

19 October 2015

Mr James Williams
Manager Policy - Compliance and Technology
National Transport Commission
628 Bourke Street
Melbourne VIC 3000

Discussion Paper on Developing a Heavy Vehicle Fatigue Data Framework

Dear Mr Williams,

On behalf of the jurisdictions of the ANZPAA Road Policing Forum and ANZPAA Heavy Vehicle Reference Group, thank you for the opportunity to provide feedback on the National Transport Commission (NTC) discussion paper *Developing a Heavy Vehicle Fatigue Data Framework*.

Please find attached for your reference individual jurisdictional feedback on the issues and proposals explored in the discussion paper (Appendices A to E).

Although jurisdictions share a number of the same views and concerns, each submission should nevertheless be reviewed and considered individually to ensure contextual comments and issues are identified. The views expressed in this submission should also be considered together with the verbal feedback that has been provided by police during the consultation process.

ANZPAA appreciates the consultative approach taken by the NTC on these proposed improvements in data collection. It is anticipated that the feedback provided by police jurisdictions will contribute to the development of practical and appropriate NTC recommendations for relevant Ministers regarding the best way to achieve a national framework to collect and analyse fatigue data.

Should you have any further questions or comments concerning this submission Melanie Atlee, Assistant Manager Policy and Research is available to assist and can be contacted via email on melanie.atlee@anzpaa.org.au.

Yours sincerely,



Jean Byzel

Acting Director, Strategic Services

Appendix A

Victoria Police (VICPOL) response

1. Do you agree with the fatigue issues identified in the discussion paper? Are there other issues that should be included?

The fatigue related issues identified in the paper are relevant, critical safety matters, which demand immediate resolution. The lack of resolution of the counting time issue, lack of short rest break requirements for 2-up BFM drivers and 100km local work diary requirements (record keeping) present clear inconsistencies with the intent of the law and recognised fatigue risk behaviours. In addition however, scheduling practices should also be addressed. Often, fatigue issues are caused by a trickle-down effect from priorities and work schedules set by operators and schedulers. As part of this data-collection framework, Victoria Police believes the NTC should investigate the work scheduling practices of operators and schedulers, including:

- how they compare between companies across the industry
- how they align with the intent and requirements under the HVNL
- the likelihood that rostering and scheduling records might offer greater data integrity/accuracy about work practices than that reported and recorded by drivers.

The results would provide insight into heavy vehicle safety and best practice, and could in turn provide new insights into fatigue regulation and enforcement.

2. What is your view on the proposed prioritisation of fatigue issues identified in the discussion paper?

Agree with the general prioritisation, as far as the data framework is being addressed as a necessity, but Victoria Police recommends work on the additional considerations (see answers to Question 1) should also be addressed.

3. What other data collection activities exist in government or industry that the data framework should consider?

VICPOL is already working on a data collection project addressing the involvement of fatigue in collisions resulting in serious infrastructure damage, unexplained rollover/run off road, serious injury, and death. The data is being collected through reports from police members who attend collisions.

4. Do you agree with the need for more comparable and accessible fatigue data to underpin future reforms? If not, what alternative approach do you propose?

From Victoria Police's perspective, there have been enough studies conducted which identify existing work and rest practices, allowed by the law, as high risk and which warrant firmer controls on heavy vehicle driver work and rest schedules. However, if there is a push to collect even more data on this issue, it should not be done through surveys of industry bodies or drivers, who have a definite bias.

Impartial data should be collected through unbiased, technological means such as Electronic Work Diary records and through traffic monitoring technologies and systems such as Safe-T-Cam. The approach should be to standardise Electronic Work Diaries in the industry, as well as to implement Safe-T-Cam-like technologies in States that do not have it.

5. Do you support an open data approach to fatigue data? Consider in your response the benefits and challenges of open data compared to other data handling approaches.

An 'open data' approach whereby aggregated data can be shared between relevant parties is supported in theory. However, establishing a national system which allows this has many considerations (cost, resourcing, system updates etc). Development of such a system should be viewed as part of the development of a broader national system where data from common heavy vehicle electronic monitoring and enforcement infrastructure can be drawn.

