



22 November 2024

National Transport Commission
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To the Regulatory Reform Team,

The Australian Livestock and Rural Transporter's Association (ALRTA) is pleased to write this letter of support to the Australian Trucking Association (ATA) submission to 'Exposure Draft Heavy Vehicle National Law Amendment Bill and Heavy Vehicle National Amendment Regulations' (Exposure Draft). ALRTA is highly supportive of the recommendations put forward in the ATA submission (attached) and am heartened that as an industry there is a harmonisation of views and recommendations related to the Exposure Draft.

The HVNL reform process commenced over six years ago, as it was acknowledged 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.

In August of 2022 the findings and recommendations of the colloquially known, 'Kanovski Review', was presented to the Infrastructure Transport Ministers' Meeting (ITMM), where these were endorsed by all Ministers present. It is disappointing that after two years of continued 'reform', Ministers have walked away from agreed positions, resulting in amendments to the current law that have the real potential to leave industry worse off.

One of the key drivers for the HVNL reform piece was to drive productivity. It would be remiss not to mention that harmonisation of road regulations nationally could unlock \$15 billion in productivity over the next 20 years and genuine HVNL reform is a critical piece in this.

Who we are

ALRTA is the peak body representing road transport businesses servicing the agricultural supply chain. We are a federation of six state associations including:

- Livestock, Bulk and Rural Carriers Association of New South Wales
- Livestock and Rural Transporters Association of Victoria
- Livestock and Rural Transporters Association of South Australia
- Livestock and Rural Transport Association of Western Australia
- Livestock and Rural Transporters Association of Queensland
- Livestock Transporters Association of Tasmania

Together our associations represent approximately 750 transport businesses including owner-drivers, small fleet operators and large fleet operators with hundreds of trucks and trailers.

ALRTA has a strong interest in the proposals contained in the draft exposure bill and explanatory memorandum.

Australia has the most urbanised populations in the world. 90% of Australians live in cities compared to 82% in the US and 56% in China. Australian public policy is therefore pretty citycentric in design. One of the roles of ALRTA is to ensure that policies not only work for the cities, but also regional and rural Australia.

The road transport sector is a collection of vastly different business types with vastly different operating frameworks and structures. It is tempting to lump all trucking businesses into the same basket; however, rural road transport operates very differently from every other road transport sector.

ALRTA members are the backbone of regional economies, contributing over \$5 billion annually to local communities. ALRTA members are instrumental in Australia's food security and play a critical role in transporting all of Australia's major commodities. ALRTA is crucial in Australia's food supply chain from paddock to plate. Our members transport Australia's leading industries:

- i) \$15.5 billion grains industry.
- ii) Livestock including cattle, sheep, pigs, and other livestock. The beef industry alone valued at around \$20 billion annually.
- iii) Horticulture including fruits, vegetables, flowers valued at approximately \$11 billion annually.
- iv) Dairy Transport, including milk and other dairy products, valued at around \$4.4 billion to the Australian economy annually.

ALRTA members commitment to safety is demonstrated through ongoing adoption of new technologies, commitment to driver training and being the initial driver of Alternate Fatigue Management (AFM). ALRTA members ongoing emphasis on road safety and commitment to best practices, has led to a significant 30% reduction in heavy vehicle incidents on rural roads.

Further, ALRTA members are critical to National Supply Chain Resilience as our members are on the frontline when natural disasters and crises emerge. We have unique expertise in rural and livestock transport which is essential in maintaining supply chain resilience and ensuring critical goods reach every corner of Australia, no matter the challenge.

In supporting the ATA's submission to the Exposure Draft, please find below some key focus areas:

Fatigue

As highlighted livestock and rural transport is an important contributor to the Australian economy and national income. Livestock transporters face several unique challenges not encountered in other transport tasks.

Livestock transport:

- Is dynamic, uncertain and complex as there are multiple legal obligations for transport, animal welfare and workplace health and safety
- Involves less time spent driving, more time meeting other obligations
- Occurs in hostile environments with longer distance between stops, poorer quality roads and less traffic, and
- Requires greater flexibility to respond to uncertainties/changes.

The current inflexibility in driving hours often forces drivers to operate while fatigued, a situation exacerbated by the stringent monitoring measures in place, such as safety cameras and inflexible logbook hours. While these measures are essential for ensuring compliance with safety standards, they fail to account for the complexities of the freight task and the frequent delays beyond a driver's control, such as traffic, weather conditions, animals or unexpected road closures. These factors can place additional strain on drivers, who may feel compelled to continue driving despite fatigue, in order to meet regulatory requirements.

To better protect the welfare of drivers, it is crucial to consider a more holistic approach that goes beyond merely assessing the time taken to complete a task. Flexibility within the framework of driving hours is essential to accommodate these unforeseen delays and provide drivers with the necessary rest periods to ensure their health and safety. A more adaptive system would allow for a more realistic reflection of the demands placed on drivers, while also promoting safer working conditions and reducing the risk of fatigue-related accidents.

Alternate Fatigue Management

A key issue for ALRTA members is Alternate Fatigue Management (AFM). In 2015/16 ALRTA worked with the National Heavy Vehicle Regulator (NHVR) to develop Livestock Alternate Fatigue Management policy and forms to ensure a risk-based approach could be taken in managing fatigue. ALRTA was a leader in this space as it was identified different freight tasks require a different risk management approach to managing fatigue, there is no one size fits all.

The finalised and endorsed NHVR Livestock Transport Fatigue Management Scheme: Implementation Guide is attached to this letter.

The proposed outer limits contained within the exposure draft are more rigid than existing AFM rules and if included in future law would force operators to be non-compliant and unable to complete the freight task. ALRTA is not supportive of the outer limits contained within the exposure draft.

The intent of the reform to AFM was to provide flexibility to manage fatigue with a risk-based approach, this has not been achieved in the current drafting. Flexibility should be provided to operators and businesses to manage fatigue with a view to improving safety outcomes. These outcomes continue to be supported through fatigue alternate compliance accreditation and continued innovation in driver distraction and fatigue technologies. Future law should enable innovations in technology to continue and enable risk management practices to evolve to improve safety outcomes for drivers and all road users.

Please see attached letter from Professor Drew Dawson, Founding Director, Appleton Institute CQUniversity, an eminent fatigue specialist to support ALRTA's position.

Penalty and Infringement Points

ALRTA also expresses strong concern regarding the proposed infringement penalty points. The current high levels of penalties for heavy vehicle offences are having an adverse effect on the industry, leading to a decline in the number of experienced individuals staying in the sector and discouraging new entrants. These penalties, rather than fostering improved safety standards, often create a punitive environment that undermines the willingness of

operators to continue their work, particularly in specialized areas such as livestock transport, where a high degree of skill and expertise is required. Consequently, this has resulted in a shrinking pool of operators who are willing to take on the demanding and often complex nature of freight tasks.

Moreover, the imposition of penalties for administrative errors is disproportionate and counterproductive. Instead of resorting to fines, a more constructive approach would be to implement re-education initiatives for operators. These programs would provide opportunities for learning and improvement, ensuring that operators understand the regulations and can avoid future mistakes. Technology can play a crucial role in supporting this process, offering tools to monitor compliance and provide real-time guidance, which would not only help operators meet safety standards but also reduce the likelihood of errors. This approach promotes a more supportive and educational environment that prioritises safety and compliance while also encouraging the long-term sustainability and growth of the industry.

ALRTA recommends penalties and infringements should take a risk management approach, whereas penalties are commensurate with the safety risk posed to drivers and the broader community. As such an administrative error or low-level infringement would be penalised similar to that of a parking ticket, rather than effectively one week's worth of income for a small operator.

Codes of Practice

The HVNL Amendment Bill, item 173, proposes changes to the process of developing and approving codes of practice. Codes provide guidance for meeting work health and safety duties but are not mandatory; businesses must meet safety standards equal to or higher than the code's requirements. Currently, the HVNL allows the regulator to register industry-developed codes, with the NHVR taking over this role in July 2024.

While ALRTA agrees with NHVR's responsibility for developing codes, the bill should be revised to involve responsible ministers in approving them, not just the NHVR. Additionally, the proposed 28-day consultation period for draft codes does not meet best practice standards. We recommend extending this to 42 days, in line with the Office of Impact Assessment's guidelines and common practice in the road transport industry.

Thank you for considering our response and support of the ATA submission. If you wish to arrange a meeting to discuss this letter or ALRTA position, please contact ALRTA Executive Director, Rachel Smith, 0433 569 301 or email executivedirector@alrta.org.au.

Yours sincerely



Scott McDonald
Acting National President



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

AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION 21 NOVEMBER 2024

1. About the Australian Trucking Association

The Australian Trucking Association is a united voice for our members on trucking issues of national importance. Through our eleven member associations, we represent the 60,000 businesses and 200,000 people who make up the Australian trucking industry.

2. Introduction

On 10 October 2024, the National Transport Commission (NTC) published exposure drafts of the Heavy Vehicle National Law Amendment Bill¹ and the Heavy Vehicle National Amendment Regulations.²

These drafts substantially implement the decisions that were documented in the Heavy Vehicle National Law high-level regulatory framework decision RIS³ and the Reforms to Heavy Vehicle National Law decision RIS.⁴

The drafts do not include the proposed increase in general mass limits to match CML, the increase in general access length from 19 to 20 metres or the increase in truck height from 4.3 to 4.6 metres. These remain subject to further analysis and drafting, and are to be finalised in early 2025.⁵

In conjunction with its release of the drafts, the NTC published the results of its review of 349 HVNL penalties.⁶

Section 3 of this submission sets out the ATA's recommendations on changes to the exposure draft package, noting that the purpose of exposure drafts is to test the legislative implementation of policy decisions that have already been made.

