

EXPOSURE DRAFT HEAVY VEHICLE NATIONAL LAW AMENDMENT BILL AND HEAVY VEHICLE NATIONAL AMENDMENT REGULATIONS

SOUTH AUSTRALIAN ROAD TRANSPORT ASSOCIATION

**SUBMISSION
21 NOVEMBER 2024**

The South Australian Road Transport Association (SARTA), established in 1908, is the peak HV Road Freight Industry association in South Australia.

SARTA appreciates the opportunity to comment on the Exposure Draft of the HVNL Amendment Bill and we offer the following comments.

SARTA, as a member of the Australian Trucking Association (ATA), has contributed to the development of the ATA's submission on the Bill. We support the ATA's submission, except where they differ from the following SARTA comments on the Bill, the Penalties Review and on the Review of the HVNL.

Additional Comments on the Exposure Draft

1. The Draft Bill should be amended to include an amendment to s245 of the HVNL. This section has become a serious issue since the NHVR recently determined to seek to apply it in a manner in which it was not intended to apply and which has not previously been applied; namely by seeking to apply the HVNL to a HV drivers who:
 - a. Complied with the relevant rules and laws of a non-participating jurisdiction whilst working within that jurisdiction;
 - b. Was fully compliant with the HVNL at all times whilst within and when re-entering a participating jurisdiction; but
 - c. Who, under the new approach the NHVR is seeking to adopt, would be in breach of a HVNL Work Rest rule whilst within the non-participating jurisdiction IF the HVNL applied within the non-participating jurisdiction.
2. The HVNL and the HV driver fatigue management regimes within WA and the NT, are state-based laws and can't and must not seek to extend beyond their jurisdiction as a matter of fundamental policy and principle. This new approach by the NHVR however creates a state's sovereignty or conflict of laws issue and must be resolved. WA and the NT have remained non-participating states and unless and until that changes there should be no provision in the HVNL that creates such a conflict of state laws.
3. One argument proffered for the approach NHVR is now seeking to take with s245 is that work performed outside a participating jurisdiction can contribute



towards fatigue inside a participating jurisdiction and is therefore relevant to whether an offence under the HVNL has been committed. That argument does not stand up if s245 operates differently, as it does, for drivers who enter a non-participating jurisdiction and return to a participating jurisdiction within 7 days, as compared to a driver who only worked within a non-participating jurisdiction for the entire 7 days before entering a participating jurisdiction.

4. SARTA proposes the following amendment to s245 to give effect to the appropriate and intended application where there is a resultant breach within the participating jurisdiction, whilst preventing the inappropriate extension of jurisdiction into a non-participating jurisdiction and also treating the fatigue management of all drivers entering a participating jurisdiction equally.

INSERT:

s245 Entering a participating jurisdiction from a non-participating jurisdiction

- (1) This section applies to the driver of a fatigue-regulated heavy vehicle when entering a participating jurisdiction from a non-participating jurisdiction;
- (2) Any time spent by the driver in the non-participating jurisdiction before the start of the driver's last major rest break before entering a participating jurisdiction must be disregarded;
- (3) The time spent by the driver in the non-participating jurisdiction after the end of the driver's last major rest break must be taken into account; however—
 - a. For the purposes of the maximum work hours in a relevant 24 hour period, the work hours must be counted in the relevant 24 hour period that ends in a participating jurisdiction and which follows the driver's last major rest break in the non-participating jurisdiction; and
 - b. For the purposes of the maximum work period without a rest, the work hours shall be counted in the period following the driver's last rest break in the non-participating jurisdiction.

OMIT:

~~**s245 Counting time spent outside participating jurisdictions**~~

~~(1) This section applies to the driver of a fatigue-regulated heavy vehicle if the driver drives a fatigue-regulated heavy vehicle into a participating jurisdiction from a non-participating jurisdiction.~~

~~(2) If, within the last 7 days, the driver has spent any work time in a participating jurisdiction, any time spent by the driver in the non-participating jurisdiction must be treated in the same way as it would have been treated if the time had been spent in a participating jurisdiction.~~

~~(3) If, within the last 7 days, the driver spent work time only in non-participating jurisdictions—~~

~~(a) any time spent by the driver in the non-participating jurisdiction before the start of the driver's last major rest break before entering a participating jurisdiction must be disregarded; and~~

