Chain of Responsibility

Capability by Design

October/November 2017
Overview

**Risk Management**
- Identifying and controlling risk using principles of ISO31000

**CoR Gap Assessment**
- Introduction to the CoR tool and tips on how to get the most from it

**Recommendations**
- Unpack the recommendations to design solutions

**Codes of Practice**
- Understanding the impact of Registered Industry Codes of Practice

**Review**
- Summary of key changes to the HVNL in 2018
CoR PHILOSOPHY

Chain of Responsibility (CoR) laws mean that any *party in the chain* who has the ability to *control* or *influence* over the transport activity is responsible for *safety* on the road.
Summary of amended law

**Business Practices**
System controls to identify and manage risks in transport activities

**Onus of Proof**
Prosecution to prove *beyond reasonable doubt* what could have been done, what should have been done, and what wasn’t done

**Reasonably Practicable**
What was able to be done in the circumstances

**Safety Duty**
Parties in the Chain of Responsibility will be required to *ensure safety*

**Vehicle Standards**
Added to *Speed, Fatigue*, and *Mass, Dimension* and *Loading* as an obligation under CoR

**Executive Officer**
Must apply *Due Diligence* to ensure compliance with the safety duty
26C Primary duty - HVNL
(1) Each party in the chain of responsibility for a heavy vehicle must ensure, so far as is reasonably practicable, the safety of the party’s transport activities relating to the vehicle.

Primary duty of care - Model WH&S Law
(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
(a) workers engaged, or caused to be engaged by the person; and
(b) workers whose activities in carrying out work are influenced or directed by the person; while the workers are at work in the business or undertaking.
Subsection (2) extends that duty to include the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

21 Duties of employers to employees – OH&S (Victoria)
(1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.
Section 23 subsequently extends that duty to include persons other than employees are not exposed to risks to their health and safety.
HVNL, WH&S, and OH&S

26C Primary duty - HVNL
(2) Without limiting subsection (1), each party must, so far as is reasonably practicable—(a) eliminate public risks and, to the extent that is not reasonably practicable to eliminate public risks, minimise the public risks ...
(b) party’s conduct ... cause or encourage (driver to contravene, driver to exceed speed limit, another {incl. party in the COR} to contravene)

Management of risks - Model WH&S Law
A duty imposed on a person to ensure health and safety requires the person—
(a) to eliminate risks to health and safety, so far as is reasonably practicable; and
(b) if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

20 The concept of ensuring health and safety – OH&S (Victoria)
(1) To avoid doubt, a duty imposed on a person by this Part or the regulations to ensure, so far as is reasonably practicable, health and safety requires the person—
(a) to eliminate risks to health and safety so far as is reasonably practicable; and
(b) if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
HVNL, WH&S, and OH&S

26C Primary duty - HVNL
(3) For subsection (2)(b), the party’s conduct includes, for example—
   (a) the party asking, directing or requiring another person to do, or not do, something; and
   (b) the party entering into a contract—
   (i) with another person for the other person to do, or not do, something; or
   (ii) that purports to annul, exclude, restrict or otherwise change the effect of this Law.

No contracting out - Model WH&S Law
A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any
duty owed under this Act or to transfer to another person any duty owed under this Act is void.

21 Duties of employers to employees – OH&S (Victoria)
(3)(b) the duties of an employer under those subsections (1&2) extend to an independent contractor engaged
by the employer, and any employees of the independent contractor, in relation to matters over which the
employer has control or would have control if not for any agreement purporting to limit or remove that control.

Caltex Oil (Australia) Pty Ltd v Best (1990) 170 CLR 516; (1990) 65 ALJR 65
**Benefits of Alignment**

**Common Approach**
Risk processes and frameworks that meet both Regulatory standards

**Common Systems**
Manage safety risks across the entire business with same systems/practices

**Economy**
Reduce costs by using the same processes and similar practices

**Integration**
Create safety and compliance synergies across the supply chain with common approaches and strategies
So Far As Reasonably Practicable

*Reasonably practicable* means something that is, or was at the time, reasonably able to be done to ensure health and safety, while taking into account and weighing up all relevant matters including:

- What is the likelihood of the risk occurring?
- What is the degree of harm that could be caused?
- What do you know about the risk?
- What are the ways to remove the risk? Are they feasible?
So Far As Reasonably Practicable

