

Response to the Heavy Vehicle National Law Draft Amendment Bill and Regulations Exposure Drafts



NOVEMBER 2024

Bus Industry Confederation

About the Bus Industry Confederation

The Bus Industry Confederation (BIC) is the national peak industry body uniting bus and coach operators, chassis and body suppliers and manufacturers, associated suppliers, professional services and State Associations. BIC's vision is an innovative and thriving bus and coach industry that moves people sustainably. We aim to do this by representing the collective interests of our members and to assist them in promoting the safety, efficiency and effectiveness of bus and coach transport in Australia.

Our Moving People Objectives

1. Encourage investment in public transport infrastructure and services.
2. Promote policies and actions that are environmentally responsible.
3. Promote the development of a viable and improved bus and coach industry in Australia.
4. Foster and promote a viable Australian bus manufacturing industry.
5. Protect the business interests of operators, manufacturers, and suppliers.
6. Promote public understanding of the contribution made by the bus and coach industry to Australia's economy, society, and environment.
7. Ensure the accessibility and mobility needs of Australians are met, regardless of where they live or their circumstances.
8. Promote the use of public transport as a viable alternative to the car.
9. Coordinate and make more effective existing Federal, State and Local Government policies and programs that relate to passenger transport.
10. Ensure that buses and coaches operate safely and effectively.

About the Bus and Coach Industry

Buses and coaches in Australia travelled 12.3 billion passenger kilometres (bpkm) in 2021-22 down from a peak of 22.11 bpkm in 2018-19. This is significantly higher than rail at 8.85 bpkm in 2021-22 and 17.81 bpkm. There are 97,469 registered buses in Australia.

Over several decades, the bus and coach industry has consolidated, with a fundamental shift from generational family-based bus companies in our cities to national and multinational businesses, especially in metropolitan areas. With contract reform, many smaller players have shifted their focus to being sole providers of charter service, no longer continuing route work.

The largest operators (in terms of fleet size and number of depots) are concentrated amongst metropolitan Australia.

In 2020, 88.9% of public transport passenger route service buses and 59.6% of school buses were manufactured in Australia, the majority built by Australian body manufacturers on a European or Asian chassis; the remainder being fully imported buses and coaches primarily from Asia, with some from Europe and South America.

Our Industry, which includes bus operators, bus manufacturers and parts and service suppliers, employs more than 85,000 people nationally. Comprehensive data on the bus industry, the fleet, the suppliers, operators, and their passengers can be found on the bic.asn.au website.

Response to the Draft Heavy Vehicle National Law Amendment Bill and Heavy Vehicle National Amendment Regulations

The Bus Industry Confederation (BIC) welcomes the opportunity to provide feedback on the exposure drafts of the Heavy Vehicle National Law Amendment Bill and Heavy Vehicle National Amendment Regulations on behalf of the bus and coach industry.

As there are no specific questions outlined in the consultation paper, BIC has made a general response and identified some areas for NTC's attention that specifically relates to the bus and coach industry and to reiterate what was provided in our response to the C-RIS.

Executive Summary

The lack of focus and recognition of the unique aspects of the bus and coach industry and our "moving people" mission has been repeatedly highlighted throughout the consultation process. We have previously suggested the inclusion of a distinct section specifically dedicated to the bus and coach industry, which has not been considered for inclusion in either the Bill or the Regulations. This would not only provide clarity but also enable Ministers and bureaucrats to clearly understand the implications of any proposed changes and the specific circumstances applying to the bus and coach industry.

Furthermore, the absence of a tailored approach has led to challenges in aligning regulatory frameworks with the operational realities faced by the industry. The bus and coach sector is highly regulated at a State and Territory level as well as nationally and consequently operates under a different set of conditions compared to other forms of heavy vehicle transport, including unique safety requirements, scheduling complexities, and workforce considerations. Recognising these factors is critical to ensuring that any policy or regulatory changes are both practical and effective for bus and coach sector.

