# Code of Practice template

## Foreword

(Free text section)

*Describe the industry sector, what makes it unique and why a code of practice is necessary.*

*Explain how this code of practice was developed. Who was involved, how the consultation was carried out, and which associations contributed to the development of the code.*

# Introduction

## Purpose

*Free text paragraph – talk about the need for the Code of Practice which exists in your industry sector.*

A code of practice combines industry knowledge and experience about how to work s­afely in a particular sector. Its recommendations can deliver substantial improvements in overall safety within an industry.

Codes of practice also promote consistency in the way that tasks are carried out. If businesses share an understanding of risks and the best ways to avoid or manage them, they can collaborate in end-to-end systems using the same language and aligning their systems, processes, and equipment.

The *(code name)* is intended to assist (*industry sector*) participants who are parties in the CoR to meet their primary duty obligations. It does this by providing information about common hazards and risks associated with the (*industry sector*) and by identifying available controls that can eliminate or minimise those risks. Participants in the (industry sector) can then determine what is reasonably practicable for their business to do to ensure safety.

This code doesn’t provide a single “one size fits all” solution that works for every business. Instead, it proposes a selection of control measures of different kinds. It is then up to each user of the code to choose the measures that are appropriate for their business according to what they do, their size, and the degree of risk associated with their transport activities.

## Scope

The (code name) describes all heavy vehicle risks associated with the (industry sector)

OR

The (*code name*) focuses on the (named) risks associated with the (*industry sector*)

(*Explain further*)

The (*code name*) should always be read in conjunction with the HVNL, the Master Code, other authorities such as the Load Restraint Guide, WHS information and other relevant industry specific publications.

## Codes of Practice and the *Heavy Vehicle National Law*

A code of practice provides guidance to parties in the heavy vehicle Chain of Responsibility (CoR) for ensuring the safety of their transport activities, so far as reasonably practicable. By adopting recommendations that are relevant to their circumstances, CoR parties can protect themselves, their employees, and the public from harm, and prevent damage to property, infrastructure, and the environment.

Adoption of code recommendations is not mandatory for any person, but if you are a party in the CoR, the contents of a code registered under s706 of the *Heavy Vehicle National Law* (HVNL) are relevant. In the event you are charged with breaching the primary duty, a court may use the contents of a registered code of practice to determine whether you or your business did everything reasonably practicable to eliminate or minimise risks to public safety.

If you are an executive of a business that is a CoR party, you also need to pay close attention to the guidance in a registered code as a court may refer to it when it determines whether you have discharged your duty to exercise due diligence.

**Note:** It is not obligatory to use the control measures recommended in a code of practice. You may use different measures so long as they achieve an equivalent level of safety of higher. In the event of legal proceedings, there is a procedure to follow if you have used an alternative system to ensure safety.
(See s 632A(5)).

## What is the Primary Duty?

A party in the CoR has a duty to ensure the safety of its transport activities so far as reasonably practicable. This is referred to as the “primary duty” and is similar to the general duty that applies to employers (and others) under occupational health and safety laws. The primary duty requires CoR parties to ensure safety by managing the risks to do with heavy vehicles to the extent of their influence and control.

The primary duty relates to each party’s “transport activities”, which includes all the activities that are associated with the use of a heavy vehicle on a road. For example, it includes business processes, safety systems and decision making, as well as the activities normally associated with the transport and logistics sector such as training, scheduling, route planning, managing premises, vehicle maintenance, packing, and loading.

In order to ensure safety, you are required to eliminate public risks associated with all your transport activities, and to the extent it is not reasonably practicable to eliminate those public risks, to minimise them.

The best way to comply with this duty is to identify and assess the risks to public safety that arise from your transport activities, and to implement measures that will eliminate or minimise those risks. This code of practice will assist you to do both those things.

**Note:** Under the HVNL, “public risk” means risks to drivers, passengers, other road users and members of the public in the vicinity of roads and public places. It also includes the risk of damage to property, including vehicles and loads, damage to road infrastructure and harm to the environment.

## What does “Reasonably Practicable" mean?

 “So far as is reasonably practicable” is the standard for how far you have to go to eliminate or minimise a risk. Put simply, it means that you must take every measure that you know of, that is effective and possible to do, and that is not overly expensive compared to the degree of risk.

You will have to make this assessment yourself, by putting yourself in the position of a hypothetical reasonable person, and asking whether that person would think you had done enough to manage risk, taking account of:

* the degree of risk, and the degree of harm that the risk could cause
* what you know or ought to know about hazards, risks and controls,
* whether control measures are suitable and available
* and whether the cost of implementing measures is proportionate to the degree of risk

These are the same factors that a court would consider where a person or executive is charged in relation to a breach of the primary duty.

## Knowledge of risks and controls

You aren’t expected to control risks that you don’t know about or couldn’t be expected to know about, and you aren’t expected to use control measures that no one in your industry has heard of. But if there are well known risks and control measures that you don’t implement, then further questions are asked.

