REPORT OUTLINE

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Objectives: To establish rules for the operation of the Fatigue Authorities Panel.

NTC Programs: Fitness for duty

Key Milestones: Submission of the final policy proposal to Transport Agency chief executives (December 2007) and the Australian Transport Council (May 2008).

Abstract: The paper sets out the Rules of the Fatigue Authorities Panel to be established as part of the Heavy Vehicle Driver Fatigue Reform. Under the model legislation the Panel is charged with certain functions, particularly in relation to ensuring national consistency in the approval of Advanced Fatigue Management (AFM) accreditation intended to have application in multiple jurisdictions. The Panel will be established by a decision of the Australian Transport Council (ATC) to approve these Rules and will include representatives of the fatigue authorities of the participating jurisdictions as voting members.

Purpose: For endorsement by ATC.

Key words: Heavy vehicles, fatigue, road safety, compliance, chain of responsibility.
FOREWORD

The National Transport Commission (NTC) is an independent body established under Commonwealth legislation and funded by the Australian Government, States and Territories. The NTC has an on-going responsibility to develop, monitor, and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and inter-modal transport.

In February 2007 the Australian Transport Council (ATC) approved the Heavy Vehicle Driver Fatigue Reform. The reform is underpinned by advice from fatigue experts which places emphasis on restorative rest, fitness for duty, body clock factors and the influence of the many parties in the supply chain on driver fatigue.

Fatigue is one of the main causes of crashes involving heavy vehicle drivers. The Heavy Vehicle Driver Fatigue Reform is a key component of the Third Heavy Vehicle Reform Package. The aim of the reform is to improve road safety through the implementation of policies and practices addressing the management of fatigue in the road transport supply chain.

This report sets out the Rules of the Fatigue Authorities Panel to be established as part of the reform. Under the model legislation the Panel is charged with certain functions, particularly in relation to ensuring national consistency in the approval of Advanced Fatigue Management (AFM) accreditation intended to have application in multiple jurisdictions. The Panel will be established on the ATC approving these Rules and will include representatives of the fatigue authorities of the participating jurisdictions as voting members.

The reform is intended to be implemented in September 2008. It is intended that the Fatigue Authorities Panel will be operational ahead of the reform in order to consider AFM applications intended to have effect in multiple jurisdictions and release guidance materials prior to implementation of the reform. This will help parties prepare for implementation of the reform and for them to better manage the risks of heavy vehicle driver fatigue.

The NTC would like to sincerely thank all those parties who have contributed to the many phases in developing these Rules, including Ron Shanks and Matthew Loader for their ongoing enthusiasm and commitment toward the completion of the document.

Michael Deegan
Chairman
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INTRODUCTION

The Fatigue Authorities Panel is established under the Heavy Vehicle Driver Fatigue Reform.

Under the laws that will be based on the model legislation, the Panel will have a statutory role to provide advice to jurisdiction fatigue regulators on matters referred to it relating to accreditation for Advanced Fatigue Management (AFM) and Basic Fatigue Management (BFM), principally in relation to applications intended to have application in multiple jurisdictions.

It is expected that the bulk of the Panel’s business will be to provide advice on applications for AFM accreditation that may be referred to it by an authority. Under the relevant jurisdictional laws, an authority must not grant AFM accreditation intended to have application in multiple jurisdictions without referring the matter to the Panel for advice.

The Panel is established by these Rules. The Rules have their authority as a result of a decision of ATC to approve them.
PART 1 – PRELIMINARY MATTERS

1. Establishment of the Panel

The Fatigue Authorities Panel is to be established, and is to operate, in accordance with these Rules.

2. Definitions

(1) In these Rules:

*applicant* means a person:

(a) applying for an AFM accreditation or an exemption; or

(b) who holds a current BFM accreditation, AFM accreditation or exemption that is proposed to be varied or cancelled.

*auditor* means an auditor of a class approved by the Australian Transport Council for the purposes of assessing a BFM fatigue management system or AFM fatigue management system;

*business day* means a day other than a Saturday, a Sunday or a day appointed as a public holiday under the *Public Holidays Act 1993* of Victoria;

*chairperson* – see rule 10;

*expert report* – see rule 23(6);

*fatigue authority* means:

(a) an authority with responsibilities for administering the fatigue legislation in a participating jurisdiction; or

(b) the Department of the Commonwealth that deals with road transport.