6. What is your view on the proposed framework methodology relating to proposed terminology and coding, proposed system changes and proposed process changes?

There is insufficient information about proposed terminology and coding, system and process changes to comment on. Victoria Police does note that any proposed changes in 'fatigue data collection' should not take place as a single project, but should align with other projects (including NHVR/ANZPAA/NCEOF projects around establishing national data sharing protocols, EWD data collection, Safe T Cam data etc).

It should also be noted that any new 'coding' or systems establishment would have an associated cost. It needs to be assessed what these costs would be and who would fund them.

7. What is your view on the validity and characteristics of a fatigue likelihood scale?

The proposed scale is highly subjective, and subject to the "crash investigator's" understanding of fatigue issues and capacity to assess an incident and its circumstances. Additionally, the framework does not address the feasibility of identifying "complete loss of situational awareness" or any other indicators after a crash has occurred.

The scale also raises the question of fatigue knowledge, training, experience and expertise. A "crash investigator" may be an individual with extensive experience with heavy vehicle enforcement, or may be a general duties member of police with no prior experience investigating a heavy vehicle collision or knowledge of fatigue. Investigation, using the proposed scale, would likely result in very different and inconsistent conclusions depending on the conducting 'investigator'.

8. What is your view on the proposed framework principles?

No issues with the framework principles.

9. What is your view on the data collection and research activities proposed in the discussion paper?

As addressed in Question 4, Victoria Police is undertaking its own data collection activity around heavy vehicle driver fatigue.

What is clear is that dependable data cannot be gleaned from answers to surveys following an incident which police attend. Drivers have no incentive to provide accurate answers about their work and rest schedules. Particularly where a driver may be culpable it is not in their interests to admit to a lack of sleep, rest, tiredness or other behaviours that would indicate unsafe driving/non-compliance with the law. As previously advised to the NTC, risks of using 'survey' methodology in this environment include:

- Enforcement attending the scene of a heavy vehicle incident will not generally have the time, resource or specialised knowledge to collate and verify information about work, sleep and rest provided by drivers.
- It is not in the interest of a driver deemed at fault in a collision to provide accurate answers when questioned about their work/rest schedules. 'Information' collected in this way will skew all information and 'findings'.

Victoria Police strongly advises that the NTC does NOT rely on 'surveys' to collect data to inform decision making, but instead pursues unbiased and objective data collection methodologies and sources.

10. *How best should the data framework be funded and governance arranged? Consider in your response organisations that could be best placed to undertake responsibility for the framework.*

Benefits, risks and all implications should be examined, detailed and compared against the potential costs of this framework.

From a VICPOL perspective, several of the proposed methodologies would not provide accurate, useful data and it would not appear viable to alter existing systems and processes to collect the suggested data.

Surveys and questioning of drivers who clearly have an interest in concealing any offending or unsafe behaviour following an incident, cannot be used as 'data' to inform policy decision making.

11. *Other comments*

From Victoria Police's perspective, there have been enough studies conducted to warrant firmer controls on heavy vehicle driver work and rest schedules. The HVNL allows a maximum limit of 12 hours of work in 24 hours and evidence is widely available demonstrating that drivers are exceeding this limit. Due to the counting time rule, enforcement is unable to enforce this work limit and drivers are manipulating the system to work up to 16.25 hours in 24 hours. These schedules are in extreme contradiction to the AFM scheme which recognises the work practices possible by Standard Hours drivers as dangerous and should only be allowed if managed within a strict AFM accreditation framework.

Appendix B

Queensland Police Service (QPS) response

1. Do you agree with the fatigue issues identified in the discussion paper? Are there other issues that should be included?

Yes. Jurisdictional discussions included the issue of 'single driver' in a two up scenario. The focus was on whether or not the second driver could achieve an adequate 'rest break' whilst sleeping within the cabin. QPS discussions resolved that a fatigue breach in these instances would be difficult to prove and that any action would not necessarily result in any benefit to the transport industry.

2. What is your view on the proposed prioritisation of fatigue issues identified in the discussion paper?

Fatigue issues as noted in discussion paper table, pp.1-2:

- 1 – 5 are most relevant to on road Compliance and Enforcement (C&E)
- 6 – 8 are more relevant to administrative functions.

