

Industry Code of Practice
for the
Transmission of Accurate Container Weight Declarations
under the
Road Transport Reform (Compliance & Enforcement) Bill

November 2004

Contact: Katharine Coroneos
Email: kathy@meyrick.com.au
Phone: 02 42271484

Meyrick and Associates Pty Ltd

Level 2, 63A Market Street, Wollongong NSW 2500 Australia
TEL +61 2 4227 1484 FAX +61 2 4227 1515 EMAIL wollongong@meyrick.com.au
ABN 85 061 120 652 WEB www.meyrick.com.au

Table of Contents

1.	PURPOSE OF THE CODE	1
2.	STATEMENT OF OBJECTIVES	2
3.	APPLICATION OF THE CODE	2
4.	RELEVANT GUIDELINES, STANDARDS AND CODES OF PRACTICE	2
5.	RESPONSIBLE ENTITIES	3
5.1	Australian consignee (importer)	3
5.2	Australian Import Customs Broker	3
5.3	Freight Forwarder	4
5.4	Australian consignor (exporter)	4
5.5	Australian export agent	4
5.6	Shipping lines	4
5.7	Stevedore	5
5.8	Rail Operator	5
6.	SPECIFIC MEASURES TO ENSURE COMPLIANCE	6
6.1	Introduction	6
6.2	Risk Management	6
6.3	Measures	6
6.4	Risk and mitigation strategies	7
7.	IDENTIFIED RISKS AND MITIGATION STRATEGIES FOR RESPONSIBLE ENTITIES	8
8.	IN HOUSE COMPLIANCE PROVISIONS	11
9.	CODE ADMINISTRATION COMMITTEE	11
10.	SANCTIONS FOR NON-COMPLIANCE	11
11.	ASSESSMENT BY AUDITOR (SEE ATTACHMENT)	12
12.	COMMENCEMENT	12
13.	DATE OF REGISTRATION	12
14.	DATE OF REVIEW	12
15.	SIGNATORIES	13
16.	APPENDIX 1 GLOSSARY OF TERMS	14

1. PURPOSE OF THE CODE

- (1) The model national Road Transport Reform (Compliance and Enforcement) Bill¹ makes provisions for compliance with, and enforcement of, laws relating to the operation of heavy vehicles² that form part of the system of nationally consistent road transport laws.
- (2) The Bill imposes duties and responsibilities on all parties in the container transport chain to take reasonable steps to prevent non-compliance with the heavy vehicle laws. The *chain of responsibility* provisions relating to heavy vehicle mass limit compliance aim to ensure that those who bear responsibility for conduct which affects compliance with the mass limits are made accountable for any failure to discharge that responsibility. In particular the Bill requires those defined as ‘responsible entities’³ under the Bill to ensure that a container weight declaration stating the weight and contents (among other pieces of information) is communicated to road carriers and/or drivers before the commencement of any road carriage of the container in Australia.⁴
- (3) The purpose of this voluntary code of practice is to provide parties who may be covered by the definition of responsible entity with access to an agreed framework and guidelines as a means of ensuring the accurate transmission of container weight information to road carriers and/or drivers. Furthermore, those who can demonstrate compliance with all relevant standards and procedures included in the code of practice and with the spirit of the code may have access to the ‘reasonable steps’ defence⁵ provided in the Bill.

The industry code sets out the framework for compliance with the Road Transport Reform (Compliance and Enforcement) Bill and provides a foundation for responsible entities who subscribe to the code to make a reasonable steps defence should circumstances require it.

Although the requirement for adhering to this Code is voluntary, the ability to rely on making a ‘Statutory Declaration’ stating compliance with all relevant standards within the industry, and with the spirit of the code, could be expected to be significant in establishing a ‘Reasonable Steps Defence’, in the event of any prosecution involving trucks that are overloaded. While there are other legal defences available to all parties (e.g. sudden and extraordinary emergency, duress etc) in many instances, the party that is held liable for a breach of the Bill will need to rely on the defence that it took ‘reasonable steps’ to prevent a breach. Complying with a registered *Industry Code of Practice* is one way of demonstrating a ‘reasonable steps’ defence.

¹ The Bill was approved by the Australian Transport Ministers on 3 November 2003. The States and Territories and the Commonwealth will introduce local legislation giving effect to the provisions of the model Bill, with any necessary adaptations.

