

# Advice on unavoidable delays



To combat driver fatigue, there are legal limits on the hours a driver can work during any given cumulative work day and period. However, the Land Transport Act 1998 (the Act) does provide a limited defence for a driver exceeding prescribed work time due to an unavoidable delay which is the result of:

- >> a state of emergency declared under the Civil Defence Emergency Management Act 2002
- >> an incident attended by an emergency service
- >> an event requiring immediate action to save life or prevent serious injury
- >> circumstances that could not reasonably have been foreseen by the defendant.

## The court's role

Only a court can decide if the reason given for exceeding work time is acceptable in terms of the Act.

While each case would be decided on its merits, operators and drivers are expected to plan for potential delays caused by events such as:

- >> heavy traffic, perhaps due to a public holiday
- >> road closure due to weather conditions, particularly if severe weather warnings such as flooding or snow have been issued
- >> operational events, eg unavailability of a forklift or labour to unload a truck.

New information acquired during the journey should also be taken into account and responded to. For example, if a road is to be closed for several hours, an alternative route should be taken if this will reduce the additional time required to complete the journey or reduce the necessity for the driver to exceed work time for that cumulative work day.

Where an unavoidable delay looks likely to extend a driver's cumulative work day, consideration should be given to rescheduling the work if it means the driver would avoid exceeding work time for that day.

Only a court can decide if the amount of time that work time was exceeded is acceptable in terms of the Act.

When considering any matters relating to work time and an unavoidable delay, a court may consider any factors it considers relevant. These factors could include:

- >> the reason for the delay
- >> the additional time added to the driver's work time
- >> what information about a possible delay was available to the driver prior to the journey commencing or was acquired during the journey
- >> what was done with the information on possible delays to minimize the impact it would have on the driver's work hours
- >> what was done to give the driver sufficient time to recover from the additional hours worked (countermeasures taken).

## Recording the delay

The law requires that any delay claimed as a reason to extend work time must be noted in the driver's logbook in sufficient detail to assist an enforcement officer and must also be able to be independently verified.

## Managing driver fatigue

Fatigue is legally recognised as being a workplace hazard. Operators have a legal obligation to ensure that any risk associated with extending a driver's work time is treated as a potential hazard and dealt with according to the operator's workplace health and safety procedures.

Although the Act provides a defence in relation to the failure to comply with work time requirements due to unavoidable delays, it does not mitigate the duty of care of drivers and persons responsible for drivers, to ensure the driver is not in an unfit, fatigued state. For guidance, when a driver exceeds prescribed work time because of an emergency or unavoidable delay, the rest break immediately following should be increased by at least the same number of hours unless the break is 24 hours or longer. Consideration should be given to providing an extra 1 ½ hours rest for each hour worked during the high-risk time of midnight to 6am.

A good reference paper on driver fatigue titled *Options for regulatory approach to fatigue in drivers of heavy vehicles in Australia and New Zealand* can be downloaded from [www.atsb.gov.au/publications/2001/pdf/Fatig\\_Trans\\_7.pdf](http://www.atsb.gov.au/publications/2001/pdf/Fatig_Trans_7.pdf)

This advice is provided as guidance only. Ultimately, only a court can decide if a reason given is acceptable in terms of section 79p of the Act.