In any case, the re-prioritisation of fatigue issues or inclusion of others may be undertaken in the future as required.

3. What other data collection activities exist in government or industry that the data framework should consider?

- Insurance claims/payouts.
- OHS reportable incidents and investigations.
- Coronial reports in relation to heavy vehicle incidents.

4. Do you agree with the need for more comparable and accessible fatigue data to underpin future reforms? If not, what alternative approach do you propose?

Yes. The CRC Alertness forums have proven to be a proactive way for industry and C&E representatives to engage in open debate and enhance the 'evidence base' for fatigue management.

5. Do you support an open data approach to fatigue data? Consider in your response the benefits and challenges of open data compared to other data handling approaches.

Yes. All government data is moving towards open source and fatigue related data should not be an exception.

6. What is your view on the proposed framework methodology relating to proposed terminology and coding, proposed system changes and proposed process changes?

Straightforward project/program methodology.

7. What is your view on the validity and characteristics of a fatigue likelihood scale?

The 'scale' appears to be more focused towards research related activities and hence its' application for operational C&E activities is unclear.

8. What is your view on the proposed framework principles?

As above.

9. *What is your view on the data collection and research activities proposed in the discussion paper?*

The proposed three groups of data collection are straightforward.

It is noted that the QPS maintains a positive and proactive relationship with university researchers, for example CARRSQ, who could also be included in the Group 2 activities.

10. *How best should the data framework be funded and governance arranged? Consider in your response organisations that could be best placed to undertake responsibility for the framework.*

There is very limited State level funding available to support national initiatives. As such, the framework owner must be funded 'nationally' to support the administrative and ICT functionalities.

There may be opportunities to leverage off road safety research funding, including tertiary institutions and insurance sponsored research.

11. *Other comments*

The HV fatigue data framework cannot be achieved in isolation. There is currently work still outstanding to achieve national standardisation/harmonisation of not only legislation but also policy and on-road C&E procedures. The on-road application of the 'counting time' rule is still being debated across jurisdictions and continues to be raised as an issue in addition to CoR and 'nose to tail' shifts.

The progression of 'intelligent telematics' will gradually provide a level of standardisation, however, the National Data Sharing Protocol and Electronic Work Diary must be delivered in conjunction with the fatigue data framework if they are to achieve any actual beneficial outcomes to on-road C&E.

Appendix C

South Australia Police (SAPOL) response

1. *Do you agree with the fatigue issues identified in the discussion paper? Are there other issues that should be included?*

SAPOL believes that there is cause for change in the fatigue regulations to prevent nose to tail shifts from occurring. SAPOL officers are seeing evidence of it occurring on the road and of the practice becoming more commonplace. Examples of nose to tail shifts detected on the road have been provided to the NTC.

Agree short rest breaks for BFM two up drivers is required to be addressed. Currently a BFM two up driver can drive non-stop for up to 14 hours before being required to take a rest break. It was an apparent oversight in the 2008 model law. It was identified at the time and should have been dealt with during the transition to the Heavy Vehicle National Law.

A new issue has emerged where drivers alternate between solo and two up driving and what stationary rest requirements apply. It is common to see a journey commence as a solo operation, then have a two up arrangement and then revert to solo driving. In such cases, the driver has not had a stationary rest break as required within the 24 hour period (but if part of a two up combination, is not required to have stationary rest within a 24 hour period). Quality of sleep is affected for claimed major rest break while the HV is in motion.

The HVNL has identified different work rest requirements between solo and two up working arrangements, whether standard or BFM, and has subsequently drawn up different tables in Schedule 1.

The requirement for two up standard drivers to have a 10 hour continuous stationary rest break in any period of 52 hours due to the fatigue levels from reduced quality of sleep in a moving fatigue related heavy vehicle. (82 hours BFM two up)

The requirement for a solo standard or solo BFM driver to have a minimum of 7 hours stationary continuous rest within a 24 hour period.

The problem exists with regard to counting 24 hour periods and which table to follow in schedule 1 when applying fatigue rules. For example if a driver has been involved in some part of two up driving, are they now required to have a 10 hour continuous stationary rest break in any 52 hour (82 hour BFM) period, even though they are not engaged in two up arrangement for the whole of that period?

