

# Speech

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**ALC Supply Chain Safety and Compliance Summit,  
Melbourne**

**Wednesday 13 August**

**1:00pm – 2:30pm**

**Topic: Chain of Responsibility and the development of  
telematics policy in Australia to assist with compliance  
and enforcement of COR obligations**

**Followed by panel session**

**Chair:** Charlie Macdonald Manufacturing, Transport & Logistics  
Industry Executive, Industry Centre of Excellence, Telstra

**Other Panellists:**

- o Mr Victor Pang, Head of Development for ANZ, Ctrack
- o Mr Matthew Bellizia, CEO, MT Data
- o Mr Steven Asnicar, Director, URBANGLOBAL

- o Mr Chris Koniditsiotis, CEO, Transport Certification Australia

## **Title slide**

Good afternoon and thank you for inviting me to be a part of the session today.

## **Slide 2**

When you consider that work-related road crashes in Australia currently account for about 50 per cent of all occupational fatalities and 15 per cent of national road deaths, it's not a stretch to say that freight transport has to be one of the most dangerous sectors to work in within in Australia.

The social impact of road trauma is catastrophic, but as you would be aware, it has a significant economic impact too.

The cost of the road toll to the Australian economy is estimated to be approximately \$27 billion per annum.

Incidents can affect a company's bottom line through damage to reputation, lost productivity, increased insurance premiums and compensation claims.

Today I want to focus on how technology can help you meet your chain of responsibility obligations and how the NTC is working to ensure that our national heavy vehicle laws and regulations will allow you take advantage of these tools and as a result be both safer and more productive.

In the next 20 minutes I will cover:

- How technology can help you meet your Chain of Responsibility obligations
- The framework for heavy vehicle regulatory telematics which ministers have now agreed to and how this impacts your business
- Upcoming work related to Chain of Responsibility being progressed by the NTC.

### **Slide 3**

#### **Recap - Chain of Responsibility**

NTC is focussed on national policy and legislative reform.

We are not a regulatory body but we do work closely with regulators such as NHVR and ONRSR, state/territory transport departments, road authorities/managers and enforcement agencies in formulating improvements to policy

settings, guidance material and national or model legislation.

Although most of you are familiar with Chain of Responsibility legislation, I'd like to do a quick recap to put in context some of the current related work NTC is doing.

The current Heavy Vehicle National Law is based on the model Compliance and Enforcement Bill and other model laws that were consolidated in 2011-12.

The aim of Chain of Responsibility is to recognise that off-road parties have the ability to *influence* on-road activities, which can potentially lead to breaches of the Law.

**Chain of Responsibility seeks to *identify* those parties that may *control, influence or encourage* on-road behaviour by making them legally *accountable* for their actions.**

It's about making sure that all parties in the supply chain are *aware* of their actions and potential *consequences* of those actions, and take appropriate steps to *prevent* breaches from happening.

It also applies to *inaction* – where not doing something may *cause* or *encourage* a breach.

## **Slide 4 - Definition of Telematics**

Telematics is the term used to describe *an in-vehicle device that forms part of a system that captures and sends information electronically.*

## **Slide 5 – Commercial and Regulatory Applications of Telematics**

A telematics system can be used for commercial purposes, such as for measuring how the vehicle is being driven and engine performance.

The same technology can also be used for regulatory purposes, for example an Electronic Work Diary application could be used to record driver work and rest hours.

This slide shows the various commercial and regulatory applications possible via an in vehicle telematics device.

## **Slide 6 - How telematics technology can help you meet your Chain of Responsibility obligations**

It is important, especially in the context of Chain of Responsibility, for businesses to demonstrate your compliance with the law, not only to the regulator and other enforcement agencies, but also to senior management as

well as others in the supply chain, such as customers and suppliers.

Technology – specifically in-vehicle telematics such as fatigue, mass and speed monitoring devices – can help improve transparency along the supply chain.

The use of technology can help demonstrate how a business has undertaken ‘reasonable steps’ to prevent breaches occurring.

For vehicle operators, these devices have the ability to give you hard data to show that the vast majority of your vehicles and drivers are fully compliant. This data can also be used internally by management to deal appropriately with the small minority who are not compliant.

Beyond simply meeting legal obligations, the use of telematics can create a safer and more productive business.

Electronically monitoring speed, location and driving hours also enables parties along the supply chain to plan more efficiently and respond in real time to unpredictable events, such as traffic congestion, vehicle breakdown, or other delays.

## **Slide 7 – Getting the most out of data**

It's important to remember, though, that technology isn't the 'silver bullet' for safety and compliance.

What is just as important as the box in the truck, are the systems you have set up within your business to deal with issues and breaches when they occur.

In other words, having data is only useful if you do something with it.

Does anyone in the business regularly look at the data these devices are generating to understand where the issues, if any, are?

If you are using telematics to monitor your drivers' speed, what process do you have in place for when they are found speeding?

Do you sit the driver down for a chat, re-train them, or issue formal warnings? How do you ensure these processes support safe and compliant workplace and therefore be used as 'reasonable steps' in the context of chain of responsibility legislation?