*fatigue legislation* means any legislation of a participating jurisdiction that corresponds, or that substantially corresponds, to the model legislation;

*fatigue expert* means a person registered as a fatigue expert under Part 6;

*fatigue expert agreement* – see rule 33(3);

*model legislation* means the model legislation set out in the schedule to the *National Transport Commission (Model Legislation – Heavy Vehicle Driver Fatigue) Regulations 2007* (Cth);

*non-participating fatigue authority* means an authority of a non-participating jurisdiction that performs functions and exercises powers under a law of that jurisdiction about heavy vehicle driver fatigue;

*non-participating jurisdiction* means a jurisdiction for which the Minister representing the jurisdiction on the Australian Transport Council has indicated, in the ministerial vote on the model legislation, that the model legislation will not be implemented in the jurisdiction;

*Note* In voting on the model legislation, the Ministers representing the Australian Capital Territory and Western Australia on the Australian Transport Council indicated, pursuant to the Inter-Governmental
Agreement on Regulatory and Operational Reform in Road, Rail and Intermodal Transport, that their respective jurisdiction governments would not implement the model legislation.

**NTC** means the National Transport Commission;

**observer** means:

(a) a permanent observer; or

(b) an organisation invited by the Panel to be an observer under rule 5;

**Panel** means the Fatigue Authorities Panel;

**participating jurisdiction** means a jurisdiction other than a non-participating jurisdiction;

**permanent observer** means:

(a) a non-participating fatigue authority invited by the Panel to be a permanent observer under rule 5; or

(b) the NTC;

**representative** means:

(a) a person appointed as a representative by the chief executive of a fatigue authority or an observer under rule 6;

(b) if no person is appointed under rule 6, the chief executive of the fatigue authority or observer concerned; or

(c) an alternate appointed under rule 7.

**voting representative** means a representative who represents a fatigue authority on the Panel;

**writing** includes all methods of representing or reproducing words, figures or symbols in a visible form, and expressions referring to writing are to be construed accordingly.

(2) If a term used in these Rules is defined in the model legislation, for the purposes of these Rules the term has the meaning set out in that definition, unless the contrary intention appears.

**Note** Terms used in these Rules that are defined in the model legislation include Australian Transport Council, AFM accreditation, BFM accreditation, exemption and guidelines.

**PART 2 – FUNCTIONS OF THE PANEL**

3. **Functions of the Panel**

The Panel is to provide advice on AFM and BFM accreditation, as provided under the fatigue legislation, including:
(a) where a matter is referred to it for advice by a fatigue authority; and

(b) by issuing guidelines in relation to AFM and BFM accreditation.

Note Sections 79(4), 84(4) and 115 of the model legislation provide for the abovementioned functions of the Panel. Reference should also be made to the jurisdiction legislation implementing the model legislation.

PART 3 – REPRESENTATION ON THE PANEL

4. Membership of the Panel

Each fatigue authority is a member of the Panel and is represented on it by one representative.

Note A representative may be appointed under rules 6 or 7. If no appointment is made, the chief executive of the fatigue authority is taken to be the authority’s representative on the Panel.

5. Observer status on the Panel

(1) The Panel may invite an observer to be represented at a specified meeting or meetings.

(2) The Panel may invite a non-participating fatigue authority to become a permanent observer.

(3) A permanent observer is entitled to have a representative attend all Panel meetings, and is to be notified of all Panel meetings.

(4) Representatives of observers may participate in the deliberations of the Panel, but may not cast a vote in relation to any decision of the Panel.

(5) Observers must notify the chairperson in writing of who will represent them at a Panel meeting at least 24 hours before the meeting is to start.

6. Appointment of representatives

(1) The chief executive of a fatigue authority or an observer may appoint a person as a representative on the Panel.

(2) A person so appointed becomes a representative on the Panel on receipt by the chairperson of advice in writing from the chief executive of the fatigue authority or observer concerned appointing the person as their representative on the Panel.

(3) A chief executive may appoint as their representative on the Panel the holder of a specified office.

(4) A chief executive may appoint a person as their representative on the Panel for a specified period.

(5) If the chief executive makes an appointment under sub-rule (3):

(a) the holder of the office specified by the chief executive becomes their representative on the Panel on receipt by the chairperson of advice in writing of the appointment; and
(b) while the appointment remains in force, all subsequent holders of that office become their representative on attaining that office (regardless of whether or not the person is acting in the office or has been appointed to the office); and

(c) if the name of the office changes, the appointment is to be read as if it referred to the office by the new name, unless there is no express link between the names in the legislation or administrative orders of the jurisdiction in which the office is located; and

(d) if more than one person holds the office, the chief executive must specify which of those office holders is to be their representative on the Panel.

(6) In appointing a person to be their representative, the chief executive must have regard to the potential for a conflict of interest to arise under rule 19.

7. Appointment of alternates

(1) A representative may appoint another person to take their place at a meeting of the Panel.

Example A representative might appoint an alternate to vote on a matter in respect of which the representative has a conflict of interest.