Similarly a driver commencing solo and then finishing as a two up at the end of the 24 hour period and is resting in a moving fatigue related heavy vehicle, is not compliant with the stationary rest requirements under the solo arrangement.

Or if the driver commences as a two up, drives first for four hours then rests seven hours in a moving fatigue related heavy vehicle, then commences solo work over the next thirteen hours. At what point does the 24 hour period commence? From the last stationary continuous rest break before beginning two up work, or from the end of the seven hour rest break in a moving fatigue related heavy vehicle?

If they are not breaching any of the rules changing from solo to two up at any stage during a 24 hour period as it is not crystal clear in the HVNL, then this practice poses an added fatigue risk as there is uncertainty as to what Table under Schedule 1 applies.

2. *What is your view on the proposed prioritisation of fatigue issues identified in the discussion paper?*

Agree nose to tail shift is the highest priority. The extended work hours are compounded by other factors such as local work which is not being recorded in work diaries and also non driving work (such as loading/unloading) which is not being recorded in work diaries and quality of alleged sleep when drivers change from solo to two up, to solo, missing stationary rest (it is strongly suspected the two up arrangement is a 'phantom driver' in most instances which further compounds the fatigue risk)

3. *What other data collection activities exist in government or industry that the data framework should consider?*

Who is responsible for formatting of the data, for example, hard copy work diary pages. If it requires entry of data into some form of data base or scanning and forwarding (rather than providing hard

copy) it will constitute a significant drain on resources and divert police from core activities. Near misses will be grossly under reported as it can only rely on self-reporting if not witnessed, complained of, etc.

4. Do you agree with the need for more comparable and accessible fatigue data to underpin future reforms? If not, what alternative approach do you propose?

Yes, with the proviso that immediate fatigue risks that have been identified (eg nose to tail shifts) is sufficiently addressed rather than delaying for collection of data. Fatigue experts agree a risk exists, police have provided evidence of the practice occurring yet industry wants further evidence. Safety must take precedence so it is wise to err on the side of caution while data is collected for future reform.

7. What is your view on the validity and characteristics of a fatigue likelihood scale?

The fatigue likelihood scale is too restrictive in the presented format (e.g. consider faculty impairments such as slurred speech and other indicators – drowsiness). Other factors may also contribute to both fatigue likelihood and poor decision making (e.g. drug-use).

9. What is your view on the data collection and research activities proposed in the discussion paper?

It is suggested in the paper that the minor crashes which are not subject to full investigation present an opportunity to capture and record data without significant impost on resources or time. These crash types will present an opportunity to gather data but it must be realised if it is only relying on police asking questions and accepting the answers of drivers, then the information is highly likely to be of little value i.e. drivers will opt to not implicate themselves if there is an alternative. If fatigue is suspected then it could involve protracted inquiries to establish time lines.

Similarly, with the 3 question concept, data will be skewed if purely relying on a driver's answer without some form of cross checking. The greatest demonstration of this is the current resistance to electronic work diaries by industry as it will expose them to too many fatigue breaches (i.e. it is harder for them to lie in the EWD than the WWD). The driver option (BFM/AFM/standard) makes sense and is a reasonable question but does pose some problems, such as some police who attend a crash scene may not be aware of exactly what AFM/BFM/standard options are. I'm not convinced we will get much honesty when asking questions as to amount of sleep in the past 24/48 hours either, when assessing fatigue.

Based on above, I believe a more comprehensive examination of the circumstances around any HV crash would be required to make the information/data collected reliable. That would obviously have implications on resourcing of the investigating agencies, so an agreement as to level of involvement would be required. SAPOL would have a limited capacity to respond when considering geographical location of crashes, availability of police with suitable level of expertise relating to HV driver fatigue, which would be the heavy vehicle enforcement group based in Parks.

11. Other comments

The paper at page 50 identifies completed work diaries as a data collection option – *filled up work diaries that are returned to road agencies...*

Filled work diaries are retained by the driver, not returned to road agencies, so this should be discounted as a source of data.

