



**National Road Transport Commission**

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**Submission to**

**House of Representatives Standing Committee on  
Communications, Transport and the Arts**

**Inquiry into**

***Managing Fatigue in Transport***

June 1999

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**1 Background**

The National Road Transport Commission was formed through the Intergovernmental Agreements on Heavy Vehicles (1991) and Light Vehicles (1992) to develop nationally uniform or consistent regulation of road transport. All States, both Territories and the Commonwealth are parties to the Agreements, which were amended recently.

The principles underpinning the Commission are that there should be improvements in road safety and transport efficiency, minimization of adverse environmental effects and reductions in the costs of administration of road transport.

The Commission's responsibilities for heavy vehicles (greater than 4.5 tonnes gross vehicle mass) extend to almost every aspect of vehicle operation and manufacture, but are more limited for light vehicles. Under the Heavy Vehicles Agreement, the Commission is responsible for heavy vehicle charges, regulations relating to the design, construction and operation of heavy vehicles, vehicle registration and driver licensing. The Commission is not responsible for setting charges for light vehicles.

In leading the development of national reforms in road transport, the Commission consults with the road transport industry, regulatory authorities and the wider community. The Commission reports to the Australian Transport Council, comprising Commonwealth, State and Territory Ministers for Transport or Roads. Once proposals have been approved by Ministers, they are implemented by regulatory authorities nationally, with the Commission monitoring the process.

## 2. Driving Hours: Uniformity of Prescriptive Regulation

The Commission played a key role in the development of the Road Transport Reform (Driving Hours) Regulations which were recently approved for implementation.

The Commission has made three sets of complementary recommendations on driving hours:

- The Road Transport Reform (Bus Driving Hours) Regulations were approved in 1994
- The Road Transport Reform (Truck Driving Hours) Regulations were approved in January 1998
- The Road Transport Reform (Driving Hours) Regulations, which amalgamated and updated provisions for bus and truck drivers, were approved in January 1999.

Key features of the approved national policy include:

- *Chain of responsibility:* The national regulations include “chain of responsibility” provisions, which are intended to impose legal liability on all in the transport chain who are responsible for unsafe outcomes. The intention of this feature is to require responsible behaviour of all in the transport chain, not just the driver.
- *Flexibility:* There are several areas in which the national Regulations increase flexibility. The Transitional Fatigue Management Scheme allows the permitted hours to be operated over a longer cycle (two weeks), in exchange for higher levels of driver and operator behaviour. More flexible record-keeping mechanisms are provided (operator records and electronic driver-specific monitoring devices). Provision has also been included for the implementation of the full Fatigue Management Scheme when it is available.
- *Application:* It is intended that the policy apply only in States and Territories which have used prescriptive regulation. This includes New South Wales, Victoria, Queensland and South Australia. It is understood that Tasmania will adopt the national provisions, but will not implement record-keeping requirements.

It has not been proposed that Western Australia or Northern Territory implement the national provisions. These jurisdictions have recently adopted Codes of Practice on fatigue management under occupational health and safety legislation.

Drivers of trucks operating solely within Northern Territory and Western Australia will not be subject to the national legislation, but drivers from these jurisdictions entering the remaining jurisdictions must comply with all of the applicable provisions.

### **3. Road Transport Reform (Driving Hours) Regulations**

Prior to the development of national provisions, heavy vehicle driving hours were regulated through prescriptive mechanisms in New South Wales, Victoria, Queensland and South Australia. Tasmania had prescriptive regulation, but did not apply record-keeping requirements. The objective of prescriptive regulation is to improve road safety by limiting fatigue of truck drivers while driving.

The primary purpose of the Road Transport Reform (Driving Hours) Regulations (referred to subsequently as the Driving Hours Regulations) is to provide for greater consistency in the regulation of hours of driving and work by drivers of heavy vehicles in areas of Australia in which prescriptive regulations have been adopted.

In order to allow greater flexibility in the management of fatigue in truck drivers, whilst maintaining or improving current levels of safety, the national policy consists of three components:

- a Regulated Hours Regime (RHR) of maximum hours of driving and minimum non-driving and rest periods. This would permit up to 72 hours of driving or work per 7 days (a rolling period), with a maximum of 12 hours of driving or 14 hours of work (including driving) in any 24 hour period (together with other conditions);
- a Transitional Fatigue Management Scheme (TFMS) allowing up to 14 hours of driving or work in any 24 hour period with a maximum of 144 hours driving allowed per 14 days (rolling period), to provide greater flexibility in driving hours in return for the application of some aspects of fatigue management and to encourage adoption of the full Fatigue Management Regime over the longer term; and
- a Fatigue Management Scheme (FMS), available to operators able to demonstrate that they can control factors affecting fatigue in truck drivers. It is expected that the take-up rate of Fatigue Management will be slow, at least in the initial stages.

