

# **Ada Evans Chambers Conference**

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## **Motor Traffic Law:**

**Selected case law and legislation update**

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# 1. ROAD TRANSPORT LEGISLATION REFORM

## HEAVY VEHICLE NATIONAL LAW

There was major reform to the road transport legislation nine months ago with the commencement of the *Road Transport Act 2013* (RTA) on 1 July 2013. The RTA consolidated the previous road transport legislation into one act. One of the previous acts, *The Road Transport (General) Act 2005* (RTG), continued, albeit with a new name: the *Road Transport (Vehicle and Driver Management) Act 2005* (RTVDMA), reflecting the fact that although under its previous iteration it dealt with "general" road transport provisions *and* heavy vehicles, the "general" provisions were now in the RTA and the RTVDMA focused on heavy vehicles. The RTVDMA continued, pending the adoption of the Heavy Vehicle National Law.

The reforms were recently completed with the commencement of the *Heavy Vehicle National Law (NSW)* on 10 February 2014 and the repeal of the RTVDMA.

### Background

Before the late 1990s, traffic law was primarily to be found in the *Traffic Act 1909* (originally known as the *Motor Traffic Act 1909*). As vehicle usage, traffic volume and technological advances increased, the Act's inadequacies grew. Further, as in other areas of Australia's economy, the limitations of state based laws in areas of national importance and cross-border interface pointed to the desirability of coordinated reform at the national level.

In 1991 inter-governmental agreement led to the formation of the National Road Transport Commission. Its task was to develop nationally consistent road transport policies and laws. As its remit extended to rail and inter-modal transport in 2004 it became the National Transport Commission. In the 1990s, as it developed modules of road transport legislation dealing with discrete topics, those modules were progressively adopted in New South Wales by enacting a new Act giving effect to each of the modules as they were completed. Thus the late 1990s saw the enactment of the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (General) Act 1999* (later replaced by the *Road Transport (General) Act 2005*), the *Road Transport (Safety and*

*Management) Act 1999* and the *Road Transport (Vehicle Registration) Act 1997*. The *Traffic Act 1909* was modified with each enactment and eventually repealed in December 1999.

The downside of this reform was that the creation of numerous separate road transport acts and regulations gave rise to its own complexities. There was duplication and repetition. Discrete topics often had to be cross-referenced across a number of acts and regulations to discover the applicable law. Navigating the legislation was hard enough for lawyers, let alone for road users who picked up the legislation with the hope they would understand the law.

With only one module remaining to be completed, the proposed *Heavy Vehicle National Law*, the government decided it was time to address the problem. It amalgamated into one Act, the *Road Transport Act 2013*, the Driver Licensing, Safety and Traffic Management, and Vehicle Registration Acts and the General Act compliance and enforcement provisions.

The reforms were completed with the commencement of the *Heavy Vehicle National Law (NSW)* on 10 February 2014. It regulates the use of heavy vehicles on roads. Thus the four key road transport acts of the 1990s have been reduced to two.

The relevant NSW HVNL legislation is:

1. Heavy Vehicle (Adoption of National Law) Act 2013 No 42
2. Heavy Vehicle National Law (NSW) No 42a
3. Heavy Vehicle (Adoption of National Law) Regulation 2013
4. Heavy Vehicle (Fatigue Management) National Regulation (NSW)
5. Heavy Vehicle (General) National Regulation (NSW)
6. Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW)
7. Heavy Vehicle (Vehicle Standards) National Regulation (NSW)

Repealed were the RTVDMA and the *RTVDM Regulation 2005*.

The *Heavy Vehicle National Law* alone contains 755 sections, so rather than giving a comprehensive overview, a few main features of the new legislation will be highlighted.

1. A national scheme for the registration of heavy vehicles (in NSW the local law still operates pending adoption of the national scheme for registration).

2. Provisions dealing with vehicle operations - standards and safety.
3. Provisions dealing with mass, dimension and loading, speeding and driver fatigue.
4. Introduction of the "Intelligent Access Program" (a program to allow heavy vehicles to have access, or improved access, to the road network in return for monitoring, by an intelligent transport system, of their compliance with stated access conditions).
5. Accreditation (allowing operators of heavy vehicles who implement management systems that achieve the objectives of particular aspects of the HVNL to be subject to alternative requirements).
6. Establishment of NHV Regulator which can , inter alia, investigate breaches of the law and bring and conduct proceedings for offences.
7. Enforcement, Review and Appeal provisions (including internal reviews by the regulator of reviewable decisions).

## 2. RECENT CASES ON THE REASONABLE STEPS DEFENCE

These authorities deal with aspects of the reasonable steps defence as it was in the RTVDMA. That defence is now in Chapter 10, Part 10.4, Divisions 1 and 2 of the HVNL.