Section 4 considers the findings of the penalties review and makes two additional recommendations.

¹ [Heavy Vehicle National Law Amendment Bill 2024](#). Parliamentary Counsels' Committee exposure draft, October 2024.

² [Heavy Vehicle National Amendment Regulations 2024](#). Parliamentary Counsels' Committee exposure draft, October 2024.

³ NTC, [Heavy Vehicle National Law high-level regulatory framework](#), May 2023.

⁴ NTC, [Reforms to Heavy Vehicle National Law decision regulation impact statement](#), July 2024.

⁵ NTC, [Consultation summary: draft Heavy Vehicle National Law Amendment Bill and Heavy Vehicle National Amendment Regulations](#). October 2024, 5.

⁶ NTC, [HVNL penalties review: summary of proposed penalty changes](#). October 2024.

3. ATA comments on the exposure drafts

Change to the definition of twinsteer axle group

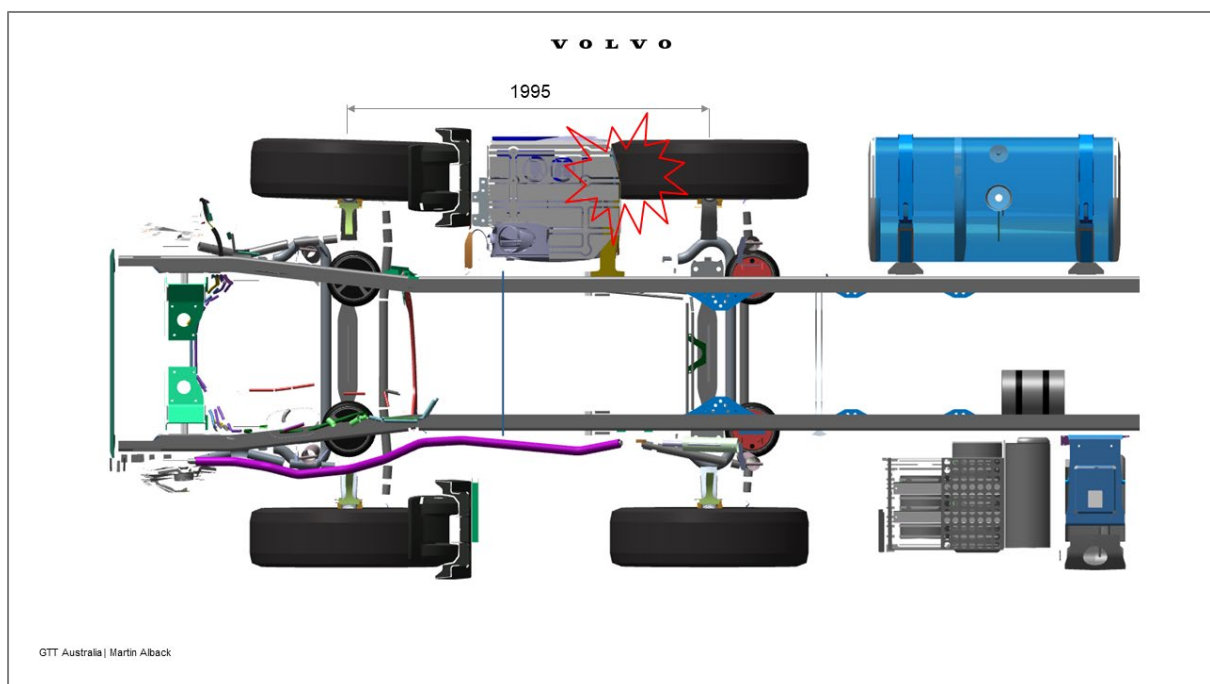
HVNL Amendment Bill item 2

HV National Amendment Regulations, schedule 2, item 2

The HVNL definition of a twinsteer axle group requires the two axles to be at least one metre but not more than two metres apart.⁷

The ATA and the Truck Industry Council have campaigned to increase the maximum spacing from two metres to 2.5 metres, to accommodate the larger mufflers required for Euro VI trucks. Figure 1, supplied by Volvo Group Australia, illustrates the problem.

Figure 1: Volvo twinsteer with current axle spacing and Euro VI muffler



The exposure draft package would—

- move the technical specifics of the definition to the national regulations, so it could be changed with less difficulty in the future⁸
- set the maximum spacing to 2.5 metres.⁹

⁷ HVNL, s 5 (definition of 'twinsteer axle group').

⁸ Exposure draft bill, item 2 (definition of 'twinsteer axle group').

⁹ Exposure draft regulations, schedule 2, item 2, new section 5C.

These legislative amendments are only part of the work being undertaken to increase the spacing between twinsteer axles.

- the Australian Government has amended the Australian Design Rules to allow vehicles with 2.5 metre twinsteer axles to be provided to the market¹⁰
- the NHVR is developing a notice, and if necessary supporting permits, as an interim solution until the HVNL amendments come into force.¹¹

The ATA supports these amendments. They are not just important in their own right: they highlight the importance of moving technical detail out of the primary HVNL and into the regulations. The ATA has advocated for this approach throughout the review.¹²

Driving while unfit to drive HVNL Amendment Bill items 51-60

Items 51-60 of the bill would extend the existing duty on drivers not to drive while fatigued to include driving while unfit to drive. Proposed s 225(2) would define 'unfit to drive' as follows—

- (2) A driver of a heavy vehicle is unfit to drive the heavy vehicle on a road if the driver is not of sufficiently good health or fitness to drive the heavy vehicle safely.

Proposed s 228(1) would set out the maximum penalty for driving while unfit to drive—

- (1) A person must not drive a heavy vehicle on a road while the person is impaired by fatigue or unfit to drive.

Maximum penalty—\$20000

Items 19, 20 and 22 of the bill would amend s 26E to prohibit requests or contracts that a person knows, or reasonably ought to know, would cause or encourage a driver to drive while unfit to drive.

The May 2023 Decision RIS noted that the intent of these changes was to place obligations on drivers to take a proactive and preventative approach to managing their health and fitness because they have a shared responsibility to ensure they are fit to drive.¹³

¹⁰ *Vehicle Standard (Australian Design Rule) Twin Steer Amendments 2024*.

¹¹ de Rozario, A. *Safer, more productive trucks*. Presentation to TMC 24, 22 October 2024.

¹² ATA, [A risk-based approach to regulating heavy vehicles: HVNL review issues paper 1](#). Submission to the NTC, May 2019. 10-11.

¹³ NTC, May 2023, 178.

The ATA supports the intent of the amendments, which would discourage individuals from—

- deliberately failing to schedule referred medical tests that they know would result in them failing to meet the commercial standards in *Assessing Fitness to Drive*
- failing to take prescribed medication, or
- working despite being warned not to operate machinery (for example, after a medical procedure involving sedation).

We are, however, concerned about the drafting of the two sections.

The definition of 'unfit to drive' in proposed s 225(2) is highly subjective and indeterminate. The offence provision has the appearance of being an offence of absolute liability. It does not appear to be predicated on the driver having any actual knowledge or reason to know or suspect they are unfit.

To address these issues, the ATA considers that proposed s 225(2) should be rewritten in objective and determinate terms and proposed s 228(1) should be amended to add a knowledge element, so a person must not drive a heavy vehicle on a road if they know, or reasonably ought to know, that they are unfit to drive.

Recommendation 1

Proposed s 225(2) should be amended to read—

- (2) A driver of a heavy vehicle is unfit to drive the heavy vehicle on a road if—
 - (a) the driver does not meet the commercial standards in *Assessing Fitness to Drive*;
 - (b) the driver is driving in breach of any medical condition or restriction on the driver's licence or any conditional fitness to drive report issued by an Australian registered medical practitioner; or
 - (c) the driver is driving contrary to any instruction issued by an Australian registered medical practitioner that the driver should not drive the vehicle.

Proposed s 228(1) should be amended to read—

- (1) A person must not drive a heavy vehicle on a road while the person is impaired by fatigue or if the person knows, or reasonably ought to know, that the person is unfit to drive.

Maximum penalty—\$20000

Extraterritorial application of work and rest hours HVNL Amendment Bill, new item 62A

Section 245 of the law purports to apply the HVNL time counting rules in the two non-participating jurisdictions, Western Australia and the Northern Territory. Under the section—

- a driver who leaves the HVNL area and then returns within seven days must comply with the HVNL time counting rules at all times while they are in the non-participating jurisdiction¹⁴
- a driver who only worked in a non-participating jurisdiction during the previous seven days must comply with the HVNL time counting rules from the start of their last major rest break.¹⁵

Because of its complexity, s 245, if applied to a driver's time in a non-participating jurisdiction, causes confusion for businesses and drivers. It discourages businesses from operating across the WA and NT borders.

The section also raises questions about whether there is a sufficient geographical nexus to enable an HVNL state to charge a driver over their work and rest times in a non-participating jurisdiction.

The NTC has argued 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.¹⁶

That argument does not stand up if s 245 operates differently, as it does, for drivers who enter a non-participating jurisdiction and return to a participating jurisdiction within seven days, as compared to a driver who only worked within a non-participating jurisdiction for the entire seven days before entering a participating jurisdiction.

Of course, a driver who works while impaired by fatigue as a result of working outside the HVNL area – or for any other reason – would commit an offence under s 228.

It is difficult to see, however, how the details of a driver's work and rest breaks outside the HVNL area before their last major rest break could have a geographical nexus with an offence under the laws of the HVNL states when—

- WA has its own work and rest hour requirements and NT has its own recommendations
- In 2017, WA recorded a lower relative risk of fatigue related crashes than NSW or Queensland.¹⁷

¹⁴ HVNL, s 245(2).