The importance of this is well demonstrated in recent court decisions.

## **Slide 8 - Heavy vehicle telematics framework**

Feedback from industry has indicated that the current lack of consistent and clear policies on how telematics data will be used has been a barrier to the take up of telematics technology

This is why governments directed the NTC to develop a compliance framework for heavy vehicle telematics which will provide a clear national policy on how telematics data will be used for regulatory purposes.

The framework aims to balance the opportunities to improve compliance with the need to regulate access to data and protect privacy.

Understandably, if transport operators install regulatory telematics on a voluntary basis, they want to know what data will be accessed for enforcement purposes, and in what circumstances.

The objective of the framework is to provide this certainty in order to encourage industry to adopt telematics on a voluntary basis and hence provide for improved road safety and productivity outcomes.

The aim is not to increase the regulatory burden for industry but to provide ways for industry to meet its compliance requirements more efficiently.

Australia's framework approach to establishing principles for the regulatory use of telematics technology, such as Electronic Work Diaries, is one of the first in the world.

Other countries have made rules and regulations for specific applications but they are not necessarily consistent and they are not necessarily scalable or transferable to other applications.

Australia has recognised that if we always pick one application off at a time, policy outcomes could be slow, laborious and potentially inconsistent.

Following public consultation on the draft framework during late 2013 and early 2014, principles to underpin a framework were approved by the Transport and Infrastructure Council in May 2014.

There are 4 key features of the compliance framework.

The first of these is:

- **Strong and clear privacy protections to guard against unreasonable enforcement**

Telematics can provide very detailed and accurate data. Understandably, operators and drivers are concerned on how this data is going to be used by enforcement agencies. For this reason, the framework provides for strong privacy protections for drivers' personal information.

The framework's principles will ensure that access and use of telematics information:

- is consistent with Australian Privacy Principles
- is not used in a discriminatory or arbitrary manner by public authorities
- must only be accessed by public authorities for the regulatory purposes for which they were intended. For example, a telematics system installed only to meet regulatory requirements under the Heavy Vehicle National Law should not be accessed to enforce a different law unless a court-issued warrant is obtained.

In addition, each telematics regulatory application must clearly identify to the user which organisation has responsibility for personal information generated by the telematics system and which organisations may access or hold personal information derived from it.

- Each telematics regulatory application must also set out:
  - the purposes for which information will be collected
  - which data will be accessed for these purposes
  - the conditions under which this information will be sought.

The second and third features of the telematics framework are:

- **Publicly available, transparent and accountable policies and processes for using telematics for enforcement purposes**
- **Providing enforcement agencies with better tools to target high-risk operators and make better use of resources**

The benefit of using telematics applications for enforcement authorities is that fewer resources are required at the roadside and can instead be focused back-of house.

Resources can also be better targeted to the few 'cowboys' who consistently ignore the rules rather than those who sometimes make inadvertent minor breaches in good faith.

The fourth feature of the framework is:

- **Minimum standards for all telematics used for enforcement, which will protect drivers from incorrect information and potentially false breaches.**

It is important that in circumstances where a telematics device is used for enforcement, particularly roadside enforcement, regulators and industry have confidence in the accuracy and reliability of that device, given that the information could be used to issue a fine.

This means that a higher standard of telematics may be required compared to a device used simply for commercial use.

We are working with TCA to finalise a 'common data set' and data dictionary as part of the framework. The data dictionary will ensure that the telematics industry design and procure interoperable systems based on international standards. This will mean that regulatory and commercial applications can be integrated into a single system and can "talk to each other".

Now that the principles that will underpin the framework have been agreed to by all governments, the NTC will finalise the framework for release by the end of the year.

## **Slide 9 - EWDs**

In an interrelated project, the NTC has specifically examined the regulatory changes required to prepare Australia for the wider, voluntary use of EWDs in the heavy vehicle industry and support the take-up of this technology.

The EWD provides an example of how technology can strip ambiguity and guesswork from complex laws, and provide assurance to partners in the chain of responsibility.

Analysis found that if only 1 per cent of operators changed from using a written work diary to using an EWD, there is a net present cost saving of \$7.5 million over five years to the Australian economy.

If just over 40 percent of operators took up the EWD, it is estimated there is a net present cost saving of \$1.221 billion over five years compared to a WWD.

The cost benefits from EWDs are essentially derived from time saved in:

- Entry and management costs associated with a WWD for drivers and transport operators
- More efficient enforcement for Authorised Officers.

However, while the EWD has been recognised in law for some time, a lack of regulatory and policy frameworks regarding its use has inhibited the uptake of this technology.

Between 2011 and 2013 the New South Wales Government funded a pilot to test the operational and technical requirements for the implementation of EWDs.

As part of that pilot, the NTC was charged with exploring the policy issues associated with EWDs, recognising that industry and government sought policy certainty as to how EWD data would be used for compliance and enforcement purposes.

The resulting work aligns with the principles of the telematics framework and the NTC's recent heavy vehicle compliance review.