Fatigue Management

1. Record keeping requirements

In our submission of November 2023, BIC highlighted that State governments require bus and coach companies to maintain specific records which are unique to our sector and are used by operators to assist with their operations, as well as providing evidence of compliance. These records include driver shift instructions, driver rosters and vehicle movement records.

Currently, under the Exposure Drafts, the definition of supplementary records is not clearly established. It is crucial that these bus specific records be formally recognised as supplementary records in the legislation, or at the very least, be acknowledged as such.

BIC continues to endorse the shift to Electronic Work Diary (EWD's); however, we also support the continued use of paper-based work diaries, especially crucial for small regional bus operators facing limited telecommunications connectivity.

2. Fatigue Regulated Heavy Vehicles

We refer to the Exposure Draft Amendment Regulations, specifically Part 2 on Maximum Work and Minimum Rest Requirements, as outlined on page 3 of the draft.

This section addresses "standard hours" and specifies the following:

For the purposes of section 249 of the Law, the following standard hours are prescribed—

- (a) for the solo driver of a fatigue-regulated heavy vehicle—the hours set out in Table 1 of Schedule 1;*
- (b) for the solo driver of a fatigue-regulated bus—the hours set out in either, but not both, Table 1 or Table 2 of Schedule 1;***
- (c) for the driver of a fatigue-regulated heavy vehicle who is a party to a two-up driving arrangement—the hours set out in Table 3 of Schedule 1*

The clause highlighted in bold refers specifically to the standard hours for solo drivers of fatigue-regulated buses, which are referenced in either Table 1 or Table 2 of Schedule 1. However, it is important to note that both these tables outline **alternative compliance hours** rather than standard hours.

Given this ambiguity, we seek clarification on whether the standard hours for solo bus drivers have been revised or changed under this amendment. We are concerned about the potential implications for solo drivers in the bus and coach sector, as the current reference to alternative compliance hours may not align with the intended regulatory framework for standard hours.

In addition, we would like to highlight that there has been no clear consideration of a consistent approach to addressing the distinction between adults and passengers for buses with a Gross Vehicle Mass (GVM) over 4.5 tonnes that are fitted to carry more than 12 adults. Currently, there are inconsistencies in the language used to determine the number of adults these vehicles are designed to carry, as well as discrepancies in how individuals are classified within the regulatory framework. Specifically, there is a lack of alignment between various legal provisions, guidelines, and industry standards when it comes to how "adults" and "passengers" are defined and differentiated.

At present, the classification of individuals as "adults" versus "passengers" can vary depending on the context. In many instances, "passenger" is used as a blanket term encompassing all individuals, whether adults or children. However, when it comes to buses with a GVM over 4.5 tonnes, the language shifts to a focus on "adults," which introduces unnecessary complexity and potential confusion in the interpretation and enforcement of regulations. We suggest referencing passenger/s which is the same terminology as currently used in Heavy Vehicle National Law - **passenger**, of a vehicle, means any person carried in the vehicle other than the vehicle's driver or someone else necessary for the normal use of the vehicle.

3. Fatigue Enforcement

Under the Draft Exposure Amendment Bill, Division 3, Section 254 proposes changes to the maximum penalties for drivers of fatigue-related heavy vehicles who commit offences. Specifically, the amendment seeks to adjust how fatigue breaches are categorised and penalised based on the severity and frequency of work and rest violations.

In this context, the BIC has raised concerns regarding the potential ambiguity of the draft, particularly in how Level 2 breaches are defined. According to the current wording, a Level 2 breach is described as a combination of three or more incidents of minor violations and substantial violations, or alternatively, more than three minor violations. This categorisation creates confusion about the clear distinctions between the levels of breaches, especially when determining the relative severity of the violations.

To address this ambiguity, the BIC recommended in our earlier submission on the C-RIS in refining this definition by limiting the number of substantial incidents to one, and the number of minor incidents to no more than two, in order to provide a more transparent and consistent framework for enforcement. This would help ensure that each level of breach is clearly distinguishable, allowing for better understanding and application by both drivers and regulators.