¹⁵ s 245(3). A major rest break means rest time of at least five continuous hours.

¹⁶ Hopkins, M. Letter to ATA CEO Mathew Munro, 7 August 2024.

¹⁷ ATA, May 2019, 6.

Accordingly, the ATA recommends that—

Recommendation 2

A new item, item 62A, should be added to the exposure draft bill to replace s 245 with the following—

245 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 following 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 must be counted in the period following the driver's last rest break in the non-participating jurisdiction.

Alternative compliance hours

HVNL Amendment Bill, item 68

HV National Amendment Regulations, items 6 and 19

In August 2022, transport ministers agreed to replace the existing BFM and AFM modules with a graduated alternative compliance scheme based on the Kanofski findings that—

- The NHVR will work with operators to set up flexible scalable certification options/levels within the scheme and corresponding business rules. Operators will present the tools and technology solutions to manage fatigue based on risk.
- Outer legislated limits should be prescribed, aligned with the current AFM outer limits.¹⁸

¹⁸ NTC, May 2023, 196.

The Decision RIS clarifies that—

...existing work and rest hour limits for AFM operators will be translated into the future law for the fatigue risk area.¹⁹

The Kanofski finding is implemented by proposed s 461A(3). It would provide that the alternative compliance hours specified by the regulator must be within the maximum work and minimum rest times prescribed by the national regulations. Those times are in table 1 below.

Table 1: Maximum work and minimum rest times for alternative compliance hours

Total period	Maximum work time	Minimum rest time
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... a driver must not rest for less than ...</i>
24 hours	15½ hours work time	7 continuous hours stationary rest time (or in the case of a driver who is a party to a two-up driving arrangement, 7 continuous hours of stationary rest time or rest time in an approved sleeper berth while the vehicle is moving)
		Note – Despite the rest time of 7 hours continuous stationary rest, the driver may instead have a split rest break in the 24-hour period if the driver has not had a split rest break in the previous 24 hour period.
		Split rest means (a) 6 hours of stationary rest time; and (b) 2 continuous hours of stationary rest time

Source: Exposure draft amendment regulations, schedule 1, items 4 and 19.

The outer limits in table 1 do not implement ministers' intent that the existing work and rest hour limits for AFM operators be translated into the future law.

The prescribed outer limits are less flexible than the hours in existing AFM accreditations.

The ATA understands that the proposed regulations would require 24 operators to restrict their operations. The change would affect more than 480 drivers, who would have to spend more time away from home to do the same work.

¹⁹ *ibid*, 77.

More generally, setting the fatigue outer limits by regulation is inconsistent with the broad goals of the reforms, which include—

- allowing flexibility for industry by focusing on safety outcomes and minimising prescriptive requirements
- establishing technology neutral legislation that recognises innovative solutions, and
- establishing a legislation structure that can keep pace with advances in technology and other changes in context, business operating models and risk management methodologies.²⁰

As eminent sleep scientist Professor Drew Dawson pointed out in a letter to the NTC (attachment A)—

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.

In the ATA's view, there is no policy reason to set the maximum work and minimum rest times in regulation.

If it is still considered that ministers should set the outer limits for fatigue alternative compliance, the ATA considers that the best alternative would be for ministers to approve the risk management standard used by the NHVR to determine the conditions of fatigue alternative compliance accreditation.

The risk management standard could—

- specify the risk controls and reporting arrangements that the NHVR would require before allowing drivers to work increased hours or with more flexibility
- set out the patterns of work and rest hours that might be permitted, such as to give a driver extra flexibility to get home at the end of a period away
- provide the NHVR with sufficient flexibility to approve other arrangements based on the use of fatigue and driver distraction technology.

²⁰ *ibid*, 39.

Recommendation 3

The exposure draft bill and regulations should be amended to remove the maximum work and minimum rest times that the regulator can set as alternative compliance hours, including the restrictions on its ability to approve split rest break arrangements.

Recommendation 4

If ATA recommendation 3 is not adopted, the bill and regulations should be amended to—

- remove the restrictions on the regulator’s ability to set alternative compliance hours and split rest breaks
- provide that responsible ministers may approve a Fatigue Risk Management Standard
- provide that the regulator must set alternative compliance hours and split rest breaks with reference to the standard.

NHVAS safety management system prerequisite HVNL Amendment Bill items 113-114

The ATA pointed out during the review that NHVAS accreditation did not deliver compliance with the safety duties in Chapter 1A of the HVNL. The extraordinary result is that the NHVR is operating a scheme that does not meet the requirements of its own law.²¹

The Kanofski review recommended that NHVAS should include a safety management system (SMS) core module.²²

Proposed sections 459 and 461 of the HVNL would implement this policy approach by requiring that applicants for NHVAS accreditation have a safety management system as a prerequisite: a key safety improvement.

The safety management system would have to comply with a new safety management system standard and be audited by an approved auditor.²³

Most NHVAS operators would need to develop a documented SMS, which would be a cost imposition, although the cost and complexity of the SMS would depend on the risk profile of the business. The SMS for an owner driver or small fleet could be expected to be very straightforward compared to the SMS that would need to be developed by a large, complex business.

²¹ ATA, [Assurance models: HVNL review issues paper 6](#). Submission to the NTC, October 2019. 3.

²² NTC, May 2023, 200.

²³ Exposure draft bill, item 113, inserted sub-paras 459(2)(b)(i)-(ii).

Immediate suspension of heavy vehicle accreditation HVNL Amendment Bill, item 139

Under s 473 of the HVNL, the NHVR has the power to amend, suspend or cancel a heavy vehicle accreditation after issuing a 14-day show cause notice to the holder. The NHVR can issue a show cause notice on a range of grounds depending on the accreditation involved, as column 2 of table 2 shows.²⁴

The NHVR also has the power to suspend an accreditation immediately if it is necessary to prevent or minimise serious harm to public safety.²⁵

These two sections create a hierarchy of actions that can be taken by the regulator. The regulator can issue a show cause notice if an accreditation endangers public safety or road infrastructure. But the regulator can go further and suspend an accreditation immediately if there is a serious risk to public safety.

These provisions mirror other transport safety laws.

For example, s 73 of the Rail Safety National Law empowers the ONRSR to issue a show cause notice if it considers that an accredited person no longer has the competence and capacity to manage risks to safety. Section 74 enables the ONRSR to suspend an accreditation immediately if it considers there is an immediate and serious safety risk.

Table 2: Powers of the regulator to suspend or cancel accreditations

Action type	Current HVNL	Exposure draft bill	ATA recommendation
Show cause	<p><i>Maintenance or mass</i></p> <p>Public safety has been endangered or is likely to be endangered; or</p> <p>Road infrastructure has been damaged or is likely to be damaged.</p> <p><i>Fatigue</i></p> <p>Public safety has been endangered or is likely to be endangered.</p>	Prevent or minimise a public risk	Prevent or minimise a public risk
Immediate suspension	To prevent or minimise serious harm to public safety.	Prevent or minimise a public risk.	Prevent or minimise a serious public risk

Sources: HVNL s 473(1)(e)-(f); s 474(1)(b); Exposure draft bill items 138-139.

²⁴ HVNL, s 473(1)(e)-(f).

²⁵ HVNL, s 474(1)(b).

The exposure draft bill would amend the test for a show cause notice to preventing or minimising a public risk,²⁶ as column 3 of the table shows. This amendment is necessary, because the bill would remove the details of alternative compliance accreditation from the law. The test needs to be broad enough to apply to all the risks that could be covered by accreditation.

The bill would also enable the NHVR to apply the same test to a decision to suspend an accreditation immediately,²⁷ instead of requiring that the harm be serious.

The ATA does not support this approach. The approach in the current HVNL – not to mention the RSNL and other laws – is appropriate, because a regulator should only be able to suspend an accreditation immediately if there is a serious risk.

After all, it is possible that a regulator that acts without asking questions might misapprehend the safety risks of a business's activities or even suspend the accreditation of the wrong company in a complex contracting chain. These risks are justified if there is a serious risk to the public, but not otherwise.

Recommendation 5

Item 139 of the bill should be amended to insert 'a serious public risk' into s 474(1)(b).

Use of audits of safety management systems in proceedings HVNL Amendment Bill, item 156

The ATA proposed in the review that parties in the chain of responsibility should be able to rely on a business's safety certification as evidence that the business was compliant with its safety duties and obligations.²⁸

The ATA made this proposal to address the tidal wave of compliance audits required by customers and prime contractors.

The Kanofski review recommended, and ministers agreed, to insert an evidentiary provision into the law to make it clear that a court could consider an audit conducted under the audit standard as part of determining whether the primary duty had been met.²⁹

²⁶ Exposure draft bill, item 138.

²⁷ Exposure draft bill, item 139.

²⁸ ATA, October 2019, 9.

²⁹ NTC, May 2023, 201.

Proposed s 632B implements this decision as follows—

632B Use of audit of safety management system in proceeding

An audit of an operator's safety management system carried out by an approved auditor in accordance with the audit standard is admissible in proceedings for an offence relating to a failure to comply with the duty under section 26C.

Section 26C of the HVNL is the primary duty on chain of responsibility parties, but an SMS audit would also be relevant to the prosecution of an executive under s 26D.

Section 26D imposes a due diligence obligation on the executives of legal entities, with the same maximum penalties that apply to individuals contravening the underlying safety duty.³⁰

Recommendation 6

Proposed s 632B should be amended so an audit of an operator's safety management system is admissible in proceedings for an offence relating to a failure to comply with a duty under sections 26C or 26D.

**Directions in relation to alternative compliance accreditation
HVNL Amendment Bill, item 159**

Section 651 of the HVNL empowers ministers to issue directions to the NHVR. A direction must not be about a particular person, a particular heavy vehicle, or a particular application or proceeding.³¹

This section is consistent with regulatory best practice.

