take direct action</p>	<p>Maintenance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Maintenance management process <input type="checkbox"/> Maintenance assurance procedures <input type="checkbox"/> System to manage maintenance and ensure compliance with all requirements of the law 	<ul style="list-style-type: none"> <input type="checkbox"/> 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 <input type="checkbox"/> Training and awareness of maintenance 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 <input type="checkbox"/> Process to resolve issues relating to maintenances, problems are reported

<p>to properly manage vehicle standards under a documented maintenance regime, or be more watchful and consultative with their transport partners.</p>			<p>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</p>
<p>Employer / Prime Contractor / Operator</p> <p>Under the current law, heavy vehicle operators are required to ensure that their fleet is free of defects, mechanically safe and in proper working order before a vehicle enters the road network.</p> <p>Under the new law, this duty will not change. The maintenance systems in place may come under much closer scrutiny however.</p> <p>To assure themselves of compliance, and safe operations generally, investigators will likely examine systems features such as: fault reporting, fault correction, maintenance programs and schedules, documentation and partner</p>	<p>Maintenance</p>	<p>Maintenance process:</p> <ul style="list-style-type: none"> <input type="checkbox"/> System to train all parties in the chain regarding their contribution to the safety of the transport activity (Employer and Operator) <p>Maintenance assurance procedures:</p> <ul style="list-style-type: none"> <input type="checkbox"/> System to ensure <input type="checkbox"/> System to ensure compliance 	<p>Implementing an accredited maintenance system that includes:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Daily check <input type="checkbox"/> Fault recording and reporting <input type="checkbox"/> Fault repair <input type="checkbox"/> Scheduled maintenance and roadworthiness <input type="checkbox"/> Records and documentation <input type="checkbox"/> Responsibilities <input type="checkbox"/> Internal review and correcting non-conformances <input type="checkbox"/> Speed limiter maintenance <input type="checkbox"/> External auditing

collaboration for supply chain reporting.			
Scheduler	Maintenance		
<p>Consignor / Consignee</p> <p>While it is recognised that non-transport supply chain parties may not be able to control the maintenance of heavy vehicles, it is acknowledged that they can influence the use of defective or unsafe vehicles on the road.</p> <p>In this sense, the role of supply chain parties is one of observe, report and record. If a supply chain partner sees a defective, unsafe or potentially dangerous condition on a vehicle, then contact ought to be made with the responsible transport company to report the issue.</p> <p>Vehicle examinations or inspections by supply chain parties are not necessary, but vigilance and a preparedness to report observations are a</p>	Maintenance		<p>Documenting or keeping a record of the observations made, the interaction with the company and the action taken are essential to ensure that supply chain parties are complying with their duties under the law.</p>

<p>reasonable response.</p> <p>Documenting or keeping a record of the observations made, the interaction with the company and the action taken are essential to ensure that supply chain parties are complying with their duties under the law.</p>			
<p>Packer</p>	<p>Maintenance</p>		
<p>Loading Manager / Loader / Unloader</p> <p>While it is recognised that non-transport supply chain parties may not be able to control the maintenance of heavy vehicles, it is acknowledged that they can influence the use of defective or unsafe vehicles on the road.</p> <p>In this sense, the role of supply chain parties is one of observe, report and record. If a supply chain partner sees a defective, unsafe or potentially dangerous condition on a vehicle, then contact ought to be made with the responsible transport company to report the issue.</p> <p>Vehicle examinations or inspections</p>	<p>Maintenance</p>		<p>Documenting or keeping a record of the observations made, the interaction with the company and the action taken are essential to ensure that supply chain parties are complying with their duties under the law.</p>

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<p>Executive Officers (of all parties)</p>	<p>Maintenance</p>		<p><input type="checkbox"/> Governance process that verifies the effectiveness of maintenance assurance procedures</p>

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
National Heavy Vehicle Regulator	
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	Load restraint
	Vehicle Standards - Maintenance

Other information:

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