Industry Code of Practice
for the
Road transport of motor vehicles and vehicle components
under the
Road Transport Reform (Compliance & Enforcement) Bill

Due for revision on 18 July 2009

Prepared by
Federal Chamber of Automotive Industries

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1. BACKGROUND

The Road Transport Reform (Compliance and Enforcement) Model Bill 2003\(^1\) makes provisions for compliance with, and enforcement of, laws relating to the operation of heavy vehicles\(^2\) for the transport of goods or passengers by road. The Bill imposes duties and responsibilities on all parties in the road transport chain to take reasonable steps to prevent non-compliance with the heavy vehicle laws. This includes those involved in consigning, loading and packing and receiving of goods that are transported in heavy vehicles. The purpose of the Compliance and Enforcement Bill is to raise industry standards and thus reduce the possibility of contraventions with the law occurring.

Essentially, the Bill comprises:

- general compliance and enforcement provisions, relating to all aspects of heavy vehicle regulation other than the transport of dangerous goods and the Australian Road Rules; and
- a set of special provisions for heavy vehicle mass, dimension and load restraint.

The special provisions for mass, dimension and load restraint contained in the Bill incorporate new chain of responsibility provisions in this area, a risk-based categorisation of mass, dimension and load restraint breaches, special powers for overloaded or over dimensional vehicles, or vehicles with inadequate load restraint, and certain special penalties for these types of offences.

The chain of responsibility means that anyone who has control over some aspect of a transport operation may potentially be held liable for breaches of Australian road transport law. The rationale for the chain of responsibility principle is that if someone has the ability to influence the ultimate road law compliance outcomes, they should be held legally responsible for their actions.

Under the Bill, for any breach of the heavy vehicle mass, dimension and load restraint requirements there might be one or more responsible entities\(^3\) at different levels in the chain of responsibility. For instance:

- the consignor, packer, loader, driver or road operator is required to take reasonable steps to prevent a breach of the requirements (see clauses 75 – 79 of the Bill)
- any person who receives a load will commit an offence if they knowingly or recklessly induce or reward a breach of the requirements (see clause 80);
- certain parties commit offences if transport documentation is false or misleading (see clause 82).

A reasonable steps defence (RSD) is available within the model Bill under the chain of responsibility in the event of a heavy vehicle mass, dimension or load restraint breach occurring. The model Bill allows for compliance with an industry code of practice to assist a person to establish a RSD should a mass, dimension or load restraint breach occur. For drivers and operators, this defence is limited to minor breaches.

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1. The Bill was approved by the Australian Transport Ministers on 3 November 2003. The States and Territories are introducing legislation giving effect to the provisions of the model Bill, with local adaptations.

2. A heavy vehicle is any road transport vehicle with a gross vehicle mass of more than 4.5 tonnes.

3. The definition of a responsible entity in each jurisdiction can be found in the Appendix.
1.1 **Obligations under State legislation**

The National Model Bill allows access to a RSD for off-road parties (consignors, consignees, loaders, packers and receivers of loads) and for on-road parties (drivers and operators) only in the case of a minor breach. However, the ultimate legal obligations of each party in a transport chain are contained in the transport laws of the States and Territories. As such, each State and Territory is introducing legislation giving effect to the provisions of the model Bill, with local adaptations.

1.1.1 **Victoria**

The Victorian Transport Legislation (Amendment) Act 2004\(^4\) provides access to a RSD for off-road parties. For breaches of mass, access to a RSD for on-road parties is limited to reliance on a container weight declaration. This is available regardless of the severity of the breach, as long as the on-road party can demonstrate that they did not know or could not have reasonably been expected to know, that the container weight declaration was inaccurate. On-road parties do not have access to a RSD for dimension and load restraint breaches.

VicRoads will register industry codes of practice\(^5\) to provide parties with access to a RSD. However, the burden of proof will still rest with a defendant in demonstrating active adherence to the code.

1.1.2 **New South Wales**

In The New South Wales Road Transport (General) Act 2005, off-road parties have access to a RSD. On-road parties have access to a limited RSD where defendants are required to demonstrate either that they have weighed the loaded vehicle or that they are in possession of sufficient and reliable evidence from which the mass was calculated. This is available for minor, substantial and severe mass breaches. On-road parties have access to a RSD with regard to dimension limits and load restraint but only for minor breaches.

While encouraging the development of industry codes of practice to assist both on and off road parties in identifying, analysing and managing their risks and increasing compliance, the New South Wales Roads and Traffic Authority will not be registering codes.

1.1.3 **Queensland**

Whilst Queensland Transport proposes to acknowledge the concept of industry codes of practice, it will not be involved in the registration of codes. It is expected that relevant industries will establish the standards and procedures under which they will operate, with a minimum requirement being that all legal obligations in respect of heavy vehicle legalisation are met. However, Queensland Transport holds the view that an industry code of practice and the compliance of all parties covered by a code are important steps in establishing a good reasonable defence to avoid a breach from occurring.

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\(^4\) The Victorian Transport Legislation (Amendment) Act 2004 has been incorporated into the Victorian Road Safety Act 1986, Parts 10 and 11.

\(^5\) Industry codes of practice are registered in accordance with the principles of the Australian Standards Association including standards AS 806 and/or AS/NZS 4360.
1.1.4 Implications of State legislation

It is through the process of registration that an industry code of practice will achieve immediate evidentiary status for use in a court proceeding should a breach occur. However, an industry code of practice may still contribute to a RSD in jurisdictions that do not offer registration.
2. **PURPOSE OF THE CODE**

The purpose of this industry code of practice (the code) is to provide parties in the chain of responsibility who are responsible for the road transport of motor vehicles and motor vehicle components to comply with the chain of responsibility laws in each State and Territory by providing mitigation strategies. The code sets out the framework for compliance and provides a foundation for responsible entities who subscribe to the code to make a RSD should circumstances require it. Code signatories who can demonstrate compliance with all relevant standards and procedures included in the code and with the spirit of the code may have access to the RSD contained in the legislation.

Although adhering to the code is voluntary, the ability to rely on making a statutory declaration stating compliance with all relevant standards within the industry, and with the spirit of the code, will be significant in establishing a RSD, in the event of any prosecution involving heavy vehicles. While there are other legal defences available to all parties (e.g. sudden and extraordinary emergency, duress etc) in many instances, the party that is held liable for a breach of the legislation will need to rely on the defence that it took reasonable steps to prevent a breach. Complying with the code is one way of demonstrating a RSD.

3. **OBJECTIVES OF THE CODE**

3.1 **Legal Objectives**

By complying with the code, signatories can:

- Minimise the risk of breaches occurring under the relevant legislation
- Be more confident of demonstrating the RSD to a court in the event of an unintentional heavy vehicle breach, and
- Be able to request a reduced penalty in the event that the RSD is not established

3.2 **Other Objectives**

This code also aims to provide other objectives in addition to compliance with heavy vehicle laws, including:

- Productivity gains, eg through improved ability to load accurately and closer to statutory limits
- Monitoring and understanding compliance risks under the Relevant Legislation through a centralised compliance tool
- Promoting a cooperative approach by all responsible parties in their dealings with one another to achieve compliance
- Encouraging good practice and improving the integrity of information relating to mass, dimension and load restraint
- Minimising the risk of civil claims resulting from unintentional safety breaches
- Satisfying insurance obligations, and
- Generating marketing opportunities by showing the ability to manage compliance thereby reducing exposure of customers and suppliers under the Relevant Legislation.
4. APPLICATION OF THE CODE

4.1 Responsible entities

This code applies to those parties who may be covered by the definition of ‘responsible entity’ in legislation for the road transport of motor vehicles and motor vehicle components. The parties identified below will at times and in certain conditions be responsible entities as defined by the legislation. The responsible entities (and intended signatories) include:

4.1.1 Motor Vehicle and Motor Vehicle Component Manufacturers

Vehicle and component manufacturers engage in one or more of the following relevant activities in the transport chain:

- Importing and local sourcing of components and other materials for the manufacture of motor vehicles and motor vehicle components
- Distribution of manufactured components for domestic use or export
- Importation, exportation, manufacturing and/or distribution of motor vehicles

4.1.2 Vehicle and Component Importers

Vehicle and component manufacturers who do not manufacture in Australia engage in one or more of the following relevant activities in the transport chain:

- Importing and local sourcing of components for fitment to imported motor vehicles
- Distribution of motor vehicles and motor vehicle components
- Importation of motor vehicles and motor vehicle components

4.1.3 Road Transport Operators

Road Transport Operators engage in the transportation of motor vehicles and motor vehicle components within the transport chain.

4.1.4 Motor Vehicle Dealers

Motor vehicle dealers may arrange for the transport of, dispatch and/or receival of motor vehicles and motor vehicle components within the transport chain.

4.1.5 Other Responsible Entities

Other responsible parties which may become responsible entities within the transport chain include:

- Modification Centres
- Predelivery Centres
- Fleet Management/Operators
- Auction Houses
- Special Event Organisers
4.2 Responsibilities of all parties in the chain

All parties referred to in paragraphs 4.1.1 - 4.1.5 may have obligations in relation to mass, dimension and load restraint requirements under the Relevant Legislation as consignors, consignees, loaders and/or packers depending on the relevant transaction. For example:

- Where a party sends or receives motor vehicles or motor vehicle components, it will be a responsible entity as consignor/consignee respectively;
- Where a party carries out warehousing or dispatch activities then it will be a responsible entity as a packer/loader.

