

Regulatory Advice - Managing the risks of heavy vehicle transport activities in the construction industry (Operator)

Note: This information is intended as general guidance only and does not constitute legal advice. We encourage you to obtain independent advice about your legal obligations. If you have any feedback on the information provided please contact us at info@nhvr.gov.au

This regulatory advice provides guidance to businesses in the construction industry about their legal obligations under the Heavy Vehicle National Law (HVNL) and how to manage safety risks and hazards associated with their heavy vehicle transport activities.

Who is this advice for?

- Heavy vehicle operators who engage in transport activities within the construction industry and their executives.
- Other parties in the [Chain of Responsibility \(CoR\)](#) and their executives.

Note: [Transport activities](#)↓ includes all activities and business processes associated with the use of a heavy vehicle on a road.



What are my legal obligations?

Under the HVNL section 26C, each party in the CoR and their executives has a **primary duty**:

- **to ensure the safety of transport activities, *so far as is reasonably practicable*.**

This is an obligation to eliminate or minimise public risks, and a prohibition against directly or indirectly causing or encouraging a driver or another person, including a party in the CoR, to contravene the HVNL. CoR parties, and their executives, should be aware that they remain a CoR party even when their transport activities are contracted, or subcontracted, to another party.

Under the HVNL section 26D, executives also have an **additional duty**:

- **to exercise *due diligence* to ensure the business complies with its primary duty.**

What are the legal consequences?

Under the HVNL, you have a legal obligation to eliminate or minimise public risk. If a breach is proven, the law provides sanctions against a company and its executives, ranging from education and improvement notices to prosecution.

Sanctions include:

- formal warnings
- enforceable undertakings
- infringement notices

- improvement notices
- prohibition notices
- injunctions
- prosecution.

Why is this an issue for the construction industry?

A pattern of non-compliance

Based on reports from compliance officers and the 2021 National Roadworthiness Survey, heavy vehicles commonly used by the construction industry have an observed pattern of non-compliance. The survey identified mechanical safety as an issue for heavy rigid truck and trailer combinations, a vehicle type used extensively in construction projects. Despite ongoing regulatory oversight, the issue persists.

Increasing construction projects

Economic recovery initiatives by State and Federal Government agencies in response to COVID-19 are expected to cause a significant increase in infrastructure and construction projects. This means an associated increase in heavy vehicle use. Increased heavy vehicle traffic will, in turn, cause an increase in interaction between heavy vehicles and light vehicles and pedestrians, especially in congested urban areas. The increase in heavy vehicle traffic elevates the risk of crashes and pedestrian (strikes) deaths and injuries.

NHVR compliance activities

Our compliance activities will focus on construction industry CoR parties and their executives who have a significant and cascading influence over the safety of heavy vehicles in their industry, even when those activities are being performed by other CoR parties.

What are the hazards and risks?

Heavy vehicle hazards in the construction industry may include:

- the mechanical safety of vehicles, especially heavy rigid truck and trailer combinations
- loads not being properly restrained
- vehicles exceeding mass and/or dimension limits.

Related hazards may include:

- driver fatigue/ fitness to drive
- workers impaired by alcohol and or other drugs
- vehicles complying with access requirements.

The potential safety risks resulting from these hazards may include:

- serious injury or death to workers, road users and the public
- damage to road and other infrastructure.

Why is it important to manage these risks and hazards?

By appropriately managing these risks and hazards, you help to:

- prevent injury and fatalities to workers, other road users, and members of the public
- avoid financial losses due to delays, impacts on scheduling, grounding of vehicles, and damage to equipment and/or infrastructure
- avoid regulatory and other legal sanctions
- enhance your business's reputation and position it as a business or employer of choice
- create a safety culture within your business where workers are encouraged to make informed decisions about safety.

How can I manage these hazards and risks?

Best practice is to take a proactive approach at preventing these risks. At a minimum, you should undertake a risk assessment to identify the risks and consider what controls are required to prevent those risks:

Control measures may include:

- implementing policies and procedures regarding the prevention of safety risks and strongly communicating these standards to employees and other parties
- facilitating effective communication and cooperation with other parties regarding the management of safety risk, controls and best practice
- providing information, training of policies, procedures and standards to employees
- ensuring policies and procedures are implemented and followed by employees
- ensuring that commercial contracts do not create incentives for people to breach the HVNL
- implementing a vehicle maintenance system with adequate oversight to verify suitability
- only dealing with reputable parties who can demonstrate a strong compliance and safety culture
- implementing systems for recording, reporting and managing faults and non-compliance.

Control measures for related hazards may include:

Mechanical safety

- implementing a daily check list to ensure the mechanical safety of vehicles
- utilising a recording and reporting system regarding faults, defects and maintenance history
- ensuring any reported faults are responded to in a timely manner
- adhering to a systematic service schedule and tracking of fleet maintenance with particular attention to vehicle component wear that is accelerated by the operating environment
- actively monitoring fleet age (noting that vehicles exceeding 12 years old were identified in the National Roadworthiness Survey as more likely to be defective).

