

TAKE
SAFE

THE ROAD

The 2010 NatRoad Conference drove home a focus on improving the industry with its theme 'From Negative to Positive – Protect your Business'. **Rob McKay** writes

Sanders had sage advice on what to do in event of a tragedy on the roads, noting: "It's a very trying and soul-destroying time [being] involved in a major accident".

"It's a very trying and soul-destroying time [being] involved in a major accident," he says.

This includes having a senior company representative attend the scene as soon as possible and have them take between 20 and 200 photos at relevant angles and distances.

It is wise to approach police or WorkSafe inspectors and identify oneself but there is no law to stop pictures being taken.

He points out that ramifications can take many years to unfold but the facts on the ground and evidence can change as soon as the police start clearing the area, as they do.

Quoting the legal adage that "he who defends himself has a fool for a client", Sanders points to the pitfalls and pressures of not dealing with issues through a legal team.

"Things aren't always as they seem," he warns.

Always offer police full cooperation but it is crucial to speak to a lawyer first, he advises.

"An innocent remark today can hang you later," he says.

"The days of throwing yourself at the mercy of the court are gone."

EXTRA CARE

On the occupational health and safety front, HWL Ebsworth Special Counsel Michael Connolly says new harmonisation laws, due in 2012, have extended coverage way beyond the basic employer/employee duty range to anyone who does any work for a particular firm, including contractors and franchisees.

He advises operators to implement what is expected before the transition starts next July.

Connolly warned that the *Model Act* was drafted with loopholes for states to add variations, particularly for prosecution.

"I don't see that as pure harmonisation," he says.

He adds: "What they should have done was implement a new federal court system — an industrial court" with uniform procedures.

He is concerned that the inspectorate will remain state-based, allowing the "cultural differences" to remain entrenched.

former US Marine's firm put together strategies that brought a 15-25 percent performance increase over four drivers in a 68-tonne B-double after training and testing at Somerton, in Victoria.

The initial partner was Blue Circle but it has been replicated with 15 more companies.

Fuel use fell 27 percent, with gear changes down 30 percent and brake applications down 35 percent, all with a 0.3 percent loss of time through the circuit.

Striplin was backed by Cement Australia National Transport Manager Mark Tempany and David Sims, National Training Manager of Ceva Logistics.

Cement Australia — which, interestingly, despite owning 308 prime movers, does not see itself as a logistics company but solely a production company — says it had not taken the promises on trust and has done its own testing and found the idea "stacked up".

Despite there having been "a hell of a lot of sceptics" Cement Australia found driver enthusiasm "was remarkable" and, though it was too early to gauge other benefits, fatigue in city driving has fallen due to fewer gear changes and "driving ahead of yourself".

Ceva had worried that older drivers would feel threatened or insulted but found "they will buy into it" and instead were keen to improve.

Ceva found drivers retaining or even improving their performance five months after its project began in March.

On the theme of limiting damage, Roger Sanders, a former Victoria Police traffic chief and now part of consultancy Delta-V Experts, advised delegates to always have what he calls a "goodness file".

Containing proof of chain of responsibility, vehicle maintenance, safety, accreditation, audits, commendations and driver training and welfare actions, the file will prove invaluable in the event of a serious truck accident, he says.

National Heavy Vehicle Regulator Interim Project Director Angus Draheim
Photo: Tina Nikolovski

When the going gets tough, the tough get back to brass tacks.

That was the basic premise of the August NatRoad Conference and it lived up to the billing.

Many of the presentations were unabashedly about how to save money and stay out of trouble, or, if that is not possible, how to limit the damage.

The former was put into sharp relief by Strategix Training Group's Wayne Striplin highlighting the value of eco-driving and defensive driving.

Having been approached in 2007 by Sustainability Victoria, Monash University and the Cement Industry Federation, the

There will be a "positive duty to exercise due diligence" that will rope in receivers and liquidators as well as company directors as well as their companies, he says.

"You have to prove that you are exercising due diligence all the time," Connolly says.

"It's not predicated on an incident occurring."

Being proactive on safety issues is crucial if accidents occur, he says.

As an antidote to all the OH&S gloom, including the new *Act's* 'union right of entry' provision, was the February 3 Kirk decision in the New South Wales High Court, which meant wrongdoing now had to be specified by Workcover authorities.

Doing 'everything reasonably practicable' now becomes a defence and the courts are "now in a bit of flux" — and Workcover charges are running out of limitation time.

However, other states have different systems, the details of which need to be addressed.

WORKPLACE HARMONY

In dealing with workplace conflict issues, Dan Houlihan of First IR Consultancy also raised legal matters, especially where a sacking or acrimonious resignations is concerned.

