



Transport Alert October 2008

Chain of Responsibility & Fatigued Drivers - Is Your Business at Risk?

New national Driver Fatigue Rules have come into effect from 29 September 2008 and will impose additional obligations on all individuals in the chain of responsibility.

As part of the chain of responsibility laws regulating heavy vehicle use in Australia, the Federal Government passed the National Transport Commission (Model Legislation – Heavy Vehicle Driver Fatigue) Regulations 2007 (**Driver Fatigue Rules**). These regulations are being adopted by all States and Territories, although Western Australia will continue to operate under local OH&S laws, which are in alignment with key aspects of the fatigue reform.

The Driver Fatigue Rules, which came into force from 29 September 2008, impose additional obligations on all parties in the chain of responsibility in respect of record keeping, accreditation for driver fatigue management systems, work/rest requirements for drivers and setting out specific penalties for these offences.

What is the Chain of Responsibility?

Chain of responsibility is the process by which each member in the supply chain involved in heavy vehicle freight and goods transport can be held accountable for various responsibilities which have previously been viewed as those of the driver and carrier.

The members of the chain of responsibility include:

- > the driver
- > the employer of the driver
- > the prime contractor of the driver (i.e. person who engages another to drive a heavy vehicle under a contract of services)
- > the operator of the vehicle
- > the scheduler (i.e. person who schedules the driver's work or rest time

or a person who makes a demand that affects a time in a schedule)

- > both the consignor and consignee of the goods transported by the vehicle
- > the loading manager
- > the loader and unloader of the goods carried by the vehicle

Heavy Vehicle Driver Fatigue – a legislative paradigm shift

The Driver Fatigue Rules involve a paradigm shift from simply regulating the hours of heavy vehicle drivers to an imposition of liability on all parties in the supply chain (including consignors and consignees) if they fail to take reasonable steps to prevent heavy vehicle drivers driving whilst fatigued. By way of definition, a heavy vehicle is either a heavy truck with a gross vehicle mass of over 12 tonnes by itself or in a combination and buses built to carry 12 or more adults.

Enforcement

Many offences under the chain of responsibility legislation are strict liability offences. This means that any person in the supply chain may commit an offence specified in the legislation as long as the elements of the offence are met, even if the person was not intending to breach the law.

In NSW, a penalty for failing to avoid and prevent driver fatigue can include court fines for an individual of up to \$2,750 for a first offence and \$5,500 for subsequent offences and for a company, \$13,750 for a first offence and \$27,500 for subsequent offences. Similar penalties apply in other States and Territories.



The Reasonable Steps Defence

The chain of responsibility legislation in most States and Territories of Australia (save Victoria) specifies a 'reasonable steps' defence.

This defence can be pleaded where a person accused of a chain of responsibility offence did not know, and could not reasonably be expected to know, of the breaking of a road law caught by the legislation; and that the person had taken "all reasonable steps" to prevent the contravention.

Risk Management and Compliance Programs

Businesses which fall within the chain of responsibility should consider adopting risk management and compliance programs to ensure that reasonable steps are being taken at all times to prevent drivers from being on the road whilst impaired by fatigue. They should also ensure that all

applicable transport laws including the Driver Fatigue Rules are being followed. By doing so, they will be maximising their prospects of being able to successfully rely on the reasonable steps defence in any prosecution.

Examples of what the regulatory authorities may consider reasonable steps include:

- > training for staff and customers to ensure they understand their potential liability under the chain of responsibility
- > ensuring commercial agreements incorporate the necessary terms to ensure that all reasonable steps are taken to prevent breaches of the rules and setting out who has prime responsibility
- > preparing schedules for drivers that do not breach the new legislation
- > selecting work/rest options for drivers that are in accordance with legislative requirements
- > training for drivers on the new requirements for work diary recording and how to comply

- > auditing driver's work diaries to ensure necessary rests are being taken and that the regulations and commercial agreements regarding carriage and goods transport are complied with

Conclusion

A failure by individuals and companies in the chain of responsibility to implement risk management, compliance programs and other procedures may well mean that the reasonable steps defence will not be available to them thus leading to an increased risk of liability and size of penalty in any successful prosecution.

Thomson Playford Cutlers can assist you in understanding the chain of responsibility legislation and adopting appropriate risk management and compliance systems.

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