Ministers are entitled to implement the policies that they were elected to carry out. They are responsible to parliaments for the performance of the departments and agencies in their portfolios.

Ministers should not, however, be able take over the functions of an independent regulator by making decisions about specific cases.

The draft bill would expand s 651 into five sections. These would generally continue the best practice approach taken by the existing law.

³⁰ HVNL, s 26D(1).

³¹ HVNL, s 651(2).

The exception is proposed s 651B, which would provide as follows—

651B Directions in relation to alternative compliance accreditation

- (1) The responsible Ministers may give a direction to the Regulator requiring the Regulator to take or not to take particular action in relation to—
 - (a) an applicant or class of applicants for alternative compliance accreditation; or
 - (b) an operator or class of operators holding alternative compliance accreditation.

The decision RIS argues that empowering ministers to issue directions about specific applicants or operators would enable them to respond swiftly following serious safety incidents involving particular accredited operators.³²

This proposed departure from best practice is not justified. If swift action was needed after a safety incident, the safety regulators at the NHVR would be best placed to evaluate the circumstances and act using the powers discussed on pages 10-11 of this submission.

Recommendation 7

Directions issued under proposed s 651B should be restricted to classes of applicants or operators and not specific businesses.

**Membership of the NHVR board
HVNL Amendment Bill, items 164-166**

In its submissions to the review, the ATA argued that the five member NHVR board was small by the standards of comparable regulators and that its size should be increased.³³

Under the draft bill, the NHVR board would comprise at least five but no more than seven members.³⁴ The board members would have the expertise, experience and skills that the responsible ministers considered appropriate.³⁵ They would not be able to serve on the board for more than three consecutive terms³⁶ (which could each be up to three years)³⁷ or more than ten years in total.³⁸

The ATA supports these amendments.

We consider, though, that proposed s 663(2A) should be redrafted.

³² NTC, May 2023, 96.

³³ ATA, [HVNL review consultation RIS: chapter 5: regulatory tools](#). Submission to the NTC, November 2020. 12-13.

³⁴ Exposure draft bill, item 164.

³⁵ Exposure draft, item 165, inserted s 663(2).

³⁶ Exposure draft bill, item 166.

³⁷ HVNL, s 665(1).

³⁸ Exposure draft bill, item 166.

Under this section, a person employed in the heavy vehicle industry or an organisation representing the heavy vehicle industry would not be able to be appointed to the board.³⁹ This restriction would not apply to a person who was a member of the board at the commencement of the amendment Act.⁴⁰

The policy intent of the ban is presumably to prevent conflicts of interest. The draft section would not achieve this goal, because—

- the NHVR’s regulatory responsibilities extend beyond the ‘heavy vehicle industry’ to include businesses in other industries that operate trucks and buses in support of their own operations, as well as other chain of responsibility parties such as consignors, consignees and loading managers.⁴¹
- the proposed ban would only apply to employees. It would not apply to non-employee directors or the direct owners of businesses, even though these individuals may have a greater personal stake in regulatory decisions than their employees.

To address these gaps in the section, the ATA recommends that—

Recommendation 8

Proposed section 663(2A) should be redrafted to provide that a person must not be appointed as a member of the Board if the person is—

- a party in the chain of responsibility
- a direct owner of a party in the chain of responsibility
- a director of a party in the chain of responsibility or an organisation representing parties in the chain of responsibility
- employed by a party in the chain of responsibility or an organisation representing parties in the chain of responsibility.

Codes of practice

HVNL Amendment Bill, item 173

Codes of practice are a well-established mechanism for fleshing out the broad general duties in work health and safety and WHS adjacent legislation such as the HVNL.

Under this model, codes of practice provide guidance about how to achieve the principles set out in general duties.⁴² A regulated party does not have to comply with a code but must achieve a level of safety equivalent to or higher than the standard in the code.⁴³

Section 706 of the HVNL currently empowers the regulator to register codes of practice developed by industry. The ATA and the Australian Logistics Council used this provision to

³⁹ Exposure draft, item 165, inserted s 663(2A).

⁴⁰ Exposure draft bill, item 178, new s 762.

⁴¹ HVNL, s 5 (definition of ‘party in the chain of responsibility’).

⁴² Bluff, E. and N Gunningham. [Principle, process, performance or what? New approaches to OHS standards setting](#). National Research Centre for OHS Regulation. Working paper 9, June 2003. 9.

⁴³ See, eg, HVNL, s 632A(4); Model WHS Act, s 275(4).

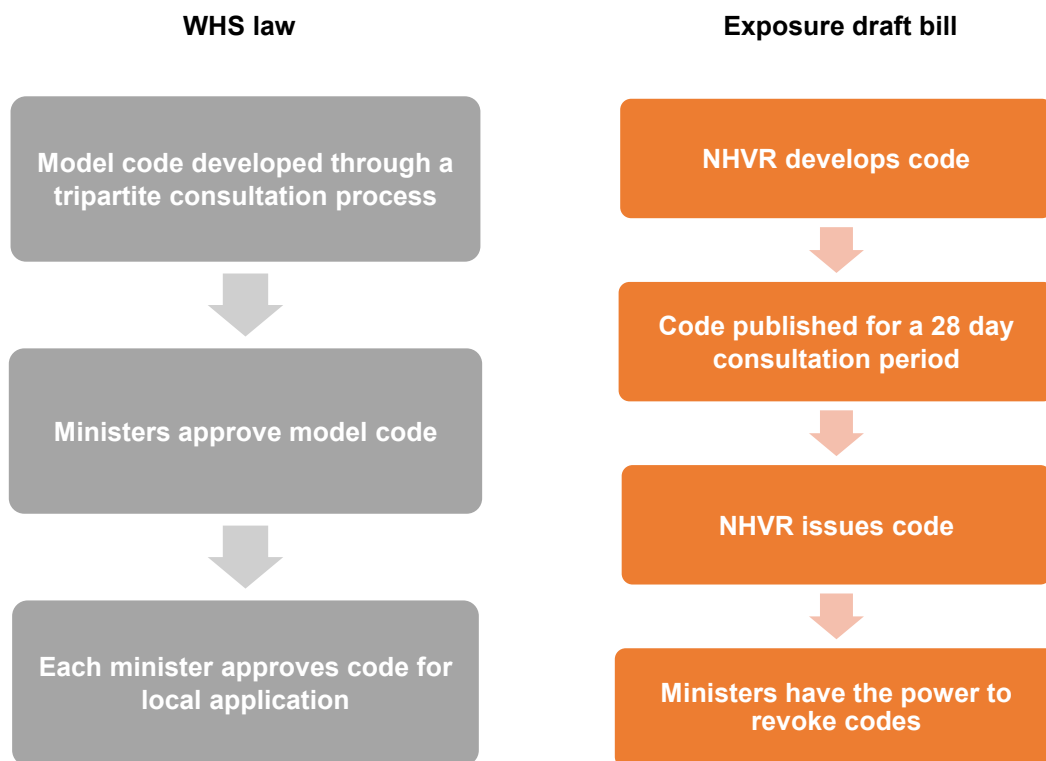
develop the master registered industry code of practice, which was registered in November 2018. The ownership of the code was transferred to the NHVR in July 2024.

Item 173 of the amendment bill would replace the existing approach to developing and approving codes with a new process. The ATA recognises that it is now appropriate to assign responsibility for developing codes to the NHVR rather than industry, but we consider that the item should be redrafted.

Responsibility for approving codes

During the review process, stakeholders generally agreed that the process for developing HVNL codes should be aligned with the WHS Act process. This process is set out in the left hand flowchart in figure 2.

Figure 2: WHS and exposure draft bill code development processes



Sources: Model WHS Act, s 274; Exposure draft bill, item 173.

The code development process in the exposure draft is not consistent with the model WHS Act process, as the right hand flowchart in the figure shows.

It would also be a weaker process. There would be less independent scrutiny, because the NHVR would be responsible for developing codes and then approving its own work.

Although ministers would have the theoretical power to revoke codes, an HVNL state with concerns about a code would have to secure unanimous agreement to get it revoked.

The ATA recognises that the approach in the exposure draft reflects Kanofski reform finding 9.3(a),⁴⁴ however, we believe that ministers should reconsider and align proposed sections 705 and 706 with the model WHS Act process as stakeholders originally considered.

Recommendation 9

Proposed sections 705 and 706 should be redrafted so responsible ministers approve codes.

Recommendation 10

If ATA recommendation 9 is not adopted—

- proposed subsection 705(5) should be redrafted to refer to subsection (3)
- proposed subsection 705(6) should be redrafted to refer to subsections (3) and (4).

These changes are to correct minor drafting errors.

Consultation with industry and the public

Proposed section 705(3)(a) provides that the regulator must make a draft code of practice or amendment publicly available for at least 28 days before issuing or amending it. The regulator would need to consider any submissions received during that period.

Similar consultation requirements would apply to revoking a code of practice.

The proposed 28 day consultation period does not align with best practice. The latest Office of Impact Assessment (OIA) guidance is that 30 to 60 days is appropriate for effective consultation, with 30 days considered the minimum.⁴⁵

The accepted practice in the road transport reform space is that consultation documents, including for example these exposure drafts, are released for six weeks.

Accordingly, consultation periods for codes should be increased to a minimum of 42 days.

Recommendation 11

Whether or not ATA recommendation 9 is adopted, the code consultation periods in the bill should be extended to 'at least 42 days.'

⁴⁴ NTC, May 2023, 208.

⁴⁵ Office of Impact Analysis, [Best practice consultation](#). Guidance note, July 2023. 7.