*Reasonably practicable* means something that is, or was at the time, reasonably able to be done to ensure health and safety, while taking into account and weighing up all relevant matters including:

Cost

Costs of modifying are proportionate to the risk
Introduction to risk management
Revisiting Phase One – Safety Management Systems

A set of **resources** and **activities** integrated in a business that all work together efficiently as a system to help improve safety.
Safety Risk Management

- Hazard identification process
- Risk assessment and mitigation/treatment
- Risk monitoring and review processes
- Incident reporting

SMS

Safety Policy and Documentation

- Management commitment
- Safety accountabilities
- Appointment of key safety personnel
- Documentation – processes, procedures, policies, forms
- Third party interactions and contracts

Safety Assurance

- Safety performance monitoring and measurement
- Internal safety investigations
- Change management
- Continuous improvement of the safety system

Safety Promotion and Training

- Training and education
- Safety communication
- Positive safety culture
Unpacking the risk management guide

This session will focus on the risk management element of SMS, drawing on information in the risk management guide.

Exploring each of the four steps in the risk management guide.
What is risk management?

The process and tools used by a business to identify things that could go wrong, understanding their impact on the business, making sure there are things in place to manage them and making sure they work.
Why manage risk?

Find things that might influence how you operate your business, and address them before something happens.

Demonstrate how and why you made decisions, allowing you to be in a defensible position.

Structure and formality will increase consistency and prioritisation.
Step 1 – Identify hazards

- The source of risk
- Reporting system & planned activities
- Promote open communication – just culture
- Record and provide feedback
Step 2 – Assess risk

- What is the risk?
- Consequence(s)
- Likelihood
- Risk level
- Compare and prioritise.

What and why?
When a hazard has been identified, it is important to figure out how much of an impact it could have on the business, and how likely it is that it will happen.

- Hazard - anything that could cause harm or loss
- Risk - the possibility that harm or loss might occur as the result of a hazard.

For example: Faulty load restraint equipment is a hazard and the risk is that the load could fall from the vehicle.

How do you do it?
To assess a risk, it is important to include the right people in the process, such as people with the authority to make decisions and those involved in the task or activity associated with the risk. You need to consider:

- What is the consequence if the risk occurred?
- What is the likelihood of that actually happening?
Consequence

- Impact upon your business
- Tailored to your business
- Worst possible?
- Existing controls
- What is the expected outcome?

<table>
<thead>
<tr>
<th>Consequence</th>
<th>Insignificant</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safety</td>
<td>Near miss or</td>
<td>Moderate</td>
<td>Severe</td>
<td>Fatality or permanent disability</td>
</tr>
<tr>
<td></td>
<td>very minor</td>
<td>injury with lost time</td>
<td>injury with hospitalisation</td>
<td></td>
</tr>
<tr>
<td>Financial</td>
<td>Minimal cost</td>
<td>Medium cost</td>
<td>High cost</td>
<td>Extreme cost</td>
</tr>
<tr>
<td>Reputation</td>
<td>Minor impact on client relationship</td>
<td>Loss of client</td>
<td>Loss of multiple clients, difficult to win new contracts</td>
<td>Unable to keep operating</td>
</tr>
</tbody>
</table>
## Likelihood

- Probability of the event and the consequence
- Sources of information, e.g.
  - Knowledge and experience
  - Historical occurrence
  - Other industries.

<table>
<thead>
<tr>
<th>Likelihood scale</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost certain</td>
<td>Expected to occur in most circumstances</td>
</tr>
<tr>
<td>Possible</td>
<td>Might occur at some time</td>
</tr>
<tr>
<td>Unlikely</td>
<td>Could occur at some time (surprised if it does)</td>
</tr>
<tr>
<td>Rare</td>
<td>May occur only in exceptional circumstances</td>
</tr>
</tbody>
</table>

*Example only*
<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Description</th>
<th>Historical – expected event intervals</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost Certain</td>
<td>Expected to occur, inevitable</td>
<td>Daily / weekly</td>
<td>More than 95%</td>
</tr>
<tr>
<td>Likely</td>
<td>Will occur in most circumstances, not surprised if it happens</td>
<td>Monthly</td>
<td>51 – 95%</td>
</tr>
<tr>
<td>Possible</td>
<td>Might occur in some circumstances</td>
<td>Every one to two years</td>
<td>11 – 50%</td>
</tr>
<tr>
<td>Unlikely</td>
<td>Could occur in some circumstances, surprised if it happens</td>
<td>Every two to 10 years</td>
<td>2 – 10%</td>
</tr>
<tr>
<td>Rare</td>
<td>May occur but only in exceptional circumstances</td>
<td>Every 10 to 100 years</td>
<td>0.1 – 1%</td>
</tr>
<tr>
<td>Very Rare</td>
<td>Theoretically plausible but not expected to occur</td>
<td>More than every 100 years</td>
<td>Less than 0.1%</td>
</tr>
</tbody>
</table>
### Risk level

