

Executive due diligence duty

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Who is an executive?

The term 'executive' includes an executive officer, a manager or another person who takes part in the management of a business. It also includes a director of a company and a partner in a partnership.

If you are an executive of a business that is a party in the Chain of Responsibility (CoR), you have what is known as *due diligence* duty.

As an executive, you must exercise due diligence to ensure that the business complies with its primary duty. (The duty also applies to other safety duty provisions in the HVNL.)

What does due diligence mean?

Exercising due diligence means:

- getting and maintaining knowledge about carrying out transport activities safely
- understanding the nature of the business's transport activities, including the hazards and risks of those activities
- ensuring the business has, and uses, the resources needed to eliminate or minimise the hazards and risks created by its transport activities
- ensuring the business has, and uses, processes to eliminate or minimise the hazards and risks created by its transport activities - and that information about hazards, risks and incidents is received, considered and responded to quickly.

Safety duty provisions in the HVNL

The term 'safety duty' means 18 specific provisions of the law, including the primary duty. To comply with the due diligence duty, an executive must exercise due diligence in relation to each of these provisions.

The safety duty provisions in the HVNL relate to:

Chain of Responsibility

- Primary duty (*s26C*)
- Prohibited requests and contracts (*s26E*)

Unsafe vehicles

- Use of unsafe vehicles (*s89*)
- Speed limiter tampering (*s93*)

Exemptions and authorisations

- Breach of condition of notice or permit (*s129*)
- Using a Class 2 heavy vehicle without authorisation (*s137*)
- Breach of condition of Class 2 heavy vehicle authorisation (*s150*)
- Using a restricted access vehicle without authorisation (*s153A*)

False or misleading information

- False or misleading transport documentation for goods (*s186*)
- False or misleading container weight declaration (*s187*)

Tampering with electronic recording systems

- Tamper with approved electronic recording system (*s335*)
- Permit tampering with approved electronic recording system (*s336, s337*)
- Tamper with approved intelligent transport system (*s454*)

Fatigue accreditation

- Breach condition of BFM or AFM accreditation (*s467*)
- Requirements for operator with heavy vehicle accreditation (*s470*)

Compliance with orders

- Contravene supervisory intervention order (*s604*)
- Contravene prohibition order (*s610*)

Note: An executive exercising due diligence to meet the business's primary duty obligation should already have identified, and be managing, most of these requirements. But they should also make sure that each one is properly addressed in the SMS or other system implemented in the business.

Executive Officers' liability

As an executive, you may also be liable for selected offences committed by your business if you knowingly authorised or permitted the conduct that constituted the offence. The list of offences is in **Schedule 4 of the HVNL**

This form of liability is based on common law principles and is similar to provisions incorporated in many other legislative schemes. It is distinct from liability for failing to exercise due diligence.

Executives should also be aware of the provisions in Schedule 4 and assure themselves that their business practices would not authorise or permit employees to breach any of them.

Note: With the exception of s26C, all of the 'Safety Duty' provisions are also found in Schedule 4 (*Sections 636-638, Schedule 4*)