



ADDRESSING THE PROBLEM OF ROAD TRANSPORTATION OF OVERWEIGHT INTERMODAL FREIGHT CONTAINERS

AN AUSTRALIAN APPROACH TO AN INTERNATIONAL PROBLEM

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1. INTRODUCTION

Road transport is the primary means of transporting export and import freight containers to and from Australian ports. At a conservative estimate, some 10% of trucks carrying containers are overloaded. Although it may be referred to as an 'overweight containers' problem, the containers themselves will be, in almost all cases, within their load capacity. The most significant cause of the problem is a high level of misrecording of container weights on shipping documents. This misinformation contributes to the choice of inappropriate trucks to collect the containers from ports or rail terminals with the consequence that when loaded with these containers, the vehicles exceed their legal vehicle or axle limits¹.

Safety of drivers and the public is the key issue, as container traffic is usually concentrated in densely populated areas where ports or rail terminals are located. Overloading also contributes to significant road and infrastructure wear and damage, and to drivers and road carriers who wish to operate legally suffering an unfair commercial disadvantage. In addition, there are potential compliance issues all along the logistics chain associated with mis-information about the loaded weight of the container.

In April 1998, the Australian Transport Council² recommended the establishment of an Austroads³ working group to develop a national, multi-modal strategy for the management of overweight containers. Managed by the Federal Office of Road Safety, the working group arranged surveys on the extent of the overloading in the various jurisdictions and developed a national conceptual strategy to address the problem, the

¹ Austroads 2002, *National Implementation Plan for the Management of Overloaded Trucks Carrying Containers – Regulatory Impact Statement*. This regulatory impact statement was prepared by Saturn Corporate Resources Pty Ltd in conjunction with Phillips Fox Lawyers, Pearsons Transport Research Centre and others.

² The Australian Transport Council is the forum of Commonwealth, State, Territory & New Zealand Ministers responsible for transport, roads, marine & ports.

³ Austroads is the association of Australian and New Zealand road transport and traffic authorities.

August 1999 Draft Overweight Containers National Strategy. The draft strategy contained 15 measures, with regulations as the primary measure.

In 1999, the National Road Transport Commission⁴ was requested by Austroads to investigate the legal, technical and economic feasibility of the draft strategy and to develop the strategy into a national, multi-modal implementation plan that would meet the needs of all Austroads members. Through consultants, Saturn Corporate Resources, Phillips Fox and others, working closely with a broad-based advisory group comprising representatives from all jurisdictions, affected industries, and all transport modes, a package of ten feasible measures were developed and evaluated. Endorsement of the project directions and findings was sought from key stakeholders at each of the three project milestones to ensure a solid foundation for further work on the remaining tasks.

The plan combines a mix of legislative, technological, enforcement and education-based measures, the main focus being on the legislative mandating of container weight declarations, supported by new 'chain of responsibility' provisions affecting all in the transport freight chain – including 'off-road' parties such as consignors, loaders, packers and receivers. This approach differs from other attempts to manage overweight containers (for example, the US *Intermodal Safe Containers Transportation Act*⁵) and will involve all responsible parties taking reasonable steps to communicate accurate information along the container transport chain and working together to ensure that containers are transported safely and legally on Australian roads.

The final National Implementation Plan for the Management of Overloaded Trucks Carrying Containers report and regulatory impact statement were submitted to the Austroads Council in late 2001. The Plan and regulatory impact statement may be obtained from the Austroads' website at the address provided at the end of this paper.

⁴ The National Road Transport Commission is the statutory body responsible for developing nationally uniform or consistent road transport laws in Australia.

⁵ The US Act only covers containers over a specified weight and requires a 'paper trail' accompanying specified containers..

2. SUMMARY OF PROJECT RECOMMENDATIONS

The ten measures put forward in the National Implementation Plan report are summarised below.

