Chain of Responsibility Update

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Operated by Adtrans MVD240896

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NHVR

Chain of Responsibility

Michael J Crellin
Manager, Chain of Responsibility
Regulatory Compliance

NHVR

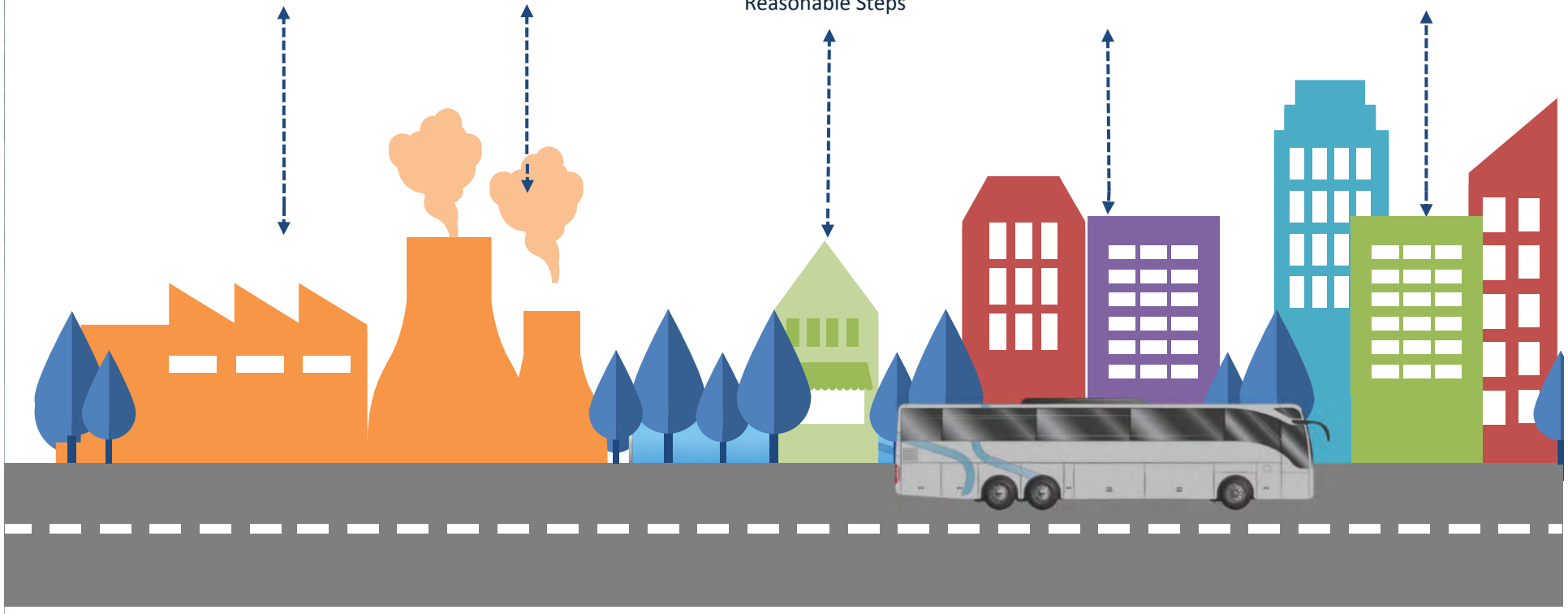
1995
Small beginnings (Qld)

1999
Executive Officers
& Representatives

2008
Extended Liability
(Parties)
Reasonable Steps

2014
Heavy Vehicle
National Law

2018
Primary Duty



Philosophy of CoR

Chain of Responsibility (CoR) laws mean that any party in the chain who has influence over the transport activity is responsible for safety on the road.

Who is accountable under the HVNL?

Scenario:

A commercial bus travelling from Cairns to Brisbane is carrying 5 passengers when it arrives at Townsville. At Townsville it accepts 40 boxes of mangoes along with 7 more passengers and their luggage. The bus is weighed at Burpengary where it has 19 passengers their luggage, the mangoes, and other general freight. The bus exceeds the mass applying to it.

Who is responsible?

What is coming – Primary Duties

Primary Duty: A new direction in legislation

Current Regime	2018
Deemed Liability	Primary Duty
Reasonable Steps	So Far as Reasonably Practicable
Onus on Defendant	Onus returns to Prosecution
Fatigue, Speed, MDL	Vehicle Standards added
Executive Officers after Corporation	Positive Duty
Focus upon driving breaches	Focus upon Business Practices

26C Primary duty - HVNL

(1) Each party in the chain of responsibility for a heavy vehicle must, so far as is reasonably practicable, ensure the **safety** of the party's transport activities relating to the vehicle.

(2) Without limiting subsection (1), each party **must**, so far as is reasonably practicable—

(a) remove public **risks** and, to the extent that is not reasonably practicable, minimise the public **risks**; and

(b) ensure the party's conduct does not directly or indirectly **cause** or **encourage**—

(i) the driver of the heavy vehicle to contravene this Law; or

(ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or

(iii) another person, including another party in the chain of responsibility, to contravene this Law.

(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.

