

FACT SHEET FOR HEAD CARRIERS WHO ENTER INTO A CONTRACT WITH A SELF-EMPLOYED CARRIER

Managing long distance truck driver fatigue in NSW

This fact sheet outlines the responsibilities of head carriers with regard to the *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005* (the Regulation). A glossary of terms is provided at the back of the fact sheet. This fact sheet should be used in conjunction with *Driver fatigue management: A guide to managing driver fatigue in the long haul trucking industry*, and the *Driver fatigue verification tool*.

1. WHAT DOES OCCUPATIONAL HEALTH AND SAFETY LAW REQUIRE IN NSW?

The *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005* is intended to reduce the risk of harm from fatigue to drivers of heavy trucks. The Regulation places legal duties on head carriers involved in the transport of freight long distance by means of a heavy truck.

The Regulation requires:

- the risk of harm from fatigue to the driver's health and safety be identified, assessed and eliminated or controlled
- that driver fatigue management plans must be in place where they are required under the Regulation.

All driving where freight that is transported long distance in NSW using a heavy truck will require a risk assessment that identifies, assesses and eliminates or controls the risk of harm from driver fatigue. A Driver Fatigue Management Plan (DFMP) may also be required under the Regulation. The definition of a DFMP is provided in the glossary of this fact sheet. You should also refer to *Driver fatigue management: A guide to managing driver fatigue in the long haul trucking industry*. A template DFMP is also contained within the *Driver fatigue management verification tool*.

2. WHAT ARE MY RESPONSIBILITIES AS A HEAD CARRIER?

If you are a head carrier involved in the transportation of freight long distance, then the Regulation applies to your business.

Head carriers must not enter into a contract with a self-employed carrier transporting freight long distance unless the head carrier has identified, assessed, eliminated or controlled the risk of harm from fatigue arising from their activities.

Head carriers who enter into a contract with a self-employed carrier must also prepare a DFMP for all drivers who transport freight long distance under the contract, and make those DFMPs available to those affected drivers.

A risk assessment and the DFMP are two separate requirements that can be combined, however it is not sufficient to have a DFMP that does not identify, assess, eliminate or control the risk of fatigue.

3. WHAT CAN I DO TO REDUCE THE RISK OF FATIGUE?

Meeting the driving hours requirements in road transport legislation is a starting point for reducing fatigue. However, additional steps are required under OHS legislation. They include conducting risk assessments and developing, implementing and maintaining effective DFMPs that address all the elements required by the Regulation.

Ideally it is best to eliminate fatigue through strategic planning and adequate control measures. Where this is not possible, steps should be taken to control the risk of harm from fatigue.

Factors to consider when planning control measures include, but are not limited to:

- generating a culture of understanding and management of fatigue including good communication and consultation
- scheduling and rosters – ie length of shift, allowance for necessary rest and recovery during and between shifts
- checking the availability of rest areas and amenities for drivers
- consultation with drivers and others in the supply chain to identify those risks that might contribute to fatigue
- reviewing loading and unloading times and delays at pickup and delivery points. This includes consultation with consignors and consignees
- establishing driver capacity and fitness for Workcover contingency planning to provide for reasonably expected delays
- training and education in fatigue management
- managing incidents and near misses
- establishing and maintaining appropriate workplace conditions.

It is important to monitor the effectiveness of control measures to ensure they actually work. This includes, but it not limited to:

- consulting with all parties in the supply chain
- monitoring driver logs against freight movements
- obtaining driver feedback.

This will help to determine whether control measures are being implemented and if they are effective in controlling the risk of harm associated with fatigue.

4. WHAT RECORDS DO I HAVE TO KEEP?

You must ensure that all records related to DFMPs (including documents required to prepare the DFMP) are retained for five years.

The Regulation requires the following documents to be retained:

- All DFMPs which have been prepared by employers.
- All contracts entered into in the course of business (such as contracts of employment) that relate to the transportation of freight long distance by heavy truck.
- All trip schedules, delivery timetables and driver rosters prepared by an employer or on behalf of them, to which they have access (only for drivers for whom they employer was required to prepare a DFMP).
- Any risk assessments made by the employer or on behalf of the employer, that relate to the fatigue of drivers of heavy trucks.

If any related documents retained under the regulation are amended in a material way, each version of the document is to be treated as a new separate document.

If you are required to keep documents as detailed above, you need to ensure they are made available for inspection by an inspector or an authorised representative when requested by the inspector or authorised representative and, in any event, no later than seven days after the date of request.

GLOSSARY

carrier means a person who in the course of the person's business (including a business carried on under a franchise or other arrangement) transports freight for another person by means of a motor vehicle.

driver fatigue management plan means a plan that sets out how the person required to prepare the plan will meet its obligations under the Act and this Regulation in relation to any risk associated with the fatigue of drivers that transport freight long distance.

freight includes goods, materials, livestock or any other things, but does not include persons.

heavy truck means:

- a. a motor vehicle with a GVM over 4.5 tonnes, or
- b. 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.

prescribed business means business that falls within one or more of the following Divisions recognised in the *Australian and New Zealand Standard Industrial Classification (ANZSIC)*, 1993 edition (Australian Bureau of Statistics publication, Catalogue No WC01292.0):

- a. Agriculture, Forestry and Fishing
- b. Mining
- c. Manufacturing
- d. Construction
- e. Wholesale Trade
- f. Retail Trade
- g. Accommodation, Cafes and Restaurants
- h. Transport and Storage
- i. Communication Services
- j. Property and Business Services
- k. Cultural and Recreational Services.

Self-employed carrier means:

- a. 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
- b. a body corporate 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:
 - i. a director of the body corporate or a member of the family of a director of the body corporate, or
 - ii. a person who, together with the members of his or her family, has a controlling interest in the body corporate, or
 - iii. a member of the family of a person who, together with the members of his or her family, has a controlling interest in the body corporate, or
- c. an individual who carries on business as a carrier, being a business in which any heavy truck used for the transport of freight is driven only by the individual.

transport freight long distance means transport freight by means of a heavy truck (whether by means of a single journey or a series of journeys) more than 500 kilometres, including any part of the journey or journeys where no freight is transported because the heavy truck is being driven to collect freight or to return to base after transporting.

WHERE CAN I GET MORE HELP?

- WorkCover Assistance Service
13 10 50
www.workcover.nsw.gov.au
- Transport Workers Union of Australia and NSW Branch
Phone: 02 9912 0700
- Natroad LTD
Phone: 02 6295 3000
Email: natroad@natroad.com.au

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This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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