<table>
<thead>
<tr>
<th>Likelihood</th>
<th>Insignificant</th>
<th>Minor</th>
<th>Moderate</th>
<th>Major</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost certain</td>
<td>High</td>
<td>High</td>
<td>Extreme</td>
<td>Extreme</td>
</tr>
<tr>
<td>Possible</td>
<td>Medium</td>
<td>Medium</td>
<td>High</td>
<td>Extreme</td>
</tr>
<tr>
<td>Unlikely</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>High</td>
</tr>
<tr>
<td>Rare</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>Medium</td>
</tr>
</tbody>
</table>

- **Compare and prioritise**
- **Can the risk be accepted?**
- **Not all risk is bad**
- **Does it need to be treated?**
Step 3 – Treat risk

- Process of implementing controls
- Can the risk be eliminated?
- Engage experienced people to develop the best treatments
- Is it as low as reasonably practicable (CoR)?
Step 4 – Monitor and review

• Have you fixed the problem?
• How will you know?
• Can controls be improved?
• Can your system be improved?
For more information

• NHVR “Introduction to risk management”

• ISO 31000 “Risk Management – Principles and Guidelines”

• NatRoad publications

• NHVAS.
What does Compliance look like?

Systems thinking

- Strategic approach – integration
- Business practices treat risk
- Obligations and requirements are risks
- Documented policies & procedures
- Documented Risk Management
- Stakeholder engagement (what do you need to know)
- Assurance (test of effectiveness)
- Communication/Education (Internal and External)
CoR Gap Assessment Tool
CoR Gap Assessment Tool

• Accessing the CoR Gap Assessment Tool
• Choosing your role/s (Activity)
• Answering questions in the Tool (Activity)
• Saving an Assessment
• Resuming an Assessment
• Producing the Results (Activity)
• Recommendations – What now?
Accessing the CoR Gap Assessment Tool
Chain of Responsibility Gap Assessment Tool

Disclaimer

The Chain of Responsibility Gap Assessment Tool (the Tool) is designed to draw your attention to particular obligations under the Heavy Vehicle National Law (the Law) that may be relevant to you, based on your answers to questions. The Tool does not provide legal advice. The Tool does not assess your compliance with the Law. Doing the assessment and following its recommendations does not relieve you of your obligations under the Law.

The recommendations provided depend on your answers to questions and are intended only to provide guidance to you. They are provided on the understanding that you, or your legal advisers, will independently assess your own circumstances to determine the actions necessary to comply with the Law.

Last Updated - 24 Aug 2017

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Your answers to questions in the Tool may be retained by NHVR but will not be identified as belonging to any person or be associated with any email address. By accepting the Terms of Use, you authorise NHVR to record and use your answers to questions for research or training purposes, to further develop or improve the Tool, and to identify parts of the Law that are of more relevance to industry participants.

If you do provide your email address in order to access an incomplete questionnaire, or to receive recommendations by email, that email address will not be saved or recorded by NHVR, and will not be used for any other purpose than providing the information to you that you request. By providing your email address, you authorise NHVR to use that address for the purpose/s you have chosen.

How would you like to proceed?

Start new assessment
Resume assessment
Chain of Responsibility Gap Assessment Tool

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NHVR has created the Chain of Responsibility Gap Assessment tool (the Tool) to help you focus on particular parts of the Heavy Vehicle National Law (the Law) which may be relevant to you. It is not intended to provide legal advice to you or to provide an assessment of your business practices.

When you have answered all the questions in a section, you will receive a report with recommendations. These recommendations are for guidance only, and NHVR accepts no responsibility for damage or loss to you that results from your reliance on them. After commencing your assessment, you have a maximum of 14 days to return and complete your assessment.

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We reserve the right to update or amend these Terms of Use at any time.

These Terms of Use will be governed by and construed in accordance with the laws in force in Queensland, Australia, and you unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.

