3

THE WAY AHEAD

Introduction

3.1 At the same time as the transport industry is developing a range of innovative responses to the problem of managing fatigue, there is a remarkable degree of convergence in the way that people are thinking about the problem.

3.2 It is generally acknowledged that:

- all participants in the industry have a responsibility to address the problem;
- that cooperative endeavours are more likely to succeed and approaches which bring together workers, managers and regulators are better able to identify workable solutions; and
- that solutions need to be as multi-faceted as the problem itself, addressing a broad range of regulatory, management, organisational and behavioural issues.

3.3 All these developments are extremely positive and suggest that with concerted effort better means of managing fatigue can be introduced throughout the industry. What remains to be done is to secure this progress and establish a solid and consistent foundation from which further fatigue management solutions can be developed.

3.4 In looking at the way ahead, we consider:

- whether more can be done to address or at least ameliorate some of the basic economic causes of fatigue;

- whether the regulatory regimes in place are as comprehensive and complementary as they should be; and
- whether awareness about the causes of, responsibility for and management of fatigue can be better promoted and understood by all stakeholders.

3.5 Our approach is built on the view that there are many common elements in managing fatigue throughout the transport industry. Just as the basic causes of fatigue are common throughout the industry, so too are some of the principles that should be applied in response. An example of this can be seen in the almost identical approaches taken by regulators in the aviation and road sectors. Both CASA and the NRTC are developing multi-tiered, regulatory frameworks, incorporating base regulations and additional less prescriptive 'outcome' focussed rules.

3.6 This is not to say that 'one size fits all' solutions can be employed, but instead that there is great scope for cross-modal cooperation.

3.7 This Chapter begins by considering how best to address some of the basic economic causes of fatigue: the impact of deregulated and competitive markets, reduced staffing levels, low freight rates and restrictive methods of payment.

Addressing the economic causes of fatigue

3.8 As discussed in Chapter 1, the manufacture and provision of goods and services increasingly requires 24 hour operations. In many ways, our entire society is evolving into a "24 hour society" as we expect goods and services to be available around the clock. In simple terms, this requires people to be at work at all hours of the day and night. This has been described as the '24/7' future, where 'maximally efficient utilisation of capital assets 24 hours a day, seven days a week, and seamless 24/7 customer service has become the norm, and the expectation'.[1] The transport industry plays a key role in the "24 hour" society, ensuring that the goods we want are available when and where we want them.

1 Moore-Ede.M, 1999. 24/7 Alertness Management: Software Tools for the Transportation Industry, paper presented to Fourth International Conference on Fatigue in Transportation, Fremantle, 19–22 March 2000.

3.9 The constant drive towards economic efficiency and higher productivity has wrought dramatic changes in the transport industry over the last twenty years:

- governments have changed their role in the provision of transport services and changed the nature of regulation;
- technical improvements have enabled an increase in capacity and speed of delivery;
- companies have sought to contain costs and maximise the return on their investments; and
- customers have demanded cheaper, quicker and more reliable services, often incorporating 'just in time' deliveries.

3.10 As a result of these changes the industry has been made more efficient and increased competition has resulted in lower transport costs for consumers. But there is a growing body of evidence indicating that we are fast approaching the point where best practice in efficiency is jeopardising best practice in safety.

3.11 The pressure on businesses to be competitive has led to decreased staffing levels, increased hours of work, higher asset utilisation levels, lower returns and increased workloads, all of which have produced patterns of work that impinge on sleep and increase exposure to fatigue.[2] Many of the submissions we received argue that the pressure to be competitive is the most important underlying factor contributing to fatigue.

3.12 Concern about the negative effect of competition on the transport industry is not new. For example, in 1995 the former House Committee on Transport, Communications and Infrastructure concluded in its *Plane Safe* report that excessive competition in the General Aviation sector places essential maintenance at risk and 'endangers safety'.[3]

3.13 In its submission, MMI Insurance claimed that the major fatigue factor in road transport is industry viability and the profitability of individual businesses.

> It is the contention of MMI that the issue of driver fatigue will never be adequately addressed by focusing on the management of fatigue alone, as it is the financial position of the business that ultimately determines the safety related business outputs.

2 Submissions Nos 6, 9, 19, 23, 27, 37, 43, 82, Vols 1, 2, 6, pp.56, 123, 255, 288 and 291, 349, 475, 603, 1249; Transcript of evidence, 10 September 1999, Melbourne, p.189 (Prof. David Dinges).

3 The House of Representatives Standing Committee on Transport, Communications and Infrastructure, 1995, *Plane Safe: Inquiry into Aviation Safety*, AGPS, Canberra, p.57.

> If the business is viable and can afford to operate in a safe and profitable manner, then issues such as driver fatigue are easily addressed as vehicle and people utilisation levels will be at manageable levels.[4]

3.14 This analysis applies equally in the other sectors of the transport industry, all of which have to contend with competitive pressures.

3.15 The submissions highlighted three economic issues as requiring particular attention: freight rates, staffing levels and payment methods.

Freight Rates

3.16 There is little doubt that the Australian road transport industry reduced its freight rates as a result of competition. However, this has come at a price. Evidence suggests that the combination of low freight rates and the increasing cost of overheads (such as fuel and tyres) means that many operators are being forced to driver longer, faster and further in order to make even a small profit. As one long distance truck driver told us, he has 'never ever worked harder to try and make nothing'.[5]

3.17 Further, there is an increased need to raise utilisation levels on equipment, which, when tied to low freight rates, creates pressure to drive long hours to make ends meet. The general message we received, particularly from owner-drivers, was that the industry has gone too far and that efficiency is now threatening viability. Mr Dean Croke stated that:

> The trucking industry has almost bent over and said, 'Here we are. We are so efficient; we are so oversupplied; we will do it almost for nothing.' The rates they are doing it for are incredibly low. I think the truck industry has gone too far in creating efficiencies, because they have not put the human factor into the equation.[6]

Reduced Staffing

3.18 In an increasingly competitive economic environment many companies decide to reduce staffing levels in an attempt to remain viable.

3.19 The 1999 Bureau of Air Safety Investigation *Regional Airlines Safety Study* identified the trend toward minimum staffing levels, 'largely due to

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4 Submission No 112,Vol 7, p.1807 (Mr Dean Croke–-MMI Insurance).

5 Transcript of evidence, 23 June 2000, Canberra, p. 822 (Mr Rodger Walker). Mr Walker also told us that 'When you look at our costs for fuel and tyres alone, you are looking at 94 cents a kilometre. We would average at the moment maybe $1.04 or $1.05 a kilometre'.

6 Transcript of evidence, 13 March 2000, Canberra, p.810 (Mr Dean Croke—MMI Insurance).

economic pressures', as having a negative effect on the ability of aviation companies to adequately service aircraft.[7] One respondent to the BASI survey suggests that:

> The almighty dollar takes precedence. The airline can hire highly paid managers but not employ additional maintenance personnel, [or] buy spares and equipment to carry out maintenance tasks.[8]

3.20 Similarly, the Fremantle Pilots raised the issue that marine pilotage agreements between pilotage companies and port authorities often did not take into account increased workload, such as shipping movements, and thus did not allow for increasing staff levels to adequately meet changing work requirements.[9]

3.21 Additionally, the Australian Marine Pilots Association (AMPA) said that competition between ports as a result of national competition policy has led to pressure on marine pilotage companies to cut costs. The AMPA argues that this cost cutting 'limits the amount of funds available to run the pilot service and it limits the number of pilots you can employ'.[10] A reduction in staff or the maintenance of current staff levels in the face of increasing workloads, often results in additional work having to be undertaken by those already employed, either in the form of longer shifts or overtime, or both, thus contributing to fatigue. In regard to ships crews, the Australian Maritime Safety Authority said that the 'current round of manning reduction has created the potential on some ships in some trades, for groups to work excessive hours'.[11]

Payment Methods

3.22 A number of submissions have argued that the 'payment by results' method used in road transport is a major contributor to driver fatigue. This type of payment may encourage drivers to work longer hours to increase their earnings.[12] This obviously reduces the time available for rest.

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7 Exhibit 7, *Regional Airline Safety Study*, Bureau of Air Safety Investigation, p. 96

8 Exhibit 7, *Regional Airline Safety Study*, Bureau of Air Safety Investigation, p.6

9 Submission No 23, Vol 2, p.291 (Fremantle Pilots).

10 Transcript of evidence, 2 August 1999, Brisbane, p.154 (Captain Steve Pelecanos—AMPA).

11 Submission No. 18, Vol 1, p. 242 (Australian Maritime Safety Authority).

12 Submission No 28.01,Vol 7, p.1803 (Ann Williamson). Payment is usually calculated by kilometres travelled or weight of load.

3.23 The NSW State Coroner made mention of payment methods while investigating the 1989 NSW truck and coach accident near Cowper in NSW.

> The driver of the semi trailer…worked under a system which was obviously designed to reward him for extended periods of driving. He was paid a fee per trip plus a fee per kilometre travelled. The more trips he fitted in, and the further he drove each day, the more he was paid. Such a method of remuneration is decidedly unhealthy.[13]

3.24 The South Australian Coroner's 1999 report on the Blanchetown road accident highlighted the method of paying by 'results' as a major contributor to fatigue in truck drivers. The Coroner made the recommendation that regulators consider:

> The extent to which the current system, whereby drivers are paid by the trip, or by the kilometre, represents an incentive to break the law (the evidence from this inquest certainly proves it does), and whether it is possible to design a different system which provides drivers with more incentive to comply with the law, and with safe work practices.[14]

Committee comments

3.25 We have no doubt that the pressure on transport companies to remain competitive is one of the most prominent causes of fatigue.

3.26 Decisions to reduce staff and to accept jobs at cut price rates and on payment terms that encourage overly long driving or working hours can all have dramatic and adverse effects on the fatigue risk faced by an organisation.

3.27 The fact is that there is little governments can do to intervene in these economic matters. They are decisions made by businesses operating in a free market for transport services. Some businesses will make bad decisions – decisions which reduce their standards of service, increase their commercial risks and, potentially, jeopardise their viability. Others businesses will make commercially sustainable decisions and be successful.

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13 NSW State Coroner, *The adjourned hearing into the inquest touching the deaths of David Kevin Hutchins and nineteen others which occurred as the result of a collision between a semi-trailer and a motor coach at Cowper, near Grafton, on 20 October, 1989*, Glebe Coroners Court 20 April 1990, p. 27.

14 Exhibits 5, Finding of Inquest, South Australian Coroner's Court, 17 March 1999.

3.28 In the first instance, prime responsibility for ensuring that the market for transport services operates in a fair manner lies with the industry itself. Not just with the individual operators who are pressed into making unsustainable decisions, but also with the customers and freight-forwarders who have, over the years, imposed unrealistic delivery expectations at the same time as benefiting from the reduced rates they have extracted.

