



# GUIDE TO CONTAINER WEIGHT DECLARATIONS

## QUEENSLAND

This is an interim guide, pending the introduction of Queensland legislation covering Container Weight Declaration in 2008. This guide will be updated to reflect the new legislation as soon as it becomes law.



This Guide was prepared by a working group of the Port of Brisbane Landside Logistics Forum (LLF), with assistance from Queensland Transport (QT) and relies extensively on material prepared by the Victorian Freight and Logistics Council (VFLC) Freight Intermodal Efficiency Group, with the help of the Victorian Transport Association, VicRoads, the Customs Brokers and Forwarders Council of Australia, and Meyrick and Associates Pty Ltd.

This Guide will be reviewed prior to incorporation of the national Compliance and Enforcement Bill in Queensland Law.



# CONTENTS

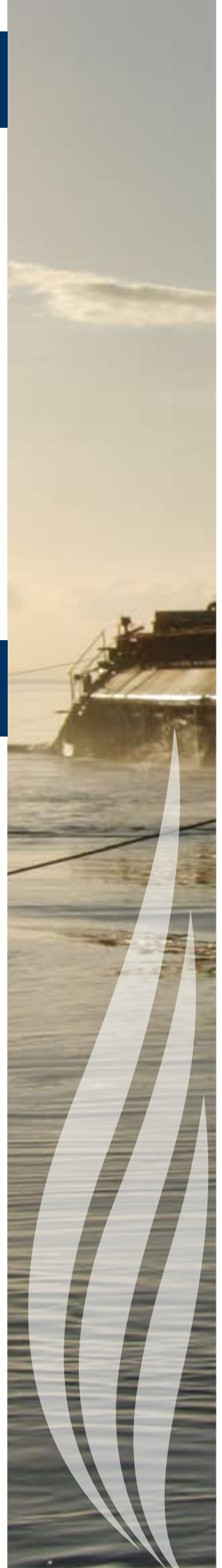
SECTION	DESCRIPTION	ISSUE DATE	PAGE
1	Chain of Responsibility	10 August 2007	4
2	Container Weight Declarations	10 August 2007	7
3	Responsible Entities	10 August 2007	11
4	Risk Mitigation	10 August 2007	16
Appendix 1	Definitions	10 August 2007	23
Appendix 2	Legislation	10 August 2007	24
Appendix 3	Queensland Transport Factsheets	10 August 2007	25

**PLEASE NOTE THAT THE LEGISLATION TO EFFECT CONTAINER WEIGHT DECLARATIONS IN QUEENSLAND IS NOT DUE TO BECOME LAW UNTIL 2008. THE PARAGRAPHS IN BLUE MAKE REFERENCE TO THE NATIONAL MODEL BILL AND ACCURATELY INDICATE THE INTENT OF THAT LEGISLATION, BUT ARE NOT THE ACTUAL LEGISLATION.**

**THESE PARAGRAPHS WILL BE REPLACED WITH THE ACTUAL LEGISLATION WHEN IT IS ENACTED BY PARLIAMENT.**



CHAIN OF RESPONSIBILITY/CONTAINER  
WEIGHT DECLARATIONS





## Introduction

New legislation to be implemented 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 ultimate objective of the legislation in relation to CWDs is to reduce the number of trucks carrying overweight containers.

The aim of these guidelines is to detail the CWD provisions of the new legislation, and provide guidelines to all parties in the sea freight supply chain on how they can comply with the legislation.

## Scope

This document includes existing and national legislation pertaining to both COR and CWDs, explains the new legislation, and provides guidelines for all parties in the sea freight supply chain (importers, exporters, freight forwarders, customs brokers, stevedores, wharf carriers) on how to best comply with the legislation.

It is important to note that this document confines itself to CWDs. It does not include compliance guidelines for other aspects of the new legislation for example, overweight trucks. It is also not a Code of Practice, although the guidelines outlined in this document could be used to develop a Code of Practice.

## Chain of Responsibility

"Chain of Responsibility" is 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.

In Queensland, COR has been enshrined in the *Transport Operations (Road Use Management) Act 1995*. The current legislation applies to mass and dimension limits, load restraint requirements, driving hours and dangerous goods regulations.