Last Updated - 24-Aug-2017
CoR - Are you a party in the chain?
How do you want to get started?

Choose your activity:

- You are the Director of the corporation
- You are a person who is concerned or takes part in the management of the corporation
- You control or direct the use of a heavy vehicle
- You load goods in or from a heavy vehicle
- You load the vehicle or any container that is in or part of the vehicle
- You load the vehicle with a freight container (whether or not it contains goods for road transport)
- You unload goods in or from a heavy vehicle
- You unload the vehicle or any container that is in or part of the vehicle
- You unload the vehicle with a freight container (whether or not it contains goods for road transport)
- You schedule the transport of goods or passengers
- You schedule the work/rest times of a heavy vehicle driver
- You engage driver/s to drive a heavy vehicle under a contract for services
- You employ someone to drive a heavy vehicle (including casual, permanent, part time, contract driving and labour hire)
- An average of five heavy vehicles are loaded or unloaded or at your premises each day the premises are operated for loading/unloading heavy vehicles
- Goods are loaded or unloaded onto or from a heavy vehicle at your premises
- You are responsible for the operation of your regular loading or unloading premises (Loading manager)
An average of five heavy vehicles are loaded or unloaded at your premises each day the premises are operated for loading/unloading heavy vehicles

Goods are loaded or unloaded onto or from a heavy vehicle at your premises

You are responsible for the operation of your regular loading or unloading premises (loading manager)

You have been assigned by the manager or the person responsible for supervising, managing or controlling activities carried out by the loader

You have agreed to and been named as a consignor in the documentation for the road transport of goods

You request an operator of a heavy transport vehicle (directly, indirectly or through their representative) to transport goods by road

You load a vehicle with goods (and the goods are in your possession or control) immediately before the operator transports them

You load a vehicle with the goods for road transport at an unattended storage/collection location (where the goods are stored, or temporarily held waiting for collection unattended, other than by the vehicle’s driver or someone else necessary for the normal use of the vehicle, during loading)

You import goods into Australia for road transport

You have agreed to and been named as a consignee in the documentation for the road transport of goods

You have received goods after road transport

You put goods into packaging

You assemble goods in an outer packaging (e.g. Mixed products bundled on a pallet)

You supervise, manage or control packaging

I have completed my selection

Start Survey
Chain of Responsibility Gap Assessment Tool

Do you manage the business?

Choose Yes to this question if you:

- Create, or have input into, the operating frameworks, including policies and procedures of your business
- Create, or have input into, the operating frameworks between your business and other parties in the chain
- Control the engagement process between your business and other parties in the chain
- Control, or have input into, the risk management procedures for your business
- Perform contract management for your business

Yes  No
# Chain of Responsibility Gap Assessment Tool

<table>
<thead>
<tr>
<th>Assessment for</th>
<th>Status</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Executive Officer</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Loader</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Unloader</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Scheduler</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Prime Contractor</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Loading Manager</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Consignor</td>
<td>New</td>
<td>Flunt</td>
</tr>
<tr>
<td>Parker</td>
<td>New</td>
<td>Flunt</td>
</tr>
</tbody>
</table>

Start Here
Answering Questions in the CoR Gap Assessment Tool

CoR - Answering questions in the Gap Assessment Tool
Chain of Responsibility Gap Assessment Tool

Your Role: Operator

Your Obligations: Speed

<table>
<thead>
<tr>
<th>Governance</th>
<th>Mass</th>
<th>Dimension</th>
<th>Loading</th>
<th>Fatigue</th>
<th>Vehicle Standards</th>
<th>Speed</th>
</tr>
</thead>
</table>

Speed Management Process > System to manage speeding generally

Does your business have documented policies and procedures for speed management?

- Yes
- No

Previous  Next  Save and Exit
Chain of Responsibility Gap Assessment Tool

Your Role: Operator

Your Obligations: Speed

Speed Management Process > System to manage speed in low speed zones

Does your business have a system for low speed zone management?

