

## MANAGEMENT OF FATIGUE REGULATED HEAVY VEHICLES

National heavy vehicle driver fatigue reforms were introduced on 29 September 2008 with the commencement of the Transport Operations (Road Use Management–Fatigue Management) Regulation 2008 (the Regulation) and amendments to the *Transport Operations (Road Use Management) Act 1995*.

The amendments affect drivers of fatigue regulated heavy vehicles and particular persons whose activities influence the conduct of those drivers in relation to fatigue.

One of the key changes introduced is combining 'driving time' and 'non-driving time' into a new definition termed 'work time' to recognise that all driver activities are classed as work.

The amendments include:

- (i) the introduction of new work diaries to replace the existing log books;
- (ii) new definitions of work and rest times when referring to driver hours;
- (iii) new systems of fatigue management and accreditation of operators;
- (iv) a risk-based system for classifying fatigue related breaches; and
- (v) new offences relating to fatigue.

### Transitional provisions

Although the provisions of the Regulation take effect from 29 September 2008, Queensland Transport has provided specific transitional arrangement to allow drivers of fatigue regulated heavy vehicles and the industry to make changes from the present system and practices.

A copy of **Transition arrangements in Queensland** is located on the Queensland Transport fatigue management web page . Officers enforcing fatigue regulated heavy vehicle provisions should become familiar with these arrangements.

Transitional arrangements of note include:

- (i) Drivers with a logbook at commencement (non local area drivers) can continue to use their logbook for a maximum period of up to 90 days from commencement. Logbooks will not be sold after 28 September 2008. Therefore, a driver will need to change over to the new work diary within the 90 day period;
- (ii) Drivers previously working under regulated hours will be able to access the transitional class work/rest hour exemption for 6 months, allowing holders of the exemption to work regulated hours (drive 12 + 2 extra work hours);
- (iii) Drivers previously working under the Transitional Fatigue Management Scheme will transition to Basic Fatigue Management hours for 12 months from 29 September 2008. Drivers will be required to carry their driver certification manual to work under the transitional arrangements; and
- (iv) Current Fatigue Management Pilot Program (FMP) drivers and operators will have 12 months to continue to meet all requirements under their existing

arrangements. FMP drivers have their own diary and will continue to use this while working under this FMP transitional arrangement.

## **Enforcement grace period**

### **POLICY**

To assist industry in transitioning to the new fatigue legislation and ensure consistent enforcement practice, officers are to follow the below listed principles as an enforcement policy for a period of three months from 29 September 2008 to 29 December 2008:

- (i) In relation to deciding the appropriate enforcement response only, the reforms introduce four recognised risk levels: critical risk, severe risk, substantial risk and minor risk;
- (ii) Critical risk offences allow for an infringement notice or fine and carry 3 demerit points;
- (iii) Severe risk offences allow for an infringement notice or fine and carry 2 demerit points;
- (iv) Substantial and minor risk offences allow for an infringement notice or fine but do not carry demerit points. Detection of multiple low risk offences does not change the risk level of the offences;
- (v) When a minor risk offence is detected (and also if the discretionary decision for a substantial risk offence is not to issue an infringement notice or complete a Transport Breach Report (PT57B)), officers are to give a caution;
- (vi) When a substantial risk offence is detected, it is for the discretion of the enforcement officer dealing with the matter to decide whether enforcement action is taken. Suggested factors to be taken into consideration during the decision to issue an infringement notice or produce a Transport Breach Report (PT57B) include (but are not limited to):
  - (a) any known history of the alleged offender not complying with fatigue regulations; and
  - (b) how many such offences have been detected at the time; and
- (vii) When a critical or severe risk offence is detected, then normal enforcement action should continue to be taken through the grace period. The normal response for these categories of offence is for an infringement notice to be issued or a Transport Breach Report (PT57B).

### **Training**

Queensland Transport has provided train the trainer workshops to the Queensland Police Service in relation to the Regulation. A computer based training package 'Compliance Enforcement Legislation–Heavy Vehicles–CD/OLP' is also available on ADVANCE (Course code QC0727) to assist officers in understanding the new Regulation.

The policies and procedures contained in this Circular reflect these changes and are set out in the format that will be used when incorporated into the Traffic Manual in due course.

