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WAKE UP CALL TO USERS OF
THE TRUCKING INDUSTRY:
THE CHAIN OF RESPONSIBILITY



WAKE UP CALL – CHAIN OF RESPONSIBILITY

The trucking industry of Australia (led by the Australian Trucking Association and its member organisations), seeks to engage the support of all participants in the supply chain to help improve safety and fatigue management practices up and down the supply chain.

This booklet is a 'wake up' call to the people and parties in the supply chain who rely on the trucking industry to transport their products. The days of 'all care, no responsibility' for safety in the trucking industry are about to end with the introduction of tough new laws which will allow anyone in the transport chain to be held liable where they have control and their actions result in an offence.

The new laws are designed to ensure that those who are responsible for conduct which affects compliance are accountable for failure to discharge that responsibility (**chain of responsibility**). Parties who should have been aware or should have taken precautions to prevent a breach will be held legally liable even though they may not have been physically involved in or aware of the breach (**duty of care**). That is, they will be legally liable for their contribution to unsafe on road behaviour.

The new laws will be specifically aimed at combating overloading, badly restrained loads, vehicle dimensions which are exceeded, speeding, excessive driving hours and poor fatigue management.

Can your organisation actively demonstrate due diligence in this area? Would you comply under 'chain of responsibility' legislation?



SPECIAL OBLIGATIONS OF CONSIGNORS

A consignor must not engage someone to transport goods by road if the consignor knows, or reasonably ought to know, that by complying with an express or implied condition of the engagement, the driver of a heavy truck or commercial bus transporting the goods would, or would likely to commit:

- a) a core driving hours offence; or
- b) a driving record offence; or
- c) a speeding offence

Penalty: \$1,500

Source: Road Transport Reform (Driving Hours) Regulations 1999, Part 5, Regulation 76.

SPECIAL OBLIGATIONS – ROSTERING AND SCHEDULING

1) A employer, or responsible employee of an employer, must not roster driving, work or rest time of an employed driver if the employer or responsible person knows, or reasonably ought to know, that by complying with the roster, the driver would, or would likely to, commit a core driving hours offence.

Penalty: \$1,500

2) A Employer, or responsible employee of an employer, must not schedule the transport of people or goods by road if the employer or responsible person knows, or responsibly ought to know, that by complying with the schedule, the driver would, or would be likely to, commit;

- a) a core driving hours offence; or
- b) a speeding offence

Penalty: \$1,500

Source: Road Transport Reform (Driving Hours) Regulations 1999, Part 5, Regulation 78.

WHY THE NEED?

Up until now road transport law has generally held drivers and in some cases, owners and operators responsible for safety on the road. Other parties in the transport chain who might influence the mass or dimension of a load, the manner of restraining that load, or driver fatigue, have rarely been held responsible.

The reason is that it has been difficult to apply chain of responsibility under current laws. Enforcement agencies have had to rely on offences such as 'complicity' or 'aiding or abetting'. Gathering the evidence needed for successful prosecutions has been difficult. Consequently prosecutions have been rare.

Also, despite concerted efforts by the ATA, its member organisations and the industry to improve safety, it has become abundantly clear that other parties in the supply chain have a significant influence on safety, and that further improvements are unlikely to be made until the 'other parties' accept more responsibility.



CHAIN OF RESPONSIBILITY – THE LAW

As knowledge increases about the causes of truck related roadsafety issues and their contribution to accidents, the courts are taking a broader view of responsibility and liability. Although legal approaches are still evolving, there is a move away from the sole focus on the individual operator to a more inclusive approach that considers the legal responsibility of other players such as managers, executives, company owners, contractors and consignors.

A recent court case highlights this trend. A driver from a trucking company was involved in an accident in which fatigue was a contributing factor. The presiding judge concluded that, although the company was aware of log book breaches by its drivers, and excessive hours of work were possible, it failed to establish a system which would have allowed it to properly collate and audit driving records to ensure drivers were not driving excessive hours.

The principle behind the 'Chain of Responsibility' is that any party which has control in a transport operation can be held responsible and may be made legally liable. It is closely related to the principle of 'duty of care', found in occupational health and safety legislation.



DUTY OF CARE/DUE DILIGENCE

'Duty of care' is an important legal concept that has long been used by the courts to impose liability in negligence or damages claims. Duty of care has more recently been introduced in Occupational Health and Safety legislation in each state.

Occupational Health and Safety legislation imposes general duties of care in the workplace. The primary duty is to ensure a safe operating environment. Responsibilities under occupational health and safety legislation are broad and include subcontractors.

