

About the chain of responsibility

If you consign, pack, load or receive goods as part of your business, you could be held legally liable for breaches of the [Heavy Vehicle National Law \(HVNL\)](#) even though you have no direct role in driving or operating a heavy vehicle. In addition, corporate entities, directors, partners and managers are accountable for the actions of people under their control. This is the 'chain of responsibility' (COR).

The aim of COR is to make sure everyone in the supply chain shares equal responsibility for ensuring breaches of the HVNL do not occur. Under COR laws if you exercise (or have the capability of exercising) control or influence over any transport task, you are part of the supply chain and therefore have a responsibility to ensure the HVNL is complied with.



The law recognises that multiple parties may be responsible for offences committed by the drivers and operators of heavy vehicles. A person may be a party in the supply chain in more than one way. For example they may have duties as the employer, the operator and the consignor of goods.

Legal liability applies to all parties for their actions or inactions.

What is chain of responsibility?

Drivers and operators have traditionally been the focus of road laws. However, breaches are often caused by the actions of others. Under chain of responsibility (COR), complying with transport law is a shared responsibility and all parties in the road transport supply chain are responsible for preventing breaches. This approach recognises the effects of the actions, inactions and demands of off-the-road parties in the transport chain.

Anybody – not just the driver – who has control over the transport task can be held responsible for breaches of road laws and may be legally liable. COR is similar to the legal concept of 'duty of care' that underpins Occupational Health & Safety (OH&S) law. This approach has long been used by the courts to impose liability in negligence and damages claims.

All parties in the supply chain – consignor/dispatcher, packer, loader, scheduler, consignee/receiver, manager, as well as the driver and operator – must take all reasonable steps to prevent breaches of the road transport mass, dimension, loading, speed compliance and work hours laws.

Penalties and sanctions range from formal warnings to court imposed fines and penalties relating to the commercial benefit derived from offences. Supervisory intervention orders and prohibition orders banning individuals from the industry can be applied to 'persistent or systematic' offenders.

Who are the parties in the supply chain?

Any person with an influence and/or control in the transport chain is a 'party' and includes, but is not limited to:

- corporations, partnerships, unincorporated associations or other bodies corporate
- employers and company directors
- exporters/importers
- primary producers
- drivers (including a bus driver and an owner-driver)
- prime contractors of drivers
- the operator of a vehicle
- schedulers of goods or passengers for transport in or on a vehicle, and the scheduler of its driver
- consignors/consignees/receivers of the goods for transport
- loaders/unloaders of goods
- loading managers (the person who supervises loading/unloading, or manages the premises where this occurs).

When could COR apply?

Some examples include:

- heavy vehicle driver breaches of fatigue management requirements or speed limits
- heavy vehicle driver breaches of mass, dimension, or loading requirements
- where any instructions, actions or demands parties in the supply chain causes or contributes to an offence under the HVNL. That includes anything done, or not done (directly or indirectly) that has an impact on compliance, for example:
 - schedulers whose business practices place unrealistic timeframes on drivers which cause them to exceed their work rest options
 - operators who do not provide drivers with a sleep environment which allows for quality sleep if their work requires them to sleep away from home (approved sleeper cab, access to rest stops).

Duty holders must also make sure the terms of consignment or work/employment contracts will not result in, encourage, reward or provide an incentive for the driver or other party in the supply chain (e.g. a scheduler) to break the HVNL.

Contracts that require a driver to break the law are illegal.

In a prosecution, the courts may consider the actions of each party in the supply chain. This includes what measures those parties have in place to prevent breaches of the HVNL occurring. Each duty holder must take all reasonable steps to ensure a heavy vehicle driver can perform their duties without breaching the HVNL.

Container weight declarations

The [Heavy Vehicle National Law \(HVNL\)](#) sets out the obligations for operators, drivers, consignors and consignees about the handling of freight containers and the requirements for container weight declarations (CWD).

