

# Chain of Responsibility Provisions

## FATIGUE MANAGEMENT



SEPTEMBER 2008

Since 2005, NSW road transport law has included 'chain of responsibility' provisions requiring all parties in the supply chain to take positive steps to prevent a breach of mass, loading and dimension laws. With the introduction of new legislation at the end of September 2008, the chain of responsibility will be extended to cover driver fatigue.

### Will the changes affect me?

Are you one of the following?

- Employer
- Prime contractor
- Operator
- Scheduler of goods or passengers, or scheduler of a driver
- Consignor of goods for transport
- Consignee of goods for transport
- Loading manager of goods for transport
- Loader of goods
- Unloader of goods.

If so, from 29 September 2008, you are part of the chain of responsibility in relation to the management of heavy vehicle driver fatigue, and the Road Transport (General) Regulation 2005 will contain new provisions relating to fatigue that apply to you.

Rather than pursue the 'soft target' on the roadside – truck drivers and operators – authorities can investigate along the supply chain and up and down the corporate chain of command.

#### NOTE.

It is performing any of these functions – rather than a job title or contractual description – that determines whether a person falls within any of these definitions.

### What are my responsibilities?

- Everyone in the supply chain must take all reasonable steps to prevent fatigue and ensure that a heavy vehicle driver does not drive while impaired by fatigue. There are no limits to the ways in which a person can show that he/she took reasonable steps.
- The law requires you to:
  - identify and assess risks, do what you can to eliminate that risk or minimise it; and
  - repeat that risk identification and assessment annually and if circumstances change.

- In determining whether you have taken reasonable steps, courts will typically consider:
  - the nature of the risk
  - the likelihood of the risk eventuating and the degree of harm
  - the circumstances of the offence
  - the abilities, experience, expertise, knowledge, qualifications and training of the driver
  - what measures are available and suitable to take; and
  - the body of fatigue knowledge.

### What do I need to do?

You should be able to demonstrate that all reasonable steps have been taken to ensure that your activities or functions will not cause, or contribute to causing, a driver driving while fatigued. There are no limits to the ways in which you can do this.

What constitutes reasonable steps will vary according to each individual's circumstances. This could include:

- Adopting a risk management approach to the management of driver fatigue.
- Becoming accredited under a recognised accreditation scheme.
- Reviewing your business practices.
- Changing your commercial arrangements.

### 1. Risk management

A number of risk management standards are available that can assist you in developing business practices to minimise the risks of non-compliance in relation to driver fatigue in your business.

Some helpful risk management standards include:

- The Australian and New Zealand Standard on Risk Management (AS/NZS 4360:1990) [www.standards.org.au](http://www.standards.org.au)
- ISO 9000 quality standards [www.iso9001qualityassurance.com](http://www.iso9001qualityassurance.com)

## 2. Accreditation schemes

There are a variety of audited accreditation and quality schemes already operating in the transport and logistics industries. Using accredited truck operators provides some assurance that your contractors have relevant business systems in place and are managing risks. Appropriate accreditation schemes which address your specific risk exposures may assist you in showing reasonable steps were taken under the chain of responsibility.

The principle heavy vehicle accreditation schemes in NSW are:

### **National Heavy Vehicle Accreditation Scheme (NHVAS)**

NHVAS mass and maintenance modules require operators to implement a business system which provides documentary and auditable evidence to prove compliance with the standards. Audits are completed every two years to ensure compliance.

See <http://rta.nsw.gov.au/heavyvehicles/accreditation/index.html>

### **TruckSafe**

TruckSafe is owned by the Australian Trucking Association and is a business risk management system. Its four core modules cover activities such as vehicle maintenance, management standards, training and driver health.

A mass management module (equivalent to NHVAS) is also available. TruckSafe is continually updated to meet new legislative requirements. See [www.atatruck.net.au](http://www.atatruck.net.au)

## 3. Business practices

You should regularly review your business practices to ensure that your activities do not contribute to a driver fatigue offence.

Some of the things you may need to consider include:

- training for staff to ensure they understand their obligations under the chain of responsibility;
- audits/spot-checks to ensure compliance (e.g. monitoring of loading); and
- contingency plans to manage operational issues within the law.

## 4. Commercial arrangements

You can ensure that your commercial relationships do not cause your business to breach chain of responsibility provisions in relation to driver fatigue by:

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

### **Where to find more information**

Further information on fatigue is available from the RTA at [www.rta.nsw.gov.au](http://www.rta.nsw.gov.au) and from the NTC website [www.ntc.gov.au](http://www.ntc.gov.au). The Road Transport (General) Regulation 2005 containing driver fatigue regulations can be found at [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au)