Legislative and Regulatory Measures
1. Jurisdictions introduce mandatory container weight certification requirements for the parties in the transport chain offering containers for transport and provisions allowing road carriers and truck drivers to rely on that certification (to a limited extent) for enforcement purposes. Road carriers and other parties in the transport chain implement effective compliance systems and work practices in response.
Practical and Technological Measures
2. Jurisdictions evaluate and adopt permanent or random WIM or other weighing schemes, access restrictions and approaches as appropriate, for both providing a means of weighing containers and assisting enforcement by increasing deterrence.
3. Jurisdictions investigate and implement the level and form of enforcement necessary to ensure compliance with new legislation relating to mandatory weight declarations.
4. Appropriate organisations publicise the chain of responsibility obligations, weighing technology available, enforcement methods and penalties to relevant parties in the transport chain
5. NRTC investigates a policy which permits overloading on individual axle groups for vehicles carrying containers provided the regulated overall mass limit for that combination is not exceeded and road wear per unit container mass is not greater than if the vehicle had been loaded to the legal mass limits.
6. Jurisdictions investigate means of moving ultra heavy containers that cannot at present be carried legally on road vehicles.
Communication, Education and Training Measures
7. Industry organisations (such as International Cargo Handling Coordination Association (ICHCA), Australian Peak Shippers Association (APSA) and Chambers of Commerce and Industry) publish in their respective journals and, if practical circulate to shipping lines, conferences and others involved in trade with Australia, information on Australia's road mass limits, consequent maximum container weights, and compliance and enforcement policies, to encourage better informed decisions in packing containers.
8. Sea Freight Councils play a role in disseminating information and educating industry about the consequences of overweight containers being carried by road vehicles, consistent with their training and education program roles.
9. Registered training organisations provide education and training on all aspects of the Action Plan to the range of participants, including shipping company employees. The NSW WorkCover Authority and the Transport Workers Union (TWU) should include specific container loading information when developing the transport industry code of practice. Parties responsible for occupational health and safety (OH&S) in other jurisdictions provide similar information and training packages, possibly using the NSW initiative as a model.
10. Trucking associations encourage the use of other educational tools such as loading

checklists for truck drivers.

The main measure, Measure 1, involves the legislative mandating of container weight declarations. In this approach, the person in Australia who tenders a container for transport by road would be held liable if the required declaration is not provided to the road carrier and/or the declaration is not accurate. This is expected to improve the flow of information to road carriers and truck drivers, who then have a reliable basis for selection of a vehicle to operate within the legal limits.

3. LEGAL MEASURE IN THE CONTEXT OF NATIONAL ROAD TRANSPORT REFORMS

The terms of reference for the project emphasise the need for any legislative proposals to be consistent with and complement existing and emerging national legislative reforms developed by the National Road Transport Commission and, in particular, the Commission's compliance and enforcement reforms.

Within the Commission's broader work on compliance and enforcement reforms, the Road Transport Reform (Compliance and Enforcement) Bill, a model set of conventional compliance and enforcement provisions, is a priority reform. These provisions are intended to underpin the Commission's national compliance strategies, by spelling out chain of responsibility accountabilities and providing 'best practice' tools for enforcement actions and the necessary sanctions and penalties. The Bill includes draft model provisions that address the legislative proposals in Measure 1 of the National Implementation Plan for Overloaded Trucks Carrying Containers.

The draft Bill, a supporting regulatory impact statement, a fact sheet and information bulletin, can be obtained from the Commission's website at the address provided at the end of this paper. The main provisions in the Bill relevant to Measure 1 of the Implementation Plan have been reproduced in Attachment 1.

An Exposure Draft of the model Bill was released for public comment in early June 2002. The closing date for comments was 2 August 2002. Following public comment, the draft Bill and regulatory impact statement were revised in consultation with key stakeholders. The revised model Bill and regulatory impact statement were presented to Australian Transport Ministers for vote in August 2003. If approved by Ministers, the model provisions will be available for incorporation and any necessary adaptation by all States and Territories in their individual regulatory systems and legislative instruments.

The legislative provisions to address Measure 1 of the Implementation Plan are set out below, within the context of the overall Bill and its objectives.

3.1 OFFENCES REFLECTING THE 'CHAIN OF RESPONSIBILITY' PRINCIPLE

In general, existing heavy vehicle legislation in Australia, the United Kingdom and the United States imposes liability for breaches of the mass, dimension and load restraint requirements only on drivers and/or operators and owners of heavy vehicles. The role played by other parties in the transport chain is not addressed, other than by way of indirect 'cause or permit; and 'aid or abet' style offences, which are not only difficult to

prove, but which lack sufficient specificity to be effective as deterrent measures. Hence the existing legislation has little, if any, deterrent effect on those other parties, many of whom may have a significant bearing on the activities that affect compliance with the road laws.

This problem is highlighted by the typical 'overloaded' import container scenario. Under existing road transport laws, the truck driver tends to be the only party who can be prosecuted if the truck is overloaded by an imported freight container, even where the driver is provided with a manifest that patently understates the container weight, or is not provided with any indication of the container's weight at all. The driver has a clear responsibility for what is carried on the road and hence becomes the usual 'soft' target of enforcement, while other parties in the chain whose activities or inaction have contributed to the overloading escape accountability because of the limited coverage of the road transport laws. This reduces the effectiveness of enforcement and of the laws themselves.

