



HEAVY VEHICLE DRIVER FATIGUE REFORM Information Bulletin

July 2008

Chain of Responsibility

– Heavy Vehicle Driver Fatigue

It's time to manage heavy vehicle driver fatigue. New national road transport Heavy Vehicle Driver Fatigue laws to commence on 29 September 2008, set revised work and rest limits for heavy vehicle drivers and require better management of driver fatigue. The reform makes all parties in the supply chain legally responsible for preventing driver fatigue.

Who is responsible?

Drivers and operators have traditionally been the focus of road laws – including those covering driving hours and fatigue management. However, breaches are often caused by the actions of others. The new Heavy Vehicle Driver Fatigue reform requires all parties in the supply chain to manage the causes of heavy vehicle driver fatigue.

Under these new laws, everyone in the supply chain, not just the driver, will have responsibilities to prevent driver fatigue and ensure drivers are able to comply with the legal work/rest hours. If your actions, inactions or demands cause or contribute to road safety breaches then you can be held legally accountable. Authorities can investigate along the supply chain and up and down the corporate chain of command. The days of 'all care and no responsibility' are over.

Who are the parties in the supply chain?

Parties in the 'Chain of Responsibility' (in addition to the driver) include:

- the employer of a driver;
- the prime contractor of a driver;
- the operator of a vehicle;
- the scheduler of goods or passengers for transport by the vehicle and also the scheduler of its driver;
- both the consignor and consignee of the goods transported by the vehicle;
- the loading manager i.e. the person who supervises loading or unloading or manages premises where regular loading or unloading occurs; and
- the loader and unloader of the goods carried by the vehicle.

Taking reasonable steps

Under the new laws, everyone in the supply chain must take 'reasonable steps' to prevent driver fatigue and ensure a driver does not drive a heavy vehicle while impaired by fatigue – an approach consistent with existing Occupational Health & Safety (OH&S) laws.



Employers and customers will be held accountable for dangerous work schedules and long truck queues, which are known to be major causes of fatigue. If poor business practices endanger the lives of other road users, there will be severe penalties for those responsible.

Penalties escalate sharply for offences which pose a serious road safety risk; including court-imposed fines of up to \$50,000 and demerit points.

Pointing the finger at someone else who has broken the law does not automatically mean you are no longer responsible. In some circumstances, you may also have multiple duties under the Chain of Responsibility and are therefore also liable.

To comply with the law, you should ensure that you can demonstrate reasonable steps are taken to prevent a breach from occurring in your workplace or as a result of your activities. There are no limits to the ways in which you can do this. What constitutes reasonable steps will vary according to each individual's circumstances. You may need to change the way you do business on a daily basis.

Taking reasonable steps could include:

- developing an industry code of practice;
- use of accreditation schemes;
- reviewing your business practices;
- changing your commercial arrangements; and
- adopting a risk management approach.

If you exercise control or influence over the transport task in your workplace you can be held legally liable for your actions, inactions or demands if they have caused or contributed to a road safety breach. The law requires you to take reasonable steps to prevent your conduct from causing or contributing to a breach. In addition, the law also prohibits you from:

- making demands that you know or ought to know would cause a breach;
- entering into contracts that you know or ought to know would cause, encourage or give an incentive for a breach;
- coercing, inducing or encouraging breaches; and
- passing on false or misleading information that could cause a breach.

Reasonable Steps: Things to consider

There are no limits on the ways in which a person can show that they took reasonable steps. Consider the following actions:

- identify and assess risks;
- take steps to eliminate, manage or prevent the risk; and
- monitor and review risk management processes.

In determining whether you have taken reasonable steps, courts will typically consider:

- how serious the breach is;
- the abilities, experience, expertise, knowledge, qualifications and training of you and your staff;
- the nature and circumstances of the breach;
- what industry practices are available and in place to deal with breaches of this sort; and
- what measures were available and suitable to take.

* *Note: In Victoria, no reasonable steps defence will be available for drivers or operators. More information is available from the VicRoads website (www.vicroads.vic.gov.au)*

To assist parties in complying with the new laws the National Transport Commission has developed *Guidelines for Managing Heavy Vehicle Driver Fatigue*. These Guidelines provide guidance for drivers, employers, operators and schedulers, as well as users and customers of road transport on managing heavy vehicle driver fatigue and on the responsibilities of each of these parties under the new laws.

