

19th November 2024

National Transport Commission
Via email: hvnlteam@ntc.gov.au.

RE: HEAVY VEHICLE NATIONAL LAW REVIEW

Six years ago, industry was buoyed by the decision of Ministers to undertake a Review of the Heavy Vehicle National Law (HVNL) to deliver a modern and risk-based approach to safety and productivity for the Australian road transport task.

It is therefore extremely disappointing that today, we find ourselves raising our serious concerns regarding not only the overall outcome but also specific aspects of the recently released proposed changes to the HVNL which in our view will decrease rather than improve safety outcomes.

Overall, it is fair to say that the industry in general feels let down and disillusioned by the lack of genuine reform that has been achieved in the six-year Review process that was originally promised to be back to basics and wholesale.

At the time, it was recognised that the current HVNL was too prescriptive having been the outcome of an amalgamation of different state-based laws and needed to be modernised to support national outcomes and efficiencies and to embrace innovation and operational flexibility.

The initial approach to the review was promising with the establishment of a HVNL Expert Panel including industry and productivity experts, however this was quickly abandoned (likely because it got too hard) in favour of closed-door working groups with state-based transport agencies.

We appreciate that Ministers sought the engagement of Ken Kanofski in 2021 to arrive at an independent position on proposed reforms, unfortunately, it appears that many of Mr Kanofski's recommendations have been watered down, re-interpreted or indeed cherry picked to pursue an outdated and prescriptive approach to regulation to the detriment of broader industry enhancements.

Sadly, this approach has resulted in a significant missed opportunity (one in a lifetime for many industry operators) for the safety and productivity of the sector, our communities, and the economy.

Of key concern for the industry is that not only has the review expended considerable public money, but it has failed to achieve real reform with the current NTC exposure draft proposing new legislation and regulations that take the industry and the safety agenda backwards.

To highlight this concern, you only need to look at the proposed changes to fatigue management, where more outdated prescription is being proposed which fails to recognise the advances made under the current HVNL through the adoption of modern platforms that encourage a lift in safety standards and innovation.

Currently, industry operators and drivers have one option in the HVNL to work together to undertake fatigue risk management. This is provided through the Advanced Fatigue Management (AFM) module as part of the National Heavy Vehicle Accreditation Scheme (NHVAS).

RFT is accredited under AFM and we alone have hundreds of heavy vehicles and many hundreds of drivers who operate or will under AFM. We have invested heavily in technology to provide transparency to how this be done including Fatigue and Distraction Detection Technology {FDDT} and Electronic Work Diaries {EWDs} which will ensure our drivers can work when fit and rest when required within a controlled safety management system.

Through the AFM approach, transport companies work with the Regulator to determine a work and rest schedule, and develop and implement risk reduction strategies which in turn provide the flexibility to our workforce to operate more safely rather than within the prescriptive regulations of the past. Importantly, this includes providing the ability for drivers to take more regular breaks when required i.e. at a time when a driver can determine when they need to rest, not when the book says.

This approach supports the introduction of practical risk controls and risk offsets (more rest the next day etc). Importantly, it reduces the anxieties created through unplanned delays whether that be due to roadworks or delays at customer sites such as distribution centres or agriculture silos that can negatively impact driving ability in attempts to “make up hours” and create road safety risks.

The companies that invest in AFM are those that are transparent about their safety operations as they are required to share their operations processes and safety cases with the Regulator to be granted accreditation. This also includes engaging in regular monitoring and reporting of performance against their AFM schedule.

It is noted that our concerns are shared by Professor Drew Dawson who is a renowned leader around the world in pursuing better fatigue management outcomes. His expertise, as outlined in his recent letter to the NTC on this matter (*see attachment A*) outlines his experience based on extensive work in the US, Canada and Australia for government authorities in the transport arena.

Professor Dawson’s letter also goes to some length to point out that the approach proposed by the NTC goes against proven scientific advice on this matter. We are at a loss to understand how, after such a long and extensive Review, the NTC can simply put a line through innovative risk reduction plans that improve safety.

RFT and other industry operators are committed to the safety and success of the heavy vehicle sector, including keeping the outcome-based approach currently provided to fatigue management under AFM. Let the Regulator work one-on-one with transport companies to establish a risk based and safe fatigue management system for the business and driver’s needs which allows them to drive when fit and stop when tired rather than be tied to prescriptive hours which may be legal but unsafe.

This will continue to encourage operators to provide more transparency to their operations and safety and continue the trend of encouraging greater take up of what can only be described as ground-breaking technological advances in the fatigue management area.

I am happy to discuss my views on the HVNL Review and the matters raised in this letter in more detail and can be contacted on 0418 694 049. Please note that a similar response has been sent to all State and Federal Ministers

Regards,



Ron Finemore AO
Executive Director
Ron Finemore Transport

Attachment A: Professor Drew Dawson's advice to proposed fatigue management reform

29 October 2024

Mr Michael Hopkins
Chief Executive Officer and Commissioner
National Transport Commission
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Dear Mr Hopkins,

I am writing to raise my serious concerns regarding aspects of the National Transport Commission's (NTC) public consultation draft of proposed changes to the Heavy Vehicle National Law (HVNL).

Overall, my concerns relate to the proposed changes that will unnecessarily constrain how the National Heavy Vehicle Regulator (NHVR) will be able to regulate fatigue in the heavy vehicle sector.

As background, I have a long history with fatigue management in the HVNL. I was a member of the Independent Expert Panel in 2008 that worked with governments and operators to introduce the risk-based approach to managing fatigue safety, based on risk trading and offsets. I am the fatigue subject expert for the Office of the National Rail Safety Regulator. I have also been a global subject expert for the road, rail and aviation sectors in Canada and the US.

