

LOADING, OVERLOADING AND ENFORCEMENT OFFICERS' POWERS

THIS TRUCKERS' GUIDE TO THE LAW FOCUSES ON TWO ASPECTS OF THE LAND TRANSPORT ACT 1998 RELEVANT TO HEAVY VEHICLES: VEHICLE LOADING & OVERLOADING AND ENFORCEMENT OFFICERS' POWERS

Insecure Loading

Any person operating a motor vehicle on a road, and any person loading that vehicle, must ensure that any load carried in or on the vehicle (or by a vehicle being towed by that vehicle) is secured and contained in such a manner that it cannot fall or escape from the vehicle.

The legislation refers to the "operator" of a vehicle. The Land Transport Act defines "operate" as "to use or drive the vehicle on a road, or to cause or permit the vehicle to be on a road or to be driven on a road, whether or not the person is present with the vehicle". "Operator" has the corresponding meaning. This definition can cover both the owner and driver of the vehicle if the owner allows or causes the vehicle to be driven with an insecure load. The "owner" of a vehicle is defined in the Act as being "the person lawfully entitled to possession" of the vehicle. A vehicle's owner and driver are usually both operators. However, "operator" casts a much wider net than "owner." You can operate a vehicle that you do not own, e.g. dispatchers.

Penalties

The infringement fine for an individual for failing to secure a load carries a fine of \$600. The penalty on conviction is a fine of up to \$2,000 for an individual, and \$10,000 for a company. If the offender was the driver of the vehicle, or the vehicle towing a trailer, with an insecure load, she or he may also be disqualified from driving for such period "as the Court thinks fit".

Strict Liability

Insecure loading is a "strict liability" offence, which means an offence is committed whether or not the operator knew the load was insecure. The prosecution does not have to prove that the operator knew the load was insecure, or that anything in fact fell from the vehicle. It is no defence that

the operator did what every other heavy vehicle operator was doing. Even demonstrating that an operator took steps to ensure the load was secure will not help, unless the Court is satisfied that the operator was in no way at fault. An operator also cannot say that they believed the weight or nature of the load was such that it was not necessary to secure it.

If the court is satisfied that a load has fallen or escaped from the vehicle, it is presumed that the vehicle's operator has not ensured the load was secured or contained in such a manner that it could not fall or escape.

Defences

It is possible to defend an insecure loading charge by proving that the load was secured on the vehicle, and if it wasn't properly secured, that it wasn't the operator's fault. This is commonly referred to as a "total absence of fault" defence. The onus is on the operator to prove the defence, and that can be difficult. Normally, if a load is insecure, it will be considered to be the operator's fault, even if she or he didn't actually load it.

Truck Loading Code

In prosecutions for insecure loading, the Court may have regard to the Truck Loading Code. Every operator should get a copy of the latest Truck Loading Code and ensure their vehicles are loaded in accordance with the code. If a ticket is received for insecure loading, it is up to the operator to prove it wasn't that person/company's fault, and that can be very difficult. It is suggested that the load be photographed as soon as possible after the ticket is received, and before it has been unloaded.

Powers of Officers Dealing with Insecure Loads

Where an enforcement officer believes that a load or part of a load is not secured so that it cannot fall from the vehicle, that officer can direct that the vehicle be stopped and kept stationary until the load is secured so that it cannot fall. The officer can also direct that the

vehicle be moved and stopped at a safe place until the load is secured so that it cannot fall from the vehicle.

Other Officers' Powers

In respect of heavy motor vehicles or transport service vehicles on a road, enforcement officers may:

- inspect the load on the vehicle;
- measure, or require to be measured, the weight of the vehicle or the weight on any of its axles; and
- direct the driver or person in charge of the vehicle to drive the vehicle to a site and onto a weighing device specified by the enforcement officer for the purpose of enforcing the law, even though the driver may not otherwise be permitted to drive the vehicle to that site.

Enforcement officers **cannot** direct a driver or person in charge of a vehicle, in order to drive the vehicle to a site or weighing device, to travel a distance that would increase the total length of the journey by more than 5 km, or more than 10 km if the site where the vehicle has been brought to a stop is unsuitable for weighing the vehicle because doing so may pose a safety risk to other road users or to the enforcement officer, or the site is not level enough for accurate weighing. Operators should make a note of the time, place and distances travelled, if they think the enforcement officer asked them to drive any further to be weighed than legally allowed.

Stopping Vehicles

Drivers of heavy motor vehicles or goods service vehicles must stop when directed to do so:

- by a sign specifying that that particular vehicle, or vehicles of that vehicle's class must stop; or
- by an enforcement officer.

The driver must keep the vehicle stopped so that an enforcement officer may determine whether or not to inspect the vehicle's load, weigh the vehicle, direct the vehicle to a place where it will be weighed, or to exercise another power under the Land Transport Act.