4. Penalties

Penalties for minor offences are too high

The ATA and its members argued throughout the review that the penalties for minor fatigue breaches and record keeping offences were too high.⁴⁶

There is little connection between improving safety and minor time counting or record-keeping offences. In fact, it's the opposite. Imposing high penalties for minor offences reduces the willingness of industry participants to focus on safety, not compliance.

Penalties are seen as unavoidable nit-picking

Many truck drivers see the minor offences and penalties under the law as unavoidable nit-picking. Road transport involves unexpected delays, whether it's an interstate journey in a truck or a family road trip. The minor fatigue offences do not recognise this reality.

As one driver told the ATA—

I started in this industry wanting to learn and aim for 100% compliance and placing my own limits on myself because of my relative inexperience.

After 18 months I feel resentful, consider it is virtually impossible to avoid 'non-compliance' due to the level of petty nit-picking, and find myself as a result, being tempted into avoidance or cheating strategies. I should not feel so afraid of or resentful toward the authorities when I have started out with a determination to do the right thing. This tells me that the current system is counterproductive.⁴⁷

Penalties are too high compared to drivers' earnings and the objective risk

Truck drivers also know that the penalties for minor fatigue and record keeping offences are disproportionate compared to the risk and their ability to earn income.

Table 3 sets out two of the infringement notice penalties for work diary errors and minor fatigue breaches. As can be seen, a grade 6 truck driver on award wages would take five hours to pay the infringement notice penalty for a record-keeping error, even though the error would have zero effect on the driver's crash risk.

The same driver would need to work for 13 hours to pay for a five minute minor fatigue risk breach, even though a five minute breach would have a negligible impact on the driver's crash risk.

⁴⁶ ATA, [Reforms to Heavy Vehicle National Law: consultation regulation impact statement](#). Submission to the NTC, November 2023. 13.

⁴⁷ *ibid.*

Table 3: Selected penalties for HVNL offences and hours to pay

Offence	Infringement notice penalty	Hours to pay
Recording work diary information as required by the national regulations	\$200	5
Minor fatigue risk breach: solo driver operating under standard hours	\$530	13

Source: HVNL; *Road Transport (Long Distance Operations) Award 2020*, schedule A, hourly payment rate for a grade 6 employee.

Good drivers are discouraged from entering or staying in the industry

The trucking industry faces a shortage of drivers, as the Australian Government's 2024 Occupation Shortage List confirms.⁴⁸ The unfairly high penalties for minor offences discourage drivers from entering the fatigue-regulated sector of the industry or can result in them leaving.

One truck driver, Chris, said in 2019—

I stopped driving trucks seven years ago following two fines I received for 15 minute errors in my old log book that I carried in my truck for 28 days – as per law. On my way from Queensland on a Friday, I got stopped at Goondiwindi and Dubbo by RMS both in one day and fined for separate offences both over one month old. Simple mistakes, well in the past, that cost me a week's wage.⁴⁹

Outcomes of the penalties review

As part of their consideration of the Kanofski review, ministers endorsed a review of penalties across the whole of the law. The review considered 349 offences; it proposed increasing 50 penalties and decreasing 21 penalties.⁵⁰

Table 4 summarises some of the key penalty reductions that would affect drivers.

⁴⁸ Jobs and Skills Australia, [2024 occupation shortage list](#). Truck driver (general), ANZSCO 733111.

⁴⁹ Cited in B Magill, *The driver shortage approach – reformed*. Daimler Truck and Bus Future Leaders' Program report, 2019.

⁵⁰ NTC, [HVNL penalties review: summary of proposed penalty changes](#). October 2024, 1.

Table 4: Selected penalty reductions proposed by the review

Offence	Existing HVNL	Proposed penalty
Minor fatigue risk breach: solo driver operating under standard hours (HVNL s 250(1))	In law: \$4,000 Indexed: \$5,300 Infringement notice: \$530	In law: \$3,000 Indexed: \$3,980 Infringement notice: \$398
Minor risk breach of alternative compliance hours (s 254 in exposure draft bill; previously s 258) ⁵¹	In law: \$4,000 Indexed: \$5,300 Infringement notice: \$530	In law: \$3,000 Indexed: \$3,980 Infringement notice: \$398
Information required to be recorded immediately after starting work (HVNL s 297(2))	In law: \$6,000 Indexed: \$8,000 Infringement notice: \$800	In law: \$4,000 Indexed: \$5,300 Infringement notice: \$530

Source: NTC penalties review.

The penalties proposed in the review are still too high. The review also did not consider the multiplier for corporate offences, which has a critical impact on the penalties faced by owner drivers.

Section 596 of the law provides that the maximum penalty for a body corporate is five times the maximum penalty for an individual unless the relevant penalty provision has a specific corporate penalty.

Most trucking businesses are very small businesses. 56 per cent don't employ staff at all.⁵²

Under these circumstances, the 5x corporate multiplier imposes an unreasonable extra penalty on owner drivers who make the perfectly legal choice to operate as a company rather than work as an employee or sole proprietor.

There is, however, no doubt that the proposed penalties would be fairer to drivers than the current penalty levels. They should be implemented as a first step toward a broader fix.

Reducing the penalties for work diary record keeping offences

The HVNL imposes significant penalties for failing to record work diary information as required by the national regulations.

⁵¹ See ATA recommendation 13.

⁵² Australian Bureau of Statistics, [Counts of Australian businesses, including entries and exits, June 2019 to June 2023](#). Data cube 2: Businesses by main state by industry class by annualised employment size ranges, June 2023.

The ATA acknowledges that the exposure draft regulations would remove the requirement for drivers to—

- record the day of the week on each work diary sheet
- record total work and rest hours on each work diary sheet
- tick the ‘standard hours’ box on each sheet, for drivers working under standard hours.⁵³

The exposure drafts would also restructure the penalty provisions for not recording work diary information correctly.

Item 84 in the bill would remove an entire subdivision of offence provisions from the law, but this would be replaced with an expanded regulation-making power⁵⁴ and new offence provisions in the regulations.⁵⁵

But the record keeping penalties would continue to be \$2,000 or a \$200 infringement notice, as column 2 in table 5 summarises.

Table 5: Current and proposed penalties for work diary record keeping offences

Offence	Exposure draft bill and regulations	ATA recommendation
Recording work diary information as required by the national regulations - general (HVNL s 296(1))	In law: \$1,500 Indexed: \$2,000 Infringement notice: \$200	In law: \$1,125 Indexed: \$1,500 Infringement notice: \$150
Recording information in written work diary (Proposed fatigue national reg 20)	In law: \$1,500 Indexed: \$2,000 Infringement notice: \$200	In law: \$1,125 Indexed: \$1,500 Infringement notice: \$150
Recording information in electronic work diary (Proposed fatigue national reg 20A)	In law: \$1,500 Indexed: \$2,000 Infringement notice: \$200	In law: \$1,125 Indexed: \$1,500 Infringement notice: \$150

Breaches of the work diary recording keeping requirements can include—

- failing to draw a vertical line between the ‘my work’ and ‘my rest’ bars of a written work diary daily sheet at a work and rest change⁵⁶
- failing to write down odometer readings when stopping at then leaving a rest area at a well-known location, such as a service centre.⁵⁷

Neither of these potential offences have a bearing on fatigue risk or the ability of enforcement officers to understand a driver’s work and rest hours. Service centres don’t wander up and down the highway.

⁵³ Exposure draft regulations, schedule 1, items 6-7, 11.

⁵⁴ Exposure draft bill, item 82.

⁵⁵ Exposure draft regulations, schedule 1, item 12, inserted regs 20 and 20A.

⁵⁶ NHVR, [National driver work diary](#). Version 1.3, 2023. 13.

⁵⁷ *ibid*, 14.

Given the low stakes involved, the ATA proposes that the penalties for the work diary record keeping offences in table 5 be reduced to \$1,125. As a result, the indexed penalties would be \$1,500 and an infringement notice would be \$150 (column 3).

A \$150 fine would still be a large penalty for failing to draw a vertical line on a form, but it would be more reasonable than \$200.

Recommendation 12

Ministers should adopt the recommendations of the penalties review.

In addition, the penalties for breaching s 296 and proposed fatigue national regulations 20 and 20A should be set at \$1,125 (an indexed penalty of \$1,500 or an infringement notice amount of \$150).

Recommendation 13

To fix a drafting error, the penalty for a minor risk breach of alternative compliance hours in proposed s 254 should be set at \$3,000 as recommended in the review.



29 October 2024

Mr Michael Hopkins
Chief Executive Officer and Commissioner
National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 3000
mhopkins@ntc.gov.au

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

Prof Drew Dawson

Founding Director, Appleton Institute CQUniversity

CC: Mrs Carolyn Walsh
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Australian Trucking Association, other industry bodies and relevant AFM companies

ATTACHMENT A



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Regards

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Prof Drew Dawson

Founding Director, Appleton Institute CQUniversity

CC: Mrs Carolyn Walsh
Chair and Commissioner, NTC
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Mr Sal Petrocitto OAM
CEO, National Heavy Vehicle Regulator
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Australian Trucking Association, other industry bodies and relevant AFM companies

Livestock Transport Fatigue Management Scheme

Implementation Guide



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Executive Summary

The Livestock Transport Fatigue Management Scheme (LTFMS) provides a pre-approved template Advanced Fatigue Management (AFM) accreditation system designed to give livestock and rural transporters the flexibility to respond to the dynamic, uncertain and complex livestock transport task.

Initially, the scheme allows AFM accredited operators to work up to 14 hours each day on a fortnightly cycle with 'risk off-setting' restrictions around driving between midnight and 4am and frequent stops for welfare checking. It is anticipated that the scheme will be extended to allow AFM accredited operators access to longer work days (for *Long Runs*) and the ability to pool hours across multiple days (for *Journey Flexibility*).

