



tourism
INDUSTRY
ASSOCIATION NEW ZEALAND

**Land Transport Rule: Work Time and Logbooks
Amendment (2009) - Submission**

27 February 2009

Introduction

1. This submission is from the Tourism Industry Association of New Zealand (TIA), located at level 4, Tourism and Travel House, 79 Boulcott Street, Wellington. If you wish to contact us regarding this submission, in the first instance, please telephone Geoff Ensor, Advocacy Manager on 04 496 4889 or e-mail him at geoff.ensor@tianza.org.nz or Simon Wallace, Policy Manager on 04 494 1842 or e-mail him at simon.wallace@tianza.org.nz
2. The TIA submission comments on the Land Transport: Work Time and Logbooks Amendment 2009. In preparing this submission, the Association has consulted with its members, especially those in the transport sector. The issues raised in this submission are not necessarily exclusive, and given the diversity of TIA's membership, some areas in the consultation document that could impact on members, may not have been commented on. For this reason, TIA recommends this submission be read alongside one you will have received from the Bus and Coach Association, as well as other transport based tourism operators.
3. TIA has been the lead association that represents the interests of more than 2000 tourism businesses in NZ since the Association was first established in 1955. The businesses TIA represent cover a range of tourism-related activities – hospitality, transport, accommodation, adventure and activities, attractions and retail as well as related tourism services.
4. Tourism in New Zealand by the numbers:
 - a \$50 million per day industry, delivering \$24 million in foreign exchange to the economy each day of the year and \$26 million in domestic tourism activity every day
 - in the year ended March 2007, total tourism expenditure reached \$20.1 billion.
 - tourism contributes close to 10% of GDP
 - tourism employs 1 in 10 New Zealanders
5. The primary role of TIA is to be the voice of tourism, but its other main aims include:
 - adding value for members and the industry
 - advocating for members on the issues facing them
 - assisting members' businesses to be profitable

6. TIA is based in Wellington and led by Chief Executive Tim Cossar. The TIA team's primary role is to advocate for its members with areas of work including advocacy, policy, communications, events, membership and business services.

Comment

7. The tourism industry welcomes the overall intent of this amendment in that it aims to reduce and prevent driver fatigue and therefore improve general road safety. TIA has advocated strongly for both road and visitor safety in the past and continues to do so. The Association played a key role in the development of a brochure for visitors about keeping safe in New Zealand. The same brochure also included tips for staying safe on the country's roads. TIA has also run risk management workshops for tourism operators that encourage safe practices on New Zealand's road network.
8. Tourism operators, however, believe the amendment proposed by the New Zealand Transport Agency is overly prescriptive by imposing road transport regulations on a sector where driving is only a small component of an operator's daily activity. In connection with this, our other main concerns centre on the extra compliance forced on operators to meet log book and work time regulations and the processing of Passenger Endorsement Licences, known as P endorsements.

Driving only part of the tourism experience

9. Apart from a handful of large operators in the tourism industry, such as Intercity and THL, the transportation of passengers is not the primary function of most tourism businesses. Instead, the most common situation for the majority of small and medium sized operators involves transporting visitors to, from and between attractions and activities. Here are some examples:

“On a rostered driving day for which our staff work approximately 11 hours per day, only a total of 2 hours is actually spent driving a vehicle. They drive 4 trips per day – 15 minutes each way on a trip, then spend the other 9 hours of their shift dealing with customers at our operations site”.

“Our business relies on transporting our visitors 4.2 km each way per trip (three times per day). We are involved in tourist activity which takes visitors out to sea to view marine mammals and birds; we are not a commercial transport operation. This transport component serves only to get our visitors from our operational headquarters to our vessels and back”.

10. TIA believes this amendment will create unnecessary, cumbersome and time consuming compliance for a sector where driving is not the main activity. In determining what is practical with respect to this amendment, employers should be able to take into account their operational environment and resources

Log Books

11. The completion of log books adds an extra task for drivers whose primary role is not driving and in some ways the rule is counter-productive in that the extra compliance burden is eroding the safety focus. This is what some operators have said about the log books:

“In summary, because of the log book rules, for 90% of their working time they are doing jobs entirely not related to driving a vehicle, yet the vehicle log book rule set the standard for our working procedures and this has the additional effect of precluding them from certain circumstances that prevent them from legally working in other forms of employment”.

“Under NZTA rules there are only two options. Guides are either on duty or off duty under the new rules. We need to recognise that NZTA are about driving and the problem arises when the driving laws are then being applied to other non-driving situations”.

“Currently we stumble around trying to patch working situations together using a driver’s log book with a belief that the catch-all rule of thumb being – “are they being paid?” as a key determinant of whether the NZTA ‘on-duty’ rule applies”.

