



New Road Transport National Compliance and Enforcement Laws

Information Sheet 5 - Legal Defences

Western Australia believes that to gain maximum road safety benefits, it is essential that the new laws apply to all vehicles regardless of their size and that all parties in the transport chain should be held accountable for offences.

However, we are not adopting the principle of absolute liability and there may be some legitimate extenuating circumstances that apply in particular instances.

All defences currently available under the Criminal Code will remain available for all categories of offences, in addition to those provided by the new legislation.

Reasonable Steps Defence

The most significant increase in defences available to parties within the transport chain is the introduction of a 'reasonable steps' defence.

However, in certain instances this defence is limited. Operators and drivers have this defence available only for minor breach categories.

The 'reasonable steps' defence provides that people have a defence to the charge if they can establish that:

- They did not know, or could not reasonably be expected to have known, of the breach; and
- They had taken all reasonable steps to prevent the breach; or
- There were no steps they could have reasonably been expected to have taken to avoid the breach.

Container Weight Declaration

The 'reasonable steps' defence is available to all parties for all risk categories if they can establish that they had relied on a container weight declaration.

However, 'reasonable steps' defence can relate only to the container weight declaration and not be extended to cover other aspects of the alleged breach.

Directors, Partners and Management

Directors, partners and management parties have a defence if they can establish:

- They were not in a position to influence conduct of the organisation in relation to the offence; or
- They took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Employers

An employer has a defence if they can establish:

- They had no knowledge of the offence; and
- They took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Further information

The model legislation is available on:

The National Transport Commission web site at:

www.ntc.gov.au/filemedia/Reforms/RTRCandEBill3Nov203.pdf

The Department for Planning and Infrastructure web site at:

www.transport.wa.gov.au

If you have further questions, you may e-mail us on: cande@transport.wa.gov.au