Safety risks of transporting overweight loads

Transporting overweight containers:

- accelerates road wear
- causes damage to infrastructure
- can result in longer braking distances and vehicle instability
- can affect performance and handling.

All of these factors can also increase the risk of a crash, putting the safety of drivers and other road users at risk.

Inefficient practices such as repeated weighing of containers also occurs. Where conflicting weights are recorded, confusion is created. Unreliable weight information makes it very difficult for drivers to comply with the law.

What is a freight container?

A freight container is a re-usable container that is designed for the transport of goods by one or more modes of transport.

Freight containers are defined in *Australian Standard AS 3711.1:2000, Freight containers – Classification dimensions and ratings*.

What is a CWD?

A CWD is a written declaration of the weight of a container and its contents. It may be either in hard copy or electronic form, but it must be able to be produced on request by an authorised officer.

What does a CWD look like and what information must it include?

There is no specific form for a CWD. It may be paper-based (one or more pages), in electronic form or even a placard attached to the freight container, however it must include the:

- weight of the container including its contents (you may estimate the mass, however subject to the [reasonable steps defence](#), you may be liable if your estimation is incorrect)
- container number and other details necessary to identify the container
- name and residential address or business name and address in Australia of the responsible entity for the freight container
- date of declaration.

How is a CWD used?

You can be held legally liable and fined for a CWD that is inaccurate, false or misleading. However, it is not an offence if the CWD overestimates the weight of the container. The CWD must accompany a container whenever all or part of the container's journey is on a road.

What is each party's responsibility?

- **Consignor**
The consignor (importer, freight forwarder, shipping agent etc.) must prepare a complying CWD and provide a copy for the road transport operator or driver before the container can be transported by road. For imported containers, the consignor is the person who imports the container into Australia.
- **Operators**
An operator who arranges for a freight container to be transported must make sure the driver is given a complying CWD before commencing the journey. If another carrier transports the container further, the operator must provide a CWD to that carrier before the container is received.



➤ **Drivers**

A driver must not drive a vehicle loaded with a freight container unless they have a complying CWD for the container. While on the road, drivers must keep a copy of the CWD in or about the vehicle at all times.

➤ **Consignee**

A consignee must not encourage or reward a breach of mass, dimension or load restraint requirements. A consignee will be regarded as participating in the breach if they knew or could reasonably have known that a complying CWD was not provided, or that information about the container's weight and contents was false or misleading.

CONTAINER WEIGHT DECLARATION

(example information required)

Vessel Name: _____ Voyage No: _____

Container No: _____

Weight of Cargo
(Including packaging): _____ KG

Container Tare Weight: _____ KG

Total Weight: _____ KG

Senders Company Name
& Address Details: _____

Receivers Company Name
& Address Details: _____

Pick Up & Delivery Address: _____
(if different from above)

If weights are incorrectly declared, the exporter / importer will be responsible for any ensuing fines or costs.

Signature of person making declaration: _____ Date: _____

Name of Signatory: _____

Business representing: _____

Notes:

1. The "Responsible entity" is responsible for providing an accurate CWD: this is usually the person in Australia who engages the road carrier or offers the container for transport by road in Australia.
2. Separating the weight of the container and its contents ensures there is no confusion as to whether the declared weight is a net weight or a gross weight.
3. This enables the person who is relying on the CWD to determine its likely accuracy.
4. CWD details could be included in another document e.g., the Import Delivery Order (DO), the Electronic Import Delivery Order (EIDO), or provided separately.
5. The contents of the CWD must be readily available to an authorised officer or police officer who seeks to ascertain its contents, there and then in the presence of the container (whether by examining documents located on or in the vehicle or by obtaining the information by radio or mobile or other means).

Reasonable steps defence

What are reasonable steps?

Reasonable steps are the actions people can take to ensure that heavy vehicle drivers do not drive in contravention of the [Heavy Vehicle National Law \(HVNL\)](#).