In addition, some of the parties referred to in paragraph 4.1.3 may also have obligations as Road Transport Operators and/or drivers depending on the relevant transaction. For example:

- Where a party is a Road Transport Operator it will be a responsible entity as an operator and/or driver.

4.3 Stakeholders that may contribute to compliance

Other parties can impact on the efforts of the above identified responsible parties. Essentially, they are responsible for ensuring that all relevant documentation regarding the mass and dimension of motor vehicles and motor vehicle components, is accurate and is forwarded to the Road Transport Operator in a timely manner. These parties include:

- Stevedores
- Air forwarders, and
- Rail operators.

The wide application of this code reinforces the critical need for communication, cooperation and appreciation of obligations of all parties in the chain of responsibility.
5. SPECIFIC MEASURES TO ENSURE COMPLIANCE – RISK MITIGATION STRATEGIES

5.1 Introduction
This code establishes a framework for compliance with the Law. The framework is based on the Australian Standards Risk Management AS/NZS 4360:1999. The code promotes compliance through the development and implementation of mitigation strategies that are operationally effective and appropriate to the business environment.

5.2 Risk Management Approach
The risk management approach used to develop this code incorporated the following steps:

1. Analysis of the operating environment to understand current practice and how it is impacted by the legislation
2. Identification of potential areas of exposure under the obligations of the legislation
3. Evaluation of the impact of the exposure for affected businesses
4. Implementation of measures to minimise exposure and increase potential compliance with the legislation

5.3 Transport Chains in the Automotive Industry
This code accommodates those elements of the road transport chain that are considered to pose significant risks to the responsible parties identified in Section 4. Three generic chains represent the broad spectrum of transport links in the industry.

- Imported Motor Vehicles including semi knocked down (SKD) motor vehicles (for domestic distribution) and locally manufactured motor vehicles for domestic distribution and export
- Exported Motor Vehicles including semi knocked down (SKD) motor vehicles.
- Motor vehicle components including semi knocked down (SKD) motorcycles

Each chain commences at the point of manufacture or import of the motor vehicle or motor vehicle components as this is where road transport operator selection, packing, loading, restraint and mass management arrangements regulated by the Relevant Legislation generally commence. Risk mitigation strategies applicable to each of the above generic chains are contained in section 5.4.
### 5.4 Risk Mitigation Strategies

A brief description of each generic road transport chain identified in Section 5.3 and its associated risk mitigation strategies are set out below.

#### 5.4.1 Transport of Imported and Manufactured Motor Vehicles

The generic transport chain for imported motor vehicles is illustrated at Figure 1 and for locally manufactured vehicles at Figure 2. Each arrow represents a link in the on-road transport of motor vehicles on Goods Carrying Vehicles.°

**FIGURE 1 IMPORTED MOTOR VEHICLES**

<table>
<thead>
<tr>
<th>Point of entry to chain</th>
<th>Initial point of receipt</th>
</tr>
</thead>
<tbody>
<tr>
<td>port, wharf, stevedore, airport</td>
<td>This could be a:</td>
</tr>
<tr>
<td></td>
<td>• independent vehicle processing point</td>
</tr>
<tr>
<td></td>
<td>• distributor’s compound</td>
</tr>
<tr>
<td></td>
<td>• modification centre</td>
</tr>
<tr>
<td></td>
<td>• dealer*</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vehicle Destination#</th>
</tr>
</thead>
<tbody>
<tr>
<td>This could be a:</td>
</tr>
<tr>
<td>• end user</td>
</tr>
<tr>
<td>• fleet customer</td>
</tr>
<tr>
<td>• auction house</td>
</tr>
<tr>
<td>• other dealer</td>
</tr>
<tr>
<td>• special event</td>
</tr>
</tbody>
</table>

**FIGURE 2 LOCALLY MANUFACTURED MOTOR VEHICLES**

<table>
<thead>
<tr>
<th>Point of entry to chain</th>
<th>Initial point of receipt</th>
</tr>
</thead>
<tbody>
<tr>
<td>factory, or modification centre</td>
<td>This could be a:</td>
</tr>
<tr>
<td></td>
<td>• wharf (for export)</td>
</tr>
<tr>
<td></td>
<td>• off-site holding yard</td>
</tr>
<tr>
<td></td>
<td>• rail head</td>
</tr>
<tr>
<td></td>
<td>• modification centre</td>
</tr>
<tr>
<td></td>
<td>• dealer* (local or interstate)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Second Designated Point</th>
</tr>
</thead>
<tbody>
<tr>
<td>This could be a:</td>
</tr>
<tr>
<td>• end user</td>
</tr>
<tr>
<td>• fleet customer</td>
</tr>
<tr>
<td>• auction house</td>
</tr>
<tr>
<td>• other dealer</td>
</tr>
<tr>
<td>• special event</td>
</tr>
</tbody>
</table>

* Dealers may be dealers themselves or other parties nominated by Dealers.

° It is noted that while the above diagram indicates the most common transport chain, a motor vehicle may be the subject of additional movements eg. from fleet customer to end user or from special event to other dealer to end user. The principles and risk mitigation strategies for those additional movements will be identical to the primary movement described in the above diagram and are therefore not dealt with as special chains in this Code.

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5 A Goods Carrying Vehicle is a vehicle used to carry motor vehicles and motor vehicle components.
Potential Risk 1 – A Goods Carrying Vehicle carrying motor vehicles exceeds the mass and/or dimension restrictions imposed by the mass and loading regulations (or where relevant an excess weight permit)

The risk is that a Goods Carrying Vehicle exceeds statutory mass and/or dimension limits. This could include either the gross limits of the Goods Carrying Vehicle or more typically the legal load of an individual axle or axle group.

Mitigation Strategies

1. *To ensure accurate and current information relating to mass and dimension of vehicles is accessible to and used by Road Transport Operators:*

   Manufacturers and distributors will ensure that Road Transport Operators within the chain have access to the accurate mass and dimensions of all makes and models of vehicles. This information will be presented in a vehicle transport specification chart (VTSC) and will be provided prior to the requested loading time. An example of a VTSC is provided in the Appendix. It is the consignor’s responsibility to ensure the information contained in the VTSC is current.

   It is then the responsibility of the Road Transport Operator to choose and load the Goods Carrying Vehicle using this information, and in accordance with mass and dimension restrictions imposed by the Relevant Legislation. For new vehicle models, the Road Transport Operator needs to decide whether a trial loading is required, to test the effect the new model has on Goods Carrying Vehicle axle weights. If it is deemed necessary, the Road Transport Operator will contact the consignor who will cooperate with the trials by making vehicles available at a mutually convenient time. An approved computer simulation may be used as a surrogate for a physical trial.

   A consignor will provide the Road Transport Operator with details of the make and model of vehicles to be transported prior to the requested loading time. The Road Transport Operator is then responsible for using this information to identify the most effective way to load the Goods Carrying Vehicle, so as not to exceed the mass and dimension restrictions imposed by the Relevant Legislation. The Road Transport Operator should consider axle and gross loading within the relevant limits.

2. *To ensure that the mass and dimension of non standard vehicles are specified to Road Transport Operators:*

   Where a vehicle is non-standard (for example modified or damaged), the consignor will provide the Road Transport Operator with accurate information regarding the vehicle (including dimensions, mass and any other relevant information). It is noted that a vehicle will be considered non-standard if it varies by more than 10% from the weight and dimensions of the standard vehicle specifications contained in the VTSC.

   As with mitigation strategy 1, the Road Transport Operator is responsible for deciding whether a trial loading is required. The consignor will cooperate with these trials as specified in mitigation strategy 1.
3. *To ensure that mixed loads do not exceed mass or dimension restrictions*: A Road Transport Operator who chooses to mix consignors’ loads must ensure that each combined load does not contravene mass and dimension requirements contained in the Relevant Legislation.

4. Where a local authority allows access for a Goods Carrying Vehicle to deliver to a nominated delivery point, the consignee is required to liaise with local authorities to ensure that all trees, power lines and signs in the vicinity of the delivery point are of the appropriate height. This requirement is contained in the Federal Chamber of Automotive Industries ‘New Vehicle Receiving & Inspection Procedures’, January 2005 or as amended.

**Potential Risk 2 – A Goods Carrying Vehicle transporting motor vehicles contravenes load restraint restrictions imposed by the Relevant Legislation**

The risk is that a Road Transport Operator may contravene the regulatory requirements to secure loads properly whilst on public roads.

**Mitigation Strategies**

5. *To ensure that appropriate restraining methods are used*: As a minimum, Road Transport Operators will apply the National Transport Commission (NTC) Load Restraint Guide when securing motor vehicles to Goods Carrying Vehicles. Section E of the Guide refers to ‘Vehicles and Mobile Equipment’. Restraining methods include:

   − 9.7.3.1 Wheel Restraint Method
   − 9.7.3.2 Tie Down Method
   − 9.7.3.3 Direct Lashing Method

Where the consignor specifies an alternative restraining method, the consignor will develop the restraining procedure and communicate the procedure along with advice to the Road Transport Operator. The specific restraining method must at least meet the standards contained in the National Transport Commission (NTC) Load Restraint Guide.

Wherever practicable the person responsible at the point of dispatch is advised to make a visual check of the Goods Carrying Vehicle to ensure that the load is restrained in accordance with the NTC Load Restraint Guide.

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7 Second Edition 2004 or as amended.
5.4.2 The Road Transport of Motor Vehicle Components and Crated Motorcycles

The generic transport chain for transportation of motor vehicle components and Crated Motorcycles is illustrated in Figure 3. Each arrow represents a link in the on-road transport of motor vehicle components and SKD motorcycles on Goods Carrying Vehicles.

