

Heavy Vehicle Compliance and Enforcement

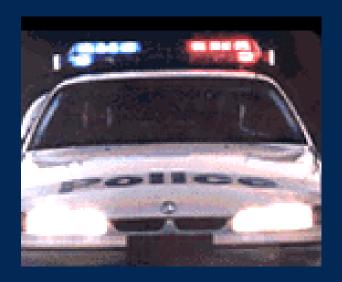
Regulating Heavy Vehicles for Safety and Efficiency
Australia as a Case Study
Paris, 24 September 2007

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Traditional road transport regulation

- enforcement rather than compliance focused
- drivers and vehicle owners/operators are the sole targets
- role of other parties not addressed
- directors, secretaries and senior managers not personally accountable





The problems with this ...

- not effective in producing long-term improvements in compliance
- no incentive for other responsible parties to prevent breaches
- unfair commercial advantage gained by all who cause or contribute to breaches
- company managers can hide behind the corporate veil

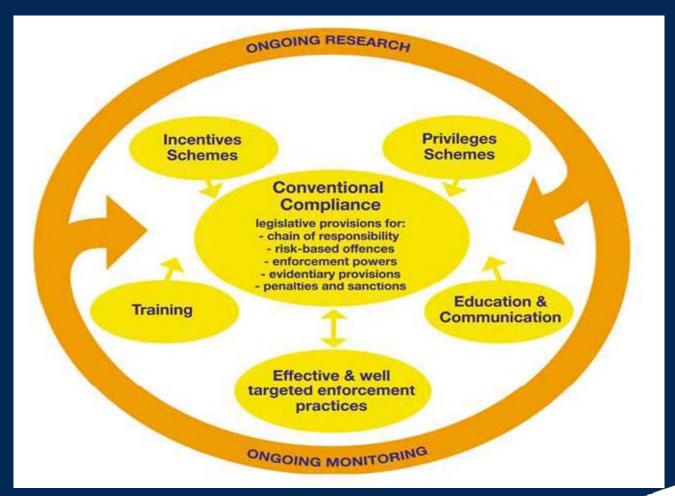


What influences heavy vehicle compliance?



National Transport Commission

National Compliance Programme





Giving the concept 'teeth'





Road Transport Reform (Compliance and Enforcement) Bill

Model provisions

Note: these provisions are intended to be adapted for use in each jurisdiction according to local requirements and local law.

A Bill for an Act to make provision for compliance with, and enforcement of, certain laws that form part of the system of nationally consistent road transport laws.

Enacting formula

Part 1 Preliminary

Division 1 Introductory

1 Short title and purpose

This Act may be cited as the Road Transport Reform (Compliance and Enforcement) Act 2003.

2 Commencement



Key elements of Bill

- chain of responsibility provisions
- risk-based categorisation of offences
- enforcement powers linked to risk
- evidentiary provisions to facilitate interstate and inter-agency investigations and proceedings
- hierarchy of penalties



What is the 'chain of responsibility'?

CONTROL =

RESPONSIBILITY =

LEGAL LIABILITY

- responsibility may overlap
- liability for <u>actions</u> / <u>inactions</u>
- 'reasonable steps' defence



What is the 'reasonable steps' defence?

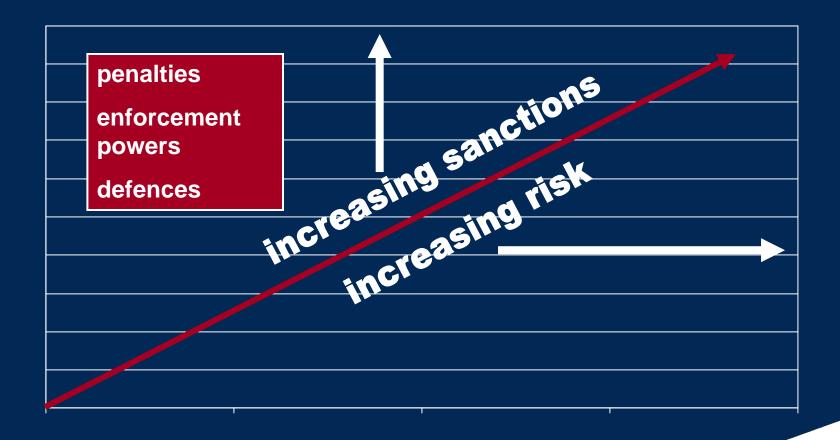
- did not know of breach
- could not be reasonably expected to have known
- took all reasonable steps to prevent breach
- 'industry code of practice' may assist to prove the defence