#### **3.1 Standard Hours**

The standard driving hours for drivers of buses (12 or more seats) and heavy trucks (greater than 12 tonnes gross vehicle mass) are shown in Table 1.

**Table 1 : Heavy Vehicle Driving Hours**

<b>Period</b>	<b>Maximum Driving or Working</b>	<b>Minimum Rest</b>
5.5 hours	5 hours driving	30 minutes, either as one period or as two separate periods of 15 minutes.
24 hours	12 hours driving 14 hours working	10 hours, including one continuous period of 6 hours and any 15 or 30 minute rest breaks taken during driving/working time.
168 hours (7 days)	72 hours driving or work	96 hours, including one continuous period of 24 hours.

\* Rest means not driving or working, it includes time spent in an approved sleeping berth.

The Regulations include the following features:

- There is no differentiation in driving hours between solo and two-up drivers.
- There are requirements to keep records of hours of driving, working and rest. These records must be in one of the following forms:
  - log-books, driver specific monitoring devices or approved alternative systems of management records; or
  - management records maintained by the employer, for operations wholly within a 100 km radius of the driver base.
- There are offences relating to exceeding relevant hours limits, for failure to keep proper records and employers failing to maintain records as required by the regulations. The penalty for failure to keep proper records is the same as that for exceeding hours of driving or working.
- Two-up driving will only be permitted in trucks fitted with a sleeper berth which meets the standard approved by Transport Ministers.

### **3.2 Transitional Fatigue Management Scheme**

The Transitional Fatigue Management Scheme (TFMS) will provide greater flexibility and productivity for drivers and operators.

The scheme incorporates most aspects of the standard hours regime but provides for higher compliance standards in return for greater flexibility. The prescriptive requirements of the TFMS are that a truck driver must:

- not drive more than 14 hours in any 24 hour period for a solo driver or 12 hours for a two-up driver;

- not work for more than 14 hours (including driving) in any 24 hour period;
- not drive or work for more than 144 hours (ie, 2 x 72 hours) in any period of 14 days;
- have at least two periods of 24 hours continuous rest in any 14 day period;
- have at least 6 hours continuous rest in each 24 hours;
- have at least 30 minutes rest in any 5.5 hour period (this may be taken as one period or two periods of 15 minutes); and
- keep similar records to those required in the standard hours regime .

Two-up drivers operating under the TFMS are subject to identical requirements except that the daily limit of driving is 12 hours and 14 hours working. This is the same limit as under standard hours, however the TFMS offers greater flexibility for two-up drivers as the time of the driving team can be scheduled over a 14 day period instead of a 7 day period.

Examples of how these requirements may operate in practice include:

- A maximum of 10 consecutive days of 14 hours of driving or working could be undertaken, followed by 4 days of rest.
- These 10 days of 14 hours could be undertaken interspersed with 4 days of rest over a period of two weeks. This would, for example, enable 5 return trips between Sydney and Brisbane. Alternatively 10 return trips requiring 14 hours driving in a day would be possible, eg Melbourne to Mildura.
- A maximum of 12 consecutive days of 12 hours of working (including driving) could be undertaken, followed by 2 days of rest.

The TFMS contains similar offences and penalties as the standard hours. In addition, non-compliance with conditions of registration in the scheme will result in the registration being cancelled.

The compliance criteria in the TFMS include a requirement that employers and drivers must apply for registration. Prior to being registered, drivers must obtain a driver certification manual from the Authority; undergo a medical examination; and undertake training in fatigue management.

Each member of the staff of the driver's employer who is responsible for rostering driving, working and resting of employed drivers must also complete an approved fatigue management training course.

The training course, was commissioned by the NRTC to assist drivers and company staff to put strategies in place to combat fatigue. The package was developed by the Commission in close consultation with the trucking industry road authorities and other organizations such as State WorkCover units and researchers in fatigue management.

The objective of the course is to provide an awareness of the causes of fatigue and train drivers in fatigue management strategies.