**FIGURE 3 MOTOR VEHICLE COMPONENTS AND SKD'S**

<table>
<thead>
<tr>
<th>Point of entry to chain</th>
<th>Initial point of receipt</th>
<th>Motor vehicle components and SKD motorcycle distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>This could be a:</td>
<td>This could be a:</td>
<td>This could be a:</td>
</tr>
<tr>
<td>• port, wharf, stevedore</td>
<td>• independent vehicle processing point</td>
<td>• end user</td>
</tr>
<tr>
<td>• airport</td>
<td>• distributor’s compound</td>
<td>• fleet customer</td>
</tr>
<tr>
<td>• local supplier</td>
<td>• second tier parts retail</td>
<td>• other dealer</td>
</tr>
<tr>
<td></td>
<td>• dealer</td>
<td>• special event</td>
</tr>
<tr>
<td></td>
<td>• manufacturer</td>
<td>• modification/repair centre</td>
</tr>
<tr>
<td></td>
<td>• distributor</td>
<td></td>
</tr>
</tbody>
</table>

* Dealers may be dealers themselves or other parties nominated by Dealers.

# Typically low density spare parts ex the wharf are shipped in 40 foot containers, with higher density loads such as engines (and the like) being transported in twenty foot containers. Airfreight is usually presented in cartons or specialised pallets and carried from the airport forwarder by small van or truck.

**Potential Risk 3 – The Goods Carrying Vehicle gross mass or axle group weight limitation is exceeded due to the fact that the declared weight of a container is not correct.**

The Relevant Legislation requires each responsible entity in the chain to pass on a declared weight of a container to the next party in the transport chain. This is to enable the Road Transport Operator to load a Goods Carrying Vehicle such that mass limit regulations are not breached. The risk is that the weight is not accurately declared at some point in the chain.

**Mitigation Strategies**

6. To ensure accurate information relating to container weight is available to each party in the road transport chain:

   The consignor should provide each party in the road transport chain with details of the individual container weights (gross and tare) and where appropriate the estimation method or weighbridge documentation. There are some instances where it is the consignee that is responsible for providing these details; for example when the consignor is offshore.

   Where it is likely that less than container load (LCL) parcels will be consolidated for transportation, the ability of the packer to identify the component weights from documentation is important. Wherever possible, the distribution of consignment notes and documentation prepared by the consignor should include notation of mass of parcel and if necessary packaging.

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* Crated Motorcycles include SKD motorcycles.
The consignee should advise principal suppliers and agents of the requirements of the Relevant Legislation in relation to the declaration, carriage and relay of accurate weights.

**Potential Risk 4 – Upon receipt, the declared weight of a container is ambiguous (tare, gross or nett?)**

This is aligned to Risk 3 above. Any party in the chain who is suspicious of the accuracy of a container weight declaration has a responsibility to address the concern. All Road Transport Operators carrying containers to or from facilities as either consigned or consignee freight should produce the weight documentation for each container including gross and tare weights. This ought (wherever practicable) to be a requirement of the contractual documentation with the supplier or Road Transport Operator.

**Mitigation Strategies**

7. *To ensure that declared container weights are not ambiguous:*
   
   Contract conditions should specify the required basis of weight estimates for specific commodities. The consignor should stipulate that tare and gross weights are to be shown on all documentation as part of the contract to buy. If the Road Transport Operator is suspicious of the declared weight they should clarify the weight and any ambiguity with the consignor by weighing before carriage. In the event that the Road Transport Operator is not satisfied with the outcome of this risk mitigation strategy the Road Transport Operator may wish to consider weighing the container independently before carriage.

**Potential Risk 5 – Upon receipt, the container weight declaration appears to have been altered**

The risk is that the container weight declaration may be altered from the original declaration at some point in the chain.

**Mitigation Strategies**

8. *To ensure that the consignee is able to obtain the original container weight:*
   
   The party who makes the initial container weight declaration should maintain an electronic or faxed copy of the original documentation. This documentation should then be provided to the consignee for verification or clarification when requested to do so.
Potential Risk 6 – A Goods Carrying Vehicle transporting motor vehicle components or crated motorcycles in a container contravenes load restraint restrictions imposed by the Relevant Legislation

The risk is that a Road Transport Operator may contravene the regulatory requirements to secure loads properly whilst on public roads.

Mitigation Strategies

9. To ensure that appropriate restraining methods are used:

The Road Transport Operator’s representative is to adopt the load restraint procedures contained in the following sections of the National Transport Commission’s Load Restraint Guide:9

- Section E 8.1.1 Restraining Shipping Containers
- Section G 3 Container Twist Locks

In the case of palletised and loose freight, the potential risks and mitigation strategies associated are identified and addressed below.

Potential Risk 7 – A Goods Carrying Vehicle transporting motor vehicle components and/or Crated Motorcycles (not containerised) exceeds the mass and/or dimension restriction imposed by the mass and loading regulation (or where relevant an excess weight permit)

Mitigation Strategies

10. To ensure accurate and current information relating to mass and dimension of motor vehicle components and crated motorcycles is accessible and used by Road Transport Operators.

The consignor is responsible for ensuring that all freight to be transported has been issued with a consignment note stating tare and gross weight.

The consignor is responsible for ensuring that each consignment note is forwarded to the Road Transport Operator prior to the requested loading time. It is the responsibility of the Road Transport Operator to load the Goods Carrying Vehicle using this information, and in accordance with mass restrictions imposed by the regulations.

A Road Transport Operator’s representative should not load motor vehicle components or SKD’s without documentation.

It is recommended that Road Transport Operators be required to have achieved mass management accreditation via the National Heavy Vehicle Accreditation Scheme (NHVAS). This enables a Road Transport Operator to operate Goods Carrying Vehicles to higher gross mass limits. In addition, where Goods Carrying Vehicles are operating to the extended allowable height of 4.6 metres, it provides benefit for consolidated loads based on cubic capacity.

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9 Second Edition, 2004 or as amended
6. **IN-HOUSE COMPLIANCE PROVISIONS**

This Code is designed to accommodate a range of businesses and their transport operations. It cannot be regarded as being all encompassing in all circumstances and each individual entity should look to supplement the Code with business specific mitigation strategies.

The following procedures shall apply to records and compliance provisions for signatories to this Code.

Each signatory has a business compliance system that addresses the requirements contained in the code.

Each business compliance system specifies what must be done and by whom in that particular business to ensure the risks are managed consistent with the broad controls outlined in the code. Each business compliance system:

- Makes a clear statement of the organisation’s commitment to compliance
- Gives details of management responsibilities for promoting and implementing compliance measures, including the provision of adequate resources
- Integrates procedures for implementing and monitoring compliance with the organisation’s day-to-day operating procedures
- Provides for effective reporting and record-keeping systems
- Details education and training for the organisation’s personnel
- Contains a complaints handling system that assists in identifying and overcoming compliance failures, and
- Ensures the business compliance system is subject to audit and is kept up-to-date

Each business compliance system is based on the Australian standard on compliance provisions (AS 3806)

7. **CODE ADMINISTRATION**

The Code will be administered by a Code Administration Committee comprising the following representatives:

| Director - Compliance & Operations, Federal Chamber of Automotive Industries |
|---------------------------------------------------------------|-----------------------------|
| Two local motor vehicle manufacturers                        |
| Two distributors                                             |
| Local motor vehicle manufacturers and distributors will be drawn from three areas: legal, logistics and motorcycles. |
| Two Road Transport Operators                                 |
| One independent vehicle processing operator                  |
The Code Administration Committee will be chaired by:

Director – Compliance & Operations, Federal Chamber of Automotive Industries
Level 6, 10 Rudd Street, Canberra ACT 2600
DDI Phone: 02 6229 8217

The chairperson is responsible for the administration of the code, ensuring it is endorsed and kept up to date.

7.1 Code Revision

The chairperson will ensure that the code is reviewed under the following circumstances:

- When it is due for regular review by an accredited auditor (every three years), to ensure that the broad mitigation strategies are addressing the identified risks and working effectively
- When new or changed legislative requirements are introduced, and
- If any major problems are identified

Stakeholders identified in Section 12 of this code will be responsible for accessing the FCAI website from time to time to establish if the code has been amended.

8. ASSESSMENT BY AUDITOR

The code was audited on 23 May 2006 by Mr Richard Cleaver, a certified RABQSA quality and heavy vehicle accreditation systems auditor. At the conclusion of the auditing process Mr Cleaver expressed the view that the code demonstrates conformance with the NTC guidelines for content, development, approval and use of industry codes of practice for heavy vehicle mass, dimension and load restraint. He also confirmed that the code will provide signatories with an opportunity to demonstrate a positive commitment to compliance with mass management, dimension and load restraint transport law and RSD provisions of Compliance and Enforcement legislation.

The auditor’s report is attached as Appendix 3.

9. COMMENCEMENT

This industry code of practice commences on 18 July 2006.

10. DATE OF REGISTRATION

This industry code of practice was registered in Victoria by vic roads on 18 July 2006. The registration number is 002/2006.
11. SIGNATORIES

Below is an example letter that will be completed by each code signatory.

(Date)

Ms Chris Baulch
Director – Compliance and Operations
Federal Chamber of Automotive Industries
GPO Box 313
Canberra ACT 2601
Fax 02 6248 7673

**Industry Code of Practice**

for the

**Road transport of motor vehicles and vehicles components**

As a signatory to the Code, (company name) has accepted that the entity is a responsible party in the road transport of motor vehicles and vehicle components in Australia.