### **s 87 RTVDMA - Reasonable steps defence for mass requirements**

#### **Onus/prosecution obligations in particularising charges**

The section places the onus on a defendant to establish that it took all reasonable steps. There is no principle that suggests that the prosecution in the charge itself should identify the reasonable steps that ought to have been taken (although in obiter it was said that arguably the prosecution did have this obligation where s 88 applied). Once the evidence of the steps taken is adduced the prosecution is at liberty to challenge those steps by leading evidence to suggest that those steps were inadequate and, to emphasise the argument, to point to other matters that could have been done: *Western Freight Management Pty Ltd v Roads and Maritime Services (NSW)* [2013] NSWSC 1123.

#### **Subsection (3): weighing the load or being in possession of sufficient and reliable evidence from which the weight was calculated**

There are problems with the construction of s 87(3)(b), because, if the driver is given wrong information from the consignor it is difficult to see how it can be reliable. However, if the driver relies on it he or she will not have satisfied s 87(3)(b) (and therefore will not have satisfied s 87(2)) without any fault on his or her part. It seems unlikely that such a result could have been the intention of the subsection. In that regard s 87(3)(b) perhaps should be construed as if it read “apparently reliable” or “purportedly reliable”: *Western Freight Management Pty Ltd v Roads and Maritime Services (NSW)* [2013] NSWSC 1123.

## **s 88 RTVDMA - Reasonable steps defence for other mass, dimension and load restraint requirements**

### **Onus/prosecution obligations in particularising charges**

Firstly, a defendant in reliance on this section must establish that it did not know and could not reasonably be expected to have known of the contravention. Then, in contradistinction to s 87 such a defendant must show either (a) that it had taken all reasonable steps to prevent the contravention or (b) that there were no steps it could reasonably be expected to have taken. Section 88 does not specify what the reasonable steps are for the defence to be made out. Rather, subs (3) lists a number of matters to which the Court may have regard to come to the view that what a defendant did or omitted to do constituted reasonable steps. In such a case an argument is at least available by a defendant that as part of the charge brought the prosecution should specify what it should have done before the defence could be made out: *Western Freight Management Pty Ltd v Roads and Maritime Services (NSW)* [2013] NSWSC 1123.

### **Reliance on third parties**

The following case dealt with the question of a consignor's reliance on a loader and operator for the loading of its cylindrical steel coils. Although it was not in the context of a prosecution under road transport legislation and whether a reasonable steps defence had been established but a civil action for damages brought by an injured truck driver, the principles may have some relevance in a reasonable steps defence context. The defendant devised detailed written guidelines for the restraint of its coils, which it provided to the loader and operator. Although there was a disclaimer clause that the guidelines were "for guidance only" and to be applied with discretion and independent judgment, the defendant had an express term of the contract that required adherence to the guidelines. The consignor's guidelines were not changed after there was a change in the configuration of the pallets it delivered to the loader and operator. The guidelines for chocking the pallets were not adequate for the new configuration which led to the restraint failing. This caused the load to shift during transit and the truck to tip over. The defendant argued that its duty was sufficiently discharged by the promulgation of its guidelines. This argument was rejected and it was found that system design was at the heart of the consignor's duty, which had added significance given the contractual requirement to pack in accordance with its guidelines: *Cartwright v Bluescope Steel Ltd* [2013] NSWSC 900.

### 3. OTHER RECENT DEVELOPMENTS

The *Road Transport Amendment (Licence Disqualification on Conviction) Act 2013* has not commenced. It will amend the *Road Transport Act 2013* by introducing section 206A, a provision that extends a disqualification period to take into account a period of imprisonment.

#### **206A Effect of imprisonment on period of disqualification**

(1) In this section:

*major disqualification offence* means:

- (a) a major offence, or
- (b) an offence against section 115 or 116 (2).

*sentence* does not include:

- (a) a suspended sentence, or
- (b) a sentence (or any part of a sentence) that is to be served in the community or by way of home detention.

(2) This section applies to a person who is, after the commencement of this section:

- (a) disqualified from holding a driver licence for a specified period as a consequence of the person being convicted by a court of a major disqualification offence (whether or not the disqualification is imposed by an order of a court), and
- (b) sentenced to imprisonment as a result of that conviction.

(3) The specified period of disqualification of the person is extended (by the operation of this section) by any period of imprisonment under that sentence that is served after the commencement of the disqualification.

(4) For the purposes of this section, a period of imprisonment does not include any period that the person has been released on parole.

(5) The extension of a period of disqualification by the operation of this section is subject to any order of the court that convicts the person relating to the operation of this section.