The NTC's work has found that the current Heavy Vehicle National Law is largely sufficient to support the use of EWDs, and that minor maintenance work to update the laws will be required.

The final EWD policy paper was endorsed by ministers in May and the next step is for us to work with NHVR, road authorities and industry to plan for a phased implementation of EWDs on a voluntary basis once the regulatory amendments take effect within the law.

### **Slide 10 - Current NTC CoR work**

In relation to the chain of responsibility, the NTC is currently undertaking work to ensure the legislation remains fair and effective.

This work follows on from a review of the Heavy Vehicle National Law's chain of responsibility provisions undertaken by a taskforce of government and industry representatives.

The review commenced in May 2013 and was completed in April 2014, with the taskforce reporting back to ministers in May 2014.

The taskforce examined:

- the duties of persons who are covered by the chain of responsibility provisions
- the persons who should be covered and the identification of their roles
- strengthening compliance with fair and effective enforcement of the provisions.

**The taskforce concluded that Australia's chain of responsibility laws are working well to keep truck drivers and other road users safe, but that more work is needed in several areas:**

### **1. Review of duties under Chain of Responsibility**

The Heavy Vehicle National Law has four types of duties – some specify who they apply to and what needs to be done to comply, while others are broader:

- A *general* duty- based on the idea that *everyone has a duty of care* to ensure their own safety as well as that of others.
- *Intermediate* duties - based around the *role* and *functions* of relevant parties.

- *Process based* duties - specify *particular processes* or *steps* that may be followed in order to meet an obligation.
- *Specification standards* - include precise and detailed information on *what needs to be done* to meet a duty.

The taskforce recommended that the NTC investigate whether any changes are required to the way duties are constructed within Chain of Responsibility legislation to improve its fairness and effectiveness.

## **2. CoR and executive officer liability**

The NTC is reviewing the director's liability provisions under the Heavy Vehicle National Law to ensure consistency with COAG's *Personal Liability for Corporate Fault Principle and Guidelines*.

These principles were agreed to in 2009 to improve consistency in the way executive officer liability is treated in legislation around the country, and to reduce complexity for corporations in understanding their legal obligations and responsibilities.

Each of the jurisdictions have undergone this process for their laws, it's now the turn of the Heavy Vehicle National Law.

### **3. CoR and vehicle standards**

During the progression of the taskforce's work, some stakeholders argued that some supply chain participants should be held to account for ensuring vehicles are maintained in a way that is roadworthy, and that the Chain of Responsibility laws that apply to fatigue and speeding should be extended to vehicle standards.

The final taskforce paper recommended that while there was support for extending the Chain of Responsibility regime to heavy vehicle standards and roadworthiness, further consideration was needed to settle the standards and parties to which these provisions would apply.

The Transport and Infrastructure Council also specifically asked the NTC to further explore this issue at their meeting in May.

Although not considered Chain of Responsibility offences, the vehicle standards chapter of the heavy vehicle national law does contain offences that achieve a similar objective, in that they recognise the on-road effects of the actions, inactions and demands of off-road parties such as operators, prime contractors and employers.

For example, the law says that a relevant person must not use, or *permit to be used*, a heavy vehicle that contravenes the vehicle standards. This means that potentially, not only the driver but others in the chain, such as an employer, could be liable if a heavy vehicle is found to be driven while not compliant with the necessary standards.

There is also other relevant legislation, such as the Work, Health and Safety Act which obligates businesses to provide and maintain a safe workplace – inclusive of trucks on the road.

The NTC will work closely with stakeholders to identify whether there can be any improvements or additions to better recognise the actions, inactions and demands of off-road parties in the vehicle standards chapter of the current Heavy Vehicle National Law.

## **Conclusion**

The NTC has and will continue to work with our stakeholders, including business, to ensure that Australia's laws and regulations encourage safe practices but are also useful and practical for your business.

The agreed principles for a telematics framework and complementary EWDs policy are a huge step forward.

This work will give the Australian heavy vehicle industry the option to use technology applications to help them meet their obligations under Chain of Responsibility and other related laws.

It will give industry the confidence to invest in applications which will improve efficiency and compliance because it gives clear direction as to how data will be used, and what specifications will be allowable under the law to meet their obligations.

Further work to review the current chain of responsibility legislation will ensure that this law continues to remain fair and effective.

## **Slide 11: New NTC website**

If you need any further information, please head over to the NTC's website, which we have recently updated at [www.ntc.gov.au](http://www.ntc.gov.au).

Improvements include:

- A responsive design for smartphones and tablets
- Many ways to find our most accessed information to suit different preferences (ie via mode, or topic).
- Subscribers to our news can now choose to receive just the information they are interested in (ie heavy vehicles, rail, load restraint guide).
- An advanced search feature that will help you find our reports, guidelines and the relevant legislation much more quickly
- A better submissions process that makes it easier for you to provide input into our policy work.

There's also a link to a survey on the new site and we'd be interested in your feedback.

I look forward to any questions you may have about the points I have covered today in the panel session this afternoon.

**Slide 12 - Ends**