

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 239**

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. 3) Regulations 2009*

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 proposed 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 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 proposed Regulations are to:

- (a) correct minor typographical errors and make changes to existing definitions;
- (b) provide that certain standards, documents and guidelines must be approved by the Australian Transport Council; and
- (c) reference the Fatigue Authorities Panel Rules.

The NTC developed the proposed Regulations in partnership with the Transport Agency Fatigue Committee (TAFC) which comprises representatives from the States, Territories and the Commonwealth.

The draft legislative package provides 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 the regulatory costs involved were covered by the *Heavy Vehicle Driver Fatigue — Final Regulatory Impact Statement (December 2006)*.

The NTC submitted the draft *Model Amendments Act: Heavy Vehicle Driver Fatigue — Package 3* to the Transport Agency Chief Executives (TACE) group in January 2008 for comment. The proposed Regulations were then submitted to the Australian Transport Council (ATC) for voting and were approved unanimously on 11 July 2008.

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 Regulations 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 Regulations would not be subject to sunseting.