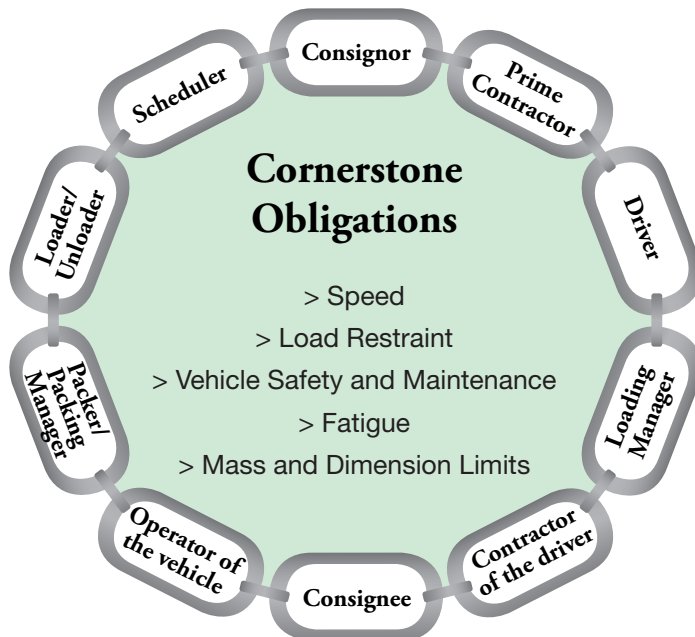


Chain of Responsibility



From taking “reasonable steps” to manage risk, to the imposition of a Primary Duty

The Chain of Responsibility (CoR) regime is intended to ensure that responsibility for preventing breaches of the Heavy Vehicle National Law (HVNL) are shared by each member of the supply chain. The HVNL regulates safety and maintenance issues in relation to heavy vehicles with gross vehicle mass or aggregate trailer mass of more than 4.5 tonnes.

New measures in the CoR regime are due to come into effect on 1 October 2018 and are intended to align heavy vehicle law with occupational health and safety law.*

From 1 October 2018 each member of the supply chain will have a primary duty to ensure that everything reasonably practical to guarantee safety in transport and reduce the risk of harm and loss, is done.

* Please note Western Australia and the Northern Territory have not implemented the Heavy Vehicle National Law and are governed by their own rules and regulations.

Measures

Everyone in the supply chain has responsibility for the transport activities they control or influence to ensure that breaches of the cornerstone obligations of the HVNL do not occur.

As the law presently stands it is incumbent on all members of the supply chain to take reasonable steps to manage risk and comply with the CoR regime.

Primary Duty

From 1 October 2018 all members of the supply chain will have a **primary duty** to prevent breaches of the CoR regime by eliminating or minimising the potential risk of harm or loss by doing all things reasonably practical to ensure safety.

Steps to ensure safety and compliance can include having processes and training in place which:

- > identify and evaluate risk
- > implement practices to ensure compliance with the CoR regime
- > utilise regular reporting
- > document steps and procedures in place to ensure compliance

Having taken ‘reasonable steps’ to manage risk is relevant to compliance with the current CoR regime however, the imposition of the **primary duty** means that “taking reasonable steps” will no longer be sufficient to defend against a finding that there has been a breach of the CoR regime and the hefty penalties that can flow.

Executives’ Liability

Executives should be aware that they are presently under an obligation to exercise due diligence to ensure compliance with the CoR regime. From 1 October 2018 Executives will have a primary duty to exercise this due diligence and ensure compliance.

Definitions

Consignor

A consignor is a person who:

1. has agreed to be and has been named or otherwise identified as the consignor of the goods in the relevant road transport documentation; or
2. if no person as described in 1 can be identified, is the person who engages an Operator either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or
3. if no person as described in 2 can be identified, is the person who has possession or control of the goods immediately before they are transported by road; or
4. if no person as described in 3 can be identified, is the person who loads the vehicle for road transport at a place;
 - (a) where goods in bulk are stored, temporarily or otherwise held waiting collection; and
 - (b) that is usually unattended, other than by the vehicle's driver or someone else necessary for the normal use of the vehicle, during loading; or
5. there is no person as described in (a) or (b) above and the goods are imported into Australia and the person is the importer of the goods.

Consignee

A consignee is a person who:

1. has agreed to and has been named as the consignee in the relevant road transport documentation; or
2. has received the goods after the road transport (other than a person who is merely the Unloader of the goods).

Contractor of the driver

Is the person who engages a person to drive the vehicle pursuant to a contract.

