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SPECIAL SUPPLEMENT



New South Wales

Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Commerce

Explanatory note

The object of this Regulation is to reduce the fatigue of drivers of heavy trucks. In order to do this, this Regulation imposes obligations on an employer whose employee drives a heavy truck that transports freight long distance. Such an employer is required to assess the risk of harm from fatigue to the driver's health and safety and to take steps to eliminate or control that risk. However, the employer is only required to eliminate or control risks to the extent that the employer's activities contribute to that risk. A similar obligation is placed on head carriers and certain consignors and consignees of freight (including their agents and persons acting on their behalf) who enter into a contract with a self-employed carrier for the transportation of freight long distance by means of a heavy truck. Those persons on whom the obligation is placed are also required to prepare driver fatigue management plans for certain drivers and to make those plans available to those drivers.

This Regulation also requires certain consignors and consignees of freight (including their agents and persons acting on their behalf) not to enter a contract with a carrier for the transport of freight long distance by means of a heavy truck unless they are satisfied that the delivery timetables are reasonable and that each driver who will transport the freight long distance under the contract is covered by a driver fatigue management plan.

This Regulation also requires certain documents to be retained for up to 5 years and to be made available to an inspector or an authorised representative of a driver.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including sections 33 (the general regulation-making power), 34 and 39.

Clause 1 Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005

under the

Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005*.

2 Commencement

This Regulation commences on 1 March 2006.

3 Amendment of Occupational Health and Safety Regulation 2001

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

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Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] **Chapter 4 Work premises and working environment**

Omit “This Chapter is divided into 4 Parts.” from the note following the heading to the Chapter.

Insert instead “This Chapter is divided into 5 Parts.”.

[2] **Chapter 4, Note**

Insert “Part 4.5 deals with long distance truck driver fatigue.” at the end of the note following the heading to the Chapter.

[3] **Chapter 4, Part 4.5**

Insert after Part 4.4:

Part 4.5 Long distance truck driver fatigue

81A Definitions

In this Part:

activities of a person include anything done or omitted to be done by the person, anything done or omitted to be done under the terms of a contract to which the person is a party, anything done or omitted to be done by the person’s employee or agent in the course of his or her employment or agency and anything done or omitted to be done in accordance with a work practice over which the person has control.

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.

combination means a group of vehicles consisting of a motor vehicle connected to one or more vehicles.

consignee means a person to whom a consignment of freight is to be delivered, being a person who carries on business of which a substantial part is prescribed business.

consignor means a person from whom a consignment of freight is to be delivered, being a person who carries on business of which a substantial part is prescribed business.

contract includes a series of contracts.

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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.

GVM has the same meaning as in the *Road Transport (Vehicle Registration) Act 1997*.

head carrier means a carrier other than a self employed carrier.

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.

motor vehicle means a vehicle that is built to be propelled by a motor that forms part of the vehicle.

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 1292.0):

- (a) Agriculture, Forestry and Fishing (Division A),
- (b) Mining (Division B),
- (c) Manufacturing (Division C),
- (d) Construction (Division E),
- (e) Wholesale Trade (Division F),
- (f) Retail Trade (Division G),
- (g) Accommodation, Cafes and Restaurants (Division H),
- (h) Transport and Storage (Division I),
- (i) Communication Services (Division J),
- (j) Property and Business Services (Division L),
- (k) Cultural and Recreational Services (Division P).

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

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- (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.

Note. The classes of persons that are taken to be self-employed carriers for the purposes of this Part are based on those specified in section 309 of the *Industrial Relations Act 1996*.

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 freight.

81B Duty to assess and manage fatigue of drivers

- (1) An employer must not cause or permit any of its employees to transport freight long distance unless:
 - (a) the employer has assessed the risk of harm from fatigue to the employee's health or safety in doing so, and
 - (b) to the extent to which the employer's activities contribute to that risk:
 - (i) the employer has eliminated the risk, or
 - (ii) if elimination of the risk is not reasonably practicable, the employer has controlled the risk.

Maximum penalty: Level 4.

Note. Employers of drivers are also covered by clauses 10 and 11 of this Regulation. Clause 11 provides that an employer must eliminate any reasonably foreseeable risk to the health or safety of any employee of the employer or if it is not reasonably practicable to eliminate the risk, then the employer must control the risk.

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- (2) A head carrier must not enter into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance unless:
- (a) the head carrier has assessed the risk of harm from fatigue to the health or safety of any driver who transports freight long distance under the contract, and
 - (b) to the extent to which the head carrier's activities contribute to that risk:
 - (i) the head carrier has eliminated the risk, or
 - (ii) if elimination of the risk is not reasonably practicable, the head carrier has controlled the risk.

Maximum penalty: Level 4.

- (3) A consignor or consignee must not enter into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance unless:
- (a) the consignor or consignee has assessed the risk of harm from fatigue to the health or safety of any driver that transports freight long distance under the contract, and
 - (b) to the extent to which the consignor or consignee's activities contribute to that risk:
 - (i) the consignor or consignee has eliminated the risk, or
 - (ii) if elimination of the risk is not reasonably practicable, the consignor or consignee has controlled the risk.

Maximum penalty: Level 4.

