Submission No 22

INQUIRY INTO HEAVY VEHICLE SAFETY

Organisation: NSW Centre for Road Safety, Roads & Traffic Authority (RTA)

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NSW Centre for
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STAYSAFE COMMITTEE

07 APR 2009

RECEIVED

Mr Geoff Corrigan MP
Chair
Staysafe Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Corrigan

I refer to your letter on 22 January 2009 regarding the inquiry into heavy vehicle safety.

I am attaching the Roads and Traffic Authority's (RTA) submission into heavy vehicle safety. The RTA submission goes beyond the specific questions asked, and broadly outlines the incidence and causes of heavy vehicle crashes on NSW roads and provides comprehensive details on heavy vehicle safety initiatives and activities for which the RTA is responsible. The submission then addresses the terms of reference (where relevant to the RTA) and explains the relationship between road transport fatigue legislation and OHS legislation. It also discusses the provision of infrastructure (such as rest areas) to support fatigue management initiatives. Also attached to the main document is a detailed report on the Heavy Vehicle Driver Fatigue and Speeding Compliance Legislation

If you require further information, please do not hesitate to contact me on 8588 5800.

Yours sincerely

6/04/09

Dr Soames Job
Director
NSW Centre for Road Safety

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Submission to the inquiry into Heavy Vehicle Safety

conducted by the Parliamentary Joint Standing Committee on Road Safety (STAYSAFE)

March 2009

Contents

Part 1 Introduction

In a recent letter, the Chairman of the STAYSAFE Committee requested the Chief Executive of the Roads and Traffic Authority (RTA) to provide a submission to its inquiry into heavy vehicle safety. While the terms of reference concentrate on NSW Occupational Health and Safety Legislation relating to long distance truck driver fatigue and a transport industry award, the Chairman acknowledged that "heavy vehicle safety is a critical part of road safety management…"

Approach taken in this submission

This submission will begin by outlining the current understanding of the incidence of heavy vehicle crashes on NSW roads and their causes. It will then address the issues relating to heavy vehicle safety for which the RTA has been responsible. These include research programs, heavy vehicle safety initiatives such as the Three Strikes Scheme, Safe-T-Cam, speed limiters, compliance and enforcement legislation, roadside drug testing, Enhanced Enforcement Program, heavy vehicle standards and inspection initiatives and communication campaigns.

The submission then specifically addresses the terms of reference of the inquiry. Attached for STAYSAFE's information at Appendix A is a recent briefing prepared to support the evidence given to the Committee in November 2008 on [National] Heavy Vehicle Driver Fatigue and Speeding Compliance legislation (updated to March 2009).

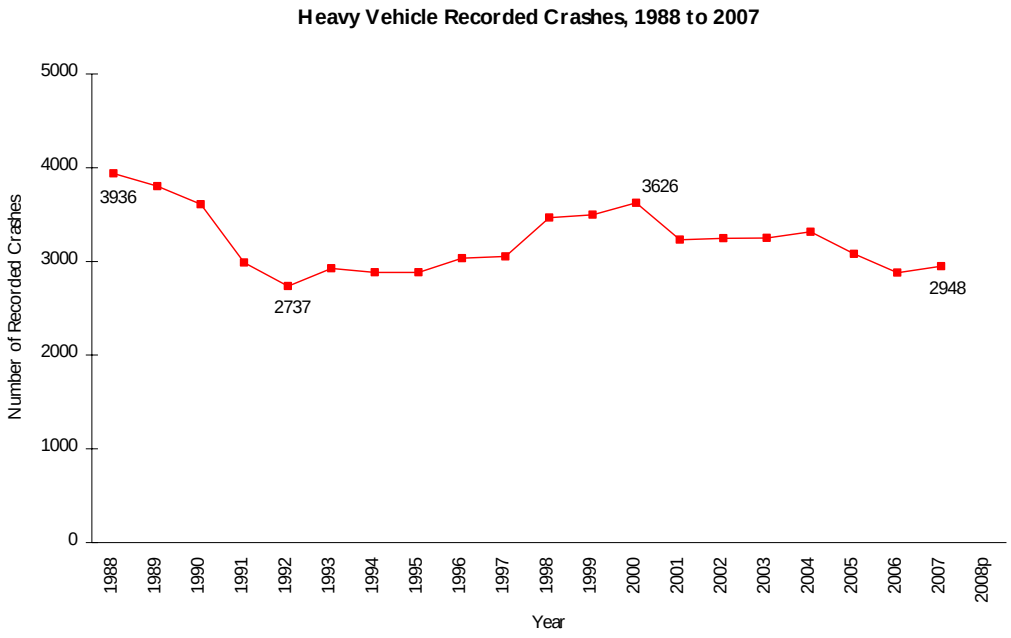
Part 2 Heavy Vehicle Safety in NSW

Incidence of road crashes involving heavy vehicles[1]

The current incidence of road crashes involving heavy vehicles

There were 2,948 recorded crashes involving a heavy vehicle driver in 2007, the most recent year of finalised data available.[2] Of these 86 were fatal crashes and 1,177 were injury crashes. There were a total of 1,713 casualties, comprising 93 persons killed and 1,620 persons injured. Preliminary data for 2008 indicate that there were 67 fatal crashes involving a heavy vehicle driver and from these crashes 73 persons were killed.

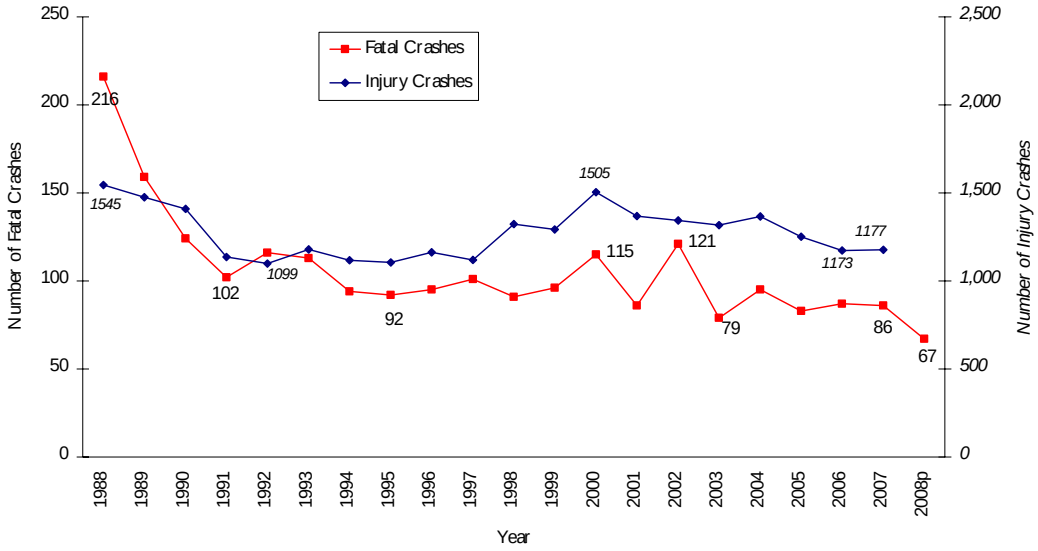
The following charts show the trends for crashes involving heavy vehicles since 1988.



[1] The discussion concerns only crashes on the RTA crash database involving a heavy vehicle and where there was a heavy vehicle driver present.

[2] Preliminary fatality data re available for 2008 and are noted where relevant in this report. However, the final number of fatalities will not be known until after remaining coronial inquests are completed. This is typically finalised in the second half of the following year. Other data also become available with significant delays. For example, the travel survey data collected Federally typically are available in October of the following year.

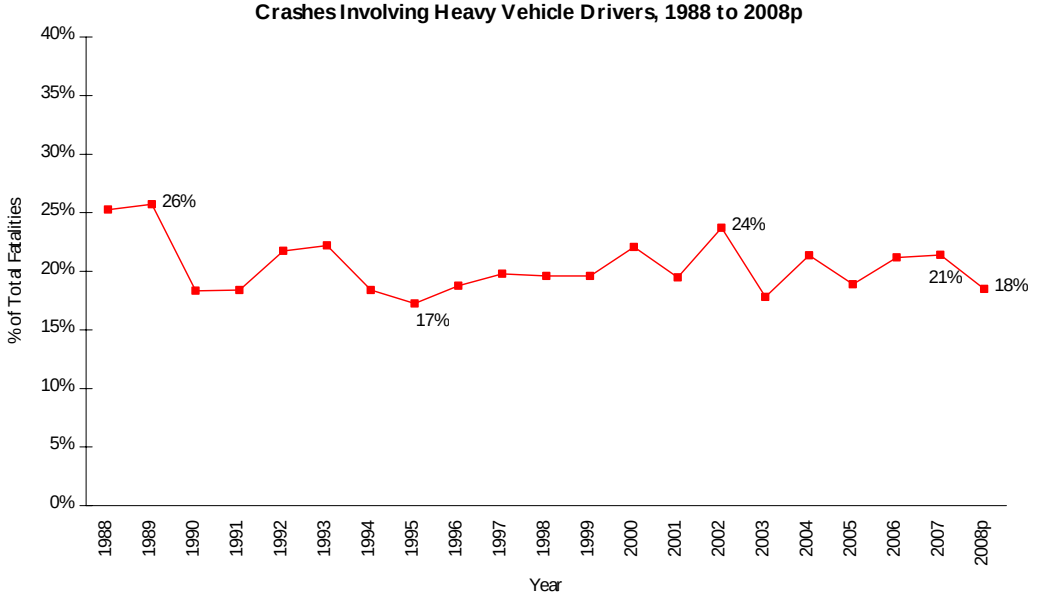
Fatal and Injury Crashes Involving Heavy Vehicles, 1988 to 2008p



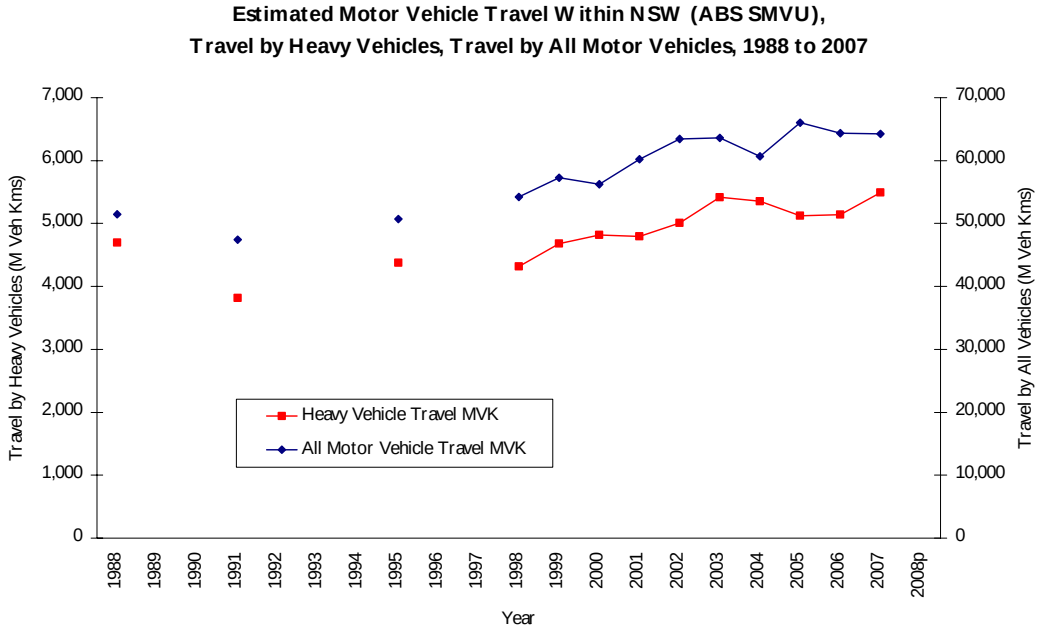
The charts show an upward trend for all recorded crashes since the early 1990s, whilst injury crashes have trended slightly downwards since 2000. Apart from a period of wild fluctuations between 2000 and 2003, fatal crashes have trended downwards since 1992. The 2008 preliminary result (67 fatal crashes) is the lowest number of fatal crashes for at least two decades and contrasts dramatically with the results in the late 1980s, in particular the 216 fatal crashes recorded in 1988.

Historically, crashes involving heavy vehicles have accounted for around 20% of all road fatalities. The 2008 preliminary result with 18% of total fatalities is one of the lowest percentages recorded over the past twenty years.

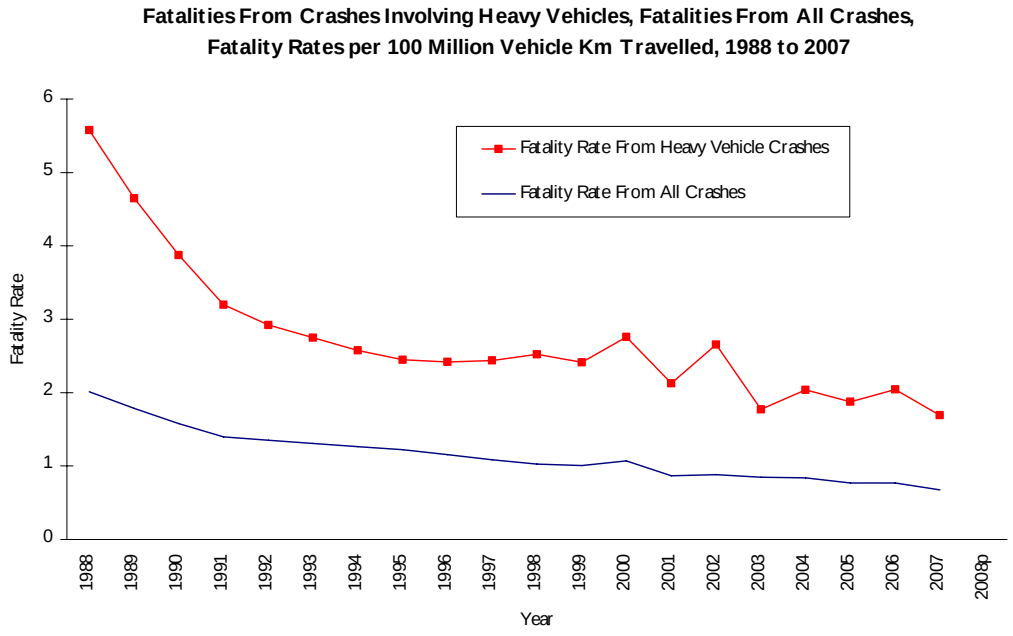
Percentage of Total Road Crash Fatalities From Crashes Involving Heavy Vehicle Drivers, 1988 to 2008p



Whilst heavy vehicles account for only a small percentage of all NSW motor vehicle registrations (around 3%) they actually represent 8% to 9% of all motor vehicle travel within NSW according to the Australian Bureau of Statistics (ABS) Survey of Motor Vehicle Usage (SMVU). The growth in heavy vehicle travel over the past decade follows a similar trend to that for total travel.



