

Heavy Vehicle Driver Fatigue Management

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Work Options

Agenda

- The 5 Laws
- Comparing the Laws
- Current Position
- Questions

The 5 Laws

1. Occupational Health & Safety Act (NSW) 2000
 - General obligations on all employers and employees
2. Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation (NSW) 1999 (the 'RT Reg')
 - Hours Based Approach
3. OH&S Amendment (Long Distance Driver Fatigue) Regulation 2005 (the 'OHS DFMP Reg')
 - Risk Management focused approach
4. NSW Industrial Relations Commission - **Mutual Responsibility for Road Safety (State) Award and Contract Determinations (2 Nov 06, settled 21 Nov 06)**
 - 3 elements, one of which Driver Fatigue Management
5. Proposed – Replacement RT Reg (29 Sep 08)
 - Hours & risk management focused approach

1. General Law Obligations

- OHS (NSW) Act 2000
- Employers obligations:
 - Ensure safe workplace for all (“reasonably practicable” is a defence) (s8)
 - ‘Systems and procedures’ used to ensure safety
 - Must consult with employees on OHS&W (s13)
 - OHS Reg. mandates risk management
- Employee’s obligations:
 - Take reasonable care of others (**not self**)
 - Cooperate with ER’s to enable compliance...comply with systems & procedures introduced IAW the law.

3. The OHS DFMP Reg

- Amendment to NSW OHS Regulations in place since 1 March 2006 b/c National approach was “taking too long to develop”
- Enforced by WorkCover NSW and ‘authorised persons’ (not police)
- Who does it cover?
 - >500kms & >4.5t GVM; Owner drivers & Self employed carriers
 - If in Geography of NSW, irrespective of where start
- Head Carriers and certain Consignors and Consignees have similar obligations as Employers
- Aims to have the **RISK** of driver fatigue eliminated or controlled
- Considerable procedural risk management required - ‘DFMP’
- ‘Journey Plan’ reqd (consultation essential & risk management must be utilised)
- Journey “actuals” required

Risk Management in OHS DFMP Reg

Risk Management Required In Areas of:

- Fitness For Work of employees
- Quals & Skills of Drivers
- Vehicle Maintenance/ Safety Compliance
- Scheduling
- Rostering
- Workplace Environment & Amenities
- Fatigue Training & Info Held by Drivers
- Loading, queuing and unloading arrangements
- Journey Plan
- Records and System Monitoring
- Responsibilities and Work Practices

All of these must be done in consultation with employees

Eg: Fitness For Work

- **Implications for Employers:**
 - Develop a systemic approach to managing driver fitness for work – fatigue being the catalyst
 - Hire and retain people capable of being physically capable to do the work specifically hired for
 - “Functional” as well as technical role description
 - Assess prior to offer and during employment (use RA)
 - Assist in health management
 - Train drivers to conduct own fatigue risk assessments (Fatigue + RA knowledge)

4. MRRS Requirements on Fatigue

- IR instrument via Award/CD - not OHS law. 3 elements.
- Who? Same as OHS DFMP Reg: >500k; >4.5t GVM; in NSW.
- OHS General Obligations & OHS DFMP Reg stand together
- Includes labour hire employees and ‘vulnerable’ contractors
- “Safe Driving Plan” = ‘Journey Plan’ **with one major exception - Remuneration**
- Reflects Chain of Responsibility: Must be in contracts, like DFMP. More focus on consignors & consignees obligations (The ‘M’ in MRRS)
- Accredited Union official can inspect SDP’s at premises of transport operator or consignor, with 24hrs notice. Union can advise on action reqd.
- Dispute procedure = Meeting with TWU; IRC.

A Comparison of the CURRENT Law

	GVM	Distance	Who Effects	Creates
RT Reg ('99)	>12t	100km radius in this jurisdiction	- Employed & Self Employed <u>Drivers</u>	- <u>Hour Limits</u> - TMFS - Log Books
DFMP ('06)	>4.5t	500km, any jurisdiction coming in or out	- Transport <u>Operators</u> - Consignors/ ees - Head Carriers - NOT Self Employed Carrier as Employer - Drivers as employees	- No Hours - <u>Risk Ax's</u> in essential areas - Personal Fatigue Risk Ax's - Journey Plans
MRRS ('06 & '07)	>4.5t	SDP = 500km, any jurisdiction com. in or out D&A = All	- All those under DFMP - Labour Hire Firms and their employees	- Bluecard - Safe Driving Plan (<u>Remuneration</u>) - D&A

5. The Model Legislation

- Goal: A “national” approach to DFM
- 1999: NTC developed “Model Legn” following consultation with States and input from industry
- Agreed target date for implementation is 29 Sep 08
- Will replace the “RT Reg” (Hrs, Log Book, TFMS)
- Introduces ‘Work Diary’ instead of log book. Can be elec.
- 100km rule altered – Diary can be mandatory.
- Solo and Two-up hours
- Enforcement and Compliance
 - Offence categorised by risk level it creates: minor through to critical
 - Fines and demerit points apply, including to non-drivers!
- Sets up three levels of compliance/ accreditation:

5. The Framework

- **Standard**
 - The default posn – no accreditation reqd
 - **Hours Based System**: Hrs are different to current RT Reg.
- **Basic**
 - Accreditation Required - must have in place an audited (against NHVAS Standards) fatigue system – **Hours & risk mgmt Based**
 - Increased hours available, but Work Diary compulsory for all work
 - Fitness for work still a key issue
 - Transition from TMFS: 3m before and 6m after 29 Sep 08
- **Advanced**
 - As for BFM, but additional reqts on risk management system
 - Sets “Outer Limits” of hrs at the 24hrs, 14 day and 28 day points.
 - Cannot be scheduled for – only for exceptional circumstances

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5. Known Positions on New Legn

- **WA and ACT:** No – retaining existing stance
- **Qld:** Model Legn already in place as the trial
- **Victoria:**
 - Some changes to Model Legn. Eg: Defence of “short rest breaks defence” not available. AFM Hours capped at 15hrs in 24.
- **NSW RTA as at 6 June 08:**
 - Working on draft legn. Goal to before house in June, for 29 Sep 08
 - Some changes to model legn will **LIKELY** occur (no guarantees):
 - Short rest break defence not available, like Victoria
 - AFM hours reduced to 15hrs in 24, like Victoria
 - Work Diary mandatory in all areas unless other “stringent” method exists
 - Additional limit in AFM working hours over long periods
- **NSW WorkCover as at 27 Mar 08:**
 - “the OHS DFMP Reg will not be repealed”

What To Do Now?

- There will not be a uniform law in all States
- It appears very likely that in NSW the DFMP Reg and MRRS will continue.

Therefore....

- Ensure your compliance to current law NOW – it will not be waste
- Keep informed

Questions?

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