



SEA FREIGHT CONTAINER CODE OF CONDUCT



THIS CODE WAS PREPARED BY A WORKING GROUP OF THE PORT OF BRISBANE LANDSIDE LOGISTICS FORUM,
WITH ASSISTANCE FROM QUEENSLAND TRANSPORT.





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DISCLAIMER

The Sea Freight Chain of Responsibility (COR) Code of Practice provides only a general guide to parties in the sea freight container supply chain for complying with COR legislation. Compliance with this code of practice does not guarantee compliance with COR legislation, and no warranty or representation as to compliance with COR legislation is given.

While every effort has been made to provide accurate and up to date information in the Code, Port of Brisbane Corporation and the LLF working group take no responsibility for any error, omission, or defect in this code and exclude all liability (whether in negligence or otherwise) for any loss or damage (including any consequential loss or damage, and any penalties imposed) suffered or incurred, directly or indirectly, by any person or company acting in reliance on all or any part of the Code.

Readers are encouraged to seek their own independent legal advice as to their obligations under the *Transport Operations (Road Use Management) Act 1995*.



INTRODUCTION

New legislation in Queensland in 2008 expands the current “Chain of Responsibility” (COR) legislative provisions which already exist. It introduces a new term and new provisions for a “Container Weight Declaration” (CWD) which must be completed whenever a container is transported by road.

The legislation imposes liability for heavy vehicle offences on all people and/or businesses whose actions, inactions, or demands influence conduct on the road as well as on road parties such as drivers and carriers. It introduces new obligations for consignors, operators, drivers and consignees related to the handling of freight containers and the provision of CWDs.

PURPOSE

The aims of this document are to:

- provide guidance to parties in the sea freight container supply chain concerning the carriage of containers on heavy vehicles, and particularly the responsibilities of all parties for Container Weight Declarations (CWDs);
- provide guidance in relation to complying with COR legislation;
- minimise the risk of freight movements along the sea freight container supply chain;
- assist participants to comply with COR legislation; and
- reduce the incidence of overloaded heavy vehicles carrying containers, inadequately restrained goods in containers, and poorly distributed goods in containers.

The Code is not intended to be anti-competitive.

The Code is designed to assist in providing a “reasonable steps defence” for breaches of legislation. Whether that defence is available will, of course, depend on the specific circumstances of each matter. No warranty or guarantee is given that compliance with this Code will provide a defence to breaches of the Act.

The Code is voluntary and prescribes minimum levels of operational behaviour to assist those in the sea freight container supply chain to manage their obligations under relevant road transport laws.

In adopting this Code, each signatory shall be individually responsible for implementing the necessary systems, procedures, and processes to achieve the purpose of the Code.

The Code is a guide only. Readers should, of course, take their own independent legal advice as to their obligations under the Act and what steps they should take to ensure compliance with those obligations.

SCOPE OF THE CODE

The Code applies to the following activities within the supply chain and the regulation and standards that apply to them:

- The transport of containers on heavy vehicles;
- The provision of Container Weight Declarations (CWD); and
- Safe loading practices for containers including mass and load restraint.

The Code applies to those parties in the chain who may be covered by the definition of “responsible entity” including consignors, shippers or representatives, freight forwarders, customs brokers, shipping lines, stevedores, consignees, road carriers, drivers, loaders and packers.



The Code encompasses practices in relation to:

- Packing, loading, consigning, carrying, driving, and receiving activities along the sea freight container supply chain;
- Heavy vehicle load mass and load restraint; and
- The provision and transmission of CWDs.

The Code applies to all participants and their employees who have direct or indirect involvement in the supply chain and all sites under the control of participants.

Status of the Code

The Code is voluntary and intended only to assist participants to identify issues related to COR compliance and to give guidance for the management of that compliance.

National Logistics Safety Code (NLSC)

This code forms part of the National Logistics Safety Code (NLSC) which has been established by the Australian Logistics Council (ALC) to assist participants in the transport and logistics industry, including the Sea Freight Container Supply Chain, to meet their Chain of Responsibility and OH&S obligations.

Signatories to the NLSC must be subjected to independent audits to determine their compliance with the elements and criteria adopted by the Australian Logistics Council (ALC).

The NLSC covers the following ten elements:

1. Legal Compliance and CoR
2. OH&S Risk Assessment and Compliance
3. Fatigue Management (Scheduling, Time Slot Flexibility, Waiting Time, Queuing, Loading or Unloading)
4. Communications
5. Safe Loads (Preparation, Restraint & Containment, Mass, Container Weight Declarations, Dangerous Goods)
6. Speed Management
7. Equipment
8. Driver Health/Drug and Alcohol Free Workplace
9. Subcontractor Assessments
10. Operational Infrastructure

All 10 elements of the NLSC are required to be independently audited by an approved RABQSA certified 3rd party auditor.

It is important to note that participants are not required to become a signatory to the NLSC in order to make use of this Code. However becoming a signatory to the NLSC will add rigour to the incorporation of this Code into a business system and enhance any reasonable steps defence based on the provisions of the Code.

Risks

There are four main categories of risk in breaching COR obligations in relation to mass or load restraint:

- Harm or damage to people, plant, property or the environment;
- The additional cost or lack of productivity;
- Loss of reputation or other public opinion; and
- Legal liability eg, fines, penalties or prosecutions.



Responsibilities, Risks and Mitigation Measures

Parties in the sea freight container supply chain will need to take reasonable steps to prevent a breach of COR legislation occurring, including adapting existing business systems to better address the requirements of this Code.

The Responsibilities, Risks and Mitigation Measures to be adopted by each party are outlined at Appendices 1 (Imports) and 2 (Exports).