New provisions to be implemented in 2008, which are based on model regulations in the *Road Transport Reform (Compliance and Enforcement) Bill* (national C&E Bill), will clarify a number of aspects, for example, who is considered to be an "influencing person".

The purpose of COR regulation is to share responsibility for road transport compliance along the transport chain, including consignors, packers, loaders, drivers, transport operators and receivers taking possession of the goods. All reasonable steps must be taken by all participants to ensure compliance with the law.

Shippers tend to understand the weight of their goods, but are usually not aware of the additional weight of the container in which those goods are shipped. Shipping lines or transport companies may know the weight of the container, but have insufficient information on the precise weight of individual loaded containers, as they only have been given an overall shipment weight. The potential for mis-declaration of the weights declaration is therefore significant.

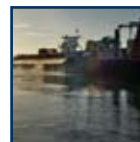
The COR legislation for Mass, Dimensions and Load Restraint, introduces new obligations for consignors, operators, drivers and consignees related to the handling of freight containers and the provision of container weight declarations. Container Weight Declarations (CWDs) are defined in the national C&E Bill. Please note that all information provided in this document is only to be viewed as a guide and further detailed advice should be gained when assessing risk management strategies.

The chain of responsibility means that anybody - not just the driver - who has control in a transport operation can be held responsible for breaches of road laws and may be made legally liable. In other words, if you use road transport as part of your business, you share responsibility for ensuring breaches of road laws do not occur. So if a breach of road transport law occurs due to your action, inaction or demands, you may be legally accountable.

**Put simply this means:**

**Control = responsibility = legal liability**

All parties in the chain – from consignors to loaders, packers, operators, drivers, carriers and receivers – may be held responsible for unlawful practices in the transport of freight by road. This is an extension of the existing chain of responsibility for driving hours (consignors and employers) and dangerous goods (packers, loaders, manufacturers and prime contractors). These new laws will be applied to any person or company with a role or responsibilities associated with road transport, including owners and operators of heavy vehicles, people who consign or receive goods by road, people who pack or load goods or import containers, and sub contractors who have a role or responsibility



associated with road transport. The Compliance & Enforcement legislation mandates that complying CWDs must be provided by the person defined as the responsible entity, namely the person in Australia who engages the road carrier or offers the container for transport by road in Australia. Without a CWD, a driver is not to transport the container.

The legislation is designed to ensure that drivers and road operators receive the information they need to select the appropriate vehicle for transporting the container within the relevant legal mass limits.

### How the Legislation Affects You

JOB TITLE	ROLE	UNDER THE LAW, YOU MUST:
Consignor/dispatcher	Dispatches goods for delivery	Ensure your delivery request does not require a truck driver to: <ul style="list-style-type: none"> <li>• Transport goods that exceed vehicle dimension or mass limits;</li> <li>• Inadequately secure the load;</li> <li>• Exceed the permitted number of driving hours;</li> <li>• Fail to have minimum rest periods;</li> <li>• Exceed the speed limits.</li> </ul>
Consignee/receiver	Orders and/or accepts the goods being delivered	Assume the same responsibilities as the consignor/dispatcher (see above), plus: <ul style="list-style-type: none"> <li>• Must not knowingly encourage or reward a breach of mass, dimension, load restraint or driving hours laws.</li> </ul>
Loader	Loads goods onto vehicle	Ensure the vehicle's load: <ul style="list-style-type: none"> <li>• Does not exceed dimension or mass limits;</li> <li>• Cannot become unstable, move or fall off the vehicle.</li> </ul>
Packer	Pack goods to be loaded into the vehicle	Ensure that when the goods are packed: <ul style="list-style-type: none"> <li>• Documentation of the load is accurate, not false or misleading;</li> <li>• Any goods packed into freight containers do not exceed the container's gross weight or safety approval rating.</li> </ul>
Heavy vehicle driver	Transports load to the destination	Maintain current obligations to ensure: <ul style="list-style-type: none"> <li>• The vehicle does not exceed dimension or mass limits;</li> <li>• The load is properly restrained;</li> <li>• All required equipment is properly fitted to the vehicle;</li> <li>• Required rest breaks are taken and driving hours regulations and speed limits are observed;</li> <li>• Safe and responsible driving behaviour is demonstrated at all times.</li> </ul>
Operator/manager	Operates or manages the business dispatching the goods	Be responsible for ensuring: <ul style="list-style-type: none"> <li>• Rosters do not require truck drivers to exceed the permitted number of driving hours;</li> <li>• Accurate records are kept of drivers' activities, including driving, work and rest times;</li> <li>• Vehicle speed limiters are functioning;</li> <li>• Loads do not exceed dimension or mass limits and are properly restrained.</li> </ul>