#### **11.9.1 Powers relating to transport Acts offences generally**

When investigating offences against transport Acts generally, officers may, subject to the limitations and requirements attached to those powers:

(i) require the person in control of a vehicle other than an aircraft or train or a vehicle being pulled by an animal, to stop the vehicle for a prescribed purpose (see [s. 60](#) of the *Police Powers and Responsibilities Act*);

(ii) give directions, signals or orders to drivers or pedestrians on or about to enter a road which the officer considers reasonably necessary for the safe and effective regulation of traffic (see [s. 59](#) of the *Police Powers and Responsibilities Act*);

(iii) require a person to produce the person's driver licence for inspection (see [s. 58](#) of the *Police Powers and Responsibilities Act*);

(iv) require a person to produce for inspection a document issued or required to be kept under a transport Act or corresponding law (see [s. 49](#) of the *Transport Operations (Road Use Management) Act*);

(v) require a person to state the person's correct name and address and provide evidence of correctness of the stated name and address (see [s. 40](#) of the *Police Powers and Responsibilities Act*);

(vi) inspect or test vehicles (see [s. 63](#) of the *Police Powers and Responsibilities Act*);

(vii) enter and search a vehicle, inspect, measure, test, photograph or film a vehicle or anything in or on it, take samples of a vehicle and anything in or on it, copy a document in a vehicle or move a vehicle's load for the purpose of enforcing a transport Act under defined circumstances (see [s. 64](#) of the *Police Powers and Responsibilities Act*);

(viii) by written notice (Defect Notice (F2869)), require the owner of the vehicle, or if there is a registered operator for the vehicle and the registered operator, apart from being the registered operator, is not the owner of the vehicle, the registered operator for the vehicle, to have the vehicle inspected at a stated reasonable time and place (see [s. 65](#) of the *Police Powers and Responsibilities Act*);

(ix) by written notice (Defect Notice (F2869)), prohibit the use of a vehicle if it reasonably suspected to be unsafe or defective (see [s. 66](#) of the *Police Powers and Responsibilities Act*);

(x) if the officer reasonably believes the person in control of a fatigue regulated heavy vehicle has contravened a maximum work requirement, minimum rest requirement, is impaired by fatigue or their work diary is not produced or is unreliable, by written notice (Prohibition Notice (F3162) require the person not to work (see ss. 39K to 39N of the *Transport Operations (Road Use Management) Act*. The use of this power should be restricted to circumstances outlined in s. 11.10.1: 'Work diary and fatigue offences' of this Circular;

(xi) require persons in control of vehicles to give officers reasonable help or require persons in control of vehicles or who are in or have just left a vehicle to do or not do anything which the officer believes is reasonably necessary to enable the officer to effectively and safely exercise a power under a transport Act in relation to the vehicle (see [s. 68](#) of the *Police Powers and Responsibilities Act*);

(xii) seize evidence (see [s. 196](#) of the *Police Powers and Responsibilities Act*);

(xiii) arrest under certain circumstances (see [ss. 365](#), [376](#), [377](#) and [380](#) of the *Police Powers and Responsibilities Act*); and

(xiv) require the person in control of an animal, whether or not the animal is pulling a vehicle, to stop the animal for a prescribed purpose (see [ss. 135](#) and [136](#) of the *Police Powers and Responsibilities Act*. See also [s. 135](#)(3) for what are 'prescribed purposes').

## 11.10 Fatigue management

The Transport Operations (Road Use Management–Fatigue Management) Regulation (the Regulation) and the *Transport Operations (Road Use Management) Act* regulates drivers of fatigue regulated heavy vehicles and particular persons whose activities influence the conduct of those drivers in relation to fatigue.

### Definitions

For the purpose of this section the following definitions apply:

BFM means the Basic Fatigue Management system.

AFM means the Advanced Fatigue Management system.

'Minor risk breach', 'substantial risk breach', 'severe risk breach' and 'critical risk breach' see s. 5: 'Definitions' of the Regulation.

'Work time' and 'rest time' see ss. 38 and 39 of the Regulation.

'Person in control' see s. 5: 'Definitions—the dictionary' of the *Transport Operations (Road Use Management) Act*.