Documentation of all interactions and behaviour is key, he says.

Houlihan describes the "adverse action" provisions in the *Fair Work Act* — those that involve disadvantaging or discriminating against employees — as a "sensational lawyers gold mine" with a reversal of the onus of proof and uncapped damages available.

"That's particularly frightening," he says of the new and untested provisions.

However, the dismissal code is described as a "fantastic crib sheet" for getting prepared to deal with the Workplace Ombudsman and to understand what 'procedural fairness' means.

Houlihan highlighted the right of employees to be represented by anyone other than a lawyer who is acting in that capacity solely.

"There is almost an onus on the employer to inform the employees of their right to be represented," he says.

"There certainly is in relation to disciplinary and termination meetings and it possibly goes wider than that."

CONSISTENT OUTCOMES

The NatRoad Conference did not just canvass internal company advice, though. On a national scale, the industry can expect consistency in laws and regulations and,

especially, a reduction in the compliance burden on industry, according to Angus Draheim, Interim Project Director for the National Heavy Vehicle Regulator (NHVR) Project.

In an address pitched to manage expectation of swift and immediate change, Draheim says: "This isn't about reforming law, this is about harmonising it".

On licensing, though a single heavy vehicle licence is an important but parallel goal, the regulator is aimed at becoming a 'one-stop shop' with national coverage for registration of vehicles, he says.

The NHVR will work towards a situation where "if the circumstances are the same, the outcomes will be the same".

Draheim emphasised that the NHVR process will entail meeting the industry in forums but drew a distinction between "engagement", where there are talks with industry, and "consultation", in which the industry is informed of decisions and changes.

Underlining the task for the two years before the regulator will become fully operational, he says 364 variations across jurisdictions had been identified.

These were major and minor, some were technical and others legal and some would require policy decisions.

Individual state productivity arrangements will remain, though the Australian Transport Council will examine new ones to see if they are applicable nationally. If the arrangements are found to be unviable they will be opposed.

Tellingly, Draheim made clear that, though the NHVR will be independent, state sovereignty will hold sway if there is a political conflict with the regulator.

However, this will involve a significant divergence in a process that has had bipartisan support at the highest political levels.

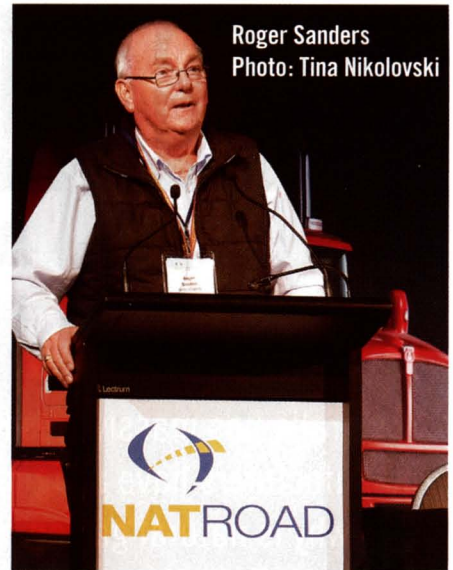
On the vexed question of uniform enforcement, Draheim says: "A single set of laws isn't the whole story, it's how they are implemented that's the key."

Uniform enforcement is a major aim, "as much as can realistically be achieved".

He did not wish to over-promise that "every interface on the side of the road is always going to be the same".

"There are local differences within jurisdictions. I know that very well from Queensland experience," Draheim says.

While transport inspectors are easier to make changes with than the police, there will be talks on the meaning of the reform with police, he adds.



"It's our ambition, it's clearly within our ambit," he says.

The "engagement" process will involve a series of workshops and summits with industry through the rest of the year to help put together a regulatory impact statement, due to be made public in February.

Along with that, an industry advisory group is being formed.

Ministers are to make a final decision by next August.

Asked if their regulator will be recognised by state courts, Draheim says its legal advice is that it will.

GROWTH FORECAST

Meanwhile, Australia, and trucking with it, is well-placed to push ahead with the economic recovery, UBS Bank Executive Director Jeffrey Dick says.

Dick, the head of investment management looking after the Transport Industry Superannuation Fund, says current market volatility is a historically accurate reflection of its behaviour in the 24 months after a major downturn, describing it as the "terrible twos".

Despite that, OECD, Thompson Reuters and UBS forecasts has Australian growth at 3.5 percent and 4 percent for calendar 2010 and 2011 respectively.

"We've weathered the storm very, very well," he says.

Bolstering that is global growth at 4.1 percent and 3.8 percent respectively.

While Europe remains a serious worry, Dick says: "There is no sign that the US will double dip."

"US manufacturing has turned up very well," he adds. ■