~~(b) any time spent by the driver in the non-participating jurisdiction after the start of the last major rest break mentioned in paragraph (a) must be—~~

~~(i) taken into account; and~~

~~(ii) treated in the same way as it would have been treated if the time had been spent in a participating jurisdiction~~

5. The proposed Fatigue Management Reform Provisions

SARTA is aware of the letter sent to the NTC by Professor Drew Dawson and a letter co-signed by 7 current AFM operators raising serious and fundamental concerns with the proposed amendments in the Exposure Draft regarding fatigue management. We fully support those letters and again notwithstanding the narrow view of some police agencies, we urge the NTC, jurisdictions and Ministers to push ahead with genuine reforms of the HVNL Fatigue Management provisions in a manner that encourages and facilitates actual fatigue management. The current regime and that which is typically supported by police, principally for its ease of enforcement, only manages compliance with a set of Work Rest rules that at best are a poor and increasingly dated substitute for actual fatigue management.

The NHVR must be empowered to work with the industry and individual operators, through the proposed alternative accreditation regime if need be, to assess and approve appropriate proposed fatigue management arrangements. Those arrangements should be tailored to the specific operation, or an industry sector, and provide appropriate and effective flexibility for the proper management of fatigue.

Taking the soft policy-safe and conservative approach, as outlined in the Exposure Draft HVNL Amendment Bill, will fail to move the industry ahead and facilitated continual improvement in fatigue management. In fact as so elegantly argued by Professor Dawson, a fatigue expert, it will take the industry backwards in its endeavours to manage fatigue, as distinct from rules.

6. The Penalties Review

- a. SARTA and we suggest the broader industry, is strongly of the view that the fundamental purpose of penalties is to encourage compliance and behavioural change by those who may not be compliant.
- b. Too many of the existing penalties fail to achieve that fundamental policy objective as they are poorly focussed and structured because they:
 - i. apply to minor rules that any given driver routinely and almost universally complies with but which they *may* breach very

- occasionally as a result of human error. Behavioural change is thus not necessary in the vast majority of cases; and
- ii. they apply to matters that have negligible, if any, actual safety consequence.
 - c. Yet the drivers are punished with substantial and disproportionate penalties (as noted and well-illustrated in the ATA submission) for each such infrequent error/oversight. These unfair penalties are counter-productive as their cumulative effect is driving good drivers out of the industry.
 - d. All penalties should be set at a level that genuinely reflects the safety consequences of the relevant breach, which typically not the case under the HVNL.
 - e. The eminent criminologist, Dr Ari Freiburg, made a profound point at a national HV enforcement and compliance conference in Sydney some 15 years or so ago, when the forum of police, industry and officials was discussing penalties when he said:
 - i. It is not the size of the penalty to changes behaviour, rather it is the perceived risk of detection.
 - f. Notwithstanding the outdated and ill-informed view of the various police agencies is completely at odds with that expert advice. Police are typically stuck in the discredited “punishment mindset”, the Penalty Review has not gone far enough nor deep enough and it should be revisited with a view to acknowledging the real purpose of penalties rather than propping up consolidated revenues.

SARTA believes that a far more effective approach to improving safety and compliance through a balanced and fair penalties regime would be to adopt the following:

- a. If there is no conviction recorded on a guilty plea then there should be no demerits imposed;
- b. All minor breach offences should be expiation only;
- c. Demerits should be reduced - 3 points critical, 2 points severe, substantial 1 point;
- d. Technical/administrative /clerical WD breaches should be warnings and education - 2nd strike expiation 3rd strike summons;
- e. All the low end offences with fines around \$3770 - should be expiation only;
- f. Mass breaches; severe are max \$12600 plus \$570 per 1% over 120% which can really add up. Maybe instead of that they could have just a higher max like critical fatigue;
- g. Overall the fines are oppressive for drivers so reducing each category for fatigue offences would be sensible as the bulk of fines end up around the \$2- 3k mark anyway.
- h. The 5x multiplier for corporate entities is also oppressive and should only be reserved for the most serious deliberate breaches or gross negligence. Perhaps 2 x for offences other than critical and then at the magistrates discretion depending on the facts.

FUNDAMENTAL CONCERNS WITH THE FAILURE OF THE HVNL REFORM PROCESS:

The drawn out and problematic 6 year-long Review of the HVNL has reached a critical and troubling point.