Key Aspects of COR Legislation

The revised legislation introduces a new term for the transport of containers - Container Weight Declaration (CWD) – and places specific obligations on a number of parties for the accuracy of CWDs, on the basis that this will lead to more appropriate selection of trucks to carry containers and, in turn, fewer overloaded trucks carrying containers.

The revised legislation also continues the “chain of responsibility” concept of cascading responsibilities for compliance. This means that any party involved in transporting a container can potentially be held liable for a breach of mass or load restraint, and more than one (in fact any number) of parties can be held liable for a particular breach ie, it is not necessarily confined to one person or entity. This depends on whether a particular party is classified as a “responsible entity”.

What is a CWD?

A CWD for a freight container is a declaration that states or purports to state the weight of the freight container and its contents. All freight containers travelling by road (empty or full), whether originating from land or ship, must carry a CWD.

The weight of a freight container recorded on the CWD must include:

- The weight of the goods being transported in the container;
- The weight of the packaging on the container; and
- The weight of the container itself.

This does not mean each weight must be shown separately, but it must be clear that the gross weight recorded is the sum of the three amounts.

The CWD must also contain additional information that identifies the container, the name and business or residential address of the consignor, the date of the declaration, and other relevant information.

Information on the CWD also must be in a form that is readily available to an authorised officer who seeks to ascertain it while in the presence of the container, including for example, by:

- Examining documents located in or on the heavy vehicle on which the container is loaded or to be loaded; or
- Obtaining the information by radio or mobile telephone or by other means.

Further detail about the CWD, including legislative definitions, can be found in the “Guide to Container Weight Declarations - Queensland”, which is located on the Port of Brisbane website, www.portbris.com.au.

Responsible Entity

A range of parties are involved in the transport of a container and will at certain times and under certain conditions be the responsible entities as defined in the legislation. In these cases the impact and the obligations 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 key entities in relation to CWDs are:

- The “Consignor”. The consignor is the entity who arranges for the transport of the container, and who is responsible for providing a complying CWD. The consignor could be the entity identified on the transport documentation, but it could also be another party who is not identified on the transport documentation, but who actually arranges for the transport of the container. It is conceivable that a consignee could also be a consignor for the purposes of the legislation.
- The “Influencing Person”. This is the person who controls or directly influences the loading or operation of a heavy vehicle, and includes the consignor, the packer, and the loader. An “influencing person”, who could be a different entity from the consignor, could be liable, along with, or instead of, the consignor, for a non compliance.
- The “consignee”. The liability of the consignee is limited to inducing or rewarding a breach of mass or load restraint, in that the consignee knew or ought reasonably to have known that the CWD was not provided as per the regulation, or the CWD was false or misleading.

Another important term is “Reasonable Steps Defence” (RSD). This is a defence for an offence if the person establishes that the person did not know, or could not reasonably expected to have known, of the contravention concerned, and either the person took all reasonable steps to prevent a contravention, or there were no steps the person could reasonably have taken to prevent the contravention. The legislation defines a number of measures which the court may consider as constituting a “reasonable steps defence” eg, weigh the vehicle or its load, obtain evidence to calculate the weight of a heavy vehicle or its load, include compliance assurance conditions in commercial arrangements, manage, reduce or eliminate a potential contravention.

Definitions

Definitions of the key legislative provisions are at Appendix 3.

General definitions are at Appendix 4.



ADMINISTRATION OF THE CODE

Participants should actively support the maintenance of the Sea Freight Container Supply Chain Code of Conduct to better meet their legal obligations under the COR legislation to assist in establishing a RSD in the event of a breach of the Act.

Without breaching their obligations under Trade Practices legislation, participants should share COR audit information to:

- Better understand COR obligations and issues;
- Provide material and information for training and education;
- Enhance the Code through potential amendments;
- Assist participants to identify and overcome Code compliance problems.

Participants who wish to formally become a signatory to the Code will need to meet the auditing and other requirements of the NLSC.

The Landside Logistics Forum Chain of Responsibility Working Group is responsible for:

- The development, maintenance and amendment of the Code, in conjunction with the ALC;
- Ensuring that reviews are conducted at least every three years (earlier if any major problems are identified);
- Having the Code ratified by organisational bodies deemed appropriate by the Group.

In carrying out these responsibilities, the Group shall:

- Hold regular meetings (at least every 6 months);
- Liaise closely with the ALC concerning code administration, auditing and reviews;
- Consult with relevant organisations from time to time, including:
 - o Regulators and other Government bodies such as the National Transport Commission and Queensland Transport;
 - o Other industry stakeholders as deemed appropriate.

Key Contacts

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Acknowledgement of Contributions

In developing this Code, Sea Freight participants acknowledge the contributions made by Queensland Transport, industry organisations, the heavy vehicle road transport industry, and in particular:

- Patrick Port Logistics
- DP World
- Queensland Trucking Association
- Container Swinglift Services
- Customs Brokers and Forwarders Council of Australia
- DHL
- Australian Logistics Council (ALC)