(2) To make such an appointment, the representative must give the chairperson notice in writing of the appointment at least 24 hours before the meeting is scheduled to start.

(3) If a person is acting as an alternate at a meeting of the Panel, a reference in these Rules to a representative is to be read as including a reference to the person.

(4) In appointing a person to be an alternate, the representative must have regard to the potential for a conflict of interest to arise under rule 19.

8. Cessation of appointment as an agency representative on the Panel

(1) A person ceases to be a representative:

(a) if the person’s appointment as a representative expires or otherwise ceases under the terms of the appointment; or

(b) if the relevant chief executive gives the chairperson either:

(i) notice in writing that the person’s appointment as their representative has been revoked; or

(ii) advice in writing that another person has been appointed by the chief executive to be their representative on the Panel; or

(c) in the case of a person who is a representative because they hold a specified office in the jurisdiction that she or he represents, if they ceases to hold that office; or

(d) if they are convicted of an indictable offence or is imprisoned for any offence; or

(e) if they give their resignation to the chief executive of the relevant fatigue authority or observer in writing.
(2) If the chief executive who made an appointment to the Panel changes, the change does not of itself affect the appointment.

9. **Obligations on representatives**

   In participating in the deliberations of the Panel:

   (a) a representative who is a public servant of a jurisdiction must conduct themself in accordance with any requirements that apply to them as a public servant in that jurisdiction; and

   (b) in any other case a representative must conduct themself in accordance with the Australian Public Service Code of Conduct made under section 13 of the *Public Service Act 1999* of the Commonwealth and the Australian Public Service Values set out in section 10(1) of that Act (and any associated directions made under section 11 of that Act) as if they were a Commonwealth public servant, to the extent that those provisions are applicable to them.

**PART 4 – MEETINGS AND DECISIONS OF THE PANEL**

10. **Appointment of the chairperson**

   (1) The Panel must appoint a chairperson from among the voting representatives.

   (2) The term of office for a chairperson is 2 years.

   (3) If the office of chairperson becomes vacant, or the person holding the office of chairperson is unable or unwilling to fulfil the duties of office, the Panel must appoint a new chairperson.

   (4) The Panel may dismiss a person from the office of chairperson.

11. **How meetings are to be convened**

   (1) Meetings of the Panel are to be convened by the chairperson.

   (2) The chairperson may convene a meeting at any time at their discretion.

   (3) A meeting is to be convened by giving all representatives written notice of the date and time at which, and the place where, the meeting is to be held at least 10 business days before the date the meeting is to be held.

   (4) The 10 day notice period does not apply if all of the voting representatives agree to waive that period.

   (5) The 10 day notice period also does not apply to meetings that are a continuation of an adjourned meeting.

   (6) The chairperson must ensure, to the maximum extent that is practicable, that a copy of each document that is to be discussed at a meeting of, or that is relevant to a matter that is to be put up for decision by, the Panel accompanies the notice of the meeting, or of the matter is to be decided (unless the Panel decides to the contrary in any particular case).
12. **Form of meetings**

Meetings may be held by whatever means are agreed by the voting representatives, including by video conferencing or telephone.

13. **Control of meetings**

(1) Meetings are to be chaired by the chairperson.

(2) If the chairperson is not present at a meeting, the voting representatives must elect one of their number who is present to chair the meeting.

(3) If the Panel disagrees with a ruling of the chairperson, the Panel may overturn their decision by a motion of dissent agreed by more than one half of the voting representatives who are present.

14. **Voting**

Each voting representative (including the chairperson or a person chairing a meeting) is entitled to exercise one deliberative vote on any matter that is to be decided by the Panel.

15. **Decisions at meetings**

(1) A voting representative may cast a vote at a meeting of the Panel:

   (a) if the representative is present at the meeting – in person; or

   (b) by lodging a vote in accordance with sub-rule (2).

(2) If a voting representative does not attend a meeting and does not appoint an alternate under rule 7 to attend the meeting, the Panel must accept a vote that has been lodged in writing by the representative with the chairperson:

   (a) before the meeting; or

   (b) after the meeting – but only if the vote has been lodged within one business day after the chairperson has briefed the representative of the items under discussion at the meeting.

(3) If a matter is put to a vote at a meeting of the Panel members in person, the matter is approved if:

   (a) at least 5 voting representatives have cast a vote either at the meeting or under sub-rule (2); and

   (b) more than one half of the voting representatives who voted approve the matter.

*Note* Under rule 21 a meeting is to be abandoned one hour after it was scheduled to start if less than 5 representatives are in attendance at the meeting venue.