3.29 It is simply not feasible for governments to make and impose decisions about optimal staffing levels within individual transport companies; or about the rates of payment in haulage contracts; or about payment methodologies. These are matters which the industry itself needs to resolve.

3.30 That said, governments do have a clear responsibility for protecting the safety of third parties (such as other road users), and there are some areas where governments may be able to help the industry fix its problems.

3.31 For example, if business viability is a key fatigue risk, then governments, both at the Commonwealth, and State and Territory level, should look at doing more to educate transport operators, especially owner drivers in the road transport industry, about basic business principles. Information should routinely be provided to transport companies about how to identify and manage commercial risks, including the risk of fatigue, and how to ensure that business decisions promote rather than undermine sustainability.

3.32 Owner-drivers are a particular risk group in regard to viability. Governments and industry should also establish a training fund to subsidise access by owner-drivers to business training programs. This will help overcome the cost barriers that many owner-drivers currently face in attempting to upgrade their business skills.

3.33 The Commonwealth, and State and Territory governments, should closely monitor the effects of economic pressures on safety in the transport industry. In addition, fatigue and fatigue management should be key features of any future Productivity Commission inquiries into transport.

3.34 Governments can also help solve problems by facilitating and co-sponsoring industry conferences. An example of this was the action taken by the Commonwealth in convening a road transport roundtable in Canberra in June 2000, where road transport industry representatives met to consider the development of a code of conduct on the setting of mutually acceptable freight rates, recognising the costs of transporting goods and the need for operators to make a fair return on investment without working unreasonable or unsafe hours.

3.35 Accordingly, at the same time as calling upon the transport industry to take urgent action to ensure that the economics of its industry do not pose an unreasonable threat to public safety, we make the following recommendations.

Recommendation 24

3.36 **The Minister for Transport and Regional Services should seek the strongest possible cooperation from his State and Territory colleagues at the Australian Transport Council to:**

- **develop transport operator education programs aimed at improving business skills; and**
- **establish a government and industry sponsored training fund to subsidise access by owner-drivers to business education programs.**

Recommendation 25

3.37 **The Minister for Transport and Regional Services should convene a series of transport industry round-table meetings to examine:**

- **the extent to which the economics of the transport industry pose a threat to public safety; and**
- **the measures which might be implemented to improve staffing levels within the transport industry, to ensure that freight rates represent a fair return to operators on their investment, and to ensure that methods of payment do not encourage unsafe operations.**

Recommendation 26

3.38 **The Minister for Transport and Regional Services, in consultation with the Treasurer, should direct the Productivity Commission to include fatigue and fatigue management as key features of any future inquiries into transport.**

3.39 The other major consequence of the drive for increased productivity in the industry has been a disregard for the human impact of increased working hours. To date this has essentially been seen as an industrial issue. But now, as the link between longer hours (particularly long hours worked at

night) and fatigue is being seen more clearly, there are those who argue that it should be seen more as a matter of public concern than private negotiation.

The growth in working hours

3.40 For many employees, the last ten years has seen a demonstrable increase in working hours.

3.41 The Australian Bureau of Statistics reports that the number of people working a 'normal' 35 to 40 hour week declined to under 50 per cent between 1978 and 1998. In the same period, the number of people regularly working over 49 hours per week increased from under 20 per cent to around 35 per cent.[15]

3.42 The number of people working non-standard work schedules is also on the rise, currently estimated at being between 15 and 20 per cent of all workers in industrialised countries. Allied with this move away from standard work schedules, the length of time typically worked by shift workers has increased from 8 hours per shift to 12 hours per shift. It is estimated that in the two-year period from 1993 to 1995, the percentage of workers in the transport and storage industry working 12 hour shifts rose from 3 to 11 per cent.[16]

3.43 Notwithstanding the fact the pattern of increasing hours and longer shifts is common in the transport industry, there are many who are concerned about the impact on safety and on the quality of life of workers.

3.44 While it is acknowledged that most truck drivers work standard hours, evidence presented to us suggests that many in the long distance road transport industry question the long hours worked in this sector of the transport industry.[17]

3.45 Similarly, the BASI *Regional Airlines Safety Study* indicated that air crew, cabin crew and maintenance staff were concerned about the impact of long shifts, inadequate rest breaks, breaches of flight and duty time limitations, and excessive workloads.[18]

3.46 The Australian Centre for Industrial Relations Research and Training (ACIRRT) argues in its submission that halting the increase in working

15 Submission No 77, Vol 5, pp.1198-1200 (ACIRRT).

16 Submission No 77, Vol 5, pp.1198-1200 (ACIRRT).

17 See Submissions No 110, 112, Vol 7, pp. 1743, 1822, Exhibit 41, Transport Workers Union Long Distance Survey: Summary

18 Exhibit 7, *Regional Airline Safety Study*, Bureau of Air Safety Investigation.

hours is at least as important as encouraging the widespread implementation of fatigue management programs in the workplace. ACIRRT makes the point that 'workplace or individual fatigue management will be a limited strategy within an hours regime where very long hours are being worked'.[19]

3.47 The challenge, as perceived by ACIRRT and those representing the interests of workers, is to develop a coherent standard on working hours that can be used as a guide by industry and the workplace.[20] They cite the European Commission's *Working Time Directive,* the key elements of which are described in Box 3.1, as a model in this regard.

Box 3.1: International developments – the European Commission *Working Time Directive*

In 1993 the European Commission introduced the Working Time Directive to ensure that 'workers are protected against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disruptive working patterns'. The initial Directive did not cover mobile workers in the road, air and inland waterways, and sea fishing sectors. The European Commission is considering including these sectors under the Directive. This will establish the maximum weekly working hours, conditions for night work, rest breaks and rest periods for all workers in the transport sector. Significantly, in road transport night work is limited to eight hours in twenty-four.

Source European Commission, at www.europa.eu.int/comm/dg05/news/worken.htm.

3.48 In the most part, hours of duty in the Australian transport industry have traditionally been prescribed in industrial agreements, arrived at after negotiation between employer and employee.[21] This is still the case for many workers, although some now find their hours of duty are prescribed by regulations, such as the *Road Transport Reform (Driving Hours) Regulations* and the flight time and duty rules for the air crew described in Chapter 2.

Safety should be non-negotiable

3.49 The risk of allowing hours of work to be settled solely in the industrial negotiations arena is that safety and hours of rest can be bargained away. Some employers may believe, falsely, that longer hours and more night shifts always represents better productivity and some employees can be tempted by the prospect of more money to do more work.

3.50 ACIRRT argues that in an increasingly deregulated industrial relations environment, the lack of agreed standards allows for 'competition' around issues of working time which places a downward pressure on conditions

19 Submission No 77, Vol 5, p. 1203 (ACIRRT).

20 Submission No 77, Vol 5, p. 1197 (ACIRRT)

21 Submissions Nos 19, 77, Vols 2, 5, pp. 255, 1198.

of work and on safety standards.[22] The Public Transport Union claims that, in the rail industry, longer hours are seen by rail operators as an easy way of increasing productivity:

> Current experience shows that rail managements are aggressively extending shift lengths, demanding that employees deliver all the flexibility and not addressing the need for management to properly organise workflow in many circumstances.[23]

3.51 We were advised by the Australian Council of Trade Unions that 75 per cent of new Enterprise Bargaining Agreements (EBAs) include changes to working hours and that, in 1997, one sixth of the EBA's reviewed by the ACTU contained provision for 12-hour shifts.[24]

3.52 Captain Graham Quick raised the concern that EBAs in the aviation industry do not state the amount of allowable time off.

> The current EBA under which I work does not mention days off at all. In fact, it does not entitle a pilot to a day off.[25]

3.53 The Transport Workers Union stated that some of the provisions in recent non-union agreements in the long distance road transport sector actively contribute to fatigue. They noted that while the Commonwealth *Transport Workers' (Long Distance Drivers) Award 1993* bases payment rates on an average speed of 75km/h, a recent non-union agreement calculates payment on an average speed of 90km/h, which is unrealistic and not only lowers a drivers earning capacity but encourages drivers to drive faster and for longer.[26]

3.54 We have also received representations arguing that amendments to the *Workplace Relations Act 1996* have removed a number of fatigue management related issues as allowable matters in awards. Specifically, rostering and accommodation are no longer allowable matters in awards.[27]

What can be done?

3.55 We accept that the intent of Australia's industrial relations system at present is to allow employers and employees maximum flexibility in determining terms and conditions of employment that are appropriate to

22 Submission No 77, Vol 5, p. 1198 (ACIRRT).

23 Submission No 63, Vol 4, p. 902 (Australian Rail, Tram and Bus Industry Union, National Office).

24 Submission No 74, Vol 5, p. 1158 (ACTU).

25 Submission No 33, Vol 2, p.423 (Captain Graham Quick).

26 Submission No 64, Vol 4, pp.974-5 (TWU).

27 Submission Nos 43, 59, Vols 3, 4, pp. 606, 853 and 865. (CAOOA and AIPA).

the particular circumstances of their enterprise. We also accept that there are mutual interests involved in striving to create and maintain an efficient and productive enterprise and that pay rates and hours of duty are legitimate matters for negotiation.

3.56 Nevertheless, it is disturbing that long hours of work, 12-hour shifts and routine night work are becoming entrenched in industrial agreements and, as noted in Chapter 2, in some regulatory arrangements. Further, we are concerned with the over-reliance on overtime that is apparent in some sectors of the transport industry such as aircraft maintenance.

3.57 We are not confident that these decisions are being made in the full knowledge of the fatigue and safety impacts of long hours of work, excessive night work, extended periods of overtime and inadequate rest breaks. It seems to us that they are being made on the basis of perceived economic imperatives and, possibly, on false assumptions about productivity: assumptions which value asset utilisation more highly than risks to personal and public safety.

3.58 We would like to see the Employment Advocate and the Industrial Relations Commissions take a more active role in ensuring that industrial agreements in the transport industry take reasonable account of the need to manage fatigue sensibly.

3.59 Under the *Workplace Relations Act*, the Employment Advocate, in regard to the requirements for filing an Australian Workplace Agreement (AWA), must provide information on occupational health and safety law to both parties of an AWA.[28] We believe that when providing such information to parties working in the transport industry, the Employment Advocate should ensure that the information explicitly covers fatigue and fatigue management, making particular reference to any industry codes of practice or occupational health and safety requirements. This would provide both parties with clear guidence in regard to identifying and managing fatigue in the workplace. This information should also be available to persons or organisations engaged in the process of developing a certified agreement.

28 Workplace Relations Act 1996, Section 170VO, Subsection 2(b)

Recommendation 27

3.60 **The Employment Advocate should, when providing information to parties to an Australian Workplace Agreement (in accordance with Section 170VO of the *Workplace Relations Act 1996)* include explicit information on fatigue and fatigue management, particularly about the requirements of any industry codes of practice or government regulations in the transport industry.**

Recommendation 28

3.61 **The Australian Industrial Relations Commission should ensure that explicit information on fatigue and fatigue management is provided to all parties engaged in negotiating an Enterprise Bargaining Agreement in the transport industry**

3.62 To gain a clearer appreciation of the extent to which excessively long hours are already entrenched in existing industrial agreements, the Commonwealth Government should conduct a review of a representative selection of the industrial agreements applying to the transport industry.