'Fatigue regulated heavy vehicle' see s. 39J: 'Meaning of *fatigue regulated heavy vehicle*' of the *Transport Operations (Road Use Management) Act*.

### 11.10.1 Work diary and fatigue offences

Under the provisions of the Regulation the drivers of fatigue regulated heavy vehicles are required to observe certain limits on maximum work and minimum rest periods.

Drivers of fatigue regulated heavy vehicles are required to possess a work diary if the driver:

- (i) is engaged in 200+km work;
- (ii) was engaged in 200+km work in the last 28 days;
- (iii) is driving under BFM or AFM hours;
- (iv) was driving under BFM or AFM hours in the last 28 days;
- (v) is driving under a work and rest hours exemption; or
- (vi) was driving under a work and rest hours exemption in the last 28 days.

See s. 66: 'Application of sdiv 1' of the Regulation.

Drivers of fatigue regulated heavy vehicles are required to correctly complete their written or electronic work diary for each day on which the driver:

- (i) engages in 200+km work;
- (ii) works under BFM hours or AFM hours; or
- (iii) works under a work and rest hours exemption.

See s. 69: 'Purpose of sdiv 2' of the Regulation.

A person may apply to the chief executive for approval to use an electronic work diary for the purpose of complying with the Regulation.

The Regulation imposes work and rest limits on drivers of fatigue regulated heavy vehicles dependent on which arrangement the operator is working under:

- (i) ss. 46 - 51: 'Standard work and rest arrangements';
- (ii) ss. 52 - 55: 'BFM work and rest arrangements';
- (iii) ss. 56 - 57: 'AFM hours'; or
- (iv) ss. 58 – 59: 'Changing work and rest hour option'.

The classification of breaches for fatigue management requirements are determined by the degree of time by which a driver of a fatigue regulated heavy vehicle has exceeded their maximum work time or is deficient in their minimum rest time, over various time periods.

The risk categories are:

- (i) minor risk;
- (ii) substantial risk;
- (iii) severe risk; and
- (iv) critical risk.

Schedules 1, 2 and 3 of the Regulation define the risk categories for Standard, BFM and AFM work and rest hour arrangements.

## **Exemptions**

Part 5, Division 4: 'Exemption for emergency services' of the Regulation provides that an approved person who has time-critical duties on the way to, or during, an emergency is exempted from parts 3 and 4 other than division 4 or 5 of the Regulation.

The Chief Executive may grant work and rest hour exemptions and work diary exemptions. If the driver of a fatigue regulated heavy vehicle is working under a work and rest hour exemption or work diary exemption, the driver must keep in the driver's possession:

- (i) for a class work and rest hour exemption – a copy of the gazette notice for the exemption; or
- (ii) for a work and rest hours exemption granted under s. 157 or work diary exemption – the exemption notice for the exemption

See s. 168: 'Driver must carry copy of gazette notice or exemption notice' of the Regulation.

## **Duty of driver to avoid driving while fatigued**

Section 21: 'Duty of driver to avoid driving while fatigued' of the Regulation provides for the offence that a person must not drive a fatigue regulated heavy vehicle on a road while the person is impaired by fatigue. A person is impaired by fatigue if the person is fatigued to the extent that the person is incapable of driving a fatigue regulated heavy vehicle safely (see Part 2, Division 1: 'Meaning of fatigue and impaired by fatigue' of the Regulation).

## **Chain of responsibility**

Section 7: 'Who is a *party in the chain of responsibility*' of the Regulation identifies each of the parties, in addition to the driver, in the chain of responsibility for a fatigue regulated heavy vehicle, those persons being:

- (i) an employer of the driver of the vehicle;
- (ii) a prime-contractor of the driver of the vehicle;
- (iii) an operator of the vehicle;
- (iv) a scheduler for the vehicle;
- (v) a consignor of the goods transported or to be transported by the vehicle;
- (vi) a consignee of the goods transported or to be transported by the vehicle;
- (vii) a loading manager of the goods in the vehicle;
- (viii) a loader of goods in the vehicle; and
- (ix) an unloader of the goods in the vehicle.