(company name) endorses this Code in its current form and in any amended form, and will implement the mitigation strategies contained within, as applicable to the operational activities of our business. (company name) has active in-house compliance provisions that will enable the mitigation strategies to be implemented, maintained and reviewed.

We undertake to communicate this commitment to other parties in our transport chain and in doing so, raise awareness of the existence of the Code to all other responsible parties.

We agree to take responsibility for checking the FCAI website from time to time for amendments to the Code. We will notify the FCAI if we decide that an amendment to the Code does not suit our business operations and/or will notify the FCAI of our decision to withdraw as a signatory to the Code.

As a signatory to the Code, (company name) consents to its company name being included on a publicly available signatory list on the FCAI website.

Signature: __________________________________________ (Authorised Person)
Name:  
Position:  


11.1 **Advice for Signatories**

- The Code will be available on the FCAI website for downloading.
- If you wish to become a signatory, a signed letter (refer to the above example) should be forwarded to the FCAI on official company letterhead.
- Your company name will be included in a publicly available signatory list that will also be placed on the FCAI website. Any party in the transport chain can access the signatory list to review which parties have signed up to the Code.
- The Code Administration Committee will update the Code from time to time and publish it in its amended form on the FCAI website. It is the responsibility of each signatory to check for these updates.
12. STAKEHOLDER CONSULTATION

Code development has encompassed three phases of consultation:

- Collaboration
- Consultation, and
- Communication

12.1 Collaboration

All members of the Code Development Committee fully participated in the process of code development. A consensus based approach was adopted to reach agreement on the final structure and content of the Code. The membership of the code development committee is as follows:

- Director – Compliance & Operations, Federal Chamber of Automotive Industries
- Two local motor vehicle manufacturers, including:
  - A FCAI Logistics Committee representative
  - A FCAI Legal Committee representative
- Three motor vehicle and motor cycle distributors, including:
  - A FCAI Logistic Committee representative
  - A FCAI Legal Committee representative
  - A motorcycle representative
- Three road transport operators, including:
  - Patrick Autocare (Patrick Corporation Pty Ltd)
  - TNT Logistics (Australia) Pty Ltd
  - Toll Holdings Pty Ltd
- A representative of PrixCar Services Pty Ltd (independent vehicle processing)

12.2 Consultation

The Code Development Committee initiated two loops of consultation; an internal and an external loop. In each case, stakeholders were forwarded a copy of the draft code and requested to provide feedback.

- The internal loop comprised three components:
  - Code Development Committee members circulated the draft Code amongst key individuals within their own organisations
  - The FCAI tabled the draft Code at a meeting of its Legal Committee
  - The FCAI circulated the draft Code to all FCAI members. A member list follows:
### Motor Vehicles

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Company Name</th>
<th>Company Name</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ateco Automotive Pty Ltd</td>
<td>Audi Australia Pty Limited</td>
<td>Bentley Motor Cars</td>
<td>BMW Australia Limited</td>
</tr>
<tr>
<td>DaimlerChrysler Australia / Pacific Pty Ltd</td>
<td>Ford Motor Company of Australia Limited</td>
<td>GM Holden Ltd</td>
<td>Honda Australia Pty Ltd</td>
</tr>
<tr>
<td>Hyundai Automotive Distributors Australia Pty Ltd</td>
<td>Jaguar Australia Pty Limited</td>
<td>Kia Australia Pty Ltd</td>
<td>Land Rover Australia Pty Limited</td>
</tr>
<tr>
<td>Lexus Australia</td>
<td>Mazda Australia Pty Limited</td>
<td>Mitsubishi Motors Australia Ltd</td>
<td>Nissan Motor Company (Australia) Pty Ltd</td>
</tr>
<tr>
<td>Peugeot Automobiles Australia</td>
<td>Porsche Cars Australia Pty Ltd</td>
<td>Proton Cars Australia Pty Limited</td>
<td>Saab Automobile Australia Pty Ltd</td>
</tr>
<tr>
<td>SsangYong Australia</td>
<td>Subaru Australia Ltd</td>
<td>Suzuki Australia Pty Ltd</td>
<td>Toyota Motor Corporation Australia Limited</td>
</tr>
<tr>
<td>Volkswagen Group Australia Pty Ltd</td>
<td>Volvo Car Australia Pty Ltd</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Motor Cycles

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Company Name</th>
<th>Company Name</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Scooter Federation</td>
<td>BMW Australia Limited</td>
<td>BRP Australia Pty Ltd</td>
<td>Harley Davidson International</td>
</tr>
<tr>
<td>Honda Australia MPE Pty Ltd</td>
<td>John Sample Automotive Pty Ltd</td>
<td>Kawasaki Motors Pty Ltd</td>
<td>NF Importers Pty Ltd</td>
</tr>
<tr>
<td>Paul Feeney Group</td>
<td>Polaris Sales Australia Pty Ltd</td>
<td>Suzuki Australia Pty Limited</td>
<td>Yamaha Motor Australia Pty Ltd</td>
</tr>
</tbody>
</table>

- The external loop sought feedback from the following stakeholders:
  - National Transport Commission
  - Australian Trucking Association
  - Federation of Automotive Products Manufacturers
  - Motor Trades Association of Australia

The National Transport Commission forwarded the draft code to the State Transport Agencies Compliance Group. Of this group, Queensland Transport provided feedback.

In almost every case, feedback provided has been incorporated into the Code.
12.3 Communication

Once the code has been registered it will be widely distributed to all stakeholders and other interested parties including:

- Transport Workers Union
- Australian Manufacturing Workers Union
- Transport authorities in all jurisdictions
APPENDIX

- Example of a Vehicle Transport Specification Chart
- Glossary of Terms
- Assessment by Auditor
- The Road Transport (Compliance and Enforcement) Model Bill 2003, Divisions 5, 6, 7 & 9.
- The Victorian Transport Legislation (Amendment) Act 2004, Division 4
**Example of a Vehicle Transport Specification Chart**

<table>
<thead>
<tr>
<th>Make</th>
<th>Model</th>
<th>Body Shapes Available</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Sedan, Wagon, Hatch, Coupe, Utility, Cab Chassis, Other</td>
</tr>
<tr>
<td>Length</td>
<td>mm</td>
<td>Front Overhang</td>
</tr>
<tr>
<td></td>
<td>mm</td>
<td>Rear Overhang</td>
</tr>
<tr>
<td>Wheelbase</td>
<td>mm</td>
<td>Width</td>
</tr>
<tr>
<td>Width</td>
<td>mm</td>
<td>Height</td>
</tr>
<tr>
<td>Track</td>
<td>mm</td>
<td>Ground Clearance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Weight Range - Front</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Weight Range - Rear</td>
</tr>
<tr>
<td>Weight Range Total</td>
<td>kgs</td>
<td>Weight Range Total</td>
</tr>
</tbody>
</table>
Glossary of Terms

**CBU vehicle** is a completely built up vehicle

**CKD** is a Completely Knocked Down vehicle

**Crated Motorcycles** include SKD Motorcycles

**Dealers** may be dealers themselves or other parties nominated by Dealers

**Goods Carrying Vehicle** is a vehicle used to carry motor vehicles and motor vehicle components

**Imported motor vehicles** includes Semi Knocked Down (SKD) Vehicles and Completely Knocked Down (CKD) Vehicles

**Motor Vehicle** includes Motorcycle unless otherwise specified

**Motor Vehicle Components** include parts, accessories and completely knocked down (CKD) kits

**Relevant Legislation** is the road transport legislation and its parts relevant to the transport activity being considered

**Road Transport Operator** is a principal contract Transporter, sub-contract Transporter, owner operator or nominated driver.

**SKD** is a Semi Knocked Down vehicle
Assessment by Auditor

Assessment of a ROAD TRANSPORT INDUSTRY CODE OF PRACTICE

FOR

FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES

BY

RICHARD CLEAVER

Road Transport Accreditation Services
Introduction to assessment:

As a certified RABQSA quality and heavy vehicle accreditation systems auditor, I have been engaged by Ms Kath McCollim of Meyrick & Associates to conduct an independent assessment of an industry code of practice for the road transport of motor vehicles and vehicle components to address compliance with the Road Transport Reform (Compliance & Enforcement) Bill. The code of practice has been developed and presented on behalf of the Federal Chamber of Automotive Industries.

My brief is to assess whether the subject code of practice complies with the National Transport Commission (NTC) guidelines for the content, development, approval and use of industry guidelines published 2006, herein after referred to as the NTC guidelines.

I have been requested to provide a statement of endorsement that the subject code of practice complies with the aforementioned NTC criteria.

My assessment and endorsement of the code of practice is one of the required steps in the NTC guidelines for development and registration of an industry code of practice leading up to an application for registration of the code of practice by a road authority. An industry code may address compliance with applicable heavy vehicle laws – or it may cover any combination of the requirements. The draft code of practice submitted to me addresses a combination of mass, dimension and load restraint requirements under the provisions of the Road Transport Reform (Compliance & Enforcement) Bill.

Having perused this code of practice, I was satisfied that the criteria of the NTC guidelines had reached the appropriate stage for me, as an accredited auditor, to conduct a desktop assessment.

The standard of conformance or otherwise of the subject code of practice was measured against the NTC guidelines and was based on an accepted National Transport Commission, National Heavy Vehicle Accreditation Scheme (NHVAS) and Federal Office of Road Safety (FORS) methodology for audit procedures.

