

COMPLIANCE AND ENFORCEMENT – the Insurance Perspective

Members will probably be aware of the impending introduction of legislation in respect of road transport. The Compliance & Enforcement reforms that are being introduced expand the responsibilities of many entities in the transport chain in relation to road safety and container weight declarations.

The Club has obtained an opinion from Stephen Thompson at Middletons Lawyers to assist members in addressing the challenges presented by these changes. Members should note the concept of “chain of responsibility” which extends the obligations on truck operators to include other parties involved in the transportation of consignments. The general purpose of the legislation is to reduce or eliminate incorrectly declared consignments on Australian roads. This is achieved by increasing the responsibilities of those in the chain and the ability of the relevant authority to pursue breaches.

The legal opinion suggests some general steps that will assist in preventing breaches and limiting exposure to prosecution or civil action. The Club would particularly recommend that members put their principals and suppliers on notice of these changes and explain that indemnities will be sought for losses arising from incorrect declarations of weight. Often you will only be able to declare the weight of the consignment based upon information provided to you by other entities.

Middletons Opinion – August 2005

CONTAINER WEIGHT DECLARATIONS – Chain of Responsibility**Introduction**

Australia has recently developed model legislation designed to improve compliance with and enforcement of road transport safety. The model is known as the *Road Transport Reform (Compliance and Enforcement) Bill*, which will not itself have legislative force - for constitutional reasons, it will be necessary for each State and Territory to adopt the legislation into domestic law.

The model deals with a number of road safety issues such as mass and dimension limits, load restraints, and new risk-based categories of offences. Of critical interest to the shipping industry are the provisions in the Act which deal with container weight declarations (CWDs).

Chain of responsibility

The model introduces the key concept of "chain of responsibility" – the notion that all parties in the road transport supply chain have obligations to improve safety and prevent a breach from occurring. The concept does not lead to equal responsibility between those parties, but rather to responsibility proportionate to each party's level of involvement.

Responsible entity

This is another key concept. The responsible entity for the consignment of a container is:

- (a) the person who consigned the container for road transport, if the person was in Australia; or
- (b) if there is no such person in Australia, the person in Australia who, on behalf of the consignor, arranged for the road transport; or
- (c) if neither (a) or (b) are applicable, the person in Australia who physically offered the container for road transport.

Container weight declarations

A CWD must include:

- the weight of the freight container and its contents;
- the number and other particulars of the container for identification purposes;
- the name and address in Australia of the responsible entity, and the date that the declaration was made,

and may:

- be in one or more documents or formats; and
- be comprised in part by a placard affixed to the container.

Offences & reasonable steps defence

It is an offence punishable by substantial fines for a responsible entity to offer a container for road transport without having provided the operator or driver with a compliant CWD.

In a CWD prosecution it is a defence if the responsible entity did not know and could not reasonably be expected to have known of the contravention **and**:

- had taken all reasonable steps to prevent the contravention; or
- there were no steps that the responsible entity could reasonably be expected to have taken to prevent the contravention.

In deciding whether reasonable steps have been taken, the court will have regard to all of the circumstances of the alleged offence including measures taken or available to be taken to:

- accurately and safely weigh or measure the container;
- calculate the container weight from reliable evidence;
- exercise supervision or control over others involved in activities leading to the breach;
- include compliance assurance conditions in commercial arrangements with other responsible persons;
- provide training and supervision to employees to enable compliance;
- maintain equipment and work systems to enable compliance; and
- address similar compliance problems that may have occurred in the past.

Civil compensation

A person who suffers loss or damage as a result of a responsible entity breaching its CWD obligations can recover compensation from the responsible entity. The reasonable steps defence is not available in civil compensation actions commenced against a responsible entity.

However, if the responsible entity's breach was caused by its reliance on information provided by a third party, the responsible entity will be entitled to an indemnity from the "information provider".

Risk management

The new legislation presents risks to all parties in the road transport supply chain. Those risks can best be managed by an integrated approach involving:

- education & training;
- documentary protection; and
- process improvement.

Education & Training

A person who receives container weight information and then passes it on is at risk of being a responsible entity or an information provider. It will be critical to educate customers and contractors to ensure they are aware of the new CWD requirements and the importance of accurate weight information being included in booking forms, consignment notes and other interchange documentation.

Internal staff should also be trained in the requirements of the new regime.

Documentary protection

All interchange documentation should be reviewed to ensure that it:

- stresses the importance of accurate weight information;
- obliges the information provider to indemnify the recipient in respect of liability arising from omitted or inaccurate information; and
- to the extent possible, excludes liability for weight information communicated in the document.

Process Improvement

Operators should review their systems for handling cargo, containers, documents and information, to identify areas for improvement and risk reduction.

Basic steps such as the use of checklists for information receipt and transfer, exception reporting for obvious weight declaration errors, and other processes can contribute greatly to avoidance of breach, or to establishment of a reasonable steps defence to a prosecution.

Adherence to published codes of conduct will assist in ensuring compliance and maintaining a defence.

Summary & conclusion

The new legislation will be progressively implemented around Australia as each state enacts the necessary legislation. While there may be some local variations, it is likely that the key elements will be substantially similar in each state.

All parties in the road transport supply chain should act quickly to establish compliant systems and documentation.

Stephen Thompson
Partner

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Solicitor

Middletons – August 2005

Club cover requires that you comply with regulations and as such failure to comply may enable the Club to reduce or reject a claim. Despite this it is anticipated that the Club would cover penalties and civil claims arising from breaches where the member has made reasonable efforts to prevent that breach. Please note claims will be considered on an individual basis and this should not be construed as a waiver of the Club's rights.

With regard to transport intermediaries such as ship agents and forwarders we suggest you make clear to the consignee/importer that the information supplied to it on the delivery order is provided by the carrier and/or shipper. We would recommend stating clearly that the information is not supplied by your company. A suitable clause on relevant documentation (such as a delivery order) would be:

"Information regarding the weight, measure, quantity, condition, contents and value of the consignment is provided to [name of your company] by the shipper, through its principal carrier. The weight, measure, quantity, condition, contents and value of the consignment is unknown to [name of your company] and its principal. [name of your company] accepts no liability for losses arising from any inaccuracy of the information."

but members should seek legal advice for their particular purposes.