



# POSITION PAPER

## REQUIREMENTS COVERING THE PREVENTION OF LONG DISTANCE TRUCK DRIVER FATIGUE

This Paper summarises the requirements the *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005* and its introduction to NSW. Further detailed guidance for duty holders is available on the WorkCover NSW website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

### BACKGROUND

The *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005*, which commences on 1 March 2006, is intended to minimise the risk of harm from fatigue for drivers of heavy trucks. The Regulation places legal duties on employers, head carriers and certain consignors and consignees involved in the transport of freight **long distance** by means of a **heavy truck**.

#### What is considered 'long' distance?

Long distance is defined by the Regulation as meaning a journey of more than 500 kilometres. The distance is calculated having regard to a single journey or series of journeys that may consist of more than one delivery of freight, and includes the distance travelled to pick up and return to base after a delivery.

#### What is considered a heavy truck?

A heavy truck is defined by the Regulation as meaning a motor vehicle with a GVM over 4.5 tonnes, or a motor vehicle forming part of a combination if the total of the GVMs of the vehicles in the combination is over 4.5 tonnes.

#### What is a driver fatigue management plan (DFMP)?

A DFMP is a plan prepared in consultation with drivers that sets out how the risks of fatigue associated with the long distance freight transport are to be managed.

#### Which businesses are covered?

If you are an employer or head carrier in the business of transporting freight long distance then you have responsibilities under the Regulation.

Consignors or consignees have legal responsibilities if they employ 200 or more workers and they carry on a business of which a substantial part is a prescribed business, which falls within at least one of the following industries:

- Agriculture, forestry and fishing
- Mining
- Manufacturing
- Construction
- Wholesale trade
- Retail trade
- Accommodation, cafes & restaurants
- Transport and storage
- Communication services
- Property and business services
- Cultural and recreational services

### **What are the responsibilities of employers and head carriers (transport operators)?**

The Regulation requires that the risk of harm from fatigue to the driver's health and safety be assessed, eliminated or controlled to the extent that the employer's or head carrier's activities contribute to that risk. The Regulation also requires that a DFMP must be in place. It is the employer or head carrier's responsibility to develop the DFMP, to consult with drivers in its development, to make it available to affected drivers, and to keep certain records in relation to the DFMP. The need to undertake a risk assessment and develop the DFMP are two separate requirements that can be combined, however it will not be sufficient to have a DFMP that does not identify, assess, eliminate or control the risk of fatigue.

### **What are the responsibilities of an employee (driver)?**

An employee while at work must cooperate with his or her employer or other person as far as necessary to enable compliance with any requirement under the occupational health and safety legislation. Employees should contribute to the development of the DFMP and comply with the measures contained within the DFMP. An employee must also take steps to report incidents and near miss road incidents, so that the DFMP can be reviewed and updated where required.

### **What are the responsibilities of consigners and consignees?**

Where consignors and consignees enter into a contract with an employer of drivers or a head carrier they must confirm that a DFMP is in place and that the delivery time is reasonable. In assessing the reasonableness of the delivery timetable the consignor or consignee must take into account the appropriateness of the time allocated for travel, loading, unloading and queuing times.

Where a consignor or consignee directly enters into a contract with a self-employed carrier they must, to the extent that their activities contribute to the risk, assess risk of harm from fatigue to the driver's health or safety, under that contract, and eliminate or control the risk. They are also required to develop a DFMP and make it available to affected drivers. The need to undertake a risk assessment and develop the DFMP are two separate requirements that can be combined, however it will not be sufficient to have a DFMP that does not assess, eliminate or control the risk of fatigue.

### **Who is considered a self-employed carrier?**

The self-employed carrier definition in the Regulation covers business structures adopted by owner-drivers. It aims to exclude owner-drivers from the head carrier and driver fatigue management plan requirements of the Regulation (as owner-drivers are already subject to the duty of the self-employed person under section 9 of the *Occupational Health and Safety Act 2000*).

The Regulation also imposes special requirements on head carriers and consignors and consignees who contract with self-employed carriers, as self-employed carriers (owner-drivers) are considered to be particularly exposed to the risk of harm from fatigue.

A self-employed carrier includes:

- A partnership that carries on business as a carrier, being a business in which any heavy truck used for the transport of freight is driven only by a partner of the business; or
- A company that carries on a business as a carrier transporting freight by means of a heavy truck where the truck is driven only by:
  - a director of the company, or a member of their family
  - a person who, together with family members has a controlling interest in the company

- a member of the family of a person who, together with the members of their family, has a controlling interest in the company
- an individual who carries on a business of transport of freight by means of a heavy truck, where the truck is driven only by the individual, ie an owner-driver.

NB: Family members include a person's spouse/de facto parent, grandparent, child or sibling, any such relative by marriage or de facto relationship and any step-parent or step-child. (See Chapter 6 of the *Industrial Relations Act 1996*)

#### **To what extent does the Regulation apply?**

The Regulation extends to the transport of freight in NSW and to the protection of NSW employees (drivers), where a journey originates in NSW and travels to locations within or outside of the State. Given this understanding, where such freight is transported, from another State or Territory, across or to a location in NSW, it is reasonable to expect the Regulation would apply to that part of the journey that occurs in NSW. This being the case the total kilometres travelled as part of a journey needs to be considered in determining the need for, and development of, a DFMP.

#### **What is WorkCover's role in relation to the new Regulation?**

WorkCover has been working with Unions and Industry associations to develop a range of practical guidance material, to ensure that stakeholders understand the new requirements, and how to apply them. WorkCover is committed to working in partnership with industry in delivering information seminars to a variety of stakeholder groups. WorkCover will continue to focus on taking an education and information role to see the Regulation successfully implemented. A hotline will be open from 1 March 2006 to provide advice and assistance.

#### **DISCLAIMER**

This publication contains information regarding health and safety, injury management or workers compensation. It includes some of your obligations under the various Workers Compensation and Occupational Health and Safety legislation that WorkCover administers. To ensure that you comply with your legal obligations you must refer to the appropriate legislation.

This publication may refer to WorkCover NSW administered legislation that has been amended or repealed. When reading this publication you should always refer to the latest laws. Information on the latest laws can be checked at [www.legislation.gov.au](http://www.legislation.gov.au) or contact 9238 0950 or 1800 483 955 (NSW country only).