3.63 As part of this review the Government should ensure that the hours of work provisions comply with occupational health and safety standards and check how the provisions rate against the computer-based fatigue management modelling packages referred to elsewhere in this report.

3.64 As part of this on-going review the Commonwealth should consider what action is required to ensure that present and future industrial agreements do not perpetuate excessive hours of work, thus contributing to workplace fatigue.

Recommendation 29

3.65 **The Minister for Transport and Regional Services, in consultation with the Minister for Employment, Workplace Relations and Small Business, should review a representative selection of the Australian Workplace Agreements and Enterprise Bargaining Agreements applying to the transport industry to ensure compliance with existing occupational health and safety requirements and to assess how they rate against accepted fatigue management principles.**

Improving the regulatory environment

3.66 Much of the debate during our inquiry revolved around how best to regulate the transport industry: whether detailed rules governing hours and work and rest should be prescribed in legislation or whether employers should be required simply to develop safe systems of work which take proper account of the need to manage fatigue.[29]

3.67 We see merit in both approaches.

3.68 Prescriptive legislation will continue to have a place in the industry for some time yet. The advantages of a legislative approach are that the rules can be clearly described, they apply uniformly across the industry or across particular parts of the industry and they provide a basis for consistent enforcement action. In an area where concerns about personal and public safety are growing, legislated rules provide a high degree of certainty and confidence.

3.69 There is also a place for rules that require an outcome (such as a safe working environment) without dictating the means of achieving that outcome. The flexibility of allowing transport operators to develop their own responses to the particular fatigue risks that they confront creates an environment where new approaches can be developed.

3.70 Of course, each approach also has its weaknesses. A prescriptive approach can be too rigid to accommodate all operational situations, while a flexible approach can mean that safety considerations run second behind economic factors.

3.71 We are pleased to note that the regulatory regimes that are currently evolving in the road transport and aviation sectors contain elements of both approaches: a firm regulatory base and flexible additional requirements. This type of model allows for the advantages of both approaches to be realised at the same time as acknowledging the limits of each approach individually.

3.72 There was a continuing theme in the evidence that there are still gaps in regulatory regime.

3.73 As noted elsewhere in the report, we think that parts of the *Road Transport Reform (Driving Hours) Regulations* developed by the National Road Transport Commission need to be amended and that significantly more work needs to be done in regulating aviation safety.

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29 See Submissions No 19, 28, 34, 46, 50, 83, Vols 2, 3, 6, pp. 259, 366, 430, 697, 719-720, 1301.

3.74 We have also received evidence arguing that more clear guidance needs to be provided to transport operators on what constitutes a safe system of work: on the principles and practices they need to institute to fulfil their fatigue management obligations. It has been argued that such guidance could be provided by means of:

- standards prescribed by the Commonwealth and State occupational health and safety authorities;[30]
- voluntary, industry-based codes of practice;[31] or
- standards developed by Standards Australia.[32]

3.75 Each of these suggestions is discussed further in the following sections, but it worth noting at the outset that they are not mutually exclusive. For example, a national occupational health and safety standard and code could be incorporated into industry specific codes of practice. Similarly, an Australian Standard may be referred to in a code of practice as a benchmark or may be used as the basis for accreditation requirements.

National occupational health and safety standard on fatigue management

The occupational health and safety regime

3.76 Australian occupational health and safety regulations are established in both Commonwealth and State and Territory laws. Each State and Territory already has a principal occupational health and safety act that sets out the responsibilities for ensuring that workplaces are safe. The Commonwealth can also establish occupational health and safety legislation in areas in which it has primary responsibility such as the *Occupational Health and Safety (Maritime Industry) Act 1993*, which is administered by the Minister for Employment, Workplace Relations and Small Business.

3.77 These laws impose 'duty of care' obligations on various groups of people who play a role in workplace health and safety. The duty of care principle requires that everything reasonably practical must be done to protect the health and safety of other people at the workplace. This duty is placed on all employers, employees and any other people who have an influence on

30 Submission No 23, Vol 2, p. 295 (Fremantle Pilots). See also Submission No 26, Vol 2, p. 312 (National Rail Corporation Ltd).

31 Transcript of evidence, 7 October 1999, Sydney, p. 417 (Dr Ann Williamson).

32 Submission No 26, Vol 2, p.311 (National Rail Corporation Limited).

the hazards in the workplace (such as subcontractors and designers of plant used in the workplace).[33] In the context of the transport industry, this duty could reasonably be extended to apply to those who use transport services as part of their business.

Support for an occupational health and safety standard

3.78 A number of submissions called on the National Occupational Health and Safety Commission (an inter-governmental body responsible for ensuring consistency between the various occupational health and safety regimes) to develop and declare a national standard and code of practice on fatigue.[34]

3.79 National occupational health and safety standards typically deal with specific workplace hazards or hazardous environments and set out 'common essential requirements that are intended to be included in the occupational health and safety legislation of each jurisdiction'. Occupational health and safety codes of practice are a second tier instrument, aimed at advising employers and workers of 'acceptable ways of meeting declared national standards'.[35] To date the Commission has declared 17 Codes of Practice and 8 National Standards applicable to all workplaces.

3.80 We believe that the Commission should prepare a national standard declaring fatigue as a workplace hazard in the transport industry and issue a code of practice establishing minimum standards of fatigue management for transport operators.

3.81 A national occupational health and safety standard and code would:

- provide guidance for operators about the measures they need to take to establish safe systems of work;
- provide a point of reference for those sectors of the industry wishing to develop complementary codes of practice; and
- establish benchmarks against which operator and industry performance can be assessed.

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33 National Occupational Health and Safety Commission, *Occupational Health and Safety in Australia: The Law—Acts and Regulations,* www.worksafe.gov.au/worksafe/07/dutycare.htm, page 1 of 1, downloaded 22/6/99.

34 Submissions Nos 19, 23, 26, Vol 2, pp.259, 295, 312.

35 National Occupational Health and Safety Commission, *Occupational Health and Safety in Australia: The Law—Acts and Regulations,* www.worksafe.gov.au/worksafe/FULLTEXT/docs/h6/03297-01.htm, page 1 of 3, downloaded 22/6/99.

3.82 Such a standard and code would send a powerful message to all in the industry about the central place that fatigue risk management should occupy in normal business operations.

3.83 We note that the National Commission itself has supported the need for a national occupational health and safety framework for the road transport industry, suggesting that 'this framework be developed by the industry players and facilitated by government'.[36]

3.84 Any occupational health and safety code and standard should not only apply nationally but be consistent with the other existing and emerging regulatory requirements, including the Western Australian occupational health and safety based Code of Practice for Commercial Vehicle Drivers. Trevor Jensen of Ansett made the point that standardised national regulation is far more desirable than individual State-based practices: 'what we do not need is that a worker in Brisbane has this set of rules but in Perth it is different'.[37]

Recommendation 30

3.85 **The National Occupational Health and Safety Commission should:**

- **develop and declare a national standard on fatigue in the workplace, identifying fatigue as a workplace hazard in the transport industry and setting the out common elements for inclusion in State and Territory occupational health and safety legislation; and**
- **declare a corresponding code of practice to provide guidance to employers and employees on how best to comply with the national standards.**

Enforcement of occupational health and safety standards

3.86 While the general duty of care obligations are clearly laid out in occupational health and safety legislation, we are concerned that not enough is being done to enforce these provisions.

3.87 Commonwealth, State and Territory Workcover authorities need to be more aggressive and proactive in identifying those companies that persist in operating in an unsafe manner, particularly if a pattern of unsafe

36 Submission No 93, Vol 7, p. 1550-1 (NOHSC). Gary Mahon (from Queensland Transport) supported the development of such a standard on the basis that it would establish an expectation within the industrial environment about the fatigue issue – see Transcript of evidence, 2 August 1999, Brisbane, p. 92.

37 Transcript of evidence, 8 October 1999, Melbourne, p. 528 (Mr Trevor Jensen—Ansett).

practice is evident. A workplace is not only a building or fixed structure. In most jurisdictions the cabin of a truck is designated a 'place of work' for the purposes of any occupational health and safety legislation or code of practice in operation in that State or Territory.[38] Similarly, an aircraft cockpit, locomotive cabin or wheelhouse on a ship can also constitute a 'workplace'.

3.88 We also consider that all transport industry accidents should be treated as workplace accidents and that fatigue should be considered a contributing factor to all accidents until ruled out through investigation. This is particularly relevant in regard to heavy vehicle accidents, which should be categorised as workplace accidents and investigated by relevant Workcover authorities as a matter of course. This may require additional legislation or funding to allow occupational health and safety officers wider opportunities or powers to enforce occupational health and safety provisions. We encourage all State and Territory governments to increase funding for this purpose. Closer cooperation with the insurance industry, particularly in regard to insurance claims, may also reveal patterns of unsafe practice in certain companies.

Changing the balance between prescription and standard setting

3.89 Professor Drew Dawson is one of the main proponents of the view that all prescriptive working hours regulation should be removed in favour of defining and managing fatigue as an identifiable workplace hazard controlled under existing Commonwealth and State/Territory occupational health and safety legislation. This would, he argues, eliminate the current reliance on ineffective legislation, and overlapping regulatory and reporting mechanisms'[39] and provide a number of other benefits:

- there is a pre-existing regulatory infrastructure for the development and delivery of policy guidelines and standards for managing fatigue;
- the use of OH&S legislation would be administratively simple. Procedures and mechanisms for identifying, auditing, managing and minimising fatigue are already in place; and
- most organisations have a pre-existing OH&S framework that could easily embrace fatigue management as an additional identifiable workplace hazard.[40]

38 Submissions Nos 75, 105, Vols 5, 7, pp. 1172, 1715.

39 Submission No 19, Vol 2, p. 259 (Centre for Sleep Research).

40 Submission No 19, Vol 2, p. 259 (Centre for Sleep Research).

3.90 The fatigue management regimes implemented in Western Australia and the Northern Territory for road transport provide a practical example of the combined occupational health and safety and Code of Practice approach Professor Dawson advocates.

3.91 As noted earlier, we believe that there are advantages and disadvantages associated with each approach and that it is preferable, at this stage, to use the best of both approaches in a combined regulatory strategy. This approach allows the flexibility inherent in the OH&S model to be introduced gradually and for its impact to be measured over time.

3.92 It may be that outcome based standards result in dramatic improvements to the way in which fatigue is managed and that, at some point in the future, a completely non-prescriptive approach to regulation is appropriate. However, until such time as the transport industry demonstrates to the community that it has taken control of fatigue management, elements of prescription are likely to remain in the system.[41]

Industry Codes of Practice

3.93 There is a noticeable trend towards the development of industry specific codes of practice or conduct. In general, codes of practice are neither mandatory nor carry the force of law.

