

15th November 2018

This notice is to provide information to our clients on changes to the Chain of Responsibility (COR), issued by the National Heavy Vehicle Regulator (NHVR), which recently came into effect. These changes are focused on improving the safety for all parties that are involved in the use (directly or indirectly) of heavy vehicles. These changes further extend the responsibility that our clients have as a consignor or consignee in the COR and that we have as a supply chain service provider. It is very important that you understand the COR and the recent changes as they expand the responsibility to include you, our valued clients.

What is the NHVR and the Heavy Vehicle National Law?

The NHVR was established in 2013 as Australia's independent regulator for all heavy vehicles and they work as an independent statutory authority pursuant to the [Heavy Vehicle National Law](#) (HVNL). The NHVR works to create a safe, efficient and productive heavy vehicle industry serving the needs of Australia.

As part of making the heavy vehicle industry safer, the changes to COR that went into effect 1 October, are to make sure everyone in the supply chain shares responsibility for ensuring breaches of the HVNL do not occur. Under COR laws if you are named as a party in the chain of responsibility and you exercise (or have the capability of exercising) control or influence over any transport task, you have a responsibility to ensure the HVNL is complied with. This includes our clients, including when they receive or dispatch cargo.

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. Part of our responsibility as a supply chain service provider is to ensure that our clients are aware of their increased legal responsibility and liability.

Why does this matter to you as consignor or consignee?

It is important for you, as a consignor or consignee, to be aware that the increased legal liability applies to all parties for their actions or inactions. The parties in the Chain of Responsibility for a heavy vehicle are:

- an employer of a driver
- a prime contractor for a vehicle if the vehicles driver is self-employed
- an operator of the vehicle
- a scheduler for the vehicle
- a loading manager for any goods in the vehicle
- a loader and/or unloader of a vehicle
- a consignor of any goods for transport by the vehicle
- a consignee of any goods in the vehicle
- a loader and/or unloader of any goods in the vehicle.

Further, please inform your suppliers, both domestic and overseas of your increased responsibility in the COR. It is important they provide accurate container weights, weight distribution and proper load restraints inside a container as these play an important role in ensuring safety and compliance.

When could COR apply?

Some examples when the COR apply include:

- Heavy vehicle driver breaches of fatigue management requirements or speed limits as a consequence of unreasonable demands.
- Heavy vehicle driver breaches of mass, dimension, or loading requirements.
- Where any instructions actions or demands to parties in the supply chain, including from a client or supply chain service provider, causes or contributes to an offence under the HVNL.

That includes anything done, or not done (directly or indirectly) by any party including consignor/consignee that has an impact on compliance, for example:

- Schedulers or clients whose business practices place unrealistic timeframes on drivers (speed) which cause them to exceed their work rest options (fatigue).
- Loading managers at a supply chain services provider or client whose business practices, including loading/unloading times, cause the driver to exceed the speed limit (reasonable time to complete tasks must be provided),
- Packers at a supply chain service provider or a client that do not properly use load restraints inside a container.
- Operators carrying freight containers that are not compliant with vehicle mass or dimension limits and or not having a verified Container Weight Declaration.

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, including clients. This includes what measures those parties have in place to prevent breaches of the HVNL occurring. Each party in the chain must demonstrate to the Court that they took all reasonable steps to prevent the contravention or show the court that there were no steps they could reasonably be expected to have taken to prevent the contravention.

The recent changes also shift the COR to a Primary Duty focus. This means all team members, from a packer or operators up to Executive Officers, in both our business and your business, are required to exercise reasonable diligence to ensure that their corporation does not commit a COR offence.

Primary Duty means that businesses must:

- take a proactive and preventative outlook,
- identify, assess and control risk,
- recognise their obligations and requirements as 'risks', and
- manage requirements with best practice.

Compliance Framework

All parties in the supply chain, including consignors and consignees (our clients) must develop an assurance regime to test effectiveness of their systems and show compliance. Steps include:

- demonstrating compliance including training and awareness,
- monitoring their business through risk-based and interval audit regime, and
- consulting with clients, partners and subcontractors to ensure awareness and compliance.

Future of COR Investigations

As part of the changes, investigations will be collaborative where appropriate and investigating parties have increased power to gather information. Investigations will include a review of the systems in place for all parties involved in the supply chain and the focus will be on business practices and risk management.

AXIMA's commitment

At AXIMA, we are focused on safety and take our responsibility seriously. It is important that our clients do the same as they are parties in the COR for a heavy vehicle. We have updated our policies and procedures to ensure we support compliance with the COR and encourage you to do the same. Areas of focus include:

1. Safety and Policy Documentation – highlighting a management commitment, safety responsibilities, key safety personnel, documentation and third party interaction;
2. Safety Risk Management – highlighting hazard identification, risk assessment and mitigation/treatment, risk monitoring and review, and incident reporting;
3. Safety Promotion and Training – comprising safety training and education, safety communication and positive safety culture; and
4. Safety Assurance – comprising internal safety investigations, safety performance monitoring and measurement, change management and continuous improvement

It is more important than ever to address business practice compliance with the amendments to the *National Heavy Vehicle Law*. This is because as part of the amendments, a director of a corporation, or a person concerned with the management of a corporation must exercise due diligence to ensure that a corporation complies with its duties under the *National Heavy Vehicle Law*. If they do not, and even though that person may have no direct exposure to the day to day carriage of goods on the road, they will commit an offence under the *National Heavy Vehicle Law*.

To learn more about the specific changes to the COR, please follow the below link:

<https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/changes-to-cor>

To learn more about potential COR gaps in your business practices and system controls, follow the below link to a free Gap Assessment Tool:

<https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/cor-gap-assessment-tool>



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We thank you for your time and attention in reading this notice as it is very important that you are aware of these changes. If you have any questions, would like further advice, or would like for us to visit your site to discuss, please contact our National Transport Manager, Gihan DeSilva, on 03 8368 5300.