Driver

The driver for a vehicle means:

1. the person driving the vehicle and includes:
 - (a) a person accompanying the person driving the vehicle on a journey or part of a journey, who has been, is or will be sharing the task of driving during the journey; and
 - (b) a person who is driving the vehicle as a driver under instruction or under an appropriate learner licence or learner permit; and
 - (c) where the driver is a driver under instruction, the holder of a drivers licence occupying the seat in the vehicle next to the driver.

Loading Manager

A person is a loading manager if:

1. the goods are loaded onto a heavy vehicle at regular loading or unloading premises for heavy vehicles; or
2. the goods are unloaded from a heavy vehicle at regular loading or unloading premises for heavy vehicles; and

the person is:

1. the person who manages, or is responsible for the operation of the premises; or
2. has been assigned by a person mentioned in 1 above as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a Loader or Unloader of goods at the premises.

Loader/Unloader

Generally a Loader or Unloader:

1. loads or unloads the goods on or from the vehicle; or
2. loads or unloads freight containers (whether or not it contains goods for road transport); or
3. loads or unloads the vehicle, or any container that is part of the vehicle, with the goods for road transport.

Operator

A person who is responsible for controlling or directing the use of the heavy vehicle or the towing vehicle in a vehicle in combination.

Packer/Packing Manager

A person packs goods, is a packer of goods or is a packing manager if the person:

1. puts the goods in packaging, even if that packaging is already on a vehicle; or
2. assembles the goods as packaged goods in an outer packaging, even if that packaging is already on a vehicle; or
3. supervises an activity mentioned in (a) or (b) above; or
4. manages or controls an activity mentioned in paragraphs 1, 2 or 3 above.

Prime Contractor for a vehicle

The Prime Contractor for a vehicle is the person who engages the driver to drive the vehicle under a contract for services.

Scheduler for the vehicle

The Scheduler for the vehicle is a person who:

1. schedules the transport of any goods or passengers by vehicle; or
2. schedules the work times and rest times of the vehicle's driver.

Our team



Elizabeth Guerra-Stolfa

Partner

T +61 3 9321 7864

EGuerra@rigbycooke.com.au



Andrew Hudson

Partner

T +61 3 9321 7851

AHudson@rigbycooke.com.au



Bethany Clark

Lawyer

T +61 3 9321 7806

BClark@rigbycooke.com.au

Company profile

Rigby Cooke Lawyers is a full service law firm providing commercial expertise and industry knowledge to private and public sector clients across Australia.

With origins that can be traced back to the 1840s, we have earned our reputation of achieving success for – and with – our clients, by remaining adaptive to change. We do this by understanding each of our clients' businesses and industry, and by staying at the forefront of changes in technology and legislation.

This is because, above all else, we remain true to our mission, *Our people: Your success.*

Our lawyers are technically excellent in their areas of expertise; but more importantly for our clients, they are genuinely concerned with the application of the law in the 'real world' to get results. We are outcome-focused and commercially-minded – helping you achieve your goals in the most effective and efficient manner is our key objective.

Our clients range from some of the largest and best known Australian and overseas companies to mid-market, privately owned or publicly listed companies, government entities and private clients with a mix of commercial and family assets and investments.

We can work with you by providing full-service ongoing support for all your commercial and private needs or by offering specialty expertise when required.

A key part of our way of operating is to get to know you and your business. We visit your sites; we work with your people. We like to work with clients on an ongoing basis so we can be involved from the beginning of a project, providing the external perspective that can make a difference.

Full-service commercial lawyers

Our team of over 85 staff in Melbourne covers:

Practice areas

- > Construction & Projects
- > Corporate & Commercial
- > Customs & Trade
- > Insolvency & Reconstruction
- > Intellectual Property
- > Litigation & Dispute Resolution
- > Mergers & Acquisitions
- > Migration
- > Planning & Environment
- > Property
- > Tax & Wealth
- > Wills & Estates
- > Workplace Relations

Industry expertise

- > Health & Pharmaceutical
- > Hotels & Accommodation
- > International Business
- > Manufacturing
- > Not-for-Profit
- > Property Development
- > Tourism, Leisure & Hospitality
- > Transport & Logistics

RIGBY COOKE LAWYERS

Level 11, 360 Elizabeth Street
Melbourne Victoria 3000

GPO Box 4767
Melbourne Victoria 3001

T +61 3 9321 7888
F +61 3 9321 7900
W www.rigbycooke.com.au

ABN 58 552 536 547
DX 191 Melbourne



©2018 Rigby Cooke Lawyers.
Liability limited by a scheme approved under
Professional Standards Legislation.

Disclaimer

This publication contains comments of a general nature only and is provided as an information service. It is not intended to be relied upon as, nor is it a substitute for specific professional advice. No responsibility can be accepted by Rigby Cooke Lawyers or the authors for loss occasioned to any person doing anything as a result of any material in this publication.