

Bus Australia Network Submission: Review of Effective Fatigue Management

Bus Industry Confederation

Bus Australia Network



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Bus Industry Confederation

Overview of the Bus Industry Confederation

The BIC represents the interests of the bus and coach operators, manufacturers and suppliers to the industry in Australia.

The BIC Objectives are to:

- promote the development and viability of the bus and coach industry in Australia
- foster public understanding of the contribution made by the bus and coach industry to Australia's economy, society and environment
- promote and support industry related research and development
- promote the use of public transport as a viable alternative to the motor car
- promote policies and actions that are environmentally responsible
- encourage investment in public transport infrastructure
- foster and promote a viable Australian bus manufacturing industry.

The Bus Australia Network

The *Bus Australia Network* (BAN) consists of the bus associations of New South Wales, Victoria, Queensland, Tasmania, South Australia and Western Australia and the federal representative body, the *Bus Industry Confederation* (BIC).

The BIC and State Association members carry more than 1.5 billion urban public transport passengers per year and makes up 5 per cent of the total urban passenger task. The coach sector of the bus industry, comprising long distance, tourist and charter operators moves more than 1.5 million domestic travellers and makes up 8 per cent of the total non-urban passenger task. The school bus is the second most popular mode for travel to school after the car with about one quarter of all school children traveling to school by bus.

The Bus Industry, which includes bus operators, bus manufacturers and parts and service suppliers, employs more than 50,000 people nationally. The BAN promotes the efficient and sustainable growth of public transport in Australia as well as the benefits of bus and coach transport.

Generally, the bus and coach industry is divided between the contracted sector (bus operators who have a contract with a relevant State or Territory Government to provide regular passenger or school bus services) and the non-contracted sector which undertakes long distance, tourist and charter services, and also non-government contract school bus services, often for private schools. In most states and territories bus and coach operators must be accredited to undertake public passenger services, irrespective of the type of bus service being provided.

There is some overlap between the two sectors of the industry. For example, some contracted bus operators also undertake charter work. The industry also includes new types of bus transport; for example, "On-Demand" bus services are currently being trialled in NSW and are included in some new contracts; and in Victoria, the industry is taking a lead with such services through the introduction of a demand responsive transport booking platform.

There is also a significant variation in the size of operators within each sector. The contracted sector can involve metropolitan operators with more than 1,000 buses through to rural operators with one school bus. Likewise, in the long distance, tourist and charter sector, there are operators with vehicle numbers ranging from one to several hundred.

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Therefore, in addition to a significant difference between a truck and a bus, there are also differences within the bus and coach sector that require consideration when reviewing the HVNL.

The Review of HVNL – General Comments

- a) The HVNL should recognise that one size does not fit all when it comes to HV law – different sectors have different needs. HVNL needs to recognise the difference between truck and bus and the task undertaken including technical issues with vehicles and contracted operations – including specific recognition of a national minimum safety standard for accreditation for buses and coaches.
- b) The HVNL needs to have a stronger performance and risk-based approach, that provides operational flexibility, is less prescriptive and offers performance based /alternative compliance approaches for operators to meet the law. This should include incentives to do so and recognise good compliance performance. This should include greater acceptance of technology as a compliance tool. The HVNL should not prescribe the technology, only the compliance performance outcome, and establish an appropriate alternative compliance enforcement regime that allows on road enforcement resources to be better targeted and for good operators to get on with the job.
- c) The HVNL maintenance group is unnecessary. The law should be allowed to work and not be under constant scrutiny and review (generally by jurisdictions) where there are issues raised or problems, due to things like idiosyncratic industry operational needs or state differences. This would be better dealt with through NHVR and specific regulation to address these types of issues. The HVNL maintenance group is a contributing factor to promulgating state-by-state HV laws and undermining national uniformity.
- d) The HVNL should be considered, when it comes to buses, in the context of the future passenger task and future impacts on the task such as population growth and congestion and automation and the efficient functioning, for example, of cities and the transport network and not in isolation of these broader societal outcomes.
- e) The HVNL should become more focussed on the use of technology to manage legal access by different productive vehicles to use the road network – the current arrangements are inadequate in managing and monitoring access.
- f) A PBS for bus system is required. The current PBS system is not suitable for buses, limits productivity for buses, and adds costs because it is based on “old school paradigms” about infrastructure, safety, environment rather than an approach that focusses on productivity and positive societal outcomes that passenger transport can deliver.
- g) Existing exemptions to the HVNL should be retained and only reviewed in the context of adoption nationally as part of the HVNL review.