Fatigue management chain of responsibility

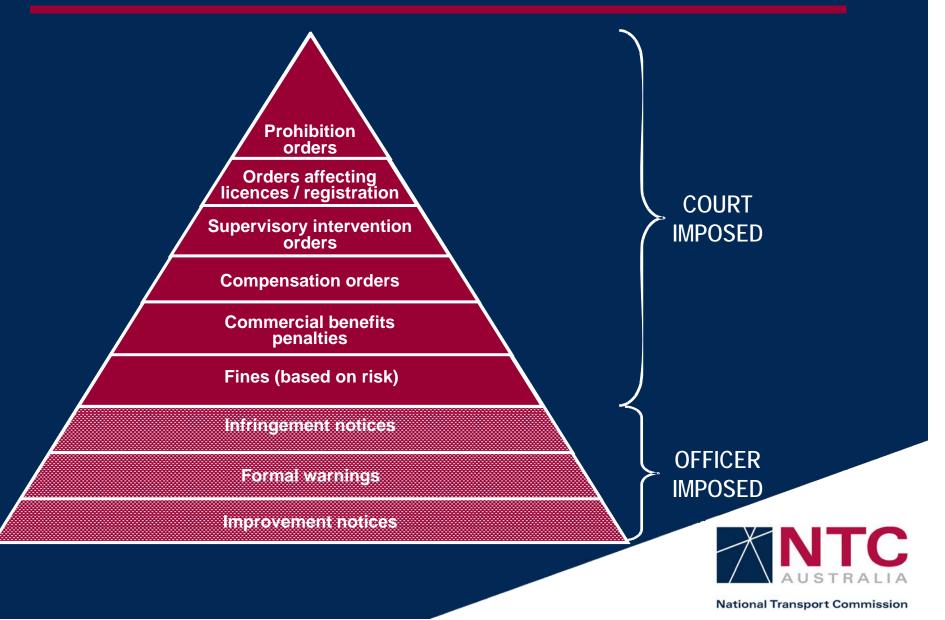


What is 'risk categorisation'?





Hierarchy of responsive penalties



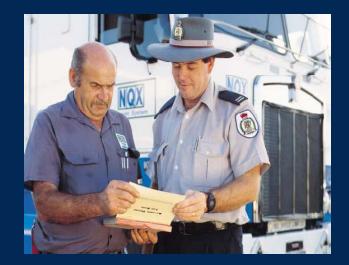
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ML8 sanctions

Matthew Loader, 13/07/2005

Strategic enforcement

- expanded investigative powers
- national guidelines for:
 - chain of responsibility investigations
 - applying the new enforcement tools
 - applying the new sanctions



- interstate recognition of evidence and offences
- interstate and inter-agency authorisation of officers
- Intelligent Access Bill
- national Heavy Vehicle Enforcement Strategy



National enforcement officer competencies and training

- previously, no nationally consistent competency standards for enforcement personnel
- new nationally-endorsed competencies and qualifications for 'transport compliance officers'
- nationally consistent training materials





National communications

- national education and communications
- long-term strategy
- working with industry

Information Bulletin



Chain of Responsibility

Introductio

This bulletin provides information on the pioneering 'chain of responsibility' laws being progressed by the National Transport Commission in conjunction with the road transport industry and all governments.

The aim of the new laws is to ensure that legal liability is imposed on all those in the transport chain who have responsibility for certain tasks where their actions result in an offence.

The laws target speeding, illegal driving and working hours, overloading, exceeding vehicle dimensions and poorly restained loads, improved compliance with these and other laws will provide a safer industry for workers in the road transport industry and other road users.

Chain of responsibility is a key initiative trapeling those who, by their actions, inactions or demands, put drivers' less and other lives at risk, and gain an unfair competitive advantage by breaking the law. The principle was developed by the National Road Transport Commission I in the early 1990s and is a major component of the Commission's 'smart compliance' approach to ensuring compliance with road transport laws.