The Compliance and Enforcement Bill reflects the Commission's commitment to the 'chain of responsibility' principle, which, simply stated, is that all who bear responsibility for conduct which affects compliance should be made accountable at law for failure to discharge that responsibility. In their application to the areas of heavy vehicle mass, dimension and load restraint – which encompass load requirements relating to container freight, the new compliance and enforcement provisions impose duties on those exercising control over any of the following essential activities in the road freight transport task:

- *consigning – commissioning the carriage of the load by road*

The draft Bill provides that a person who consigns the goods for transport by road may include a manufacturer or freight forwarder, rail or sea carrier, customs agent, person who arranges for the transport of goods immediately after their entry into Australia, freight consolidator, or a carrier who consigns goods for transport by other carriers. Consigning also includes being the nominated representative in Australia of an overseas-based consignor.

- *loading – placing or restraining the load on the vehicle or combination*

In the draft Bill, the entity with responsibility for loading the goods on the vehicle may include a professional loading agent, a stevedoring company, a rail or sea freight forwarder, a prime or principal contractor, a subcontractor, a person who controls the loading facility and a person who supervises the loading.

- *carrying – controlling the use of the vehicle or combination for the transport of the load by road*

The draft Bill provides that the carrier is the person responsible for the transport of the goods by road and may include a fleet operator of the vehicle, the prime or principal contractor, the subcontractor, the registered operator, the owner of the vehicle or the lessee of the vehicle.

- *driving – the physical act of driving the loaded vehicle or combination*

The Bill expressly specifies that driving should include being the driver's employer. This is necessary to ensure that the driver's employer can be held vicariously liable for the acts of the driver.

- *receiving – paying for the goods/taking possession of the load*

The Bill provides that those who knowingly or recklessly induce or reward a breach by, for instance, paying for goods in excess of the legal payload quantity of those goods may be guilty of unlawfully receiving the goods.

In the specific cases of container freight and pre-packaged loads, there is a further essential activity:

- *packing – placing items in packages, containers or pallets.*

Joint and several liability will apply, so that each and every party who commits a breach may be held accountable, irrespective of the liability of any other party. And, consistent with other regulatory offences, such as occupational health and safety and environment protection, a breach of the mass, dimension and load restraint laws committed by consignors, packers, loaders, drivers and carriers will be an offence of absolute liability. This means that the defence of honest and reasonable mistake will not be available.⁶

The draft Bill also provides that a director, secretary or senior manager of a body corporate that has committed a road law offence may be punished as an individual who has been found guilty of the offence. As well, any person who causes or permits the commission of an offence or coerces, induces or offers an incentive to a person to commit an offence may be held legally accountable for that offence. It will also be an offence to discriminate against a person who has reported or raised concerns about road law breaches. For example, this offence could apply to an employer who dismisses an employee for reporting or raising such concerns.

To give effect to the legislative proposals contained in Measure 1 of the National Implementation Plan for the Management of Overloaded Trucks Carrying Containers, an additional responsible party and additional duties on other parties in the container transport chain have been included in the Bill.

In brief, the additional container-specific provisions⁷ impose liability on a person who offers a container for transport by road without giving the road carrier a container weight declaration containing the gross container weight, the number of the container, the name and address of the person making the declaration (which is to be a person and an address in Australia), and the date of the declaration. Depending on the facts of the particular transaction, this person may be any one of a number of parties, including a rail carrier, a prime contractor (road carrier), shipping liner, customs broker, freight

⁶ However, some jurisdictions may choose to apply strict liability instead of absolute liability. In such jurisdictions, the honest and reasonable mistake defence will still apply.

⁷ Refer to Attachment 1 of this paper for the main provisions.

consolidator, and so forth. The obligation on that party will be to take reasonable steps in the circumstances to ensure that an accurate container weight declaration is provided to either the road carrier or the driver before the commencement of the road transport of the container. The obligation amounts simply to communicating information about the freight to other responsible parties in the logistics chain.

Also included in the container-specific provisions in the draft Bill are special duties on the road carrier, driver and consignee. The road carrier has the duty to ensure that the container weight declaration is provided to the truck driver and to any other subsequent road or rail carrier. The driver must not undertake a journey without the relevant declaration and must keep the declaration in or about the vehicle at all times while the container is on the road vehicle (or in a manner that enables it to be accessed from the vehicle for verification, where the information required to be in the declaration is transmitted electronically). And an offence of inducing or encouraging an overload will be committed where a consignee knew or reasonably ought to have known of a failure to provide the requisite container weight declaration or that the declaration was misleading or inaccurate.