A person in the supply chain can claim a 'reasonable steps' defence if they can show they did not know or could not reasonably have been expected to know that a breach had occurred.

In making a 'reasonable steps' claim a person also has to prove:

- they took all reasonable steps to prevent the breach, or
- there were no reasonable steps they could have taken to prevent the breach.

For the defence to be successful, ALL reasonable steps must have been taken – not just some.

An operator of a vehicle used in the commission of an offence against the HVNL may also raise a defence that at the time of the offence the vehicle was being used by:

- an employee who was acting outside the scope of his or her employment
- an agent (in any capacity) who acted outside the scope of the agency
- another person who was not entitled to use the vehicle.

How can I show I have taken reasonable steps?

There are no restrictions on the ways in which a person can demonstrate that they took reasonable steps; reasonable steps will vary depending on circumstances.

Business practices should include methods to identify, assess, control, monitor and review situations that put driver safety at risk. These include:

- Risk identification – What could happen?
- Risk assessment – What is the likelihood it may happen?
- Risk control – What can we do about it, or to prevent it?

You should ensure you set up and document a set of business practices and ensure all employees are trained in their use. The practices should be comprehensive yet flexible enough to allow for changes through regular review, in response to accidents/incidents or at times when things just go wrong.

Some examples of reasonable steps include:

- conducting regular audits of work schedules and work records
- regularly reviewing business activities, processes, policies and written instructions and identifying how best to manage outcomes and prevent offences
- implementing processes to be used after unexpected delays, or times when things just go wrong
- planning for driver rest breaks with some consideration for unexpected traffic delays when creating trip timetables
- providing accurate weights of containers and ensuring loads will not exceed vehicle mass or dimension limits
- positioning and securing loads to ensure they remain stable for the entire journey
- if a breach occurs putting procedures in place to prevent similar breaches or issues from happening again
- establishing a risk management plan
- conducting training to develop staff awareness of business policies and procedures and their obligations; such as fatigue management, speed compliance, loading and unloading
- ensuring staff are not just aware of their obligations, but are actively engaged in implementing practices.



Examples of reasonable steps for parties in the supply chain*Operator/manager/scheduler*

Examples of how operators, managers, or schedulers may demonstrate reasonable steps were taken to prevent a breach occurring include:

- having work practices in place to ensure vehicles and equipment are kept in good condition and all loads are properly restrained
- implementing systems and procedures to ensure that the mass of each vehicle is assessed and recorded for each trip
- routinely checking your records of drivers' activities, including work and rest times, to ensure they are complying with all regulations and instructions
- ensuring your scheduling system is able to be audited and allows for sufficient rest and sleep
- fostering commercial arrangements with other responsible persons which include operating conditions that comply with the law
- providing employees with easy and unrestricted access to all necessary information, instruction, training and supervision to allow them to comply with relevant laws.

Consignor/consignee

Examples of how consignors or consignees may demonstrate they took all reasonable steps to prevent a breach occurring include:

- having processes in place to accurately weigh and measure all goods to be transported by road
- set realistic delivery timelines which make allowances for unexpected delays such as traffic or road works
- request information from transport operators and/or drivers about what systems they have in place to prevent breaches of road transport laws when transporting your goods.

Loading manager/loader/packer

Examples of how loading managers, loaders or packers may demonstrate they took all reasonable steps to prevent a breach occurring include:

- using a loading diagram for different types of loads to ensure axle weight limits are not exceeded
- under-loading for the first trip and verifying the weight at some stage of the journey if the vehicle's weight cannot be accurately assessed at the time of loading. Subsequent loads can be adjusted accordingly
- fitting scales to loading equipment and keeping a "running" total of the weight of the load for each trip
- using a pre-printed form which requires the person in control of packing or loading the goods to verify the accuracy of any records
- notifying drivers if loading/unloading times will be 30 minutes or more either late or early so they can manage their work/rest times
- providing rest facilities to allow drivers to take rest while waiting if the loading/unloading schedule has long queues.