The employer upon applying for registration will make a commitment to manage the fatigue of drivers and be able to demonstrate that this is the case.

An employer is required to arrange for a review of compliance under the scheme within 9 months of the commencement of operations on the second anniversary of commencement and annually thereafter. The Authority may arrange to conduct an audit at any time.

### **3.3 Fatigue Management Scheme**

The third component of the policy approved by Ministerial Council is a Fatigue Management Scheme. This scheme is under development as a module of the National Heavy Vehicle Accreditation Scheme, which provides alternative compliance arrangements for drivers and operators of heavy vehicles. The other alternative compliance modules are Mass Management and Maintenance Management.

An operator can have a Fatigue Management Program accredited if he can demonstrate control over factors which lead to driver fatigue and can demonstrate this control through an auditable process. An operator accredited in this manner will not be subject to prescriptive regulations.

Fatigue management is based on control of driver fatigue through management of all fatigue risk factors rather than just a set of limits on driving, working and rest which are inflexible and take no account of variations in the capabilities of drivers and different types of transport operations and working environments. A commitment is required from both operators and drivers to identify and manage the fatigue risk factors involved in trip scheduling, driver rostering, time working, lifestyle, quality of rest and driver health standards.

The pilot scheme will be subject to review and evaluation prior to a recommendation to Ministerial Council on full availability of fatigue management as an alternative to a prescriptive approach to driving hours.

### **3.4 Chain of Responsibility**

One of the principles of the Commission's approach to the compliance and enforcement provisions of the national Road Transport Law has been the broader application responsibility for road transport outcomes. Under the principle of chain of responsibility, parties in a road transport transaction who have control over driver behaviour should be held responsible and should be subject to legal liability. It is intended to use this mechanism to expand the focus of enforcement beyond the driver, to include (in appropriate circumstances) operators, employers, consignors and perhaps even customers.

Earlier approaches to road transport law in Australia generally applied responsibility for operating safely to drivers. Application of responsibility to other parties in the

transport chain has been rare, and would generally occur only in the case of serious offences. Enforcement agencies have had to rely on offences such as “complicity” or “aiding and abetting”. Gathering the evidence required for successful prosecutions under these provisions has been difficult and successful prosecutions rare. Enforcement agencies have generally pursued these avenues only in the case of serious offences, (e.g. deaths where Coroners’ powers can be used to access a wider range of evidence).

The new approach is consistent with other areas of law, including occupational health and safety, environment and companies and securities laws.

The principle behind the “chain of responsibility” concept is simple:

***Any party who has control in a transport operation can be held responsible and may be made legally liable.***

***Under chain of responsibility: control = responsibility = legal liability***

The driver is in control of the vehicle on-the-road and has responsibilities to other road users. It is not intended that chain of responsibility will remove these responsibilities. Where others in the transport chain have acted illegally, they will **also** be held responsible and may be prosecuted.

Chain of responsibility applies both inside and outside a road transport company. Within the company, any person with control over road transport operations could be held responsible. Examples would include directors who set general policies and managers who set rosters or schedules. Outside the company, it also applies to consignors, customers and potentially any other party in the transport chain who places unreasonable demands on others in the transport chain.

The application of chain of responsibility would not depend on the nature of the employment/contractual relationship; the provisions would apply equally to employees and sub-contractors.

The application of chain of responsibility will nearly always be more difficult for enforcement agencies than simply prosecuting the driver. Therefore it is not expected that the chain of responsibility will be followed up on every occasion. It is expected that a single successful prosecution of a party high in the transport chain will have a demonstration effect and may be a more powerful agent of change than a large number of actions against drivers.

Chain of responsibility is strongly supported by drivers and the road transport industry as a key initiative to target operators who engage in unsafe practices and gain an unfair competitive advantage by operating illegally.

There is already some evidence of a trend for transport companies to educate their customers on their obligations under the legislation. However, the full implications of the chain of responsibility provisions will not be apparent until there has been a series of successful prosecutions. However, the ability to prosecute parties other than drivers and operators is expected to be a strong deterrent and will also have

implications for the insurance liability of those parties. These factors alone are expected to result in an overall improvement in compliance.