Ordinary shipping documentation that contains the required information may meet the requirement, as will electronically transmitted declarations. The Bill also provides that the declaration may be comprised in one or more documents or other formats.

3.2 REASONABLE STEPS DEFENCE

To safeguard fairness in circumstances where reasonable care has been taken to prevent non-compliance, yet, because of systemic problems, equipment inaccuracies, or even incorrect documentation, a breach of the mass, dimension or load restraint requirements has occurred, the Bill provides for a special defence based on due diligence. The defence is to the effect that the defendant 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.

This defence will be available to each of the parties in the container transport chain (other than the consignee to whom a different form of liability attaches), irrespective of the risk categorisation of the offence.

What will constitute 'reasonable steps' will depend on the circumstances of each case. Measure 1 of the National Implementation Plan for Overloaded Trucks Carrying Containers includes a proposal that road carriers and truck drivers may rely on the weight stated in a container weight declaration to establish reasonable steps for the purposes of raising this defence, and this proposal has been reflected in the provisions in the draft Compliance and Enforcement Bill (except that the defence for carriers and drivers in the Bill is more extensive than that proposed in the Implementation Plan).

Also, the draft Bill gives a defendant the option of establishing that reasonable steps have been taken by showing compliance with all relevant requirements of a registered industry code of practice. The intention of using compliance with an approved code as a means of establishing the reasonable steps defence is to encourage the development and maintenance, by any industry sectors involved in the road transport of freight, of

best practice loading systems particular to their own operations. Also, this is likely to raise compliance with the road transport law as a conscious consideration for industries that might otherwise be unaware of the adverse impacts of their operations on road safety, infrastructure, and road transport competitive equity.

The use of industry codes of practice to provide guidance on matters covered by general duties in legislation is common in occupational health and safety and building regulation. Codes provide flexibility and have the advantage of being industry specific. Because they are to be developed by industry, they are more likely to be accepted and observed. An additional advantage is that off-road parties - consignors, loaders, packers and receivers - who develop such codes, will do so in consultation with the road transport industry and road authorities⁸, thereby ensuring negotiated outcomes that meet the needs of the drivers and carriers who service their operations.

When introduced, the new chain of responsibility provisions and the requirements relating to the provision of container weight declarations will impose duties on *all* responsible parties (not just drivers, operators and owners of heavy vehicles) to take reasonable steps to prevent non-compliance with the road laws. It will no longer be acceptable for them to turn a blind eye to the road safety, road damage and other adverse consequences of their actions or inaction. As such, the Compliance and Enforcement Bill has an important role to play in the development of a road transport compliance culture over the long-term⁹.

3.3 RISK-BASED CATEGORISATION OF OFFENCES

In general, the existing legislation in the Australian jurisdictions lacks any differentiation between minor and more serious safety-related offences, between unintentional offences and offences that are committed for commercial gain, between individuals and bodies corporate, or between first time and habitual offenders. Hence, there is little structure to assist enforcers in implementing the requirements fairly on a national basis and little guidance as to which offences should be regarded more seriously.

A fundamental rationale for the offences in the new Bill is the seriousness of the risk they pose to safety, infrastructure and competitive equity. Breaches have been categorised as minor risk, substantial risk or severe risk. Implications of minor risk breaches tend to be unrecovered road wear and unfair competition. Substantial risk breaches have more serious implications for infrastructure and competitive equity, while severe risk breaches pose an appreciable risk to public safety, as well.

For mass limits breaches, a minor risk breach roughly corresponds to a load of between 100% and 105% of legal limits; a substantial risk breach, to a load between 105% to just under 120%; and a severe risk breach is a load of 120% and over. The roadside enforcement powers and, to a large extent, the sanctions and penalties, in the Bill are linked to the breach categories, increasing in magnitude with the extent of the breach.

⁸ The Compliance and Enforcement Bill requires that codes are to be developed in consultation with the road transport industry and approved by a road authority.

⁹ That is, the positive effects of this measure are expected to go beyond the relatively short-term effects of actions such as enforcement blitzes and media campaigns, etc.

This approach provides for more proportionate and nationally consistent enforcement and sanctions responses.

3.4 ENFORCEMENT POWERS

Current legislation provides little scope to take action beyond the roadside and beyond the driver or truck owner. In the national arena, model powers are proposed in the Compliance and Enforcement Bill that will provide enforcement personnel with the necessary authority to pursue their investigations in appropriate cases to other relevant parties in the chain of responsibility, including the 'off-road' parties such as consignors and consignees.