² Heavy vehicles are vehicles over 4.5 tonnes gross vehicle mass (gvm)

³ The definition of a responsible entity can be found at Appendix 1 Glossary of terms

⁴ Communication of container weight declarations may be in electronic format and may consist of more than one document. There is a significant move in the industry towards paperless documentation.

⁵ The explanation of the reasonable steps defence is taken from Division 4 of the Bill and is included in appendix 1 glossary of terms.

2. STATEMENT OF OBJECTIVES

The objectives of the Code are to:

- Promote a cooperative approach by all parties in their dealings with one another to achieve compliance with the container weight declarations provisions of the Road Transport Reform (Compliance and Enforcement) Bill
- Minimise the risk of responsible entity organisations breaching the Bill
- Encourage best practice and improve the integrity of information relating to container weights
- Provide a means of accessing the reasonable steps defence as described in Section 89 of the Bill

3. APPLICATION OF THE CODE

- (1) The industry code of practice applies to those parties in the transport chain who may be covered by the definition of ‘responsible entity’ including the consignor, shipper or a representative thereof, loader, freight forwarder, customs broker, shipping line, stevedore, and rail operator in Australia. (Road carriers, drivers, packers and consignees are subject to other, special provisions and duties).
- (2) The wide application of the industry code of practice reinforces the critical need for communication, cooperation and appreciation of obligations of all parties in the chain of responsibility.

4. RELEVANT GUIDELINES, STANDARDS AND CODES OF PRACTICE

The industry code of practice should be read in conjunction with the following guidelines and standards relating to compliance with the heavy vehicle mass, dimension and load restraint requirements.

- a) Road Transport Reform (Vehicle Standards) Regulations 1999⁶;
- b) Road Transport Reform (Mass and Loading) Regulations - reg 1⁷;
- c) Road Transport Reform (Dangerous Goods) Act 1195;
- d) Road Transport Reform (Dangerous Goods) Regulations 1997; and
- e) Sixth edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail⁸

⁶ The guidelines can be found on the National Transport Commission website,
<http://www.ntc.gov.au/filemedia/Reforms/RoadTransportReformVehicleStanda.pdf>

⁷ <http://scaletext.law.gov.au/html/pastereg/1/617/top.htm>

⁸ <http://www.ntc.gov.au/ViewPage.aspx?page=A02208509300530020>

5. RESPONSIBLE ENTITIES

The parties identified below will at times and in certain conditions be responsible entities as defined by the model legislation. In these cases the impact and obligation each party has regarding the transmission of accurate container weights cascades from one business operation to the next commencing with the Australian consignee (importer).

The potential impact and obligations of each party with respect to the transmission of accurate container weights is described below:

5.1 Australian consignee (importer)

An importer must fulfil two primary requirements before they are able to take delivery of containerised cargo from the stevedore:

- (1) Obtain a “delivery order” from the shipping line or freight forwarder in return for a Bill of Lading and payment of freight and service charges (this process can be completed through an electronic transfer of data).
- (2) Complete all import declaration statutory (Australian Customs Service, Australian Quarantine & Inspection Service, Australian Bureau of Statistics and other Permit Issuing Authority) requirements. Once all statutory processes are complete, an electronic release message is transmitted to the relevant stevedore.

Once these requirements are satisfied, the importer will provide advice to a transport operator to arrange pick up and delivery of the cargo in containers.

5.2 Australian Import Customs Broker

An importer may use a service provider to complete the primary import requirements on their behalf.

Customs brokers are licensed by the Australian Customs Service to complete import declaration requirements on behalf of importers.

Customs brokers require commercial documentation (invoices, packing lists / declarations) from the importer or overseas consignor, to complete the import declaration process.

As a part of the service provision to importers, many companies that perform the customs broker role will also complete the delivery order process and / or arrange transport to pick up and deliver the cargo from the stevedore to the importer.

In these circumstances, there is an expectation that the company arranging the transport would ensure that the commercial information is reviewed before providing a container weight declaration to a third party transport provider.

5.3 Freight Forwarder

Freight forwarders arrange international transport of freight on behalf of importers and exporters. Most also offer the service of Customs broker / export agent role to complete statutory requirements on behalf of their clients.

The Freight Forwarder is also responsible for the landside transfer of LCL containers (multiple consignees / consignors). In the scenario of transporting LCL cargo, the freight forwarder is reliant on the accuracy of shipping documentation (House Bill of Lading or manifest) to pass on to the transport provider.