- [ ] Yes
- [x] No

User Notes:

123 reassessing

Save and Next
CoR - Saving your assessment
## Chain of Responsibility Gap Assessment Tool

<table>
<thead>
<tr>
<th>Assessment for</th>
<th>Status</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Officer</td>
<td>Completed</td>
<td>View Recommendations</td>
</tr>
<tr>
<td>Operator</td>
<td>Saved</td>
<td>View</td>
</tr>
<tr>
<td>Prime Contractor</td>
<td>Now</td>
<td>Start</td>
</tr>
</tbody>
</table>

[Start New]
Your assessment has been saved. To return to the assessment, record the following assessment code and enter when prompted:

qKV2qNfKAn

Or:

Enter your email address: [ ] I'm not a robot

Email my task

We do not keep a copy of your email addresses. See our privacy policy for more information. To the extent permitted by law, the NHVR expressly excludes all responsibility and liability (including without limitation, liability in negligence) to you for any expenses, losses, damages or costs incurred by you as a result of your use of the Tool, your reliance upon the recommendations provided by the Tool, or as a result of inaccurate or incomplete information contained in the Tool or the recommendations.
Resuming your Assessment
# Chain of Responsibility Gap Assessment Tool

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</tr>
</thead>
<tbody>
<tr>
<td>Executive Officer</td>
<td>Completed</td>
<td>View Recommendations, Result, Delete</td>
</tr>
<tr>
<td>Operator</td>
<td>Saved</td>
<td>Review, View, Result, Delete</td>
</tr>
<tr>
<td>Prime Contractor</td>
<td>New</td>
<td>Start, Delete</td>
</tr>
</tbody>
</table>

Start New
Producing the results of your Assessment

CoR - Producing the results of your assessment
### Management

<table>
<thead>
<tr>
<th>Standard</th>
<th>Requirement</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operational Practice</td>
<td>Due Diligence</td>
<td>Ensure that steps are taken, and records kept, of actions taken to acquire, and keep up to date, knowledge about the safe conduct of transport activities.</td>
</tr>
</tbody>
</table>

### Role Name: Operator

**Identifier Code:** DszRnAkkKxx  
**Date:** 29-09-2017

### Speed

<table>
<thead>
<tr>
<th>Standard</th>
<th>Requirement</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speed Management Process</td>
<td>System to manage speed in low speed zones</td>
<td>Install a system to manage speed in low speed zones.</td>
</tr>
</tbody>
</table>

### Role Name: Loading Manager

**Identifier Code:** DszRnAkkKxx  
**Date:** 29-09-2017

### Fatigue

<table>
<thead>
<tr>
<th>Standard</th>
<th>Requirement</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fatigue Management</td>
<td>Operational practice</td>
<td>Install a system to record any instances where a driver is not fit to drive.</td>
</tr>
<tr>
<td>Fatigue Management</td>
<td>Operational practice</td>
<td>Install a system to report any instances where a driver is affected by fatigue.</td>
</tr>
</tbody>
</table>

### Role Name: Consignor

**Identifier Code:** DszRnAkkKxx  
**Date:** 29-09-2017

### Loading

<table>
<thead>
<tr>
<th>Standard</th>
<th>Requirement</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Practices</td>
<td>Business practices</td>
<td>Ensure the load is restrained in accordance with the Load Restraint Guide.</td>
</tr>
<tr>
<td>Business Practices</td>
<td>Business practices</td>
<td>Install a system that takes into account the vehicle used to carry the load.</td>
</tr>
</tbody>
</table>
Getting the best out of the CoR Gap Assessment Tool
Establishes *standards* and *procedures* for parties in the chain of responsibility to *identify, analyse, evaluate* and *mitigate* general *risks* associated with meeting obligations under the Heavy Vehicle National Law (HVNL).
Registered Industry Codes of Practice

**Master Code**
1. Describes what is known about a risk, risk assessment, and risk controls
2. Outlines what is reasonably practicable

**Livestock**
A supplementary RICP for loading, and for managing effluent

**Cranes**
A supplementary RICP related to the risks associated with the movement and use of cranes in the road environment

**Forestry**
A supplementary RICP focussed upon the unique risks of log restraint and transportation
Registered Industry Codes of Practice

Heavy Vehicle National Law

The HVNL is the point of all truth in determining the requirements, conditions and responsibilities for transport operations.

Codes of Practice

Codes of Practice establish the higher order risks and the features of management systems or business practices that prompt ways of complying with the law.

Implementation Tools

Implementation tools are the forms, software, templates, policies, etc. that can be used to give effect to a Code of Practice. These are also the mechanisms that check systems controls are adequate and in place.

Operational Practice

Operational practice refers to the actual way in which an operator, or party in the supply chain, conducts their business. Such may include: risk management processes, operational processes, training regimes, etc.