3.94 Codes of practice typically provide guidance on how to meet existing regulatory requirements. For example, a primary function of the draft *National Codes of Practice for Railways* is to provide a basis for operators on the national rail network to meet the requirements of rail regulations in each State and of the Australian Standard for Rail Safety (described below). Similarly, the Western Australian *Code of Practice for Commercial Vehicle Drivers* 'plays a central role in advising industry, occupational safety and health inspectors and the Courts as to what constitutes "safe working practices" in the area of driver fatigue'.[42]

3.95 Alternatively, a code of practice may set out guidelines as to what constitutes industry best practice. For example the Aviation Safety Foundation of Australia (ASFA) has released a Code of Practice and operating guidelines which commits members of the ASFA to achieving

41 For further discussion of this point see Moore.B and Brooks.C, 2000, Heavy Vehicle Driver Fatigue: A Policy Advisors' Perspective, paper presented to Fourth International Conference on Fatigue and Transportation, Fremantle, 19-22 March, 2000. See also Transcript of evidence, 26 July 1999, Adelaide, p. 8 (Assoc. Prof. Laurence Hartley); and Transcript of evidence, 8 October 1999, Melbourne, p. 479 (Mr Barry Moore—NRTC).

42 Brindal,D and Poore, L, 2000, Fatigue Management in Western Australia, paper presented to Fourth International Conference on Fatigue and Transportation, Fremantle, 19-22 March, 2000.

the highest standards of aviation safety.[43] A code may also establish some common standards and expectations between different players within an industry. The road transport industry and its customers are currently developing a code of conduct, with assistance from the Commonwealth, that will address such issues as entry standards, and operating and commercial standards.

3.96 Codes of practice or conduct are not necessarily inconsistent with other measures such as regulatory or occupational health and safety based approaches. One line of argument suggests that Codes of Practice could bridge the gap between relevant transport legislation and occupational health and safety legislation, ensuring consistency across jurisdictions. Such Codes of Practice could be incorporated into systems that use either a prescriptive approach or an occupational health and safety approach to managing fatigue. In the context of the road transport industry, where both systems are in use, it has been suggested that:

> One or more codes of practice could cover drivers, transport operators and others in the transport chain. These codes could be given status by being referenced in road transport legislation or occupational health and safety legislation. Compliance with road transport legislation or occupational health and safety legislation, combined with adherence to the appropriate code of practice, would ensure compliance with both road transport and occupational health and safety requirements.[44]

3.97 We support strongly the moves by the transport industry to develop voluntary codes of practice. While the impetus for such codes needs to come from industry, the Commonwealth can make a valuable contribution by providing expertise, advice and a forum for sectors of the industry to develop effective codes of practice or conduct.

3.98 However, industry codes of practice or conduct are only effective if they are recognised and accepted by all players concerned and there is some positive reward for complying with the code and negative sanctions for non compliance. This is particularly so for codes that are not associated with a body of legislation. Accordingly, industry needs to pay close attention to establishing suitable incentives for compliance so as not to diminish the effectiveness of a code of practice or conduct. That being

43 Correspondence received from Mr Don Kendell, 4 May 2000.

44 B.Moore and C.Brooks, 2000, Heavy Vehicle Driver Fatigue: A Policy Advisors Perspective, paper presented to Fourth International Conference on Fatigue and Transportation, Fremantle, 19-22 March.

said, we fully support codes practice or conduct being given status by being referenced in appropriate transport or occupational health and safety legislation as a way of ensuring that they have authority and recognition.

Recommendation 31

3.99 **The Minister for Transport and Regional Services should:**

- **work with the Australian Transport Council, transport industry representatives and occupational health and safety specialists to develop workplace safety codes of conduct for each sector of the transport industry to provide guidance on how best to manage fatigue; and**
- **ensure that these codes are national in application, complement existing regulatory and occupational health and safety requirements, and, where appropriate, are given status by being referenced in relevant transport or occupational health and safety legislation.**

Australian Standards

3.100 Standards Australia is a private company that develops and publishes documents setting out the technical specifications or other criteria necessary to ensure that a material or method will consistently do the job it is intended to do.

3.101 As Standards Australia is a non-government organisation, the standards it promulgates are voluntary unless they are specifically incorporated into a regulatory framework by governments. As these standards are usually well-founded and comprehensive, such incorporation is not uncommon.

3.102 Standards Australia is a member of the International Organisation for Standardisation (ISO) and contributes to the development of and promotes compliance with international standards developed by the ISO. There are currently about 6000 Australian Standards in operation.[45]

3.103 Many companies in the transport industry have already sought and obtained quality assurance under the ISO AS/NZ 9000 series of standards, which provide guidance on quality management standards. Some companies have taken the additional step of integrating fatigue management into the ISO 9000 system, as a way of providing auditable

45 Standards Australia, at www.standards.com.au.

evidence of fatigue management.[46] These companies have judged that voluntary adoption of the ISO standard and the incorporation of fatigue management principles is a sound business decision, enabling them to better manage their organisation. It can also be a useful promotional tool, marking a point of distinction between themselves and many of their competitors.

3.104 Australian Standards could also be used to set benchmarks for entry into an industry.

3.105 In the rail industry, for example, prospective operators are required to prepare a safety management plan in accordance with the *Australian Standard for Rail Safety* (AS.4292) before they receive accreditation as a rail operator.[47] The various rail regulators audit compliance with the standard on a regular basis and if any breaches of the standard are found an operator's accreditation may be suspended, cancelled or conditions imposed.[48] This is a commendable initiative.

3.106 We believe there is considerable scope for making more use of Australian Standards in the transport industry:

- industry bodies should encourage transport companies to seek quality management accreditation; and
- the road, aviation and maritime sectors of the industry should be encouraged to work with Standards Australia to develop sector specific standards for the operation of safe systems of work.

Recommendation 32

3.107 **The Minister for Transport and Regional Services should propose to the Australian Transport Council a strategy to encourage:**

- **transport companies to seek quality management accreditation through Standards Australia and the International Organisation for Standardisation; and**
- **the road, aviation and maritime sectors, in conjunction with Standards Australia, to develop sector specific Australian Standards for Safety, incorporating fatigue management principles.**

46 Exhibit 49, Nolan's Transport Limited.

47 Submissions Nos 26, 88, Vols 2, 6, pp.314, 1465.

48 Submissions Nos 26, 88, 105, Vols 2, 6, 7, pp.314, 1465, 1709.

3.108 On a related matter, we note that the National Occupational Health and Safety Commission is currently working with Standards Australia to develop standards for occupational health and safety management systems, to be known as AS/NZ.4801.[49] This is a positive development and we encourage the Commission to ensure that the final standard recognises workplace fatigue as an occupational health and safety issue requiring careful management.

3.109 Although we support strongly the rail industry's requirement that all operators comply with the Australian Standard on Rail Safety, we note the observation made by National Rail Corporation that the standard does not set specific fatigue management obligations on operators.[50] The impact of the standard would be much improved if it did so and we urge the rail industry and Standards Australia to amend AS.4292 to incorporate specific reference to fatigue management principles.

Operator accreditation

3.110 The additional regulatory measures we have recommended above would, if implemented, all contribute towards better fatigue management in the transport industry. They would improve awareness of the problem, help promote good practice and encourage consistency. They would not force operators to implement better fatigue management practices.

3.111 A more direct way of achieving widespread behavioural change would be to introduce operator accreditation throughout the transport industry, especially in the road transport sector.

3.112 Road transport is one of the few sectors of the transport industry without some minimum standard which must be met prior to entry to the industry, and which must be maintained in order to continue operation. All that is needed for entry to the road transport industry is a truck licence, with no test required to determine whether an operator has the requisite skills and knowledge to be conducting a safe business.

3.113 It seems to us that too many owner-operators enter the road transport industry with little understanding of how to operate a safe and sustainable business. This, combined with the need to service the high debt levels acquired by purchasing a truck, creates an enormous pressure to drive longer, further and faster to make ends meet.

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49 National Occupational Health and Safety Commission, *Annual Report 1998-1999*, Ausinfo, Canberra, p.11.

50 Submission No 26, Vol 2, p. 314-5 (National Rail Corporation Limited).

3.114 Raising the threshold for entry to the road transport industry, by requiring operators to demonstrate an awareness of basic commercial, regulatory and safety requirements, would be one way of establishing minimum standards. It would also help reduce the risk to public safety.

3.115 We are aware that the introduction of compulsory accreditation of road transport operators would meet some resistance in the industry. Some would see such a scheme as an unnecessary and costly burden. However, many in the industry would agree that it is too easy to get started in the industry, that many operators lack basic business skills and run unsafe operations and that these operators act as a destabilising force in the industry.

> A lot of people, I believe, do not understand their costings in this industry. Anyone can go and buy a truck....That is why we are saying start out with licensing so that you can control the people who come into the industry. Anybody who gets a payout can just go straight in and buy a truck and they are on the road.
>
> And they just destabilise the industry once more.[51]

3.116 Road transport operator accreditation schemes have been suggested before. The 1984 National Road Freight Industry Inquiry recommended a system of operator licensing covering owner-drivers, fleet operators, freight forwarders, agents and brokers.[52] While some of the principles underpinning this recommendation are reflected in the 'chain of responsibility' provisions in the *Road Transport Reform (Driving Hours) Regulations*, the principal objective of industry-wide accreditation has not yet been picked up.

3.117 There is an example of such a scheme close to home. The New Zealand Land Transport Safety Authority requires all goods and passenger transport operators to hold a Transport Service Licence. As part of the application process all applicants are vetted for conduct or convictions that would disqualify them as a license holder on the grounds that they are not a 'fit and proper' person to hold transport license.[53] In addition, applicants must obtain a Certificate of Knowledge of Law and Practice by passing a series of exams. The exams include knowledge of general

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51 Transcript of evidence, 23 June 2000, p. 826, Canberra, (Mr Wayne Davidson and Mr Rodger Walker). See also Submission No. 22, Vol. 2, p.285 (Sanmar Consulting Group).

52 Parliament of the Commonwealth of Australia, 1984, *National Road Freight Industry Inquiry*, Parliamentary Paper No.261/1984, Australian Government Publishing Service, Canberra pp.189-191.

53 Land Transport Safety Authority, 1999, *Transport Service Licence*, Factsheet 47, Wellington.

transport industry laws and safety standards and laws specific to particular sectors of the industry.[54]

3.118 Our preferred option at this stage is to proceed with the recommendations made elsewhere in this report and allow the industry time to deal effectively with the problem of fatigue management.

3.119 However, if within a reasonable timeframe, namely by mid-2002, there is not an appreciable improvement in the manner in which the road transport industry is addressing the problem of fatigue management, the Commonwealth Government should seek Australian Transport Council approval for the development of a national operator accreditation scheme for the road transport sector.