However, despite these recommendations, the language in the current exposure drafts does not seem to clarify the issue. There remains uncertainty regarding how the terms “minor” and ‘substantial’ are to be interpreted in practice, and whether the proposed changes would address the concerns about overlap and confusion in categorising breaches. Without further clarification, there is a risk that enforcement could become inconsistent, or that drivers may struggle to understand the full scope of their obligations under the amended regulations.

Definition of “unfit to drive”

Both Exposure Drafts do not provide a clear definition of "unfit to drive." While both documents highlights that drivers must not operate heavy vehicles while fatigued, they also broaden this to include a requirement that drivers must be in general good health and fitness to operate all heavy vehicles. However, this concept of "fitness" is subjective and open to interpretation.

Typically, when someone is deemed "unfit to drive," it means they fail to meet the necessary physical, mental, or legal criteria to safely operate a heavy vehicle. This could encompass conditions such as poor eyesight, hearing impairment, or chronic health issues like epilepsy, heart disease, or uncontrolled diabetes.

We believe that the drafts would benefit from greater clarity and more specific guidance on how to assess a driver’s fitness to drive a heavy vehicle. Providing a clear, standardised process for evaluating fitness would help eliminate ambiguity and reduce the potential for misinterpretation or inconsistency in enforcement, while ensuring that the law and regulations are both fair and practical for all parties involved.

The lack of a clear definition of "unfit to drive" presents an additional challenge in addressing the ongoing shortage of bus drivers. The ambiguity surrounding the criteria for fitness to drive could exacerbate the issue by making it more difficult for bus operators to assess and manage their driver workforce effectively, with an industry already struggling with a significant shortage of qualified bus drivers, adding uncertainty around who is considered "fit" or "unfit" to drive could impact our ability to attract and retain drivers.

In addition, the proposed amendments create a new duty not to drive “while unfit”. The term “unfit” is defined as “not of sufficiently good health or fitness to drive the vehicle safely.” This broad definition could cause problems in practice, given the current demographics of bus drivers across Australia, with most 50-60 years of age, and a good proportion in their 60s and 70s, when health issues become more prevalent.

We believe that the definition in the HVNL should be tightened up to focus on health issues that the driver should have known about, rather than being able to be judged as having “after the fact”. For example, a definition of “unfit” as “having an injury or illness that in the opinion of a physician would impact the ability to drive the vehicle safely.” This would then tie in with the various medical assessments undertaken by bus drivers when applying for or renewing their Bus Driver Authority.

Whilst we support the idea in its intent, until more defined and prescriptive definitions and applications are provided, the current proposal is subjective to a person’s opinion and very difficult to practically apply in real-world circumstances.

Safety Management Systems

We refer to the change in the legislation in relation to the retirement of the old Heavy Vehicle Accreditation Scheme (mass, fatigue, maintenance management, etc) in favour of an accreditation scheme based on implementing a Safety Management System. This is a welcome move, however the legal process for the regulator to grant accreditation is restrictive. Specifically, section 461(2) of the Bill states:

“In deciding an application for heavy vehicle accreditation, the Regular must have regard to the following:

- (a) The results of any audits of the applicant’s safety management system carried out by an approved auditor in accordance with the audit standard.
- (b) Any relevant body of fatigue knowledge
- (c) The approved guidelines for granting heavy vehicle accreditation.”

Many bus regulators such as Transport for NSW (TfNSW) require bus operators to implement a Safety Management System and have that system audited as a condition of accreditation. If the granting of national safety accreditation is linked to an approved national audit, it may render the state-based bus accreditation and audit process void and potentially create duplicate red tape for operators even when their Safety Management System covers the same issues set out in the national regulation/guidelines.

We recommend mutual recognition of State/Territory government approved Safety Management System for bus and coach to avoid duplication.