In terms of our submission, the BAN has prepared a response to each of the twelve (12) questions posed in the Issues Paper. These are set out below.

Q1: How can we change our approach to fatigue management, so we reduce fatigue-related incidents and deliver Australia’s road transport task efficiently and safely?

For most of the bus industry, the risk of fatigue is slight. Drivers work timetabled shifts and in strict accordance to rosters. Roster and shift records are maintained by the bus company, making the need for the driver to carry a Work Diary largely redundant. Moreover, the nature of timetabled bus work (with regulated breaks and multiple stops to pick up and drop off passengers) makes the completion of Work Diaries an unnecessary burden for bus drivers. For this reason, Government contracted bus services have been exempted from the Work Diary requirements in some states (refer: *Commonwealth of Australia Gazette: NSW Work Diary Exemption Notice 2017*).

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The bus industry also has a range of other regulated controls (not found in the HVNL) which greatly minimise the risk of fatigue. The Issues Paper mentions that *drivers operating under standard hours are not regularly assessed to make sure they are medically fit to perform their duties* (p.32). However, the bus and coach industry does just that, with a requirement for driver health assessments linked to bus driver authorisation in some states. Similarly, the industry requires drug and alcohol programs and testing by bus companies in some states.

A proper risk-based approach to fatigue management should include the ability to ascertain what the actual fatigue related issues are, where they apply, the fundamental underlying causes and the current controls in place. Then bus and coach operators can determine appropriate measures to more effectively manage the fatigue risks to reduce these issues occurring. The NTC also notes that WA uses OHS regulations under which work and rest hours tolerate minor irregular reasonable variations (p.24). This approach should be followed by HVNL, or HVNL should support this element of fatigue management where particular controls are in place.

Q2: What fatigue risks that are currently out of scope for the HVNL should be brought into scope? What is in scope that shouldn't be?

The impression provided by the Issues Paper is that HVNL wants to expand its scope and complement WHS and CoR provisions. A glaring example highlighted in the Issues Paper of a fatigue risk that is currently out of scope is an employee arriving at work after recently completing work at a second job. With the definition of fatigue effectively excluding farming and other heavy machinery, this means that potentially a driver can be fatigued before they even commence a shift with an employer.

However, instead of just expanding (or reducing) the scope of HVNL on a piecemeal basis, we would prefer the creation of a proper risk based system that sets fatigue management goals or parameters and allows operators flexibility of approach to effectively manage the relevant risks, provided it also allows a prescriptive option for those who may prefer it. This would allow controls such as secondary employment policies (which many bus companies have in place) to be factored into the overall fatigue risk management system.

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3: What are the key risk factors associated with long hours, night shifts and other work schedule factors? How do we account for the fact that not all work hours have the same risk without introducing excessive complexity?

HVNL needs to accommodate flexible work and rest requirements that are lacking at the moment, as per the problem noted at the top of p.39 of the Issues Paper, where a driver had breached Work Diary requirements but was demonstrably not fatigued due to adequate rest.

A proper risk-based fatigue management approach needs to consider a multitude of factors, not just driving/work hours. These include:

- Schedules
- Day/night work
- Living away from home
- The task itself
- Geography
- Vehicle type
- Network congestion
- Access issues (i.e. departure/destination constrained by time restrictions).

It is notable that the table of Work and Rest Requirements included in the Issues Paper at Appendix A (p.51), fails to mention a work and rest regime mandated under the HVNL. In addition to the 'Standard Hours' in Appendix A, the HVNL includes a fatigue regime open only to the bus and coach industry. This is known as the Standard (Bus and Coach) Hours, which allows a driver to work 24 days straight in 28 days, provided they have 6 night rests in each 7 day period. This contrasts with the Standard Hours for other Heavy Vehicles which mandate one 24 hour period off each week but only mandate 2 night rests (and two consecutive nights) in 14 days.

The Standard (Bus and Coach) Hours was developed specifically for the tourist sector where coaches take passengers on extended trips (e.g. a 20 day tour to central Australia), which require working more than 6 days straight. In contrast, timetabled bus services generally use the Standard Hours (Heavy Vehicle) because many timetabled services commence before 5am and so would not meet the Standard Hours Bus and Coach which requires 6 night-rests in 7.