The issues discussed around recording of data against vehicle collisions may be problematic as it would require change to I.T. systems (vehicle collision reporting system) and have costs associated with it. Although in SA a heading of 'fatigue' is available, it is not linked solely to fatigue regulated heavy vehicles.

Appendix D

New South Wales Police Force (NSWPF) response

1. *Do you agree with the fatigue issues identified in the discussion paper? Are there other issues that should be included?*

The fatigue issues raised in this paper are those that have arisen due to the differences in counting of time by jurisdictions with the introduction of the fatigue reform model legislation in 2008. Victoria and South Australia accepted these provisions with the counting of work time being from any rest break and New South Wales and Queensland remained with counting of time starting from one or more major rest breaks. With the introduction of the Heavy Vehicle National Law (HVNL) in 2013, this process of counting of time was adopted by participating jurisdictions including Victoria and South Australia however, Victoria and South Australia have maintained that this has permitted a flawed process for the counting of time, as it allows greater leeway for drivers and allows up to 16.25 hours of work in 24. The NSWPF does not disagree with this assertion and believes that all jurisdictions should be operating from the same provisions for the counting of time.

If the HVNL were to be amended by introducing the model fatigue laws introduced in 2008 this would in most circumstances overcome the issue of counting time.

In relation to the issue of insufficient sleep, numerous studies have been conducted in this area and while in some cases may be a causation factor in a crash, the ability to determine sleep patterns or quality of sleep is in itself outside the realms of on-road enforcement. The entire fatigue issue is reliant upon drivers complying with the requirements of driving hours and partaking of rest periods as required. Further sleep patterns and when a driver undertakes rest breaks are up to the driver. However if drivers can be compelled to undertake further rest who would ensure this was to happen or prove that it did happen? The quality of a driver's sleep patterns would appear to be outside policing other than where a driver is to be charged with criminal matters. If it were available, their sleep patterns or undertaking proper rest breaks may play a role in the investigation. If this information was available, as not all investigations permit or legislative requirements may not permit an interview, and if it did, the accused driver is not required to say anything other than provide a version of a crash.

Night time driving – As per item 1.

Continuous hours – BFM and AFM has always been an issue in regards to fatigue. If the community is so concerned on driver's rest breaks and sufficient sleep requirements why are we allowing extension of driving time when all the studies are indicating they should not be permitted to drive whilst fatigued? There is no necessity for an investigation of a crash to indicate a driver of a regulated heavy vehicle was operating under BFM or AFM. If the driver was operating within the legislation governing these extended fatigue driving hours and was within the limits of the legislation then there is no necessity to record information other than they were within the parameters permitted to operate under.

Impact of Local Work – The impact of how drivers abuse local work and then carry out 100+km has continued. NSW had several crashes where drivers were carrying out local work far in excess of

normal driving hours by underhanded cash payments. It would appear that the carrying and use of a work diary for all regulated heavy vehicles no matter what work is being conducted may prevent this type of activity. All local work should be examined more closely as part of the review.

Wellbeing of a Driver – Do not agree that this is an issue for policing. A driver is issued with a driver's licence based upon they are a fit and proper person to drive, in this case a heavy vehicle which applies an increased ability and training regime in NSW. An eligibility requirement before they are able to drive heavy vehicles is in place. Other issues come into play if the driver does not ensure they are fit and proper to drive and this applies to any driver not just of heavy vehicles. The issues raised are possibly medical and it is not up to police to ensure they are medically fit to drive. If they do then legislation is in place to have their driver's licence removed. If the driving hours are too long then why do we need experts to keep providing extended driving hours as we continue to argue that fatigue is bad. If so, reduce all driving hours to one time, e.g. no more than 12 hours in any one day or less if it is believed necessary.

2. *What is your view on the proposed prioritisation of fatigue issues identified in the discussion paper?*

Prioritisation of issues – Do not have an issue, however do have an issue regarding the wellbeing of a driver as a policing issue.

The issue raised in relation to a definition of fatigue - whilst the discussion paper raises numerous issues involving fatigue there is no specific definition of fatigue. This has been sought and discussed during the recent teleconference, however as indicated during these discussions there is no simple method of introducing a definition of fatigue. ATSB are quoted in relation to a definition of fatigue, however this remains a subjective issue when taking into account how jurisdictions define what fatigue is. In fact to say a vehicle that is involved in a head on collision where neither vehicle was overtaking is fatigue, at best is a guess, this may be distraction and nothing to do with fatigue. Or to say it happened on a road having a specific speed limit would equally apply.