3.120 Such an accreditation scheme would ideally cover owner-drivers, fleet operators, freight forwarders, agents and brokers and fill in the gaps left by road transport legislation and regulation such as entry requirements into the industry, including verified knowledge of fatigue and fatigue management strategies and business management skills. New operators wishing to enter the road transport industry could, if required, be given access to new enterprise incentive type education schemes, as put forward in Recommendation 24, prior to applying for accreditation to operate.[55]

3.121 An accreditation scheme would also provide a mechanism for removing from the road transport industry those operators who establish a pattern of breaching regulations and who pose a threat to public safety and themselves. Such operators would possibly have their accreditation revoked for a fixed period of time, and would not legally be able to operate a transport business during that time or until they could demonstrate that they have achieved the required standards.

3.122 The scheme could possibly be administered by a inter-government and industry heavy vehicle safety and accreditation agency.

3.123 We do not make this suggestion lightly and would prefer if it were not necessary. But the threat to public safety and to the road transport industry's credibility is of such magnitude that we believe it is appropriate.

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54 Land Transport Safety Authority, 1999, *Getting a Certificate of Knowledge of Law and Practice*, Factsheet 46, Wellington.

55 The structure and criteria for eligibility of the New Enterprise Incentive Scheme (NEIS) administered by the Department of Employment, Workplace Relations and Small Business is not suitable for owner-operators. However, the NEIS program may provide a suitable model for the development of an owner-operator focused program.

Recommendation 33

3.124 **If by mid-2002, there has not been an appreciable improvement in the way in which the road transport sector is addressing the problem of fatigue management, the Minister for Transport and Regional Services should seek Australian Transport Council approval for the development of a national operator accreditation scheme for the road transport sector. The accreditation scheme should:**

- **cover owner-drivers, fleet operators, freight forwarders, agents and brokers;**
- **incorporate training and standards for fatigue management and business management; and**
- **be administered by a national heavy vehicle safety and accreditation agency.**

Should driving while fatigued be an offence?

3.125 It is clear that fatigue is a public safety issue of the highest order. This is particularly so in road transport, which constitutes the major share of the human and economic costs of fatigue related transport accidents (see Chapter 1). The preceding recommendation is aimed at promoting culture change in the industry, however, it is clear that without some form of enforcement and penalties, drivers and operators will continue to ignore fatigue (whether for commercial or personal reasons), posing an unacceptable risk to public safety.

3.126 At present, operating a vehicle while fatigued is not an offence similar to being under the influence of alcohol. Currently, the only real option for a police officer if he or she suspects a driver is too fatigued to continue is to suggest that it is 'possibly a good idea to have a bit of a rest'.[56]

3.127 The scale of the fatigue problem requires that direct and positive action be taken. Legislators and the general public have, in the past, made tough decisions in regard to other critical road safety issues such as drink driving, speeding and seatbelts, often against strong opposition but which resulted in appreciable improvements in road safety. These measures are now widely accepted as being necessary. The issue of driver fatigue requires a similar approach.

56 Transcript of evidence, 15 September 1999, Armidale, p. 280 (Sgt. Bartholomew—NSW Police).

3.128 In recognition of the principle of chain of responsibility, we believe that both the driver and the owner of a vehicle should be culpable for a fatigue related offence and propose a two-pronged approach to developing anti-fatigue laws. In the first instance driving while fatigued should be made an offence similar to drink driving. Second, it is necessary to go beyond the driver and create a penalty for the operator. In keeping with the principle of forcing responsibility for fatigue further up the transport chain, it would be appropriate to develop complementary laws to the effect that a driver fatigue conviction would automatically result in the suspension of a vehicles registration for a set period. In States such as NSW this can be enforced through the use of Safe-T-Cam technology (see Chapter 2).[57] This measure would add a very real financial incentive for operators to manage fatigue effectively and not to force drivers to work excessive hours.

3.129 In light of the evidence from the Centre for Sleep Research equating fatigue impairment with alcohol impairment and advances in fatigue testing technology (discussed in Chapter 2), it would appear that it will be possible in the near future to set a fatigue 'limit' and to test drivers for fatigue at the roadside. This provides added weight to the validity of the proposal to make driving while fatigued an offence.

3.130 Taking the decision to make fatigued driving an offence also will give impetus to the rapid development, validation and refinement of fatigue testing technologies. The ability to accurately test fatigue, in a similar way to roadside breath tests for alcohol, will force community consideration of to what is an acceptable level of fatigue for a vehicle driver.

3.131 Community attitudes towards safety issues such as drink driving have changed due to the introduction of appropriate legislation. Similarly, it is reasonable to expect that if drivers knew they could be pulled up and charged for driving while fatigued it would cultivate an attitude similar to the current attitude to random breath testing. Just as for many people there is a psychological check when drinking if they know they have to drive and run the risk of being breath tested, there would be a psychological check on a driver not to drive if there is a risk of fatigue.

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57 In some States vehicle registration can be suspended for set periods for breaches of regulations. For example, the registration of NSW heavy vehicles may be suspended for Safe-T-Cam breaches under the NSW *Road Transport (Vehicle Registration) Regulations 1998*, 'if the Authority is satisfied, on the balance of probabilities, that a registered operator of the vehicle has failed to use or manage the vehicle so as to effectively prevent repeated violations of the traffic law'. Correspondence received from Department of Transport and Regional Services, 21 March 2000.

3.132 Additionally, if an operator knew that their vehicle registration would be suspended if the driver were charged with fatigued driving, it would force them to consider the financial risk of having drivers working excessive hours.

3.133 We feel that this recommendation complements and in many ways enforces the previous recommendation by providing very real penalties for those who, despite the plethora of measures to promote and entrench fatigue management practices, choose to act irresponsibly and dangerously. This, in effect, draws a line in the sand that should not be crossed.

Recommendation 34

3.134 **The Minister for Transport and Regional Services should:**

- **promote, through the Australian Transport Council, the development of State and Territory laws making driving while fatigued an offence;**
- **promote the development of additional laws with the effect of suspending the registration of a vehicle if a driver is found guilty of driving while fatigued; and**
- **fund the Australian Transport Safety Bureau to commence a program of research to validate the accuracy and reliability of fatigue testing technologies; in particular, those technologies which might be used at the roadside and workplace.**

Drugs in transport

3.135 There are many reports of drugs being used widely in the transport industry to help combat the effects of fatigue, particularly in the long distance road transport sector.

3.136 There is a wide range of stimulant drugs available, both legal and illicit, which are open to abuse by transport workers. These include Sudafed, Duramine and 'Speed' (amphetamine and methamphetamine).[58]

3.137 Research, based on self-reporting and tissue sampling, suggests that 'around 30 per cent of [truck] drivers use drugs'.[59] A 1993 study indicated

58 Submission No 1, Vol 1, p. 6 (Assoc. Prof. Laurence Hartley).

59 Submission No 1, Vol 1, p. 7 (Assoc. Prof. Laurence Hartley).

that in 'three states, 40 per cent of fatally injured drivers of heavy trucks were found to have drugs in their system (stimulants 21 per cent and alcohol 19 per cent)'.[60]

3.138 There are indications that drug use is an issue in other sectors of the transport industry. Drug testing by National Rail reveals that drug taking exists in the rail industry.[61] Anecdotal evidence suggests that some marine pilots may use drugs,[62] and the issue of drug use among seafarers on foreign ships (particularly flag of convenience vessels) was raised during the Committee's inquiry into the Australian Maritime Safety Authority Annual Report 1996–1997.[63]

3.139 The drug use we are particularly concerned about is that based on 'operational', rather than recreational, reasons. This feature of the problem was clearly stated by the presiding judge in a recent court case involving a truck driver who was found guilty of manslaughter following a motor vehicle accident and who was effected by drugs at the time of the accident. The presiding judge observed that the driver took drugs not to cause euphoria but to keep awake and that he 'was a worker on his way home, not a drunk on a spree'.[64]

3.140 Disturbingly, there is also some evidence that management, as suggested in the South Australian Coroner's report on the 1996 Blanchtown road accident, may implicitly or explicitly support the use of drugs.[65] We are also aware of a road transport company from Northern NSW that appears to accept and condone drug use among its drivers, rather than take effective action against drug use. The company newsletter offered this disturbing advice:

> Watch out for the early signs that the effects of the drugs are wearing off…If this happens, take a break. Get some sleep, or stop for a meal, have a walk around, take a shower, or listen to the radio…Watch how much you are using. Know where you cut off point is—that is, when the drugs aren't keeping you awake any longer.

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60 Submission No 111, Vol 7, p. 1749 (Australian Drug Management and Education).

61 Submission No 26, Vol 2, p. 314 (National Rail Corporation Ltd).

62 Submission No 37, Vol 2, p. 474.(Australian Marine Pilots Association).

63 House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, 1998. *Ship Safe: An inquiry into the Australian Maritime Safety Authority Annual Report 1996–1997*, The Parliament of the Commonwealth of Australia, pp.38-9.

64 Regina v Michael James Ryan [2000] NSWSC 724, paragraph 21.

65 Exhibit 5, Findings of Inquest, South Australia's Coroners Court, March 1999.

3.141 We are appalled by this lenient attitude towards drug use. Given the health and road safety risks associated with drug use by truck drivers, it is unconscionable that management should be condoning drug use in this way. While we do not want to imply that management support of drug taking is widespread, it is a very serious issue that should be recognised and firm action taken by companies to address the problem.

3.142 Many transport companies have instituted drug free workplace policies. Mr Williamson, Owner/Manager of a road transport company, said in response to questions about his company's policy towards drugs in the workplace that 'we will not tolerate it'. He said that he 'did not think a stay awake drug is necessary in this modern world' and that nobody 'should be using that sort of a leverage to keep themselves on the road'.[66]

3.143 We are interested in pursuing the more extensive use of random drug testing by transport companies, particularly in road transport, as a way of enforcing a zero-tolerance drug policy in the transport industry. Some sectors of the transport industry are already actively pursuing a workplace drug and alcohol testing regime. National Rail, for example, has adopted a zero blood alcohol level and drug free policy and instituted a mandatory alcohol and drug testing regime, which includes a performance monitoring policy for those who breach the guidelines and possible dismissal for repeat offenders. The National Rail Enterprise Agreement (1995) states that:

> All employees may be subject to intermittent testing. Employees will also be tested where it is suspected that they are functioning or attempting to start work under the influence of alcohol or other drugs. Similarly, employees will be tested following any incident or accident in which the involvement of alcohol or other drugs is suspected.[67]

3.144 Given the high incidence of drug taking in the road transport industry and the obvious dangers to public safety, we firmly believe that road transport companies should adopt a similar policy. In order to take firm action against the use of drugs in the road transport industry, the road transport industry should, without delay, adopt a drug free policy and that all companies should be required to implement a mandatory drug testing regime. We feel very strongly that management must take responsibility for drug use by their truck drivers, including subcontractors. The

66 Transcript of evidence, 16 September 1999, Kempsey, p.354 (Mr Rex Williamson).

67 Submission No 26, Vol 2, pp. 318-32 (National Rail Corporation Limited). A zero blood alcohol level is regarded as 0.02 gm of alcohol per 100 ml of blood.

implementation of mandatory drug testing could be incorporated as criteria for accreditation as outlined in Recommendation 33.