No	All parties	Consignee (Importer)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/ terminal operators	Wharf Carrier
Responsibilities of the parties for CWDs, restraint of the container and the goods in the container	<p>Parties should have systems and training in place to ensure CWDs are complete, accurate and unambiguous and are provided to carriers in sufficient time to allow them to select and deploy the appropriate equipment to carry the container legally.</p> <p>The primary responsibility for the accuracy of the CWD and restraint of the goods in the container rests with the 'consignor' ie, the party arranging the transport of the container. This is usually the importer, even if the importer is noted on the transport documentation as the 'consignee'. If the importer is not the 'consignor', it is usually the customs broker/freight forwarder.</p> <p>Currently the Electronic Import Delivery Order (EIDO) may not include container weight information and therefore is not a CWD.</p> <p>Empty containers being transported on road also require a CWD.</p>	<p>An importer obtains a "delivery order" from the shipping line or freight forwarder in return for a Bill of Lading (B/L) and payment of freight and service charges, and completes import declaration statutory requirements for Customs and AQIS. Once this has been done the importer will provide advice, including a CWD, to a transport operator to arrange pick up and delivery of the containers. In this case the importer also becomes the 'consignor'. Alternatively, the importer may arrange for this task to be completed by a customs broker or forwarder, in which case they become the 'consignor' and responsible for the CWD.</p> <p>Consignors (importers) must ensure that:</p> <ul style="list-style-type: none"> • CWDs are accurate and unambiguous, • the contents and weight are distributed evenly throughout the container, • the contents are properly restrained <p>Note that in the circumstance where an importer is the consignee, but not the consignor, the importer must ensure he does not induce or reward a breach eg, a non complying or false or misleading CWD, or goods not properly restrained in the container.</p>	<p>Shipping lines provide relevant authorities/ports/terminals with details of cargo onboard the vessel, on receiving vessel arrival and manifest information. When a shipping line arranges the transport of containers, they become the 'consignor' and thus responsible for the CWD. This could occur when transporters are directed to deposit containers at specific locations by shipping lines.</p> <p>In all other cases the shipping line is responsible to ensure that accurate CWDs are transmitted to other parties.</p>	<p>Customs brokers require commercial documentation (invoices, packing lists/declarations) from the importer or overseas consignor to complete the import declaration process. Many brokers also complete the delivery order process and/or arrange transport to pick up and deliver the cargo from the stevedore to the importer. Freight forwarders arrange international transport of freight on behalf of importers and often act as customs brokers as well.</p> <p>Agents face two circumstances in relation to CWDs:</p> <ul style="list-style-type: none"> • They arrange for the pick up and delivery of the container. In this case they are the 'consignor' and become responsible for the CWD. • The agent simply transmits the CWD to another party. <p>In the first case, agents are to ensure CWDs are accurate and unambiguous.</p> <p>In the second case agents are to ensure that accurate CWDs are transmitted to other parties.</p>	<p>Stevedores effect the loading and unloading of containers to road transport operators within the terminal. In this case, they are the 'loader' and an 'influencing person', and therefore are responsible to take all reasonable steps to prevent trucks breaching mass or load restraint rules.</p> <p>They rarely contract road haulage, except for shuttles between inland storage facilities and the terminal. In this case they become the 'consignor' and are responsible for the CWD.</p> <p>Stevedores and terminal operators are responsible to take reasonable steps to ensure that trucks leaving their terminals carrying import boxes are not overweight and the container is restrained ie, twist locks are engaged.</p>	<p>Drivers must carry a copy of the complying CWD in the truck (it could be electronic). The carrier is then responsible to provide a truck which is mass compliant when the container is placed on the trailer.</p> <p>Carriers are entitled to rely on the veracity of the CWD, but this does not apply if the person knew, or ought reasonably to have known, that:</p> <ul style="list-style-type: none"> • the weight in the container is less than the actual weight, or • The distributed weight of the container and its contents, together with the mass or location of any other load and/or the mass of the vehicle, would cause contravention of the mass requirement of a heavy vehicle.

No	All parties	Consignee (Importer)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/ terminal operators	Wharf Carrier
Key Risks of each party	<ul style="list-style-type: none"> Inaccurate or ambiguous CWDs. CWDs which are not provided in time for carriers to select the appropriate vehicle for the job. Potential breaches of the Customs Act through an incorrect customs declaration and/or one which contains a false or misleading statement. Confusion as to who is the 'consignor' and responsible for the CWD, irrespective of who is noted on the transport documentation. The wrong vehicle is supplied to carry the container. The goods inside the container are not adequately restrained. 	<ul style="list-style-type: none"> Not being provided with the tare weight of the container and the weight of its contents. The contents of the container are not distributed evenly within the container and/or are not restrained properly. Containers with multiple products. 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWDs. Inadequate or incomplete weight information ie, tare weight and contents Container weights which exceed the gross rating of the box. 	<ul style="list-style-type: none"> The weight on the bill of lading is inaccurate or unreliable, and/or the DO does not tally with the CWD A packing list is not provided. Inadequate weight distribution or load restraint. An inaccurate or ambiguous CWD. Inadequate or incomplete weight information ie, tare weight and contents 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWD. Inaccurate or incorrect truck tare weight information provided by the carrier. Inappropriate truck provided to carry the container ie, one which increases the risk of mass non compliance Container weights which exceed the gross rating of the box. Twist locks not engaged. Inadequate load restraint of the goods inside the container 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWD. A complying CWD is not provided. A complying CWD is not provided in time to allow the selection and deployment of an appropriate vehicle. Inadequate load restraint of the goods inside the container