(4) In this rule, a voting representative is considered to be present at a meeting if they participates in the meeting by a means of communication that enables them to hear what is said at the meeting, to be heard by all those who are present at the meeting and to vote in the same way as those who are present in person at the meeting.
16. Decisions without meetings

(1) The Panel may vote on a matter without convening a meeting (for instance, by circulating emails) if:

   (a) the chairperson decides that a recommendation of a fatigue authority should be voted upon without convening a meeting; or

   (b) the Panel otherwise agrees.

(2) If sub-rule (1)(a) applies:

   (a) the chairperson must notify each representative in writing of the recommendation and of the deadline for the receipt of votes; and

   (b) the chairperson must allow at least 10 business days for voting representatives to cast a vote, unless otherwise determined by the Panel; and

   (c) to be valid, a vote must be lodged in writing with the chairperson by the deadline specified in the chairperson’s notice.

(3) Despite rule 15(3), if a matter is put to a vote without a meeting of the representatives in person, the matter is approved if more than one half of the voting representatives approve the matter.

(4) If a recommendation of a fatigue authority is put to a vote of the Panel without a meeting, a failure to cast a valid vote by a voting representative is to be taken as a vote to accept the recommendation.

17. Records of decisions

(1) The chairperson of the Panel must ensure that minutes are made recording the decisions of each meeting of the Panel, and records are made of any decisions of the Panel that are not made at a meeting.

(2) Any minutes or records made under sub-rule (1) must include a record of the votes cast or abstentions by voting representatives relevant to the decision.

(3) The chairperson of the Panel must ensure that a copy of the minutes of each meeting of the Panel is distributed to each representative as soon as is practicable after the meeting.

(3) The chairperson of the Panel must ensure that a copy of the records of any decision of the Panel that is not made at a meeting are distributed to each representative as soon as is practicable after the decision is made.

(4) In any event, a copy of the minutes or records required by sub-rule (2) or (3) must be distributed to each representative within 5 business days after the meeting or decision, as the case may be.

18. Proceedings to be confidential

Other than matters required to be recorded under rule 17 or by law, representatives must treat the proceedings of the Panel and information derived from their participation in the proceedings of the Panel as confidential.
Note: Representatives must keep confidential any commercially sensitive information provided as part of an application referred to the Panel. The model legislation is not intended to abrogate intellectual property rights that may reside in any application made under it.

19. Disclosure of interests of representatives

(1) A representative who has a direct or an indirect pecuniary interest in any matter being considered, or about to be considered, by the Panel must, as soon as possible after becoming aware of the relevant facts, disclose the nature of that interest at the meeting of the Panel at which the matter is to be considered or by written communication with the chairperson if the decision is proposed to be made without a meeting.

(2) A representative who holds an office or possesses property as a result of which, directly or indirectly, duties or interests may be created in conflict with their duties as a representative, must, as soon as possible after becoming aware of the potential conflict, disclose that fact at a meeting of the Panel or by written communication with the chairperson if a decision is proposed to be made without a meeting.

(3) If a disclosure is made at a meeting or in a written communication to the chairperson, the chairperson must ensure that the disclosure is recorded in the records of any decision to which it relates, and that the minutes also record full details of who voted on any matter in respect of which the disclosure was made.

(4) A representative who is required to make a disclosure under sub-rule (1) or (2) must not take any part in any discussion of, or vote on, any matter to which the pecuniary interest or potential conflict relates (and regardless of whether or not they have made the required disclosure at any relevant time) unless the chairperson or the Panel decides otherwise.

(5) If a voting representative votes on a matter in contravention of sub-rule (4), the vote of the voting representative is not a valid vote.

(6) A representative is not to be regarded as having a pecuniary interest:

   (a) in a matter relating to the supply of goods or services to or by the representative if the goods or services are, or are to be, available to members of the public on the same terms and conditions; or

   (b) in a contract or arrangement only because that contract or arrangement may benefit a company or other body in which the representative has a beneficial interest that does not exceed 1% of the total nominal value of beneficial interests in that company or body.

20. Meeting procedure

The Panel may determine its own procedures with respect to any matters that are not dealt with in these Rules.

21. Automatic cancellation of meeting if insufficient attendance

(1) If a meeting of the Panel has been scheduled, the meeting is cancelled by virtue of this sub-rule if at least 5 representatives have not appeared at the meeting venue or otherwise made themselves available within one hour after the time the meeting was scheduled to start.
(2) If a meeting of the Panel that was scheduled has been abandoned in accordance with sub-rule (1), the chairperson may at their discretion reconvene the meeting at a later time on the same business day if at least 5 representatives have become available.

