

CHAIN OF RESPONSIBILITY & INSURANCE COVER

The 'chain of responsibility' principle affects all parties involved in the transport chain. It operates to expose any person or entity with control or influence over transport activities, liable for actions or inactions that cause or contribute to a road safety or work place safety breach. The 'chain of responsibility' principle also applies to the creation of a safe

Work Environment by directors, managers and employees, including all locations that the transport operator conducts business, including but not limited to, suppliers and end receivers premises, public and private thoroughfares, ports etc.

A key purpose of the 'chain of responsibility' principle is to reduce Heavy Vehicle Driver Fatigue, but it does extend to other areas of road safety as we have recently seen in a couple of specific cases where Transport Operators have been caught up in the "Chain of Responsibility" as demonstrated as follows;

Recently a leading livestock & grain exporter was convicted under the *Road Transport (General) Act 2005* (NSW) of 10 grain overloading offences and fined \$3,000. The RTA appealed this decision to the Supreme Court and the appeal was upheld, resulting in a fine of \$49,500 plus court costs. The maximum penalty was \$544,500.

The Grain Exporter was not directly involved with carrying the grain but was deemed the consignor, therefore bound by the *Road Transport (General) Act 2005* (NSW), and although the Judge ruled that the exporter should have been aware of its obligations, there was no evidence the law was deliberately breached.

In Queensland, the 'chain of responsibility' principle is enacted in the *Transport Operations (Road Use Management) Act 1995* (Qld) and extends to contraventions of any mass, dimension or loading requirements (including container weight declarations) as well as fatigue offences.

The parties exposed to 'chain of responsibility' liability are usually described as 'influencing persons' and include the:

- Driver
- Employer of a driver
- Contractor of a driver
- Operator of a vehicle
- Scheduler of goods or passengers for transport by a vehicle, and the Scheduler of its driver
- Consignor and Consignee of the goods transported by the vehicle
- Loading manager (e.g. the person who supervises loading and/or unloading, or manages premises where regular loading and/or unloading occurs)
- Loader and/or unloader of goods.

Under the 'chain of responsibility' principle, a consignor will include anyone that commissions the transportation of goods or merchandise, e.g. a primary producer that transports produce by road; and a consignee will include anyone that takes possession of the goods or merchandise, e.g. the wholesaler that receives produce.

A consignor and consignee must take reasonable steps to ensure the terms of any services contract for transport of produce will not result in, encourage or provide an incentive for a driver to drive while fatigued, in breach of their work and rest hours obligations under transport fatigue management laws or in breach of any other law. They must also ensure they do not make a demand that affects a time in a schedule that may cause a driver to drive while fatigued.

Similarly, loading managers must ensure that the loading and unloading of heavy vehicles will not cause a driver to drive while fatigued, in breach of their work and rest hours obligations under transport fatigue management laws or in breach of any other law.

Under most state laws associates of 'influencing persons' will also be exposed to 'chain of responsibility' liability. For an influencing person who is an individual, an associate will include a spouse, relative, partner or employee who acts in accordance with the directions, instructions or wishes of the influencing person.

In respect of a corporation, or other body corporate, an associate will include an executive officer as well as any person who holds a controlling interest in that entity. This means that directors, officers and shareholders can be liable if the corporate entity is found liable. Importantly, an 'executive officer' means anyone involved in the management of these organizations. It extends beyond directors and officers as understood by the *Corporations Act 2001* (Cth) to those who have the capacity to impact upon management decisions of a corporate entity or exercise managerial discretion. Such persons will be found personally liable for 'chain of responsibility' offences committed by employees.

There are a number of risk management steps that can be taken to minimise the potential for exposure to 'chain of responsibility' offences. The law requires an entity demonstrate that it took reasonable steps to prevent a breach from occurring as a result of their activities. Not only is it important that business practices be regularly reviewed, but companies and individuals should consider some form of insurance protection to provide legal defense costs cover in the event of an inadvertent breach.

We can confirm there are insurance products available to cover such exposures, in particular will protect the Insured Company, its Directors, Principals, Partners and Employees for their Liability to pay fines which may arise out of innocent or wrongful breaches of the many Acts which control their operations.

The policy covers:

- ▶ Fines
- ▶ Costs & Expenses to defend the imposition of a fine
- ▶ All Acts administered by Commonwealth, State & Local Governments
- ▶ Innocent Parties – the Wrongful acts of one party do not prejudice the cover provided to other innocent parties

For more information please feel free to contact Austbrokers AEI Transport, an Insurance Broker, specialising in the Transport Industry.



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