# CONTAINER WEIGHT DECLARATIONS (CWD)





## 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. A CWD must accurately state the weight of the freight and its contents. All loaded freight containers travelling by road, whether originating from land or ship, must carry a CWD. Definitions of a CWD and a freight container are set out below:

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

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

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

## Container Weight Declaration

Section 101 of the national C&E Bill defines CWDs as follows:

### 101 Container Weight Declarations (CWD)

- (1) A container Weight Declaration for a freight container is a declaration that states or purports to state the weight of the freight container and its contents.
- (2) Subject to the regulations, a container weight declaration:
  - (a) may be comprised in one or more documents or other formats, including in electronic form; or
  - (b) without limiting the above, may be comprised wholly or partly in a placard attached or affixed to the freight container.

For a CWD to comply with the C&E legislation it must also contain additional information that identifies the container, the name and address of the consignor, the date of the declaration and other relevant information. Section 102 of the national C&E Bill specifies the requirements for a complying CWD:

### 102 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.

There is no requirement for the complying CWD to be in one single document or located in any specific location when travelling, but the declaration must be kept in or near the vehicle so it can be accessed readily from the vehicle for inspection by an enforcement officer.





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## Freight Container

Section 6, Definitions of the national C&E Bill defines a freight container as:

*Freight container means:*

- (a) A re-usable container of the kind mentioned in Australian/New Zealand Standard 3711.1.2000 Freight Container - Classification, Dimensions and Ratings, that is designed for repeated use for transporting goods by one or more modes of transport; or*
- (b) A re-usable container of the same or similar design and construction to a container mentioned in paragraph (a), above though of different dimensions; or*
- (c) A container of a kind prescribed under a regulation; but does not include anything declared under a regulation not to be a freight container.*

### When is a CWD required?

Under C&E legislation, a CWD is required when a freight container is consigned for transport by road, or for transport partly by road and partly by some other means. This includes the following circumstances:

- When there is a change in the load inside the container;
- Before a container is consigned by road or rail;
- When goods are being transported in a container, and it is carried on a truck;
- When the consignor changes; and
- When freight is loaded into a different container.

### What does a CWD comprise?

Subject to the regulations, a CWD:

- May be comprised in one or more documents or other formats, **including in electronic form**; and
- Without limiting the above, may be comprised wholly or partly in a placard attached or affixed to the container.

There is no requirement for the complying container weight declaration to be in one single document or located in any specific location when travelling, but the declaration must be kept in or near the vehicle so it can be accessed readily for inspection by an enforcement officer. This also applies to a CWD in electronic form.

A CWD for a freight container is compliant if it contains the following additional information:

- The number and other particulars of the freight container necessary to identify the container;
- The name, home address or business address in Australia of the responsible entity;
- The date of the declaration.

However a CWD is not compliant if:

- The contents of the CWD 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 container (whether by examining documents located on or in the vehicle or combination or by obtaining the information by radio or mobile telephone or by another means); or
- It is not in a form that can be used or adapted for evidentiary purposes; or
- It is not in a form that satisfies the requirements prescribed by regulations.

Templates for CWDs for imports and exports are at Appendices 1 and 2.

### Who provides a CWD?

The C&E legislation mandates that an accurate CWD must be provided by the entity responsible for the freight container - generally the person in Australia who engages the road carrier or offers the container for transport by road in Australia (see section 3). It is expected that the entity responsible for arranging the transport of a freight container should ensure that they review the commercial information before providing a CWD to a third party transport provider.