My assessment is necessarily limited by the following:

- The independent audit methodology has been agreed as representing a reasonable degree of assessment in all the circumstances particularly cost effectiveness.

- Some of the requirements of the National Transport Commission guidelines against which assessment is made calls for an exercise of subjective judgement.

- A desktop assessment will often involve reliance on written records in circumstances where the accuracy of these records cannot be completely verified.

- The assessment may involve a determination as to which of two or more versions of the same requirement to conform put to an assessor is correct under circumstances where this issue cannot be determined with absolute certainty.
Disclaimer:

For the aforementioned reasons I cannot accept any responsibility for any future claims based on an assertion that a Federal Chamber of Automotive Industries signatory company and/or entity’s conformance, act or omission or otherwise through following the content or intent of the industry code of practice for the road transport of motor vehicles and vehicle components under the Road Transport Reform (Compliance & Enforcement) Bill was in breach of any Act or Regulation where the circumstances were due to the limitation expressed above.

Assessment resources:

My assessment was conducted in accordance with the independent audit principles and methodology endorsed by the NTC and FORS and for the purpose of certifying the conformance or non-conformance of the subject code of practice within the NTC guidelines for development and registration of an industry code of practice leading up to an application for registration of the code of practice by the relevant authority.

The reference documentation available for me in this brief was the;

- Draft copy 8 (May 2006) of the industry code of practice for the road transport of motor vehicles and vehicle components under the Road Transport Reform (Compliance & Enforcement) Bill including;
  - An example of a vehicle transport specification chart
  - A glossary of terms
  - The Road Transport (Compliance and Enforcement) Model Bill 2003, Divisions 5, 6, 7, & 9
  - The Victorian Transport Legislation (Amendment) Act 2004, Division 4
  - The New South Wales Road Transport (General) Act 2005, Sections 53 – 58, 66 - 69
- Draft (April 2004) NTC guidelines for development and registration of industry codes of practice for heavy vehicle mass, dimension and load restraint
- Austroads research report (AP-R282/06) – Guidelines for the Content, Development, Approval and Use of Industry Codes of Practice 2006
- Load restraint guide (Second edition 2004)
- New South Wales Roads & Traffic Authority (RTA) publication 00.094 – Car Carriers (longer than 19m)
- New South Wales RTA publication 00.025 4.6metre high truck routes and loading requirements
- NHVAS business rules
• NHVAS mass management standards
• Mass limits for NHVAS mass management vehicles in NSW
• Federal Office of Road Safety - Independent Audit Framework manual.

My assessment also was assisted through my research that a code of practice under the provisions of Australian law is a document prepared for the purpose of providing;

• practical advice on preventative strategies; and
• practical means of achieving any code, standard, rule provision or specification relating to an industry’s regulation or legal requirements.

A code of practice may contain explanatory information. The preventative strategies outlined in a code of practice do not represent the only acceptable means of achieving the standard to which the code refers. A code of practice does not have the same legal force as a regulation and is not sufficient reason, of itself, for prosecution under an Act. For all stakeholders to accept an industry code of practice it should be accurate, easy to understand and avoid ambiguity.

**FCAI code of practice principal references to heavy vehicle mass management:**

The reference to the requirement for mass management compliance in the draft code of practice appears to have been developed as a useful training resource as well as being individualised through five Potential Risk Scenarios. (1, 3, 4, 5 and 7).

The foundation of the mass management references in the code of practice follows a general road transport industry contemporary rationale that efficient and effective mass management controls of heavy motor vehicles is increasing. The risk management provisions and incentives of the National Heavy Vehicle Accreditation Scheme (NHVAS) mass management module have been referenced in Potential Risk Scenario 7 of this draft Code of practice.

Potential Risk Scenario 7 recommends to signatories the NHVAS mass management alternative compliance methodology and through accreditation the expectation of government and regulators that road transport operators working through self regulation and a code of practice will be the expected norm rather than through in-efficient and in-effective operational and investigative enforcement and punitive regulation.

**FCAI code of practice reference to heavy vehicle dimension limits:**

The draft code of practice provides a reference for heavy vehicle dimension limits primarily through two Potential Risk Scenarios. (1 and 7). The scenarios can also be used as useful training tool.
**FCAI code of practice principal reference to heavy vehicle load restraint:**

The load restraint reference in the code of practice appears to have been developed as a useful training resource as well as through Potential Risk Scenario. (2 and 6).

The current NTC load restraint guide (Second Edition 2004 – Section E and G) has been referenced to underpin the credibility of this document.

My observations of this road transport industry sector’s national on-road operations supports that adequate work practices and appropriate vehicle transportation requirements have been developed and implemented.

References to the load restraint guide’s approved load restraint equipment requirements and specifications are provided in the draft code of practice for advice to drivers of their operational requirements. Driver safe loading and on-roadwork instructions are similarly provided though reference to the load restraint guide.

**Auditor’s overview of a Code of Practice objectives:**

There is a broad inference within the draft code of practice to an industry focused on compliance to road transport and traffic law. This industry direction follows the introduction of the Road Transport Reform (Compliance & Enforcement) Bill and to the States and Territories that introduced legislation giving enforcement powers to the provisions of the model Bill. I identified that this is a proactive strategy and appropriate for signatories or entities to move into under a contemporary Reasonable Step Defence and Chain of Responsibility compliance and enforcement environment.

The intent of this code of practice is to place responsibility on key managers of signatory companies and their entities to provide assurances and documentation that they have developed and implemented management systems that are effective and that are producing objective evidence to comply with road transport law, their manager’s duty of care, due diligence and an opportunity to demonstrate their chain of responsibility through a reasonable steps defence.

A signatory company’s managers, and/or their entities who follow closely, within the intent or spirit of the code of practice should be in a position to adequately demonstrate a reasonable steps defence in a prosecution or investigation following circumstances that involved a breach of a mass, dimension or restraint law.

This draft code of practice includes a plain English background statement not written in an anti-competitive way that identifies the requirements of relevant legislative mass, dimension and load restraint requirements in Victoria, New South Wales and Queensland. It has current copies of the Road Transport Reform (Compliance and Enforcement) Model Bill 2003, relevant sections of Division 4 of the Victorian Transport Legislation (Amendment) Act 2004 and relevant sections of the New South Wales Road Transport (General) Act 2005 attached as an appendix. The draft code sets out fundamental parameters to be a pro-active policy instrument or effective training aid that provides a process and operational guidelines for signatory members of the Federal Chamber of Automotive Industries and their entities to demonstrate compliance with mass, dimension and load restraint transport law.
In this code of practice, the core hazard analysis and critical control package for identification and subsequent compliance with the mass, dimension and load restraint requirements of road transport law is identified through seven potential risk management scenarios. The scenarios can identify a workplace risk that will allow the reader to more effectively assess and manage their mass, dimension and restraint compliance rather than the traditional reliance on reactive industry regulation and the response from regulators or investigators.

The draft code of practice is a stand alone document that is set out under twelve sections with appendix. The document in itself is an instrument that can significantly support management control and to facilitate legal compliance and/or legal mitigation to heavy vehicle mass, dimension and load restraint requirements. The code is an appropriate and useful training aid.

**Evaluation of Draft Code of Practice Sections:**

**Section 1. Background:**

A background statement in an industry code of practice is a contemporary means to demonstrate an industry or business strategy on how the signatories plan to address the fundamental principles of an industry code of practice and their intent to address the objectives of both the code of practice and the regulator’s requirements.

This Code of Practice background makes a clear professional statement that addresses the intent of the Road Transport Reform (Compliance and Enforcement) Model Bill 2003. The document’s background primarily identifies to the reader that they have an obligation of responsibility for general compliance to mass, dimension and load restraint law. It provides a clear statement of the provisions for Chain of Responsibility and Reasonable Steps Defence (RSD) available under some circumstances within the Bill.

The background sets out the basic RSD for contributors in road transport processes. It advises of expectations from compliance with the provisions of the code of practice and a RSD under Victoria, New South Wales and Queensland jurisdictions.

It rightly advises that only compliance with a code of practice that has been registered by a road authority will have the status of prima facie evidence towards a RSD.

The background statement in this draft code of practice is an explanation that satisfies the NTC guidelines insofar as it:

- a code of practice that sets out clear reasons for its establishment and the intended outcomes.
Section 2. Purpose of the Code:

The NTC guidelines recommend that an industry code of practice should provide an opportunity for voluntary compliance with the heavy vehicle mass, dimensions and load restraint requirements. Registration of a code of practice is a formal step that helps a person who is abiding by the letter and spirit of a code of practice establish reasonable steps for the purpose of a RSD to certain mass, dimension and load restraint offences when the person neither knew nor reasonably ought to have known of the non-conformance.

Section 2 of the draft code of practice gives similar direction to the code’s background statement. It advises that a RSD is available in circumstances where a signatory and/or entity in the chain of responsibility have followed to the letter or in the spirit of the code of practice.

The purpose of the code statement detailed out in Section 2 of the draft code of practice adequately satisfies the NTC guidelines.

Section 3. Objectives of the Code:

The draft code of practice in Section 3 sets out its legal and other objectives.

The legal objectives are;

- minimising the risk of breaches occurring under the relevant legislation
- be more confident of demonstrating the RSD to a court in the event of an unintentional heavy vehicle breach and;
- being able to request a reduced penalty in the event that RSD is established.