'Due Diligence' refers to the need to take appropriate steps to ensure that legislative requirements are met.

source: NRTC

This principle has been given legal force for example by being incorporated into the National Heavy Vehicle (Driving Hours) Regulations, which are expressed in the following terms:

ROAD TRANSPORT REFORM (DRIVING HOURS) REGULATIONS : CHAIN OF RESPONSIBILITY

" A person must not ask, direct or require, directly or indirectly, a driver to do something if the person knows, or reasonably ought to know, that by complying the driver would, or would be likely to commit:

- a) A core driving offence*
- b) A driving record offence*
- c) A speeding offence*

Penalty: \$1,500

Example of Requirement: "A requirement that is an express or implied condition of the driver's engagement".

source: Road Transport Reform (Driving Hours) Regulations 1999, part 5, regulation 75.

So far, Queensland, New South Wales and South Australia have implemented the regulations.

Chain of Responsibility provisions have also been included in national Regulations governing dangerous goods and will soon become part of other aspects of road transport law.

Victoria may establish stand-alone Chain of Responsibility legislation to allow the prosecution of related offences, to overcome the difficulty of prosecuting under road transport regulations.

Wider recognition and strict enforcement of the chain of responsibility is potentially the single most influential factor in seeking to improve safety in the trucking industry

The new transport laws apply in addition to, but complement, other duties required by occupational health and safety, environment, corporations and other laws.

WHO IS PART OF THE CHAIN?

Who could be held liable under the new legislation? The parties who will be included in the Chain of Responsibility are those who perform the following activities:

- CONSIGNING** – for whom or on whose behalf goods are being transported by road. The term covers freight forwarders, loading agents, manufacturers, and importers.
- PACKING** – in cases of pre-packaged loads and container freight, placing items in packages or containers or pallets
- LOADING** – placing or restraining the load on a vehicle.
- CARRYING** – controlling the use of the vehicle for the transport of the load by road.
- DRIVING** – the physical act of driving the loaded vehicle.
- RECEIVING** – paying for the goods/taking possession of the load.

A director, secretary or senior manager of a body corporate are included in the chain of responsibility.



HOW DOES A USER OF TRANSPORT SERVICES IMPACT ON TRUCK SAFETY?

Knowingly or unknowingly, the activities of customers, consignors, agents, and suppliers have a major influence on drivers' fatigue levels, overloading, load restraint, and speeding, all of which affect safety. Systems, people and processes are the key influences.

Common problems which lead to speeding, overloading, and increased fatigue levels for drivers are:

- Exerting pressure on loaders, carriers and drivers to overload.
- Accepting overloaded trailers or containers.
- Accepting inadequately restrained loads at either the loading or unloading point.
- Poor load distribution, leading to overloaded axles.
- Understatement of mass on a consignment note.
- Poor or inaccurate loading of a vehicle.
- Poor load planning, leading to poor driver scheduling.
- Poor planning of truckload routes and load consolidation, especially where there is more than one loading point.
- Poor management of truck queues.
- Delays during loading and unloading.
- Inflexible customer delivery times and unloading windows
- Inefficient preparation for unloading e.g., removal of product protection and restraints (tarps etc).
- Inadequate provision of equipment and/or resources to unload trucks.
- Machinery breakdowns.
- Seasonal peaks and troughs.
- Staff rosters and absenteeism.
- Unavailability of stock or product at the loading point.

THANKS, BUT NO THANKS!

Early in the ATA's work to investigate supply chain practices, customers involved said, "Look, we don't tell the trucks to speed, overload or break log book hours, we want them here, safely and on time."

This is true, and the transport industry has bent over backwards to meet customer and supplier requirements, including pushing the safety envelope, often as a result of inefficiencies in other parts of the supply chain. This is why the trucking industry in Australia is acknowledged as the most efficient in the world. However the old adage 'all care, no responsibility' can no longer apply in relation to driver fatigue, overloading, load restraint, and speeding.

If, as a user of transport services you are found to have contributed to a breach of road transport law or to the fatigue of a driver which led to an injury or death, you can be just as liable as the trucking operator!

We need you to be part of the solution – NOT the problem.



CURRENT SAFETY INITIATIVES

The trucking industry and state regulatory authorities have initiated a number of innovative programs over the last five years which have been designed to improve safety and assist customers to meet their chain of responsibility obligations.

■ **The TruckSafe Industry Accreditation Programmes.**

This program was initiated and is managed by the ATA and requires operators and drivers to meet minimum standards of driver health and safety, vehicle maintenance, driver training, and management systems. 350 trucking operators are now 'TruckSafe' accredited.

■ **A pilot Fatigue Management Program.** This program is being trialed by the Queensland Department of Transport, the ATA and a number of trucking companies. It aims to become an alternative to the regulated hours of driving regime.