Proving what a person knows or ought to know can be complicated, but information included in this code of practice will be regarded by a court as information about hazards, risks, and controls that everyone in the relevant industry knows or ought to know. (See s632A, HVNL).

You aren’t obliged to implement any or all of the recommendations in this code - as explained below - but if you don’t know its contents you are at a disadvantage. You won’t know safety information that your industry has agreed is relevant, and that a court would expect you to know. You might overlook a control measure that is in fact quite effective, and relatively inexpensive to implement.

An executive’s ignorance of relevant safety information in this code may also indicate that they have failed in their duty to exercise due diligence.

## Availability and suitability

You are not required to implement control measures recommended in this code if they aren’t available or aren’t suitable for your situation. For example: a tool that is not available in Australia; equipment that has not been adapted to your operations; practical training that’s only available at a remote location.

A control measure which introduces new risks or that won’t always work would not be suitable. For example: new equipment that causes complacency about other safety procedures, leading to new risks; training that is ineffective because of high staff turnover; a procedure that isn’t flexible enough for each of the working methods used in your business.

Where a recommended control measure is not available or suitable, you are still required to find other ways to eliminate or minimise the risk.

### Relative cost of control measures

You are not required to implement recommended measures if their cost would be grossly disproportionate to the risk. You must use judgement to determine what would be proportionate, taken account of all the circumstances. You can’t conclude that the cost is disproportionate based on personal opinion or preference. The conclusion must be one that would also be reached by another reasonable person, in the same position, and with the same information as you.

It is difficult to anticipate what measures and what expenditure courts would hold to be reasonable in a given situation. The best approach may be to assume that where overall risks are high, no price is too great to protect the safety of employees or the public.

Note: in some situations, the risk that an activity creates may be so severe that there are simply no measures that can eliminate the risk or minimise it to an acceptable level. In that situation, you will have to stop performing the activity altogether, or find a safer way to achieve the same outcome.

## What is Executive Due Diligence?

If you are an executive of a business that has a primary duty you must exercise due diligence to ensure that the business complies with its primary duty. Failing to do this could expose you to a charge against section 26D of the HVNL.

The term “executive” includes an executive officer, a manager or another person who takes part in the management of a business. It also includes a director of a company and a partner in a partnership.

Exercising due diligence means to:

* acquire and maintain knowledge about conducting transport activities safely
* understand the nature of the business’ transport activities, including the hazards and risks associated with those activities
* ensure the business has and uses the resources required to eliminate or minimise the hazards and risks created by its transport activities
* ensure the business has and implements processes to eliminate or minimise the hazards and risks created by its transport activities and that information about hazards, risks and incidents is received, considered and responded to in a timely way

This means that if a code of practice is relevant to your business’s activities, as an executive, you have a duty at the very least to familiarise yourself with the contents of this code. You can also use the code to develop the safety systems necessary for the business to meet its primary duty obligations.

# How to Use this Code of Practice

This code will help you identify the risks and hazards associated with your transport activities in the (relevant) industry, provide insights about the likelihood and consequences of those risks, and propose measures to control the risks. Even if you are familiar with the risks and hazards described in the code, the controls might be new or different from the controls you currently have in place.

The (*code name*) should be used in your business to establish your own risk management system. Only you can understand the circumstances and the environment in which your business operates, including the risks your business confronts from your transport activities, so only you can decide what is reasonably practicable for your business to do to eliminate or minimise those risks. The (*code name*) provides a resource for you to refer to when building your systems. You should revisit the (*code name*) when your situation or activities change, or when you confront new risks from your transport activities, to ensure your systems remain current.

The information contained in the (*code name*) is also a resource you can use to develop training about the hazards which arise from the risks in your business and controls which can be applied to manage those hazards.

If you are developing contracts with other parties about how a transport activity will be undertaken, the (*code name*) can provide a reference for which party will be responsible for which parts of an activity. When you are establishing assurance processes to measure the performance of parties against a contract, the (*code name*) can also assist as a reference.

### Implementing Risk Management - AS/NZS ISO 31000:2018

The NVHR recommends that you use this code to help develop a risk management system for your business that complies with the *AS/NZS ISO 31000:2018 Risk Management — Principles and Guidelines.* Depending on the size of your business, this process may be relatively straightforward, or might take many months to fully implement. More information about risk management is available on the Safe Work Australia website (e.g. [www.safeworkaustralia.gov.au/resources-and-publications/model-codes-practice/model-code-practice-how-manage-work-health-and-safety-risks](http://www.safeworkaustralia.gov.au/resources-and-publications/model-codes-practice/model-code-practice-how-manage-work-health-and-safety-risks)).