Commercial documents (packing lists) of container weights are best separated into gross and net weights to ensure there is no confusion. It is critical to ensure that the content weight plus the tare weight of the container is included as total gross weight. It is a common international trade practice for overseas suppliers (consignors) to declare the content weight only on bills of lading and packing lists for imported containers. Careful examination of the commercial documents prior to producing a container weight declaration is advisable.



Responsible entities in Australia should instruct clients to contact overseas suppliers and include content and tare weight on commercial documents (packing list) for all shipments.

### Reliance on container weight declaration

An operator or driver of a heavy vehicle is entitled to rely on the veracity of a CWD provided by a responsible entity. In the event that an operator or driver of a heavy vehicle is charged with an offence for contravening a mass requirement while carrying a freight container, they have the benefit of the reasonable steps defence. Section 90 of the national C&E Bill outlines the protection offered by the reasonable steps defence for operators and drivers relying on a CWD:

#### 90 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;*
  - (c) *would cause one or more breaches of mass requirements.*

It should be noted that a responsible entity that issues a CWD for a freight container with inaccurate or misleading information is still deemed as having committed an offence, even when an operator or driver charged with an offence relating to transporting the freight container successfully uses the reliance on a CWD defence. The responsible entity may also be responsible for any losses incurred by parties who relied on a false or misleading CWD.

### How can weights be calculated?

A weighbridge is the most accurate means of weighing vehicles or vehicle combinations. In the absence of a weighbridge, the following alternative methods could be used:

- If the load is break bulk, by weighing a small quantity of it and calculating how much is loaded in the container. A container weight can then be determined if the weight of the container is known;
- If the vehicle's mass cannot be accurately calculated at the time of loading, under-load the first trip and verify the mass at some stage of the journey. Subsequent loads can be adjusted accordingly;
- Fit scales to loading equipment and keep a "running" total of the mass of the load for each trip;
- Refer to weights on previous consignment notes and test weigh some of the load; or
- Use a vehicle fitted with on-board weigh scales. This will confirm whether or not the vehicle is overloaded, not only by the gross weight, but also on the axle groups, where much of the overloading risk lies.

### Load Restraint

An incorrectly loaded container on a truck can be as much danger as, or more dangerous, than an overloaded container. Therefore it is equally important to pack and restrain goods inside containers properly, as it is to not overload the container.

A shipping container is a "contained load" for the purposes of road transport. The Load Restraint Guide (NTC Australia, 2004, *The Load Restraint Guide: Guidelines and Performance Standards for the Safe Carriage of Loads on Road Vehicles*, second edition, The National Transport Commission (NTC) and Roads and Traffic Authority (RTA)) states that:

*"Incorrect loading in a freight container can adversely affect the carrying vehicles' weight distribution or stability, especially if the load shifts during transport. The load should be arranged where possible so that its weight is evenly distributed over the floor and packed tightly against the walls of the container. Drivers should ask the consignor for information on the packing of the container."*

If the container is only partially loaded, an internal restraint system is required in accordance with the Load Restraint Guide. Containers with uneven weight distribution should be clearly marked with a "centre of mass cargo" symbol if the weight distribution has more than 60% of the load in less than half of the containers length.

RESPONSIBLE ENTITIES





## Responsible Entities

A range of players are involved in the transportation of a container and will at times and in certain conditions be the responsible entities as defined by the 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).

### Responsible Entity

Section 100 of the national C&E Bill outlines who the responsible entity is for a freight container.

#### 100 Meaning of “responsible entity”

*A responsible entity, in relation to a freight container, is:*

- (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.*

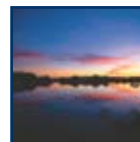
### Responsible Person

Section 6 of the national C&E Bill outlines the definition of a responsible person.