Section 22: 'Duty of party in the chain of responsibility to prevent driver driving while fatigued' of the Regulation provides for the offence that a party in the chain of responsibility for a fatigue regulated heavy vehicle must take all reasonable steps to ensure the driver does not drive the vehicle on a road while the driver is impaired by fatigue.

## **POLICY**

Officers commencing a proceeding for an offence against s. 21: 'Duty of driver to avoid driving while fatigued' or s. 22: 'Duty of party in the chain of responsibility to prevent driver driving while fatigued' of the Regulation must do so by way of notice to appear, complaint and summons or where justified, arrest. There are no provisions to issue an infringement notice for these offences.

Additional duties of particular parties in the chain of responsibility are provided for in Part 2, Division 4 of the Regulation.

## **Reasonable steps defence**

A person in the chain of responsibility may claim a reasonable steps defence in relation to proceedings for an offence against a provision of part 2 of the Regulation that may be committed by the person failing to take all reasonable steps if the person establishes that:

- (i) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- (ii) either:
  - (a) the person took all reasonable steps to prevent the contravention; or
  - (b) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

See ss. 8: 'What is the *reasonable steps defence*', 9: 'Matters court may consider for deciding whether person took all reasonable steps' and 10: 'When person regarded to have taken all reasonable steps – pt 2 duties' of the Regulation.

## Requirements by officers

### POLICY

Where an officer reasonably believes the person in control of a fatigue regulated heavy vehicle has contravened a maximum work requirement by working for a period in excess of the maximum period or contravened a minimum rest requirement by taking a period of rest that is shorter than the minimum period, the officer may require the person to immediately take a period of rest in accordance with ss. 39K: 'Requiring person to rest for contravention of maximum work requirement' and 39L: 'Requiring person to rest for contravention of minimum rest requirement' of the *Transport Operations (Road Use Management) Act*.

Where an officer reasonably believes a person in control of a fatigue regulated heavy vehicle to be impaired by fatigue, or their work diary cannot be produced or relied upon, the officer may require the person to stop work and not work again for a stated period in accordance with ss. 39M: 'Requiring person to stop working if impaired by fatigue' and 39N: 'Requiring person to stop working if work diary not produced or unreliable' of the *Transport Operations (Road Use Management) Act* (see also ss. 18: 'What is *impaired by fatigue*' and 19: 'Matters court may consider in deciding whether person is impaired by fatigue' of the Regulation).

The approved form for the purpose of a requirement made in accordance with ss. 39K to 39N of the *Transport Operations (Road Use Management) Act* is the Prohibition Notice (F3162). This form is available from Queensland Transport.

### PROCEDURE

Officers who intercept fatigue regulated heavy vehicles should require the drivers of such vehicles required to carry work diaries to produce their work diaries for inspection.

Where an inspection of a work diary reveals that the provisions of the Regulation have not been complied with officers should issue an infringement notice for the relevant offence.

Officers who detect an offence as a result of inspecting an authorised work diary, other than an electronic work diary, should:

- (i) endorse the relevant page with:
  - (a) time, date and place at which the offence was detected;
  - (b) sufficient notations to show that an offence was committed with respect to the information shown, or not shown, on the page; and
  - (c) their signature, name, rank, number and station;
- (ii) make notes in their official police notebook of:
  - (a) the particulars of the offender;
  - (b) the number of the offender's work diary;
  - (c) the number of the page of the offender's work diary which contains the information to substantiate the offence;
  - (d) any conversation with the offender; and
  - (e) any other particulars necessary;

(iii) return the work diary to the offender.

Officers who inspect work diaries, other than electronic work diaries, that are correctly completed should endorse the last original page in use with their signature, name, rank, number and station together with the time, date and place at which the work diary was inspected.

## ORDER

Officers who make a requirement of a person in control of a fatigue regulated heavy vehicle in accordance with ss. 39K to 39N of the Regulation are to:

- (i) make an appropriate notation in the person in control's work diary (other than an electronic work diary); and
- (ii) issue the person in control with an appropriately completed Prohibition Notice (F3162). These forms are available from Queensland Transport.