Road Transport Laws - Then and Now

The traditional approach in road transport law in Australia has been to apply legal liability for not operating salely on drivers only, or in some cases owners or operators. Where other parties could be held accountable, this was generally through legally cumbersome 'cause or permit' or 'aid and aber' laws. Prosecution of other parties in the transport chain was rare, and tended to occur only for serious offences. The major weakness of this approach is that it ignores the actions of many other parties (including "off-road" parties such as consignors, manufacturers and loaders). Knowingly or unknowingly, the actions (or failure to a city of these parties in the chain can have a major effect on drivers' falgue, speeding, overloading and load restart in theirwise. Hence, former road transport laws tended to have little, if any, determet falled to these parties.

However, under the national approach to road transport law being progressed by the Commission and now being implemented by States, Ferindries and the Commonwealth, alf who sexcrise control over conduct that affects compliance will have responsibility, and may be made accountable for failure to discharge that responsibility, This includes primary producers, miners, mandacturers, retailare, and other parties involved in road freight and passenger transport.

This is achieved by the clear identification of the responsibilities of various parties and holding them legally accountable for breaching them. The new approach is far more direct and effective in securing accountability for non-compliance than the previous laws, and enables all parties to know their legal obligations from the outset.

The chain of responsibility laws are designed to apply to all road transport offences, ranging from minor breaches of log book recording to actions contributing to a serious spill of dangerous goods from a truck.

1. The National Road Transport Commission became the National Transport Commission on 16 January 2004.





Developing the approach: problem identification

- Identifying problems through industry workshops and meetings since 1994
- Site visits and discussions with all parties in chain
- Involvement of key industry participants in policy and legislation development







Developing the approach – research and analysis

- analysing current models operating in Australia and overseas in road transport regulation and other areas of regulation (particularly OH&S and environment protection)
- consulting legal experts in areas such as criminology and regulatory theory
- tailoring effective models for application to the road transport regulatory context
- developing new approaches where existing models do not address the identified regulatory 'gaps'

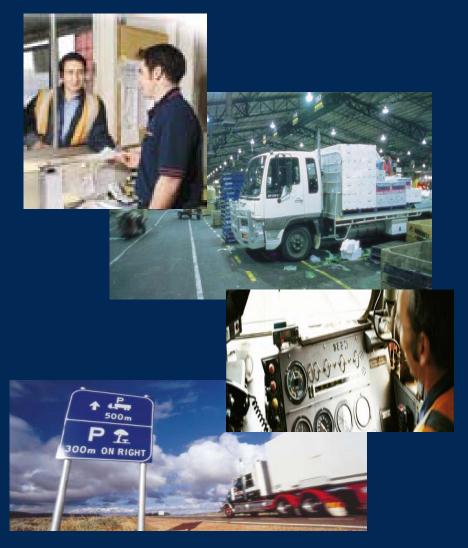


Developing the approach: working together

- High level and broad-based Compliance
 Reference Group
- Two national conferences
- Legislation Advisory Panel
- National consultations and seminars
- Transport Agencies Chief Executives



Will it work?



- consensus of consultation
- commitment of Ministers
- commitment of transport and police agencies
- responsible businesses already taking steps, including developing industry compliance codes:
 - shipping containers
 - retailers
 - steel industry
 - automotive industry
 - gypsum industry
 - logging



Is it working?

- 'patchy' implementation
- reform cherry-picking undermines the realisation of anticipated benefits
- transport agencies are talking the talk, but finding it hard to change

'All politics is local. When leaders or ministers sign a global communique that implies some action, they will deliver only if it suits then domestically.'

Tim Colebatch 'The Age' November 21 20/06 ('Climate change may achieve what street protests could not)



But ...

- surveys indicate:
 - CoR as a concept is widely understood and accepted
 - there is a belief that CoR laws are in place throughout the country and are enforceable
- other key agencies are increasingly interested
- industry from all key sectors is leading the charge, communicating the concepts and making the changes
- NTC continues to build upon and reinforce these reforms, seeking leverage from local industry and COAG, and evidence of positive implementation outcomes





More information

www.ntc.gov.au