#### 6 Definitions

*Responsible person means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following:*

- (a) an owner of a vehicle or combination or of a vehicle in a combination;*
- (b) a driver of a vehicle or combination;*
- (c) an operator or registered operator of a vehicle or combination;*
- (d) a person in charge or apparently in charge of a vehicle or combination;*
- (e) a person in charge or apparently in charge of the garage address of a vehicle or combination or the base of the driver or drivers of a vehicle or combination;*
- (f) a person appointed under an approved road transport compliance scheme to have monitoring or other responsibilities under the scheme, including (for example) responsibilities certifying, monitoring or approving vehicles or combinations under the scheme;*
- (g) an operator of an intelligent transport system;*
- (h) a person in charge of premises entered by an authorised officer or police officer under this Act;*
- (i) a person who consigns goods for transport by road;*
- (j) a person who packs goods in a freight container or other container or in a package or on a pallet for transport by road;*
- (k) a person who loads goods or a container on a vehicle or combination for transport by road;*
- (l) a person who unloads goods or a container containing goods consigned for transport by road;*
- (m) a person to whom goods are consigned for transport by road;*
- (n) a person who receives goods packed outside Australia in a freight container or other container or on a pallet for transport by road in Australia;*
- (o) an owner or operator of a weighbridge, or weighing facility, used to weigh vehicles or combinations or an occupier of premises where such a weighbridge or weighing facility is located;*
- (p) a responsible entity for a freight container;*
- (q) a person who controls or directly influences the loading or operation of a vehicle or combination; or*
- (r) an agent, employer, employee or subcontractor of any person referred to in the preceding paragraphs of this definition.*



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## Consignor

Section 6 of the national C&E Bill outlines the definition of a consignor.

### 6 Definitions

*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 a 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.*

If the consignor of a freight container is not in Australia at the time the container is consigned for transport by road in Queensland, the definition of consignor refers to the person in Australia who arranges the transport of the container by road or (in the case where no such person is in Australia) then the person who physically offers the container for transport by road.

## 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 organisations or persons depending on the circumstances of the container transport movement (full & empty), and who engages the transport. This may include importer, exporter, freight forwarder, customs broker, stevedore and even shipping line 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, 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

Section 6 of the national C&E Bill outlines the definition of a consignee.

### 6 Definitions

*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.*

## Consignee Liability

Under the national C&E Bill, a consignee is taken to have induced or rewarded a breach of a 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 contained information about the weight or contents that was false or misleading.



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The potential impact and obligations of each party for the transmission of accurate container weights is described below.

### **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.

### **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 commercial information is reviewed before providing a container weight declaration to a third party transport provider.

### **Freight Forwarder**

Freight forwarders arrange international transport of freight on behalf of importers and exporters. Most also offer the service of a 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.

### **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.

### **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 commercial information is reviewed before providing a container weight declaration to a third party transport provider.

### **Shipping Lines**

Shipping Lines provide relevant authorities/ports/terminals with details of cargo onboard the vessel on receiving vessel arrival and manifest information. When the shipping lines engage the transport of containers they become a responsible entity for the purpose of the Bill. This could occur in situations where transporters are directed to deposit containers at specific parks by shipping lines.



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## Stevedores

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.

## 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. As there is no prescribed format for the declaration, the delivery dockets produced by particular software applications are satisfactory, as long as all the information required is included on the declaration to ensure it is a complying CWD. It is also worth noting that overstating a CWD is an offence, because it is considered to be a false declaration.

## Duty of Operator

An operator who arranges for a freight container to be transported must ensure that:

- The driver is given a complying CWD before the driver starts to transport the container; and
- If the container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying CWD relating to the container, prior to the other carrier receiving the container.

## Duty of Driver

A driver must not drive a vehicle loaded with a freight container:

- Unless the driver has been provided with a complying weight declaration; and
- The declaration must be kept in or near the vehicle so it can be accessed readily from the vehicle.

RISK MITIGATION







## Risk Mitigation

The national C&E reforms provide for a “reasonable steps defence” for most offences relating to CWDs for freight containers, when a person did not know (or could not reasonably know) of an offence and can prove that they had taken all reasonable steps to prevent any offence prior to it occurring.

The best way to prove a “reasonable steps defence” is to identify risks associated with transporting goods and prepare a mitigation strategy. This provides you with the opportunity to argue a “reasonable steps defence” and minimise or mitigate the risk of breaching a mass, dimension or loading requirement of the TORUM Act.