3.145 This zero-tolerance policy should be supported by an associated education and counselling campaign. Australian Drug Management and Education suggested that drug use be deterred through an Australian Transport Industry Drug-Free Program. This type of program would aim to deter drug use and be part of a 'holistic approach that includes education, media announcements, testing, assistance, positive alternatives, counselling, rehabilitation and law enforcement'.[68] They argue that evidence of the success of this approach 'can be seen from overseas and Australian drug-free workplace programs, roadside breath tests (RBTs), smoke free workplace programs and the Australian approach to drugs in sport'.[69]

3.146 The development of workplace and industry-wide education programs is an important part of the response to the problem and should be supported by industry associations and governments. On their own, however, they will not eradicate a problem caused, in large part, by work practices in the industry.

3.147 A 1998 survey of truck drivers in Western Australia, found that drivers 'who only had between 2 and 6 hours of sleep before a trip used significantly more than expected over the counter drugs'.[70] The survey also revealed that an important factor in influencing drug use is the way a company is managed. Drivers indicated that where a company allowed for adequate rest, they were less inclined to use stimulant drugs. Conversely, where a company set tight schedules, drivers were more inclined to consider or probably use drugs for a trip.[71]

3.148 These management and organisational issues need to be addressed at the same time as testing for drug use or educating and counselling employees about the dangers of drug use. The temptation to take stimulant drugs will continue for as long as companies continue to set unrealistic work schedules, run inappropriate rosters and ignore basic fatigue management principles. Drug education should be aimed at managers as well as at drivers

3.149 It is unacceptable that any transport operator should feel the need to take drugs in order to do their job properly. The transport industry and governments should, as a matter of urgency, establish a broad ranging

68 Submission No 111, Vol 7, p.1750 (Australian Drug Management and Education).

69 Submission No 111, Vol 7, p.1750-1 (Australian Drug Management and Education).

70 Submission No 1,Vol 1, p.6 (Assoc. Prof Laurence Hartley).

71 Submission No 1,Vol 1, p.7 (Assoc. Prof Laurence Hartley).

strategy, directed equally at employee and employers, to reduce the extent of drug taking in the industry.

Recommendation 35

3.150 **The Minister for Transport and Regional Services, through the Australian Transport Council and in conjunction with industry, should develop and implement a drug free policy for the road transport industry, with all road transport companies being required to institute and administer mandatory drug testing in the workplace. Such testing should include subcontract drivers as well as company drivers.**

Recommendation 36

3.151 **The Australian Transport Safety Bureau, in consultation with peak industry bodies should develop an industry-wide drug-free workplace program and associated counselling program, aimed equally at discouraging employees from taking drugs and encouraging employers to establish work practices which respect basic fatigue management principles.**

Research is a priority

3.152 The need for continued and focused research was consistently raised throughout the inquiry with suggestions for possible research coming from all sectors of the transport industry.[72] There has already been a great amount of research undertaken both in Australia and internationally and the basic causes of fatigue appear to be well researched. What appears to be required is research on fatigue in operational settings to test and validate different strategies to manage fatigue, such as technology and work practices.

3.153 Australia leads the way in 'second-wave' research aimed at managing fatigue,[73] with the scientific community and agencies such as the National

72 Submissions Nos 20, 32, 72 Vols 2, 5, pp.262, 409, 1141.

73 Transcript of evidence, 26 July 2000, Adelaide, p. 55 (Prof. Drew Dawson). 'Second wave' research is research aimed at finding practical ways to manage fatigue, as opposed to 'first-wave' research, which focused on identifying fatigue as a problem.

Road Transport Commission actively engaged in fatigue related research. But overall, government support is lagging.

3.154 We are disturbed by the suggestion 'that the per capita GDP related expenditure on fatigue research in Australia is right at the bottom, down along with Africa, India and some of those countries'.[74] Funding for fatigue management research in Australia is very low in comparison to what is spent in the US and Europe. Professor Dawson estimates that spending in the US and Europe is 10 to 100 times more per capita.[75] Research spending can be seen as an investment with very good economic returns as well as improved safety. Professor Dawson estimated that 'the benefits to organisations are somewhere in the order of $5 to $10 in cost reductions for every dollar they spend'.[76]

3.155 We do not want to dictate what research should be undertaken. The evidence received indicates that researchers, industry and regulators know what areas need further research. Our concern is with the fragmented and uncoordinated nature of the research effort. The evidence suggests that while each sector is progressing their own strategies, there is not a great deal of effort applied to finding ways to merge information, create synergies between modes or develop a national cross-modal approach to fatigue management. Mr Trevor Jensen of Ansett argues that despite the research that is going on 'we have not had a central forum to pull together all the research at this time'.[77]

3.156 The Commonwealth, has a definite role to play in coordinating the research being conducted. This could include a range of activities, including the cross modal evaluation of initiatives, such as fatigue modelling software and fatigue management regimes, to determine if and how they can be applied broadly. Further, the Commonwealth should take on a leadership role in merging the research effort and providing national direction on issues. The Australian Transport Safety Bureau is well placed to perform these functions.

The Australian Transport Safety Bureau

3.157 The Australian Transport Safety Bureau (ATSB) was established in July 1999. It integrates the various non-regulatory safety units that operate within the Department of Transport and Regional Services: the Bureau of

74 Transcript of evidence, 26 July 2000, Adelaide, p. 55 (Prof. Drew Dawson).

75 Transcript of evidence, 26 July 2000, Adelaide, p. 55 (Prof. Drew Dawson).

76 Transcript of evidence, 26 July 2000, Adelaide, p. 55 (Prof. Drew Dawson).

77 Transcript of evidence, 8 October 1999, Melbourne, p. 526 (Mr Trevor Jensen—Ansett).

Air Safety Investigation (BASI), the Marine Incident Investigation Unit (MIIU), the non-regulatory parts of the Federal Office of Road Safety (FORS) and a new Rail Safety Unit.[78]

3.158 When questioned about the role of the ATSB, the Department of Transport and Regional Services indicated that although it did not see a regulatory role for the ATSB, it would 'genuinely want to take a more proactive and multimodal role' in addressing fatigue, particularly in regard to research.[79] Professor Dawson sees the ATSB playing a key role in developing industry-based guidelines for new fatigue management approaches such as the use of fatigue modelling software. This would promote a common understanding of how new approaches should be used and implemented within an industry.[80]

3.159 The creation of the ATSB provides the opportunity for establishing an agency to coordinate a national response to fatigue in transport. We would like to see the ATSB take on a more extensive and pro-active leadership role, while retaining its sector specific investigation expertise, developing a broader field of activities similar to the US National Transportation Safety Board. It is envisaged that the work of the ATSB would complement the work undertaken by sector specific agencies such as the National Road Transport Commission.

3.160 The US National Transportation Safety Board (NTSB) provides a possible model for the future development of the Australian Transport Safety Board.

Box 3.2: US National Transportation Safety Board

The National Transportation Safety Board is an independent Federal agency responsible for promoting aviation, rail, road and marine safety. It is mandated by the US Congress through the Independent Safety Board Act 1974 to investigate transportation accidents, determine the probable causes of the accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The NTSB publicises its activities and decisions through accident reports, safety studies, special investigation reports, safety recommendations and statistical reviews. [81]

3.161 Evidence, and experiences such as the national rail industry Workload and Shiftwork Study, suggests that government, industry and the university sector should work together thus allowing a valuable cross flow of ideas, perspective's and practical experience and therefor allow funding to be

78 Submission No 83, Vol 6, p. 1261 (Dept. Transport and Regional Services).

79 Transcript of evidence, 8 November 1999, Canberra, p. 607-8. (Mr Peter Harris—DOTRS).

80 Transcript of evidence, 26 July 1999, Adelaide, p. 56 (Prof. Drew Dawson).

81 National Transportation Safety Board, 1999, *Evaluation of US Department of Transportation Efforts in the 1990s to Address Operator Fatigue*, Safety Report NTSB/SR-99/01, Washington DC.

better targeted. The ATSB could work closely with the Australian Research Council (ARC) to sponsor collaborative research programs.

3.162 The ATSB could also work with the National Occupational Health and Safety Commission to facilitate and coordinate occupational health and safety research efforts in fatigue and fatigue management. The goal of these efforts should be to ensure that occupational health and safety research is better integrated into the overall research effort.

Recommendation 37

3.163 **The Australian Transport Safety Bureau should take a leadership role in coordinating research and evaluating fatigue issues and initiatives.**

What needs to be done to promote awareness?

3.164 Despite great advances in developing technological means for detecting fatigue, self-assessment is currently the only method available to detect fatigue. As such, education in recognising the signs of fatigue and what to do to alleviate fatigue remains a core ingredient in successful fatigue management.

3.165 This in many ways also relies on promoting culture change throughout the transport industry. It must be recognised and accepted within the industry that feeling fatigued and needing to rest is not a sign of weakness or being unprofessional. In fact, a well developed safety culture would promote the idea and practice of working while fatigued as being unprofessional and as unacceptable as drinking or drug taking on the job. This culture must be inculcated right across the industry, from the individual driver or pilot through to the company director and the customer.

3.166 Accordingly, we have identified four key areas that need attention:

- the need to maintain and possibly standardise community education;
- the need for ongoing employee education;
- the need to educate transport customers; and
- the need for education and training of middle and upper management.

Community awareness and education

3.167 We are pleased to note that there appears to be increasing community recognition of fatigue as a serious safety issue. The 1999 *Community Attitudes Survey* conducted by the Australian Transport Safety Bureau (ATSB) indicates that 'over the last five years mention of fatigue as one of three main reasons for road crashes has nearly doubled', rising from 19 per cent of those surveyed in 1993 to 35 per cent in 1999. Fatigue is consistently mentioned as the third most important cause of vehicle crashes after speed and drink driving.[82] This suggests that community attitudes are changing, which will hopefully provide a firm base for future public and industry education strategies to address the issue of fatigue. Regulators must take full advantage of this trend and change in community attitude to further develop an understanding and recognition of fatigue in the transport industry.

3.168 Most States also operate a system of 'driver-reviver' stops during peak periods, such as school holidays, to provide drivers with the opportunity to stop and rest.[83] At the local level these facilities are predominantly managed and staffed by volunteers from various community organisations, with government road transport authorities generally providing regional coordination and management, and maintenance of the sites. The principal aim is to encourage drivers to stop and take a short break.[84]

3.169 It is clear from figures provided to us that driver-reviver stops are well patronised. In NSW for example, during the 1999 Easter holiday period driver-reviver sites dispensed 124 000 cups of coffee.[85] Similarly, in Queensland over 185 000 cups of coffee were dispensed during the combined 1999 holiday periods.[86]

3.170 There have been criticisms that stopping for a coffee is not effective in combating fatigue.[87] However, the key point is to get people to stop at

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82 Australian Transport Safety Bureau, 1999. *Community Attitudes to Road Safety, Community Attitudes Survey Wave 12*, Australian Transport Safety Bureau, Canberra, p.1.

