

Heavy Vehicle Driver Fatigue



Transport
Roads & Maritime
Services

CHAIN OF RESPONSIBILITY

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NSW road transport laws include 'chain of responsibility' provisions which require all parties in the supply chain to take all reasonable steps to prevent a breach of the heavy vehicle driver fatigue laws.

Who is covered by the Chain of Responsibility Provisions?

Each of the following people or functions is included in the chain of responsibility for fatigue management:

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

The chain of responsibility provisions recognise that many people are in a position to cause or contribute to a situation where a driver acts in breach of the NSW fatigue management laws. Rather than focusing solely on 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?

- Each person in the supply chain is under a duty to 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 she or he 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 ISO 3100/2009)

www.standards.org.au

- ISO 9000 quality standards

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 principal 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://rms.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

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 RMS at www.rms.nsw.gov.au and from the NTC website www.ntc.gov.au. The Road Transport (General) Regulation 2005 containing driver fatigue regulations can be found at www.legislation.nsw.gov.au.