The other objectives succinctly written are;

- productivity gains
- managing compliance risks
- promoting collaboration
- encouraging industry best practice and integrity
- mitigating civil claims risk
- insurance obligations
- generating marketing opportunity and demonstrating chain of responsibility protection.

The draft code of practice objectives have been developed within Section 1.4 and 1.5 of the NTC guidelines.
Section 4. Application of the Code:

The NTC guidelines set out that the first step in developing an industry code of practice for heavy vehicle laws is to consider who the code will cover and the extent of that coverage. In particular the industry will need to determine;

- who is intended to be covered by the code
- who are the relevant stakeholders that may contribute to compliance with the relevant vehicle laws and;
- who should be consulted and involved in developing the code.

Section 4 of the draft code of practice adequately identifies key industry stakeholders with their responsible entity who are the proposed participants in the processes of road transporting motor vehicles and vehicle components. The section adequately identifies the participant’s chain of responsibility obligation in relation to mass, dimension and load restraint requirements under the relevant legislation.

There is a reference to the critical need for communication, co-operation and appreciation of obligation for all parties in the chain of responsibility requirements.

The application of code detailed out in Section 4 of the draft code of practice adequately satisfies the NTC guidelines.

Section 5. Specific measures to ensure compliance - Risk mitigation strategies:

Section 5 of the draft code of practice identifies a framework for risk management. It is based on the Australian and New Zealand Standard on Risk Management (AS/NZS 4360: 1999). The Section identifies generic stakeholders that are principally responsible in the logistics of road transporting motor vehicles and/or vehicle components.

A risk management approach through the analysis of the industry operating environment with the identification of hazard and critical control points have been nominated through seven potential risk scenarios. Mitigation strategies and outcomes that can comply with the heavy vehicle mass, dimension or load restraint laws are included.

The aforementioned strategy uses the code of practice as an effective means to promote compliance within a signatory’s business and operational environment. To be effective, the code should have broad controls that focus on each and every reasonable risk of non-compliance with the relevant heavy vehicle laws for the road transport of motor vehicles and vehicle components. Types of management controls that have been recommended in the NTC guidelines include requirements to;
• ensure the accuracy of statements made in transport documentation that is given to heavy vehicle operators and drivers

• include heavy vehicle compliance assurance requirements in commercial arrangements with customers and other parties in the chain of responsibility

• exercise supervision or control over employees, agents or other parties involved in activities that might lead to a heavy vehicle compliance problem occurring

• provide information, instruction and training in relation to the code and heavy vehicle compliance

• undertake and document processes to demonstrate compliance with the code and;

• regularly monitor and review the operation of the code to ensure it is kept up to date by promptly addressing problems.

The mitigation strategies set out in Section 5 of the draft code of practice adequately satisfies the NTC guidelines.

Section 6. In-house compliance provisions;

The NTC guidelines recommend that any business seeking to comply with an industry code of practice must have a business compliance system that should be clear and measurable and that addresses the requirements contained in the code.

The management system should make a clear statement of the organisation’s commitment to compliance through;

• given details of management responsibilities for promoting and implementing compliance measures, including the provision of adequate resources

• integrated procedures for implementing and monitoring compliance with the organisation’s day-to-day operating procedures

• providing for effective reporting and record-keeping systems

• detailed education and training for the organisation’s personnel

• maintaining a complaints handling system that assists in identifying and overcoming compliance failures and;

• ensuring that the business compliance system is subject to audit and is kept up-to-date.

A business compliance system must specify what must be done and by whom in that particular business to ensure the risks are managed consistent with the broad controls outlined in the code.
Readily available to all businesses are existing standards that may provide assistance in establishing procedures to ensure compliance including the AS/NZ 4360:1999 and the International Standards ISO family of Quality standards. The NHVAS mass and maintenance management standards as well as the Australian Trucking Associations TruckSafe scheme are available to road transport operators that will satisfy the above criteria.

Section 6 of the draft code of practice identifies that each individual entity should look to supplement the code with business specific mitigation strategies and that each signatory has a business compliance system that addresses the requirement contained in the code.

The in-house compliance provisions detailed out in Section 6 of the draft code of practice adequately satisfies the NTC guidelines.

**Section 7. Code administration.**

The NTC guidelines states “that an administrator must be appointed to be responsible for the development and administration of the code, ensuring it is endorsed and kept up-to-date. Whilst the administrator can contract for someone else to manage this on their behalf, they will remain responsible for ensuring their duties as administrator are properly carried out”. It was recommended in the NTC draft guidelines that unless someone is held responsible for ensuring the implementation and ongoing administration of the registered industry code of practice, the code’s list of signatories will not be updated, the required audits will not be conducted, the code won’t be updated when necessary, and the code’s capacity to improve compliance with the heavy vehicle mass, dimension and load restraint requirements is likely to be significantly limited.

The NTC guidelines recommendation that a review of the code must be conducted at least every three years or earlier if any major problems are identified has been addressed under section 7.1 of the draft code. The date by which the code must be reviewed should be marked prominently on the front cover of the code.

In addition, changes to applicable heavy vehicle regulatory requirements may also necessitate review of the code.

This code of practice through Section 7 has identified that the code of practice will be administered by a Code Administration Committee. The committee will comprise of the:

- Director – Compliance and Operations, Federal Chamber of Automotive Industries who will act as chairperson
- two local motor vehicle manufacturers
- two road transport operators
- one independent vehicle processing operator.

The chairperson will be responsible for the administration of the code of practice, ensuring that it is endorsed and kept up to date. The code can only be practicable if it reflects the current heavy vehicle regulatory requirements of states and territories.
There should be provision for a regular review of the code by an accredited auditor to ensure that broad rules and controls on the code are addressing the identified risks and that it is working effectively.

**Auditor’s recommendation:**

As required in Section 2.2 of the NTC guidelines, the Director – Compliance and Operations FCAI by formally identified as the Administrator of the Industry Code of Practice for the Road transport of motor vehicles and vehicle components.

The Code Administration Committee should be the mechanisms by which stakeholders will be involved in a review of the code.

**Section 8. Assessment by auditor:**

The NTC guidelines recommend that all industry codes of practice should be audited and endorsed by an accredited auditor. An accredited auditor assesses whether the proposed code;

- meets the requirements of the NTC guidelines
- provides effective measures to prevent contraventions of the relevant heavy vehicle laws for the industry or business the code seeks to cover.

I am satisfied the two issues above have been adequately addressed in this draft code of practice.

**Section 9. Commencement:**

Following this assessment and recommendation, the Code Administration Committee will make a decision concerning registration of the subject code or practice.

**Section 10. Date of registration:**

Once a date of registration is finalised the code of practice will be endorsed.

**Section 11. Signatories:**

Member organisations of the Federal Chamber of Automotive Industries or businesses within the industry may be invited as signatories and entities to the industry code of practice by way of the example letter in Section 11.
Section 12. Stakeholder consultation:

The NTC guidelines recommend “that if a code of practice is to be accepted by other responsible parties in the ‘chain of responsibility’, governments and the general public, credibility with stakeholders is vital. Development of industry codes of practice should be in consultation with the appropriate stakeholders and details of consultation must be noted in the code”.

Extensive collaboration, consultation and communication of the intention of the FCAI Code Development Committee in the developmental stages of the code of practice have been provided. A broad group of internal and external industry and regulative stakeholders participated. Reference to the participants in the consultation process is documented in Section 12 of the draft code of practice.

Auditor’s comment:

It was evident throughout this assessment that the Industry Code of Practice with its recommended supporting Potential Risk Scenarios would provide Federal Chamber of Automotive Industries signatory organisations with an opportunity to demonstrate a positive commitment to compliance with mass management, dimension and load restraint transport law and RSD provisions of Compliance and Enforcement legislation.

Auditor’s statement of endorsement:

Based on my independent assessment, in my opinion at 23 May 2006, the Industry Code of Practice for the road transport of motor vehicles and vehicle components under the Road Transport Reform (Compliance & Enforcement) Bill presented by the Federal Chamber of Automotive Industries demonstrated conformance with the NTC guidelines for content, development, approval and use of industry codes of practice for heavy vehicle mass, dimension and load restraint.

Richard Cleaver
23 May 2006.
Division 5  Liability for breaches of mass, dimension or load restraint requirements

91 Liability of consignor

(1) A person commits an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs; and
   (b) the person is the consignor of any goods that are in or on the vehicle or combination concerned.

(2) A person commits an offence if:
   (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container’s safety approval plate; and
   (b) the person is the consignor of any of the goods contained in the freight container.

(3) The offences under this section are offences of absolute liability.

(4) The person charged has the benefit of the reasonable steps defence for an offence under this section.

Drafting note. Provisions in this clause and elsewhere in the Bill stating that an offence is one of absolute liability with the benefit of the reasonable steps defence may be replaced in some jurisdictions by provisions for strict liability.

92 Liability of packer

(1) A person commits an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs; and
   (b) the person is the packer of any goods that are in or on the vehicle or combination concerned.

(2) A person commits an offence if:
   (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container’s safety approval plate; and
   (b) the person is the packer of any of the goods contained in the freight container.

(3) The offences under this section are offences of absolute liability.

(4) The person charged has the benefit of the reasonable steps defence for an offence under this section.

93 Liability of loader

(1) A person commits an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs; and
   (b) the person is the loader of any goods that are in or on the vehicle or combination concerned.

(2) The offence is an offence of absolute liability.
The person charged has the benefit of the reasonable steps defence for an offence under this section.