The Bill confers on enforcement officers powers to stop, move and inspect heavy vehicles to check on compliance with the road laws, inspect premises to check on compliance with the road laws, to enter and search heavy vehicles and premises, seize evidence, require the production of information, documents, records and devices from all parties in the transport chain, and require reasonable assistance in the exercise of their functions and duties.

The provisions attempt to balance the need to have effective powers to improve compliance and enforcement with the right to privacy and the right to conduct one's business without the undue influence of, or scrutiny from, government, especially in relation to entry and search of vehicles and premises.

Some of the proposed powers are considerably broader than those currently exercised by authorised officers from road agencies in some States and Territories, however, they are based on powers that apply in other regulatory areas - such as in environment protection, trades practices and occupational health and safety - and the Bill provides what are regarded as adequate safeguards to ensure their fair and reasonable administration within a tightly defined range of circumstances.

As mentioned under the preceding section, the roadside enforcement powers contained in the Bill in their application to mass, dimension and load restraint breaches have also been linked to the risks associated with the breach detected. This will enable consistency across the country of the powers available to officers and the circumstances in which like powers are exercised. National enforcement guidelines will be developed to provide more detailed guidance to authorised officers and police.

In summary, officers will have a discretionary power to authorise the continuation of travel of non-compliant vehicles. Where the breach is a minor risk breach, travel will usually be authorised to the intended destination; however, if the breach is a substantial risk breach, travel will generally only be authorised to the nearest town or other centre suitable for the purpose of the load being legalised; and, if the breach is a severe risk breach, authorisation to travel will generally be restricted to moving the vehicle to the nearest safe place to achieve compliance. The officer will also be empowered to impose other conditions on the continuation of travel (such as speed and route restrictions).

3.5 NEW NATIONAL SANCTIONS AND PENALTIES

Traditionally too, the main sanctions available for breaches of the mass, dimension and load restraint requirements in road transport legislation have been fines or infringement penalties. These penalties may be effective as punitive sanctions in some situations, but by no means all, and when they are directed solely at the truck driver, are unlikely to act as deterrents to other parties in the logistics chain. This is especially so in the case of imported freight, including imported containerised freight, where the overseas-based consignor is unlikely to suffer any punitive consequences for a breach of the Australian road transport requirements.

A wide variety of responsive sanctions and penalties is contained in the Compliance and Enforcement Bill, addressing the different sanctions strategies. These sanctions and penalties include improvement orders which aim to assist an offender improve compliance performance; maximum fines which escalate according to breach category and escalating mass; commercial benefits orders which target offenders who reap profits from overloading; and supervisory intervention orders and prohibition orders to address systematic and persistent offenders. Formal warnings and infringement notices are proposed as administrative penalties for minor offences, to avoid the need for court action in such cases.

Where appropriate, any one of these penalties may be imposed against any of the parties in the chain of responsibility in respect of a breach of the road transport requirements. The sanctions and penalties form a hierarchy as set out below, in ascending order of severity.



Another option that is proposed to be available to a court is a compensation order. The Bill provides that a court may order the offender to pay such compensation as the court considers appropriate in the circumstances to the road authority specified in the order. A compensation order may be made when an Authority demonstrates to the court on the

balance of probabilities that the breach resulted in road damage or damage to road infrastructure. This order is to be in the alternative to any civil or other proceedings for compensation for the same injury or damage arising from the same breach.

3.6 SPECIAL PROCEEDINGS TO RECOVER LOSSES ARISING FROM RELIANCE ON CONTAINER DECLARATIONS

The draft Bill also addresses the additional proposals in Measure 1 of the National Implementation Plan for the Management of Overloaded Trucks Carrying Containers relating to civil recovery of losses incurred through reliance by a road carrier or truck driver on an incorrect container weight declaration. Losses that may be recovered include any fine or penalty or losses incurred through delays in the delivery of the container, from spoliation of or damage to the goods or from the need to provide another more suitable vehicle to transport the container. Such losses are proposed to be recoverable against the person responsible for providing the container weight declaration to the relevant road carrier.

4. INDUSTRY INVOLVEMENT

To ensure comprehensive feedback and “sign off” from key stakeholders at the major consultation points of the project, as well as to ensure the action plan is practical and implementable, the consultants were required to liaise closely with members of both the Austroads Overweight Containers Working Group and a new “core” group selected from those members.