Other defences (for drivers only)

In addition to the reasonable steps defence, the new laws also provide a number of other defences specifically for drivers. Other parties in the chain may not claim these defences. Please note that not all these defences will be available in all States and Territories so consult your local road agency for further information.

Short rest break defence (Standard Hours only)

If a driver has to take a short rest break (under 1 hour) but cannot find a suitable place to rest the driver is able to continue driving for up to 45 minutes in order to reach a suitable rest area.

Suitable rest places are defined under legislation as any of the following:

- a rest area designated for and able to be used by a regulated heavy vehicle;
- a place at which a regulated heavy vehicle may be safely and lawfully parked; or
- a place declared by the regulations to be a suitable rest place.

Split rest break defence for solo drivers (BFM only)

Under BFM hours drivers have the ability to split a 7 hours continuous rest break. Split rest breaks **cannot be scheduled** but can be used by a driver if, for example, their rest is disturbed and the driver needs to move the vehicle.

Drivers splitting their rest will need to have a total 8 hours rest with one part of at least 6 hours. It is a defence for the driver to prove the following at the time of an offence relating to split rest breaks, that:

- they were driving under BFM hours as a solo driver at the relevant time;
- they had taken a split rest break (being a 6 hour continuous rest break and a 2 hour continuous rest break) within the same 24 hour period; and
- they had not taken a split rest break in the previous 24 hour period.





Recording non-local area work in work diary defence (Standard Hours only)

The new laws state you must use the work diary if you are working:

- under Standard Hours in NSW or Tas (regardless of the distance travelled); or
- under Standard Hours working more than 100km from your base (200km in Qld); or
- under Basic Fatigue Management (BFM) or Advanced Fatigue Management (AFM).

Local area drivers can use the work diary as a means of recording their working hours but use of this document is not mandatory. Please note that drivers operating in NSW or Tasmania are required to record all work and rest activities in a driver work diary regardless of distance traveled.

The laws provide protection for local area drivers operating under Standard Hours if the driver is unaware he or she is scheduled to work outside the local area on a particular day. It is a defence for the driver to prove at the time of an offence occurring relating to recording of non-local area work that:

- they were unaware that they would be engaging in non-local area work on that day; and
- they recorded information in their work diary as soon as practicable after becoming aware that they would be engaging in non-local area work on that day.

Recording of odometer readings when the odometer is malfunctioning defence

One of the requirements of the new driver work diary is the recording of the odometer reading immediately before or after each work/rest change. If the odometer is faulty the driver must inform the appropriate person/s (the owner of the vehicle, if the driver is an employed driver – the driver's employer and the operator of the vehicle) within 2 business days of becoming aware or suspecting that the odometer was malfunctioning.

Business practices

You should regularly review your business practices to ensure the steps you are taking are reasonable at all times. Some of the steps you may need to consider include:

- ensuring your work practices do not contribute to or cause on-road breaches;
- training for staff to ensure they understand their obligations under the Chain of Responsibility;
- audits/spot-checks to ensure compliance (eg: monitoring of loading);
- reviewing contracts and commercial arrangements to ensure they do not encourage or give an incentive for breaches; and
- contingency plans to manage operational issues within the law.

Risk management

Ensuring your business is taking reasonable steps to prevent breaches requires you to be able to regularly identify and assess the risks involved and to manage them by either eliminating or reducing their effect or the likelihood they will arise. Examples of how to identify and assess risks include:

- reviewing driving or work schedules and work records, including opportunities for rest breaks;
- reviewing loading and unloading times and delays during loading and unloading;
- reviewing contractual arrangements and documents relating to the consignment and delivery of the goods;
- regularly assessing driver fitness for duty;
- analysing injury and accident reports; and
- consulting with drivers, unions and industry associations.

Examples of how to manage a risk include:

- contingency planning in relation to fatigue and work/rest hours;
- allowing for traffic or other delays in scheduling;
- avoiding incentives and demands that might cause or encourage breaches of work/rest hours; and
- a system for giving drivers sufficient notice of scheduled changes.