No	All parties	Consignee (Importer)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/terminal operators	Wharf Carrier
Mitigation	<p>All parties should assess their risks and implement procedures, processes and training to reduce them.</p> <p>All parties should document their systems, procedures and processes.</p> <p>All parties should keep records of incidents in relation to CWDs, overweight vehicles and load restraint, as well as measures and corrective actions taken.</p> <p>Parties should have their systems audited annually to provide evidence that mitigation steps are being used consistently.</p> <p>Reasonable Steps Defence</p> <p>Note the legislation outlines what the court may have regard to in deciding whether reasonable steps have been taken to prevent a breach:</p> <ul style="list-style-type: none"> • Weigh the vehicle or its load, or restrain the load, • Get information from which the weight or measurement of the vehicle or its load can be calculated, • Manage, reduce or eliminate a potential contravention arising from the location of the load in the vehicle, or the location of the goods in the load, • Supervise others involved in activities leading to a contravention, • Include compliance assurance arrangements in commercial arrangements with other 'responsible persons', • Provide information, training and supervision of employees to enable compliance, • Maintain equipment and work systems to enable compliance, • Remedy similar compliance problems that may have happened in the past. 	<p>Importers should:</p> <ul style="list-style-type: none"> • advise all suppliers and agents in writing of the requirements of Australian law in relation to CWDs, load restraint and weight distribution. • ensure the shipper provides details of the weight estimation method. • stipulate that tare and gross weights are to be shown on all documentation as part of the contract to buy. • ensure contract conditions require the basis of weight estimates. 	<p>Shipping companies should:</p> <ul style="list-style-type: none"> • advise overseas agents of the general requirements of Australian law. • ask that all documentation provide tare and gross weights. 	<p>Agents should:</p> <ul style="list-style-type: none"> • advise overseas consignors of Australian law and the weight estimation method. • maintain a register of shipments and shippers known to be in breach. • Stipulate that packing lists be provided, with details of tare weight, cargo weight and packaging weight. If none is provided, arrange for the truck to be weighed on a weighbridge and a certificate provided. • Provide advice to importers on packing and loading requirements. 	<p>Stevedores and terminal operators should:</p> <ul style="list-style-type: none"> • Take reasonable steps to discover the weight of the vehicle by one of the following: <ul style="list-style-type: none"> • use of onboard forklift weigh scales, • suspension air pressure gauge readings, • on board scale readings, • container or mass product declarations, • use of a weighbridge (if readily available), • checking shipping documentation and manifest, • obtaining weight declaration from shippers. • Stipulate that carriers provide truck tare weights and details of mass concession permits (eg, MIMS), including fleet registration numbers. • Ensure that facility personnel are trained to identify overweight vehicles, or those suspected of being overweight, and instructed on what to do with them when they are identified. • Report loads suspected of being overweight to the transport operator/driver and: <ul style="list-style-type: none"> • Arrange for the vehicle to be weighed, or • Lift the container off the vehicle, and advise the consignor. • Keep records of the actions taken to identify overweight vehicles and either prevent them leaving the site, or arrange for the truck to be weighed. • Annually seek evidence from transport operators that they use and monitor a systematic method for checking the tare weight of their vehicles and the restraint of goods inside the container 	<p>Carriers should:</p> <ul style="list-style-type: none"> • Maintain accurate records of vehicle and trailer tares and ensure drivers have these in their possession. • When it is suspected the vehicle is overloaded, either report this to the stevedore, or arrange for the vehicle to be weighed (if a weighbridge is available) and the load adjusted, if necessary. • Register vehicles and trailers in MIMS. • Be accredited to the National Heavy Vehicles Accreditation Scheme (NHVAS) Mass. • Keep records of actions taken to identify overweight vehicles and adjust loads. <p>Carriers should consider:</p> <ul style="list-style-type: none"> • Providing on board weigh scales. • Provide other means of establishing compliance with axle and gross mass limits. • Providing light weight equipment and, where applicable, special vehicles designed to legally carry the weight. • Refuse to carry a load if a complying CWD is not provided or it is obviously inaccurate.

No	All parties	Exporter (Consignor)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/ terminal operators	Wharf Carrier
Obligations of the parties for CWDs and restraint of the container and the goods inside the container	<p>Parties should have systems in place to ensure CWDs are complete, accurate and are provided to carriers in sufficient time to allow them to select and deploy the appropriate equipment to carry the container legally.</p> <p>The primary responsibility for the accuracy of the CWD and the restraint of the goods in the container rests with the 'consignor' ie, the party arranging the transport of the container. This is usually the exporter. If the exporter is not the 'consignor', it is usually the customs broker/freight forwarder.</p> <p>The electronic pre receipt advice (PRA) includes weight information and will usually be the CWD.</p> <p>Empty containers being transported on road also require a CWD.</p>	<p>Exporters (consignors) arrange the physical transport of cargo through a freight forwarder or direct through a shipping line. They also complete all export declaration statutory (Customs, AQIS, and other permit issuing authority) requirements. Exporters will provide advice, including a CWD, to a transport operator to arrange pick up and delivery of the container of cargo.</p> <p>Exporters may arrange for containers to be packed and/or loaded by another party ie, a 'packer' and/or a 'loader', who may also be the 'consignor', and therefore responsible for the CWD.</p> <p>'Consignors' must ensure that CWDs are accurate and unambiguous and the contents are distributed evenly throughout the container and properly restrained.</p>	<p>When shipping lines organise the transport of containers they become the 'consignor' In this case they become responsible for the CWD and must ensure the CWD is accurate and unambiguous. This is often the case when empty containers are transported to the stevedores for export.</p>	<p>The export agent may complete some or all of the export processes on behalf of the exporter. Freight forwarders commonly also complete this role for exporters. Export agents require commercial documentation (Invoices, packing lists, declarations) from the exporter to complete the export declaration process. As part of the service export agents often also arrange pick up and transport of the container to the stevedore. In these circumstances, they become the 'consignor' and are responsible for the CWD, usually the (PRA).</p> <p>In other cases where the agent simply transmits the CWD to another party, the agent has to ensure that accurate CWDs are transmitted to other parties.</p>	<p>Stevedores/depots are responsible to ensure that accurate CWDs (PRAs) are transmitted to the shipping lines.</p> <p>Stevedores effect the loading and unloading of containers to road transport operators within the terminal. Whilst the 'consignee' is the person who receives the goods after road transport ends, it does not include a person who merely unloads the goods. Stevedores usually only unload export containers. Ipso facto, they are usually not 'influencing persons'</p> <p>Stevedores are unlikely to be held responsible for overloaded trucks entering the terminal, as in these circumstances they will usually be the "unloader".</p> <p>In circumstances where an overloaded truck is identified once it has reached the terminal, the truck should not be allowed out of the gate until it is mass compliant.</p>	<p>The carrier must be provided with a complying CWD. Carriers are responsible to provide a truck which is mass compliant when the container is placed on the trailer.</p> <p>Drivers must carry a copy of the CWD in the truck (it could be electronic).</p> <p>Carriers are entitled to rely on the veracity of the CWD, but this does not apply if the person knew, or ought reasonably to have known, that:</p> <ul style="list-style-type: none"> the weight in the container is less than the actual weight, or the distributed weight of the container and its contents, together with the mass or location of any other load and/or the mass of the vehicle, would cause contravention of the mass requirement of a heavy vehicle.

