

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’

Speed 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 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.

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.

What are the nature of risks, and possible control measures, that should be provided in a code for each of the respective parties in the chain of responsibility so as to meet their general duty obligations for speed?

Please review and add to the controls and examples

Chain of responsibility participant	Risk type	Control measure	Example
<p>All parties</p> <p>NHVL requirement S26C(5)(b)(ii) 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 exceed a speed limit applying to the driver</p> <p>S26E(1)(a) A person must not ask, direct or require (directly or indirectly) the driver of a heavy vehicle or a party in the chain of responsibility to do or not do something the person knows, or ought reasonably to know, would have the effect of causing the driver to exceed a speed limit applying to the driver</p>	<p>Speed</p>	<p>Speeding assurance procedures</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Policy and procedures such that all parties in the chain of responsibility know that it is unacceptable to put undue pressure (directly or indirectly) on a driver to speed, and drivers are proactively recognised for managing speed <input type="checkbox"/> Training and awareness of speed assurance procedures and risk / human factors including delay management processes so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit

Employer / Prime Contractor / Operator	Speed	<input type="checkbox"/> System to ensure terms of consignment, contracts and agreements will not cause the driver to exceed speed limit <input type="checkbox"/> System to ensure demands are not made of the driver that may result in the driver exceeding the speed limit <input type="checkbox"/> System to ensure driver's schedule will not cause the driver to exceed the speed limit	<input type="checkbox"/> Terms of consignment, contracts and agreements do not contain rate structures or incentives (for early delivery) or penalties (for late delivery) or associated performance measures that may reward or encourage the driver to exceed the speed limit <input type="checkbox"/> Drivers rosters are scheduled with appropriate timeframes so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit <input type="checkbox"/> Loads are scheduled with adequate time for the required route so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit <input type="checkbox"/> Vehicles are fitted with fit for purpose, maintained, calibrated, speed limiting devices (12T and over by law) <input type="checkbox"/> Process to monitor drivers speed (in real time if possible and at any sign posted speed limit if possible) is in place and reviewed regularly – e.g. telematics / GPS or engine management systems / engine control module data downloads <input type="checkbox"/> Process to manage changes to delivery schedule including delays so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit
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Scheduler	Speed	<input type="checkbox"/> System to ensure rosters, schedules and routes will not cause the driver to exceed speed limit	<input type="checkbox"/> Deliveries are planned with appropriate time for the required route so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit <input type="checkbox"/> Loads are scheduled with appropriate time for the required route so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit
Consignor / Consignee	Speed	<input type="checkbox"/> System to ensure terms of consignment, contracts and agreements will not cause or encourage the driver to exceed the speed limit <input type="checkbox"/> System to ensure demands are not made of the driver that may result in the driver exceeding the speed limit System to ensure driver's schedule will not cause the driver to exceed the speed limit	<input type="checkbox"/> Terms of consignment, contracts and agreements do not contain rate structures or incentives (for early delivery) or penalties (for late delivery) or associated performance measures that may reward or encourage the driver to exceed the speed limit <input type="checkbox"/> Process to make reasonable enquiries as to monitor the effectiveness of Employer / Prime Contractor / Operator speed management systems and adherence <input type="checkbox"/> Deliveries are planned with appropriate time for the required route so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit <input type="checkbox"/> Parties sending and receiving goods

			<p>aim to adhere to scheduled delivery windows and minimise delays for drivers, however, if delays occur operators and drivers are advised in advance</p> <p><input type="checkbox"/> Parties sending and receiving goods are flexible with pick-up and delivery times where there are changes to the schedule so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit</p>
Packer	Speed	N/A	
Loading Manager / Loader / Unloader	Speed	<p><input type="checkbox"/> System to ensure loading/unloading will not cause the driver to exceed speed limit</p> <p><input type="checkbox"/> System to ensure demands are not made of the driver that may result in the driver exceeding the speed limit</p>	<p><input type="checkbox"/> “Loaders” sending and receiving goods aim to adhere to scheduled delivery windows and minimise delays for drivers, however, if delays occur operators and drivers are advised in advance</p> <p><input type="checkbox"/> “Loaders” sending and receiving goods are flexible with pick-up and delivery times where there are changes to the schedule so drivers are not directly pressured, or feel indirectly pressured, to exceed the speed limit</p>

Executive Officers (of all parties)	Speed	<input type="checkbox"/> Ensure that a system to ensure terms of consignment, contracts and agreements will not cause the driver to exceed speed limit is in place <input type="checkbox"/> Ensure that a system to ensure demands are not made of the driver that may result in the driver exceeding the speed limit is in place <input type="checkbox"/> Ensure that a system to ensure driver's schedule will not cause the driver to exceed the speed limit is in place	<input type="checkbox"/> Governance process that verifies the effectiveness of speed assurance procedures

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	MDL Load Restraint
	Vehicle Standards

Further Comments

Name

Company

Email

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