Fatigue is not defined specifically in any papers both nationally and internationally. It is difficult to understand how fatigue will be defined when it is defined currently in s223 of the HVNL which appears to draw the same information regarding fatigue as generally feeling sleepy or lack of energy and motivation and this can be physical, mental or both. The final up shot is how you define mental fatigue or for that matter determine someone is suffering from mental fatigue and whether this will prevent someone from carrying out driving tasks. Notwithstanding any suffering from diseases or syndromes – is this going to be defined into HVNL? Do not consider that a single definition will be capable of covering every aspect of fatigue and no single or simple definition has been defined nationally or internationally. A simple definition is not possible as fatigue is so subjective and to arrive at a single definition that covers all which may or may not be challenged in court does not appear justified.

Table 2 set out on page 34 is also similar to those who may or may not be effected by alcohol or drugs and police would eliminate any criminal issue prior to venturing down the path of a driver being affected by fatigue.

Other issues of risky behaviour may be a number of issues relating to a driver and inevitably would incur other enforcement action other than they were perhaps affected by fatigue.

The only method that could be imposed for a driver to respond to the suggested three questions would be if legislated. However the HVNL does not govern or control what is asked or how a crash is investigated as many heavy vehicle crashes raise significant indictable matters where any

investigation is governed by the rules of obtaining evidence. Notwithstanding the right of a driver to remain silent and not provide any information.

3. *What other data collection activities exist in government or industry that the data framework should consider?*

Perhaps ALEIN or CRIMTRAC may be a source of information regarding heavy vehicles – whether this is able to provide the data being suggested to be collected will need to be explored further.

4. *Do you agree with the need for more comparable and accessible fatigue data to underpin future reforms? If not, what alternative approach do you propose?*

What reforms are being anticipated? As the issue of fatigue has been hailed as such a significant causation factor in relation to heavy vehicle crashes and associated costs with these incidents, with drivers claiming they are fatigued due to delivery expectations, no expansion of working hours should be contemplated. The only reform should be to reduce the ability to drive not to expand driving time limits. Perhaps the removal of BFM and AFM and place all drivers on a set period would alleviate these issues.

5. *Do you support an open data approach to fatigue data? Consider in your response the benefits and challenges of open data compared to other data handling approaches.*

As indicated in a number of responses from the NSWPF there will be no open approach of providing data? Firstly because the NSWPF does not record fatigue data. The only information would be the number of penalty notices or legal actions taken in relation to offences where non-compliance with work/rest hours by drivers would be available.

6. *What is your view on the proposed framework methodology relating to proposed terminology and coding, proposed system changes and proposed process changes?*

Regardless of what framework is introduced – this paper refers to an open data approach. How will this be achieved considering the limitations of systems, as not one is compatible and no agency will be permitted to interface with the NSWPF computer systems. The practical approach as suggested should be explored.

7. *What is your view on the validity and characteristics of a fatigue likelihood scale?*

Do not support a scale of fatigue. Again, how would you determine this, slightly sleepy, very sleepy and finally really sleepy. However, a person fatigued may not be sleepy or they may be affected by drugs which has similar symptoms to being sleepy or for that matter not sleepy. Do not consider there is any validity in having a scale of how fatigued a driver is - if fatigued they should not be driving and the only method of checking this is that they are compelled to provide certain information that is through work diaries and if not compliant then removed from the road and driving.

If stopped for being slightly sleepy and they crash later, how do you determine whether fatigue may have been the issue and has increased because they were allowed to continue to drive. Will longer hours make them more fatigued? Most likely, however this would be indeterminable at road side? A scale does not take into account or consider the consequences at a later period after conducting some untested determination that a driver may be fatigued. On-road enforcement is not a medical check, it is to ensure drivers are compliant with current work time permitted by regulation. There is no method of checking a driver's fatigue level or how impaired they are at the time, other than observations and how this is to be conducted is inconclusive. Symptoms in many instances are the

same or may not be, when a driver has taken drugs or is effected by alcohol, which is able to be tested through instruments not guess work.