To access these hours, you will need to accredit your business in the AFM option of the National Heavy Vehicle Accreditation Scheme (NHVAS), including:

- putting a fatigue management policy/procedure in place,
- training your staff and drivers in it, and
- having your business audited.

If you are already running BFM or AFM, or if you have a documented fatigue management policy/procedure in place, you can adapt your existing system to access the fortnightly work cycle with minimal effort. New entrants can use the pre-approved template, which includes a wealth of supporting resources in the package, including 'model' policies, procedures and forms.

As a pre-approved template, you will not have to present a safety case to the NHVR.

This document:

- outlines a step by step process for obtaining accreditation using this guideline, and
- provides a template AFM Fatigue Management System on which operators can base their application.

Before you start

The Livestock Transport Fatigue Management Scheme outlines specific principles, standards of behaviour and business practices that underpin good fatigue risk management for livestock and rural transport.

Whilst the package does include template policies, procedures and forms, you will need to review these and tailor them to your business.

If you already have business practices in place, even if they are not written down, you can document and keep these so long as they adequately cover the minimum requirements mentioned in the template and meet the AFM standards.

Specific guidance on how to implement the template, including key tasks you will need to undertake, is outlined in the section titled **Steps to implementing an FRMS in your company**.

Before you start, check that you've got the following documents:

- *Livestock Transport Fatigue Management Scheme: AFM Policies and Procedures*
- Livestock Transport Fatigue Management Scheme: Forms 1-12:
 1. *Safe Driving Plan*
 2. *Fitness for Duty Assessment*
 3. *Employee Fatigue Training Register*
 4. *Individual Employee Training Matrix*
 5. *Incident, Accident, Near Miss and Hazard Report Form*
 6. *Non-conformance Audit Report*
 7. *Internal Review Planner*
 8. *Quarterly Compliance Statement*
 9. *Non-conformance Corrective Action Report*
 10. *Internal Review Report*
 11. *Induction letter*
 12. *Chain of Responsibility Risk Assessment Template*
- *Chain of Responsibility guidance*

It is important that you read and understand all of the documentation before you begin. This initial effort could save your time and help you avoid mistakes as you implement the template in your business.

While using the template you will have to modify the template policies and procedures and forms and conduct a risk assessment which includes your own specific details, fatigue risks and countermeasures. All template documents have been created using Microsoft Word to allow you to do this.

It is important that you keep a copy of this implementation guide and all updated documents in a safe place as you go. Creating a specific folder on your computer will allow you to keep all your livestock template documents together, making them easier to find.

Definitions

The following terms are used throughout this document.

Term	Definition
Advanced Fatigue Management (AFM)	An option introduced in the 2008 legislation that enabled an NHVAS accredited Operator to propose a trip plan for which they believed the risk associated with increased likelihood of fatigue due to longer working times had been adequately offset or mitigated by additional risk controls.
Circadian Rhythm	Also known as the body clock: a naturally occurring 24 hour cycle influenced by light that influences periods of wake and sleep. There is an increase in the desire to sleep at night, and a decrease in the desire to sleep during the day.
Fatigue Risk Management System (FRMS)	The AFM policy, procedures and forms that constitute a fatigue management system under the AFM Business Rules and Heavy Vehicle National Law.
Prescribed Compliance History	A compliance history for the operation listing; <ul style="list-style-type: none"> • breaches against the HVNL or its predecessors, • an offence involving fraud or dishonesty punishable on conviction by imprisonment of 6 months or more, by the applicant or other persons who are responsible for the business's AFM accreditation (e.g., schedulers).
Sleep debt	Sleep debt or sleep deficit is the cumulative effect of not getting enough sleep. A large sleep debt may lead to mental and/or physical fatigue.
Sleep opportunity	Opportunities for a driver to sleep which may occur with either a recovery or reset break.
Trip	A return journey of more than 500 kilometres that involves a vehicle moving livestock or raw or manufactured materials from one place to another.
Within work rest	Short rest breaks taken within a work opportunity will delay onset of fatigue impairment.
Work opportunity	Work time plus work related rest or breaks between commencing and finishing work. At least a 7 hour break is necessary to signify the end of a work opportunity.

Steps to implement an FRMS in your company

The flowchart below outlines the major steps that operators need to progress through to implement, and continue to monitor, a tailored Fatigue Risk Management System (FRMS). The major steps in the implementation of an FRMS are:

1. Company commitment
2. Conduct a fatigue risk assessment
3. Document your FRMS policy, procedures and forms
4. Training key staff and drivers
5. Audit your system
6. Apply for AFM accreditation.

Each step is discussed in more detail later in this document.



Figure 1 - Steps in Implementing an FRMS

A major component of successful implementations that is not represented in this figure is the underlying culture into which an FRMS is introduced. Certainly, commitment from senior management and active and prominent local champions are important in promoting that culture. However, promoting a workplace environment in which fatigue-related risk is managed by all individuals is essential.

1 Company commitment

The initial step in the process of implementing an FRMS is to get company commitment to proceed with one or more of the template tasks, determine the governance structure by which the FRMS will be administered and to stipulate the key roles and responsibilities in the FRMS document.

Common issues implementing an FRMS in your business

Even with a template to base your own system on, the implementation of a FRMS can be a complicated activity for a business to undertake. The most common problems businesses have in successfully implementing an FRMS are:

- Management not being or not being seen to be committed to the FRMS.
- Lack of financial and human resources to implement the FRMS – Often staff implementing the FRMS have to “fit it in” with their regular duties.
- Staff tasked with implementing the FRMS have insufficient authority to be taken seriously.
- The FRMS doesn’t have a clear leader, figurehead or champion with credibility and authority, who the workforce trust and respect, and who management will listen to.
- Staff implementing the FRMS are not directly involved in commercial or rostering decisions, preventing the business from making difficult choices.
- The FRMS is rolled out but the company culture is not ready, resulting in the FRMS not being accepted by staff or used appropriately.
- Providing generic “off-the-shelf” fatigue training that does not consider the specific risks faced by an individual business, is of limited relevance to staff and doesn’t meet the AFM standard.

Each of these issues has the potential to compromise the implementation of the FRMS, making it harder for a business to successfully get AFM accreditation based on the Livestock Transport FMS. Appendix 1 has further information about encouraging a culture in which the shared responsibility of fatigue risk management can be successfully implemented.

Determining roles and responsibilities

The template *AFM Policy and Procedures* defines the responsibilities of various individuals within typical transport operations. These include the Managing Director/General Manager, the Operations Manager/schedulers, supervisors and individual drivers.

It is important that an organisation tailors the roles and responsibilities section to their own organisational structure. Review the roles and responsibilities below. As you go along, work out who, in your business, will perform these functions. When you have finished, update the AFM template or your existing fatigue management policy with the newly determined responsibilities.

Business Owner/Managing Director/General Manager

The Business Owner/Managing Director/General Manager will support the implementation and maintenance of AFM accreditation based on the template FRMS in the company. Their responsibilities are to:

- determine which template tasks the FRMS is to be based upon
- manage barriers preventing extreme and major level risks being managed to as low as reasonably practicable
- prioritise allocation of available resources to reduce high-risk fatigue to as low as reasonably practicable

Operations Manager/Schedulers

- monitor compliance with the *AFM Policy and Procedures*
- ensure risk control measures are appropriate for ongoing high risk situations
- prioritise allocation/reallocation of human resources to reduce high fatigue risks
- advise Managing Director/General Manager of barriers preventing extreme and major level risks being managed.

Supervisors

- ensure FRMS meet all requirements of the *AFM Policy and Procedures*
- ensure compliance with FRMS by driving staff under their supervision
- respond appropriately to reports of fatigue-related incidents, errors or behaviours
- ensure training for self and staff under their supervision required by FRMS is completed
- where organisational delegations permit, ensure available resources are allocated in a manner that reduces fatigue-related risk to as low as reasonably practicable
- advise Operations Manager/Schedulers of barriers preventing extreme and major level risks being managed.

Drivers

- present at work in a fit state to conduct duties safely
- complete all training required by FRMS
- identify, report and respond to actual and potential risks associated with fatigue according to the FRMS
- inform the appropriate individual where adequate sleep has not been obtained
- declare any work hours outside of rostered work at primary place of employment where it would elevate the risk of fatigue above that which would otherwise be expected.

Key tasks: Corporate structure and commitment

These are the key tasks relating to the establishment of an appropriate corporate structure for your FRMS.

- Determine the scope of FRMS with Managing Director/General Manager, including relevant template tasks.
- Liaise with the Operations Manager on resources and project support.
- Establish top-level management commitment across the company.
- Identify a project officer to customise the *AFM Policy and Procedures* template and Local Champions.

2 Conduct a Fatigue Risk Assessment

Each of the template tasks contain pre-determined fatigue risks and an indication of the level of fatigue risk based on an assessment using the Risk Classification System Matrix in the *AFM Policy and Procedures*. The Fatigue Risk Assessment is about validating this in the context of your company and determining any other factors in your business that may create fatigue risks. Typically, the purpose of the Fatigue Risk Assessment is to ask:

- For the preferred template tasks, what is our fatigue-related risk?
- How are we currently managing our fatigue-risk?
- What can we do, that we are currently not doing?

If you already have done a fatigue risk assessment for your business, check that it is still current and any actions/changes to your fatigue risk management system have been made. If it is current and the changes have been made you can proceed to the next step.

Otherwise, at the end of the risk assessment you will need to update your fatigue risk management policy to reflect changes identified by your assessment and incorporate the relevant sections of the AFM template.

What is our fatigue-related risk?