83 Queensland operates 31 sites, Western Australia 21 sites and NSW approximately 80 sites. South Australia operates a variation on the driver-reviver theme by providing vouchers for free coffee and discount accommodation on selected high capacity routes. (Submission No 86, Vol. 6, p.1417 – Transport SA). In regional and remote Western Australia a similar program, called Coffee Stop, is run in conjunction with the driver-reviver program.

84 Submission No 88, Vol 6, pp. 1458-9 (Queensland Department of Transport).

85 Information received from the NSW Roads and Traffic Authority, 24 December 1999.

86 Information received from Queensland Transport, 5 October 1999.

87 Transcript of evidence, 8 November 1999, Canberra, p. 611 (Department of Transport and Regional Services).

regular intervals. In addition, the local volunteers at the site can provide information on accommodation and places to eat.[88] Further, there are indications that the Driver-Reviver program does have a positive effect on road safety. The Queensland Department of Transport provided figures which showed that in relation to the driver-reviver program, in the eight years from 1991, almost 100 serious casualty crashes have been avoided, with a total social cost saving to the community averaging about $3 million per year.[89]

3.171 An issue that is of interest to us is the location and frequency of driver-reviver stops. Queensland Transport endeavours to strategically place facilities in high risk fatigue areas across the State, many of which are away from towns.[90] In NSW site selection is left to the local community group managing the site, and as a consequence 'many driver-reviver sites are not strategically positioned'.[91] A key problem identified in NSW is the difficulty in getting volunteers to staff sites that are isolated.[92]

3.172 We are convinced of the usefulness of the driver-reviver strategy and fully support the program. However, at the national level we would like to see a more consistent approach to the siting of driver-reviver facilities. We believe that the various road transport authorities and community groups involved with the driver-reviver program should work towards national guidelines for the siting of driver-reviver facilities so as to derive the greatest benefit from this worthwhile initiative.

3.173 The fatigue message is already widely promoted by State and Territory governments to road users on television, billboards and in printed material. Each State is to be commended for the quality of their public education campaigns and programs and we strongly recommend that these be continued. We acknowledge that there are good reasons for encouraging the development of different educational campaigns in each State and Territory, reflecting local circumstances and driving conditions. The more ideas that are developed and tested, the more likely it is that the fatigue message will be conveyed effectively.

3.174 Nevertheless, as argued elsewhere in this report, we think there is merit in sharing experiences between jurisdictions. When dealing with limited resources it is more productive to share the secrets of success and warn against approaches that have failed, rather than to work in isolation.

88 Transcript of evidence, 9 November 1999, Canberra, p. 736 (NSW Department of Transport).

89 Submission No 88, Vol 6, pp. 1458-9 (Queensland Department of Transport).

90 Submission No 88, Vol 6, pp. 1458 (Queensland Department of Transport).

91 Information received from the NSW Roads and Traffic Authority, 24 December 1999.

92 Transcript of evidence, 9 November 1999, p. 736 (NSW Department of Transport).

Accordingly, we recommend that the Australian Transport Safety Bureau work with relevant State and Territory agencies to compare experiences in developing road safety campaigns, particularly campaigns directed at managing fatigue while driving (including driver-reviver programs), with a view to ensuring greater consistency in the fundamental fatigue message.

Recommendation 38

3.175 **The Australian Transport Safety Bureau should establish and coordinate an ongoing program of consultation with relevant State and Territory agencies designed to:**

- **share experiences in the development of road safety education programs, particularly those campaigns aimed at educating the community about the dangers of driving while fatigued, with a view to achieving a higher degree of consistency; and**
- **develop, in conjunction with community groups, a nationally consistent approach to the frequency and location of driver-reviver facilities.**

Individual responsibility and education

3.176 The individual operator has clear responsibilities in regard to identifying and managing their own fatigue. They must be able to recognise the onset of fatigue and take appropriate measures to alleviate fatigue. We recognise that this is quite a heavy responsibility. In the context of road transport, Mr Leslie James of McCafferty's Coaches argued that:

> Driver fatigue involves a lot of self-control on the part of the drivers. The company can do so much but drivers have to monitor their own lifestyle, I believe, to ensure that they come to work fresh.[93]

3.177 A key factor in ensuring individuals take responsibility for managing their own fatigue is the difficulty in ensuring that rest periods and days off are used appropriately. It is widely recognised that employees have family and social responsibilities and lives out side of work, which at times may contribute to fatigue. Attempting to prescribe what someone does on their days off is difficult because, as highlighted by Mr Terry Nolan of Nolan's

93 Transcript of evidence, 16 September 1999, p. 304 (Mr Leslie James—McCafferty's Coaches).

Interstate Transport, 'you really cannot get into peoples personal lives when they leave work…It is an invasion of privacy'.[94]

3.178 One strategy to assist in managing fatigue in off duty periods and engendering a sense of individual responsibility has been to involve spouses and families in fatigue management strategies. This has the aim of cultivating a broader understanding of fatigue and the importance of fatigue management, not just at work but also at home. National Rail Corporation Ltd incorporated families into the development of their fatigue management program for shiftworkers and found that the 'partners of our train crew have been very interested and very supportive of the program'.[95] According to Mr Vincent Graham of National Rail Corporation Ltd:

> We developed this program so that the families could collectively understand the needs of shiftworkers and could try to adjust the family lifestyle to fit in with them so that during periods of rest it was not only adequate but it was reasonable rest.[96]

3.179 In some cases the partners of transport employees may have very different views and priorities, which contribute to effective fatigue management. Professor Dawson found that for wives and partners of transport workers 'the risk to their partner and to their financial security is often a very important driving force' to ensuring their partner takes appropriate precautions against fatigue.[97]

3.180 In an effort to promote and encourage employees to consider fatigue while off duty, some companies also have begun providing health and lifestyle information to employees and their families.[98]

3.181 While the most widely promoted and recognised fatigue campaigns are aimed at non-commercial vehicle drivers, the road and rail transport sectors have developed some excellent educational material. We received examples of video, cd-rom and printed material promoting fatigue awareness and education in the road and rail transport industry. This material appeared to be of a very high quality and was presented in a clear and easily understood manner. We were particularly impressed by the fatigue booklet issued by the Western Australian Department of Transport in support of the *Code of Practice for Commercial Vehicle Drivers* and believe

94 Transcript of evidence, 2 August 1999, p. 106 (Mr T. Nolan—Nolan's Interstate Transport).

95 Transcript of evidence, 26 July 1999, p. 29 (Mr Vincent Graham—National Rail Corporation).

96 Transcript of evidence, 26 July 1999, p. 29 (Mr Vincent Graham—National Rail Corporation).

97 Transcript of evidence, 26 July 1999, p.50 (Prof. Drew Dawson—Centre for Sleep Research).

98 Transcripts of evidence, 2 August 1999, p. 99 (Mr Darren Nolan—Nolan's Interstate Transport) and 10 September 1999, p. 231(Ms Michelle Nation—Finmore Holdings Limited).

that it provides a good model for other States to follow. Insurance companies have also contributed some valuable educational tools. We are particularly impressed by the interactive cd-rom package produced by NTI Insurance for fatigue management training, for both drivers and managers. We support the continued development and dissemination of these types of educational material.

3.182 Another way that individuals can take responsibility for managing fatigue is through maintaining an adequate diet. Inadequate diet has been identified as a possible contributing factor to driver fatigue.[99] Long distance truck drivers are particularly prone to poor dietary habits.

3.183 The Healthy Eating on the Road project was established to address the problem of inadequate diet in truck drivers. The project has a number of aims:

- improving the health, knowledge, attitudes and behaviour of heavy vehicle drivers thus improving their health and fitness;
- creating an environment that supports changes to eating habits, physical activity and fatigue management; and
- improving access to healthy food choices in roadhouses along the Hume and Newell highways.[100]

3.184 Evaluation of the project has been positive and drivers indicate actual behaviour change towards better eating patterns and improved fatigue management.[101] We have inspected a number of roadhouses and were impressed by the range of food becoming available at these establishments. One roadhouse operator indicated to us that an attraction of his particular roadhouse was the 'home cooked' style and range of food available.

3.185 This being said, the fact that many commercial drivers continue to ignore the fatigue message means that there is reason for a more wide-ranging and hard-hitting anti-fatigue campaign. This could incorporate wider use of radio and closer cooperation with the proprietors of roadhouses and other places drivers stop for food and coffee to distribute and display information.

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99 Submission 47, Vol 3, p. 699 (Healthy Eating on the Road). For example, carbohydrate rich foods contribute to the maintenance of adequate blood sugar levels. Low blood sugar levels may lead to tiredness and drowsiness.

100 Submission No 47, Vol 3, p. 699-700 (Healthy Eating on the Road).

101 Submission No 47, Vol 3, p. 700 (Healthy Eating on the Road).

3.186 We are concerned, however, that there does not appear to be a similar commitment to employee awareness and education programs in the aviation or maritime transport sectors. We did not see any educational material for the maritime or aviation transport sectors that was similar to that produced in road and rail, nor did there appear to be a coordinated program of education in these sectors. For example, one major airline provided the Committee with a copy of its fatigue education manual. This was copy of a publicly available document rather than an education package specifically developed for its staff. In addition, aircraft maintenance staff of a major airline told us that they have only had one short fatigue education session, while staff at another airline said they had not received any fatigue training. We feel that this does not indicate a high level of commitment to fatigue management, nor does it set a good example of corporate citizenship. If large organisations will not commit the time and resources, how can smaller companies be expected to effectively address fatigue. We are not aware of any comprehensive industry-wide education programs being conducted in the marine pilotage sector.

3.187 We feel very strongly that ongoing employee education is an important facet of fatigue management. The Australian Transport Safety Bureau (ATSB), as the principal Australian transport safety authority, is well placed to facilitate and coordinate the development of appropriate education programs. The ATSB should also draw on the expertise of the National Occupational Health and Safety Commission (NOHSC) in this task. We recommend that the ATSB with the assistance of the NOHSC and in conjunction with industry and the scientific community develop a basic and nationally consistent fatigue awareness and education program that can be used as the foundation for the development of modal specific education programs.

Recommendation 39

3.188 **The Australian Transport Safety Bureau, with assistance from the National Occupational Health and Safety Commission and in conjunction with industry and the scientific community, should establish a cross-modal working group to develop and coordinate fatigue awareness education material and programs for the transport sector.**

Customer responsibility and education

3.189 The second area of concern is the apparent lack of understanding and recognition of fatigue by those who use the transport industry.