Set out below is Section 89 of the national C&E Bill, which outlines the circumstances the court will consider in deciding whether or not “reasonable steps” were taken to prevent an offence.

### 89 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



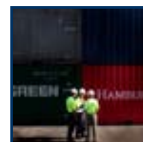
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*If the person charged establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice, and with the spirit of the code, with respect to matters to which the breach relates, proof of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

*(4) Notice of intention to prove compliance with industry code of practice*

*Subsection (3) is not available unless the person charged has served notice of intention to establish the matters referred to in that subsection on the prosecution at least 28 working days before the day on which the matter is set down for hearing.*

In the table below is a set of responsible entities with a proposed set of mitigating strategies. This table is neither exhaustive nor possible to be applied to all companies in all sectors without an individual assessment of business processes, identifying risks and developing a methodology to mitigate. The matrix below shows the identified risks and the reasonable measures each responsible entity can take to mitigate the risk. When the identified party is the responsible entity the following mitigating strategies could be applied to the identified risk.



<b>Responsible Entity</b>	<b>Declared weight of container appears to be understated and/or overstated.</b>	<b>Declared weight of container is ambiguous (tare, gross or net).</b>	<b>Declaration weight has been altered.</b>	<b>No declaration of weight is provided to responsible entity (RE).</b>
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.
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, the 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.



<b>Shipping Lines</b>				
<b>Responsible Entity</b>	<b>Declared weight of container appears to be understated and/or overstated.</b>	<b>Declared weight of container is ambiguous (tare, gross or net).</b>	<b>Declaration weight has been altered.</b>	<b>No declaration of weight is provided to responsible entity (RE).</b>
Imports	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.
Exports	Where detected, the box should not be offered for road transport.	Where detected, the container weight information should be checked before commencing transport by road.	Where detected, the container weight information should be checked before commencing transport by road.	If no weight is declared on the transport documentation the box should not be offered for 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 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 enroute 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.



Although the wharf carrier is the recipient of the CWD, and is not usually a “responsible entity”, the scenarios depicted above will likely affect the wharf carrier. The matrix below provides potential mitigating strategies wharf carriers can take to reduce the risk of a breach.

Wharf carrier	Declared weight of container appears to be understated or overstated.	Declared weight of container is ambiguous (tare, gross or net).	Declaration weight has been altered.	No declaration of weight is provided.
Exports	<p><u>Understated</u></p> <p>a. Refuse to load.</p> <p>b. If possible, weigh the truck and the container. If overweight, change trailers or arrange with the consignor for the container to be repacked.</p> <p><u>Overstated</u></p> <p>No action required.</p>	<p>a. Refuse to load.</p> <p>b. Advise consignor that tare and gross weights are to be shown on documentation. Contract conditions to require basis of weight estimates.</p>	<p>a. Refuse to load.</p> <p>b. If possible, weigh the truck and the container. If overweight, change trailers, or arrange with the consignor for the container to be repacked.</p>	<p>Refuse to load (transporting the container without a CWD would be a breach of the law).</p>
Imports	<p><u>Understated</u></p> <p>a. Refuse to load.</p> <p>b. If possible, weigh the truck and the container. If overweight, change trailers or arrange with the consignor for the container to be repacked.</p> <p><u>Overstated</u></p> <p>No action required.</p>	<p>a. Refuse to load.</p> <p>b. Advise consignor that tare and gross weights are to be shown on documentation. Contract conditions to require basis of weight estimates.</p>	<p>a. Refuse to load.</p> <p>b. If possible, weigh the truck and the container. If overweight, change trailers, or arrange with the consignor for the container to be repacked.</p>	<p>Refuse to load (transporting the container without a CWD would be a breach of the law).</p>

## APPENDICES

1. Container Weight Declaration Template (Imports)
2. Container Weight Declaration Template (Exports)
3. C & E Provisions in the Transport Operations  
(Road Use Management) Act 1995
4. Factsheets





**CONTAINER WEIGHT DECLARATION (CWD) - TEMPLATE - IMPORTS**

Container Number	<b>Mandatory</b>
Exporter/Consignor/Sender	<b>Not mandatory</b>
Consignee/Receiver (1) <b>(Responsible Entity)</b>	<b>Name and address is mandatory</b>