A number of risk management standards are available that can assist you in developing business practices to minimise the risks of non-compliance in your business. Some of these standards are linked with accreditation schemes; others can be used as tools to help you make your business practices meet your duties under the Chain of Responsibility.

Some helpful risk management standards include The Australian and New Zealand Standard on Risk Management (AS/NZS 4360:1990) (www.standards.org.au) and ISO 9000 quality standards (www.iso9001qualityassurance.com)

Accreditation schemes

Freight customers should ensure their transport operator is accredited to manage fatigue risks where appropriate.

The National Heavy Vehicle Accreditation Scheme (NHVAS) has been developed to offer transport operators a means to demonstrate compliance with the regulations. Heavy vehicle operators must be NHVAS accredited to operate under Basic Fatigue Management and Advanced Fatigue Management work and rest hours (see fact sheets *Basic Fatigue Management explained* and *Advanced Fatigue Management explained*). For more information about NHVAS contact your local road agency.

TruckSafe is an audited business and risk management system aimed at improving the safety and professionalism of trucking operator's nationwide and can assist with training and accreditation. Fatigue modules are being developed by TruckSafe to meet NHVAS standards. For more information visit the Australian Trucking Association (www.atatruck.net.au)

Industry codes of practice

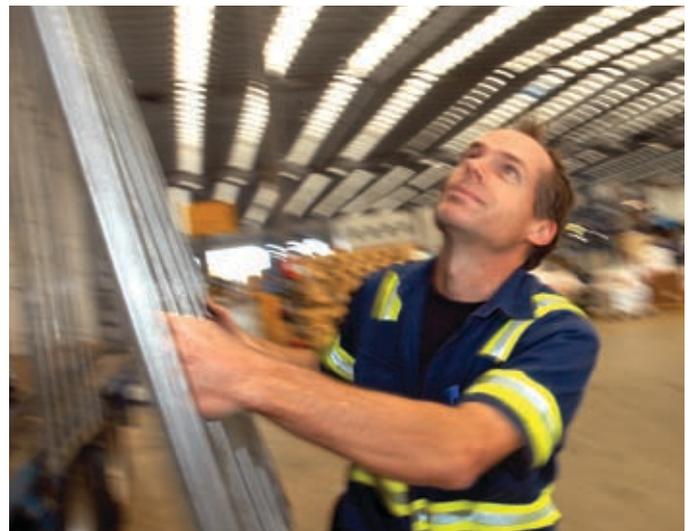
Companies can also develop and register an Industry Code of Practice and adherence to a Code can be used as supporting evidence of compliance with the laws. An Industry Code of Practice does not automatically discharge liability; it merely establishes a presumption that compliance with the Code is compliance with the duty of care. Guidelines on how to develop an Industry Code of Practice are available from Austroads (www.austroads.com.au).

Commercial arrangements

You can ensure your commercial relationships do not cause your business to breach CoR laws by:

- including compliance assurance conditions (e.g. safety accreditation) in relevant commercial arrangements with other responsible persons;
- requesting information about what systems and controls are in place to ensure compliance (e.g. policies on drugs, fatigue management etc); and
- avoiding arrangements which encourage or reward non-compliance.

www.ntc.gov.au



Further information

For specific queries about CoR legislation applicable to you, please consult a solicitor or the Legal Aid organisation from your local State or Territory.

For further information on developing an Industry Code of Practice Austroads has prepared guidelines on the preparation of codes of practice (www.austroads.com.au)

The National Transport Commission (NTC) has developed *Guidelines for Managing Heavy Vehicle Driver Fatigue* to educate everyone in the road transport supply chain on heavy vehicle driver fatigue. These Guidelines provide guidance for drivers, employers, operators and schedulers, as well as users and customers of road transport on managing heavy vehicle driver fatigue and on the responsibilities of each of these parties under the new laws.

This bulletin cannot explain all of your obligations under the new laws. Further information on fatigue and copies of the Guidelines are available from your local road transport agency or may be obtained from the NTC website

www.ntc.gov.au

Disclaimer

This bulletin does not constitute legal advice. Details are subject to amendment. Check your local legislation or contact your local road agency if you want more information.