### **11.10.2 Basic Fatigue Management and Advanced Fatigue Management**

As alternatives to compliance with the standard work and rest arrangement of work and rest time limits some operators of fatigue regulated heavy vehicles are registered as participants in either the Basic Fatigue Management system (BFM) or the Advanced Fatigue Management system (AFM).

Drivers of fatigue regulated heavy vehicles working under a BFM or a AFM accreditation must have in the driver's possession:

- (i) a copy of the accreditation certificate for the BFM or AFM accreditation;
- (ii) a document, signed by the operator of the vehicle who holds the BFM or AFM accreditation, stating that the driver:
  - (a) is working under the operator's BFM or AFM accreditation; and
  - (b) has been inducted into the operator's BFM or AFM fatigue management system; and
  - (c) meets the requirements relating to drivers under the operator's BFM accreditation.

Drivers of fatigue regulated heavy vehicles working under AFM accreditation must also have in their possession a document stating the AFM hours applying under the AFM accreditation.

See ss. 141: 'Driver must carry BFM accreditation details' and 150: 'Driver must carry AFM accreditation details' of the Regulation.

## POLICY

Officers intercepting fatigue regulated heavy vehicles being driven by drivers working under a BFM or AFM accreditation should conduct inquiries to ensure the driver has in their possession the required documents in accordance with ss. 141: 'Driver must carry BFM accreditation details' and 150: 'Driver must carry AFM accreditation details' of the Regulation.

Where the driver does not have the required documentation officers should consider issuing an infringement notice to the driver for the offence.

### **11.10.3 Deleted**

### **11.10.4 Issuing work diaries**

#### **PROCEDURE**

Officers at stations and establishments listed in Appendix 11.1 of the Traffic Manual are permitted to issue work diaries.

Prior to issuing work diaries, officers should ensure that applicants:

- (i) have the correct fee in their possession; and
- (ii) produce a current driver's licence with the appropriate heavy vehicle class.

When issuing new work diaries, officers should:

- (i) obtain the previous work diary or, where applicable, the previous log book from the applicant prior to issuing a new work diary;
- (ii) cancel all remaining unused pages in the previous work diary or log book by using a 'cancelled' stamp or printing the word 'cancelled' on each unused page;
- (iii) return the cancelled work diary or log book to the applicant;
- (iv) if not working on-line with TRAILS, obtain authorisation for the issue of the work diary from Queensland Transport Compliance Section Radio Room (see Contact Directory of the Traffic Manual);
- (v) complete the application form page of the work diary once approval is obtained from Queensland Transport;
- (vi) ensure that the applicant reads, or if unable to read has it read to them, the information and the declaration on the application form page prior to signing it; and
- (vii) remove the original of the application form page prior to issuing the work diary and forward this original to Queensland Transport with the appropriate fee.

Officers may issue new work diaries to applicants who are unable to produce their previous work diary or, where applicable, log book because it was:

- (i) lost;
- (ii) stolen; or
- (iii) destroyed.

In such cases officers should ensure that the applicant signs the appropriate declaration on the application form page.

Officers who are advised by applicants for new work diaries that their previous work diary or where applicable, log book has been seized by an authorised officer should request that the applicant produce the seizure receipt which was issued when the previous work diary or log book was seized.

Where applicants are unable to produce a seizure receipt officers should seek verification of the seizure by:

- (i) requesting the applicant to provide details of the seizure (where seized, time and date seized, whether seized by police or Queensland Transport); and

(ii) providing such details to the Transport Compliance Section Radio Room (see Contact Directory of the Traffic Manual).

#### POLICY

Officers should not issue work diaries outside of office hours except under exceptional circumstances and are not, in any case, to issue log books between the hours of 0200 and 0400.

Officers in charge of stations should ensure that fees collected for work diaries are forwarded regularly to Queensland Transport.

#### **Administrative**

#### ORDER

Officers in charge are to note the contents of this circular and bring them to the notice of all members under their control.

#### POLICY

The contents of ss. 11.9.1, 11.10, 11.10.1, 11.10.2, 11.10.3 and 11.10.4 of the Traffic Manual are hereby cancelled. The contents of this Circular will be incorporated into Chapter 11 of the Traffic Manual in due course.

**IAN STEWART  
DEPUTY COMMISSIONER  
(SPECIALIST OPERATIONS)**