94 Liability of operator

(1) A person commits an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs; and
   (b) the person is the operator of the vehicle or combination concerned.

(2) The offence is an offence of absolute liability.

(3) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section.

(4) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

95 Liability of driver

(1) A person commits an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs; and
   (b) the person is the driver of the vehicle or combination concerned.

(2) The offence is an offence of absolute liability.

(3) If the breach concerned is a minor risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section.

(4) If the breach concerned is a substantial risk breach or a severe risk breach, the person charged has the benefit of the reasonable steps defence for an offence under this section, but only so far as it relates to reliance on the weight stated in a container weight declaration.

96 Liability of consignee

(1) A person who is a consignee of goods consigned for road transport commits an offence if:
   (a) the person engages in conduct; and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
   (c) the person intends that result.

(2) A person who is a consignee of goods consigned for road transport commits an offence if:
   (a) the person engages in conduct; and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
   (c) the person is reckless as to the matter mentioned in paragraph (b).

(3) A person who is a consignee of goods consigned for road transport commits an offence if:
   (a) the person engages in conduct; and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement; and
the person is negligent as to the matter mentioned in paragraph (b).

Note. Section 106 (Liability of consignee—knowledge of matters relating to container weight declaration) provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.

Division 6 Sanctions

97 Matters to be taken into consideration by courts

(1) The purpose of this section is to bring to the attention of courts the general implications and consequences of breaches of mass, dimension or load restraint requirements when determining the kinds and levels of sanctions to be imposed.

(2) In determining the sanctions (including the level of fine) that are to be imposed in respect of breaches of mass, dimension or load restraint requirements, courts are to take into consideration the following matters:

(a) minor risk breaches involve either or both of the following:
   (i) an appreciable risk of accelerated road wear;
   (ii) an appreciable risk of unfair commercial advantage;

(b) substantial risk breaches involve one or more of the following:
   (i) a substantial risk of accelerated road wear;
   (ii) an appreciable risk of damage to road infrastructure;
   (iii) an appreciable risk of increased traffic congestion;
   (iv) an appreciable risk of diminished public amenity;
   (v) a substantial risk of unfair commercial advantage;

(c) severe risk breaches involve one or more of the following:
   (i) an appreciable risk of harm to public safety or the environment;
   (ii) a serious risk of accelerated road wear;
   (iii) a serious risk of harm to road infrastructure;
   (iv) a serious risk of increased traffic congestion;
   (v) a serious risk of diminished public amenity;
   (vi) a serious risk of unfair commercial advantage.

(3) Nothing in this section affects any other matters that may or must be taken into consideration by a court.

(4) Nothing in this section authorises or requires a court to assign the breach to a different category of breach.

(5) Nothing in this section requires evidence to be adduced in relation to the matters that are to be taken into consideration by a court pursuant to this section.

98 Default categorisation

(1) If a court is satisfied that there has been a breach of a mass, dimension or load restraint requirement but is not satisfied that the breach is a substantial risk breach or a severe risk breach, it may treat the breach as a minor risk breach.
(2) If a court is satisfied that there has been a breach of a mass, dimension or load restraint requirement and that the breach is at least a substantial risk breach but is not satisfied that the breach is a severe risk breach, it may treat the breach as a substantial risk breach.

**Division 7 Container weight declarations**

**99 Application of Division**

This Division applies to a freight container that is consigned for transport by road, or for transport partly by road and partly by some other means.

**100 Meaning of “responsible entity”**

A *responsible entity*, in relation to a freight container, is:

(a) the person who consigned the container for transport by road in this jurisdiction if the person was in Australia at the time of consignment; or

(b) if there is no person as described in paragraph (a)—the person who in Australia, on behalf of the consignor, arranged for the transport of the container by road in this jurisdiction; or

(c) if there is no person as described in paragraphs (a) and (b)—the person who in Australia physically offered the container for transport by road in this jurisdiction.

**101 Container weight declarations**

(1) A *container weight declaration* for a freight container is a declaration that states or purports to state the weight of the freight container and its contents.

(2) Subject to the regulations, a container weight declaration:

(a) may be comprised in one or more documents or other formats, including in electronic form; or

(b) without limiting the above, may be comprised wholly or partly in a placard attached or affixed to the freight container.

**102 Complying container weight declarations**

(1) A container weight declaration for a freight container complies with this Division (a *complying container weight declaration*) if it contains the following additional information:

(a) the number and other particulars of the freight container necessary to identify the container;

(b) the name, home address or business address in Australia of the responsible entity;

(c) the date of the declaration;

(d) any other information required by the regulations.

(2) However, a container weight declaration does not comply with this Division if:

(a) the contents of the container weight declaration are not readily available to an authorised officer or police officer who seeks to ascertain its contents, there and then in the presence of the freight container (whether by examining documents located in or on the vehicle or combination or by obtaining the information by radio or mobile telephone or by any other means); or

(b) it is not in a form that can be used or adapted for evidentiary purposes; or

(c) it is not in a form that satisfies requirements prescribed by the regulations.
103 Duty of responsible entity

(1) This section applies where a responsible entity offers a freight container to an operator for transport in this jurisdiction by a vehicle or combination.

(2) The responsible entity must ensure that the operator or driver of the vehicle or combination is provided, before the start of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.

(3) The responsible entity is guilty of an offence if the responsible entity engages in conduct that contravenes subsection (2).

(4) The offence is an offence of absolute liability.

(5) The person charged with an offence under this section has the benefit of the reasonable steps defence.

104 Duty of operator

(1) This section applies where an operator arranges for a freight container to be transported in this jurisdiction by a vehicle or combination.

(2) The operator must ensure that the driver of the vehicle or combination is provided, before the start of the driver’s journey in the course of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.

(3) If the freight container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.

(4) If the driver does not have a complying container weight declaration (or the prescribed particulars contained in the declaration), the operator is taken to have contravened subsection (2) unless the operator establishes that the driver was provided with the declaration (or the prescribed particulars).

(5) The operator is guilty of an offence if the operator engages in conduct that contravenes subsection (2) or (3).

(6) The offences under this section are offences of absolute liability.

(7) The person charged with an offence under this section has the benefit of the reasonable steps defence.

(8) Any or all of subsections (2), (3) and (4) do not apply in circumstances prescribed by the regulations.
105 Duty of driver

(1) A person must not drive a vehicle or combination loaded with a freight container on a road in this jurisdiction without first having been provided with the relevant container weight declaration.

(2) If a container weight declaration relating to a freight container is provided to a driver of a vehicle or combination with the container, the driver must, during the course of a journey in this jurisdiction, keep the declaration in or about the vehicle or combination or in a manner that enables it to be readily accessed from the vehicle or combination.

(3) The driver is guilty of an offence if the driver engages in conduct that contravenes subsection (1) or (2).

(4) The offences under this section are offences of absolute liability.

(5) The person charged with an offence under this section has the benefit of the reasonable steps defence.

106 Liability of consignee—knowledge of matters relating to container weight declaration

Without limiting section 96 (Liability of consignee), a consignee of goods is taken to have intended the result referred to in section 96 (1) (b) if:

(a) the conduct concerned related to a freight container; and
(b) the person knew or ought reasonably to have known that:
   (i) a container weight declaration for the container was not provided as required by this Act; or
   (ii) a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Note. Section 96 (1) provides that a person who is a consignee of goods consigned for road transport is guilty of an offence if the person engages in conduct that results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement and the person intends that result.

Division 9 Transport documentation

112 False or misleading transport documentation: liability of consignor, packer, loader, receiver and others

(1) Application of section
This section applies where goods are consigned for transport by road, or for transport partly by road and partly by some other means, and where all or any part of the transport by road occurs or is to occur in this jurisdiction.

(2) Liability of consignor
A person is guilty of an offence if:
(a) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and

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(b) the person is the consignor of the goods.

(3) Liability of packer
A person is guilty of an offence if:
(a) the goods are packed in Australia in a freight container or other container or in a package or on a pallet for transport by road; and
(b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
(c) the person is the packer of the goods.

(4) Liability of loader
A person is guilty of an offence if:
(a) the goods are loaded on a vehicle or combination for transport by road; and
(b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
(c) the person is the loader of the goods.

(5) Liability of receiver
A person is guilty of an offence if:
(a) the goods are packed outside Australia in a freight container or other container or in a package or on a pallet for transport by road; and
(b) the transport documentation relating to the consignment is false or misleading in a material particular relating to the mass, dimension or load restraint of any or all of the goods consigned; and
(c) the person is the receiver of the goods in Australia.

(6) Container weight declaration—liability of responsible entity
A person is guilty of an offence if:
(a) a container weight declaration provided to an operator of a vehicle or combination contains information that is false or misleading in a material particular; and
(b) the person is the responsible entity who offered the freight container concerned to the operator for transport.

(7) Container weight declaration—liability of operator
A person is guilty of an offence if:
(a) a container weight declaration provided to a driver of a vehicle or combination contains information that is false or misleading in a material particular; and
(b) the person is the operator of the vehicle or combination who arranged for the freight container concerned to be transported in this jurisdiction.

(8) Container weight declaration—certain information not misleading
Information in a container weight declaration is not false or misleading for the purposes of this Act merely because it overstates the actual weight of the freight container and its contents.

(9) Nature of offences
The offences under this section are offences of absolute liability.

(10) Reasonable steps defence
The person charged with an offence under this section has the benefit of the reasonable steps defence.

