

Case learnings – May 2023

Facts of the case

The company was a ‘consignor’, importing construction materials from overseas.

In November 2019, the company imported timber goods from overseas to Australia in a shipping container and engaged a transport company to deliver the shipping container to the company’s depot.

A prime mover towing a skeletal semi-trailer was used to transport the shipping container. Whilst turning at an intersection, the heavy vehicle combination tipped, landing on a pedestrian island crossing. At the time, it is estimated that the heavy vehicle was travelling at approximately 15 kilometres an hour.

No one was injured because of the incident.

The NHVR commenced an investigation into the company, and the investigation revealed that:

- The load within the container was not restrained in accordance with the load performance standards.
- The bill of lading incorrectly labelled the gross weight of the container. The load was heavier than the declared weight.
- Gaps were not filled inside the container.
- There was both a lateral void, which exceeded 500mm and a longitudinal void between the load and the edge of the container.
- After the incident, four other containers consigned by the company were inspected. All containers were packed in the same fashion as the container involved in the incident.
- The transport company engaged to transport the containers had not inspected the loads.
- The company would sometimes get photos of the contents within the containers prior to departure from the overseas location however, this did not occur consistently and the photos received sometimes only included the last row of product and/or the closed doors of the container.
- The company did not otherwise receive any information about how the contents of the container were packed.
- Following the incident, the company implemented an airbag solution and provided drawings about how the product was to be loaded to suppliers.

- The company consigning goods could not confirm that these drawings were in accordance with the load performance standards.
- The company that consigned the goods was not advising the drivers and/or operators of how the load was restrained.
- The company had an internal Chain of Responsibility policy.

The offence

The company plead guilty to one offence contrary to section 26G of the HVNL (Category 2). The offending can be broadly categorised as follows:

- The company breached its primary duty by failing to implement effective systems and procedures to ensure that loads consigned by the company, and later transported by heavy vehicles, were adequately loaded and restrained.
- The failure to properly manage this risk exposed heavy vehicle drivers and road users to a risk of death or serious injury.



Key takeaways

Considering the potentially significant consequences of non-compliance with your primary duty, it is important that you review your safety systems and ensure you are doing everything reasonably practicable to eliminate or minimise the risks in your transport activities.

Below are some takeaways from this case:

- **Consigners:** Consignors of goods are bound by the primary duty imposed by section 26C of the HVNL even when they outsource the transportation of the goods or products.

- **International imports:** Consignors of imported products are required to ensure that the supplier is aware of, and is compliant with, Australian load restraint requirements.
- The *Heavy Vehicle National Law* is concerned with potential harm, not actual harm. **An accident or fatality doesn't have to occur for charges to be brought.**

Guidance for consignors

The case provides some reasonably practicable measures consignors can take to reduce or minimise the risks associated with load restraint for heavy vehicles, including:

- When reviewing compliance with Australian load restraint requirements for goods in shipping containers, ensure that:
 - Gaps and void spaces are filled with empty pallets, rated inflatable dunnage, foam, custom framing or other suitable material.
 - Lashings, webbing nets or gates are used to prevent the load from falling out when the doors are opened.
 - Shoring/blocking bars are used to stabilise the load.
 - Non-slip surface material is used to prevent the load from shifting.
 - Appropriate load restraints are used to properly restrain the load.
- Establish a system of ensuring compliance with the above for every load consigned, i.e. by requiring photos and/or diagrams of each load.
- Provide overseas suppliers with instructions regarding compliance with Australian safety regulations.
- Establish a system for advising transport companies of the load restraint used for each load consigned.
- Ensure compliance with the requirements of the Heavy Vehicle National Law and Regulations.
- Ensure compliance with internal Safety Management Systems, policies, and procedures.

These reasonably practicable measures are just examples of potential controls that you can implement and should be read in conjunction with those outlined in the registered industry [Master Code](#).



For more information:

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