

Case learnings – February 2024

Facts of the case

In July 2022, South Australia Police were called to the scene of an accident where a rigid heavy vehicle towing a fully laden trailer (“the combination”) had collided with a passenger bus and five cars. The collision was a result of the installation of an inadequate braking system on the combination. South Australia Police launched an investigation into the company and the individual that jointly operated the combination.

The subsequent investigation revealed the following:

- That the company and the director permitted the combination to be driven in an unsafe condition with regards to the combination’s braking system;
- That the company and the director permitted the combination to be driven without the journey being scheduled to manage driver fatigue;
- That the company and the director permitted the driver to drive the combination without undergoing any fitness to drive check, training or induction. It was later discovered that the driver’s heavy vehicle licence had expired;
- That the company, under the director’s leadership, was devoid of any policies and procedures in relation to transport and safety; and
- That the trailer was overweight.

The charges

The company and the director each pleaded guilty to one Category 2 offence, contrary to the *Heavy Vehicle National Law* (‘HVNL’).

The sentence

The court issued the following penalties against the company and the director:

- Conviction and \$120,000 fine for company, which was reduced to a \$84,000 fine on account of the early guilty plea;

- Conviction and \$10,000 fine for the director, which was reduced to a \$7,000 fine on account of the early guilty plea.



Key takeaways

Even though no deaths or serious injuries resulted from the collision, it is vital that all operators, and any other party in the chain of responsibility, take all reasonable steps to minimise risk. This should occur, whether it is an operator with one vehicle engaging a driver to undertake a single journey, or a multinational company, operating multiple vehicles undertaking thousands of journeys a year.

Below are some takeaways from this case:

- All parties in the chain of responsibility need to be aware of all risks, and their obligations in minimising the risks;
- That multiple risks can occur even as a result of a driver undertaking a single journey;
- That the requirement for a party in the chain of responsibility to take reasonably practicable steps to minimise risk is enshrined in legislation and having no knowledge of this requirement will not be a defence.
- The HVNL is concerned with potential harm, not actual harm. **An accident or fatality does not have to occur for charges to be brought.**

**For more information:**Visit: www.nhvr.gov.auEmail: info@nhvr.gov.au

Phone: 13 NHVR (13 64 87)*

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Guidance for operators

The case provides some reasonably practicable measures operators can take to reduce or minimise the risks associated with operating heavy vehicles, including ensuring that:

- Any mechanical changes to a heavy vehicle are conducted or checked by a qualified mechanic, and any changes to a heavy vehicle braking systems tested under the conditions they will be required to operate under.
- All journeys are scheduled to ensure fatigue guidelines are met, and the driver is aware of any dangerous areas of the road that they may be required to traverse.
- Policies and procedure are in place to ensure a driver is fit to drive a heavy vehicle. This includes, but is not limited to:
 - Checks to see if the driver is appropriately licenced and accredited;
 - Checks to determine if a driver can operate the specific heavy vehicle they are required to drive; and
 - Checks to ensure the driver is aware of all the heavy vehicle's systems, including any tools that are required to operate them.
- Risk assessments are undertaken and adequate measures are provided for in the company's policies and procedures;
- Adequate records are maintained of the maximum loading capacity of all heavy vehicles and trailers, and that all persons operating them are aware of these maximums.

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**.