8. *What is your view on the proposed framework principles?*

The attached papers from the NTC have indicated the principles underpinning the framework should ensure that data collection and research activities are consistent with privacy principles and are not used for enforcement purposes. This would only apply if data was collected and there were no pending legal actions proposed. However as indicated previously, data collected is not necessarily exchanged or shared and it may be gathered from other agencies independently. There would be privacy and criminal or pending legal action issues and this would not be readily available to other agencies regardless of any framework principles.

9. *What is your view on the data collection and research activities proposed in the discussion paper?*

Do not have an issue of collecting data – the NTC has to accept there will be significant limitations of what data and how this data may be collated. Notwithstanding, if this is conducted within the jurisdictions this may involve an entirely different operating process and collection ability, whilst not knowing what costs will be incurred.

10. *How best should the data framework be funded and governance arranged? Consider in your response organisations that could be best placed to undertake responsibility for the framework.*

The cost of implementing a data collection framework has not been determined. Who is going to pay, and who is going to control information data? External collection of police data may be obtained through other agencies, however this may be limited to basic information of a crash as an example. There would not be an open availability to information obtained by police.

Data governance is a quality control discipline for assessing, managing, using, improving, monitoring and protecting organisational information. How is this to be implemented when taking into account the limitations to police information?

11. *Other comments*

Police attending a crash, whether it involves a light or heavy vehicle, only require a driver to give certain information under the law. Failure to provide this information is a summary matter and a driver may be fined accordingly. That does not ensure that the relevant information will be provided. If all information that is a version of the crash is given to police then a driver is not compelled to give any further information. Police may wish to interview to obtain further information from a driver and this would in most instances include serious crashes. However a driver may refuse and they are entitled to refuse under the law.

The NSWPF has significant concerns in relation to introducing three questions no matter what those questions are for a heavy vehicle driver, as they are not required to provide this information by law, notwithstanding the delineation created between light and heavy vehicles when investigating a crash.

Not all crashes are recorded in the same manner. Those involving serious injury or fatal crashes would be extensive investigations with all of the information as listed on page 22 of the attached papers, including further information being sought to determine what charges may be laid in regard

to the driver. However as stated previously, questions in regard to sleep patterns can be refused. A heavy vehicle driver that has not completed a work diary is not necessarily fatigued.

The Centre of Road Safety may be in a better position to provide this type of data although all crash data is sourced from police.

Further, the likelihood of fatigue is not, in many instances sufficient to lay charges for indictable matters when investigating serious crashes.

Finally, a driver may agree to respond to the proposed questions that are the three proposed by the NTC to capture data. However, this may have the potential to trigger a driver's response, and he/she states 'I spontaneously fell asleep'. This immediately provides a defence to any type of driving whether fatigued or otherwise. The driver then uses the immediately fell asleep defence called the Jiminez Defence to acquire an acquittal which has occurred on a number of occasions in NSW.

This would equally apply to those who may suffer from sleep apnoea – a driver may not know he has this medical problem or they do not record it when obtaining a driver's licence and if this occurs then they may use the Jiminez defence by stating they spontaneously fell asleep. This would come back to the issue raised in regards to the medical state or the wellbeing of a driver, and police are not doctors nor should they be placed in a position to commence a process of diagnoses for the purposes of defining a driver affected by fatigue.

Implementing standard questions does not necessarily assist police investigating a crash, it would only be a data collection process.

Appendix E

Tasmania Police response

11. Other Comments

Tasmania police does not typically engage in heavy vehicle specific enforcement. Offending, specific to heavy vehicles, is enforced by our jurisdictional transport authority (Department of State Growth), while police enforcement is limited to more general road rules applicable to all road users.

The Department of State Growth in Tasmania would be responsible for data collection and research activities.

It is not appropriate for this agency to commit to or comment on a framework which will impact on another agency.

In saying this any road safety initiative, based on, and supported by data would be encouraged.

If there is a move towards mandating police involvement then it would be essential for this agency to revisit this response as additional resources would need to be considered.

