

FAQs

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As a driver, how do I comply with CoR?

If you are employed as a heavy vehicle driver, you do not have to comply with the CoR law, but your employer does. The procedures and training you have to follow are part of your employer's CoR obligations.

At the very least, your employer should make sure that you comply with HVNL requirements. This includes:

- having a vehicle that is roadworthy and well maintained
- knowing how to load it safely, within mass and dimension limits
- being trained and equipped to securely restrain loads
- being prohibited from driving while fatigued or exceeding speed limits.

If you drive a fatigue-regulated heavy vehicle, you should be able to record your work and rest hours.

If you drive a vehicle that exceeds general mass and dimension limits, you should also know how to work out which routes you are permitted to drive and what conditions you have to comply with.

Your employer may also require you to follow additional safety procedures that relate to your particular work circumstances.

By following all of these requirements, you can ensure you are complying with the parts of the HVNL that apply to drivers.

Does my primary duty depend on my role in the CoR?

Put simply, the answer is no. That's because although there are 10 different CoR functions, the duty is the same for all of them: eliminate or minimise risks from the heavy vehicle transport activities you influence or control, so far as is reasonably practicable.

Once you have established that you are a CoR party - because you perform one or more of the 10 CoR functions - your next focus should be on working out how to carry out your primary duty.

To comply with the primary duty:

1. identify the risks to public safety that arise from your transport activities
2. work out what measures would be reasonably practicable for you to implement to ensure safety
3. implement those measures and monitor whether they work.

Although the HVNL doesn't break down the primary duty according to CoR roles, other parts of the HVNL do impose obligations on particular persons. Those provisions may be a useful starting point when you are developing systems for managing risk.

Is my company responsible for breaches by other parties in the CoR?

Under the current HVNL s26C Primary Duty, these are the circumstances in which breaches by other parties could result in charges for your business:

- You failed to implement reasonably practicable measures that would have eliminated or minimised the relevant risk. s26C(2)(a)
- Your business directly or indirectly caused or encouraged a person to breach the HVNL, or a driver to speed. s26C(2)(b)

You can avoid charges like these by ensuring that your business requirements are not creating incentives for other parties to breach the law and by communicating and collaborating with business partners so that you have good visibility and understanding of the ways your businesses interact and influence each other.

When you first start working with a business, find out about them and how they work, and make sure that your contract with them allows you to monitor safety factors and adjust procedures to improve safety. Then you have the opportunity to identify the causes of safety risks in your combined activities and address them before it is too late.

Even if your business avoids charges when another entity is investigated, there may be damage to the reputation of your own business, by association. **Good safety management is not only a legal requirement, but also good business practice.**

CoR laws pre-2018

Prior to October 2018, the answer to the above question would have been different. The CoR laws in older versions of the HVNL were based on extended liability. That meant that a CoR party could be treated as automatically liable for a breach by a driver or by another party, and was required to prove, on the balance of probabilities, that they had taken reasonable steps to prevent the breach.

These laws were an exception to two normal legal principles that:

- a person is innocent until proven guilty
- it is up to the prosecution to prove beyond reasonable doubt that a person has committed an offence.

This was one of the reasons that the CoR obligations are now expressed in a different form, and that non-compliance is proved in a different way.

Proving CoR breaches post October 2018

Under the current HVNL, a breach of the primary duty is proved in two main ways:

- by proving that a CoR party did not have measures in place to manage safety
- or by evidence that a CoR party caused another party to breach the HVNL.

Although many prosecutions are brought because of a serious incident, the essence of a primary duty breach (of the first kind) is the failure to have systems in place, or the potential risk, rather than the consequences. In other words, **your business could be charged with a breach of the duty, even if no incident has actually occurred** (there are more serious charges and higher penalties if an incident has occurred).

What is the difference between the primary duty and the due diligence duty?

The primary duty applies to *any* CoR party. It requires the party to eliminate or minimise the risk of the transport activities they influence or control, so far as is reasonably practicable.

The due diligence duty applies to the *executive* of a CoR party. It requires the executive to exercise due diligence to ensure their business complies with its primary duty and other safety duty provisions of the HVNL.

In practice, there is substantial overlap between the actions taken to carry out these two duties. For example, implementing an effective SMS could be evidence of compliance with both the primary duty and the executive due diligence duty.

Despite the clear link between the two duties, they are still distinct. An executive could be charged with a breach of duty even where the company has not been charged with breaching the primary duty. On the other hand, a company could be charged with a primary duty offence without the executive being charged. This is because there are differences in the specific requirements for each duty and because legal, evidential and policy questions determine decisions to prosecute.

What are the penalties for not complying with the primary duty?

Significant penalties can be imposed for a CoR party that contravenes the primary duty.

Depending on the nature and seriousness of the contravention, the penalty for an individual can be up to \$300,000 and five-years imprisonment. The penalty for a business can be up to \$3 million.

An executive who fails to exercise due diligence can face the same penalty as an individual who contravened the primary duty.