<b>Status</b>	Full	Empty		
<b>Cargo Type</b>	General	Hazard	Reefer	
<b>Type</b>	20ft	40ft	ISO Code	

Commodity	<b>Not mandatory</b>
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Weight (2)	Container Tare Weight <b>(Not mandatory)</b>	Contents & Packaging Weight <b>(Not mandatory)</b>	Container & Contents Gross Weight <b>(Mandatory)</b>
	kgs	kgs	kgs

- Method of determining Weight (3)  
**(Not mandatory)**
1. Estimation
  2. Weighing of Contents
  3. Weighing of Container & Contents
  4. Weighing of Truck & Container

Signature of Person Making Declaration: **(Not mandatory)**

Date: **(Mandatory)**

Receiving Organisation Receipt:

**Notes:**

1. The "Responsible entity" is responsible for providing an accurate CWD: this is usually the person in Australia who engages the road carrier or offers the container for transport by road in Australia.
2. Separating the weight of the container and its contents ensures there is no confusion as to whether the declared weight is a net weight or a gross weight.
3. This enables the person who is relying on the CWD to determine its likely accuracy.
4. CWD details could be included in another document eg, the Import Delivery Order (DO), the Electronic Import Delivery Order (EIDO), or provided separately.
5. The contents of the CWD must be readily available to an authorised officer or police officer who seeks to ascertain its contents, there and then in the presence of the container (whether by examining documents located on or in the vehicle or by obtaining the information by radio or mobile or other means).



## CONTAINER WEIGHT DECLARATION (CWD) - TEMPLATE - EXPORTS

Container Number	<b>Mandatory</b>
Exporter/Consignor/Sender (1) <b>(Responsible Entity)</b>	<b>Name and address is mandatory</b>
Consignee/Receiver	<b>Not mandatory</b>

<b>Status</b>	Full	Empty		
<b>Cargo Type</b>	General	Hazard	Reefer	
<b>Type</b>	20ft	40ft	ISO Code	

Packer (2)	<b>Not mandatory</b>		
Commodity	<b>Not mandatory</b>		
Weight (3)	Container Tare Weight <b>(Not mandatory)</b>	Contents & Packaging Weight <b>(Not mandatory)</b>	Container & Contents Gross Weight <b>(Mandatory)</b>
	kgs	kgs	kgs

Method of determining Weight (4)

1. Estimation
2. Weighing of Contents
3. Weighing of Container & Contents
4. Weighing of Truck & Container

Signature of Person Making Declaration: **(Mandatory)**

Date: **(Mandatory)**

Receiving Organisation Receipt:

### Notes:

1. The "Responsible entity" is responsible for providing an accurate CWD: this is usually the person in Australia who engages the road carrier or offers the container for transport by road in Australia.
2. Including details of the packer enables easy identification of the person who packed the container. The packer could also be the "responsible entity".
3. Separating the weight of the container and its contents ensures there is no confusion as to whether the declared weight is a net weight or a gross weight.
4. This enables the person who is relying on the CWD to determine its likely accuracy.
5. CWD details could be included in another document eg, the Export Pre Receipt Advice (PRA), or provided separately.
6. The contents of the CWD must be readily available to an authorised officer or police officer who seeks to ascertain its contents, there and then in the presence of the container (whether by examining documents located on or in the vehicle or by obtaining the information by radio or mobile or other means).





### **C&E provisions in the Transport Operations (Road Use Management) Act 1995**

#### **Summary**

Once they are finalised, this section will include references to sections within the *Transport Operations (Road Use Management) Act 1995* and subordinate legislation which contain the definitions of responsible entities and specifics of when an offence occurs. For more information on current Queensland laws, readers can gain full access to the complete *Transport Operations (Road Use Management) Act 1995* from the following web site:

**<http://www.legislation.qld.gov.au/OQPChome.htm>**



### **Factsheets**

Once legislation is finalised in Queensland, QT will develop related fact sheets to assist understanding of the C&E requirements. These will be included here at that time.