3.190 The road transport industry is particularly affected by the actions and demands of its customers. Unreasonable or ill-informed demands from those who use the road transport industry to move their goods from one point to another, or from agents who organise the movement of freight, have been described as one of the 'greatest contributing factors to fatigue in the road transport industry' as many customers do not understand legislation governing driving hours or understand liability issues.[102] Customers need to progress past the untenable attitude that fatigue is not their problem.

3.191 The demand of customers for goods to be at a particular place at a particular time puts pressure on both the transport company and the driver.

> Obviously, the trucking company is giving the directions to the driver. But I have no doubt that the authority is with the people receiving the freight. They are the people who are saying what time they want their goods. They are passing it on to the transport company and the transport company is passing it on to the driver.[103]

3.192 Similarly, in the maritime transport sector, problems may arise due to shipping agents not properly organising Estimated Time of Departure (ETD) or Estimated Time of Arrival (ETA) for cargo. A number of researchers have identified this as a fatigue problem as it creates uncertainty in regard to the working time for a marine pilot.

> Waking up a pilot to tell him/her to go back to sleep because of a change in ETA/ETD severely diminishes the rest of the pilot and directly compromises the safety of the pilotage act about to be performed.[104]

Slotting

3.193 The specific issue of 'slotting' relates to deficiencies in the process of dispatching and receiving goods, particularly in the road transport industry. This is where a driver has a specific prearranged time 'slot' for

102 Submission No 68, Vol 5, p.1121 (Nolan's Interstate Transport).

103 Transcript of evidence, 16 September 1999, Kempsey, p. 336 (Mr Richard Norberry).

104 Submission No 21, Vol 2, p.274.(Captain Rob Lovell).

delivering or picking up a load. However, drivers are often forced to wait in line with other drivers or risk losing their slot and being sent to the back of the line. Further, there are often penalties in place if the driver is late whereas there are no penalties on the customer for not unloading or loading on time, nor is the driver compensated for time lost waiting in line.

3.194 We were quite shocked by some of the stories told to us by drivers of their experiences of having to wait many hours to unload, unable to leave their vehicle or get proper rest, and then being expected to still be on time at their next destination.

> I can go in there and then I can sit there for anything from one to 12 or 14 hours–-there is no saying how long you are going to be in there. It is the type of place where you do not get much sleep because they have got other vehicles moving through all the time, so you just sit there and wait.[105]

> I have left Sydney at 3 o'clock in the afternoon and got to Brisbane at the 3 o'clock time slot next day….They will make you sit where you unload for five hours until they are ready to get you in there. You just sit there. You try to have a sleep but you have to move the truck to keep in line with the other trucks going in. They just do not care. They are not really worried, as long as their freight is up there and sitting on the truck. They are using you as a storage area while they get room to put the stuff away and then get you in.[106]

3.195 It is our opinion that the commercial customer carries the lion's share of the responsibility for this farcical situation. These customers have obviously not taken responsibility for this problem nor made any attempt to rectify the situation, despite the obvious safety implications and clear obligations under occupational health and safety legislation and 'chain of responsibility' provisions. If a driver is made to wait upon arriving at their designated time, it is obvious that the vehicle was not required at that particular time. In addition, we find it unacceptable, for example, that a driver should be fined for being late, particularly if it is due to circumstances beyond their control, and then be made to wait to be unloaded. The practice of penalising drivers for being late, while customers are not penalised for making drivers wait is not an acceptable or equitable practice.

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105 Transcript of evidence, 23 June 2000, Canberra, p. 819, (Mr Wayne Davidson)

106 Transcript of evidence, 16 September 1999, Kempsey, p. 334 (Mr Leslie Snape).

3.196 We are aware of initiatives that have been developed to deal with the slotting issue. An example from California involves drivers being provided with a pager and a number on arrival at the depot. They are then told to go and park and rest in an area set aside for the purpose. Drivers are then paged ten minutes before it is time to unload.[107] This obviously involves some investment on the customer's behalf, in terms of parking space and pagers, but it allows drivers to rest, rather than wait in line.

3.197 BHP informed the committee that under their new logistics management plan (Chapter 2) the consignor must arrange an area where a truck can park. Under this system drivers park their vehicles but do not lose their place in line. The driver is told when it is time to load or unload. This enables the driver to sleep rather than having to move up in line every 10 minutes with the engine running.[108]

3.198 Judging by the number of times the management of slotting was raised during the course of the inquiry this is a deep-rooted problem. It is clear that the trucking industry needs to work with and educate customers to get them to take some responsibility for the issue and put some thought and action into fixing the problem. The solution could be quite simple: modify the scheduling processes for the receipt and dispatch of goods, provide more user friendly facilities and loading/unloading procedures, and improve communications between drivers in transit and customers so that drivers can be forewarned of delays. There may be a role for Local and State government planning authorities to require that any new warehouse or industrial development must provide adequate space for heavy vehicles to park while waiting to unload or load.

3.199 Under the new national heavy vehicle driving hours regulations, there is the possibility that customers may also face liability for accidents under the new 'chain of responsibility' provisions. Sitting in the vehicle and waiting in a queue for a loading or unloading slot is defined by the National Road Transport Commission as being either work or driving and is covered by the prescriptive hours provisions in the regulations.[109] Therefore, if a customer keeps a driver waiting until his or her working hours have elapsed and then requests them to continue work (such as making deliveries) they are in contravention of the regulations. This should provide added incentive for customers and consignors to develop

107 Krueger.G, 2000, Turning the Millennium on American Truck Driver Fatigue: A Review of the Issues, paper presented to Fourth International Conference on Fatigue and Transportation, Fremantle 19-22 March 2000.

108 Transcript of evidence, 7 October 1999, Sydney, p.433 (Mr Tom McAbe—BHP).

109 Transcript of evidence, 8 October 1999, Melbourne, p. 477 (Mr Barry Moore—NRTC).

effective solutions for the dispatch and receipt of goods in cooperation with the trucking industry. In addition, there is an increasing potential for litigation where customers can be shown to have obligations under vicarious liability and have contributed to a fatigue related accident.[110]

Customer education

3.200 Typically, the feeling in the transport industry is that customers will not accept that they are part of the fatigue problem nor that they are also part of the solution. Based on the evidence we received throughout this inquiry there is an obvious need to develop appropriate education programs for customers of the transport industry and freight agents (in all sectors). Such an education package should inform customers and freight agents about fatigue and fatigue management, their role in the 'fatigue chain', as well as their legal obligations under current and proposed occupational health and safety and other pertinent regulations.

Recommendation 40

3.201 **The National Occupational Health and Safety Commission, in conjunction with Commonwealth and State and Territory transport authorities, should develop and disseminate customer focused information and education packages on:**

- **best practices in fatigue management;**
- **legal obligations and responsibilities for fatigue management; and**
- **the legal and fatigue implications of inadequate slotting management.**

Company responsibility and education

3.202 The final area that requires attention is the broader education of middle and upper management engaged in transport operations.

3.203 The way a company organises and manages their operations may contribute to employee fatigue. One recent study into the role of road transport companies in driver fatigue suggests that:

> Truck drivers involved in crashes are the unfortunate inheritors of poor decision making on the part of their companies' non-driving

110 Transcript of evidence, 26 July 1999, Adelaide, p. 53 (Prof. Drew Dawson).

> personnel–including managers, customer service personnel and trip schedulers–regarding conditions of employment, delivery agreements and trip scheduling.[111]

3.204 While the individual will always have a primary responsibility to determine if they are fit for duty, it is not always possible for them to act on their own assessment. In highly competitive industries such as road transport and general aviation a driver or pilot may agree to work very long hours or break rules, or be reluctant to report feeling fatigued for fear of losing their job. A truck driver told the committee that it is particularly difficult for subcontract drivers to say no to jobs even if to do the job may require the driver to break the law or drive long hours.

> It is very difficult as far as the owner-driver goes. One fellow would probably say it is too costly. They put the time in front of him and he says, 'No, I am not going to do it', there is always someone behind him who has to make the commitment of a payment on a truck or a family commitment as far as finance goes. When someone makes a stand and says they will not do it, there is always someone behind them that will go and do it for a cheaper rate.[112]

3.205 A similar situation exists in the highly competitive general aviation and regional aviation sectors.

> If they [pilots] report fatigue factors or walk away from an aircraft, they are accused of doing it deliberately. They know that they are under pressure, that they jeopardise their career. That is one of the major problems we have in aviation. Pilots will not provide reasonable reporting because there is a surplus of pilots out there who will take on the job.[113]

3.206 Sometimes the pressure to work long hours or break the regulations is covert rather than overt. One witness responding to a question about pressure being put on drivers to falsify log books told the Committee:

> You are and you aren't. They do not say, 'You're going to falsify your log book to do this'. They just tell you, 'You're going to do it'. So if you are going to do it you have got to falsify your logbook to do it.[114]

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111 Arnold.P and Hartley.L, 2000, The Role of Transport Companies in Driver Fatigue, paper presented to Fourth International Conference of Fatigue and Transportation, Fremantle, 19-22 March, 2000.

112 Transcript of evidence, 16 September 1999, Kempsey, p. 337 (Mr Paul Lawrence).

113 Transcript of evidence, 10 September 1999, Melbourne, p. 221 (AFAP).

114 Transcript of evidence, 16 September 1999, Kempsey, p. 347 (Mr Donald Moy).

3.207 The strategies a company uses to attract business can also contribute to fatigue, particularly if the only strategy is to keep cutting charges. We received evidence that some road transport companies continually undercut competitors prices to obtain contracts leaving truck drivers in the position of having to drive 'like an idiot' out of fear of missing their deadline and being penalised.[115]

3.208 As described elsewhere in this report there are moves to enforce a broader responsibility for managing fatigue. For example, the 'chain of responsibility' provisions in the *Road Transport Reform (Driving Hours) Regulations* provide a clear signal that companies in the road transport sector must take their responsibilities seriously. In addition, companies in all modes of transport are obligated under the duty of care provisions of Commonwealth, State and Territory occupational health and safety legislation to provide a safe place of work.

3.209 The continuation of accidents in air, sea, road and rail transport indicates that some transport companies, in all modes of transport, have been and continue to be willing to risk penalties and push employees to the limit, typically for economic reasons. It also indicates a lack of understanding of effective fatigue management.

3.210 Education and training in fatigue, fatigue management, and occupational health and safety obligations should be a basic training prerequisite for all those engaged in a management role in the transport industry, whether they be a private company or a government entity which is responsible for contracting transport related services.

Recommendation 41

3.211 **Fatigue and fatigue management training should be incorporated into management training programs for all those engaged in a management role in all sectors of the transport industry, whether they be a private company or a government entity which is responsible for contracting transport related services.**

115 Transcript of evidence, 16 September 1999, Kempsey, p 333 (Mr Leslie Snape)

Paul Neville MP

Chair

7 September 2000