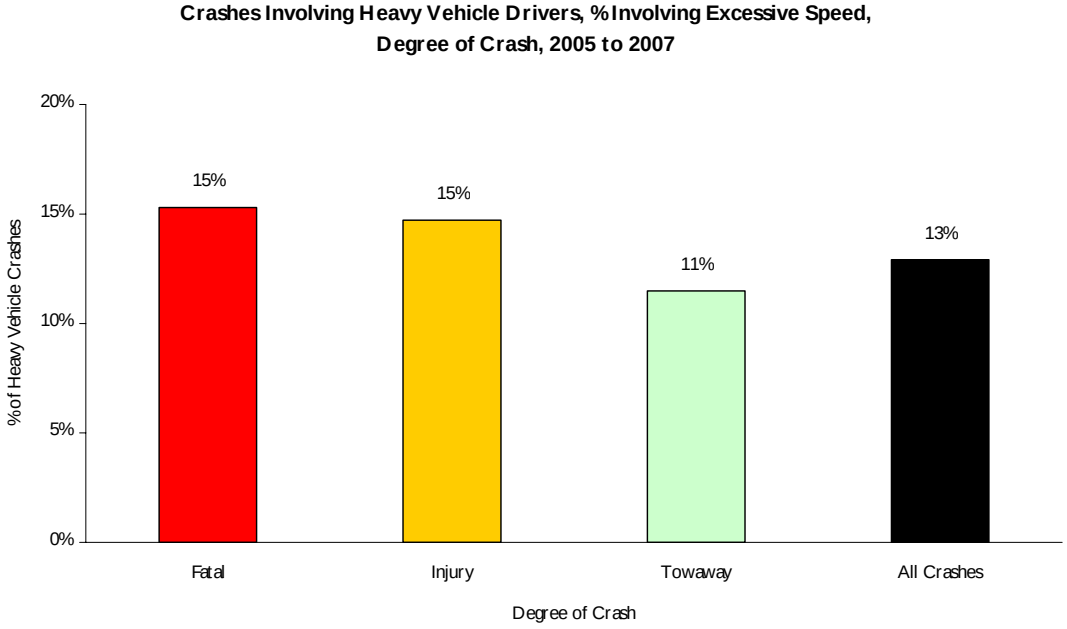
The fatality rate per 100 million vehicle km travelled (MVKT) for crashes involving heavy vehicles are significantly higher than for all crashes. In 2007, there were 1.7 fatalities per 100 MVKT from heavy vehicle crashes, compared with 0.7 fatalities per 100 MVKT for all crashes. However, this disparity has been gradually improving over the past two decades.



Underlying risks and major factors contributing to crashes

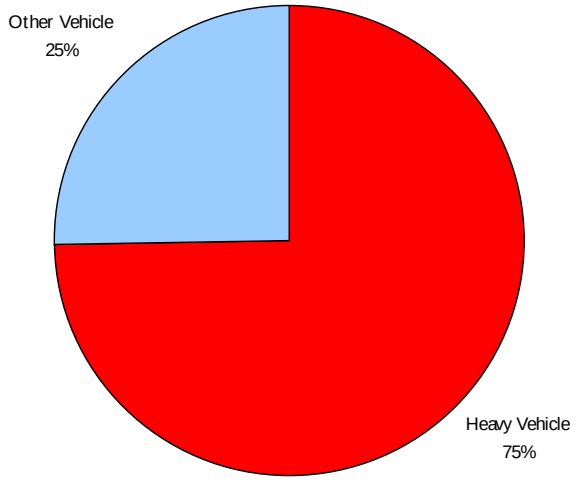
Speed

One in eight (13%) crashes involving a heavy vehicle involved excessive or inappropriate speed whilst 15% of fatal crashes were speed related. This figure deserves some discussion as it appears an aberration. Firstly, because the other potential witness to the crash is often the person who has died and secondly, the crashes are more likely to be fatal at higher speed limits (100 and 110 km/h) where speed is more difficult to determine and witnesses are less likely. Thus speed may be underestimated in heavy vehicle crashes.



The majority of the speeding motor vehicles in these crashes were heavy vehicles (75%):

Speeding Controllers Involved in Heavy Vehicle Crashes, 2005 to 2007



Fatalities From Crashes Involving a Heavy Vehicle Driver, 2005 to 2007
Speed Involvement, Road User

Speed Involvement	Heavy Vehicle Occupant	Light Vehicle Occupant	Pedestrian or Pedal Cyclist	Total
Not Involved	27	165	55	247
Speed for Heavy Vehicle Driver	30	4	2	36
Speed for Light Vehicle Driver / Rider	2	9	0	11
Total	57	178	57	292

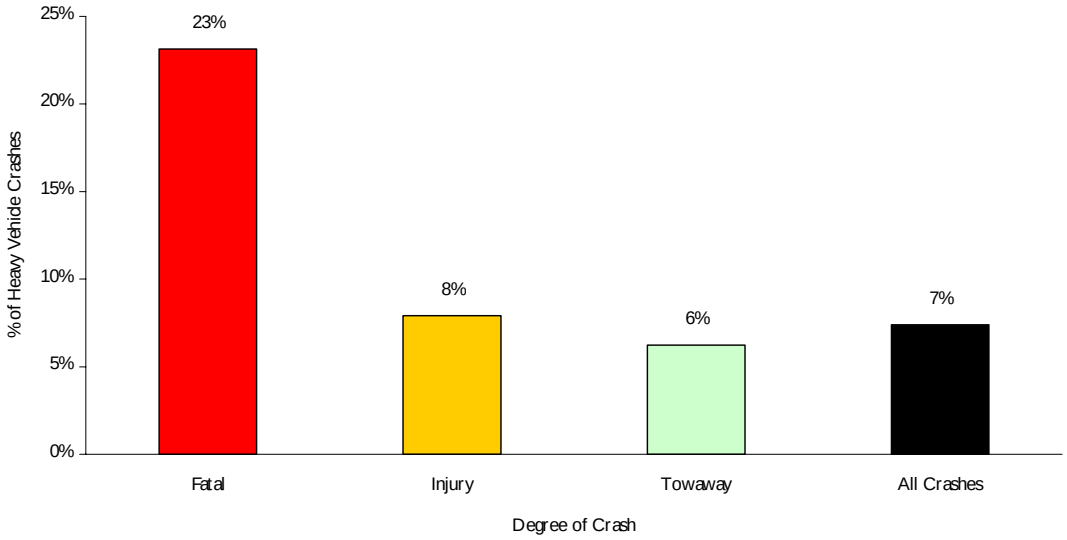
+ Note : Two fatal crashes involved a speeding heavy vehicle and a speeding light vehicle, resulting in the two heavy vehicle fatalities from the crashes being included in both the speed for heavy vehicle and speed for light vehicle categories

The majority of fatalities where the heavy vehicle driver is considered speeding (30 out of 36) are the occupants of a heavy vehicle. Of the 11 fatalities from heavy vehicle crashes where the light vehicle was considered speeding, nine were from a light vehicle and two were from a heavy vehicle.

Fatigue

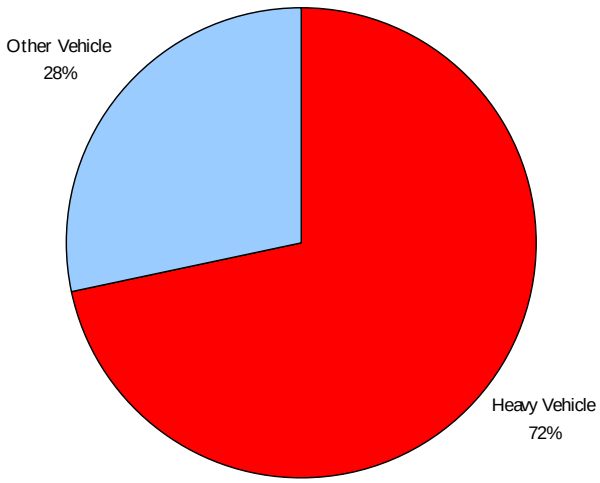
Seven percent of crashes involving a heavy vehicle involved driver fatigue. However, fatigue was over-represented in fatal crashes - 23% of fatal crashes were fatigue related.

Crashes Involving Heavy Vehicle Drivers, % Involving Driver Fatigue, Degree of Crash, 2005 to 2007

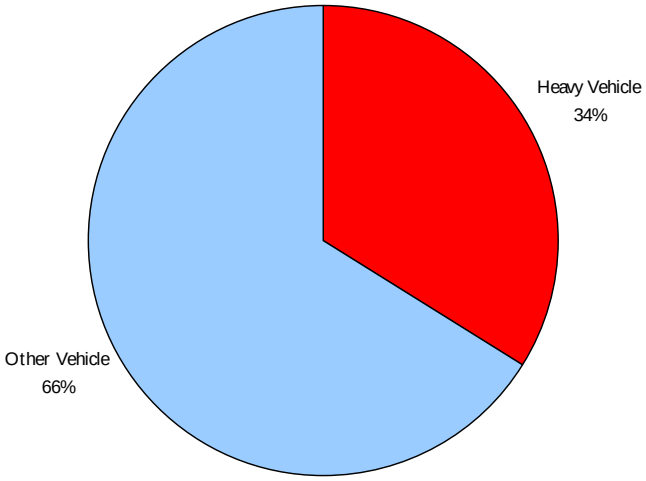


The majority of the fatigued motor vehicle controllers in these crashes were the heavy vehicle driver (72%). However, in fatigue related fatal crashes involving a heavy vehicle driver the other vehicle controller was more likely to be the one who was fatigued (66% of fatigued drivers in these fatal crashes were not the heavy vehicle driver):

Fatigued Controllers Involved in Heavy Vehicle Crashes, 2005 to 2007



Fatigued Controllers Involved in Heavy Vehicle Fatal Crashes, 2005 to 2007



Fatalities From Crashes Involving a Heavy Vehicle Driver, 2005 to 2007
Fatigue Involvement, Road User

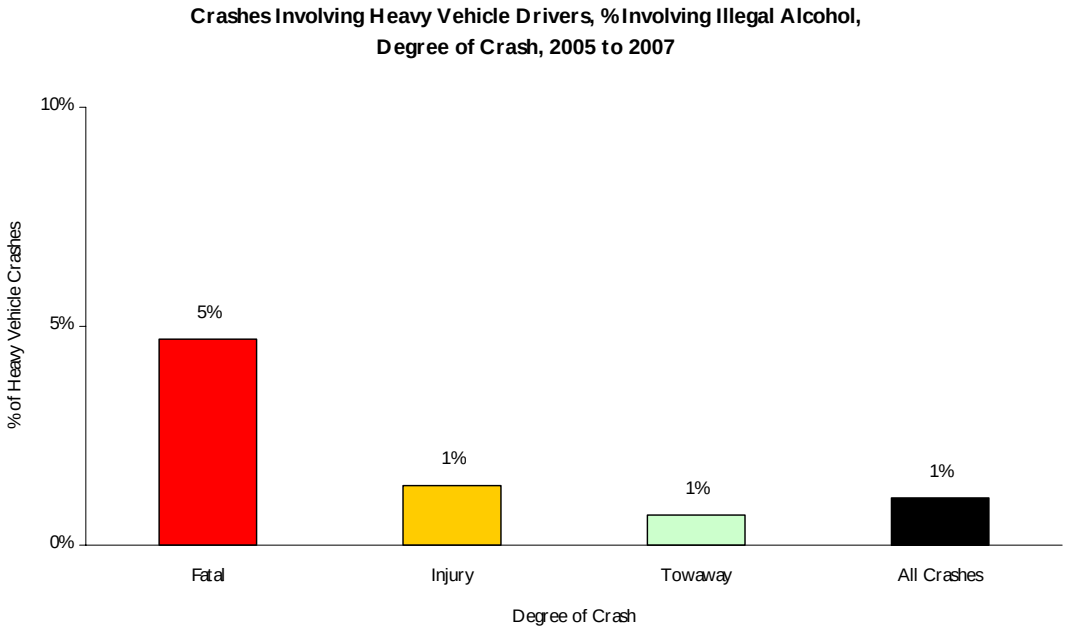
Fatigue Involvement	Fatalities Heavy Vehicle Occupant	Fatalities Light Vehicle Occupant	Fatalities Pedestrian or Pedal Cyclist	Total
Not Involved	39	125	56	220
Fatigue for Heavy Vehicle Driver	18	3	1	22
Fatigue for Light Vehicle Driver / Rider	0	50	0	50
Total	57	178	57	292

Of the 22 fatalities from crashes where the heavy vehicle driver was considered fatigued, the majority (18, 82%) were occupants of heavy vehicles. Over the three year period 2005 to 2007, 50 fatalities resulted from fatigue related crashes where the light vehicle driver was considered fatigued – all of these fatalities were from a light vehicle.

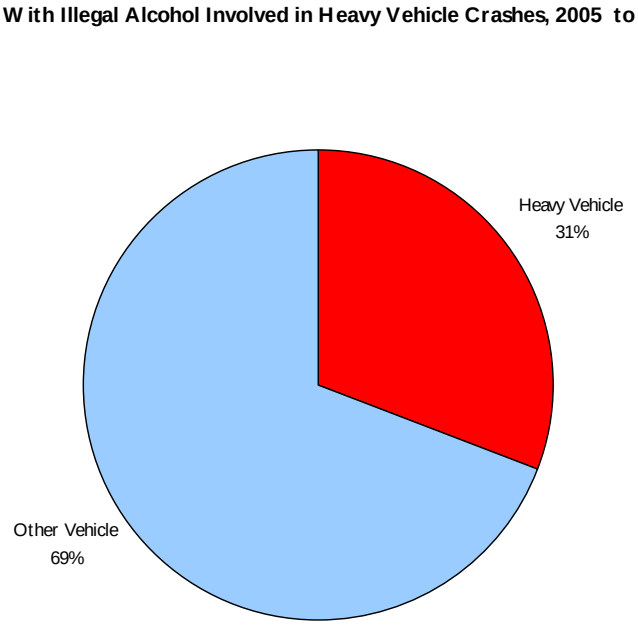
This pattern of results highlights uncertainties in the collection of fatigue data. When another road user is killed, and the heavy vehicle driver is alive to provide an account, fatigue is rarely identified as a factor.

Alcohol

Very few crashes involving a heavy vehicle were alcohol related (1% of all crashes, 3% of fatal crashes in 2007):



Of those motor vehicle controllers with an illegal alcohol level involved in a heavy vehicle crash, 69% were not the heavy vehicle driver.