5.4 Australian consignor (exporter)

An exporter must fulfil two primary requirements before they are in a position to deliver containerised cargo to the stevedore:

- (1) Arrange the physical transport of cargo through a freight forwarder or direct through a shipping line
- (2) Complete all export declaration statutory (Australian Customs Service, Australian Quarantine & Inspection Service, Australian Bureau of Statistics and other Permit Issuing Authority) requirements.

Once these requirements are satisfied, the exporter will provide advice to a transport operator to arrange pick up and delivery of the container of cargo.

5.5 Australian export agent

Unlike a Customs broker, an export agent does not require a licence.

The export agent may complete some or all of the export processes on behalf of the exporter. Freight forwarders commonly complete this role as a service to exporters.

Export agents require commercial documentation (invoices, packing lists / declarations) from the exporter to complete the export declaration process.

As a part of the service provision to exporters, many companies that perform the export agent role will also arrange transport to pick up and deliver the container of cargo from the exporter to the stevedore.

In these circumstances, there is an expectation that the company arranging the transport would ensure that the commercial information is reviewed before providing a container weight declaration to a third party transport provider.

5.6 Shipping lines

Provide relevant authorities/port/terminal with details of cargo onboard the vessel on receiving vessel arrival and manifest information.

5.7 Stevedore

The stevedore affects the loading and unloading of containers from the vessel to rail and or road contractors within a terminal. They have a copy of the bay plan but rarely contract any road haulage. The exception to this rule is with shuttles between inland storage facilities and the waterside terminal. These storage facilities are used to buffer the terminals and or to meet peak delivery or discharge windows.

Where the stevedore has to engage the transport, the firm becomes a responsible entity for the purposes of the Bill.

5.8 Rail Operator

Containers may be conveyed between major rail freight terminals, private rail sidings and ports. In many major rail freight terminals there are weighbridges to validate declared container weights.

Operators may require commercial documentation (consignment note, dangerous goods declaration, etc) from Freight Forwarders and Shippers. This documentation must include an accurate declaration of container weight and may be completed through an electronic transfer of data.

Consignor Freight Forwarders and Shippers receive pre-delivery notification of containers arriving by rail. This information includes individual container weights

6. SPECIFIC MEASURES TO ENSURE COMPLIANCE

6.1 Introduction

The industry code of practice establishes a framework for compliance with the Road Transport Reform (Compliance and Enforcement) Bill. The framework is based on the Australian Standards AS/NZS 4360:1999 Risk Management standards⁹. The code promotes compliance through the development and implementation of systems that are operationally effective and appropriate to the business environment.

6.2 Risk Management

A risk management framework incorporates the following steps:

- (1) Analysis of the operating environment to understand current practice and how it is impacted by the Bill
 - The benefit of undertaking a review of the operating environment would be to confirm practices and systems in place meet requirements and that opportunities for improvement are identified and responded to.
- (2) Identification of potential areas of exposure under the provisions of the Bill
 - Areas of exposure will possibly be different for the different responsible entities in the chain
- (3) Evaluation of the impact of the exposure for the business
 - The evaluation of impact can help to identify what will be the best way to deal with the exposure
- (4) Implementation of measures to minimise exposure and increase potential compliance with the Bill
- (5) Regular review and refinement of measures as required to ensure ongoing compliance with the Bill
- (6) Assessment of opportunities to work with other parties in the chain of responsibility to increase the potential for greater communication, shared information and standard practice in dealing with containers.

6.3 Measures

The guidelines for the development of the code of practice¹⁰ identified specific measures designed to ensure compliance once the role as responsible entity has been acknowledged. Depending on the role of the responsible entity with respect to the transmission of accurate container weights in the chain of responsibility the following measures are applicable in varying degrees to those who are party to this code. In particular the measures are aimed at ensuring compliance is facilitated through the:

- Transmission of accurate container weight declarations to heavy vehicle operators and drivers;
- Provision and acquisition of sufficient and reliable evidence from which the weight or measurement of a heavy vehicle or combination or its load might be calculated;
- Ensuring the accuracy of statements made in transport documentation that is given to heavy vehicle operators and drivers;

⁹ Australian Standards are available from www.standards.com.au

¹⁰ Guidelines for the development of industry codes of practice have been produced by the NTC.

