

Heavy Vehicle (Fatigue Management) National Regulation

Explanatory Notes for SL 2013 No. 78

made under the

Heavy Vehicle National Law as applied by the *Heavy Vehicle National Law Act 2012* (Qld) and by the law of States and Territories

General outline

Short title

Heavy Vehicle (Fatigue Management) National Regulation.

Authorising law

Section 730 of the *Heavy Vehicle National Law* contained in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld).

Policy objectives and the reasons for them

The *Heavy Vehicle National Law* is a Council of Australian Governments (COAG) reform that introduces a national scheme for the regulation of heavy vehicles used on public roads. The scheme is to be administered by the National Heavy Vehicle Regulator which is established by the *Heavy Vehicle National Law* and is based in Brisbane.

The primary objectives of this regulation are to:

- prescribe the work diary recording requirements that apply to drivers of fatigue-regulated heavy vehicles;

- prescribe the maximum work and minimum rest hours that apply to the driver of a fatigue-regulated heavy vehicle who is operating under Standard Hours or a Basic Fatigue Management (BFM) accreditation; and
- prescribe the penalty categories that apply to breaches of the maximum work or minimum rest hours applicable to the Advanced Fatigue Management (AFM) accreditation or work and rest hours exemption they are working under.

Other objectives of the regulation are to:

- prescribe odometer requirements that apply to fatigue-regulated heavy vehicles;
- prescribe matters to which an authorised officer must have regard to in requiring a fatigued driver to stop work;
- provide examples for how to take reasonable steps to meet fatigue management obligations under the Heavy Vehicle National Law; and
- modify the penalty categories for AFM from those found in the Heavy Vehicle Driver Fatigue National Model Legislation to be aligned with the revised AFM approach known as the ‘Risk Classification System’.

Achievement of policy objectives

The *Heavy Vehicle (Fatigue Management) National Regulation* is required to support the effective operation of the heavy vehicle fatigue provisions contained in the *Heavy Vehicle National Law*.

The driver fatigue requirements contained in this regulation are largely consistent with those currently imposed in Queensland by the *Transport Operations (Road Use Management) Act 1995* (Qld) and the *Transport Operations (Road Use Management—Fatigue Management) Regulation 2008* (Qld).

The fatigue management and record keeping requirements imposed on drivers of fatigue-regulated heavy vehicles under this regulation are reasonable, appropriate, effective and proportional because:

- they were subject to rigorous cost benefit analysis during the development of the *Heavy Vehicle Driver Fatigue National Model Legislation (2008)*;
- the obligations placed on duty holders by the regulation represent a reasonable and appropriate balance between safety, compliance and administrative burdens;
- the work diary and work and rest hour requirements have been operating effectively in Queensland, New South Wales, Victoria and South Australia since 2008; and
- the regulation makes a number of minor improvements to work diary requirements which will reduce the administrative burden on drivers in Queensland and other participating jurisdictions.

The regulation will achieve its objective in relation to work diary recording requirements by prescribing the information that must be recorded in work diaries, and the time and manner in which this information must be recorded.

The regulation will achieve its objective in relation to work and rest hour regulation by setting out the maximum work and minimum rest times that drivers of fatigue-regulated heavy vehicles are permitted to operate, and the penalty categories that apply for any particular breach of a maximum work or minimum rest time requirement.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the *Heavy Vehicle National Law*, which are to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in way that:

- (a) promotes public safety;
- (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity;
- (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
- (d) encourages and promotes productive, efficient, innovative and safe business practices.

The Regulation prescribes work diary requirements and work and rest hour restrictions for drivers of fatigue-regulated heavy vehicles to ensure that fatigue-regulated heavy vehicles can be safely used on roads.

The Regulation is also consistent with section 220 of the *Heavy Vehicle National Law*, which states the main purpose of Chapter 6 of the Law is to provide for the safe management of the fatigue of drivers of fatigue-regulated heavy vehicles while they are driving on a road.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation. In particular, section 23 of the regulation provides double jeopardy protection for an offence against section 228 or 229 of the *Heavy Vehicle National Law*; a person cannot be convicted of an offence against one of those sections and an equivalent offence under a relevant work health and safety law of a participating jurisdiction for the same occurrence.

Benefits and costs of implementation

The requirements in this regulation were subject to a detailed and rigorous cost benefit analysis during the development of the *Heavy Vehicle Driver Fatigue National Model Legislation (2008)*¹.

An independent cost benefit analysis was commissioned to ascertain the net benefits possible through adoption of the proposed Heavy Vehicle National Law. The outcomes of this analysis are summarised in the explanatory notes for the *Heavy Vehicle National Law Bill 2012 (Qld)*.

There are no additional appreciable costs associated with implementing this regulation.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

The primary duties, offences, obligations, defences and penalties relevant to this Regulation are all contained within the primary law. The Regulation

1 National Transport Commission “*Heavy Vehicle Driver Fatigue Final Regulatory Impact Statement*”, December 2006

does not infringe on the rights and liberties of individuals or the institution of Parliament.

Consultation

An earlier version of this Regulation was distributed for public comment when the exposure draft of the *Heavy Vehicle National Law* and Regulatory Impact Statement was released for public comment in February 2011. The comments provided by stakeholders in response to this earlier version of the Regulation were considered in developing the proposed regulation.

Ongoing consultation has been undertaken with State and Territory stakeholders through the involvement in the Project Implementation Board (PIB). Stakeholders through the PIB have been involved in the development of the regulation and review of draft versions of the regulation. Stakeholders agree with the proposed regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the National Heavy Vehicle Regulator.

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