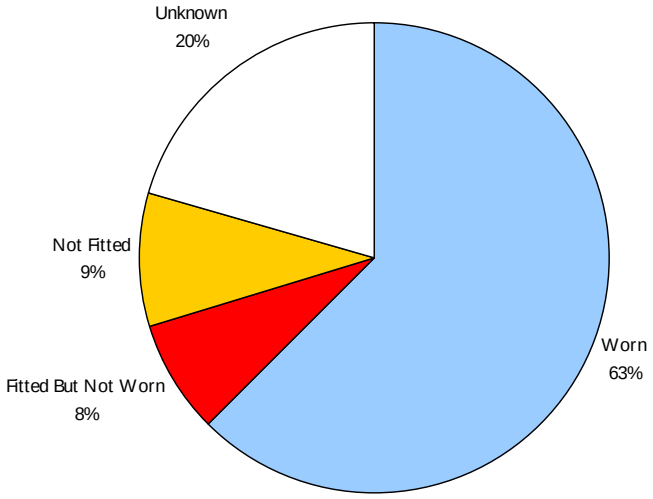


Seat belt non-usage

Whilst seat belt usage is not a contributing factor in the crash occurring, it is a factor which contributes to the severity of the crash.

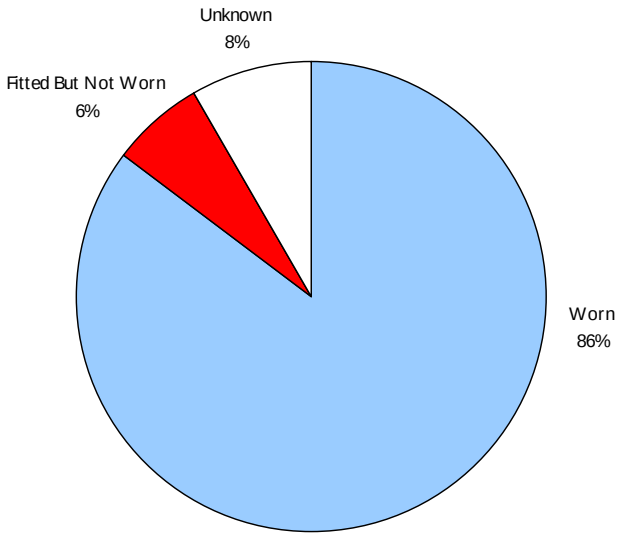
Restraint non usage and non fitment is a factor present for heavy vehicle drivers involved in crashes, particularly fatal crashes. Of the 269 heavy vehicle drivers involved in fatal crashes between 2005 and 2007, the restraint was fitted but not worn for 21 (8%) and was not fitted for 25 (9%). Of the 25 heavy vehicle drivers in fatal crashes where the restraint was not fitted, every heavy vehicle had a year of manufacture of 1977 or later. Given that restraints were required to be fitted for all heavy vehicles manufactured from 1977 onwards, this would suggest that the vehicle was defective.

Restraint Usage for Heavy Vehicle Drivers Involved in Fatal Crashes, 2005 to 2007



Of the 191 light vehicles in fatal crashes involving a heavy vehicle driver between 2005 and 2007, around 6% of drivers were not wearing an available restraint.

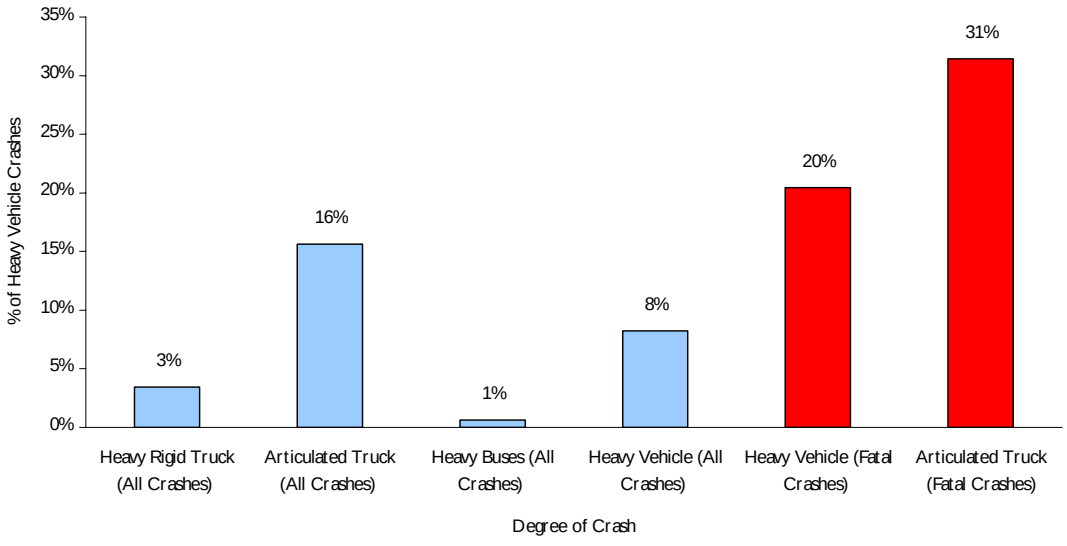
Restraint Usage for Other Vehicle Drivers Involved in Heavy Vehicle Fatal Crashes, 2005 to 2007



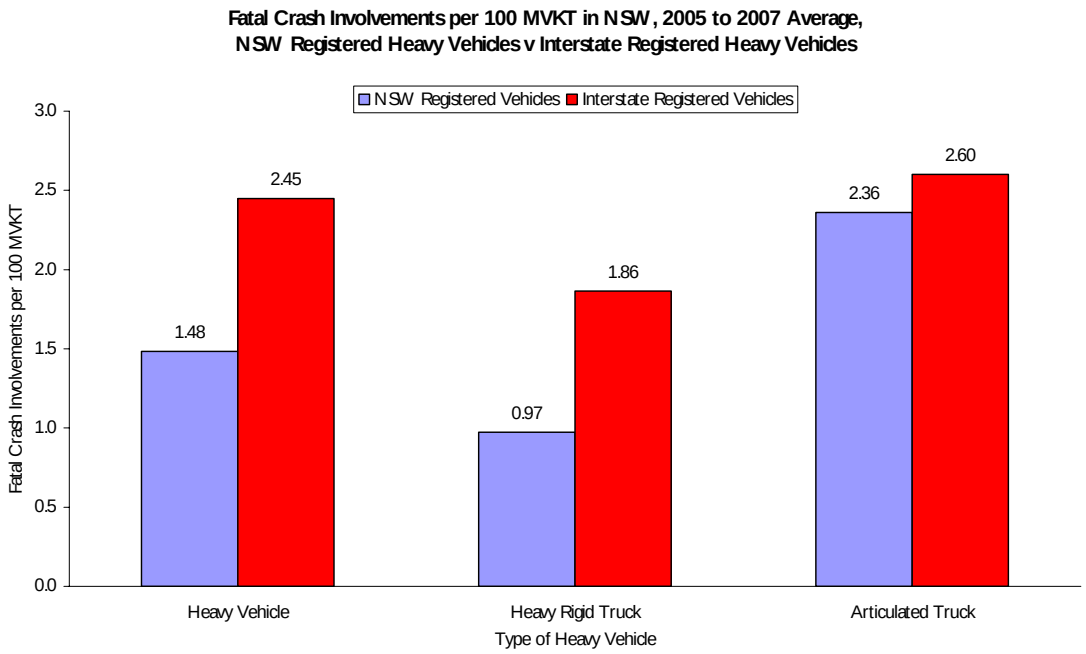
Residence of driver

Around 8% of heavy vehicle drivers involved in crashes during 2005 to 2007 were interstate residents. However this percentage rises to 20% for those involved in fatal crashes and 31% of articulated truck drivers involved in fatal crashes.

Heavy Vehicle Drivers Involved in Crashes, % Involving Interstate Drivers, 2005 to 2007

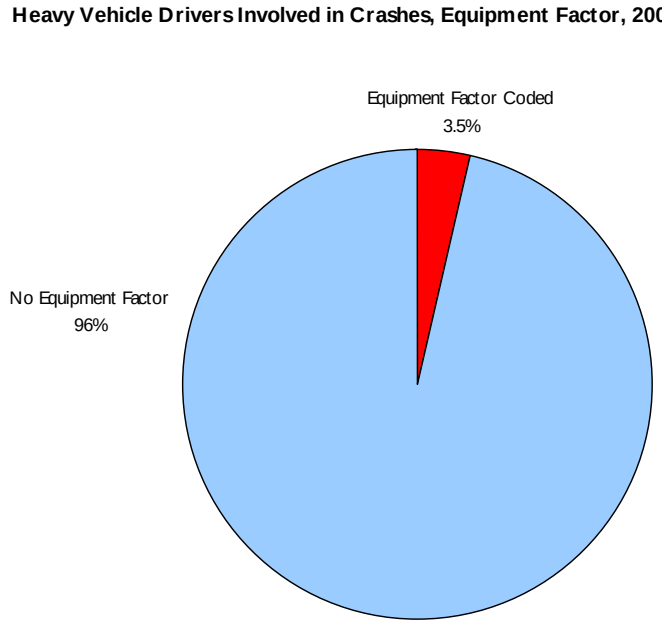


When fatal crash involvements of NSW and interstate heavy vehicles are standardised by kilometres travelled within NSW using ABS SMVU data, the fatal crash involvement rates for interstate heavy vehicle are found to be higher than that for NSW registered heavy vehicles.



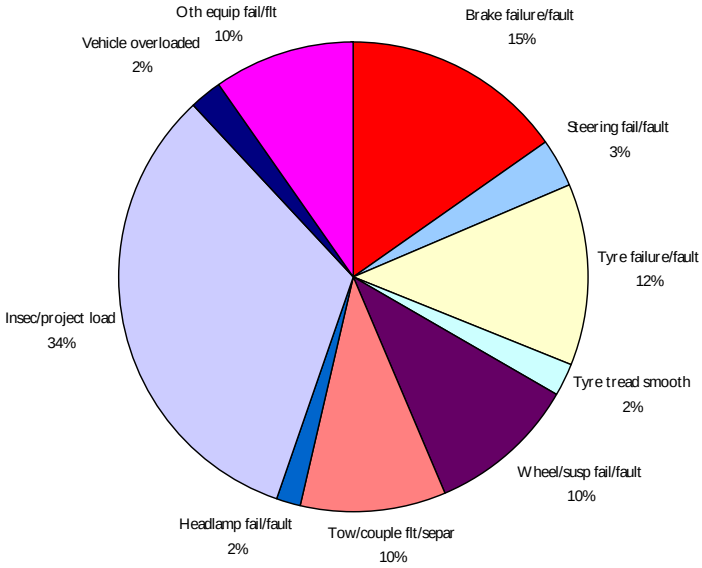
Equipment failure

Of the 9,149 heavy vehicle drivers involved in crashes during 2005 to 2007, only 322 (3.5%) had an equipment factor for the vehicle. Equipment factor is identified as any equipment failure that can be considered a factor in the crash.



The three most common factors coded were insecure/projecting load (99 heavy vehicles), brake failure/fault (77 heavy vehicles) and tyre failure/fault (43 heavy vehicles). Equipment factors were less commonly recorded for heavy vehicle drivers involved in fatal crashes – only 4 out of 269 vehicles (1.5%) involved in fatal crashes had an equipment factor recorded.

Heavy Vehicle Drivers Involved in Crashes With Equipment Factor, 2005 to 2007



Relative Safety by Type of Articulated Truck

Taking into account the ABS data on tonne kms travelled during the three year period 2005 to 2007 and crash involvements over the same period, the data indicate that the crash rate per tonne km for B-doubles is less than that for articulated tanker / semi trailers. Note that these data are tonnage rates, not simple kilometre of travel rates.

Relative Safety of B Doubles and Other Articulated Trucks
Crash Involvements, Tonne Kms Travelled, 2005 to 2007

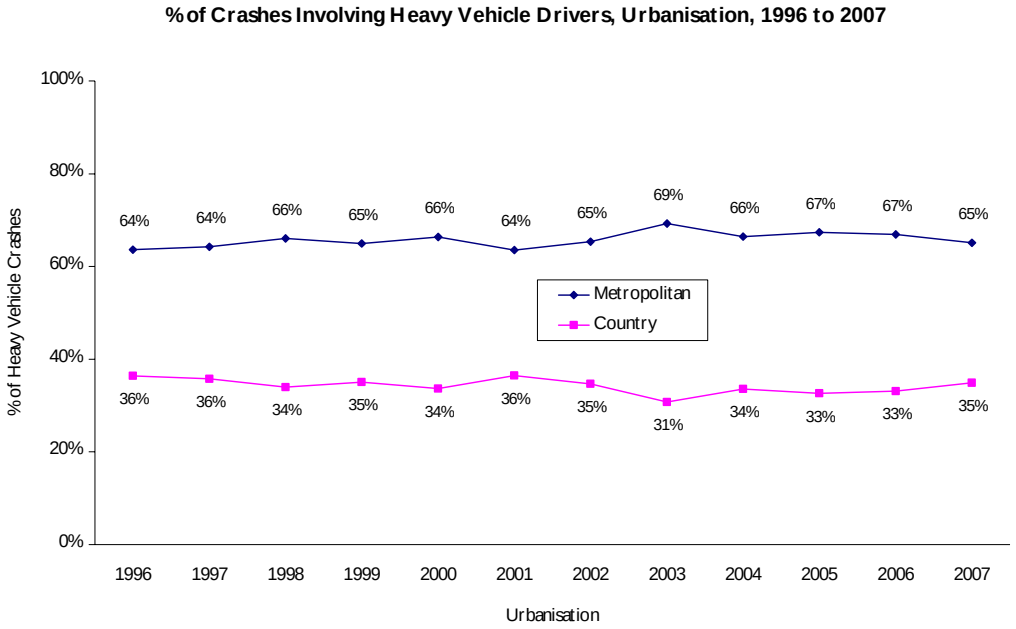
Vehicle Type	Fatal	%	All Crashes	%	Tonne Kms (MVTKms)+	%
Road Train	5	3%	19	<1%	1496	2%
B-Double	47	30%	699	18%	29695	41%
Other Articulated	107	67%	3208	82%	42098	57%
Total	159	100%	3926	100%	73289	100%

+ Travel data from ABS Survey of Motor Vehicle Usage, 2005, 2006 and 2007

Differences in driving behaviour, crash outcomes and relevant trends in urban and country areas

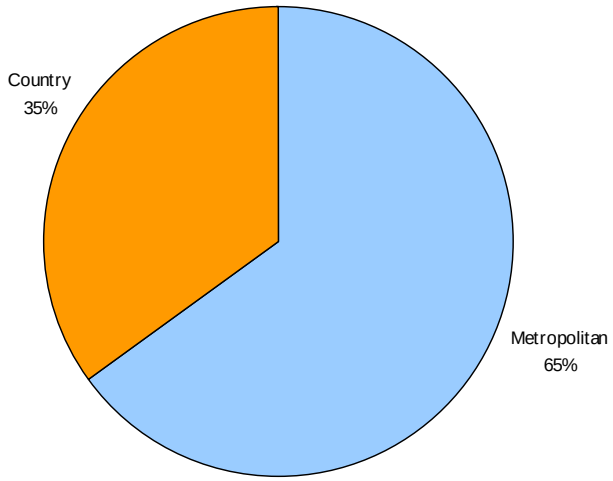
Urbanisation

The metropolitan/country distribution of heavy vehicle crashes has remained at similar levels for a number of years, with around two-thirds of all crashes involving a heavy vehicle driver occurring in the metropolitan areas.