- Inclusion of compliance assurance requirements in commercial arrangements with customers and other parties in the logistics chain;
- Management or supervision of employees, agents or other parties involved in activities that may lead to a compliance problem;
- Provision of information, instruction and training in relation to the code and compliance with heavy vehicle mass requirements;
- Maintenance of equipment and work systems to ensure compliance; and
- Remedy of any compliance problems that occur.

6.4 Risk and mitigation strategies

The matrix below shows the identified risks and the reasonable measures each responsible entity can take to mitigate the risk.

7. IDENTIFIED RISKS AND MITIGATION STRATEGIES FOR RESPONSIBLE ENTITIES

When the identified party is the responsible entity the following mitigating strategies can be applied to the identified risk.

	Declared weight of container appears to be understated and/or overstated	Declared weight of container is ambiguous (tare, gross or nett?)	Declaration weight has been altered	No declaration of weight is provided to Responsible Entity (RE)
Australian Consignee (Importer)	The consignee is to advise all suppliers and agents in writing of the requirements of the Australian Law in relation to declaration of container weights. Shipper to provide details of weight estimation method.	Consignee to stipulate that tare and gross weights are to be shown on all documentation as part of contract to buy. Contract conditions to require basis of weight estimates.	Consignee to maintain an electronic or fax copy of original consignment from shipper. This should be compared to delivery and if different assess impact and mitigation. Consignee to consider contractual steps available e.g. should payment be withheld?	If any RE in the chain does not receive a declaration of weight, then a copy should be provided by consignee, who should supply from original receipt of consignment note
Australian Import Customs Broker	The agent to advise consignor of Australian Law and weight estimation method. Agent to maintain register of shipments and shippers known to be in breach.	In the absence of tare and gross weights agent is to seek clarification from shipper and/or consignee.	Agent to compare transport documentation with commercial documentation advice for every transaction. Agent to treat any discrepancy as a breach, inform consignee and request action.	Agent immediately seeks to rectify by reference to earlier records and/or shipper/consignee. Agent records help identify and track repeat instances.
Freight Forwarder	Agent to advise consignor of Australian Law and weight estimation method. Agent to maintain register of shipments and shippers known to be in breach.	In the absence of tare and gross weights agent is to seek clarification from shipper and/or consignee.	As above	Agent immediately seeks to rectify by reference to earlier records and/or shipper/consignee. Agent records help identify and track repeat instances.

	Declared weight of container appears to be understated and/or overstated	Declared weight of container is ambiguous (tare, gross or nett?)	Declaration weight has been altered	No declaration of weight is provided to Responsible Entity (RE)
Australian Consignor (Exporter)	Either has control on weight estimation or should advise freight owner of requirements of law at regular intervals	Establish unambiguous reporting formats. Gross, tare and net mass recorded and computer verified adding on a spreadsheet	Reissue or request clean substitute paperwork. Compare documentation with commercial documentation	Consignor should refuse to order road transport in the absence of documentation
Australian Export Agent	The agent to advise consignor of Australian Law and weight estimation method. Agent to maintain register of shipments and shippers known to be in breach.	In the absence of tare and gross weights agent is to seek clarification from shipper and/or consignee.	Agent to compare transport documentation with commercial documentation advice for every transaction. Agent to treat any discrepancy as a breach, inform consignee and request action.	Agent immediately seeks to rectify by reference to earlier records and/or shipper/consignee. Agent records help identify and track repeat instances.
Shipping Company				
<i>Imports</i>	Where detected, the shipping company should advise the overseas agent of the general requirements of Australian Law.	The shipping company should advise overseas agents that all documentation provide tare and gross weights. Agents and staff to be informed that incomplete documentation could result in delays.	Shipping companies should provide instructions that any obvious alteration of a declaration should be advised immediately to the agent and the consignee. Shipping company records help identify and track repeat instances.	If no weight is declared on the transport documentation the box should not be offered for road transport.
<i>Exports</i>	Where detected, the box should not be offered for road transport.	Where detected, the container weight information should be checked before commencing	Where detected, the container weight information should be checked before commencing	If no weight is declared on the transport documentation the box should not be offered for