CoR: New Primary Duty Penalties

- Category 3 – breaches safety duty
  - $50,000 Individual; $500,000 Corporation
- Category 2 – risk of death/injury
  - $150,000 Individual; $1.5m Corporation
- Category 1 – recklessness
  - 5 years imprisonment, $300,000 Individual
  - $3m Corporation

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:

- The likelihood of the risk occurring
- The degree of harm
- What the person knows about the risk
- Ways to remove or reduce the risk & whether they are feasible
- Cost of modifying is proportional to the risk

CoR: Practical impacts of Primary Duty

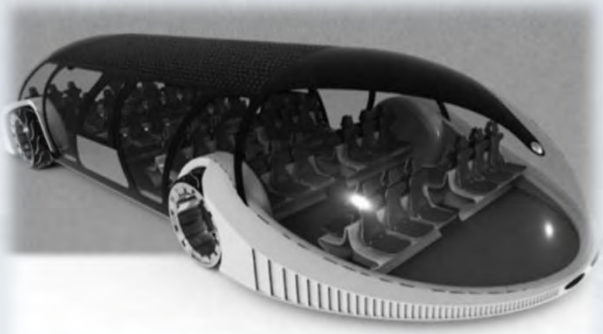
- Proactive and preventative outlook
- Identify, assess and control risk
- Recognise obligations and requirements as 'risks'
- Manage requirements with best practice
- Develop an assurance regime to 'test effectiveness' of system
    1. Demonstration of compliance
    2. Monitoring, risk-based and interval audit regimes
    3. Consultation with drivers and support functions

Controls and practices

- Consider the entire system that ensures safety
- Apply risk management processes to HV operations
- Integrate technology
- Monitor operations and report continuously

The future of CoR investigations

- Right approach for the right circumstance
- Collaborative approach where appropriate
- Review of systems
- Focus on business practices and risk management
- Enforceable undertakings
- Information gathering powers



The Future HVNL

Scenario:

Its late 2018 and one of the usual bus routes from Brisbane to Sydney is affected by the infrastructure developments along the M1/Pacific Highway where the drivers are experiencing major delays owing to the roadworks. Many of the bus drivers have arrived late for their scheduled stops and they have not been in a position to ensure they have 6 night rest breaks in every 7 days owing to the late arrivals.

What should be the approach?

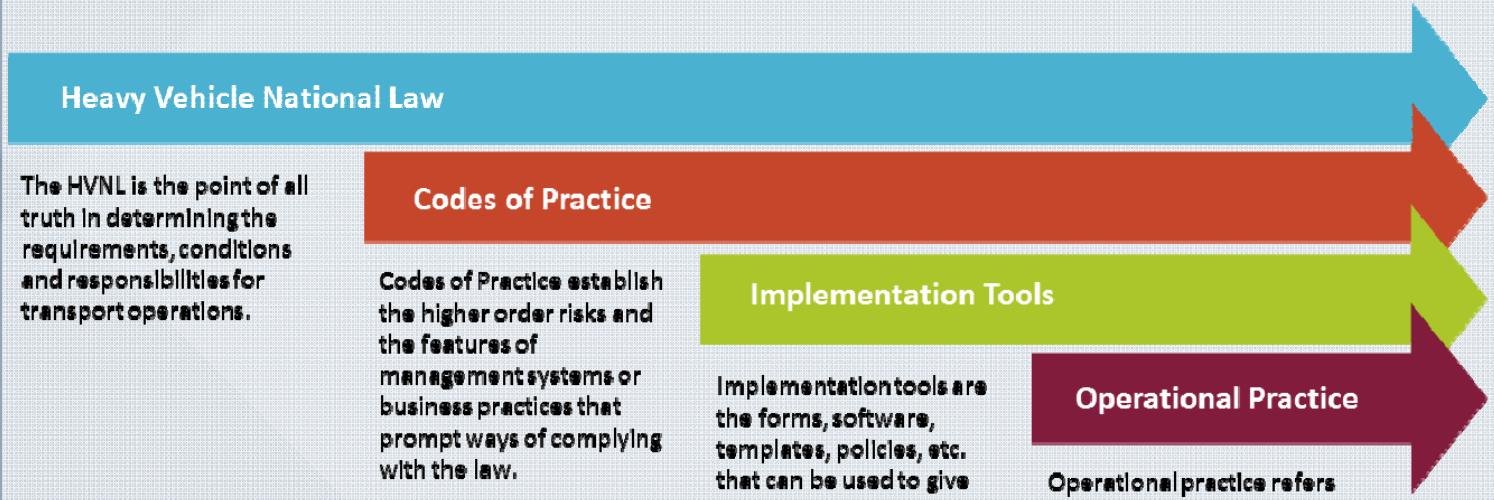
Three takeaways

- *CoR Laws will change for the road transport industry and supply chain in 2018 to focus on safety.*
- *CoR Parties will need to proactively manage the risks involved in their transport operations.*
- *Installing safety systems to reduce risks.*

Codes of Practice

- 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).

Codes of Practice



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

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 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 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.

Safety

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Questions?
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