PART 5 – MATTERS REFERRED TO THE PANEL

22. Matters that may be referred to the Panel

(1) The Panel must consider all matters referred to it for advice by a fatigue authority under the fatigue legislation.

Note Under the model legislation a fatigue authority must refer certain matters to the Panel for advice before making a final decision if the decision may, or is intended to, have effect in another participating jurisdiction. These include:

- a grant of an AFM application or an exemption; or
- the variation, suspension or cancellation of a BFM accreditation, AFM accreditation or an exemption if the original grant of the accreditation was made by another fatigue authority.

(2) In addition, a fatigue authority may refer any matter to the Panel at any time for advice.

Note Under the model legislation a fatigue authority may refer any matter at any time for advice. However, generally matters should only be referred if required under the fatigue legislation.

23. Procedure for referral of matters to the Panel

(1) To refer a matter to the Panel, a fatigue authority must notify the chairperson in writing with full details of the matter upon which the Panel’s advice is sought.

(2) In notifying the chairperson under sub-rule (1), the fatigue authority must provide the Panel with a report, in the form and manner specified by the Panel, containing:

(a) a copy of all relevant documents in the possession of the fatigue authority relating to the matter;

(b) any relevant information about the applicant concerned known to the fatigue authority, including any information obtained under the fatigue legislation; and

(c) an expert report on the matter by a fatigue expert, at the applicant’s expense – unless otherwise waived by chairperson with the subsequent agreement of the Panel; and

Note If a fatigue authority considers that a matter to be referred to the Panel does not need to include a fatigue expert report, it should consult the chairperson to seek approval for this. However, if the chairperson waives the requirement for a fatigue expert report, the Panel may nonetheless disagree and decide that it will not consider the matter until such a report has been prepared. The chairperson may, in exercising their discretion to waive the requirement for a fatigue expert report, consult with such voting representatives as they see fit.

(d) a written assessment of the matter by the fatigue authority; and

(e) a draft written recommendation to the Panel on the matter for consideration by the Panel.

(3) On receipt of a referral in writing, the chairperson may request the fatigue authority referring the matter to do one or more of the following:

(a) provide more information for the Panel’s consideration;
(b) seek further information directly from the applicant concerned; or

(c) seek or commission a further expert report from the same or another fatigue expert on the matter.

Example The chairperson may seek or commission a further expert report from the same or another fatigue expert if they thought that the original fatigue expert did not comply with the fatigue expert agreement in giving their original advice, eg by having a conflict of interest.

(4) If satisfied that the subject of the referral does not relate to a matter on which the Panel may give advice under the fatigue legislation, the chairperson may reject the referral.

(5) Once satisfied that sufficient information on the matter referred is available for the Panel to consider the matter, the chairperson must either:

(a) decide that the referral should be discussed at the next scheduled meeting of the Panel at which it can be put under these Rules; or

(b) convene a meeting of the Panel to consider the referral; or

(c) take steps to hold a vote without a meeting on the referral under rule 16.

Note It is not possible for the Panel to meet each time a matter referred to it is ready for consideration. The chairperson will be required to exercise discretion whether to ‘stockpile’ matters for regular scheduled meetings of the Panel, hold an out-of-session vote or call a special meeting to consider the referral. Generally, out-of-session votes should be reserved for matters which are non-controversial and straightforward.

(6) In this rule, expert report means a written assessment by a fatigue expert of the matter referred to the Panel in the form specified by the Panel.

24. Matters the Panel must have regard to

In deciding what advice to give on any matter referred to it, the Panel must have regard to:

(a) the need to ensure the safety of heavy vehicle drivers and other road users; and

(b) the obligations placed on the referring fatigue authority by the fatigue legislation; and

(c) the requirements of the relevant accreditation module; and

(d) the practical effect of the advice and how it would be implemented; and

(e) whether the advice, if implemented, would be readily enforceable; and

(f) the precedent value of the advice.

Note The model legislation sets out obligations on fatigue authorities in relation to various decisions. Reference should also be made to the jurisdiction legislation implementing the model legislation.

25. Panel may seek further information

The Panel may request the chairperson to seek further information on any matter referred to it before giving its advice.

Note Generally, the Panel will seek further advice from either the fatigue authority or a fatigue expert. It may, however, seek information from other sources if necessary.
26. Appearance by applicant, auditor or fatigue expert before the Panel

(1) An applicant, auditor or fatigue expert may appear before the Panel if, in the opinion of the chairperson, the appearance will be likely to assist the Panel, or if the Panel has asked that the applicant, auditor or fatigue expert appear before it.

(2) In appearing before the Panel, a person must comply with any restrictions imposed on the appearance by the Panel, and must adhere to any guidelines issued by the Panel in relation to the appearance.