No	All parties	Consignee (Importer)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/ terminal operators	Wharf Carrier
Key Risks of each party	<ul style="list-style-type: none"> Inaccurate or ambiguous CWDs. CWDs which are not provided in time for carriers to select the appropriate vehicle for the job. Confusion as to who is the 'consignor' and responsible for the CWD, irrespective of who is noted on the transport documentation. The wrong vehicle is supplied to transport the container. The goods inside the container are not properly restrained. 	<ul style="list-style-type: none"> Not knowing the weight of the commodity. Not knowing how much can be placed in the container. The weight of the product is variable The wrong container is supplied The container is not loaded correctly ie, the goods are not restrained and/or the weight distributed properly. Containers are loaded with multiple products. The carrier turns up with the wrong/heavy truck 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWDs. Inadequate or incomplete weight information ie, tare weight and contents. Container weights which exceed the gross rating of the box. 	<ul style="list-style-type: none"> The weight on the bill of lading is inaccurate or unreliable. The CWD is inaccurate or ambiguous. Inadequate weight distribution or load restraint. Inaccurate information provided by the exporter or packer. 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWD. 	<ul style="list-style-type: none"> Inaccurate or ambiguous CWD. A CWD is not provided. The CWD is not provided in time to allow the selection and deployment of an appropriate vehicle. The carrier does not know the weight of the product or the weight of the container once loaded, or how it is restrained. The exporter does not provide weight details in time. The container is not loaded correctly ie, the load is not restrained properly and/or the weight distributed properly. The carrier does not know the tare weights of his equipment. The wrong equipment is selected for the job. The exporter or packer is not equipped for loading the container or truck.

No	All parties	Consignee (Importer)	Shipping Line	Freight forwarder/ Customs Broker (Agent)	Stevedore and depots/ terminal operators	Wharf Carrier
Mitigation	<p>All parties should assess their risks and implement systems, procedures, processes and training to ameliorate them.</p> <p>All parties should document their systems, procedures and processes.</p> <p>All parties should keep records of incidents in relation to CWDs and overweight vehicles, as well as measures and corrective actions taken.</p> <p>Parties should have systems audited annually to provide evidence that mitigation steps are being used consistently.</p> <p>Reasonable Steps Defence</p> <p>Note: the legislation outlines what the court may have regard to in deciding whether reasonable steps have been taken to prevent a breach:</p> <ul style="list-style-type: none"> • Weigh the vehicle or its load, or restrain the load, • Get information from which the weight or measurement of the vehicle or its load can be calculated, • Manage, reduce or eliminate a potential contravention arising from the location of the load in the vehicle, or the location of the goods in the load, • Supervise others involved in activities leading to a contravention, • Include compliance assurance arrangements in commercial arrangements with other 'responsible persons', • Provide information, training and supervision of employees to enable compliance, • Maintain equipment and work systems to enable compliance, • Remedy similar compliance problems that may have happened in the past 	<p>Exporters should:</p> <ul style="list-style-type: none"> • Ensure they know the weight of the commodity, irrespective how it is calculated. This must be documented. • Ensure they know how much can be placed in the container so that the truck carrying the container is mass and load restraint compliant. • Check the carrier's vehicles and tare weights (perhaps with an occasional weighbridge docket?). • Register for the Mass Export Management Scheme (MEMS). 	<p>Shipping companies should:</p> <ul style="list-style-type: none"> • ask that all documentation provide tare and gross weights. 	<p>Agents should:</p> <ul style="list-style-type: none"> • advise the exporter/consignor of Australian law and the weight estimation method. • maintain a register of shipments and shippers known to be in breach. • Stipulate that CWDs be provided, with details of tare weight, cargo weight and packaging weight. If none is provided, arrange for the truck to be weighed on a weighbridge and a certificate provided. • Provide advice to exporters on packing and loading requirements. 	<p>Stevedores should, if they become aware an operator is continually overloading trucks entering the terminal, advise the operator to desist, and, if this has no effect, consider restricting the operator's access to the terminal.</p>	<p>Carriers are to:</p> <ul style="list-style-type: none"> • Maintain accurate records of vehicle and trailer tare weights and ensure drivers have these in their possession. • Where it is suspected the vehicle is overloaded, arrange for the vehicle to be weighed and the load adjusted, or refuse to load the vehicle • Ensure the exporter understands CWD and load restraint requirements. • Check the exporter's weight calculations and the veracity of the CWD eg, an occasional weighbridge docket. • Ensure the exporter and the carrier are registered in MEMS • Keep records of actions taken to identify overweight vehicles and adjust loads. <p>Carriers should consider:</p> <ul style="list-style-type: none"> • Providing on board weigh scales. • Providing other means of establishing compliance with axle and gross mass limits. • Providing light weight equipment and, where relevant, special vehicles designed to legally carry the weight. • Be accredited to the National Heavy Vehicle Accreditation Scheme (NHVAS) Mass. • Refusing to carry a load if a complying CWD is not provided or it is obviously inaccurate.