As fatigue is a risk to be considered for any organisation providing round-the-clock service, the real question is about the degree of risk that is acceptable with relation to fatigue.

In order to determine this, a number of questions need to be initially addressed to determine current fatigue-related risk:

- Where is our fatigue-related risk highest?
- When does it impact?
- Who does it impact?
- How does it impact?

A fatigue risk scan will identify the specific occurrences of fatigue-related risk in the company, a team or an individual. The fatigue risk scan requires a group of people with current knowledge about the working environment. Another individual that could contribute to this process is your OHS officer, who should already have risk management expertise. Specifically, the questions that should be addressed in some detail are:

- When is fatigue-related risk increased for us? When in the roster or the day or the week or the year is risk increased?
- When fatigue-related risk is increased, who is it impacting? Is there a specific group of drivers that are at increased risk due to the nature of their work arrangements/schedules?
- How does the increased risk impact? What tasks are susceptible to fatigue? How does performance change?

Other questions, based on the Defences in Depth framework, might include:

- To inform our assessment, what information do we have about hours of work, actual sleep, time awake, fatigue reports, etc?
- Do we need to collect some more information or data about these factors?
- What is the information telling us?
- What do we need to do differently (eg. work practices)?
- Can we do things differently?
- What prevents/restricts us from changing things and are these reasonable barriers?

How are we currently managing our fatigue-related risk?

Based on the answers that identify the fatigue-related risks, a decision needs to be made about whether or not the identified risks are currently being managed adequately. That is, where fatigue-related risk is elevated, is it an acceptable risk based on everything we know? This requires you to identify all the current controls that are in place.

It should be noted that the fatigue risk scan and subsequent risk register, will form a very strong foundation for your FRMS through the identification of current and potential controls. It is also important to understand that the vast majority of controls that are in place in your company are most likely informal controls. Indeed, these controls are probably not called controls and almost certainly aren't presently referred to as fatigue risk management strategies. You should identify as many of these informal practices as you can and include them in the FRMS Policy for other staff to use where appropriate.

Key tasks: Fatigue Risk Assessment

These are the key tasks relating to the fatigue risk scan.

- Assign roles and responsibilities for conducting and writing up the results of the fatigue risk assessment.
- Choose the most appropriate format for the fatigue risk scan – either individual interviews, focus groups or a written survey.
- Conduct the fatigue risk scan
- Identify the specific fatigue-related risks and develop a fatigue risk register
- Evaluate the current risk mitigation strategies and develop the action-plan for the FRMS.

3 Complete a FRMS Policy

Working through the previous sections has enabled you to:

- assess the fatigue-related risk in your workplace
- determine the controls you already have in place, even though they are probably informal (ie. not written down anywhere)
- define the roles and responsibilities for people in your company and to understand the roles of the management in supporting you in managing fatigue-related risk in your drivers
- create and foster an environment that encourages reporting of instances of increased fatigue-related risk
- document the assessment and control strategies for fatigue-related risk that are tailored for your workplace
- determine the best education strategy for drivers and other key personnel.

It is now time to put FRMS documentation for your company together.

If you already have a fatigue management policy

Many livestock transport operators, especially those that are accreditation in Basic Fatigue Management (BFM) have some form of fatigue management documentation for their business. If this is the case, you don't have to replace your existing system with the model AFM system in the *AFM Policy and Procedures*.

Compare your existing documents with the model AFM documents. Pay specific attention to sections 1, 2 and 10 which cover how you schedule, roster, determine driver fitness and use your operating limits.

If your existing documentation covers the key areas in the model AFM documents (highlighted by blue text in the instructions), you do not have to make any changes. It doesn't matter if you do something slightly different to what is mentioned in the model AFM system – so long as the outcome of the process is the same.

If some of the key areas are missing you can add them to your own documentation by copying them across from the model AFM system.

Make sure you use the latest version of your existing documents, including any changes that may be identified by your risk assessment.

If you are new to fatigue management

Use the model AFM system in the *AFM Policy and Procedures* as the basis of your Fatigue Risk Management System.

The document is a complete system but will need to be revised to include information for your business. Any text inside square brackets “[text]” will need to be replaced with relevant information for your business. As a minimum, you will need to:

- update the template with your company's information (throughout)
- inserting a new organisational chart
- reviewing the template countermeasures and updating with tailored FRMS defences
- creating template schedules and rosters for your business
- reviewing draft forms and 1) removing potential duplicates and 2) customising other forms for your company

Key tasks: FRMS Policy

The *AFM Policy and Procedures* contains a template AFM system including a FRMS policy, procedures and forms that also meets the 10 AFM standards. The next step in implementing an FRMS in your company is to update the template FRMS policy with your tailored information.

As a minimum, this should include:

- updating the template with your company's information (throughout)
- inserting a new organisational chart
- reviewing the template countermeasures and updating with tailored FRMS defences
- creating template schedules and rosters for your business
- reviewing draft forms and removing potential duplicates and customising other forms for your company.

Prior to implementation, you should consult with all key stakeholders in your company and allow adequate opportunity for review and feedback on the FRMS document.

4 Training

All drivers and staff involved in fatigue management, as part of the implementation of fatigue risk management systems, are required to complete mandatory courses in managing fatigue. The two courses are:

- Apply fatigue management strategies (TLIF2010A) - This unit involves the skills and knowledge required to apply fatigue management strategies, including identifying and acting upon signs of fatigue and implementing appropriate strategies to minimise fatigue during work activities, in accordance with legislative and regulatory requirements. This unit is best suited to drivers and supervisors.
- Administer the implementation of fatigue management strategies (TLIF3063A) - This unit involves the skills and knowledge required to administer the implementation of fatigue management strategies, including monitoring the implementation of fatigue management strategies; and recognising breaches of fatigue management policies, procedures and regulations. It also includes developing and assessing staff competence in fatigue management; providing feedback to staff on any shortcomings in their fatigue management skills and knowledge; and reporting to management on the implementation of fatigue management policy. This unit is best suited to supervisors and managers.

Additional information on these units can be obtained at the following:

<https://training.gov.au/Training/Details/TLIF2010A>

<https://training.gov.au/Training/Details/TLIF3063A>

Key tasks: Training

These are the key tasks relating to training.

- Identify staff training needs based on their role and responsibilities and prior learning.
- Identify and select a training provider that represents good value to business.
- Arrange for training delivery including arranging for drivers to participate as necessary.



Image provided courtesy of Kevin Williams



Image provided courtesy of Kevin Williams

5 Audit your system

To qualify for accreditation you must be audited by an independent NHVAS auditor to verify that your Fatigue Risk Management System (as set out in your *AFM Policy and Procedures*) ensures that you can comply with the 10 AFM Standards. This is called an Entry Audit.

You must also be audited at specified intervals after you qualify so that your accreditation can be renewed. These are called Scheduled Compliance Audits, and they are to check that you are doing what you said you would do. The first Scheduled Compliance Audit will be conducted six months after your accreditation. After that, Scheduled Compliance Audits are required within the last twelve months of your current accreditation period.

Your accreditation lasts for two years unless a Compliance Audit recommends that it be terminated sooner. It is up to you to arrange and pay for these audits. You can get a list of NHVAS auditors from the NHVR website or by calling the NHVR on 1300 MYNHVR (1300 696 487).

What is an audit?

An audit is simply a check to make sure that your Fatigue Risk Management System works and that you are complying with the Fatigue Management Standards and Heavy Vehicle National Law.

If your records and procedures are all correctly in place, the auditor will recommend that your application be granted.

There are strict guidelines for auditors, but if you have successfully completed your own internal review first, the external audit shouldn't be a problem for you.

The auditor may find some evidence of non-compliance and recommend that you take corrective action. Unless the non-compliance is persistent and serious, it won't necessarily affect your accreditation in the long term; but you will have to demonstrate that you have taken successful corrective action before your accreditation will be granted.

What to expect in an audit?

After you have engaged a NHVAS auditor to conduct an AFM, the auditor will contact you to schedule an appointment. A date and time will then be agreed upon. The audit should take place where you normally run your business from as this makes access to documents and records easier.

Preparing for the audit

The auditor may explain the documents and records required for review before the day of the audit. It is a good idea to gather these before your meeting. Typically, the auditor will want to look at:

- Fatigue Risk Management System/Fatigue Management Manual
- Forms mentioned in your System/Manual
- Template trip plans
- Training records for your drivers/key staff
- Medical records for your drivers

Audits usually cover the period since the last audit but for business's applying for accreditation for the first time, the auditor will look at the documents and records you have prepared for use when you are accredited. The auditor will undertake a Scheduled Compliance Audit roughly six months after you are granted accreditation to ensure that you are keeping the correct records as described in your Fatigue Risk Management System.

During the audit

The auditor may take a tour and or observe your operations to get a better understanding of your business activities and Fatigue Risk Management System.

The auditor will review your records/system documents and may provide you with valuable information and instructions for future use.

To minimise disruption to your business and save time, the auditor may choose to look at a sample of your records. Sampling, also minimises the costs associated with retrieving and examining documents. The auditor will discuss the options to select the most appropriate method of sampling with you.

Although most audits can be completed with the records and documents requested by the auditor before the audit, additional documentation may be requested on the day of the audit to clarify potential issues.

The time to complete an audit varies upon the size of your business and the number of records/documents being reviewed. It is best to set aside the whole day to help the auditor during the audit.

Finalizing the audit

You will be notified on the audit findings by the auditor after the audit day. This gives the auditor time to document their observations and findings.

It is possible, following the audit, that the auditor raises Corrective Action Requests (CAR). CAR's summarise issues where your system does not meet the AFM Standards and provide suggested changes that will allow your system to meet the Standards.