27. Reasons should be given for votes or abstentions by representatives

(1) In order to ensure that the Panel operates as openly, effectively and efficiently as possible, a voting representative should give reasons to the Panel to justify each of their votes or abstentions.

(2) The chairperson must ensure that any written statement of reasons given in relation to a vote or abstention is recorded in the minutes of the relevant meeting of the Panel or in the records of the relevant decision if the decision was made without a meeting of the Panel.

Note: Under the model legislation a fatigue authority may choose not to accept the advice of the Panel, but only if it records in writing the reasons for doing so.

28. Form of recommendations by the Panel

(1) A recommendation of the Panel on a matter referred to it under rule 22 must:

   (a) be in writing; and
   
   (b) include a written statement of reasons for the Panel’s recommendation.

(2) The Panel must not recommend approval of an application for AFM accreditation for more than an initial term of 2 years.

PART 6 – FATIGUE EXPERTS

29. Role of fatigue experts

(1) The role of a fatigue expert is to provide independent expert advice to the Panel on matters referred to it under rule 22(1).

(2) The Panel may issue guidelines, not inconsistent with these Rules, to assist fatigue experts in the performance of their functions.

30. Eligibility to become a fatigue expert

(1) Subject to this rule, the Panel may register a person as a fatigue expert if is recommended for registration by a fatigue authority and, in the opinion of the Panel, the person:

   (a) has demonstrated a high level of professional expert knowledge in work-related fatigue, particularly relating to driving or shift work; and

Examples of ways to demonstrate professional expert knowledge
• holding a post-graduate tertiary qualification relevant to work-related fatigue;
• at least 5 years experience in a field of research relevant to work-related fatigue;
• publication of peer-reviewed academic research on work-related fatigue.

(b) has a sound knowledge of the heavy vehicle industry; and

c) has demonstrated high professional and ethical standards in their field of expertise.

**Examples of ways to demonstrate professional and ethical standards**
- membership of a relevant professional body;
- relevant qualifications or training in professional conduct;
- research approval by an ethics committee;

(2) The Panel must not register a person as a fatigue expert if the person:

(a) has been found guilty of an offence of dishonesty within the last 10 years; or

(b) is bankrupt or subject to a bankruptcy law; or

(c) is prevented by any illness or mental or physical disability from properly performing the functions of a fatigue expert.

### 31. Applying to become a fatigue expert

(1) A person may apply to the Panel to be registered as a fatigue expert.

(2) The application must be made in the form and manner specified by the Panel.

(3) In considering an application by a person for registration, the Panel may require the person to do one or more of the following:

   (a) to attend an interview with a nominee of the Panel;

   (b) to provide any documents necessary to substantiate the person’s application, including samples of their research;

   (c) to provide references as to their competence or experience; and

   (d) to provide any other additional information to assist the Panel to determine the person’s eligibility, such as proof of employment by a suitable organisation.

(4) The Panel may register a person as a fatigue expert if it is satisfied that:

   (a) the person is eligible under rule 30;

   (b) the person is able to perform the functions of a fatigue expert specified under rule 29;

   (c) the person and their employer (if applicable) has signed and is complying with a fatigue expert agreement under rule 33.

**Note** Registration is at the discretion of the Panel. Registration is not a guarantee of any paid work for the fatigue expert.

(5) If the Panel decides to register a person as a fatigue expert, it must advise the person of that fact in writing.

(6) If the Panel is not satisfied that a person is eligible to be registered as a fatigue expert, it must notify the person of that fact in writing within 5 business days after reaching
that conclusion, and it must include in that notification its reasons for reaching that conclusion.

32. Term of registration and renewal

(1) The registration of a person as a fatigue expert is for a period of 3 years, unless sooner terminated.

(2) The Panel may, upon application by a fatigue expert, renew that person’s registration for a further period of 3 years.

(3) If a fatigue expert applies for renewal of their registration not less than 2 months before its expiry, they are to remain registered as a fatigue expert until they are given written notice that the application has been rejected.

(4) In applying for the renewal of their registration, a fatigue expert must provide to the Panel any information required by the Panel.

(5) The Panel must renew the registration of the fatigue expert if:
   (a) the fatigue expert applies for renewal of his or registration as a fatigue expert not less than 2 months before their registration is due to expire; and
   (b) the fatigue expert continues to be eligible for registration under rule 30;
   (c) the fatigue expert and the fatigue expert’s employer (if applicable) has signed and is complying with a fatigue expert agreement under rule 33; and
   (d) the fatigue expert is not otherwise ineligible to be registered.