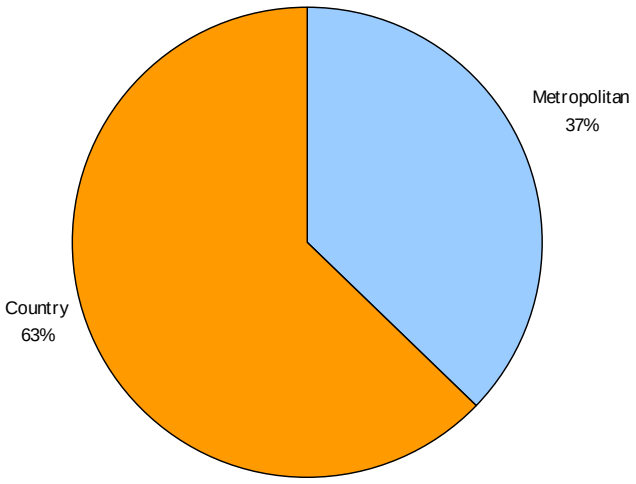
In 2007, there were 2,948 crashes involving a heavy vehicle. The majority of these (65%) occurred in the Sydney, Newcastle and Wollongong metropolitan areas.

Crashes Invoving Heavy Vehicle Drivers, Urbanisation, 2007

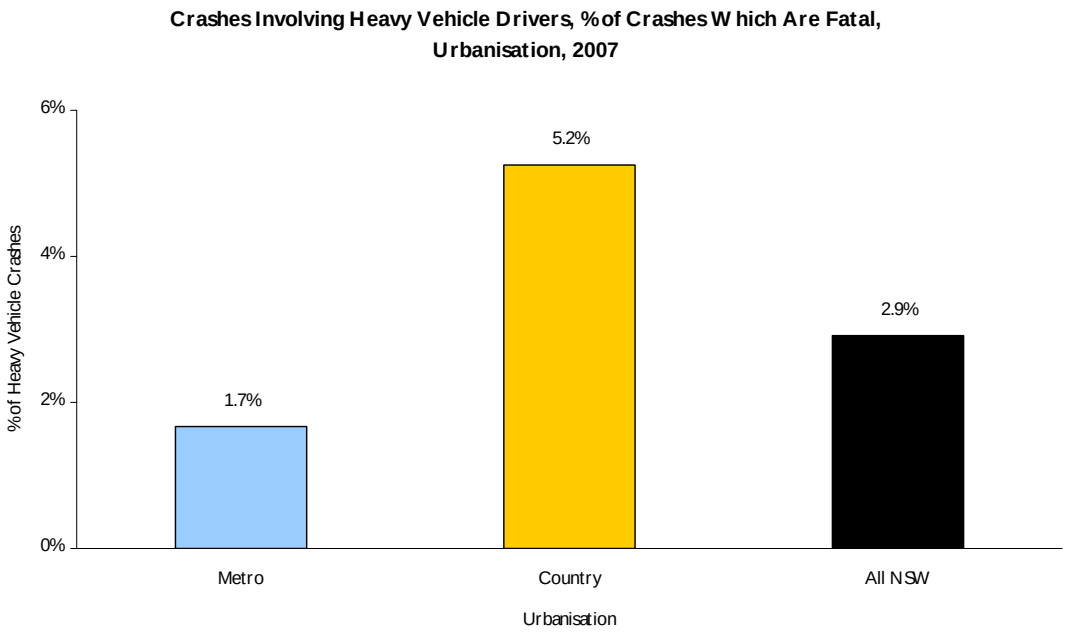


However, the majority of fatal crashes involving a heavy vehicle (63%) occurred on country roads.

Fatal Crashes Invoving Heavy Vehicle Drivers, Urbanisation, 2007



As a consequence a country crash involving a heavy vehicle is much more likely to result in a fatality (1 in 20 recorded crashes) than a metropolitan crash involving a heavy vehicle (1 in 160 recorded crashes).



Some crash factors are more common in heavy vehicle crashes in country areas. These include:

- Speed related crashes (25% of country crashes v 6% of metropolitan crashes in 2007)
- Fatigue related crashes (13% of country crashes v 4% of metropolitan crashes in 2007)
- Head on crashes (13% of country crashes v 2% of metropolitan crashes in 2007, 44% of country fatal crashes v 13% of metropolitan fatal crashes)
- Rollover crashes (17% of country crashes v 2% of metropolitan crashes in 2007)

Whilst pedestrian crashes account for only a small percentage of all crashes involving a heavy vehicle across the State (2.7%) during 2005 to 2007, they actually accounted for 9.5% of all casualty crashes involving a heavy vehicle in the metropolitan areas.

RTA responsibility for heavy vehicle programs

NSW Centre for Road Safety

The RTA is responsible for the development of a safe, sustainable and efficient transport system. Within its organisational structure, a number of directorates and branches have responsibility for heavy vehicle policy which impinge upon, directly or indirectly, road safety outcomes. Principal among these is the NSW Centre for Road Safety which was formed in June 2007 as an outgrowth of the Road Safety Branch. The primary objective of the Centre is to promote road safety as a core value and key influence on decision-making across the organisation and the road-using public. It leads the development and implementation of State-wide road safety strategies, policies and programs and promotes RTA leadership at state and national levels to reduce the trauma and cost of road casualties to the community. The Centre leads and coordinates the integration of road safety objectives and responsibilities across the RTA, particularly within the infrastructure and traffic management programs.

Compliance and Freight Strategy

Compliance and Freight Strategy Branch leads and manages heavy and light vehicle compliance programs and policy development on enforcement and charging. The branch provides an integrated RTA policy approach to heavy vehicle reform, safety, charging and productivity issues, and manages the road transport compliance and enforcement regime in NSW. Compliance and Freight Strategy facilitates the RTA's capacity to respond to issues across the national and State heavy vehicle environment, through a focus on road safety, asset protection, network access and freight efficiency. Compliance and Freight Strategy Branch also manages the development, pricing and delivery of vehicle identification and roadworthiness inspection programs including the Vehicle Identification Inspection Unit, Authorised Inspection Stations and the Heavy Vehicle Inspection Scheme.

Driver and Vehicle Services

Driver and Vehicle Services develop policies and delivers services for the 4.6 million licensed drivers and 5.2 million registered vehicles on NSW roads. The branch provides registration, licensing and education services that reflect the diverse needs of NSW road users. It also sets the regulatory framework for driver and rider sanctions and communicates compliance and road safety obligations to RTA customers through publications such as the *Road Users Handbook* and the *Heavy Vehicle Drivers Handbook*. Services are currently provided through 129 motor registries, the Contact Centre in Newcastle, five government access centres, 33 agencies, 40 itinerant sites and the internet. The business delivers a range of face-to-face services. In 2007-2008, these included:

- 1.251 million licences were issued or renewed
- more than 300,000 driving tests.

Recent research

The RTA conducts an important research program relating to heavy vehicle safety. These inform policy, target enforcement, and help in setting communications to the industry. The following is a sample of the most recent projects.

Survey research on speed behaviours of long and short haul heavy vehicle drivers (2005)

In May 2005, the RTA commissioned a research study to determine the reasons heavy vehicle drivers choose to speed and the types of measures from education to enforcement that would influence drivers to keep within the speed limits. The results revealed that:

- The highest risk groups for speeding were younger short haul, younger and older long haul heavy vehicle drivers
- Twenty five percent of drivers experienced some pressure to speed to meet deadlines
- The strongest motivator to discourage drivers from speeding was on-road police enforcement (71%)
- The majority of drivers (83%) stated they did not exceed the speed limit in built up areas. However, 51% of drivers agreed that, if the truck driver was experienced, it was acceptable to drive 'up to 10 km/h over the speed limit' on the open road
- A high proportion of drivers nominated loss of points and or licence (87%) and the possibility of crashing (81%) as being very important consequences of not staying within speed limits.

Research into the fatigue experience of long and short haul heavy vehicle drivers (2006)

In 2006, the RTA commissioned research to:

- determine the prevalence of driver fatigue among *short haul heavy truck* compared with *long haul heavy truck* drivers
- examine the incidence and experience of fatigue
- determine the factors contributing to the fatigue experience
- identify measures that will improve fatigue experience.

The research was made up of a number of stages. It began with an exploratory investigation of fatigue issues among short haul drivers, through six discussion groups in Sydney and regional areas of NSW. The main survey involved telephone interviews with 634 truck drivers across NSW with two additional discussion groups.

Keys findings include:

- Measures of risk of fatigue developed in the survey indicated that long haul drivers were more likely to be at risk, and that long haul drivers of *light trucks* in particular had higher risk on some measures. This is evidently a small sub-group requiring special attention

- While long haul drivers had a greater overall risk profile than short haul drivers, significant numbers of short haul drivers reported experiences related to fatigue. Sub-groups of both short and long haul drivers fell into the highest risk segment of drivers identified in the survey
- A significant minority of drivers in the survey reported that fatigue was more than a 'minor' problem for them. A large proportion of drivers, on the other hand, did not consider fatigue was a problem at all. The key to progressing improvements in driver fatigue for heavy vehicle drivers appears to be building more acceptance of the extent and severity of the problem among both long haul and short haul drivers.

Education of drivers, companies, clients and the community, along with implementation of company policies and restrictions, should be directed at:

- raising the issue of driver fatigue among short haul drivers
- changing the way that schedules and other systems are set up which oblige drivers to work long hours and drive without taking breaks
- encouraging drivers not to put themselves under pressure leading to unsafe practices.

Heavy Vehicle Compliance Survey (2006)

In 2006, the RTA conducted the Heavy Vehicle Compliance Survey to track the roadworthiness and compliance of heavy vehicles using NSW roads. Four other compliance surveys have been undertaken in 1992, 1995, 1998 and 2003. A total of 1,675 heavy vehicles were randomly selected and inspected by RTA vehicle regulations inspectors (IVRs) across NSW.

Key findings included:

- The rate of major defects in heavy vehicles has continued to fall in each wave of the survey, decreasing from 9.2% in 1992, to 5.9% in 2003 to 3.9% in 2006
- The rate of minor defects at the same time has increased from 32% in 1998, to 34.7% in 2003, and then to 44.5% in 2006
- Brakes are considered a major defect, with 3.6% of vehicles (including trailers) having some level of brake defect in 2006 (this compares with 5% in 2003)
- Road trains had the highest incidence of major defects with 3 of the 27 (11%) road trains inspected having at least one major defect in the hauling unit. The incidence of major defects in hauling units for all other vehicle types was between 3.3% (rigid trucks) and 4.7% (plant)
- Vehicles registered in NSW had significantly fewer major defects (3.2%) than vehicles registered interstate (at 5.6%). NSW registered vehicles also had fewer defects overall (45.4%) compared with interstate registered vehicles (56.2%)
- 5.8% of interstate registered vehicles had major brakes defects compared to 2.8% of vehicles registered in NSW. Interstate registered vehicles had a higher percentage of major light and

reflector, exhaust, chassis and suspension defects than found in vehicles registered in NSW.

The RTA uses the Heavy Vehicle Compliance Survey results to inform its review of the Heavy Vehicle Inspection Scheme (HVIS). The HVIS is NSW's annual inspection scheme that manages the roadworthiness of heavy vehicles and public passenger vehicles. Heavy vehicles are required to undergo at least one inspection a year, public passenger vehicles (including school buses) are required to undergo two inspections as a condition of annual registration. Previous survey results from 2003 and 2006 informed the review about classes of vehicle that could potentially be removed from the Scheme using a relative risk based approach.

There is potential to use future survey results as part of the RTA's risk-based approach to targeted heavy vehicle enforcement. The profiling of vehicles that are likely to have major defects can be used as additional criteria for intercepting heavy vehicles during random road-side and mobile inspections.

The Heavy Vehicle Compliance Survey is conducted every 3 years and will be conducted again in 2009.

Focus groups with heavy vehicle drivers (2007)

In 2002, the RTA conducted research to identify the communication networks used by the trucking industry and to ascertain how these networks could be utilised to disseminate road safety information. The survey included face to face interviews with 150 truck drivers in truck stops and trucking terminals as well as telephone interviews with relevant people from 40 companies.

In order to seek heavy vehicle drivers' opinions about current RTA brochures and proposed resource materials for the heavy vehicle driver fatigue reform, focus group testing was conducted in 2007. Specifically, opinions were sought about four existing RTA brochures as well as the best ways of communicating heavy vehicle driver fatigue reforms. Four focus groups and three mini groups were conducted in Sydney and Dubbo with heavy vehicle company drivers and owner drivers. The results showed that:

- Relatively few heavy vehicle drivers had seen the RTA brochures
- Many drivers demonstrated an inability to read and even made jokes about their own illiteracy. When they did read, they read magazines such as *Big Rig*, *Picture* and newspapers such as *Owner Driver*
- Heavy vehicle drivers communicated through the use of stories. In the current suite of brochures there are no stories and therefore an opportunity is lost to communicate effectively to the target group
- Effective RTA communication should include 'more relevant' information, an empathetic rather than an authoritarian tone, shorter and more concise information and use of pictures and stories.

In terms of the national heavy vehicle driver fatigue reforms, at that time due for implementation in September 2008, focus group research revealed:

- There was awareness about the heavy vehicle driver fatigue reform package but virtually nothing specific was known by drivers
- Information about the fatigue reforms was received with a strong degree of cynicism and concern. Many drivers took the view that it would provide owners with an opportunity to make drivers drive longer hours. As a result the motivation for the reforms was questioned. Drivers could not see how the reforms will benefit them personally
- Drivers recommended direct communication about the reform, either by letter or brochure. (This was subsequently implemented in the form of "fact sheets" distributed widely through companies, at industry forums and at the roadside)
- The reasons for the reform need to be clearly and simply expressed and the benefits of the reform for heavy vehicle drivers emphasised. Chain of responsibility and enforcement messages were essential elements that needed to be included
- The use of illustrations and stories using scenarios demonstrating how the reforms might benefit heavy vehicle drivers were recommended.