	Declared weight of container appears to be understated and/or overstated	Declared weight of container is ambiguous (tare, gross or nett?)	Declaration weight has been altered	No declaration of weight is provided to Responsible Entity (RE)
		transport by road.	transport by road.	road transport.
Stevedore	If this is detected or suspected by operators the box shall be isolated and the receival party agent/consignee/truck operator notified.	There is little in the way of mitigation steps available to the stevedore in relation to this risk.	As above.	Stevedore must hold box and advise agent or consignee that the box cannot be released without accurate declaration.
Rail Operator	Where the box is weighed on receival and the declared weight appears inaccurate the consignment will be refused and the consignee/agent advised. Where the box is identified as overweight in transit by rail (eg, by in-motion weigh bridge) the consignee/agent will be advised. The box may be detached en-route pending transshipment to another wagon or transfer to another transport mode.	See left hand column	See left hand column	Container will not be accepted without a declared accurate weight.

8. IN HOUSE COMPLIANCE PROVISIONS

Risk management is an iterative process that encourages a sequential approach to minimising risk and as a result of this approach, provides opportunity for continuous improvement.

Application of this framework will assist responsible entities to maintain compliance with the Bill and support a reasonable steps defence. Beyond the risks and specific measures identified in this code, responsible entities will be obliged to ensure their in house operations facilitate compliance with the Bill.

Each signatory to the code must address the matters identified in section 6 through in house programs that meet AS 3806-1998 Compliance Programs.

The type of control measures and systems that would support the above risk management strategy could include:

- Design and delivery of relevant training to raise employee awareness and competencies
- Communication to raise customer awareness and appreciation of quality service within the parameters of the law
- Contracts that require appropriate data to be provided
- Audit of systems to identify appropriateness, consistency of application, employee practice and business effectiveness

9. CODE ADMINISTRATION COMMITTEE

In accordance with the Industry Codes of Practice for Heavy Vehicle Mass, Dimension and Load Restraint - Guidelines for Development and Registration, a Code Administration Committee will be established.

10. SANCTIONS FOR NON-COMPLIANCE

The Code Administration Committee will review breaches of which it is notified and may decide on sanctions on a case-by-case basis. This may involve removal as a signatory in line with 5.8 of the Industry Codes of Practice for Heavy Vehicle Mass, Dimension and Load Restraint - Guidelines for Development and Registration.

11. ASSESSMENT BY AUDITOR (SEE ATTACHMENT)**12. COMMENCEMENT**

This industry code of practice commences on (date to be inserted).

13. DATE OF REGISTRATION

This industry code of practice was registered on (date to be inserted).

Name of Approving Authority (to be inserted).

14. DATE OF REVIEW

This industry code of practice will be reviewed as necessary and every three (3) years from its commencement.

15. SIGNATORIES

The undersigned have endorsed this industry code of practice:

Party	Business address

16. APPENDIX 1 GLOSSARY OF TERMS

The following terms have the meanings listed in this industry code of practice, unless the contrary intention appears:

Registered industry code of practice means an industry code of practice that is registered in accordance with the principles of the Australian Standards Association including standards AS 3806 &/or AS/NZS 4360.

Australian Authority means the Authority or a corresponding Authority, for example the Vehicle Registration Authority of the Australian State or Territory.

Chain of responsibility in the context of the road transport laws means all who have responsibility for activities that may affect compliance with road transport laws may be held legally liable for failure to discharge that responsibility.

Consignee of goods means a person who:

- a) with the person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road; or
- b) actually receives the goods after completion of their transport by road;

but does not include a person who merely unloads the goods.

Consignor of goods means a person who:

- a) with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road; or
- b) if paragraph (a) does not apply to the person or anyone else:
 - i) engages an operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or
 - ii) has possession of, or control over, the goods immediately before the goods are transported by road; or
 - iii) loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is unattended (except by the driver of the vehicle, a trainee driver or any person necessary for the normal operation of the vehicle) during loading: or
- c) if paragraphs (a) and (b) do not apply to the person or anyone else, and the goods are imported into Australia – imports the goods.

Container means:

- a) A reusable container of the kind mentioned in Australian/New Zealand Standards AS/NZS 3711.1:2000, *Freight containers – Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one more modes of transport; or
- b) A reusable container of the same or a similar design and construction to a container referred to in paragraph (a) though of different dimensions; or
- c) A container of a kind prescribed by the regulations;

but does not include anything declared by the regulations to be excluded from this definition.