The chain of responsibility provisions of the Road Transport Reform (Driving Hours) Regulations are set out in the box below:

**Driving Hours – Chain of Responsibility**

*“A person must not ask, direct or require, directly or indirectly, a driver to do something if the person knows, or reasonably ought to know, that by complying the driver would, or would be likely to, commit:*

- a) a core driving hours offence; or*
- b) a driving record offence; or*
- c) a speeding offence.*

*Penalty: \$1500*

*Example of requirement:*

*A requirement that is an express or implied condition of the driver’s engagement.”*

Specific are also included for:

- special obligations of consignors
- special obligation of employers
- special obligations – rostering and scheduling

***Road Transport Reform (Driving Hours) Regulations***

### **3.5 Implementation of National Provisions**

Implementation of national heavy vehicle driving hours provisions has occurred in Queensland, New South Wales and Victoria. In South Australia, the Transitional Fatigue Management Scheme has been implemented and it is expected that the full set of national provisions will be implemented before the end of 1999.

## **4. Policy Development**

The Commission’s emphasis in the development of national provisions has been to achieve uniformity or consistency in jurisdictions which have adopted a prescriptive approach to the regulation of fatigue in drivers of heavy vehicles. In this process, the prescriptive approach has been improved through the inclusion of chain of responsibility and additional flexibility.

The current position is seen as providing a base for further development of regulatory approaches to the management of fatigue. Issues for consideration in further policy development include:



### *Research results*

Fatigue researchers generally point to the importance of time-of-day effects (circadian rhythms) and accumulated sleep debt as of greater importance than time on task. The best means of applying these research results in road freight must be devised.

The NRTC has been active in initiating research into fatigue in drivers of heavy vehicles. This research has generally been funded in conjunction with the Federal Office of Road Safety. One current project initiated and managed by NRTC and funded by Federal Office of Road Safety will examine operational differences and road safety outcomes in regulated and non-regulated areas of Australia. The NRTC was a sponsor of the Third International Conference on Fatigue in Transportation, held in Fremantle in 1998.

### *Lack of flexibility in prescriptive regulations*

There may be situations in which current regulations are unnecessarily rigid in their application. Examples include:

- A driver who runs out of hours close to home and has to rest in the vehicle, when higher quality rest may be obtained if a slightly longer trip were permitted;
- A driver who wishes to drive regularly, but for a short period of time on each occasion. Under the current regulations, a driver can drive for no more than 11 days in succession, no matter how short the driving period.

Consideration should be given to greater flexibility in prescriptive regimes. A key to this approach may be the facilitation of enforcement through the wider use of electronic recording devices in place of logbooks. The Commission has initiated a pilot scheme to evaluate the use of driver-specific monitoring devices.

### *Occupational health and safety*

Occupational health and safety legislation in all jurisdictions imposes a broad duty of care in the workplace. This duty of care can be interpreted as including other road users. There are two aspects in which the application of occupational health and safety legislation should be considered in further policy development on fatigue management:

- *Removal of prescriptive legislation:* The approach which has been adopted in Western Australia and Northern Territory is of interest and should be considered for national application. Issues which must be addressed in any evaluation of this approach include:
  - whether the approach provides sufficient certainty to road transport operators
  - whether the approach will result in effective enforcement, particularly in an industry characterised by a large number of small operators and a small number of medium and large operators
- *Possible inconsistency between the requirements of road transport regulation and occupational health and safety regulation:* Suggestions have been made that

compliance with road transport regulations may not satisfy duty of care requirements under occupational health and safety legislation. If this is the case, and if the road transport provisions are to be retained, consistency between the two regulatory approaches should be a high priority.

### *Fatigue Management*

Whilst the pilot under development by Queensland Transport currently includes only a small number of transport operators, that number will increase as Phase 2 pilot operators are accredited. The pilot will then be subject to a full evaluation and will be considered for national application as a module of the National Heavy Vehicle Accreditation Scheme.

## **5 Conclusion**

Uniform provisions for the prescriptive regulation of hours of driving and work for drivers of heavy vehicles have now been approved by Ministers and are being implemented in the populous areas of Australia.

The Commission sees these provision as:

- enabling more effective enforcement action to be taken against those currently responsible for unsafe practices
- providing greater operational flexibility, particularly for drivers and operators who demonstrate higher levels of responsibility
- through chain of responsibility provisions, working in conjunction with occupational health and safety legislation to change industry cultures and attitudes to fatigue, leading to the adoption of safer operating practices
- providing a base for further policy development, including taking more account of research results on factors leading to fatigue.

A review of regulatory approaches to fatigue in road transport will be commenced as part of the Commission's 1999/2000 Work Program.

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