The Overweight Containers Working Group had been established by Austroads to assist in the preparation of the original draft Overweight Containers Strategy. The Working Group had broad-based representation, including officers from all transport agencies and the NSW WorkCover Authority and representatives of road transport associations, the TWU and peak shipping, stevedoring and ports operations. The members of the Working Group were invited to continue their membership and to act in an ongoing advisory and reference capacity for this project on an as required basis, and the group was expanded to include representatives of other key government and industry organisations in each jurisdiction.

Also, a Core Group was formed from these members whose organisations have a central interest in the study’s findings, to provide more active advice and assistance to the Commission and its consultants throughout the development of the Action Plan. Representatives on the Core Group were drawn from VicRoads, the New South Wales Branch of the Transport Workers’ Union, the New South Wales Road Transport Association, the New South Wales Roads and Traffic Authority, the Western Australian Department of Transport, the National Rail Corporation, Liner Shipping Services Pty Ltd, the Australian Association of Port and Marine Authorities, P & O Ports and Patricks Stevedores.

This process ensured strong participation from the key parties and an ongoing dialogue between the parties on any substantive points of difference. The main areas of difference concerned Measure 1, and in particular, the duty to provide an accurate container weight declaration to the road carrier. Special meetings were held to attempt

to resolve concerns about the implications of such a duty raised by representatives of the shipping liner, customs brokers and freight forwarders. As an outcome of this ongoing consultative process, a number of additional actions were agreed to be taken by the Commission to mitigate the concerns about the operation of the legislative measure.

For example, to address shipping, freight forwarder and customs broker concerns, extra provisions relating to consignee liability have been included within Measure 1 and will be reflected in the current package of model compliance and enforcement provisions that are being developed by the National Road Transport Commission. This liability would be in addition to any potential liability of the consignee in respect of a breach of the road transport mass limits and in addition to the potential liability of other parties in the container logistics chain, including the person who has offered the container for road transport.

The national package of measures contained in the National Implementation Plan for the Management of Overloaded Trucks Carrying Containers may rightly be attributed to the strong, co-operative partnership of government and industry groups represented on the Working Group. The outcomes of this project reflect the preparedness of the parties to work constructively towards high level objectives, addressing national and intermodal safety issues.

5. STEPS TOWARDS IMPLEMENTATION

National implementation of the measures is being co-ordinated and monitored by Austroads in a new project. Responsibilities and timings for implementation of the individual measures in the plan have been identified in the Implementation Plan.

The Implementation Plan included drafting instructions as part of Measure 1 to enable appropriate legislative provisions to be prepared by Parliamentary Counsel. The provisions to give effect to Measure 1 have since been developed by the National Road Transport Commission and drafted by New South Wales Parliamentary Counsel. These draft provisions are included in the Exposure Draft of the model Compliance and Enforcement Bill, released for public comment at the start of June this year. Hence, actions under Measure 1 are already well advanced.

As stated earlier, this Bill has been submitted to Australian Transport Ministers. If approved, jurisdictions can then implement the legislation.

To ensure the effective and appropriate administration of the Compliance and Enforcement Bill, Austroads is funding a series of national enforcement projects which will produce practical guidelines specifying best practice in the application of the model provisions. These projects are being managed by a project manager working from the New South Wales Roads and Traffic Authority, with assistance from the National Road Transport Commission. The results will be greater administrative efficiency and clarity and more effective national deterrents. The constituent projects include guidelines for the application of enforcement powers along the chain of responsibility and guidelines for the development of and approval of industry-specific codes of practice.

In this work, Austroads is working closely with the National Road Transport Commission, government and key industries to develop enforcement guidelines for the fair and effective administration of the proposed chain of responsibility legislation in its application to freight containers, and in particular to import freight containers.

Also, the NRTC has employed a consultant to assist shipping liner, freight forwarder and customs broker industries develop an industry code of practice to address the proposed new requirements in relation to ensuring the provision of accurate container weight declarations to road carriers. Such an industry-specific code of practice will assist industry reduce the number of contraventions of the legislation and serve as a useful means of establishing 'reasonable steps' towards meeting the relevant obligations. This code is likely to document existing best practice in the industry to prevent a breach of the obligations, and would set out the appropriate remedial steps to address mis-declared containers of a particular cargo type or from a particular consignor. At the time of writing the Industry Steering Committee was considering the 3rd draft of the code with a view to finalizing the document in September.