Container weight declaration means a declaration referred to in Division 7 of Part 4 of the Bill, and includes a copy of such a declaration or a version of such a declaration in electronic or other form. The relevant sections of the Bill are as follows:

Division 7

100 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.

101 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.

Freight container means:

- a) A reusable container of the kind mentioned in Australian/New Zealand Standards AS/NZS 3711.1:2000, *Freight containers – Classification, dimensions and ratings*, that is designed for repeated use for the transport of goods by one more modes of transport; or
- b) A reusable container of the same or a similar design and construction to a container referred to in paragraph (a) though of different dimensions; or
- c) A container of a kind prescribed by the regulations;

but does not include anything declared by the regulations to be excluded from this definition.

Journey documentation means any documentation (other than transport documentation) directly or indirectly associated with:

- a) the actual or proposed physical transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
- b) goods or passengers themselves so far as the documentation is relevant to their actual or proposed physical transport;

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and whether or not the documentation relates to a particular journey or to journeys generally, and includes (for example) any of the following:

- c) records kept, used or obtained by a responsible person in connection with the transport of the goods or passengers;
- d) workshop, maintenance and repair records relating to a vehicle or combination used, or claimed to be used, for the transport of the goods or passengers;

- e) a subcontractor's payment advice relating to the goods or passengers or the transport of the goods or passengers;
- f) records kept, used or obtained by the driver of the vehicle or combination used, or claimed to used, for the transport of the goods or passengers, including (for example) a driver's run sheet, a log book entry, a fuel docket or receipt, a food receipt, a tollway receipt, pay records and mobile or other phone records;
- g) information reported through the use of an intelligent transport system;
- h) driver manuals and instruction sheets;
- i) advice in any form from check weighing performed before, during or after a journey.

Reasonable steps defence

The relevant section of the Bill is as follows:

Division 4 Reasonable steps defence

87 Reasonable steps defence

(1) Defence

If a provision of this Part states that a person has the benefit of the reasonable steps defence for an offence, it is a defence to a charge for the offence concerned if the person charged establishes that:

- a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- b) either:
 - (i) the person had taken all reasonable steps to prevent the contravention; or
 - (ii) there were no steps that the person could reasonably be expected to have taken to prevent the contravention.

(2) Matters that court may have regard to without limiting the above, in determining whether things done or omitted to be done by the person charged constitute reasonable steps, a court may have regard to:

- a) the circumstances of the alleged offence, including (where relevant) the risk category to which the breach concerned belongs; and
- b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:
 - (i) to accurately and safely weigh or measure the vehicle or combination or its load or to safely restrain the load in or on the vehicle or combination;

- (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or combination or its load might be calculated;
 - (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle or combination, or from the location of the load in or on the vehicle or combination, or from the location of goods in the load;
 - (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
 - (v) to exercise supervision or control over others involved in activities leading to the breach;
and
- c) the measures available and measures taken for any or all of the following:
- (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons;
 - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
 - (iii) to maintain equipment and work systems to enable compliance with relevant laws;
 - (iv) to address and remedy similar compliance problems that may have occurred in the past;
and
- d) whether the person charged had, either personally or through an agent or employee, custody or control of the vehicle or combination, or of its load, or of any of the goods included or to be included in the load; and
- e) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had.

(3) Proof of compliance with industry code of practice

If the person charged establishes that the person had complied with all relevant standards and procedures under an approved industry code of practice, and with the spirit of the code, with respect to matters to which the breach relates, proof of compliance (as so established by the person) is prima facie evidence that the person charged had taken reasonable steps to prevent the contravention.

88 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.

Responsible entity

The relevant section of the Bill is as follows:

Division 7 98 Definition of “responsible entity”

In this Division:

responsible entity, in relation to a freight container, means:

- 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.

Transport documentation means:

- a) any contractual documentation directly or indirectly associated with:
 - i) a transaction for or relating to the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
 - ii) goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or
- b) any associated documentation:

- i) contemplated in the contractual documentation; or
- ii) required by law, or customarily provided, in connection with the contractual documentation or with the transaction;

whether the documentation is in paper, electronic or any other form, and whether or not the documentation has been transmitted physically, electronically or in any other manner, and includes (for example) an invoice, vendor declaration, delivery order, consignment note, load manifest, export receipt advice, bill of lading, contract of carriage, sea carriage document, or container weight declaration, relating to the goods or passengers.

DRAFT