DEFINITIONS

The following definitions are extracts from the Transport Operations (Road Use Management) Act 1995 (TORUM).

A “responsible entity” (TORUM, Schedule 4) means:

- a. The person who, in Australia, consigned the container for road transport in Queensland by use of a heavy vehicle; or
- b. If there is no person as described in paragraph a, the person who, in Australia, for the consignor, arranged for the container’s road transport in Queensland by use of a heavy vehicle; or
- c. If there is no person as described in a or b, the person who, in Australia, physically offered the container for road in Queensland by use of a heavy vehicle.

Responsible Person (TORUM, Schedule 4)

“Responsible person”, for a heavy vehicle means a person having, at a relevant time, a role or responsibility associated with road transport by use of the vehicle, and includes the following:

- A. An owner of the vehicle or, if it is a heavy combination, the owner of a heavy vehicle forming part of the combination;
- B. The person in control of the vehicle;
- C. A person who is instructing a learner driver of the heavy vehicle;
- D. An operator or registered operator of the heavy vehicle;
- E. A person in charge or apparently in charge of the heavy vehicle’s garage address; or a base of a driver of the heavy vehicle;
- F. A person appointed under an alternative compliance scheme to have monitoring or other responsibilities under the scheme, including for example, responsibilities for certifying, monitoring or approving the heavy vehicle under the scheme;
- G. A person who provides to the owner or the registered operator of the heavy vehicle an intelligent transport system for the vehicle;
- H. Other than section 26A – a person in charge of a place entered by an authorised officer under this Act for exercising a power under this Act in relation to a heavy vehicle;
- I. The consignor of goods for transport by use of the heavy vehicle;
- J. The packer of goods in a freight container or other container or in a package or on a pallet for road transport of the heavy vehicle;
- K. The loader of goods or a container on the heavy vehicle for road transport;
- L. A person who unloads goods or a container containing goods consigned for road transport by use of the heavy vehicle;
- M. A person to whom goods are consigned for road transport by use of the heavy vehicle;
- N. A person who receives goods packed outside Australia in a freight container or other container or on a pallet for road transport in Australia by use of the heavy vehicle;
- O. An owner or operator of a weighbridge or weighing facility used to weigh the heavy vehicle, or an occupier of the place where the weighbridge or weighing facility is located;
- P. A responsible entity for a freight container on the heavy vehicle;
- Q. A loading manager for goods for transport by use of the heavy vehicle or another person who controls or directly influences the loading of the heavy vehicle;
- R. A person who schedules the transport of goods or passengers by the heavy vehicle;
- S. A person who schedules the work and rest times of the driver of a heavy vehicle;
- T. An agent, employer, employee, or subcontractor of a person referred to in paragraphs a to s.

Consignor (TORUM, Schedule 4)

Consignor, in relation to goods transported, or to be transported by a heavy vehicle means:

- A. The person who has consented to being, and is, named or otherwise identified as the consignor of the goods in the transport documentation for the consignment; or
- B. If there is no person as described in paragraph a, the person who:
 1. Engages an operator of the heavy vehicle, either directly or through another person, to transport the goods by road; or
 2. Has possession of, or control over, the goods immediately before the goods are transported by road; or
 3. Loads the vehicle with the goods, for road transport by road, at a place:
 - i. Where goods in bulk are stored or temporarily held: and
 - ii. That is usually unattended, other than by the driver or trainee driver of the heavy vehicle or someone else necessary for the normal operation of the heavy vehicle, during loading; or
 - iii. If there is no person as described in paragraph a or b and the goods are imported into Australia through a place in Queensland, the importer of the goods.

Duty of Consignor

It is the duty of the consignor (the entity that arranges the transport of the container) to ensure that the operator or driver of the vehicle is provided with a complying CWD relating to the container prior to the start of the transport of the container. The consignor might be different organizations or persons depending on the circumstances of the container transport movement (full & empty) and who engages the transport. This may range from importer, exporter, freight forwarder, customs broker, stevedore and even shipping lines depending on the circumstances of the container being offered for transport. For example in circumstances where the consignor is an entity overseas, the responsible entity in Australia who becomes the consignor for the purpose of the Act, and is required to provide the complying CWD, could be the importer, a customs broker, or freight forwarder etc, depending on who is responsible for arranging the road transport. In circumstances where the transport is engaged by an overseas party, then the responsible entity (the consignor for the purpose of the Act) becomes the party that physically offers the container for transport. In the case of an imported container this could be the stevedore.

Consignee (TORUM, Schedule 4)

“Consignee”, in relation to goods transported or to be transported by a heavy vehicle, means the person who:

- A. Has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or
- B. Actually receives the goods after their road transport ends; but does not include a person who merely unloads or unpacks the goods.

Consignee Liability

A consignee is taken to have induced or rewarded a breach of mass, dimension or loading requirement in relation to a freight container if they knew or reasonably ought to have known that:

- A complying container weight declaration was not provided; or
- It contains information about the weight or contents that was false or misleading.