Fact sheets and bulletins on the driver fatigue legislation were distributed to drivers.

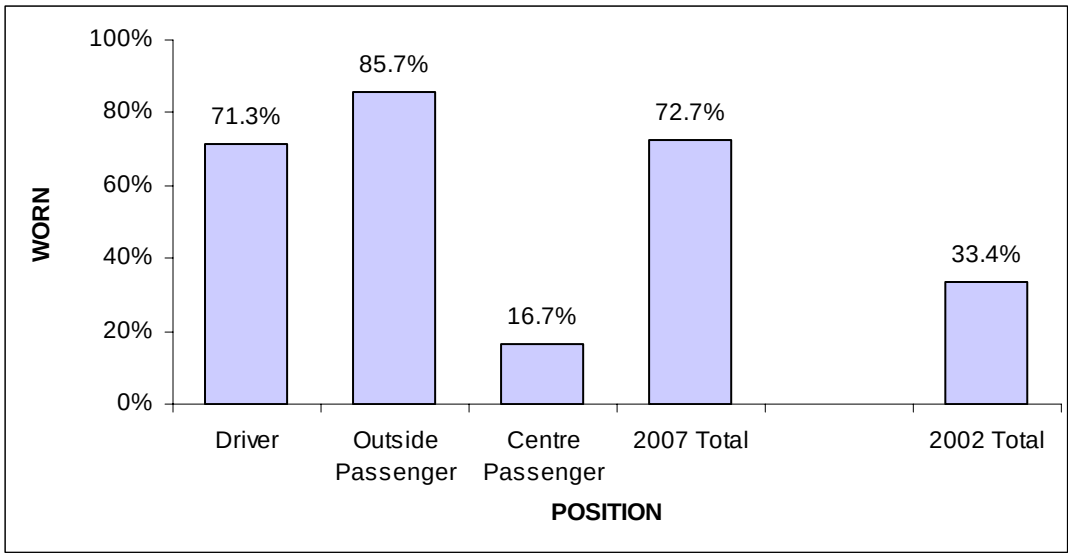
Heavy vehicle seatbelt observational survey (2007)

Heavy vehicle drivers have been required to wear seatbelts since February 2000. An observational survey conducted in 2002 to measure seatbelt wearing rates revealed low seatbelt usage by truck occupants (drivers and passengers) with only 33 per cent found to be wearing a lap/sash belt. Furthermore, the incidence of wearing decreased substantially with size of truck, with the availability and use of lap/sash belts decreasing as the trucks increased in size, the lowest among articulated trucks.

A follow-up survey was conducted to monitor the effectiveness of three heavy vehicle driver seat belt campaigns implemented in 2003, 2005 and 2006, to determine changes in the availability and use of seatbelts in heavy vehicles since 2002 and to inform the development of future communication campaigns.

The observational survey was conducted in May 2007 involving more than 1500 heavy vehicles at 13 roadside locations and three Heavy Vehicle Checking Stations across NSW. The survey found that 72 per cent of truck occupants were wearing a lap/sash belt, a much higher proportion than when measured in 2002 at 33 per cent. As in 2002, the wearing of lap/sash belts decreased with truck size, down to less than half (46 per cent) of occupants of articulated trucks in the current survey. However, this was a substantial improvement from one in six (17 per cent) measured in 2002.

Summary of seatbelt use in trucks, by seating position in 2007, and total in 2002



Heavy vehicle speeding survey (2008)

The RTA regularly undertakes surveys to assess the extent and severity of heavy vehicle speeding on NSW roads. The 2008 surveys show that:

- 47% of heavy vehicles were still exceeding the speed limit of 100 km/h[3] compared with 52% in 2006.
- A high proportion of articulated trucks (35%) and B-doubles (38.5%) were travelling between 1-5km/h over the limit
- 9% of articulated trucks and 10% of B-doubles were travelling between 6-10km/h over the limit
- A total of 6% of rigid trucks, 2% of articulated trucks and 2.6% of B-doubles were travelling between 11-15km/h over the limit
- 3.4% of rigid trucks, 0.6% of articulated trucks & 0.8% of B-doubles were travelling between 16-20km/h over the limit
- Approximately 2.8% of rigid trucks and 0.6% of B-doubles continue to travel 21 km/h over the speed limit.

[3] All figures are based on combined heavy vehicle speeds 100 & 110 km/h posted speed limits where 100 km/h is the maximum speed limit for heavy vehicles.

Heavy vehicle safety initiatives

The RTA has been active in the development of legislation, policies, programs and initiatives targeted at improving heavy vehicle safety.

Three Strikes Scheme

As part of an initiative to implement programs and countermeasures to discourage heavy vehicle drivers from speeding, the RTA extended the Three Strikes Scheme in 2003 to penalise heavy vehicles that are repeatedly caught exceeding the legal speed limit. When a heavy vehicle (with a GVM greater than 4.5 tonnes) is detected travelling at 15 km/h or more over the posted or relevant heavy vehicle speed limit by a mobile police unit or fixed speed camera, the RTA records a strike against the vehicle. If three strikes are recorded within a three-year period, the RTA suspends the registration of the vehicle. All strikes are retained for a period of three years from the date of the offence. The RTA will remove a strike from the record of a heavy vehicle after a three year period.

Three Strikes seek to:

- Reduce the incidence of heavy vehicle speeding
- Inform heavy vehicle operators that their vehicle has been detected travelling at excessive speeds
- Encourage heavy vehicle operators to educate their drivers to comply with posted speed limits and/or the relevant speed limit for their vehicle
- Improve road safety for all road users.

Safe-T-Cam

Since its introduction as pioneering technology in the 1990s, Safe-T-Cam operations have been expanded into an automatic monitoring system with a network of 24 digital cameras capable of reading the front number plate of heavy vehicles. Cameras are mounted on overhead gantries and bridges located on major routes throughout NSW. Safe-T-Cam identifies vehicles that:

- Have travelled at excessive speed
- Have travelled beyond prescribed driving hours
- Have attempted to avoid detection by Safe-T-Cam
- Are unregistered.

Hence, the Safe-T-Cam network monitors heavy vehicle travel times, verifies driver logbooks and detects vehicles that fail to enter checking stations for inspection.

Speed limiters

Australian Design Rules require most heavy vehicles to be fitted with speed limiters. Speed limiters govern the maximum speed at which a heavy vehicle can travel: 100km/h is the national speed limit for heavy vehicles which came into effect in 1998.[4] Despite this requirement, RTA speed surveys on major freight routes in NSW show that almost 4 per cent of heavy vehicles in 2004 were travelling over 115 kph. Recognising speed as a major contributing factor to heavy vehicle crashes, NSW Parliament approved the *Road Transport Legislation (Speed Limiters) Amendment Bill 2005*. Under the new legislation which commenced in November 2005, a heavy vehicle operator commits a speed limiter offence when the heavy vehicle, which is required by law to be speed limited, is detected by Police travelling at more than 115 km/h. The sanction applies to interstate vehicles as well as those registered in NSW, as an estimated 80 percent of interstate freight travels through NSW. The Traffic Infringement Notice to accompany the offence imposes a fine of $1,674 to the operator. If the operator elects to go to court there is a maximum penalty of 30 penalty units for an individual (currently $3,300), or 150 penalty units for a corporation ($16,500). This penalty is in addition to the fine and demerit points imposed on the driver for the speeding offence.

To ensure that enforcement occurs on those sections of road that meet the requirements of the law, the RTA has surveyed sections of major freight routes to determine those sections where the gradient of the road is less than -2% and where a correctly speed limited vehicle could not exceed 115 km/h. These sections are identified as speed limiter enforcement zones (SLEZ). SLEZ maps have been developed for 17 highways in NSW and provided to NSW Police to enforce the speed limiter legislation.

Fixed speed cameras

In order to combat speeding behaviour, which, as we have seen previously is prevalent among heavy vehicle drivers and increases crash severity, the RTA employs fixed speed cameras, the first of which were used in NSW in 1997 when one was installed in the Sydney Harbour Tunnel. There are currently 171 fixed speed cameras at 141 locations, 64 of these cameras are located in 44 school zones.

An independent evaluation of the NSW Fixed Speed Camera Program conducted by the Australian Road Research Board (ARRB) and released in May 2005 revealed that at camera sites, the number of vehicles exceeding the speed limit was reduced by 71% and this has resulted in fatal crashes being reduced by 90%, and casualty crashes being reduced by 23%.[5]

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[4] The Hon Carl Scully MP, Media Release, 3 April 1998, "Standard Speed Limit for Heavy Vehicles".

[5] ARRB Group project team, May 2005, Evaluation of the fixed digital speed camera program in NSW, RTA website www.rta.nsw.gov.au.

Point-to-Point Camera Enforcement

"Point-to-point" works by measuring the average speed of a vehicle between two cameras and determining if that speed is greater than the average speed allowed for that particular length of road. If it is, an infringement notice is issued to the registered operator. International research has shown that the introduction of point-to-point enforcement provides a significant road safety improvement, reducing casualties across a point-to-point length by around 50%."[6] The Minister for Roads, Mr Daley said that: "While we know most operators do the right thing, point-to-point speed cameras would help stop unscrupulous heavy vehicle operators from forcing their drivers to speed by placing unreasonable deadlines on them."[7]

Compliance and enforcement legislation

In 2000, the Australian Transport Council (ATC) supported the development of a better compliance and enforcement model for legislation including the concept of a "chain of responsibility" as part of the Third Heavy Vehicle Reform Package. Accordingly, in 2005, NSW adopted national model compliance and enforcement provisions into its road transport legislation, the Minister for Roads at the time advising Parliament that the intention was to extend accountability "to parties in the road transport chain other than the driver and transport operator and who may bear significant responsibility for the occurrence on an offence..."[8] As the RTA's website explains the concept to the public:

> [Chain of responsibility] recognises that the actions, inactions and demands of off-the-road parties in the supply chain can have a huge impact on heavy vehicle safety. The laws create a level playing field for industry by making it more difficult for those operating outside the law to gain a competitive advantage.[9]

The chain of responsibility provisions extend liability for mass, dimension and load restraint offences to prescribed parties including consignors, packers, loaders or consignees of goods as well as driver and operators of vehicles.

Following the commencement of the legislation, the RTA has had nationally recognised success in prosecuting consignors and consignees in targeted enforcement activities where mass limits have been exceeded in the transport of grain. Vehicle overloading has important implications for infrastructure damage as well as road safety. The RTA's enforcement

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[6] Keenan D. 2004 *Speed Cameras – how do drivers respond, Journal of Traffic Engineering and Control*. Vol. 45, No. 3 and Cameron, M. 2008 *Development of strategies for best practice in speed enforcement in Western Australia* Monash University Accident Research Centre.

[7] *Sydney Morning Herald*, 2 March 2009.

[8] NSW Parliamentary Debates, Legislative Council, 6 April 2005, Hon Michael Costa, Road Transport (General) Bill, Second Reading.

[9] http://www.rta.nsw.gov.au/heavyvehicles/complianceenforcement/index.html

activities have resulted in demonstrable changes in behaviour. Encouraged by these achievements, the ATC supported the extension of compliance and enforcement concepts to the management of driver fatigue and speed compliance.

Roadside drug testing

Drug abuse has long been known as a problem among heavy vehicle drivers, especially stimulants which temporarily ward off the effects of fatigue. Indeed, research commissioned by the RTA showed that approximately 25 per cent of all drivers killed in New South Wales in 1997 and 1998 had consumed drugs of some type (including prescription drugs). Further studies in 2003 found that 43 per cent of *drug users* admitted to driving while affected by drugs. In 2006, NSW Parliament passed the *Road Transport Legislation Amendment (Drug Testing) Bill* which allows for the compulsory drug testing of any driver, motorcyclist or supervising licence holder involved in a fatal traffic crashes; and also authorises the commencement of random roadside drug testing, using oral fluid samples to detect the presence of certain illicit drugs. Before the commencement of testing, the RTA published a pamphlet titled *Roadside drug testing: heavy vehicle drivers* which explained the roadside testing procedures, the drugs tested for and the penalties for drug detection. It also included information about avoiding fatigue and reliance on drugs to forestall fatigue.

Since January 2007, Police have had the powers to carry out roadside drug testing on any driver, rider or supervising licence holder in NSW for the presence of the following drugs:

- Delta-9-tetrahydrocannabinol (THC), the active component of cannabis
- Methylamphetamine, also known as speed, ice, crystal meth, or base
- Methylenedioxymethylamphetamine (MDMA), also known as ecstasy.

In 2008 NSW Police conducted 30,424, roadside drug tests with 658 positive results or one in every 46 drivers tested. Since testing began, 6, 702 heavy vehicle drivers have been tested with 107 or 1 in every 62 heavy vehicle drivers tested showing positive to one or more of the illicit drugs.

The maximum court imposed fine for a first offence is $1,100 for presence of an illicit drug with an automatic 12 months disqualification from driving. A first offence of driving under the influence (not simply presence) incurs a fine of up to $2000 or 9 months imprisonment or both. Penalties for second offences rise to a fine of $3000 or 12 months imprisonment or both. The Police Minister indicated that apart from concentrating on "rave parties", "Police will also continue to pay particular attention to reducing the incidence of drug taking by drivers within the heavy vehicle industry".[10]

[10] Minister for Police, Tony Kelly MLC, "Roadside Drug Testing Milestones", press release, 15 January 2008.

Enhanced Enforcement Program

The Enhanced Enforcement Program (EEP) is a partnership between the NSW Police and RTA with the objective of reducing road trauma. The RTA provides the NSW Police with additional funding in order to enhance the level of visible Police enforcement activity over and above normal operating requirements. NSW Police enhanced enforcement activities target road user behaviour known to contribute to road trauma and heavy vehicles are therefore a priority for the program. During the 2007/08 financial year, NSW Police undertaking EEP operations recorded 7243 offences by heavy vehicles including speeding and log book infringements.

Heavy vehicle standards and inspection initiatives

Ensuring the roadworthiness of the NSW heavy vehicle fleet

The RTA is responsible for ensuring that everyone using NSW roads does so safely, while still allowing the transport industry to operate as efficiently and productively as possible. One method of achieving this is by regularly inspecting heavy vehicles operating on NSW roads to ensure they comply with safety and roadworthiness standards. Under the periodic inspection scheme, most heavy vehicles are required to undergo at least one inspection each year while public passenger vehicles require two inspections per year. In 2007//2008 96,348 inspections were conducted across 275 sites including RTA owned inspection facilities, privately owned and fleet sites. These inspections were performed by RTA vehicle regulation inspectors while a further 16,500 inspections across 631 sites were conducted by non-RTA Heavy Vehicle Authorised Inspection Scheme examiners.

The core elements of the heavy vehicle inspection manual have been developed as part of the national road and regulatory reform agenda to ensure that vehicle safety is consistent across jurisdictions.