The draft legislation also ignores businesses that may have accreditation for their Safety Management System under ISO 45001. As a result, we would recommend allowing more flexibility in 461(2) by:

- Changing the word “must” to “may” and
- Adding an additional sub-clause (d) “any alternative safety accreditation held by the applicant.”

Approved Sleeper Berths

We would like to draw to your attention to proposed changes in relation to approved sleeper berths for buses (refer to the Amendment Regulations Exposure Draft, page 15 and extract below from HVNL).

approved sleeper berth means—

- (a) *for a fatigue-regulated heavy vehicle other than a fatigue-regulated bus—a driver’s sleeper berth that complies with ADR 42 and is able to be used by the driver when resting; or*
- (b) *for a fatigue-regulated bus—a driver’s sleeper berth that—*
 - (i) *complies with a standard for sleeper berths that is approved by the responsible Ministers under [section 654](#); and*
 - (ii) *is able to be used by the driver when resting.*

Due to the ambiguity and the specific prescriptive definition of sleeper berths in buses, we recommend referencing the National Road Transport Commission's Sleeping Berth Standards for new buses manufactured after December 31, 2000, to provide context and clarification (***refer to Attachment A***).

Conclusion

Thank you once again for the opportunity to respond to the exposure drafts and hope that our feedback will have a positive impact and help drive meaningful changes, particularly in relation to the bus and coach sector.

We look forward to further engagement on this matter and are committed to working collaboratively to help shape its success.

If you would require any additional information or wish to discuss our submission please contact Glen Bortolin, National Operations and Policy Manager on glen.bortolin@bic.asn.au or (02) 6274 5990.

Attachment A



NATIONAL ROAD TRANSPORT COMMISSION

SLEEPING BERTH STANDARD FOR NEW BUSES MANUFACTURED AFTER 31 DECEMBER 2000

July 2000

**SLEEPING BERTH STANDARD FOR NEW BUSES
MANUFACTURED AFTER 31 DECEMBER 2000
{For the Purposes of the Road Transport Reform (Driving Hours) Regulations}**

DEFINITIONS

Sleeping Berth - A place set aside in a commercial bus where a driver may sleep while the vehicle is being operated by another driver.

Self-illuminating - A luminescent material which can retain its luminescence for at least 15 minutes after the source of illumination is removed and which takes no more than 20 minutes to charge.

REQUIREMENTS

Every sleeping berth must comply with the following requirements:

1. Location

The sleeping berth must be located within the passenger compartment or be immediately adjacent and interconnected to it.

Sleeper berths should not be located so as to hinder free access to roof hatch emergency exits.

The longitudinal axis of the sleeping berth must be transverse to the longitudinal axis of the bus.

2. Dimensions and Shape

The sleeping berth must have at least the following internal dimensions:

Length: 1980 mm measured on the centreline of the longitudinal axis

Width: 600 mm for 1200 mm along the required length and 450 mm for the remainder of the length

Height: (Above mattress) 800 mm for 1200 mm along the required length and 630 mm for the remainder of the length.

Corners: Vertical corners and the horizontal roof corners may be truncated to not exceed a radius of 270 mm.

The mattress surface must be substantially level when the vehicle is standing on a roadway surface with a crossfall to the left side of the vehicle of 3%.

3. Access

Access openings must be provided, allowing ready entry and egress for the occupant without the assistance of other persons. Access openings must have the following minimum dimensions:

a) Berths within passenger compartments

At least one opening 600 mm in one direction and 900 mm in another direction in the case of a single doorway or opening with direct access to the passenger compartment; or

b) Berths adjacent or interconnected to passenger compartment

At least two openings 600 mm high and 600 mm wide, in different panels of the compartment, with at least one having direct access to the passenger compartment.