■ **The BHP Logistics Management Model.** This model aims to manage fatigue across the entire supply chain from consignor, through transporter to the end customer. The model consists of three modules - 'supplier', 'transporter' and 'customer'. The fatigue management program standards being trialed by Queensland Transport have been incorporated into the 'transporter' module.

■ **The Agribusiness Group/Forum.** This Forum consists of a number of companies in the fertilizer and grains industries who have come together to develop a set of safety standards for their trucking suppliers. The standards are based on Chain of Responsibility principles and have an Occupational Health and Safety focus.

■ **Chain of Responsibility Legislation.** The ATA and its member associations have been working with the National Road Transport Commission for some time to see Chain of Responsibility legislation introduced to target those people responsible for breaches of on road safety.



SUPPLY CHAIN SAFETY CULTURAL CHECKLIST

If you are a member of a supply chain, can your organisation demonstrate due diligence through the meeting of the following checklist of features:

QUESTION	YES	SOMETIMES	NO
1. Do you consider a trucking operator's safety management system when contracts are being discussed ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do service agreements/contracts expressly ask for members of the supply chain to be able to demonstrate fatigue management abilities, policies, and standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you monitor loading to ensure trucks are not overloaded?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Is there any flexibility in the timings for trucks to load and/or unload? Is this monitored?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Do your work practices support or exacerbate fatigue management, speeding or overloading?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Have staff been trained in fatigue management principles?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Do your staff understand the impact their decisions might have on an operator's ability to operate safely and comply with the law ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Do existing risk management strategies consider fatigue management?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Do you have a communications system which allows your trucking operators to advise you of arrival times and/or delays?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Has fatigue management been discussed with your transport operators, and does it feature in contractual performance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Do existing quality and safety manuals feature risk management as a performance requirement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Is your current performance in fatigue management measured, policed and reviewed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WHAT SHOULD YOU DO?

If your organisation puts a high priority on safety, the task of insuring your internal systems do not adversely affect the safety performance of your trucking operators is relatively simple.

To get started, we suggest the following:

1. Circulate this booklet widely.

2. Discuss with your trucking operators:

- Their risk management practices, including whether they are members of a safety accreditation scheme e.g., TruckSafe (you can reduce your business risks by insisting your trucking operators are accredited to a safety program).
- Their fatigue management standards and procedures (these are available from the organisations listed at the end of this brochure).
- Their drug policy, including the use of random testing.
- Your existing practices and procedures, especially how you communicate with your trucking operator(s).
- Your O H & S policy and procedures, especially as they relate to trucks and drivers on your premises
- Ideas for improvement

3. Review, with your senior management team, existing policies and procedures within your business as they relate to the activities of your trucking operators:

- Truck load/unload resources, times, timings and delays
- Truck load consolidation and route planning
- Queuing
- Risk management standards and procedures
- Business manuals and procedures
- Communications procedures with your trucking operators
- Contractual agreements with customers and transporters
- Training in the chain of responsibility.
- OH&S committees
- Codes of Practice



4. Discuss concepts/ideas with key supply chain members.

4. Discuss concepts/ideas with key supply chain members.

5. Trial in one supply chain first and then refine across all chains

Please do not wait until there is a fatigue-related incident or accident.

The principle behind the 'chain of responsibility' legislation is quite clear:

Any party who has control in a transport operation can be held responsible and may be made legally liable.

**Under chain of responsibility,
control = responsibility = legal liability**

Under the law, you cannot actively dismiss fatigue management or other truck safety responsibilities as not being your responsibility. Ignorance is no excuse.

By taking the time to read this booklet your organisation has taken the first step towards achieving a more professional and safe supply chain. For further information contact the ATA.

MEMBERSHIPS/SERVICE

Member organisations of the ATA are:

Australian Trucking Assoc.	(02) 6247 5832
NSW Road Transport Assoc.	(02) 9267 8222
ATA (NT)	(08) 8941 3177
Qld. Trucking Assoc.	(07) 3394 4388
SA Road Transport Assoc.	(08) 8445 8177
VIC Road Transport Assoc.	(03) 9646 8590
Transport Forum WA Inc.	(08) 9355 3022
NatRoad	(02) 6230 6889
Aust. Livestock Transporters Assoc.	(02) 6247 5434
Aust. Road Train Assoc.	(02) 6884 3304
TWU	(03) 9347 0099



The Membership of the Australian Trucking Association includes the leading national operators from across the country.

- Australia Post
- BHP Transport
- MPG Logistics
- TNT
- Boral
- Finemore Holdings Ltd
- K&S Corporation and the Scott Group Companies



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