

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 153**

Issued by the Authority of the Minister for Infrastructure, Transport, Regional Development  
and Local Government

*National Transport Commission Act 2003*

*National Transport Commission (Model Amendments Act: Heavy Vehicle  
Driver Fatigue – Package No. 1) Regulations 2008*

Section 52 of the *National Transport Commission Act 2003* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The provisions of the Act are supported by the Inter-Governmental Agreement on Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA), which serves to formalise the cooperative arrangements between the Commonwealth, States and Territories and define the roles and responsibilities of the National Transport Commission, the Australian Transport Council and the jurisdictions. Clause 14 of the IGA requires the Commonwealth to submit model legislation for inclusion in schedules to regulations under the Act. The proposed Regulations would implement this commitment.

The purpose of the Regulations is to make various minor amendments to improve the operation of the *National Transport Commission (Model Legislation — Heavy Vehicle Driver Fatigue) Regulations 2007* (the Principal Regulations) for nationally consistent implementation in each State and Territory. The amendments to the model Act included in the proposed Regulations are in model form to allow for implementation in each jurisdiction using the most convenient and effective regulatory manner available – for instance, the provisions may be incorporated into the law of a jurisdiction by way of amendment of existing legislation.

The objects of the Regulations are to:

- (a) more clearly delineate the relationship between the Principal Regulations and existing occupational health and safety legislation in each State and Territory; and
- (b) correct inconsistencies and errors in the Principal Regulations particularly with respect to electronic work diaries and driver and operator requirements when operating under the Basic Fatigue Management and Advanced Fatigue Management regimes which are heavy vehicle driver fatigue programs administered by each State and Territory.

The Regulations were developed in conjunction with officers from Commonwealth, State and Territory road safety, traffic and road transport authorities. The Regulations provide for a number of minor amendments and clarifications to the Principal Regulations which were approved by the Australian Transport Council (ATC) in February 2007. The proposed Regulations did not require a supporting Regulatory Impact Statement (RIS) as they did not provide for any changes to the regulatory environment. The Heavy Vehicle Driver Fatigue

maintenance process commenced in 2007 with consultation being limited to key stakeholders as well as with the Transport Agency Chief Executives (TACE) group. The reason for the limited consultation undertaken by the National Transport Commission (NTC) was the nature of the proposed Regulations, which do not vary the duties or responsibilities of affected parties or the policy fundamentals and intent underpinning the *Road Transport (Heavy Vehicle Driver Fatigue) Act 2007*. The NTC submitted the draft *Model Amendments Act 2007 (Heavy Vehicle Driver Fatigue) Regulations* to the Transport Agency Chief Executives (TACE) group on 16 July 2007 for comment. The Regulations were then submitted to the Australian Transport Council (ATC) for voting and were approved unanimously on 16 November 2007.

Section 7 of the Act provides that the regulations may set out model legislation, being legislation developed by the NTC in accordance with the IGA. Paragraph 7(2)(a) provides that model legislation does not have the force of law. The schedules to the regulations serve only as a repository for nationally agreed reforms, which may then be implemented by jurisdictions.

Item 44 of the table to subsection 44(2) of the *Legislative Instruments Act 2003* together with item 7 of Schedule 2 to the *Legislative Instruments Regulations 2004* operate to provide that the proposed Regulation would not be subject to disallowance. In addition, item 51 of the table to subsection 54(2) of the *Legislative Instruments Act 2003* together with item 4 of Schedule 3 to the *Legislative Instruments Regulations 2004* operate to provide that the proposed Regulation would not be subject to sunseting.