Driver/owner-driver

Examples of how drivers or owner-drivers may demonstrate they took all reasonable steps to prevent a breach occurring include:

- ensuring that your conduct does not compromise road safety or involve breaking the law
- you should know your vehicle's mass – For example keep weighbridge docketts, use on-board scales to check your weights, and keep any loading documentation that shows the weight of your load, and ensures that your vehicle does not exceed legal dimensions
- check your load to ensure it is properly restrained – even if you are not the person who loaded the vehicle
- checking the condition of restraining equipment (chains, ropes, straps etc) for signs of wear.

Roles and responsibilities of parties in the supply chain

Under the Heavy Vehicle National Law (HVNL), everyone in the supply chain has an obligation to ensure breaches of road transport laws do not occur. Duty holders need to make sure that their action or inaction does not contribute to or encourage breaches of the HVNL. If a party's actions, inactions or demands cause or contribute to an offence, they can be held legally accountable.

Put simply: influence = responsibility = legal liability.

Operator/manager/scheduler responsibilities

As an operator, manager, or scheduler of a business involved in road transport, your responsibilities also include ensuring that:

- rosters and schedules do not require drivers to exceed driving hours regulations or speed limits
- you keep records of your drivers' activities, including work and rest times
- you take all reasonable steps to ensure drivers do not work while impaired by fatigue or drive in breach of their work or rest options
- vehicles are regularly maintained, and if speed limiters are fitted they are functioning properly
- vehicles are not loaded in a way which exceeds mass or dimension limits
- drivers moving freight containers have a valid Container Weight Declaration
- loads are appropriately restrained with appropriate restraint equipment (see the Load restraint guide for more information).

Consignor/consignee responsibilities

As consignor or consignee your responsibilities include ensuring that:

- loads do not exceed vehicle mass or dimension limits
- goods carried on your behalf are able to be appropriately secured
- operators carrying freight containers have a valid Container Weight Declaration
- your delivery requirements do not require or encourage drivers to –
 - exceed the speed limits
 - exceed regulated driving hours
 - fail to meet the minimum rest requirements
 - drive while impaired by fatigue.

Loading manager/loader/packer responsibilities

Loading managers, loaders and packers must ensure that loading a fatigue-regulated heavy vehicle will not cause or contribute to the driver driving while impaired by fatigue or in contravention of road transport laws.

Loading manager responsibilities include:

- working with other off-road parties to make reasonable arrangements to manage loading/unloading time slots
- ensuring vehicles are loaded/unloaded as quickly and efficiently as possible
- putting systems in place for unexpected jobs – for example where there have been unexpected road delays.

Loader responsibilities include ensuring a vehicle's load:

- does not exceed vehicle mass or dimension limits
- does not cause the vehicle to exceed mass limits
- is placed in a way so it does not become unstable, move or fall off the vehicle.

Unreliable weight information makes it difficult for drivers to comply with the law. Packer responsibilities include ensuring:

- documentation about the vehicle's load is not false or misleading
- any goods packed in a freight container do not cause the container's gross weight or safety approval rating to be exceeded (also see Container Weight Declarations).

Driver/owner-driver responsibilities

As a driver your responsibilities include making sure that you:

- comply with relevant fatigue management work and rest laws and procedures to implement them
- make sure you make the most of your rest breaks by sleeping in dark, quiet and comfortable places
- respond to changes in circumstances (such as delays) and report these to your base (if possible) to implement short-term fatigue management measures
- ensure your vehicle does not exceed mass or dimension limits
- ensure your load is appropriately restrained.

Additional responsibilities for owner-drivers include:

- making sure your drivers are medically fit to drive
- making sure your vehicles are roadworthy and well maintained
- keeping full and accurate records as required by law.