Loader (TORUM, Schedule 4)

“Loader”, of goods in a heavy vehicle means a person who:

- A. Loads the vehicle with goods for road transport; or
- B. Loads a bulk container, freight container, or tank that is part of the vehicle, with the goods for road transport; or
- C. Loads the vehicle with a freight container, whether or not it contains goods, for road transport.

Loading Manager (TORUM, Schedule 4)

Loading Manager means:

- A. For goods in another vehicle:
 - 1. A person who manages, or who is responsible for the operation of, premises, or part of premises, at which goods are loaded onto the vehicle; or
 - 2. A person who has been assigned by a person who is mentioned in subparagraph 1. as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader of the goods.

Packer (TORUM, Schedule 4)

“Packer”, of goods means a person who does any of the following:

- A. Puts the goods in packaging for road transport;
- B. Assembles the goods in an outer packaging or unit load for road transport;
- C. Supervises an activity mentioned in paragraph a. or b.;
- D. Manages or controls an activity mentioned in paragraph a, b, or c.

Influencing Person (TORUM, Section 57AB)

Influencing person in relation to a heavy vehicle generally means any or all of the following persons:

- 1. The owner of the heavy vehicle or, if the heavy vehicle is a combination, the owner of a vehicle forming part of the combination;
- 2. The registered operator of the heavy vehicle or, if the heavy vehicle is a combination, the registered operator of a vehicle forming part of the combination;
- 3. A person, other than the owner or registered operator, who controls or directly influences the loading or operation of the heavy vehicle; and
- B. For an offence against Section 162D or relating to contravention of mass, dimension or loading requirements involving a heavy vehicle, includes any of the following persons:
 - 1. The consignor of any goods in the heavy vehicle;
 - 2. The packer of any goods in the heavy vehicle;
 - 3. The loading manager of any goods in the heavy vehicle;
 - 4. The loader of any goods in the heavy vehicle.

Reasonable Steps Defence (TORUM, Section 57DA)

Matters the court may consider for deciding whether a person took all reasonable steps – offences about mass, dimension or loading:

- 1. Without limiting subsection (A), in deciding whether things done or omitted to be done by the person charged with a mass, dimension or loading offence constitute reasonable steps, the court may have regard to the following:
 - A. The circumstances of the alleged offence, including any risk category for the contravention constituting the offence;
 - B. Without limiting paragraph a, the measures available and measures taken for any of the following:
 - 1. To accurately and safely weigh or measure the heavy vehicle or its load, or to safely restrain the load in the heavy vehicle;
 - 2. To provide and obtain sufficient and reliable evidence from which the weight or measurement of the heavy vehicle or its load might be calculated;
 - 3. To manage, reduce or eliminate a potential contravention arising from the location of the heavy vehicle, or from the location of the load in the heavy vehicle, or from the location of the goods in the load;

4. To manage, reduce or eliminate a potential contravention arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
 5. To exercise supervision or control over others involved in activities leading to the contravention;
- C. The measures available and measures taken for any or all of the following:
1. To include compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;
 2. To provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
 3. To maintain equipment and work systems to enable compliance with laws;
 4. To address and remedy similar compliance problems that may have happened in the past;
- D. Whether the person charged had, either personally or through an agent or employee, custody or control of the heavy vehicle, its load, or any goods included or to be included in the load;
- E. The personal expertise and experience of 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.

Proof of Compliance with industry code of practice (TORUM, Section 57F)

1. This section-
 - A. Applies for deciding whether a person charged with an offence against a prescribed provision took all reasonable steps to prevent a contravention; and
 - B. Does not limit sections 53B(6), 53C(4), 57B(2AA), and 162D (2).
2. Proof, as established by the person, that the person complied with all relevant standards and procedures, including, for example, an industry code of practice and the spirit of the code, in relation to matters to which the offence relates, is evidence that the person took all reasonable steps to prevent the contravention.
3. Subsection 2 does not apply unless the person has given written notice of the intention to prove the matters referred to in the subsection to the prosecution.
4. The notice must be:
 - C. Signed by the person; and
 - D. Given at least 28 business days before the date fixed for the hearing of the charge.

Reliance on Container Weight Declaration (TORUM, Section 57G)

1. This section applies if the operator or driver of a heavy vehicle is charged with an offence involving a breach of a mass requirement for the vehicle and is seeking to prove the reasonable steps defence in relation to the offence.
2. To the extent 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.
3. However, subsection 2 does not apply if 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 either of the following would a cause contravention of a mass requirement for the heavy vehicle:
 - i. The mass or location of any other load;
 - ii. The mass of the vehicle or any part of it.

GLOSSARY OF TERMS

Parties which comprise the Sea Freight Container Supply Chain

Parties	What They Do
Importers	<p>Before taking delivery of cargo, importers must:</p> <ul style="list-style-type: none"> • 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; and • Complete all import declaration statutory (Customs, AQIS etc) requirements.
Exporters	<p>Before delivering containerised cargo to the wharves, exporters must:</p> <ul style="list-style-type: none"> • Arrange the physical transport of cargo through a freight forwarder or direct through a shipping line; and • Complete all export declaration statutory (Customs, AQIS) requirements.
Freight Forwarders	<p>Arrange international transport of freight on behalf of importers and exporters. Most also offer the service of a customs broker/export agent to complete the statutory requirements on behalf of clients.</p>
Customs Brokers	<p>Are licensed by Customs to complete import declaration requirements on behalf of importers.</p>
Export Agents	<p>Complete some or all of the export processes on behalf of exporters. They are not licensed.</p>
Stevedores	<p>Load and unload containers from ships and arrange for containers to be received from, and delivered to, transport companies.</p>
Shipping Lines	<p>Provide relevant authorities/ports/terminals with details of cargo on board the vessel, on receiving vessel arrival and manifest information.</p>
Container Parks	<p>Store empty containers on behalf of shipping lines, and provide off-hire delivery points and receipt depots for off-hired containers.</p>
Road Transport Operators/Carrier	<p>Means a person/business which transports containers to and from the wharves on behalf of importers, exporters and freight forwarders by means of a heavy vehicle.</p>
Rail Operators	<p>Transport containers to and from the Brisbane Multi Modal Terminal (BMT) on behalf of importers, exporters, and freight forwarders.</p>
Container Freight Station (CFS) Operators	<p>CFS operators offer a number of services on a 24/7 basis, to cater for the extended hours of stevedore operations and the often limited hours of operation of importers, exporters, and freight forwarders. These services include container packing and unpacking, consolidation and deconsolidation of FCL (full container load) cargo and LCL (less than container load) cargo, holding and storing cargo, and the provision of 'staging' arrangements and/or 'interim' depots.</p>