**Note.** Section 90 (Reasonable steps defence—reliance on container weight declaration) makes provision for reliance on a container weight declaration where an operator or driver is charged with an offence involving a breach of a mass requirement and is seeking to rely on the reasonable steps defence.
The Victorian Transport Legislation (Amendment) Act 2004

Division 4—Responsibility for Breaches of Mass, Dimension and Load Restraint Limits and Requirements

171. Liability of consignor

(1) A "consignor" of goods is a person who—
   (a) with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road; or
   (b) engages an operator of a vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or
   (c) has possession of, or control over, the goods immediately before the goods are transported by road; or
   (d) loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is unattended (except by a driver of the vehicle, a trainee driver or any person necessary for the normal operation of the vehicle) during loading; or
   (e) if the goods are imported into Australia, imports the goods.

(2) A person is guilty of an offence if—
   (a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and
   (b) the person is the consignor of any goods that are in or on the vehicle.

(3) A person is guilty of an offence if—
   (a) the weight of a freight container containing goods consigned for road transport and its contents exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and
   (b) the person is the consignor of any of the goods contained in the container; and
   (c) the container is placed on a vehicle.

(4) This section does not apply to the consignment by a person of goods by mail or by means of a parcel service.

(5) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

(6) A person charged with an offence under this section has the benefit of the reasonable steps defence.

172. Liability of packer

(1) A "packer" of goods is a person who—
   (a) puts the goods in a packaging for transport by road; or
   (b) assembles the goods as packaged goods in an outer packaging or unit load for transport by road; or
   (d) supervises an activity mentioned in paragraph (a) or (b); or
   (e) manages or controls an activity mentioned in paragraph (a), (b) or (c).

(2) A person is guilty of an offence if—
   (a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and
   (b) the person is the packer of any goods that are in or on the vehicle.
A person is guilty of an offence if—
(a) the weight of a freight container containing goods consigned for road transport and its contents exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and
(b) the person is the packer of any of the goods contained in the container; and
(c) the container is placed on a vehicle.

This section does not apply to the putting by a person of goods in a packaging for consignment of those goods by mail or by means of a parcel service.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

A person charged with an offence under this section has the benefit of the reasonable steps defence.

173. Liability of loader
(1) A "loader" is a person who—
(a) loads a vehicle with goods for transport by road; or
(b) loads a vehicle with a freight container (whether or not containing goods) for transport by road; or
(c) without limiting paragraph (a) or (b), loads a freight container already in or on a vehicle with goods for transport by road; or
(d) supervises an activity mentioned in paragraph (a), (b) or (c); or
(e) manages or controls an activity mentioned in paragraph (a), (b), (c) or (d).

(2) A person is guilty of an offence if—
(a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and
(b) the person is the loader of any goods that are in or on the vehicle.

A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

A person charged with an offence under this section has the benefit of the reasonable steps defence.

174. Liability of operator
(1) A person is guilty of an offence if—
(a) the person is the operator of a vehicle; and
(b) the vehicle is in breach of a mass, dimension or load restraint limit or requirement.

(2) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

If the vehicle is in breach of a mass limit that is a substantial risk breach, or a severe risk breach, the person charged with the offence has the benefit of the reasonable steps defence so far as it relates to reliance on the weight stated in a container weight declaration.

175. Liability of driver
(1) A person is guilty of an offence if—
(a) the person is the driver of a vehicle; and
(b) the vehicle is in breach of a mass, dimension or load restraint limit or requirement.

(2) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.
(3) If the vehicle is in breach of a mass limit that is a substantial risk breach, or a severe risk breach, the person charged with the offence has the benefit of the reasonable steps defence so far as it relates to reliance on the weight stated in a container weight declaration.

176. Liability of consignee

(1) A "consignee" of goods is a person who—
(a) with the person's authority, is named or is otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road; or
(b) actually receives the goods after completion of their transport by road — but does not include a person who merely unloads the goods.

(2) A person who is a consignee of goods consigned for road transport is guilty of an offence if—
(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and
(b) the person intends that result.

(3) A person who is a consignee of goods consigned for road transport is guilty of an offence if—
(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and
(b) the person consciously and unjustifiably disregards a substantial risk that that result would occur, or would be likely to occur.

(4) A person who is a consignee of goods consigned for road transport is guilty of an offence if—
(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and
(b) the person fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all of the circumstances of the case to prevent that result from occurring.

(5) This section does not apply to the receipt by a person of goods by mail or by means of a parcel service.

Note: Section 187 provides that a consignee is taken to have intended the result referred to in sub-section (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.
The New South Wales Road Transport (General) Act 2005

53 Liability of consignor

(cf model provisions, s 91)

(1) A person is guilty of an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs, and
   (b) the person is the consignor of any goods that are in or on the vehicle or combination concerned.

(2) A person is guilty of an offence if:
   (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container’s safety approval plate, and
   (b) the person is the consignor of any of the goods contained in the freight container.

(3) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

54 Liability of packer

(cf model provisions, s 92)

(1) A person is guilty of an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs, and
   (b) the person is the packer of any goods that are in or on the vehicle or combination concerned.

(2) A person is guilty of an offence if:
   (a) the weight of a freight container containing goods consigned for road transport exceeds the maximum gross weight as marked on the container or on the container’s safety approval plate, and
   (b) the person is the packer of any of the goods contained in the freight container.

(3) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

55 Liability of loader

(cf model provisions, s 93)

(1) A person is guilty of an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs, and
   (b) the person is the loader of any goods that are in or on the vehicle or combination concerned.

(2) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.
56 Liability of operator

(cf model provisions, s 94)

(1) person is guilty of an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs, and
   (b) the person is the operator of the vehicle or combination concerned.

(2) If the breach concerned is a minor risk breach, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

(3) If the breach concerned is a substantial risk breach or a severe risk breach of a mass requirement, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

57 Liability of driver

(cf model provisions, s 95)

(1) A person is guilty of an offence if:
   (a) a breach of a mass, dimension or load restraint requirement occurs, and
   (b) the person is the driver of the vehicle or combination concerned.

(2) If the breach concerned is a minor risk breach, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

(3) If the breach concerned is a substantial risk breach or a severe risk breach of a mass requirement, a person prosecuted for an offence under this section has the benefit of the reasonable steps defence for an offence under this section.

58 Liability of consignee

(cf model provisions, s 96)

(1) person who is a consignee of goods consigned for road transport is guilty of an offence if:
   (a) the person engages in conduct, and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
   (c) the person intends that result.

(2) A person who is a consignee of goods consigned for road transport is guilty of an offence if:
   (a) the person engages in conduct, and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
   (c) the person is reckless as to the matter mentioned in paragraph (b).

(3) A person who is a consignee of goods consigned for road transport is guilty of an offence if:
   (a) the person engages in conduct, and
   (b) that conduct results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement, and
   (c) the person is negligent as to the matter mentioned in paragraph (b).
Note. Section 69 (Liability of consignee—knowledge of matters relating to container weight declaration) provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.

64 Container weight declarations

66 Duty of responsible entity

(cf model provisions, s 103)

(1) This section applies where a responsible entity offers a freight container to an operator for transport in this jurisdiction by a vehicle or combination.

(2) The responsible entity must ensure that the operator or driver of the vehicle or combination is provided, before the start of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.

(3) The responsible entity is guilty of an offence if the responsible entity engages in conduct that contravenes subsection (2).

(4) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence.

67 Duty of operator

(cf model provisions, s 104)

(1) This section applies where an operator arranges for a freight container to be transported in this jurisdiction by a vehicle or combination.

(2) The operator must ensure that the driver of the vehicle or combination is provided, before the start of the driver’s journey in the course of the transport of the freight container in this jurisdiction, with a complying container weight declaration relating to the freight container.

(3) If the freight container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying container weight declaration relating to the freight container (or with the prescribed particulars contained in the declaration) by the time the other carrier receives the freight container.

(4) If the driver does not have a complying container weight declaration (or the prescribed particulars contained in the declaration), the operator is taken to have contravened subsection (2) unless the operator establishes that the driver was provided with the declaration (or the prescribed particulars).

(5) The operator is guilty of an offence if the operator engages in conduct that contravenes subsection (2) or (3).

(6) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence.
(7) Any or all of subsections (2), (3) and (4) do not apply in circumstances prescribed by the regulations.

68 Duty of driver

(cf model provisions, s 105)

(1) A person must not drive a vehicle or combination loaded with a freight container on a road in this jurisdiction without first having been provided with the relevant container weight declaration.

(2) If a container weight declaration relating to a freight container is provided to a driver of a vehicle or combination with the container, the driver must, during the course of a journey in this jurisdiction, keep the declaration in or about the vehicle or combination or in a manner that enables it to be readily accessed from the vehicle or combination.

(3) The driver is guilty of an offence if the driver engages in conduct that contravenes subsection (1) or (2).

(4) A person prosecuted for an offence under this section has the benefit of the reasonable steps defence.

69 Liability of consignee—knowledge of matters relating to container weight declaration

(cf model provisions, s 106)

Without limiting section 58 (Liability of consignee), a consignee of goods is taken to have intended the result referred to in section 58 (1) (b) if:

(a) the conduct concerned related to a freight container, and

(b) the person knew or ought reasonably to have known that:

(i) a container weight declaration for the container was not provided as required by this Act, or

(ii) a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material particular.

Note. Section 58 (1) provides that a person who is a consignee of goods consigned for road transport is guilty of an offence if the person engages in conduct that results or is likely to result in inducing or rewarding a breach of a relevant mass, dimension or load restraint requirement and the person intends that result.