33. Fatigue expert agreements

(1) The Panel may only register a person or renew a person’s registration as a fatigue expert if:
   (a) the person, and in the case of a person who will operate as an employee, the person’s employer, signs a fatigue expert agreement for the period of the registration; and
   (b) the person produces evidence that they (or their employer) have complied with the any insurance requirements of the fatigue expert agreement for the period of the registration.

(2) Despite sub-rule (1), if a person is a public servant and will, if registered as a fatigue expert, only carry out assessments as a public servant, it is not necessary for the fatigue expert agreement to provide for the person to be insured, and sub-rule (1)(b) does not apply.

(3) In this rule, a **fatigue expert agreement** is an agreement made between the chairperson by and on behalf of the Panel and a fatigue expert and the employer of a fatigue expert (if relevant) in the form specified by the Panel.

(4) The Panel must publish the fatigue expert agreement specified under sub-rule (3).

(5) A fatigue expert agreement specified by the Panel under rub-rule (3) must include conditions requiring the fatigue expert to:
(a) comply with these Rules;
(b) treat any information obtained by the fatigue expert in preparing an expert report as confidential;
(c) have a policy for professional indemnity insurance for an amount and for a period specified by the Panel; and
(d) indemnify the chairperson and representatives against any liability, loss, damage or expense arising from professional negligence on the part of the fatigue expert in providing an expert report;
(e) consent to release of the information on the register under rule 34(4).

(6) A fatigue expert agreement specified by the Panel under sub-rule (3) may include such other conditions, not inconsistent with these Rules, as the Panel considers appropriate.

(7) However, the Panel may, at its discretion, waive a condition under sub-rule (6).

34. Register of fatigue experts

(1) The Panel must maintain a register of fatigue experts.

(2) The register must include details of:
   (a) the name, address and contact details of each fatigue expert;
   (b) the date of registration of the fatigue expert; and
   (c) the expiry date of each fatigue expert’s registration.

(3) The Panel must make the register available to a fatigue authority on request.

(4) A fatigue authority may make information on the register available to an applicant in relation to a matter referred or to be referred to the Panel under rule 22(1).

   Note Under the fatigue expert agreement, a fatigue expert is required to consent to release of their information of the register.

35. Complaints against fatigue experts

(1) A fatigue authority may make a complaint about a fatigue expert to the Panel.

(2) The complaint must be in writing, identify the complainant and outline the nature of the complaint and any relevant information.

(3) The Panel should consider the details of the complaint and, if it appears that there is a basis for the complaint, should ask the fatigue expert about whom the complaint was made to respond in writing to the complaint.

(4) After receiving the written response from the fatigue expert about whom the complaint was made, the Panel should consider the response and make an initial determination as to whether, in its opinion, the complaint is justified.

(5) The Panel may undertake whatever investigations it considers necessary to make a final determination of the complaint, including nominating a person to interview the complainant or the fatigue expert about whom the complaint was made.
(6) If the Panel makes a final determination that the complaint was justified, it should, based on the severity of the matter, decide what further action is necessary.

(7) The Panel should advise the complainant of the outcome of its investigations, providing as much or as little detail as it determines is appropriate.

36. Termination of registration

(1) A fatigue expert may surrender their registration as a fatigue expert by giving 20 business days notice in writing to the chairperson of that surrender.

(2) The Panel may terminate the registration of a fatigue expert if the expert:

(a) ceases, in the opinion of the Panel, to be eligible under rule 30; or

(b) commits an offence of dishonesty; or

(c) fails, in the opinion of the Panel, to carry out the obligations of a fatigue expert in a competent or professional manner, or at all; or

(d) fails to comply with their fatigue expert agreement, or has an employer who fails to comply with that agreement; or

(e) has an employer who is a party to a fatigue expert agreement, and the fatigue expert ceases to be employed by the employer.

(3) Before terminating a fatigue expert’s registration, the Panel must give written notice to the expert stating:

(a) the day (not less than 14 business days after the date of the notice) on which it intends to terminate the registration; and

(b) the grounds on which it proposes to terminate the registration, and any material facts on which those grounds are based; and

(c) that the expert may, within 10 business days after the date of the notice, put any relevant matters to the Panel.

(4) If, after giving due consideration to any matters that are put to it by the expert under sub-rule (3)(c), the Panel still considers that grounds for termination exist, the Panel may terminate the registration with effect from either:

(a) the date specified under sub-rule (3)(a); or

(b) any later date specified by notice in writing to the fatigue expert concerned stating the date on and from which the registration is terminated or suspended.

(5) If the Panel terminates or suspends a fatigue expert’s registration, the Panel must:

(a) remove the expert’s name from the register referred to in rule 34; and

(b) maintain a record of the termination and the reasons for it for at least 3 years.
PART 7 – OTHER MATTERS

37. Panel may issue guidelines

(1) The Panel may, from time to time, issue guidelines in relation to AFM or BFM accreditation.