All CAR's need to be closed out before your application for AFM accreditation can be accepted by the NHVR. To close the CAR, you will need to agree which changes will be made, implement those changes and have the CAR signed by both the auditor and the person in your business responsible for your AFM accreditation.

If the Auditor is satisfied that your system and business meet the AFM Standards (and all CAR's have been closed out) they will give you a signed National Heavy Vehicle Accreditation Audit Report. You must keep this report safe and attach a copy of it to your application form.

Key tasks: Audit your system

To have your business audited you must:

- Select an NHVAS auditor and engage them to conduct your AFM audit
- Schedule a day for your audit
- Organize relevant documents
- Close out any CAR's (if required)
- Keep your signed National Heavy Vehicle Accreditation Audit Report for your application.

6 Applying for AFM accreditation

After implementing the FRMS in your company, training your staff and passing your audit, the next step is to apply for AFM accreditation so you can use the AFM work and rest limits. The good news is that the Livestock Transport Fatigue Management Scheme and your FRMS constitute the bulk of the paperwork you have to do for your application.

The easiest (and recommended) method of submitting an application for accreditation or reaccreditation is via our website (<https://www.nhvr.gov.au/forms/submission-form>). Our website contains a comprehensive help to assist users in submitting their application for accreditation.

Alternatively, you can download the NHVAS accreditation application form (NHVAS MA1) as a PDF from our website and submit your application in writing. The application form includes instructions on how to complete each section and provides details on the documentary evidence you will need to provide with your application.

The application form

This section outlines the application form in detail. Before starting your application, please read this and the 'General Information' section on page one of the application form.

Accredited operator details

Accreditation is awarded to businesses – whether they are run by companies, partnerships or individuals. This section collects the information required to legally identify who runs the business seeking accreditation.

If your business is a company, please provide the requested details for the company, including the Australian Company Number (ACN). Note that you cannot use an Australian Business Number (ABN) instead of an ACN. If you don't know your ACN, it is printed on your companies' certificate of registration. You can also contact the Australian Securities and Investments Commission to find out your ACN.

If you have NHVAS accreditation for mass, maintenance, or Basic Fatigue Management, you should enter your current NHVAS accreditation number. You'll find this number printed on the front of your NHVAS certificate.

If you are applying for AFM accreditation as an individual the accreditation should be in your own name and use your business address.

Choose application type

This section asks applicants to identify the application type. If your business is not NHVAS accredited, please tick '*Establish accreditation*'. If you already have NHVAS accreditation, please tick '*Add module to accreditation*'.

Contact person's details

Please provide all information required by this section of the application form, which collects the important information needed to contact you both in relation to your application if necessary and later if you become accredited.

Accredited operator declaration

In this section, you acknowledge that you are applying for accreditation, have completed the application form honestly and you agree to the NHVR's privacy policy. This section must be signed by a company director (if the business is a company) or by the individual applying for accreditation. Prior to signing the completed form, please read it carefully.

NHVAS Accreditation Module selection

Please tick 'Advanced Fatigue Management (AFM)'.

Compliance History Declaration

This section collects information on relevant compliance issues that the NHVR will need to consider before granting accreditation.

Please provide details of contraventions of the HVNL or previous corresponding laws for the applicant and other parties involved in the running of your AFM accreditation. You do not have to provide details of offences by drivers unless they have another role in your AFM accreditation (e.g., training manager/scheduler).

Past contraventions do not automatically disqualify you from being AFM accredited. Be as honest as possible in this section as it is an offence to provide false or misleading information.

If there are no contraventions to declare, write NIL in the table to indicate this.

Vehicle particulars

You do not have to complete this section.

Change of existing vehicle particulars

You do not have to complete this section.

Drivers under Fatigue Management

You do not need to have all of your drivers trained prior to applying for AFM accreditation. Provide the name and other details of drivers that you plan to have work under your AFM accreditation.

If you have not completed the induction of your nominated drivers into your FRMS prior to applying for AFM accreditation, leave this column blank. However, you will need up-to-date records of drivers within the first six months of your AFM accreditation.

Payment details

There is a nominal accreditation application fee for AFM accreditation which covers the cost of the NHVR administrative effort. There is no per vehicle/per driver fee for AFM accreditation. If you are submitting your application using the online portal, our system will take you through the payment process. Otherwise, please complete all the payment details fields to authorise payment.

Lodging your application

You can submit completed applications and supporting information online or by mail, fax or email as listed below:

Online www.nhvr.gov.au/forms/submission-form

Mail Accreditation

National Heavy Vehicle Regulator

PO Box 492

Fortitude Valley QLD 4006

Fax 1300 736 798

Email forms@nhvr.gov.au

Please review your application before lodging it. You should also check that you have included all supporting documentation along with your completed application form. This will ensure that your application is both complete and accurate so that it can be processed as quickly as possible.

Should you need assistance to complete any part of your application, please contact the NHVR Accreditation Team by calling 1300 MYNHVR (1300 696 487). Standard 1300 call charges apply so please check with your phone service provider.

Key tasks: AFM Accreditation Application

To apply for AFM accreditation you must submit the following documents to the NHVR:

- Signed Establish Accreditation form
- Signed Independent National Heavy Vehicle Accreditation Audit Report
- Compliance History Declaration* form for the operator and all associates
- Nominated drivers list (can be in any format)
- AFM Policy and Procedures* (including proposed template tasks).

As a pre-approved template, you will not be required to provide a detailed safety case with your application.

For more information on applying for accreditation, including how to apply using the NHVR's online application process, please call us on 1300 MY NHVR (1300 696 487).

Appendix 1 – Development of a change management plan

Building recognition of need to change

It is necessary to develop a need for change within the company and each employee. Previous experience has shown that a lack of a sense of urgency and the absence of a specific catalyst for change makes it difficult to implement change. In some cases, fatigue is not seen as a critical issue for performance or safety by some staff at all levels, and a sense of not being vulnerable is apparent. Excessively long working hours had become a cultural norm because of deeply entrenched historic practices within the heavy vehicle transport profession.

Actions that establish the need for change must focus on disrupting complacency and could include:

- publicising critical events where fatigue has been a contributing factor
- continued education about the impacts of fatigue on performance
- a consistent message from the organisation, colleges and associations that there is a need for change.

Delineating accountability and responsibility

The responsibility for employee and public safety needs to be formally defined and accountability for a safe system of work established within the company. Previous experience indicates that there is often referral of responsibility to ‘the system’, ‘the fatigue policy’ or ‘the organisation’ and evidence of learned helplessness within individuals in the company.

Actions that establish accountability and responsibility for managing fatigue-related risk could include:

- clear delineation of accountability and responsibility for fatigue risk management
- organisational requirement for managers, supervisor and schedulers to report formally on fatigue risk management in their teams.

Identifying industrial impediments to change

In several road transport businesses there is a clear link between the number of hours worked and the remuneration received by the drivers. In some cases, remuneration structures reward excessively long hours of work and there is anecdotal evidence of overtime payments reinforcing work practices that elevate fatigue risk.

Whilst the emphasis of fatigue as a safety issue is critical, the company’s current industrial context needs to be critically examined as part of the overall change management process.

Provision of resources for change – Allocating time for change

Within individual teams, the management of fatigue risk requires a small but significant investment in time. In already stretched teams, finding even 30 minutes for meetings relating to FRMS development can be extremely difficult, let alone time for a half-day workshop to develop and embed components of the FRMS into work practices.

Actions that assist in the provision of resources for change could include:

- clear communication of the requirement to invest time in the development of fatigue risk management systems
- provision of locum resources to cover the time required to develop FRMS within each unit.

Investing in change agents – local champions

In other industries, the experience to date has highlighted that success is closely linked to the strength of local champions. These are drivers who are peers and who can dedicate time and effort to working with other drivers in the development of FRMS.

Actions that assist in the development of these local champions could include:

- ensuring each team has a local champion for fatigue risk management
- analysing the training needs of local champions
- facilitating a local champion forum or get together
- providing support to cover the driving load of local champions.

Implementation Checklist

1	Read template documentation thoroughly	<input type="checkbox"/>
2	<p>Get Executive/Management approval for financial and time resources</p> <p>The implementation of fatigue accreditation requires a small but significant investment in time and some financial resources to obtain necessary training for key staff and to have systems audited.</p> <p>Approval for this investment should come from the most senior levels within the company, to maximise staff buy-in.</p>	<input type="checkbox"/>
3	<p>Appoint someone to lead the implementation of the template</p> <p>Research shows that to avoid staff from shifting responsibility for fatigue accreditation to ‘the system’ or ‘the organisation’ a person must be appointed to implement the livestock template.</p>	<input type="checkbox"/>
4	<p>Assess the current fatigue risk management system</p> <p>Some of the systems included in the template fatigue risk management system may already be in place in the business. If so, it may be possible to use existing practices by deleting the relevant section of the template system and inserting the business policy and procedure. Only do this if your current practices meet the AFM standards.</p>	<input type="checkbox"/>
5	Assess current fatigue risks and controls	<input type="checkbox"/>
6	Update the template fatigue safety management systems with your company details	<input type="checkbox"/>
7	<p>Implement changes to business practices to incorporate any additional controls</p> <p>This includes:</p> <ul style="list-style-type: none"> • Customising forms • Setting up file locations for forms (folders/filing cabinet files) • Printing blank forms for drivers/schedulers • Laminating a blank form for future photocopying 	<input type="checkbox"/>
8	Arrange for drivers and key staff to be trained in the fatigue risk management staff and relevant fatigue competencies	<input type="checkbox"/>
9	Arrange for an audit of the company’s fatigue safety management system	<input type="checkbox"/>
10	Prepare and submit application documentation	<input type="checkbox"/>
11	Induct drivers and key staff into FRMS	<input type="checkbox"/>

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