Offloading Demands

Where the gross mass of the vehicle, or the mass on a wheel, axle or group of axles, exceeds by 10% or more, or by 2,000kg (whichever is the lesser) the prescribed mass restriction for the vehicle or a mass or loading restriction specified in the vehicle's certificate of loading, the enforcement officer must direct the driver to keep the vehicle stopped; or move it to a safe place. The vehicle must remain stopped or be removed to a place of safety until part of the load is removed or rearranged so that the mass is not more than the maximum prescribed or until an overweight permit has been issued.

Enforcing Transport Laws

Enforcement officers in uniform, who have a warrant or other evidence of their authority as enforcement officers, are authorised to enforce the provisions of the Land Transport Act, the Road User Charges Act, and a number of other Acts relating to transport. They can direct anyone on any road, whether or not they are in charge of any vehicle, to give their name, address, date of birth and any other details required.

The person asked must also provide information, if s/he has it, that may lead to the identification of the driver or person in charge of any vehicle.

Requirement to Stop

Drivers must stop at an enforcement officer's request or signal. Officers must be in full uniform, or wearing a cap, hat or helmet identifying them as a police constable or traffic officer. Drivers must stop if followed by a motor vehicle displaying blue or red flashing lights or sounding a siren. If the car displaying the lights or sounding the siren travels past or does not stop nearby, then the driver may continue on.

On demand, the driver of a vehicle must give their name, occupation, address, date of birth, telephone number and the name and address of the owner of the vehicle.

Arrest Without Warrant

An enforcement officer can arrest, without warrant, any person who:

- fails to stop at an enforcement officer's request or signal, or fails to provide their name, occupation, address, date of birth, telephone number or the name and address of the owner of the vehicle;
- having undergone a breath screening test or a compulsory impairment test,

fails to remain at the place where the test was conducted until after the result has been ascertained;

- fails or refuses to accompany an enforcement officer to a place when required to do so, in order to complete an evidential breath test, blood test, or both, or fails to take the test or wait for the result;
- fails or refuses to remain in the place where stopped, for a period of time that is reasonable in the circumstances, or to accompany an enforcement officer to another place, to undergo a compulsory impairment test, or fails to take the test or wait for the result;
- they have good cause to suspect has failed to comply with a direction under section 113 (which authorises enforcement officers to enforce transport legislation), section 115 (which authorises enforcement officers to give directions prohibiting driving of vehicles), or section 121 (authorising enforcement officers to immobilise a vehicle);
- they suspect is, or has been, driving under the influence of drink or drugs;
- they suspect has assaulted a police constable or traffic officer executing their duties. In such cases, an enforcement officer can call on a member of the public to help them, and can give that person power to arrest. The arrested person must be delivered as soon as possible into the custody of an enforcement officer.

It should be noted that assault includes "intentionally applying force to another person, or attempting to do so, or threatening by act or gesture to apply force to another person." It includes grabbing hold of an officer or even raising a fist in an aggressive fashion.

Forbidding a Driver to Drive

If an enforcement officer thinks that a driver is physically or mentally incapable of driving properly or is in breach of their driving hours (and it is in the best interests of the public), the enforcement officer may forbid that person to drive for a specified time. An enforcement officer can also:-

- direct the driver to drive to a specific place where he/she may rest;
- take possession of the keys or get the driver to hand them over, or take any other steps to see that the vehicle is not driven, such as removing a mechanical part.

Other Powers

Enforcement officers also have other powers.

These include the right to inspect any part of any vehicle, including equipment on a vehicle.

They also have the power to order a vehicle be removed from a road or public place if the officer believes the vehicle is causing an obstruction or is in any other way a nuisance. The officer can direct the driver or other person in charge of the vehicle to remove it, or can remove or arrange for the vehicle to be removed by someone else. In these circumstances, an officer can organise any action necessary to remove the vehicle, including breaking into a locked vehicle.

If the enforcement officer believes that a vehicle is in some respect not roadworthy, that officer may send a notice to the owner, or affix a notice to the vehicle itself. Such a notice requires the vehicle to be taken off the road until it has been inspected by a person authorised by the New Zealand Transport Agency and a new certificate or warrant of fitness is issued. It does not matter that the vehicle has a current warrant or certificate of fitness at the time it is ordered off the road. It is an offence to disregard any such notice.

Entering Private Property

If an enforcement officer suspects a person has been driving dangerously or under the influence of drink or drugs and the person doesn't stop after sirens are sounded or flashing lights signaled, the enforcement officer may pursue the person onto private property in order to administer, or to decide whether to administer, a breath test to that person. In such a situation an enforcement officer in fresh pursuit can use forcible entry onto property.

The officer must, on request by a person affected by the exercise of this power, identify himself or herself either by name or unique identifier, state the name of the enactment under which they are exercising the power, and if not in Police uniform, produce evidence of his or her identity.

This summary is intended only as a guide. It is not a full summary of the law relating to vehicle loading, overloading and enforcement officers' powers.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

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