Key components of risk management are:

1. Risk identification
2. Risk Assessment and Documentation
3. Selection of Reasonably Practicable Control measures
4. Implementation and training
5. Systems to monitor and report on the effectiveness of controls
6. A process for periodic review of the system and a process for responding to incidents, lead and lag indicators, and new risks.

This code will help you with steps 1 - 3 in that process.

The NVHR recommends that you establish a safety management system (SMS) to develop steps 4-6. There are numerous SMS resources such as templates, quick guides and toolbox talks on the NHVR website that can be tailored to suit business needs regardless of the size and complexity of a heavy vehicle operation.

The 9 Step SMS Roadmap gives structured information and direction through each step of developing an effective SMS, implementing it with management and staff, and extracting safety improvements as part of its day-to-day use. (see [www.nhvr.gov.au/safety-accreditation-compliance/safety-management-systems](http://www.nhvr.gov.au/safety-accreditation-compliance/safety-management-systems)).

## Identify and Assess your risks

This code may help you identify the public risks associated with your business’s activities. You should also consider legislation and regulations, other registered codes of practice such as the Master Code, industry publications, guidance material from regulators and expert reports.

These resources, when combined with your own knowledge of your business, and what you can learn from employees and business partners enable you to identify most of your risks.

Don’t overlook the risks created when you interact with other parties, for example the risks associated with using inconsistent systems or terminology. Also consider the risks to those other entities and their employees as part of your assessment of public risk.

Recommended practice is to document each of your identified risks in a risk register.

Once, you have identified all relevant risks, use this code and the resources mentioned above to help you assess each risk. Information about past performance of your business or industry will also be relevant in this process.

Assess the likelihood of each risk and the seriousness of the consequences if it does occur. Some people use a risk matrix to arrive at an overall risk level based on a combination of a rating for probability and a rating for consequence. This allows different kinds of risks to be compared on the same scale.

**Note:** Because of the size and speed of heavy vehicles, the consequences of a collision or rollover or loss of load will almost always be in the most serious category. Expect that the combined risk scores for many heavy vehicle risks will be high.

Once you have assessed each risk, look at the recommended control measures in this code to find the measure or combination of measures, that will eliminate each risk so far as reasonably practicable. If a risk can’t be eliminated, find the measure or measures that will minimise the harm or damage it could cause, so far as is reasonably practicable.

## Selecting and Applying the Control Measures

You may have a choice of suitable control measures. You should favour the most effective and reliable controls.

In the field of occupational health and safety, there is a principle called the “hierarchy of controls” which recognises that the most effective control is one that eliminates the risk altogether. The next most effective controls are ones that isolate the hazard from persons, that substitute a hazard with a safer alternative, or that rely on equipment or modifications to equipment or premises to control a risk (engineering controls).

“Administrative controls” are ones that rely on systems or procedures. If they are properly implemented, administrative controls can be highly effective, but they may need to be supported by continual monitoring and can fail if people aren’t properly trained or motivated to use them all the time.

The final type of control is personal protective equipment (PPE) which can be effective at reducing the harm that an incident causes but does little or nothing to prevent the risk eventuating. In the event of a heavy vehicle collision or rollover, PPE is unlikely to be effective though it may afford protection in other less serious incidents.

You should implement the control measures that will be most effective in managing risk, giving priority to measures that eliminate risks altogether. Consider how effective each control will be in your circumstances.

In some situations, you may need to implement a combination of controls to manage the same risk or hazard.

### Using other control measures

You are not restricted to using the control measures recommended in this code of practice. If there are other measures that are equally effective or better it’s perfectly acceptable to apply those measures instead of, or in addition to the ones that the code suggests.

If you did use different measures, then in the event of legal proceedings, you would have to give notice of the types of measures that you had used, in advance of any hearing. (See s632A(5)).

A registered code may not cover every possible hazard and risk. If one of your risks is not covered in a code, you still have to find a reasonably practicable way of eliminating or minimising that risk.

# Context

## Environment

Discussion or description of the nature of the industry, highlighting key risk types that are unique to the industry, and any of the constraints to managing safety or complying with the HVNL.

## Challenges

References to other legal requirements, practical challenges, difficulty of sharing information etc.

# Identified Key Risks

*Free text paragraph – Explanation of how the risks were identified and how they are described or classified.*

## Key Risk #1

### Hazard #1 (Optional – depends on the scope of the code and how risks and hazards are described)

#### Activity #1

##### Control #1

##### Control #2

####  Activity #2

##### Control #1

### Hazard #2

#### Activity #1

#### Activity #2

## Key Risk #2

### Hazard #1

#### Activity #1

#### Activity #2

## Etc.

## Definitions and Abbreviations/ Glossary

*Definitions or explanations of industry terminology*

# Appendices

## Appendix A – Training Requirements

## Appendix B – Equipment Recommendations

## Appendix C – etc.

# Code Administration

## Code Administrator

## Code Maintenance

## Code Review

**For more information:**

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