

# Trade & Transport Alert

June 2005

## Update on the Chain of Responsibility Legislation

In October 2002, we [reported](#) on the proposal by the National Road Transport Commission (now the National Transport Commission (NTC)) to implement uniform legislation across all Australian jurisdictions in relation to compliance and enforcement of heavy vehicle road transport. This proposal is part of a measure by the NTC to improve safety and compliance in the road transport industry. With the assistance of industry, a new Model Bill entitled *Road Transport Reform (Compliance and Enforcement) Bill* (the Model Bill) was drafted.

### What has happened since October 2002?

Versions of the Model Bill have passed in New South Wales and Victoria. In New South Wales, the *Road Transport (General) Act 2005* (NSW Act) is expected to come into force from 1 September 2005. Similarly, Victoria is expected to implement the *Transport Legislation Amendment Act 2004* (Vic Act) by 1 October 2005. Queensland and South Australia are expected to follow suit and to have their own regimes in place by early 2006.

### Who is affected by the changes?

The reforms apply to a wide variety of people in the road transport chain. The legislation refers to the "responsible person" who must ensure that other people in the transport chain are not misled by false information about any aspect of the road transport.

"Responsible persons" are the following parties involved in road transport:

- operators and drivers of heavy vehicles;
- packers and loaders; and
- consignors and consignees.

### How do the Vic and NSW Acts differ from the Model Law?

The Model Law offers a national framework from which each jurisdiction can derive its own legislation. However, due to differences in legislative practice in some jurisdictions, there may be differences between the Model Law and those jurisdictions in respect of:

- existence of absolute or strict liability offences;
- availability of "reasonable steps" defence;
- removal of privilege against self-incrimination; and
- availability of various types of penalties.



Below is a summary of the differences between the Model Law and the Vic and NSW Acts:

Model Law	Vic Act	NSW Act
Absolute vs Strict Liability	Absolute	Absolute
"Reasonable Steps" Defence	Limited circumstances	Limited circumstances
Removal Of Privilege Against Self-Incrimination	✗	✓
Formal Warning	✗	✓
Minimum Fine For Subsequent Offences	✗	✗
Commercial Benefits Penalty	✓	✓
Supervisory Intervention Order	✓	✓
Orders Affecting Vehicle Registration Or Licences Limited to Severe Risk Breaches	✗	Registration: ✓ Licensing: ✗
Prohibition Order	✓	✓

## Mutual recognition provisions

The regime includes mutual recognition provisions which ensure that the judicial and administrative actions in each jurisdiction receive appropriate recognition in other jurisdictions and that officers and road authorities have appropriate powers in other jurisdictions.

The mutual recognition provisions will also avoid the possibility of a responsible person being charged twice for the same offence in two different jurisdictions.

The practical implementation of these provisions will occur through the Regulations that will be enacted in each jurisdiction and through memoranda of understanding (MOUs) between the road authorities in each jurisdiction. As most jurisdictions are only at the early stages of implementing the regime, the negotiations between the road authorities in relation to these issues will continue for some time.

**Dimity Maybury, Lawyer, Sydney**  
dimity.maybury@bdw.com

**Jacqueline Truong, Lawyer, Sydney**  
jacqueline.truong@bdw.com

## What can you do to prepare for the reforms?

- Audit your systems to ensure compliance.
- Train your staff on the additional obligations.
- Check your insurance policies to ensure that you are covered for any additional liability.

### BDW Contact Details:

24 hour contact: +61 2 9258 5987

**Sydney** Alex Baykitch + 61 2 9258 6752  
Peter McQueen + 61 2 9258 5887  
Lea Constantine + 61 2 9258 6446

**Brisbane** Ernest Van Buuren + 61 7 3259 7119  
**Perth** Anthony Willinge + 61 8 9366 8165

**Melbourne** Chris Quennell + 61 3 9679 3341

This publication is authorised by Blake Dawson Waldron. The firm can be contacted by emailing [marketing@bdw.com](mailto:marketing@bdw.com)

**Subscription Maintenance** – If you would like to unsubscribe or modify your electronic subscription please go to <http://www.bdw.com/subscriptions>

**Privacy Policy** – You can find our Privacy Policy on our website at <http://www.bdw.com>

*This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.*

© 2005 Blake Dawson Waldron

[www.bdw.com](http://www.bdw.com)