I believe there are some positive aspects to the proposed legislative changes:

- I support the transition to a two-tier accreditation system and improvements that require a Safety Management System (SMS) approach to gain access to alternative compliance accreditation.
- the Basic Fatigue Management (BFM) tier has served its purpose and the new approach will allow for a review of the required risk controls for this mode operation.

The challenge here for government is, as often is the case, if the bar is set too high operators will simply choose to give up accreditation and revert to standard hours operations i.e., "go under the radar."

In reviewing the consultation draft, my main concern relates to the proposal to reintroduce and strengthen prescriptive rules. I am at a loss to understand this inclusion which will reduce the incentive for operators to adopt a safety and risk-based approach and has the potential to take the safety cause back 20 years.

I work extensively with transport regulators globally on the many challenges relating to fatigue management and this approach is in marked contrast to other transport sectors and workplace safety regulation.

Since the pivotal UK Robens' Report in 1972, safety regulators globally have recognised that compliance with prescriptive rules does not necessarily improve safety and that many prescriptive rule-sets can result in paradoxical safety outcomes. The research evidence and industry experience clearly support this trend.

The Parliamentary enquiry 'Burning the Midnight Oil,' published in 2000 was also a turning point for regulators who since this time have consistently reduced and/or eliminated their reliance on 'compliance' based safety systems.

All Australian transport regulators have introduced safety-based regulatory regimes where companies who need the operational flexibility to work outside the prescriptive limits, can present a 'safety case' demonstrating how they will control the additional risk.

The use of alternative compliance options with a 'reversal of the burden of proof' for the safety case has been the essential foundation of fatigue management in Australia for more than two decades. This has seen Australia globally recognised as the leader in fatigue safety regulatory reform and is an option in the current HVNL.

Unfortunately, the proposed changes appear to significantly reduce the opportunity for operators to increase flexibility and safety with an approved accreditation system. Specifically, the hard outer limits around a maximum work opportunity of 17 hours (15½ hours work and 90 minutes rest) and a prescriptive 'split rest' option will be exempt from flexibility in a safety case.

Importantly, there is no published data that justifies this choice, or indicates that doing so will likely improve safety. In my view, the opposite is likely to be true. That is, there is considerable potential to reduce safety and operational flexibility.

My second area of concern is that the legislation does not explicitly acknowledge the importance of 'shared responsibility' to fatigue management. In some cases, the information necessary to determine a driver's fitness-for-duty may not be readily available to one or other party in the decision (i.e., driver and manager).

Where a driver or manager believes it is not safe to continue driving that decision (to stop driving) should be binding for either party until the driver has recovered sufficiently to continue safely.

Flexibility to manage work and rest time is critical in empowering these safety decisions to be made together. These breaks should not be prescriptively defined but rather left to be agreed within the scope of the accreditation approval as is now the case.

Ironically, this approach does not usually lead to more driving time but rather a safer balance between work and rest to match the circumstances.

My third area of concern is the failure of the proposed changes to anticipate the technological advances already occurring which will inevitably continue over the next few decades.

Operators are already rapidly adopting new technologies that are providing far more valuable risk management tools than counting hours will ever do. This includes electronic work diaries, computer-assisted and monitored driving behaviour and fatigue detection and distraction technologies which are already fundamentally altering the fatigue risk profiles associated with working time arrangements.

We will no longer rely on log-book compliance with driving hours as a crude proxy for determining (acceptable) fatigue-related risk.

With these technologies in place, possible fatigued driving will often be clearly identifiable when it occurs and, importantly, when it does not. Operators will have this data in a quantitative form, often in real-time, so fatigue risk management will be direct and the tenuous link between fatigue risk and the working time arrangements will become salient to drivers, operators **and** potentially to regulators.

I think it is critical that the NTC reflect carefully on the proposed changes and the evidence base upon which they are predicated which I have stated previously, is contrary to the extensive published research in this area.

Given the weight of evidence suggesting that the proposed changes are, at best, counter-productive, I would urge the NTC to reconsider their position. In my view, it would be possible to avoid the negative impacts of the proposed changes and to significantly future-proof the legislation through some minor changes to the proposals.

To do this, I would suggest-

(1) retaining the proposed two-tier system of standard hours and an 'alternative compliance' option. To reduce the regulatory and compliance burden, the regulator and relevant industry associations could co-design realistic 'templates' that could be easily 'adopted' and 'approved' This will be critical given the large number of operators currently in the BFM tier.

(2) removing the "set in concrete" outer limit proposals in particular the work opportunity and split rest outer limits to allow safer and more flexible alternatives to be proposed.

(3) that an operator choosing the 'alternate compliance' pathway be required to develop a safety case that demonstrate the controls the company employs to manage delays and other challenges that arise in an ad hoc manner i.e. they do not schedule to work more hours but to manage things that occur outside of their control.

(4) that where the additional risk is deemed sufficient, that an operator be required to provide 'post-hoc' monitoring data that demonstrates that their operation has achieved the required level of safety.

(5) the proposed reforms explicitly acknowledge the changing technological environment for drivers and the decreasing relevance of the working time arrangement as a proxy for fitness-for-duty vis-a-vis fatigue risk. Specifically, the law should recognise that fatigue detected directly is at least as good and probably better as a proxy for fitness-for-duty.

(6) as proposed, introduce an 'absolute authority to stop driving.' Where an employee or manager believes it is unsafe for a driver to continue driving the driving must cease until the employee is again deemed fit-for-duty. This action should be interpreted within a just-culture framework and form part of the information informing the safety management system.

Regards



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Australian Trucking Association, other industry bodies and relevant AFM companies