The Responsibility Chain in a Transport Company



<http://latus.edu.au/difference-chain-of-responsibility-cor-compliance-enforcement-ce/>

About fatigue management

Driver fatigue or drowsy driving is a safety hazard for the road transport industry. The main causes of fatigue are not enough sleep, driving at night (when you should be asleep) and working or being awake for a long time.

National heavy vehicle driver fatigue laws apply to fatigue-regulated heavy vehicles. A fatigue-regulated heavy vehicle is:

- a vehicle with a Gross Vehicle Mass (GVM) of over 12t
- a combination when the total of the GVM is over 12t
- buses with a GVM over 4.5t fitted to carry more than 12 adults (including the driver)
- a truck, or a combination including a truck, with a GVM of over 12t with a machine or implement attached.

Some heavy vehicles are not classed as fatigue-regulated heavy vehicles. These include trams, motor vehicles modified to primarily operate as a machine or implement (plant such as agricultural machinery, bulldozers, tractors, etc.) and motor homes specifically modified for residential purposes (not just built with a sleeper berth).

The laws cover all aspects of work and rest relating to heavy vehicles including:

- work and rest hours
- recording work and rest times
- fatigue management exemptions
- Chain of responsibility obligations.

At the heart of the laws for fatigue management is a primary duty - a driver must not drive a fatigue-regulated heavy vehicle on a road while impaired by fatigue. Drivers may be impaired by fatigue even when complying with work and rest limits.

Livestock Transport Fatigue Management Scheme

The NHVR will commence the Livestock Transport Fatigue Management Scheme on 1 July 2015, providing new opportunities for operators and drivers who become accredited with the NHVR.

Chain of responsibility

If you consign, pack, load or receive goods as part of your business, you could be held legally liable for breaches of road transport laws even though you do not drive a heavy vehicle. In addition, corporate entities, directors, partners and managers are accountable for the actions of people under their control. This is the 'Chain of responsibility' (COR).

Each person in the COR must take **all reasonable steps** to ensure that the driver of a fatigue-regulated heavy vehicle does not drive on a road while impaired by fatigue or breach road transport laws relating to fatigue. In addition to this, each person in the COR must take all reasonable steps to ensure a heavy vehicle driver can perform his or her duties without breaching road transport laws.

Facts About Truck Driver FATIGUE

THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION CONSERVATIVELY ESTIMATES THAT

100,000 POLICE-REPORTED CRASHES ARE THE DIRECT RESULT OF DRIVER FATIGUE EACH YEAR.

TOP 10 DRIVER-RELATED FACTORS THAT LED TO ACCIDENTS

1. PRESCRIPTION DRUG USE
2. TRAVELING TOO FAST FOR CONDITIONS
3. UNFAMILIAR WITH ROADWAY
4. OVER-THE-COUNTER DRUG USE
5. INADEQUATE SURVEILLANCE
6. DRIVER FATIGUE
7. UNDER WORK-RELATED PRESSURE
8. ILLEGAL MANEUVER
9. INATTENTION
10. EXTERNAL DISTRACTION FACTORS

DRIVER FATIGUE-RELATED CRASHES RESULT IN AN ESTIMATED

1,550 DEATHS

71,000 INJURIES

AND **\$12.5 BILLION** IN MONETARY LOSSES.

