

The 'New' Concept of a Chain of Responsibility for Transport and Logistics Operations in Western Australia



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A new legal concept termed the *Chain of Responsibility* will come into operation in March 2014 and will arguably have the most significant effect on land transport operators and the multitude of users of these services in recent history. The concept has been in development for approximately 10 years and will dramatically extend the responsibility for legislative breaches across the whole logistics chain, provide the regulatory authorities with strong investigative powers, make company officers personally responsible for breaches, introduce some unique penalties and incorporate a new statutory defence. Importantly, this legislation will also impact outside of the freight industry and extend well into other major industries, such as retail, manufacturing, construction and the resources industry.

OPERATION OF THE CHAIN OF RESPONSIBILITY

In November of 2003 the Council of Commonwealth, State and Territory Transport Ministers approved the *Road Transport Reform (Compliance and Enforcement) Bill* as the national model (National Model) for the implementation of Chain of Responsibility across all the States and Territories in Australia. The National Model provided for uniform offences for speeding, fatigue, mass, dimensions and loading aimed at the national trucking industry. It recognised that a number of people in the logistics train, other than merely the driver, had responsibility for safely conducting transport operations. Under the National Model, consignors, consignees, packers, loaders, schedulers, operators, contract managers, procurement officers and anyone else with influence on transport operations may be held accountable for a breach of the provisions. Pursuant to the Western Australian legislation, if employees such as packers, drivers, loaders etc. are charged then their employer may also be automatically charged. Upon conviction of the employee the employer is also deemed to have committed the offence and is subject to a number of

potentially severe penalties.¹

This extended level of responsibility goes beyond the transport industry and includes parties who are sending freight (consignor) or those who are receiving freight (consignee). The broad scope of this extended responsibility will impact upon every industry which utilises road transport. An example might be a resource project in the Pilbara being held accountable in their capacity as a consignee, for a piece of their machinery falling from a contractor's long haul truck, en route to their project from Perth. Equally the same project could be held accountable in their capacity as a consignor for a piece of machinery which falls from a truck during demobilisation back to Perth from their project.

THE WESTERN AUSTRALIA LEGISLATION

In Western Australia the law will take effect through two pieces of legislation. The *Road Traffic (Administration) Act 2008* provides the regulators with their powers whilst the *Road Traffic (Vehicles) Act 2012* will provide the operative provisions of the Chain of Responsibility. The relevant operating regulations are due to come into operation in March 2014. In this state the new laws will only encompass the National Model's mass, dimension and loads requirements (MDLR). In the Second Reading Speech for the *Road Traffic (Vehicles) Bill 2007*, the Honourable Ms Alannah MacTiernan identified that Western Australia was "clearly the rogue state" and statistically had a higher number of transport related breaches than any other State or Territory.² The intent of the operation of these acts is to make the transport industry safer.³

INVESTIGATIVE POWERS OF THE REGULATORS

The *Road Traffic (Administration) Act 2008* provides the regulators with a number of strong investigative powers. For MDLR purposes a regulator may order a driver to stop, move or leave a vehicle.⁴ This includes being able to

order a driver or any other person to vacate a vehicle or to move a vehicle to a particular location. It is an offence not to follow the direction given. A vehicle or business premises may also be entered, inspected and searched without the consent of the occupier. During the inspection any relevant records may be inspected and copied.⁵ For compliance purposes a regulator may also make a demand upon a person for the production of records, to provide information or to provide reasonable assistance in locating records or information.⁶ Again, it is an offence to fail to comply with a direction without a reasonable excuse. As can be seen by the above provisions there are quite extensive powers to assist in the investigation of offences in respect to the Chain of Responsibility.

LIABILITY OF OFFICERS FOR CHAIN OF RESPONSIBILITY OFFENCES

The *Road Traffic (Vehicles) Act 2012* is aligned to section 27 of the *Model Work Health and Safety Act* in that it makes officers of a corporation personally liable for breaches of the legislation. The *Road Traffic (Vehicles) Act 2012* specifies that when a body corporate is charged with an offence, any person who was an officer at the time of the offence may also be individually charged with the same offence.⁷ An 'officer' is defined as having the same meaning as given in the *Corporations Act 2001* (Cth). This essentially states that an 'officer' is anyone who makes or participates in decisions that affect the whole or a substantial part of the business. This extends responsibility for legislative breaches straight into the ranks of senior management. Imposing this responsibility on an individual basis to company officers clearly lifts the protection of the corporate veil.