12. The log book rule is clearly designed for businesses where driving is the primary activity. There appears to be confusion amongst operators as to how to apply the log book rules to their own situations. The rule is being interpreted differently across the industry and has forced some operators to come up with creative situations to meet the rule.

So what’s the solution?

13. It has been suggested by some TIA members that the law around log books be reconsidered to allow for a threshold point for driving within the normal working day. Once this threshold is met, the logbook rules could then apply. One operator has suggested this threshold could be 25% of the total working day.
14. Another recommendation made is the idea of refresher driving tests to ensure the drivers are suitable for driving passengers or if the employment of an individual is governed by other regulations not dissimilar to the log book rule, then that could over-ride log book requirements. There may, for example, be clauses in the Health and Safety in Employment (HSE) Act requiring employers to conduct refresher training.
15. One tourism operator has developed the concept of “Rested from Responsibility” which means if an employee is in a role where they are free from direct responsibility for the well-being of their clients, then they are deemed to be off-duty.

Work Time

16. As with log books, the work time rules have implications that are impractical for many tourism businesses. In a submission TIA made on the Employment Relations (Breaks and Infant Feeding) Amendment Bill in May 2008, the Association said that existing legislation, such as the HSE already required employers to provide time and facilities for staff to have breaks. The HSE stops short of specifying the form and frequency of breaks leaving the enterprises themselves to determine what is best for them and their workers.
17. As with the Breaks and Infant Feeding Bill, imposing prescriptive changes on employers, as the work time regulations do, fails to recognise the flexibility and good nature of employers or the operating realities of a service based industry like tourism. For example, it would not be practical for a ski, mountain or rafting guide, a horse trekking instructor or a jet boat driver to have legislated break times as to do so would compromise safety. Similarly, a bus or coach driver's working day is determined by a tour company's itinerary or schedule. In reality, employees in all these situations get breaks at reasonable periods and their employers work within legislative guidelines.

So what's the solution?

18. The tourism industry believes that flexibility can be applied to the work time regulations. TIA thinks the NZTA should simplify the work time requirements and be guided by the HSE Act which legislates for rest breaks at a time agreeable to both the employer and employee.

Passenger Endorsement Licence (P endorsement)

19. There is considerable concern in the tourism industry around the rules for P endorsements. It is understood that overseas applicants need to have had a full New Zealand licence for at least two years before being granted a P endorsement to drive in this country (in some cases they may have lived in NZ for much longer than that) and are then subject to overseas police checks. The tourism industry sees this requirement as a barrier for many businesses that rely on overseas drivers to fill the gap created by a shortage of skilled New Zealander drivers. Other tourism related professions such as guides, ski instructors and pilots have no such requirements.
20. Aside from strict requirements for overseas drivers, the process for New Zealand drivers to get their P endorsements and maintain them is both cumbersome and costly. Currently it can take anywhere from six to twelve weeks for a P endorsement to be processed at a cost of approximately \$750. In some cases, this has forced operators to cancel operations (inconveniencing the visitor) until drivers have the correct documentation to drive again.
21. As with the log books and work time requirements, the P endorsement process fails to recognise the realities facing tourism operators. Delays of six to twelve

weeks in a highly seasonal industry can break operators who generally need to employ drivers immediately. These drivers may then only be employed for short periods.

So what's the solution?

22. The NZTA needs to be more active in communicating and promoting rules around P endorsements to tourism operators. It cannot expect businesses, particularly those that are not solely transport operators, to be aware of all rules.
23. The processing of renewals for P endorsements needs to be more streamlined. The NZTA should be able to have an automatic call up of P endorsement holders and send out renewal notices well in advance (in the same way that drivers receive a reminder notices about vehicle registration).
24. The rules concerning the issuance of P endorsements for drivers born overseas need to be reviewed. The NZTA could consider waiving the need for overseas police checks where an applicant has been a New Zealand citizen resident for five years, as it is presumed such checks have already been completed.

Talk with industry

25. TIA believes solutions can be found to the issues outlined above. The Association suggests the best way of achieving this would be to assemble a representative group of operators in Wellington for a meeting with NZTA officials. In this way, NZTA will be able to hear the view of grass-roots operators and what the rules actually mean in practice at the coal-face. TIA could facilitate and provide a venue for the meeting. In this regard, we would ask you to contact Geoff Ensor or Simon Wallace (details above).
26. It is recognised that some of the issues raised in this submission may have gone beyond the brief of the proposed amendment, but they are serious issues for an industry that is worth \$20.1 billion to the New Zealand economy. If these issues go unresolved, the viability of many operators is at risk and so too is the world-class visitor experience the industry is striving to deliver.