For the remaining, non-legislative measures in the National Implementation Plan, Austroads has established a formal management and reporting process to monitor progress towards implementation in all jurisdictions. Where practicable and desirable, the measures for 'overweight' containers have been extended to include overdimensional containers, to ensure the harmonisation where practicable of the approaches for the management of both problems. This is the case with:

- Measure 2: applying a weighing technology to check container vehicles' weight (extended to include applying height detection devices to assist in checking height);
- Measure 3: targeted enforcement on containers to monitor weight compliance (extended to include dimension compliance);
- Measure 4: preparation and distribution of a communications bulletin to outline practical and operation container information (extended to include dimension);
- Measures 7-8: media releases and publicity of changes to industry organisations, Sea Freight Councils, shipping and trucking industry employees (these will include information on container vehicle dimension requirements);
- Measures 9-10: development of training and educational material for shipping company employees, and incorporate container reforms into training packages associated with the national *Load Restraint Guide* (extended to encompass dimension requirements).

Also, the National Road Transport Commission will be continuing to work through Austroads, and in close consultation with the Austroads Overweight Containers Working Group and wider industry stakeholders, to evaluate options to progress Measures 5 and 6 of the plan (the axle overloading and ultra heavy container issues, respectively) in order to prepare nationally consistent approaches to manage these particular issues.

6. CONCLUSIONS

The February 2002 National Implementation Plan for the Management of Overloaded Trucks Carrying Containers is an important national and multi-modal plan to address a

longstanding road transport compliance problem and the adverse impacts on safety, infrastructure, and competitive equity that stem from this problem.

The development of the Plan involved a rigorous consultative process involving government and industry stakeholders from all transport modes at all stages of the project. The solutions developed in the Plan reflect this national, co-operative effort.

Central to the Plan is the legislative measure relating to container weight declarations. This is a proactive measure that aims to improve communication along the logistics chain, and, in particular, to ensure the correct vehicle is selected to carry the container.

The National Road Transport Commission has already commenced action on this measure by developing draft legislative provisions that require the person in Australia who offers a container for road transport to provide an accurate container weight declaration to the relevant road carrier prior to the commencement of the road transport of the container. These provisions are included in the Commission's draft Compliance and Enforcement Bill, which amongst other things, also proposes a range of new 'chain of responsibility' obligations on all parties in the container transport chain to take reasonable steps to prevent truck overloading.

The draft Bill has been released for public comment. Comments received have been reviewed and where appropriate the Bill has been modified.

The model Bill is currently being considered by the Ministers and if approved will be available for inclusion, with any necessary adaptation, within the legislative frameworks of all Australian States and Territories from the end of 2003.

The effective implementation of the non-legislative measures in the National Implementation Plan for the Management of Overloaded Trucks Carrying Containers will involve an ongoing consultative process co-ordinated by Austroads, and working with government agencies, the National Road Transport Commission and all the critical parties in the container logistics chain. Working together in this way will ensure the safe and efficient flow of freight through all of the transport modes.

At this point of time, it is important that all parties in the container logistics chain consider the measures in the National Implementation Plan and commence taking the appropriate steps to introduce any changes needed to current practices to support these measures.

For More Information

For more information about the initiatives outlined in this paper:

Visit the Austroads website at

www.austroads.com.au/austroads/others/containers.html

to obtain:

- the National Implementation Plan for Overloaded Trucks Carrying Containers – Final Report

- the National Implementation Plan for Overloaded Trucks Carrying Containers – Regulatory Impact Statement.

Visit the National Road Transport Commission's website at
www.ntc.gov.au

to obtain:

- the draft model Road Transport Reform (Compliance and Enforcement) Bill
- fact sheets and information bulletins on the Commission's compliance and enforcement reforms.

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ATTACHMENT 1 – EXCERPTS FROM THE DRAFT MODEL ROAD TRANSPORT REFORM (COMPLIANCE AND ENFORCEMENT) BILL

90 Reasonable steps defence—reliance on container weight declaration

- (1) This section applies where the operator or driver of a vehicle or combination is charged with an offence involving a breach of a mass requirement and is seeking to establish the reasonable steps defence in relation to the offence.
- (2) To the extent that the weight of a freight container together with its contents is relevant to the offence, the person charged may rely on the weight stated in the relevant container weight declaration, unless it is established that the person knew or ought reasonably to have known that:
 - (a) the stated weight was lower than the actual weight; or
 - (b) the distributed weight of the container and its contents, together with:
 - (i) the mass or location of any other load; or
 - (ii) the mass of the vehicle or combination or any part of it;would cause one or more breaches of mass requirements.