Development and implementation of new Australian Design Rules

Australian Design Rules (ADRs) are national design standards for vehicle safety. They are developed through a consultative process involving government, industry and consumer representatives. The RTA, through its involvement on national committees, participates in developing new and existing ADRs. Current ADR initiatives include the introduction of improved cabin strength and front underrun protection for heavy vehicles.

Development and review of Performance Based Standards

The National Transport Commission (NTC) has been promoting the introduction of Performance Based Standards (PBS) to provide a different approach to vehicle regulation. This is intended to promote both safety and higher productivity through innovative vehicle design. PBS is designed to focus on how the vehicle behaves on the road and how it conforms to a set

of safety and infrastructure protection standards, rather than focusing on its length and mass. The RTA, through its involvement on national committees, has participated in engineering and technology innovations designed to build heavy vehicles which comply with standards for vehicle stability, rollover risk, the ability to turn in traffic within a safe envelope and manage tail swing.

Safe modifications to heavy vehicles

The current Engineering Certificate Scheme that applies to all vehicles with significant modifications or that have been specially constructed. It is about to be replaced by the Vehicle Safety and Compliance Certification Scheme. The purpose of the Scheme is to prevent the registration of non-complying modified production, imported and individually constructed vehicles which may pose a risk to vehicle occupants and other road users. It will be implemented in accordance with the RTA Safe System Partnership approach to road safety and is based on shared responsibility with industry to achieve improved road safety outcomes.

Development of codes of practice

The RTA has participated in the development and modification of a number of mandatory and voluntary codes of practice relating to heavy vehicles. These include:

- The National Code of Practice for Heavy Vehicle Modifications (published by the Department of Infrastructure, Transport, Regional Development and Local Government)
- Voluntary Guidelines for retrofitting seat belts in buses
- The Brake code of practice.

Communications Campaigns

The RTA is constantly developing and refining campaigns to target road users, especially those over-represented in crashes such as heavy vehicle drivers. Many of these marketing campaigns are subsequently delivered through RTA Regional offices.

Seat Belt Campaign

The heavy vehicle seat belt campaign was developed in 2003 to encourage seat belt wearing among heavy vehicle drivers and to advise them that they have a 50 per cent better chance of surviving a potentially fatal crash if they are wearing a seatbelt. The campaign was also intended to increase operators' awareness of their responsibilities under the Occupation Health and Safety (OH&S) legislation and to encourage employers to fit appropriate seatbelts to their vehicles where necessary.

The media used in the campaign included radio advertisements (on Rig Radio), posters at rest stops, outdoor billboard, magazine/press advertisements, installation of 'Fasten Your Seat Belts' and 'Do or Die

Seatbelts Saves Truckies Too' stencils painted on the road at RTA heavy vehicle checking and inspection stations. Operators were targeted with a direct mail campaign. Included in the information kit for operators were a brochure, shirt, poster and letter detailing the issues around seatbelt wearing for heavy vehicle drivers and operators.

See page 19 for results of seat belt observation survey.

Driver Fatigue Campaign

First implemented in 2004, the objective of the driver fatigue campaign was to make practices which lead to fatigue unacceptable in the trucking industry. Like the seat belt campaign, a multi-pronged communications strategy was developed including radio advertisements (on Rig Radio), posters at rest stops, magazine and press advertisements, direct mail to operators with an information kit and poster. Variable message signs along the Pacific Highway were used to deliver a message about the importance of trip planning with three slogans displayed on a rotating basis: 'Plan your trip, plan your stops and mange fatigue', 'Truckies – Plan your trip and manage fatigue' and 'Truckies – Don't die for a deadline'. The **'**Don't die for a deadline**'** campaign also highlighted, in the print and web media, the detrimental use of prescription medications and illicit drugs in keeping fatigued heavy vehicle drivers awake.

Drug Driving Education Campaign

The RTA implemented a heavy vehicle drug driving campaign in 2004. The aim of the campaign was to contribute to a reduction in the incidence of truck driver drug use, particularly in relation to combating fatigue. The campaign consisted primarily of an operator kit (similar to those employed in the driver's fatigue and seatbelt campaigns). The kit comprised of two brochures titled "An Operators guide to the dangers of drug driving to stay awake" and "A Drivers guide to the dangers of using drugs to stay awake", a poster and sleep mask. Other strategies included press advertisements in industry magazines, radio advertisements and posters placed at convenience stops.

Heavy Vehicle Driver Fatigue Legislation Campaign

A communication plan and marketing campaign were developed and implemented in late 2008 to promote the new heavy vehicle driver fatigue legislation. The communication strategy included press advertisements in industry magazines and newspapers, radio advertisement, outdoor billboards, workplace and convenience posters, brochures and fact sheets. A DVD about the key elements of the legislation was also developed in collaboration with the NTC and participating jurisdictions. The strategy includes materials for the RTA website and development of an e-newsletter. A direct mail pack was also sent to operators with promotional material.

The RTA conducted 90 information sessions from April to September 2008 concerning the new legislation. Approximately 3500 participant attended

the sessions. In addition, officers from the RTA attended industry-organised conferences, meetings and workshops. In response to the key issues identified during the industry session, the RTA led discussion with other implementing jurisdictions to develop a much more generous transitional arrangement package and work diary exemptions.

Future initiatives

A review of heavy vehicle countermeasures in Australia and overseas

The RTA is proposing to conduct a comprehensive review of countermeasures in Australia and overseas to provide an insight in the development of the overall heavy vehicle strategy and to help narrow the choices for potential heavy vehicle safety countermeasures and its use in NSW. It will also include discussions with other state and federal road safety agencies such as the NTC, Austroads and ARRB.

The review will have 3 stages which will include:

1. a literature review of international and national heavy vehicle safety countermeasures
2. discussions with other Australian jurisdictions to identify:
    - Heavy vehicle countermeasures that are currently in place
    - Any evaluation of the effectiveness of these countermeasures
    - Lessons learnt from implementation of these countermeasures
    - Heavy vehicle countermeasures currently being considered or evaluated for possible implementation.
3. the evaluation of these recent initiatives to assess their relevance and suitability for NSW conditions and make recommendations for the type of countermeasures that may play a potentially useful role in NSW.

Heavy Vehicle Compliance Survey

The RTA is currently in the process of conducting the sixth Heavy Vehicle Compliance Survey. The aim of this survey is to track the roadworthiness and compliance of heavy vehicles using NSW roads.

Part 3 Terms of Reference: Inquiry into Heavy Vehicle Safety

The Chairman of the STAYSAFE Committee has asked the RTA to address the terms of reference of the inquiry into heavy vehicle safety.

Terms of Reference

(a) the adequacy of the implementation of the NSW Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005 and the Transport Industry – Mutual Responsibility for Road Safety (State) Award, particularly in relation to heavy vehicle driver fatigue management and safe driving plans.

With regard to the first of the terms of reference, the RTA advises that these initiatives introduced by WorkCover and the Department of Industrial Relations and hence it is not in a position to discuss the adequacy of their implementation. However, road transport authorities in NSW have had a long involvement with the regulation of bus and truck hours. Over last 50 years, this has increasingly transformed into concern with the active management of fatigue and there has been much cross-fertilisation, both at the state and national levels, with occupational health and safety. The following provides information on the management of driving hours and fatigue, the development of national model heavy vehicle driver fatigue legislation and the relationship between current OH&S and road transport driver fatigue legislation.

The regulation of heavy vehicle driving hours

In NSW, log books were introduced on 1 May 1957 to regulate the hours of driving of motor vehicles more than two tonnes tare weight. In 1989 new regulations under the *Traffic Act 1909* were introduced applying to heavy vehicles exceeding 13.9 tonnes Gross Vehicle Mass (GVM) or Gross Combination Mass (GCM) and to coaches constructed to carry more than 8 persons. The regulations permitted a driver to drive for no more than 12 hours in any 24 hour period and 72 hours in any 7 day period. A driver could only drive for 5 hours in any continuous shift before taking a mandatory 30 minute rest break. The regulations included a new log book system which included an Australian Professional Driver's Log Book (for NSW licence holders) and an Australian Special Purpose Driver's Log Book (for casual or visiting interstate drivers). In 1990, however, the NSW Government agreed to a temporary easing of the work limit from 12 hours to 14 in a 24 hour period; these temporary exemptions lasted ten years.

During the 1990s, the ATC developed national policies for the bus and truck driver working hours. In 1998 NSW implemented the national work and rest

log book and the national truck and bus work and rest regulations with some amendments. The main variation from the national regulations was the retention of the existing work and rest hours for bus drivers. These became the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999.* These were repealed on 29 September 2008 when national model legislation was adopted into NSW law with the commencement of *Road Transport (General) (Driver Fatigue and Speeding Compliance) Regulation 2008*.

OHS Legislation and industrial award

The *Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005* was introduced by the then Minister for Commerce as part of the NSW Government's commitment to improving safety in the long haul trucking industry. The legislation was "intended to reduce the risk of harm from fatigue to drivers of heavy trucks". The Regulation places legal duties on employers, head carriers and certain consignors and consignees involved in the transport of freight long distance [a journey of more than 500 kilometres] by means of a heavy truck [a motor vehicle with a GVM over 4.5 tonnes].[11] The Regulation, which commenced on 1 March 2006, requires:

- The risk of harm of fatigue to the driver's health and safety be identified, assessed, and eliminated or controlled
- That driver fatigue management plans (DFMP) must be in place.

In the same year the legislation commenced, the then Minister for Commerce, in his capacity as Minister for Industrial Relations, introduced the Transport Industry Mutual Responsibility for Road Safety (State) Award and the Transport Industry Mutual Responsibility for Road Safety (State) Contract Determination which require transport operators, employers, employees, contract carriers and labour hire employees connected with the road transport of goods to take responsibility for road safety and to prepare and follow safe driving plans. Apart from requirements for employees to hold "Bluecards" (safety awareness training) and implementation of drug and alcohol policies, transport operators are obliged to ensure that:

- Safe driving plans are prepared for any work performed
- Drivers work in accordance with any safe driving plans.

NTC Fatigue Reform Package

While WorkCover was developing its Truck Driver Fatigue Regulation, the RTA was involved with the implementation of the Heavy Vehicle Driver Fatigue Reform Package. The development of the Package followed the ATC decision in April 2000 to direct the NTC to develop a range of requirements for the management of heavy vehicle driver fatigue. The

[11] WorkCover, Position Paper: Requirements covering the prevention of long distance truck driver fatigue, at http://www.workcover.nsw.gov.au/Documents/Publications/AlertsGuidesHazards/TransportAndStorage/requirments_covering_prevention_long_distance_truck_driver_fatigue_position_paper_4809.pdf

Package arose from dissatisfaction with the traditional regulation of driving hours for long haul bus and truck drivers through the setting of maximum hours. State laws, such as the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999,* were alleged to have serious shortcomings:

- The regulations were less concerned with safety and managing fatigue than with hours worked
- The log book system of recording hours was easily circumvented
- The regulations did not allow sufficient time for restorative sleep and made no distinction between day and night work
- The enforcement focus was almost solely on the driver.

Because this is a large and complex piece of regulation, the background to national model heavy vehicle driver fatigue and speeding compliance legislation and an explanation of its provisions are provided at Appendix A.

Comparison: OHS Regulation and national model driver fatigue legislation

During the consultation phase leading up to the introduction of national model heavy vehicle driver fatigue legislation, in November 2006 the then Minister for Roads convened a Ministerial Working Group to undertake a detailed comparison of the draft model legislation and OHS legislation (including the truck driver fatigue provisions of the *Occupational Health and Safety Regulation 2001*) and the relevant industrial awards and determinations. This followed an approach from the Transport Workers' Union (TWU) that NSW OHS legislation was preferable in safety terms to the proposed NTC model legislation. The Ministerial Working Group on Heavy Vehicle Driver Fatigue was chaired by the RTA with representatives drawn from the TWU, NSW Road Transport Association, WorkCover and the NTC. It was charged with undertaking a technical analysis including areas of compatibility between proposed NTC model legislation and OHS legislation.

The report of the Working Group in January 2007 found the following:

- No material difference between the objectives of OHS legislation and NTC model legislation in relation to the prevention and management of heavy vehicle driver fatigue
- While both OHS legislation and NTC model legislation create definitions of "duty holders" which align with industry roles, the NTC definitions covered a wider range of activities than those covered in OHS legislation
- There was no material difference between the general duties in the OHS Act and the NTC model legislation in relation to fatigue nor was there material difference in practice between the ability to successfully mount a prosecution under the NTC model legislation and OHS legislation
- While there were some differences in the specific duties in the OHS legislation and the NTC model legislation, the provisions were essentially compatible and not in legal conflict

- In terms of coverage:
    - The NTC legislation would have wider jurisdiction because of the national nature of the proposals and the concept of "corresponding fatigue law"
    - The OHS legislation covers lighter trucks (from 4.5 tonnes) but does not cover buses
    - There are different triggers for the regulatory framework: OHS requires a freight vehicle to travel more than 500 km while NTC model legislation relates to all trucks and buses greater than 12 tonnes regardless of distance travelled
    - Consignors and consignees with fewer than 200 employees in NSW are not subject to OHS provisions relating to truck driver fatigue and significant industry sectors (including Government and Defence) are excluded
    - NTC legislation is unique in its attempt to define what constitutes "fatigue" and "impaired by fatigue"
    - NTC legislation has greater prospect of enforcement across state borders
    - Penalties provided under OHS legislation are far greater than penalties under existing road transport legislation or indicated in the NTC model legislation.

In summary, the report found "differences in detail, much that was congruent in intent but nothing that was in conflict…" The TWU subsequently indicated that it would not be bound by all the findings of the report but would support its recommendations. These included enhancements to NTC legislation, including statutory provisions to ensure that driver fatigue legislation added to, but took nothing from, OHS legislation and the strengthening of safety duties. These amendments to NTC model legislation were accepted by the ATC in February 2007.

Adoption of national model legislation

In May 2008, after a process of extensive consultation with stakeholders as outlined in our attached briefing, the submission "to amend road transport legislation to provide for the adoption of national model legislation for heavy vehicle driver fatigue and speed compliance" was approved. In summary, the amendments included:

- The extension of "chain of responsibility" provisions in heavy vehicle C&E legislation to the management of driver fatigue and speed compliance
- The adoption of concepts from OHS legislation such as general and specific duties
- The requirement that off-road parties in the transport chain take "reasonable steps" to prevent the occurrence of an offence
- Shorter "standard" work hours involving longer and more frequent rest breaks, with longer hours and greater flexibility in operations accompanied by accreditation requirements, safety management systems and increased accountability

- Sanctions and penalties founded on a risk-based approach to the categorisation of offences and enhanced enforcement powers.