STATUTORY PENALTIES

Penalties which flow from breaches of the *Road Traffic (Vehicles) Act 2012* are also somewhat unique and broad in their application. Pursuant to section 123, a court may impose a Commercial Benefit

their chosen occupation within the transport industry.

ALL REASONABLE STEPS - THE STATUTORY DEFENCE

In an effort to balance the strict liability offences provided in the *Road Traffic (Vehicles) Act 2012* the legislators have also incorporated the statutory defence from the National Model. In section 113 a person who has been charged with a MDLR offence may rely upon the defence if they can prove on the balance of probabilities that they did not know the offence was being committed. Further, the accused must also show that they had either taken *all* reasonable steps to prevent the offence or in the alternate that there were no reasonable steps they could have taken to prevent the offence. The requirement here is very different to the traditional Australian standard of mitigating risks by reducing the risk to a level that is as low as reasonably practicable. Pursuant to this act the defence is only complete once all reasonable steps are taken. The challenge here will be identifying all the steps that the court might believe are reasonable. Those working in the safety industry can attest that identifying each and every single strategy to mitigate an identified risk can be an extremely difficult and often subjective task.

To form an effective defence a person will need to show that they have taken steps to do all things reasonable in the circumstances to ensure that those parties they can influence were acting in accordance with the mass, dimension and loading requirements. This will include, at a minimum, conducting proper risk assessments, putting in place policies and procedures, enacting safe work practices, ensuring effective contractor management and training and educating staff in their roles and responsibilities.

Penalty Order. This order may require a convicted party to pay a fine up to three times the commercial benefit that was received or receivable from the commission of the offence. Place that into the context that, its not uncommon for a single truck load to be worth multi-millions of dollars, particularly for loads supporting the resources industry, then it can be appreciated that these orders could potentially result in fines in the sum of millions of dollars.

The courts may also impose a Supervisory Intervention Order which might require the offending entity to appoint staff to particular positions, remove staff, install equipment or implement operational or managerial practices.⁸ This could potentially be a very invasive order particularly if a company is forced by the court to appoint particular people into management positions or to implement court ordered practices, systems and procedures. Similarly the court may also impose a Prohibition Order on a convicted person to prevent them from filling a role or holding responsibilities associated with road transport.⁹ This type of order may conceivably stop an owner from managing his own business or prevent a person from continuing in

CONCLUSION

With the implementation of the Chain of Responsibility come a number of new strict liability offences that will hold directly accountable a broad range of people across the transportation and logistics industry. The concept now spreads this responsibility into many other industries that use land transportation to either obtain the resources they need to operate or to distribute their goods once produced. It also places a clear burden on all companies to ensure their staff and contractors are doing business in a safe manner. Due to the potential ramifications of the severe penalties involved in the Chain of Responsibility it is very likely that many of the provisions will be challenged. It will be an interesting journey to see the courts' perspective on how far the legislation will be allowed to influence industry to work in a safer manner.

NOTES

1. See section 111 *Road Traffic (Vehicles) Act 2012*.
2. Western Australia Parliament. Hansard Record of Proceedings, 13 March 2008, p.890b.
3. Main Roads Western Australia. (August 2013) "Chain of Responsibility" Legislation. Fact Sheet Number 1. Retrieved from <https://www.mainroads.wa.gov.au/Documents/CoR%20Fact%20Sheet%20No%201%20-%20Overview.RCN-D13%5E23399045.PDF>.
4. Part 4 Division 3 *Road Traffic (Administration) Act 2008*.
5. Sections 54 - 55 *Road Traffic (Administration) Act 2008*.
6. Sections 56 - 58 *Road Traffic (Administration) Act 2008*.
7. Section 108 *Road Traffic (Vehicles) Act 2012*.
8. Part 11 Division 5 *Road Traffic (Vehicles) Act 2012*.
9. Part 11 Division 6 *Road Traffic (Vehicles) Act 2012*.

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