Load restraint, mass and dimension limits

- identifying the mass and dimension requirements that apply to each vehicle or combination and communicating that information with employees and other parties
- providing drivers with training and measuring devices, such as tape measures or height sticks, to confirm the vehicle and its load are within allowable dimensions
- providing drivers with accurate load weights and dimensions before or at the point of loading
- providing drivers with the necessary training and equipment to allow them to safely restrain the load
- developing load restraint systems for common loads and providing such to employees and other parties for implementation
- not entering contracts or arrangements that have a risk of causing a driver to breach mass, dimension and loading requirements
- having regular catch ups with employees and other parties to communicate risk, controls and best practice.

Fatigue

- ensuring scheduling and rostering minimises driver fatigue risk
- ensuring drivers take regular rest breaks
- ensuring drivers accurately record work and rest hours
- empowering drivers to self-report when they're fatigued and not fit to work.

Alcohol and drugs

- developing a policy and supporting procedure outlining how to deal with alcohol and other drug impairment in the workplace
- implementing an alcohol and drug screening program which may include pre-employment random

- or targeted testing based on reasonable suspicion or following an accident or incident
- providing information, education, and training to employees on how to deal with the identification of alcohol and other drug impairment.

Access

- ensuring that drivers understand the access requirements for the vehicle they are driving
- providing drivers with compliant pre-determined routes that must be followed
- ensuring that contingency arrangements are provided for when disruption to the planned route is experienced.

Learn more about managing heavy vehicle safety risks by exploring more of our Regulatory Advice topics.

Resources

Master Code

Guidance and direction on how to effectively introduce a risk management process within your business can be found in Section 3 of the [Master Code](#).

Safety Management System (SMS)

Management of safety risks can be more effective with the adoption, development and active use of a Safety Management System (SMS).

An SMS is a systematic approach to managing safety, including the necessary organisational structures, accountabilities, policies and procedures, which is integrated throughout the business wherever possible.

An SMS can help you:

- provide a safer work environment for your employees, customers, contractors and the public
- manage your safety duties under the HVNL
- demonstrate your ability to manage risk and ensure safety
- become an employer of choice and preferred supplier to customers
- make informed decisions and increase efficiency
- allocate resources to the most critical areas that have an impact on safety
- reduce costs associated with incidents and accidents.

Regardless of the size of a business, an effective SMS can help your business have an appropriate safety focus and comply with its duty to ensure the safety of its transport activities.

Structured information and resources including quick-guide documents, templates, worked examples and toolbox talks to guide you through each step of developing an SMS, implementing it with your management and staff, and extracting safety are available. Targeted guidance, tools and information regarding the development and implementation of an SMS is available in the [9 Step SMS Roadmap](#).

Understand the HVNL and your primary duty

Under the HVNL section 26C, each party in the CoR has a primary duty to ensure the safety of its transport activities, *so far as is reasonably practicable*. This duty includes an obligation to eliminate or minimise public risks and a prohibition against directly or indirectly causing or encouraging a driver or another person, including a party in the CoR, to contravene the HVNL.

Transport activities

Transport activities include all the activities associated with the use of a heavy vehicle on a road. It includes safety systems, business processes such as contract negotiation and communication and

decision making, as well as the activities normally associated with the transport and logistics sector such as training, scheduling, route planning, managing premises, selecting and maintaining vehicles, packing, loading and unloading.

So far as is reasonably practicable

So far as is reasonably practicable means an action that can reasonably be done in relation to the duty, considering relevant matters such as:

- the likelihood of a safety risk or damage to road infrastructure
- the harm that could result from the risk or damage
- what the person knows, or ought reasonably to know, about the risk or damage
- what the person knows, or ought reasonably to know, about the ways of removing or minimising the risk, or preventing or minimising the damage
- the availability and suitability of those ways
- the cost associated with the available ways, including whether the cost is grossly disproportionate to the likelihood of the risk or damage.

More information can be found in [Regulatory Advice - Reasonably practicable](#).

Executives of businesses that are parties in the CoR have a distinct duty under the HVNL section 26D to exercise due diligence to ensure the business complies with its duty to ensure the safety of its transport activities.

Due diligence

Exercising due diligence includes taking reasonable steps to:

- acquire and maintain knowledge about conducting transport activities safely
- understand the nature of the business's transport activities, including the hazards and risks associated with those activities
- ensure the business has, and uses, appropriate resources to eliminate or minimise the hazards and risks associated with its transport activities
- ensure the business has, and uses, processes to eliminate or minimise the hazards and risks associated with its transport activities and that information about hazards, risks and incidents is received, considered and responded to in a timely way.

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