4. Occupant Safety

The sleeping berth must meet the design requirements below for protective interior surfaces, occupant retention and structural strength:

- (i) The sleeping berth interior must be free from potentially injurious projections. Brittle fittings such as lamps, switches, mirrors or communication devices that may shatter in a crash should be recessed or protected. [All hard edges in the sleeping berth interior contactable by a 165mm diameter sphere must present a radius of curvature of at least 5mm.](#)
- (ii) Internal surfaces of the berth must be padded to provide an energy dissipation equivalent to that required by ADR 3/02 clause 5.9 for contactable areas of seats.
- (iii) The berth must be so constructed that a 95th percentile male occupant as defined in SAE J833 May 89 - "Human Physical Dimensions" is retained within the berth:
 - (a) when the occupant in the berth is subjected to a deceleration of 20 times the acceleration due to gravity in a forward direction relative to the vehicle.
 - (b) when the side wall of the berth is impacted by the occupant subjected to a deceleration of 4 times the acceleration due to gravity in a direction transverse to the vehicle. Window glass shall be considered to provide no assistance in meeting this requirement.
- (iv) Conformance to these requirements may be demonstrated by strength calculation or static load testing in the case of berths with rigid wall and door construction. For static tests, the load must be sustained for at least 0.2 seconds.

Where flexible materials form part of the occupant restraint system, compliance may be considered to be demonstrated if the flexible restraint barrier retains the occupant when tested in accordance with the impact test procedure in AS/NZS 4034:1992 "Motor Vehicles - Cargo barriers for occupant protection" at energy ratings of:

- (a) 100 kg for clause 4 (iii) a
- (b) 20 kg for clause 4 (iii) b
- (v) Where a sleeping berth is located within or adjacent to the bus luggage compartment the dividing walls must be designed to withstand the impact loads of luggage in the event of an accident.

This requirement will be deemed to be met if the dividing wall is calculated to withstand the distributed force imposed by the luggage bearing directly on it, assuming a 100 kg/m^3 density of luggage, 20G deceleration for a rear facing wall and 4G deceleration for all other walls.

The luggage volume to be used in this calculation is that occupying the space which directly impinges on the wall area.

The force to be withstood in kilonewtons is therefore:

- (a) For a rear facing dividing wall: Force kN = $20 \times \text{luggage space volume (m}^3)$
- (b) For a side or front facing dividing wall: Force kN = $4 \times \text{luggage space volume (m}^3)$

- (vi) A restraint system that has to be closed by the occupant, must be easy to operate from inside the berth and any latching devices for the system must be protected against accidental opening.

5. Protection against Exhaust System and Fuel System

A sleeping berth must be sealed against the entry of exhaust gases and insulated against heat input from adjacent exhaust piping. It must not be possible for defects in the fuel system to result in fuel leakage or fumes entering the berth.

6. Communication with Driver

A facility to enable its occupant to readily speak to the driver must be provided within a sleeping berth. If the occupant can't speak to the driver directly, the facility may include telephones, intercoms, or speaker tubes.

7. Closures

Closures must meet design requirements for privacy, transmission of light and sound, external sealing and signage.

- (i) The berth must be separated from the passenger compartment by a closure which can be readily opened or removed in an emergency **whether or not there is something blocking the enclosure on the inside of the berth**. The closure must completely cover the opening and reduce the ingress of light and the transmission of sound from the passenger compartment to levels which do not inhibit sleeping.

The sound level reduction requirements are detailed in Section 8.

The illumination level reduction requirements are detailed in Section 10.

Closures may be designed as part of the occupant restraint system or remain separate from it. Flexible screens or curtains may be used for interior access closures.

- (ii) A dressing space, if provided adjacent to the berth, must be capable of being visually separated from the passenger compartment by a curtain or flexible screen which will not impede access to the berth.
- (iii) Where an exit is provided to the exterior of the vehicle, the closure must be sealed against the ingress of dust and moisture and must be provided with both interior and exterior opening mechanisms.
- (iv) Where latches are used to secure closures, clear instructions concerning the method of operation must be placed on or close to the closure on both sides of the opening. The instructions must be printed on self-illuminating material where internal to the vehicle and on retroreflective material where external to the vehicle.
- (v) An external door to a sleeping berth must be identified with an adjacent external sign of retroreflective material with the inscription "SLEEPING BERTH EMERGENCY EXIT" in letters at least 50 mm high in a colour which contrasts with the background.