Australian Customs Service (ACS)

Customs and Border Protection protects the Australian community by preventing the illegal movement of goods across the border. It intercepts prohibited or restricted items including illicit drugs, weapons, pornography, and quarantine items. Customs and Border Protection also collects import duty and indirect taxes on imported goods. All sea cargo is risk assessed by Customs and Border Protection and all high risk and a small portion of lower risk containers are inspected through the use of container X ray technology.

Customs and Border Protection operates the Intergrated Cargo System (ICS) which is an IT system through which all import and export cargo is reported.

Containers selected for inspection are 'held' by Customs and Border Protection and transported from the stevedores' terminal to the X ray facility (Container Examination Facility (CEF)). Once the inspection is completed, containers are transported back to the stevedores' terminal before being released. As a result of Customs and Border Protection risk assessments and analysis of the X ray, some containers are opened and physically examined by Customs and Border Protection.

Australian Quarantine and Inspection Service (AQIS)

AQIS is charged with protecting Australia's agricultural industries and natural environment from exotic pests and diseases. In order to do this, AQIS undertakes quarantine intervention and inspection of containers:

- AQIS inspects all import containers containing material of quarantine concern; and
- AQIS inspects the external surfaces of all import containers that exit container terminals and wharf areas.

GENERAL DEFINITIONS

Term	Definition or Meaning
B/L	<p>The Bill of Lading (B/L) is the transport document commonly used for sea freight shipments. It is a legal document under which cargo is accepted for carriage on board a vessel. It is issued by the shipping line/owner. A B/L is both evidence of the contract of affreightment, and a document of title. The consignee may take delivery of the goods at the destination, or transfer them to another person by endorsing the B/L. When using a B/L, cargo cannot be delivered without presentation of an original copy of the B/L. A B/L must be suitably endorsed and stamped by the parties involved in the shipment (requirements will vary depending on the consignee nominated on the B/L). If using an agent to present the B/L, the agent needs to have written authority from the consignee to collect the cargo eg, a Delivery Order (D/O). Where the sale of goods is under a Letter of Credit (L/C), the B/L must comply with the L/C in all respects, including spelling.</p> <p>Virtually all the information contained on the Interim Receipt/Forwarding instruction will appear on the B/L. The shipping line issues a 'Master' B/L which covers the full container. 'House' B/Ls, which are issued by freight forwarders, cover individual shipments which may have been loaded into a container with other exporters' shipments, and consolidated by the freight forwarder.</p>
CoR	Chain of Responsibility. A term coined for the principle underlying the Road Transport Reform agenda of the federal Government, aimed at improving compliance by industry to regulations relating to mass limits, dimension and load restraint, vehicle standards, speeding of heavy vehicles, and driving hours.
Consignee	Means a person who carries on business to whom a consignment of freight is to be delivered. The legislative definition is at appendix 2.
Consignor	Means a person who carries on business from whom a consignment of freight originates. The legislative definition is at appendix 2.
CWD	Container Weight Declaration. A declaration that states or purports to state the weight of a freight container and its contents. It is expected that this new provision will be operative in 2008.

D/O	Delivery Order. A cargo release document provided by shipping companies given in exchange for an original B/L, Seaway Bill, or email-released B/L. Issued by shipping companies to enable consignees to collect containers/cargo ex-wharf.
ERA	Export Receival Advice. Mandatory document for receiving full container loads into an export terminal/wharf.
EIDO	Electronic Import Delivery Order. The electronic form of the Delivery Order (D/O).
Heavy Vehicle	Means a motor vehicle or combination with a gross vehicle mass (GVM) over 4.5 tonnes.
Loader	Means a person who loads, manages or supervises the loading of freight or containers for transport by road on a heavy vehicle. The legislative definition is at appendix 2.
Packer	Means a person who places items in packages, containers or on pallets for consolidation or streamlining processes for later freight movement. The legislative definition is at appendix 2.
PRA	Electronic Pre Receival Advice. Stevedores' document to enter the international terminals.
Receiver	Means a person who takes physical receipt of transported goods at the end of the supply chain. The legislative definition is at appendix 2.
SWB	The Sea Waybill (SWB) is a receipt for the goods, showing details of agreed shipping arrangements eg, route, vessel, description of goods etc. The SWB is, unlike a B/L, not a 'document of title', not negotiable, and the title to the goods cannot be transferred during transit. In effect it is evidence that the carrier has taken over the goods for the purpose. of transport. The SWB simplifies documentation by eliminating the need for the physical transfer of paper documents eg, a B/L.
Supply Chain	Means the transport logistics chain, encompassing packing, loading, consigning, scheduling, carrying, driving, and receiving.
TEU	Twenty foot equivalent unit ie, 20 ft container.