

## Case learnings – August 2023

### Background

In September 2019, a heavy vehicle driver carting car bodies was required to brake suddenly. The sudden stop caused part of the load to become wedged between the outside of the tub and the back of the prime mover.

The driver and the company were each charged with offences under the *Heavy Vehicle National Law* ('HVNL') for driving and/or permitting a person to drive a heavy vehicle without ensuring that the vehicle's load complied with loading requirements. It is a defence if a person can establish that they had a reasonable excuse.

The company pleaded not guilty and the matter proceeded to trial.

Following the trial, the Magistrate found in favour of the company. In particular, the Magistrate found that the driver, being properly trained and instructed, should have advised the company and sought further instructions when they became aware the load was different to that stipulated on the original manifest. By failing to contact the company, the driver did not afford the company an opportunity to send an alternative trailer to transport the load and this amounted to a reasonable excuse.



### The appeal

The Regulator appealed the decision to the Supreme Court on the basis that the Magistrate erred in finding the company had a reasonable excuse based on the evidence before the court.

### The appeal decision

A single judge of the Supreme Court allowed the appeal and ruled that a finding of reasonable excuse was not open on the evidence that was available to the court at trial.

In reaching this decision, the Judge took into consideration the following:

- Improperly secured loads transported by heavy vehicles have the potential to cause substantial injury and damage to road users and infrastructure.
- While 'reasonable excuse' is not defined in the HVNL, it must be considered consistent with the purpose of the HVNL – including the importance of safety over profit and efficiency.



### Key takeaways

The nature of the heavy vehicle industry necessitates there will be times when operators may need to be flexible and adaptable to changing circumstances. It is therefore important for companies to ensure they have adequate systems and procedures in place to manage the risks associated with their transport activities and that their staff are sufficiently trained and supported.

Below are some takeaways from this case:

- Companies and drivers have a responsibility under the HVNL to ensure that safety, as opposed to profit or efficiency, is their paramount consideration.
- Companies cannot assert that drivers are trained and/or instructed, without more, to avoid liability under the HVNL.

- There is an obligation on companies to ensure drivers have access to the right training, equipment and support to ensure they meet their obligations under the HVNL.

## Guidance for operators

The case provides some reasonably practicable measures operators can take to reduce or minimise the risks associated with loading and restraining, including:

- Conducting regular audits to ensure that a heavy vehicle's load is compliant with the company's policies, procedures, the HVNL loading requirements and loading performance standards and the Master Code.
- Providing all drivers and workers with training in the correct loading and restraining policies and procedures.
- Ensuring all drivers are aware of the load they are required to carry so they can recognise if the load differs to what is expected to be carried and make alternative arrangements if required.
- Conducting ongoing reviews of loading and restraining procedures to ensure that the correct and safest loading measures are being used.
- Seek professional advice to develop loading plans that are compliant with the HVNL loading requirements and loading performance standards

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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