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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 8 Recovery of losses resulting from non-provision of or inaccurate container weight declarations

107 Recovery of losses for non-provision of container weight declaration

- (1) This section applies where:
- (a) a container weight declaration has not been provided as required; and
 - (b) a person suffered loss as a result of the non-provision of the declaration.
- (2) Any person (the **plaintiff**) has a right to recover under this Act, from the responsible entity for the freight container, the monetary value of any loss incurred by the plaintiff and consequent on the non-provision of the container weight declaration.
- (3) Losses that may be recovered include any or all of the following:
- (a) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
 - (b) any loss incurred from spoliation of or damage to the goods;
 - (c) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination;
 - (d) any costs or expenses incurred in weighing the freight container or any of its contents or both.

- (4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

108 Recovery of losses for provision of inaccurate container weight declaration

- (1) This section applies where:
- (a) a container weight declaration has been provided as required; and
 - (b) the declaration contains information about a freight container:
 - (i) that is false or misleading in a material particular by understating the weight of the container; or
 - (ii) that is otherwise false or misleading in a material particular by indicating that the weight of the container is lower than its actual weight; and
 - (c) a breach of a mass requirement occurred as a result of the reliance, by an operator or driver of a vehicle or combination, on the information in the declaration when transporting the container by road (whether or not enforcement action has been or may be taken in relation to the breach); and
 - (d) the operator or driver of the vehicle or combination:
 - (i) had at the time a reasonable belief that the vehicle or combination concerned was not in breach of a mass requirement; and
 - (ii) did not know, and ought not reasonably to have known, at the time that the minimum weight stated in the declaration was lower than the actual weight of the container; and
 - (e) a person suffered loss as a result of the provision of the declaration.
- (2) Any person (the **plaintiff**) has a right to recover under this Act, from the responsible entity for the freight container, the monetary value of any loss incurred by the plaintiff and consequent on the provision of the container weight declaration.
- (3) Losses that may be recovered include any or all of the following:
- (a) any fine, infringement penalty or other penalty imposed on the plaintiff under an Australian road law;
 - (b) any fine, infringement penalty or other penalty imposed on an agent or employee of the plaintiff under an Australian road law and reimbursed by the plaintiff;
 - (c) any loss incurred from delays in the delivery of the freight container or any goods contained in it or of other goods;
 - (d) any loss incurred from spoliation of or damage to the goods;
 - (e) any loss incurred from the need to provide another vehicle or combination, and any loss incurred from any delay in the provision of another vehicle or combination;
 - (f) any costs or expenses incurred in weighing the freight container or any of its contents or both.

- (4) The plaintiff may enforce that right by bringing proceedings in a court of competent jurisdiction for an order for payment of the monetary value of the loss.

109 Recovery of amount by responsible entity

- (1) This section applies where an order under section 108 (Recovery of losses for provision of inaccurate container weight declaration) has been made or is being sought against a responsible entity for payment of the monetary value of any loss incurred by a person.
- (2) The responsible entity has a right to recover under this Act, from a person (the **information provider**) who provided the responsible entity with all or any of the information that was false or misleading, so much (the **attributable amount**) of the monetary value paid or payable by the responsible entity under the order as is attributable to that information.
- (3) The responsible entity may enforce that right by:
- (a) joining or seeking the joinder of the information provider in the proceedings for the order under section 108 and applying to the court for an order for payment of the attributable amount to be made when the order is made under that section; or
 - (b) bringing separate proceedings in a court of competent jurisdiction for an order for payment of the attributable amount.

110 Assessment of monetary value or attributable amount

- (1) In making an order under this Division, a court may assess:
- (a) the monetary value of any loss, as referred to in:
 - (i) section 107 (Recovery of losses for non-provision of container weight declaration); or
 - (ii) section 108 (Recovery of losses for provision of inaccurate container weight declaration); or
 - (b) the attributable amount, as referred to in section 109 (Recovery of amount by responsible entity);
- in such manner as the court considers appropriate.
- (2) In making such an assessment, the court may take into account such matters as it considers relevant, including any evidence adduced in connection with any prosecution brought for a breach referred to in section 108 (Recovery of losses for provision of inaccurate container weight declaration).

111 Costs

- (1) A court may award costs in relation to the proceedings for an order under this Division.
- (2) A court may, in proceedings for an order under this Division, order payment of any costs or expenses incurred in weighing a freight container or any of its contents or both, where:
 - (a) the minimum weight stated in the container weight declaration concerned was lower than the actual weight; or
 - (b) a container weight declaration was not provided.
- (3) An order under subsection (2) may be made in favour of a party to the proceedings, an Australian Authority or a public authority of this or any other jurisdiction.