8. Protection against Noise and Vibration

The berth must be insulated from vibrations and noise, including conversation from adjacent seating, which are likely to disturb the occupant's sleep.

The maximum recorded noise level* measured 200 mm above and on the centreline of the mattress at the head end must not exceed:

- (i) 80 dB(A) when the vehicle is accelerated as rapidly as possible from rest to maximum limited speed on level road; and
- (ii) 76 dB(A) when travelling without acceleration at maximum limited speed on level road.

The closure separating the sleeping berth from the passenger compartment should have acoustic attenuation properties to reduce noise transmission into the berth from

the passenger compartment by a minimum of 15dB(A). This may be established by simultaneous sound level measurements on either side of the closure, using a suitable sound source such as a radio receiver to replicate passenger conversation. The test should be conducted with the vehicle engine stopped and with the reference source sound level sufficient to provide a measurable increase above ambient sound level in the berth.

***Note:** Driver interviews were used to identify sleeping berths that provided a good environment for sleeping/resting and factors that might reduced the quality of rest. The critical sleep disturbance issue for resting drivers was found to be sudden peaks in noise level from gear changes and hard accelerations etc. Accordingly, an averaging L_{eq} approach was not used to specify the limits above. Berths said to provide good accomodation were tested for a range of characteristics including noise levels. Good berths exhibited an average noise level in the range 72 to 78 dB(A) with peaks of up to 83 dB(A). The standard above provides a 3 dB(A) reduction on the measured limits.

9. Heating, Cooling and Ventilation

A sleeping berth adjacent to a heat source such as the engine compartment or exhaust system must be insulated against heat input from that source.

A supply of refrigerated and heated air must be provided, capable of maintaining the internal temperature at a stable level conducive to sleep. The air flow within the berth must be adjustable by the occupant to create air movement in the region of the occupants face. A minimum air velocity of 0.5 m/s would be considered to meet this requirement.

A sleeping berth located other than in the passenger compartment must additionally be provided with an adjustable source of fresh air ventilation, free from dust and water, not dependent on a forced flow device to provide the specified air velocity.

10. Lighting

Lighting controlled from within the berth must be provided to illuminate the entire berth and to provide a level of illumination sufficient to permit reading in the region intended for the occupier's head. Indicative figures of 20 lux for background lighting and 80 lux for reading surface intensity would be considered satisfactory.

The closure separating the berth from the passenger compartment and the curtains provided across external windows must reduce the entry of light to a level which would not inhibit sleeping. An indicative figure of 2 lux (maximum) of interior surface illuminance under external daylight conditions would be considered satisfactory.

11. Interior materials

The interior lining and trimming of a sleeping berth must be made of a material that is not readily flammable.

12. Furnishings

Furnishings provided must include:

- (i) A mattress of innerspring or high density cellular foam construction, of 150 mm minimum thickness, fitted with a readily removable, washable cover. The mattress must cover at least the minimum berth area.
- (ii) A pillow.
- (iii) Bed linen including a pillowcase, two sheets and a blanket.
- (iv) An enclosure for garment storage including hanging or horizontal storage space for a jacket and shirt.

13. Dressing area

An area of floor contiguous with the berth should be provided to facilitate occupant dressing. Provision of this dressing space is optional for vehicles not used exclusively for two-up driving where removal of passenger seats would be required to create the necessary floor space. The area should be screened from the passenger compartment and should have the following minimum dimensions:

- (i) Where the height projected vertically above the area is less than 1800 mm
 - Width **standing area** 500 mm
 - Standing Area** 0.4 m²
- (ii) Where the height projected vertically above the area exceeds 1800 mm
 - Width **standing area** 500 mm
 - Standing area** 0.25 m²
- (iii) **The minimum vertical height of the dressing area (over the minimum standing) area must not be less than 1650mm.**
- (iv) Surfaces directly adjacent to the dressing area must be free from potentially injurious projections.