SYMPTOMS OF DRIVER FATIGUE

- FEELING RESTLESS AND IRRITABLE
- DIFFICULTY FOCUSING
- DAYDREAMING & WANDERING THOUGHTS
- DRIFTING, TALKING OR DRIVING ON SHOULDER
- TRAVELING SLOWER THAN USUAL
- MISSING EXITS OR FORGETTING PAST MILES
- TROUBLE KEEPING YOUR HEAD UP
- YAWNING REPEATEDLY AND RUBBING EYES

LONG-HAUL TRUCK DRIVERS AVERAGE LESS THAN **5 HOURS OF SLEEP PER DAY**

CONTRIBUTING FACTORS

- SLEEP-DEPRIVED OR FATIGUED (6 HOURS OF SLEEP OR LESS TRIPLES YOUR RISK)
- SUFFERING FROM SLEEP LOSS (INSOMNIA), POOR QUALITY SLEEP, OR A SLEEP DEBT
- DRIVING LONG DISTANCES WITHOUT PROPER REST BREAKS
- DRIVING THROUGH THE NIGHT, MID AFTERNOON OR WHEN YOU WOULD NORMALLY BE ASLEEP
- TAKING SEDATING MEDICATIONS (ANTI-DEPRESSANTS, COLD TABLETS, ANTIHISTAMINES)
- DRIVING ALONE OR ON A LONG, RURAL, DARK OR BORING ROAD

DID YOU KNOW?

DRUNK ON EXHAUSTION?

BEING AWAKE FOR 18 HOURS IS EQUAL TO A BLOOD ALCOHOL CONCENTRATION (BAC) OF 0.08%, WHICH IS LEGALLY DRUNK AND LEAVES YOU AT EQUAL RISK FOR A CRASH

DRIVER SAFETY TIPS

- TAKE A BREAK WHEN YOU ARE FEELING DROWSY
- AVOID ANY MEDICATION THAT MAY MAKE YOU DROWSY DURING A LONG-HAUL TRIP
- BE CONSCIOUS OF YOUR DROWSINESS. BEING AWARE OF YOUR FATIGUE WILL HELP YOU RECOGNIZE YOU NEED TO REST
- DON'T RELY ON ALERTNESS METHODS TO WAKE YOU UP. THIS IS A TEMPORARY SOLUTION AND IT'S NOT NEARLY AS EFFECTIVE AS SLEEP
- CAUTIOUSLY DRINK COFFEE. CAFFEINE IS GOOD TO KEEP YOU AWAKE, BUT TOO MUCH CAN CAUSE INSOMNIA AND OTHER HEALTH PROBLEMS

NextExit

Work and rest requirements

In addition to the general duty to not drive a fatigue-regulated heavy vehicle on a road while fatigued, drivers must comply with certain maximum work and minimum rest limits.

Parties in the supply chain have to take all reasonable steps to prevent the drivers from exceeding these limits. This is similar to occupational health and safety laws and means that drivers must be allowed to stop if they are at risk of exceeding the limits and make alternative arrangements.



The Heavy Vehicle National Law (HVNL) sets three work and rest options.

1. **Standard hours**

Standard hours are the work and rest hours allowed in the HVNL for all drivers who are not operating under National Heavy Vehicle Accreditation Scheme (NHVAS) accreditation or an exemption. They are the maximum amount of work and minimum amount of rest possible that can be performed safely without additional safety countermeasures.

2. **Basic Fatigue Management (BFM)**

Those operating under NHVAS with Basic Fatigue Management (BFM) accreditation can operate under more flexible work and rest hours, allowing for (among other things) work of up to 14 hours in a 24-hour period. BFM gives operators a greater say in when drivers can work and rest, as long as the risks of driver fatigue are properly managed.

3. **Advanced Fatigue Management (AFM)**

Those operating under NHVAS with Advanced Fatigue Management (AFM) accreditation adopt a genuine risk management approach to managing heavy vehicle driver fatigue. Rather than prescribing work and rest hours, AFM offers more flexibility than standard hours or BFM in return for the operator demonstrating greater accountability for managing their drivers' fatigue risks.

To view the full list of hours related to the work and rest requirements for fatigue management go to the following link;

<https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/work-and-rest-requirements>

<https://www.nhvr.gov.au/> - All information above has come direct from the National Heavy Vehicle Register. This document is used as a guide only for training purposes The information contained may change at any time. It is important that you constantly monitor any changes issued by NHVR.