Relationship between OHS legislation and road transport legislation

It is likely that WorkCover would take action in more serious breaches of driver fatigue law involving injury or death to heavy vehicle truck drivers (its legislation does not specifically address the bus and coach industry). The RTA and WorkCover have a history of successful co-operation in such major cases, most notably the case of *Inspector Campbell v James Gordon Hitchcock [2004],* and these arrangements will continue. RTA officers undertake roadside enforcement (including buses and coaches) as well as investigating, auditing and prosecuting off-road parties in the chain of responsibility for offences which do not require WorkCover assistance. In addition, evidence of non-compliance under model fatigue legislation in NSW law will also be admissible as evidence of non-compliance under OHS legislation (without amounting to double jeopardy).

A number of departures from the national model legislation (including an outer limit of 15 hours in 24 for drivers operating under the Advanced Fatigue Management option) were approved. The national model legislation was adopted through amendments to the *Road Transport (General) Regulation 2005* which commenced on 29 September 2008.

(b) the integration of NSW OH&S and industrial relations legislation governing heavy vehicles to ensure consistency and conformity with that applying in other States as part of the national reform agenda

The RTA suggests that this is a matter most suitably addressed by WorkCover.

(c) the adequacy of the Government's provision of infrastructure to support the implementation of heavy vehicle driver fatigue management and safe driving plans in NSW

The RTA's provision of infrastructure such as rest areas pre-dates the introduction of OHS legislation and was designed to facilitate compliance with the driving hours requirements of the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999.* Currently there are some 1400 rest areas in NSW, and over 1000 of which can accommodate heavy vehicle vehicles. Rest areas range from informal hard stand areas through to high quality facilities such as the Yelgun and Frank Partridge VC rest areas and the Tarcutta Trailer Exchange Facility.

A strategy to enhance the provision of major rest areas on rural freight routes, based on the NTC's Guidelines for the Provision of Rest Area Facilities, is currently being developed. Criteria have been established to

determine whether existing rest areas should be upgraded to "major" rest areas for heavy vehicles.

In addition, the RTA has bid for a share of the Australian Government's Heavy Vehicle Safety and Productivity Program which was announced as part of the 2008/09 Budget. The Department of Infrastructure, Transport, Regional Development and Local Government indicated that it would provide $70M over four years to fund a range of heavy vehicle safety initiatives across Australia. These include:

- Construction of heavy vehicle rest stops
- Heavy vehicle parking and 'breakup' opportunities in urban areas
- Heavy vehicle electronic on-board systems
- Heavy vehicle productivity enhancing infrastructure, such as bridge strengthening.

The RTA's bid has put forward priority needs for a mix of new rest areas, rest area upgrades, decoupling sites, access enhancements, sign-posting and blue reflector lights across the key freight routes of NSW. Prioritisation is based on findings of the recent Austroads "Audit of Rest Areas against National Guidelines" and advice from the industry representative, NatRoad, on the NSW Road Freight Advisory Council.

(d) responses to heavy vehicle driver fatigue management and safe driving plans in other jurisdictions, further proposals and any other related matters.

The RTA is pleased to provide answers on related matters, as requested, in providing verbal evidence.

Attachment A

Heavy Vehicle Driver Fatigue and Speeding Compliance Legislation

Contents

Introduction

In a recent letter, the Chairman of the STAYSAFE Committee requested the Chief Executive of the RTA to provide a briefing on "issues relating to the trucking industry particularly detailing recent regulations governing occupational health and safety provisions…" Accordingly, this document provides a briefing on the introduction of the *Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008* by which model national heavy vehicle driver fatigue and speeding compliance legislation was adopted into NSW road transport law.[12]

Background

Movement for national road transport reform

A national approach to road transport reform began in 1991 and was facilitated by the establishment of an independent statutory body, the National Road Transport Commission. The success of that model led to the Commonwealth, States and Territories signing an Inter-Governmental Agreement (IGA) in 2003 to progress further regulatory reform through the National Transport Commission (NTC). All parties were, and are, committed to improving transport productivity, efficiency, safety, environmental performance and regulatory efficiency in a uniform or nationally consistent manner.

Road transport reform – both through regulations and operationally – was considered a high priority for all governments as the amount of freight conveyed by road in Australia is increasing and the ability to improve productivity and safety has the potential to add significant value to the economy. In its public review of the impact of the National Competition Policy on the Australian economy over the ten years from 1995-2005, the Victorian Government estimated that growth of 0.13% in Australia's GDP was attributable to road transport reform. In 2006, the Productivity Commission estimated that further reforms to road transport could increase GDP by some $2.4 billion.[13] Significantly, some 80% of Australia's long distance freight travels on NSW roads for at least part of its journey and some 40% of the total Australian road freight task is performed on NSW roads. Therefore, strong, national solutions to problems such as driver fatigue and speeding are considered critical for this State.

[12] The Parts of the *Road Transport (General) Regulation* 2005 which were amended by the *Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008* are to be found at Appendix A.[not attached]

[13] *Victorian Government Submission: Productivity Commission Inquiry into National Competition Policy Arrangements*, June 2004, p. 45; Productivity Commission Inquiry *Overview,* No. 41, 22 December 2006 Road and Rail Freight Infrastructure Pricing, p. XLI.

Heavy vehicle road safety

In NSW, heavy vehicles comprise around only 2.5% of registered motor vehicles but account for an estimated 8% of vehicle kilometres travelled and are involved in 21% of all fatalities on the State's roads. In the years 2003 to 2007, there was a total of 15,557 crashes involving heavy vehicles: this is an average of 3,100 crashes a year involving heavy vehicles (heavy buses, articulated trucks and heavy rigid trucks). There were 432 fatal crashes resulting in 501 fatalities and 8,583 injuries: this is a total 9,084 casualties. The average cost over the five years 2003 to 2007 of crashes involving heavy vehicles is $406 million p.a. amounting to $2.03 billion over 5 years.[14]

Driver fatigue and speeding are key safety issues for the transport industry. Compliance with previously existing driving hours which purported to manage fatigue was poor: 27% of drivers surveyed reported breaking the regulations on every trip; 36% of drivers admitted to infringing driving hours regulations to "do enough trips to earn a living".[15] Crashes in which the driver is fatigued are prevalent and costly: heavy vehicle fatigue-related crashes are estimated by the NTC to cost over $300M a year across Australia.[16] Heavy vehicle speeding is likewise a major concern: research has indicated that if all heavy vehicles complied with speed limits, a 29% reduction in heavy vehicle crashes could be expected.

Heavy Vehicle Driver Fatigue Reform Package

In April 2000, the Australian Transport Council (ATC) agreed to the Third Package of Heavy Vehicle Reforms and directed the NTC to develop a range of requirements for the management of heavy vehicle driver fatigue. The ATC then endorsed some key features of a framework to manage driver fatigue in 2004. The Heavy Vehicle Driver Fatigue Reform Package, circulated for consultation in 2006, arose from dissatisfaction with the traditional regulation of driving hours for long haul bus and truck drivers through the setting of maximum driving hours.

The major criticism of the previous driver fatigue laws is that they were less concerned with safety and managing fatigue than hours worked; the log book system of recording hours was easily circumvented and the industry demonstrated poor safety outcomes in terms of drug abuse, speeding and fatigue related crashes. The prescriptive regulations did not allow sufficient time for restorative rest and sleep, made no distinction between day and night work and placed the enforcement focus almost solely on the driver.

In February 2006 the Council of Australian Governments (COAG) agreed that the NTC Fatigue Reform Package was a key road transport law reform and, if the ATC approved the proposed reform, jurisdictions would implement the

[14] RTA Crash Database, 2003-2007.
[15] NTC, *Heavy Vehicle Driver Fatigue - Updated Draft Regulatory Impact Statement*, August 2006, p. 7.
[16] Fatigue RIS, p. v.

model law within 12 months. The reforms proposed by the Package, and covering trucks over 12 tonnes gross vehicle mass (GVM) and buses seating over 12 adults, included:

- application of the "chain of responsibility" concept placing obligations on all parties in the heavy vehicle industry to manage fatigue
- application of Occupational Health and Safety (OHS) concepts such as general and specific "duties"
- development of three tiers of driving hours options with more flexibility in return for increased compliance requirements
- a scientific understanding of fatigue reflected in constraints on night work and long hours and promotion of short breaks and napping.

The Package was placed before ATC in February 2007. It included draft model heavy vehicle driver fatigue legislation, National Heavy Vehicle Accreditation Scheme (NHVAS) business rules and guidelines for managing heavy vehicle driver fatigue. ATC formally approved the model legislation and in February 2008, supported a revised implementation date of 29 September 2008, along with the amendments to the legislation.

Speed compliance

Aligned with its work on fatigue, the NTC commenced its review of speed compliance for heavy vehicles in 2005 with a view to a reduction in the road toll. Roadside enforcement of speeding behaviour is limited in its effectiveness and does not target systemic issues where contracts and deadlines encourage or even coerce drivers into breaking the speed limit. Accordingly, discussion has focused on developing a chain of responsibility for speed compliance. The purpose is to ensure that off-road parties such as employers, schedulers and consignors, take responsibility for ensuring that "the road transport task is carried out by a driver in such a manner that does not encourage or require the driver to speed".[17]

Following the receipt of comment on its draft proposal for heavy vehicle speed compliance in March 2007, the NTC finalised its proposal for consideration by the ATC in December 2007. The model legislation, which received unanimous endorsement, was originally due for implementation by December 2008.[18]

[17] Speed Compliance RIS, summary.

[18] In April 2008, the speeding compliance legislation was also approved for implementation on the same date as fatigue legislation (29 September 2008).

Compliance and enforcement: the concept of chain of responsibility

In 2000 the ATC supported the development of a better compliance and enforcement model for legislation including the concept of a "chain of responsibility" as part of the Third Heavy Vehicle Reform Package. When adopted in NSW as part of the *Road Transport (General) Act 2005*, the intention was expressed as extending accountability "to parties in the road transport chain other than the driver and transport operator and who may bear significant responsibility for the occurrence of an offence…"[19] The chain of responsibility provisions, until the recent fatigue and speeding amendments, extended liability for mass, dimension and load restraint offences to prescribed parties including consignors, packers, loaders or consignees of goods as well as drivers and operators of vehicles.

Recently, the RTA has had nationally recognised success in prosecuting consignors and consignees in targeted enforcement activities where mass limits have been exceeded in the transport of grain. These actions have resulted in demonstrable changes in behaviour: many consignees are now putting in place active management systems to discourage and prevent further mass offences. Encouraged by these achievements, the ATC supported the extension of the concept to the management of driver fatigue and speed compliance.[20]

Safety duties and OHS legislation

NSW OHS legislation establishes general duties providing that the employer "must ensure the health, safety and welfare at work of all employees of the employer".[21] Specific duties are also imposed to contribute to the achievement of the general duty.

The *OHS Regulation 2001* requires the employer to assess the risk of harm from fatigue to the truck driver who transports freight long distance and to eliminate or control that risk.[22] National model legislation for driver fatigue draws on OHS concepts by imposing a general duty on all parties in the chain of responsibility to take "all reasonable steps" to ensure that a person does not drive a heavy vehicle while impaired by fatigue. In addition, there are specific duties on nine parties in the chain: schedulers, for example, must take all reasonable steps to ensure that a driver's schedule will not cause the driver to drive while impaired by fatigue. While there is no general duty in the speed compliance model legislation, there are specific duties on seven parties in the chain to take all reasonable steps to ensure that their business activities will not cause a driver to exceed any speed limit.

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[19] NSW *Parliamentary Debates*, Legislative Council, 6 April 2005, Hon Michael Costa, Road Transport (General) Bill, Second Reading.

[20] See reference to success of NSW compliance and enforcement activities in Speed Compliance RIS, p.17.

[21] *Occupational Health and Safety Act 2000*, section 8.

[22] Long distance truck driver fatigue provisions are found at Part 4.5 of the *OHS Regulation 2001*.

In February 2007, the then NSW Minister for Roads requested that the NTC amend the model legislation to include provisions which explicitly confirm that fatigue legislation adds to, but takes nothing away, from OHS legislation. Clause 9 was subsequently amended to that effect. Because the primacy of OHS legislation is protected and more substantial penalties are available for prosecution purposes, WorkCover will continue to have a role in investigating and prosecuting major breaches of driver fatigue law involving injury or death to heavy vehicle truck drivers (OHS legislation does not specifically address the bus and coach industry).

The combination of the OHS concepts of specific and general duties and the chain of responsibility provisions of compliance and enforcement legislation mean that, under national model legislation, a number of parties in the supply chain – not just the driver – have a duty to take all reasonable steps to ensure that a driver does not drive while fatigued or drive in breach of his or her work and rest hours option.

Reform to existing legislation

In addition to extending responsibility to off-road parties in the road freight and bus and coach industry sectors, national model legislation, particularly for driver fatigue, introduces substantial reforms to existing road transport law. The model legislation:

- defines "fatigue" and also "impaired by fatigue" and incorporates provisions which have, as their basis, the scientific understanding of fatigue.
- refers to the causes of fatigue, the signs of fatigue and calls up the "body of fatigue knowledge"
- recognises "work time" rather than "driving time" with "work time" including time that the driver spends driving a heavy vehicle and any other time doing related tasks such as loading and unloading
- introduces new driving hours regimes:
    - under **Standard Hours**, drivers may work up to 12 hours in any period of 24 hours - Not only are the hours of driving shorter (drivers may presently work 14 hours in 24) but rest breaks are longer and more frequent and night driving hours are limited[23]
    - under **Basic Fatigue Management**, which requires accreditation, operators are allowed flexibility within a set minimum rest and maximum work hours regime (14 hours work in any period of 24 hours)
    - under **Advanced Fatigue Management**, also requiring accreditation, operators are allowed to manage fatigue risk without prescribing work or rest hours, with operating and outer limits of 15 hours (16 outside NSW and Victoria) in any 24 hour period.
- includes new provisions for work diaries and record keeping

- includes a risk-based categorisation of offences (minor through to critical risk), enhanced penalties and the imposition of demerit points against drivers for certain offences.

Consultation

Coinciding with the ATC decision on the key features of a framework to manage driver fatigue in 2004, detailed policy papers were released by NTC to industry and other stakeholders on Advanced Fatigue Management, bus policy, short rest breaks, record keeping requirements, two-up driving, transition arrangements, accreditation standards, sanctions and penalties.[24] A final, extensive round of public consultation was undertaken throughout Australia during August-September 2006 with the NTC and the RTA conducting seven forums throughout this State. The final round was accompanied by the release of model legislation, updated policies and the draft regulatory impact statement.