The Exposure Draft Bill would implement the dismal remnants of the reform proposals that were left after the appalling and often self-interested turf wars between the various States' agencies, including police and between them and the NHVR.

Whilst industry did have a say throughout the 6 years of the Review, we were ***never allowed in the same room*** as the state agencies, including police. Despite the NTC's attempts to accommodate our persistent requests and calls for joint industry-agency meetings, the jurisdictions refused to meet with industry. The only credible explanation for that is that they did not want industry to hear what the agencies and police were considering or saying about the industry and our views/proposals.

Refusing, repeatedly, to meet jointly with industry and failing to work collaboratively in the best national interest has resulted in watered-down and essentially ineffective proposed changes to the HVNL. It would be wrong to label the proposed changes a **REFORM** of the HVNL. A **TINKERING perhaps but not a reform**.

The NTC has had the unenviable task of securing agreement of ALL the jurisdictions and this has meant that we have repeatedly been told when we have challenged the NTC on various proposals "Well this is what we can get the jurisdictions to agree to!" Opposition from one or more jurisdictions has been the death knell for any particular proposal. To make matters worse many of the sensible, effective and significant proposals for improved safety were effectively vetoed by police agencies, which seem stuck in a bygone adversarial and counter-productive era.

Police want what makes their life easy; the opportunity to continue to enforce simplistic black-and-white letter law that provides zero flexibility because tolerances and flexibility are just too hard to enforce, or so *they* think. Perhaps more accurately the police agencies think it's too hard to train their officers on anything that's not black and white. As stats-driven agencies they believe that racking up countless infringements and fines, regardless of their effectiveness in improving safety, is proof they're doing a good job in keeping the industry safe.

The reality of course is that well over 90% of those infringements issued by police are at best tick-and-flick technical matters that are utterly inconsequential for safety and risk. It's mindless counter-productive *rule enforcement*. That is precisely what the proposed **REFORM** of the HVNL was supposed to eradicate, by shifting the law to a **Risk-based and Safety-focussed** law that facilitated safe and productive road freight movement, for the benefit of the economy which our industry underpins.

Transport agencies and the NTC have allowed the police to scuttle that at virtually every step and the almost laughable proposed reforms to the Fatigue Management rules is a classic example. Police are on record as being against the use of Fatigue and Distraction Detection Technology. They argue, incredibly, that FDDT is ineffective because it kicks in when people are fatigued, instead of preventing it.

That extraordinary statement made to us by very senior Police obviously misses the point entirely:

1. FDDT technology is not designed nor intended to prevent fatigue;
2. Its designed and very effective at **preventing fatigue-related crashes** and incidents by **detecting the *early signs* of impending fatigue and alerting the driver and the truck operator**; and
3. There is no better way of achieving those massive life-saving safety gains. Work Diaries, whether paper or electronic, do not and can't do that that because they don't manage fatigue. They just managed compliance with a poor ineffective substitute set of Work/Rest rules.

As we have stated publicly and repeatedly:

“What we want and what the country needs, is an efficient and productive road freight industry that underpins the economy whilst operating safely and responsibly under a Risk-based and Safety-focussed HVNL that is applied consistently and sensibly.”

That is not what we are getting as a country and ill-informed police and state agency officials are in no small way to blame. We urge the NTC and Ministers to push back against their agencies who are choking the reform process and tell them that they need to stop getting in the way of needed progressive and genuine reform that would actually improve safety and productivity.

We shudder to think about how many infrastructure projects and new Rest Areas could have been funded by the enormous amount of federal and state tax-payers funds that have been wasted over the past 6 years on this sad excuse for a *reform* of the HVNL.

It will not deliver:

1. The promised and necessary Risk-based and Safety-focussed HVNL; which is what's needed to underpin a competitive national economy;
2. An NHVR better placed for effective regulation of a safe and productive Road Freight industry;
3. Real improvements to actual fatigue management, as distinct from tweaks to counting rules;
4. A more dynamic legislative regime that is truly responsive to progress and technology change;
5. Eradication of the state and local govt bureaucratic barriers to appropriate HV access; and
6. An operating environment that supports a viable and sustainable road freight industry.

Yours sincerely



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Executive Officer