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Released by: Mark Stockdale

To	All members
From	Mark Stockdale, Policy and Advocacy Advisor

Legal opinion supports continuous rest periods during Cook Strait crossings

Purpose

- 1 Providing a summary of a legal opinion commissioned by Transporting New Zealand on the interpretation of the Work Time and Logbooks Rule 2007 (the 'Work Time Rule') as it relates to drivers taking rest breaks whilst travelling on Cook Strait ferries when parking up at either end, and whether a 10-hour continuous rest period could be achieved.

Background

- 2 Following feedback from a member who had recently been audited by the NZTA, Transporting New Zealand sought legal advice on the interpretation of mandatory rest breaks under the Work Time Rule.
- 3 **Specifically: whether paid rest breaks for drivers travelling on ferries and parking up at either end should not be considered as work time.**
- 4 In particular, we asked whether drivers are having a continuous rest period under the scenario:
 - (a) drivers park their vehicles in the ferry marshalling yard and begin their rest break in the vehicle;
 - (b) stevedores (or ferry staff) drive the vehicles onto the ferry;
 - (c) drivers walk onto the ferry and continue their rest on the vessel in a cabin or lounge area during the sailing; and
 - (d) once the ferry arrives, if 10 hours have passed since the driver began their break, the driver drives the vehicle off the ferry and resumes duty. If not, the ferry staff drive the vehicle off the ferry into the marshalling yard and once 10 hours have passed since the driver began their break, they resume driving.

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We asked:

- (a) whether the scenario above provides for the driver to have a 10-hour continuous rest period (i.e. it should not be considered work time) under the Work Time Rule; and
- (b) if the driver is paid for that 10-hour continuous rest period, does that make it work time; or can a driver be undertaking rest while being paid?

The legal interpretation

Can a driver take their 10-hour continuous rest period across a ferry sailing?

- 5 Transporting New Zealand's lawyers advised that a driver can record the time before, during and after a ferry sailing as part of their 10-hour continuous rest period.
- 6 However, from the time they commence their rest in the marshalling area before the ferry departure, the driver must not drive the vehicle, or operate it in any way, or do any other work-related task until 10 hours pass.
- 7 Clause 2.2(1) to 2.2(3) of the Work Time Rule specifically provides that a driver may treat any ferry sailing of more than one hour's duration as "rest time", including the time spent in the vehicle while the ferry is sailing. The period of "rest time" a driver can record is from the time the ferry departs until the time the ferry arrives.
- 8 For a driver to record the time across a Cook Strait ferry sailing (i.e. before, during and after) as part of their 10-hour continuous rest period, the driver must not:
 - drive the vehicle on or off the vessel, or remain in the cab whilst it is driven on or off;
 - perform administrative tasks;
 - probably even assist, or answer questions from the ferry staff who drive their vehicle on and off the ferry.
- 9 The 10-hour continuous rest period counts as "rest time" even if the driver is resting in different places (i.e. the cab of the truck while immobile, then the commercial vehicle driver cabins or cafe, then back to the cab of the truck, and the walks in between).
- 10 It's worth remembering that the Work Time Rule also allows a driver to exceed the 13 hour "work time" maximum for their cumulative work day, by one additional hour of "work time", if a driver is storing or parking the vehicle after the ferry sailing. That is provided the driver immediately takes a 10-hour continuous rest period, at the place of storage or parking.

Does the driver's pay status have any effect on the 10-hour continuous rest period?

- 11 The driver's pay status has no impact on whether they can record a 10-hour continuous rest period. The definition of "work time" excludes "paid breaks of at least 30 minutes' duration".
- 12 This means that even if a driver is being paid for the time they are spending on the ferry, so long as what they are doing amounts to "rest time" (i.e. not performing "work related duties") the payment does not prevent them from lawfully recording it as "rest time".

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Limitations to legal advice

13 A caveat with this advice is that it is based on the wording of the Work Time Rule, as there have been no directly relevant court decisions about the ferry crossings. This means that our lawyers could not say the law is entirely clear as it applies to this scenario.

- **A copy of the full legal opinion is available on request: email mark@transporting.nz**
- **Note: This advisory is for informational purposes only and should not be substituted for advice from a lawyer regarding your specific circumstances. Members can also contact our lawyer Ed Cox at Gibson Sheat, on 0800 ROAD LAW, for a free 15 minute chat.**

Regards

Mark Stockdale
Policy & Advocacy Advisor

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