81C Duty of consignors and consignees to make inquiries as to likely fatigue of drivers

A consignor or consignee must not enter a contract with a head carrier for the transport of freight long distance unless the consignor or consignee has satisfied itself on reasonable grounds:

- (a) that any delivery timetable is reasonable as regards the fatigue of any driver transporting freight long distance under the contract, taking into account industry knowledge of a reasonable time for the making of such a trip (including loading, unloading and queuing times), and
- (b) that each driver who will transport freight long distance under the contract is covered by a driver fatigue management plan.

Maximum penalty: Level 4.

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81D Driver fatigue management plans

- (1) An employer (other than a self-employed carrier) must prepare a driver fatigue management plan for all its employees who are drivers who, in the course of their employment, transport freight long distance.
Maximum penalty: Level 3.
- (2) A head carrier that enters into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance must prepare a driver fatigue management plan for all drivers who transport freight long distance under the contract.
Maximum penalty: Level 3.
- (3) A consignor or consignee that enters into a contract with a self-employed carrier under which the self-employed carrier undertakes to transport freight long distance must prepare a driver fatigue management plan for all drivers who transport freight long distance under the contract.
Maximum penalty: Level 3.
- (4) A driver fatigue management plan prepared under this clause must address each of the following matters to the extent to which they may affect driver fatigue:
 - (a) trip schedules and driver rosters, taking into account the following:
 - (i) times required to perform tasks safely,
 - (ii) times actually taken to perform tasks,
 - (iii) rest periods required to recover from the fatigue effects of work,
 - (iv) the cumulative effects of fatigue over more than one day,
 - (v) the effect of the time of day or night on fatigue,
 - (b) management practices, including the following:
 - (i) methods for assessing the suitability of drivers,
 - (ii) systems for reporting hazards and incidents,
 - (iii) systems for monitoring driver's health and safety,
 - (c) work environment and amenities,
 - (d) training and information about fatigue that is provided to drivers,
 - (e) loading and unloading schedules, practices and systems, including queuing practices and systems,

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- (f) accidents or mechanical failures.
 - (5) A person who is required to prepare a driver fatigue management plan may amend or replace the plan at any time.
 - (6) A person who is required to prepare a driver fatigue management plan:
 - (a) must consult in accordance with Division 2 of Part 2 of the Act during the preparation of the plan and at each time the person proposes to amend or replace the plan (except if the proposed amendment or replacement would only change the effect of the plan in a minor way), and
 - (b) must ensure that the person's activities are consistent with that plan, and
 - (c) must make a copy of the plan available to each driver covered by the plan.

Maximum penalty: Level 1.

81E Application of Part to consignors and consignees and their agents

- (1) Clauses 81B (3), 81C and 81D (3) apply to an agent or other person acting on behalf of a consignor or consignee in the same way as they apply to a consignor or consignee.
- (2) If an offence under clause 81B (3), 81C or 81D (3) is committed by an agent or other person acting on behalf of a consignor or consignee, the consignor or consignee is also guilty of the offence.
- (3) Clauses 81B (3), 81C and 81D (3) do not apply to or in respect of either of the following:
 - (a) a consignor or consignee that employs fewer than 200 employees (including persons carrying out work for the consignor or consignee under labour hire arrangements),
 - (b) an agent or other person acting on behalf of a consignor or consignee referred to in paragraph (a).

81F Records

- (1) A person who is required to prepare a driver fatigue management plan is to keep the following documents:
 - (a) all driver fatigue management plans prepared by the person,
 - (b) all contracts entered into in the course of the person's business (including any contracts of employment) that relate to the transportation of freight long distance,

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- (c) all trip schedules, delivery timetables and driver rosters prepared by or on behalf of the person or to which the person has access, but only for those drivers for whom the person was required to prepare a driver fatigue management plan,
- (d) any risk assessments made by or on behalf of the person that relate to the fatigue of drivers of heavy trucks.
- Maximum penalty: Level 1.
- (2) A person who is required to be satisfied of the matters set out in clause 81C is to keep all documents that the person relied on to be satisfied of those matters including the relevant contract and any relevant trip schedules, delivery timetables and driver rosters to which the person has access.
- Maximum penalty: Level 1.
- (3) Despite subclauses (1) and (2), a person:
- (a) is not required to keep a driver fatigue management plan or a contract for more than 5 years after the plan or contract ceases to have effect, and
- (b) is not required to keep a trip schedule, delivery timetable or driver roster for more than 5 years after the end of the period covered by the schedule, timetable or roster, and
- (c) is not required to keep a risk assessment for more than 5 years after the assessment is made, and
- (d) is not required to keep any document that is required to be kept under subclause (2) for more than 5 years after the relevant contract ceases to have effect.
- (4) For the purposes of this clause, if a document is amended in a material way, each version of the document as amended is to be dealt with as a separate document.
- (5) A person who is required to keep documents under this clause must make those documents available for inspection by an inspector or an authorised representative in accordance with a request by the inspector or authorised representative and, in any event, no later than 7 days after the date of the request.
- Maximum penalty: Level 1.
- (6) In this clause:
authorised representative means an authorised representative within the meaning of Division 3 of Part 5 of the Act who is exercising functions under that Division.

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