(2) The Panel may publish any of its decisions, or any part of its decisions, that it believes it would be in the public interest to publish.

38. Staff assisting the chairperson

(1) In performing their functions under these Rules, the chairperson may make use of staff employed by:

(a) the fatigue authority that the chairperson represents on the Panel; or

(b) with the agreement of the Panel – any other fatigue authority or permanent observer that makes its staff available to assist the chairperson.

Note It is intended that the NTC will provide staff to assist the Panel in its first year of operation.

(2) The chairperson must consult with the Panel on staffing issues that may affect the operation of the Panel.

(3) The chairperson’s staff are to report directly to the chairperson and be subject to their instructions on matters related to the operations of the Panel.

(4) For the purpose of employment-related matters, any staff providing assistance to the chairperson under sub-rule (1) are to continue to report the management of the fatigue authority or permanent observer, and the fatigue authority or permanent observer is to continue to be responsible for ensuring compliance with all relevant laws concerning employment of staff.

39. Managing records and information

(1) The chairperson must maintain the records that are necessary to support the Panel:

(a) at the fatigue authority that the chairperson represents on the Panel; or

(b) with the agreement of the Panel – any other fatigue authority or permanent observer that makes its services available to assist the chairperson.

Note Generally, all information relevant to the reasons for the decision of the Panel should be retained. In addition, records of decisions must be maintained in accordance with rule 17. It is intended that the NTC will provide services for the maintenance of the Panel’s record in its first year of operation.

(2) The chairperson must ensure that any records maintained under this rule are managed in accordance with any legislation relating to records management that is applicable.

Note This obligation would include archiving and access under freedom of information legislation.

(3) Records relating to decisions of the Panel must be made available by the chairperson to a representative on request.

(4) In managing any records that contain confidential or commercially sensitive information, the chairperson must ensure that the records are only accessible to those authorised by law to have access to the information.
(5) In this rule **records** includes any information obtained by the Panel relating to its functions.

40. Complaints procedure

(1) Any complaints concerning the processes of the Panel should be referred to the chairperson for consideration.

**Note** The Panel is only capable of receiving complaints relating to its processes and practices, not the substance of decisions as such. The model legislation sets out a review process for such complaints. Reference should also be made to the judicial and administrative review processes of each participating jurisdiction.

(2) The Panel may specify a procedure for how the chairperson should handle complaints.

41. Liability of the Panel

For the purposes of liability in tort, despite rule 28, it is intended that each of the fatigue authorities and observers whose representatives sit on the Panel will remain jointly and severally liable for any advice, recommendation or assessment adopted or endorsed by the Panel in relation to a matter referred to the Panel under rule 22.

42. Review of operations

(1) A review is to be conducted within 2 years after 29 September 2008 of the operation of the Panel and these Rules, and as to whether the operation of all or any of them can be improved.

**Note** 29 September 2008 is the national commencement date for the fatigue legislation in New South Wales, Queensland, South Australia and Victoria approved by the Australian Transport Council. It is intended that the NTC will provide staff and resources to assist the Panel in its first year of operation.

(2) The review is to be managed by the NTC, and input is to be sought from all jurisdictions.

(3) Findings and recommendations from the review are to be submitted to the Australian Transport Council for consideration.

43. Transitional arrangements

(1) The Panel commences on *<insert date of the Australian Transport Council decision in final version of the Panel Rules>*.

(2) The chief executive of each fatigue authority must advise the NTC of the name of their initial representative on the Panel on or before 1 June 2008.

(3) The chief executive of a fatigue authority may appoint a representative even if the jurisdiction’s fatigue legislation has not been implemented.

(4) For the purposes of sub-rule (3), an authority is to be taken to be the fatigue authority for a jurisdiction if it is intended that the authority concerned will be the fatigue authority when the jurisdiction’s fatigue legislation is implemented.

**Note** Under the definitions, a fatigue authority is an authority with responsibilities for administering fatigue legislation in a participating jurisdiction. While it is anticipated most participating jurisdictions will implement the fatigue legislation on the same date, some jurisdictions may implement it later. This provision will allow for the participation of those jurisdictions in the Panel, even if they have not yet implemented the fatigue legislation.
(5) The NTC may convene the first meeting of the Panel, in lieu of a chairperson, and otherwise perform the functions of the chairperson until the Panel appoints a chairperson.

44. Amendment of these Rules

These Rules may only be amended by a majority vote of the Australian Transport Council.

Note In accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport, any changes to these Rules will be on the recommendation of NTC. However, NTC will accept advice from the Panel on any such recommendations.