During the consultation process, the Bus and Coach Association (BCA) made representations objecting to the amalgamation of bus industry operation into the same scheme as that for heavy trucks. Accordingly, NSW indicated that it had certain concerns about the impact of proposed model legislation on the bus and coach industry at the ATC meeting in October 2006 and, at that time, intended not to apply the package to regulate bus and coach operations. Since then, the issue of separate NSW bus hours has raised problems of national consistency and cross border enforcement. Accordingly, there have been ongoing discussions between the Minister for Roads and the Minister for Transport on this matter.

The Transport Workers Union (TWU), likewise, has made ongoing representations since late 2006 arguing that the national model driver fatigue legislation would provide a lower standard of safety than that provided under existing NSW OHS legislation. In November 2006, the then Minister for Roads, the Hon Eric Roozendaal, established a Ministerial Working Group on Heavy Vehicle Driver Fatigue with representatives drawn from the TWU, the NSW Road Transport Association, WorkCover and the RTA to undertake a detailed comparison of the proposed national model legislation and the driver fatigue-related provisions of NSW OHS legislation. The Working Group found "differences in detail, much that was congruent in intent but nothing that was in conflict between the NTC proposals and existing legislation".[25] The TWU indicated, however, that it did not agree with a number of the findings and continued to press for amendments to national model legislation. As a consequence, some amendments to the legislation, for example, to enhance the primacy of OHS legislation, have been adopted; other changes sought by the TWU have not been acceded to.

[24] *Heavy Vehicle Driver Fatigue, Final Regulatory Impact Statement*, NTC, December 2006, Summary.
[25] Report of the Ministerial Working Group on Heavy Vehicle Driver Fatigue, January 2007, p.2.

Rest Areas

A strategy is being developed to enhance the RTA's approach to providing heavy vehicle rest areas on major freight routes on the rural network based on the NTC's National Guidelines for Provision of Rest Area Facilities. It is focused on heavy vehicle driver needs, national fright routes in rural NSW, suitable facilities for longer rest stops and prioritised and staged enhancement of rest opportunities.

Concurrently, the RTA is bidding for funds from the Australian Government to provide a mix of new rest areas, rest areas upgrades, access enhancements, sign-posting and blue reflector lights across the key freight routes of NSW.

Blue Reflector Trial

Consideration has been given to the marking of informal heavy vehicle stopping areas so that they can be more readily identified.

Distinct from existing formal rest areas are informal stopping places at the roadside which drivers of heavy vehicles have developed through use over time. They provide drivers of heavy vehicles with useful stopping places. There is a need for an easy and effective way to give drivers of heavy vehicles advance notice that they are approaching such sites. This is particularly so for drivers of heavy vehicles unfamiliar with a route, and especially at night.

Advance notice of informal heavy vehicle stopping opportunities helps make heavy vehicles stopping at and near these sites more predictable, thereby helping to reduce the risk of rear-end collisions.

The RTA has recently approved guidelines for a method of marking informal heavy vehicle stopping areas with Blue Reflectors. These guidelines have been produced to provide RTA Regions with guidance for implementing the Blue Reflector treatment at appropriate informal heavy vehicle stopping areas.

Circular blue reflectors mounted on road side guide posts in rural areas are used as a simple, effective, minimal cost way of giving drivers of heavy vehicles advance notice that they are approaching an appropriate informal heavy vehicle stopping area.

The guidelines address a number of issues relevant to the identification of a Blue Reflector site including, location, sight distance and safe access to and from the site, site surface conditions, maintenance, site dimensions and local amenity issues such as noise.

The trucking industry strongly supports the Blue Reflector scheme and the scheme is being rolled out along NSW highways.

Adoption of national model legislation

New South Wales

In May 2008, the submission "to amend road transport legislation to provide for the adoption of national model legislation for heavy vehicle driver fatigue and speed compliance" was approved. The amendments included:

- the extension of the "chain of responsibility" provisions in heavy vehicle compliance and enforcement legislation to the management of driver fatigue and speed compliance
- the adoption of concepts from OHS legislation such as general and specific duties
- the requirement that off-road parties in the transport chain take "reasonable steps" to prevent the occurrence of an offence
- shorter "standard" work hours involving longer and more frequent rest breaks, with longer hours and greater flexibility in operations accompanied by accreditation requirements, safety management systems and increased accountability
- sanctions and penalties founded on a risk-based approach to the categorisation of offences and enhanced enforcement powers.

A number of departures from model legislation for its operation in NSW were also approved. These departures included:

- *carriage of work diaries*: drivers of all regulated heavy vehicles will be required to carry a work diary, regardless of distance travelled (Note: Exemption from carrying a work diary provided until 28 September 2009)
- *short rest break defence*: NSW would not be adopting the defence which allows drivers working under Standard Hours to continue driving for an additional 45 minutes on the grounds that they could not find a rest area
- *AFM limits*: NSW and Victoria would set an outer limit of 15 hours in any 24 hour period (16 hours in other states) for drivers operating under AFM.

The possibility of the granting of exemptions from some of the provisions of the proposed legislation was also discussed.

Because of the short timeframe available for the common national implementation, on the advice of Parliamentary Counsel's Office, the national model legislation was adopted through amendments to the *Road Transport (General) Regulation 2005* which commenced on 29 September 2008.[26]

[26] The provisions relating to heavy vehicle driver fatigue and speeding compliance are to be found in Parts 6 and 7 of the Road Transport (General) Regulation 2005.

Other states and territories

During 2007 and 2008 most Australian States and Territories adopted national model driver fatigue legislation into their own road transport legislation. The common commencement date of 29 September 2008 was observed by NSW, Victoria, Queensland and South Australia. Northern Territory and Tasmania intend to implement the legislation later. Speeding compliance legislation is due for implementation in December 2008.

Transitional arrangements

The national model driver fatigue legislation provides for the following transitional arrangements:

- operators and drivers registered in the current, transitional, fatigue management schemes have 6 months to convert to the BFM or AFM schemes and obtain a new accreditation and
- drivers who choose to work under the new Standard Hours scheme will be given 90 days to use up their current "log book" and replace it with the new format "work diary".

Discussions with other jurisdictions regarding transitional arrangements led to the identification of a number of issues:

- there was a likelihood that substantial numbers of drivers and companies who are not currently part of any accreditation scheme would seek to enrol in the new BFM or AFM schemes, both of which require accreditation
- there is a national shortage of auditors approved to conduct accreditation enrolments and checks under the new legislation; jurisdictions were not confident that the supply of auditors was sufficient to deal with conversions and enrolments into BFM and AFM
- there were no approved transition arrangements regarding log book usage for those drivers who convert from the existing transitional fatigue management schemes to BFM or for those drivers who were previously not required to complete a log book.

Accordingly, NSW, Queensland and South Australia reached agreement on enhanced transitional arrangements including:

1. A transition period for Standard Hours

Because there is no transition period provided in the model legislation for drivers who are working on the current 12 hours driving plus 2 hours work to move into the new Standard Hours scheme, a six months exemption is now available. Solo drivers operating under Standard hours (12 hours) will be permitted to drive for 12 hours and work for an additional 2 hours. During this 14 hour period, drivers must continue to take their prescribed rest breaks. Drivers must also carry a work diary and the exemption notice.

2. Extended transition period for existing fatigue management schemes
Operators and drivers registered in the existing transitional fatigue management schemes will have 12 months to convert to BFM or AFM regimes. In January 2009, owner drivers and drivers not registered in an existing fatigue management scheme such as the Transitional Fatigue Management Scheme (TFMS) were permitted to work on BFM hours (14 hours work in any 24 hour period) on the condition that they were employed by a TFMS registered operator. This enhanced transition period will expire on 28 September 2009.

3. Logbooks to work diaries
To overcome practical problems relating to drivers being able to access work diaries a number of measures have been devised:

- Drivers transitioning from the transitional fatigue management scheme to BFM have been permitted to use their work diaries for 90 days after the 29 September 2008. This is similar to the transitional arrangements provided for Standard Hours drivers.
- Drivers whose operators gain accreditation for AFM or BFM have 14 days after 29 September 2008 to obtain a work diary (this arrangement only applies for 90 days and ends on 28 December 2008)
- Drivers who never had to complete a work dairy before or those working under the work rest exemption would also have 14 days after 29 September 2008 to obtain a work diary.[27]

4. A 6 month period of grace regarding the enforcement of minor offences
This complements the enhanced transition arrangements.

In addition, NSW developed its own transitional arrangements for bus and coach drivers:

- Bus and coach drivers are exempted for 12 months from the decision to work under hours prescribed in the new Standard Hours or Bus and Coach Hours or continuing to operate under those previously prescribed in the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999*.

Exemptions

Exemptions granted under 1999 legislation

A number of exemptions were provided under previous NSW driver fatigue legislation:

- heavy vehicle drivers engaged in driving and working within 100km of their base ("local area work") were not required to carry and complete logbooks
- Under a Ministerial Exemption Order, the following classes of drivers were exempted from log book and record keeping requirements:

[27] See Appendix C.[not attached]

    - drivers of heavy vehicles transporting primary produce on journeys of 160km or less
    - drivers of heavy vehicles owned or operated by or on behalf of the government or local government
- Exemption from all provisions of the legislation was granted to heavy vehicle used:
    - as an ambulance
    - for drought, flood, fire or similar emergency
    - "pursuant to the directions of an authorised officer"
    - as a motor home.

The 1999 legislation was repealed on 29 September 2008.

Exemptions provided under national model legislation

Under the national model legislation, drivers of regulated heavy vehicles are not required to carry a work diary if they are driving within 100km of their base. In addition, it does not apply to motor homes, and exempts emergency services drivers on the way to or during an emergency from compliance with work and rest hours, work diary and record keeping requirements. However, it does not include work diary exemptions for Government and Local Government agencies or drivers transporting primary produce.

Current NSW exemptions

NSW driver fatigue legislation reflects the previous Minister's advice to ATC in February 2007 that NSW would require all heavy vehicle drivers to carry a work diary regardless of the distance travelled. This was intended to simplify monitoring and enforcement of compliance with the regulated work and rest hours by drivers engaged in a mix of long and short haul journeys. In addition, it is considered necessary for drivers engaged in driving within 100km of their base to carry a work diary in order to enforce compliance with regulated work and rest hours. In this regard, it should be noted that fatigue-related road safety risks, according to fatigue experts, arise from insufficient opportunity for restorative rest and sleep, regardless of distances travelled.

A number of stakeholder groups have recently raised concerns that the requirement to carry and complete a work diary for journeys less than 100km represents an unnecessary administrative burden. These included:

- the NSW Farmers Association in relation to short journeys by farmers
- the Motor Traders Association of NSW in relation to journeys incidental to the sale, servicing or repair of heavy vehicles
- the Waste Contractors and Recyclers Association of NSW in relation to waste collection and recycling.

As a result of these representations, the Minister for Roads has approved exemptions for the following classes of drivers from certain requirements of the new Regulations:

- drivers operating under Standard Hours (exempted from carrying and completing a work diary) for a journey within a 100km radius of the driver's base (operates only until 5 October 2009)
- drivers undertaking journeys for the purpose of primary production (cultivation of land or the keeping of animals or bees) within a 160km radius of the driver's base (exempted from carrying and keeping a work diary and record keeping requirements) (operates until 5 October 2009).

The 12 month exemptions are in keeping with the exemptions in the 1999 Regulations and are intended to enable the Minister sufficient time to further consult stakeholders on concerns about impact of new regulations, and in particular, concerns about proposed requirement to carry work diaries for all journeys.

In March 2009, the Minister announced that drivers of heavy vehicles transporting livestock in the event of unforeseen circumstances which may result in risks to animal welfare will be permitted to exceed the regulated maximum work time by 2 hours in any 24 hour period.

The following permanent exemptions have also been determined:

- bus and coach drivers (including volunteer bus drivers, school bus drivers, private bus owners and operators) undertaking journeys within a 100km radius of the driver's base and bus and coach journeys provided under Government bus service contracts regardless of distance travelled (exempted from requirement to carry and complete a work diary only)
- drivers employed by licensed motor vehicle repair businesses or licensed motor dealers for purposes incidental to the sale, registration, servicing or repair of a heavy vehicle undertaking journeys within a 100 km radius of the driver's base (exempted from carrying and completing a work diary only)
- drivers engaged by emergency services, including fire brigades and police, undertaking journeys of less than 100 km (exempted from all aspects of the new law)[28]

Motion to disallow the Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008

On 21 October 2008, Duncan Gay, MLC, Shadow Minister for Roads, announced that on the following sitting day he would move that the Legislative Council disallow the *Road Transport (General) Amendment*

[17] For details about Work Diary Exemptions, see Appendix D [not attached].

(Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008 under the provisions of the *Interpretation Act, 1987*.

If the motion were to be successful, it would have the effect of leaving NSW without laws to manage driver fatigue creating major enforcement problems particularly across boarders and increasing the risk of fatigue related crashes. Mr Gay has postponed the motion to disallow the legislation twice. Once on 3 December 2008 when the motion was postponed until 5 March 2009 then again on 5 March 2009 when the matter was postponed until 1 September 2009.

Further stakeholder consultation

In response to concerns about the impact of NSW departures from national model legislation and to identify and address issues, the Minister for Roads, Michael Daley, called two special meetings of the Road Freight Advisory Council on 13 November and 16 December 2008. The meeting was also attended by representatives from the NSW Farmers' Association. In addition, the Minister invited National Party Members of Parliament and representatives from regional and rural areas to attend a special meeting on 26 November to discuss the impact of the legislation and to examine whether certain provisions of the regulation are unduly onerous.

The Roads and Traffic Authority is continuing discussions with the Ministry for Transport, State Transit Authority and Bus NSW regarding bus industry issues and with NSW Waste Collectors and Recyclers Association on waste industry issues.

Following the consultations with various industry groups, the Minister for Roads has agreed to the following:

- Liaise with State and Territory Roads Ministers to examine a range of significant industry concerns about the new work and rest hours and accreditation schemes, and their consistent interpretation and enforcement across state borders;
- Developing NSW exemptions for specific industry sectors who cannot easily comply with the 'one-size-fits-all' national laws. The proposed exemptions will cover the transport of fresh produce, grain and livestock, and essential waste collection and community transport services. They will be developed in the first quarter of 2009, in consultation with relevant industry groups and road safety experts; and

Allow NSW employer participants in the Transitional Fatigue Management Scheme to engage new drivers to work the Basic Fatigue Management (BFM) hours. Drivers must comply with competency training and medical assessment criteria applicable to drivers under the BFM accreditation scheme. These transitional arrangements were gazetted on 16 January 2009 and will expire on 28 September 2009.

Conclusion

Recently introduced national model heavy vehicle driver fatigue and speeding compliance legislation is an important road safety initiative. By extending compliance and enforcement legislation – especially the concept of the "chain of responsibility" – and OHS concepts such as general and specific duties to the management of driver fatigue and speeding compliance, the intention is to circumvent commercial and other pressures which push drivers and operators to work beyond safe limits.