On 30 January 2018 the NHVR issued, *National Heavy Vehicle work and Rest Hours Exemption (Personal Use) Notice 2018 (No.1)* that exempts specified categories of permitted personal activity from the definition of work, with the intention that those activities are not counted as work time for a driver under Standard Hours. This exemption, were it to continue under any amended HVNL, needs to be amended by providing the exemption to drivers operating under the Standard (Bus and Coach) Hours fatigue management regime. The reasoning behind this recommendation is that these drivers are the most likely to benefit from the exemption as they are the ones operating away from home and require the flexibility of the exemption provided.

This highlights the need for work and rest regimes which consider the specific nature of work in the various sectors that make up the heavy vehicle industry across Australia.

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Q4: How should a new HVNL address driver health and lifestyle factors? What kinds of controls could be effective?

Driver health and lifestyle factors need to be considered very carefully. As noted above, there are state and territory safety regimes within the bus and coach industry to assess driver health and fitness. The systems implemented in the bus industry may be an appropriate model in this context.

In some states, bus and coach companies are required to implement driver health monitoring programs which include the following requirements:

- In addition to a Heavy Vehicle Licence, a bus driver is required to hold a Driver Authorisation. This Accreditation has a life of three years and requires passing a formal medical assessment to be renewed. If the driver is over 65 years of age or has a special medical condition (e.g. diabetes) an annual medical assessment and clearance by a medical specialist is required.
- Bus companies have a triggered medical assessment process in place, where if there are any concerns about a driver's fitness to drive, the company is empowered to order the driver to undergo a medical examination in addition to the assessment required as a condition of their Driver Authorisation. A medical assessment is generally triggered by a complaint from the public or a fellow driver, observation by the operator, prolonged medical absences or accidents/incidents involving the driver.
- Bus companies are required to develop and implement a Drug and Alcohol Program including training and consultation with staff, mitigation strategies (including testing) and remedial/disciplinary procedures. Any positive test must be reported to the Transport Regulator by the operator and may lead to the loss of the Driver's Authorisation. The legal limit for Blood Alcohol Concentration for bus and coach drivers in Victoria is 0.00%. In NSW it is 0.02% for all bus drivers and for drivers of heavy vehicles over 13.9 tonnes. The legal limit for Blood Alcohol Concentration for bus and coach drivers in Tasmania operating vehicles in excess of 4.5 tonnes or greater than 12 seats is 0.00%.
- If the current controls applied to the bus industry are considered too prescriptive for other heavy vehicle sectors, some form of elective education and training may be appropriate. Any such advisory or educational material needs to be written and presented in a simple and straightforward manner so that it can be readily understood by drivers.

Q5: How do we ensure the HVNL is agile enough to adopt best practice fatigue management as it emerges? How do we encourage continuous improvement? Can training help?

HVNL needs to be drafted to accommodate technological change and better ways of managing fatigue. This means a risk based system that sets fatigue management goals or parameters and less prescription where appropriate, providing operators with the flexibility to manage fatigue risks, allowing operators to record/report on their successes in achieving successful fatigue outcomes and which links flexible hours, access to roads etc., to those operators with good systems and outcomes.

The implementation of *safety management systems* that incorporate driver health assessments, drug and alcohol programs and secondary employment monitoring for example, should provide employers with the flexibility to manage fatigue beyond the parameters of strict driver work and rest hour regimes.

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Q6: How can we better accommodate emerging technologies? How can the new HVNL get the best value from technology and data? Do you think fatigue monitoring technology can supersede work and rest hour requirements?

HVNL needs to be drafted to facilitate recognition of new fatigue management technology as a replacement to or the equivalent of, existing or approved systems such as work diaries, e.g. the Seeing Machine on p.33-4. Different ways of demonstrating compliance must be provided for in the legislation. Operators should be free to adopt whichever technology they wish to acquire with the proviso that it meets clear compliance and reporting standards. Moreover, there is a range of existing technology which could also be accommodated in the legislation. In some jurisdictions, coaches are required to be fitted with Vehicle Monitoring Devices (VMDs), with employers required to maintain detailed VMD records. These records are far broader than Work Diaries and record:

- The lengths of time the vehicle is moving and stationary during a journey
- The speeds at which the vehicle is driven
- The distance the vehicle travels between stops
- The time, date and place of starting and finishing a journey
- The driver's details and the vehicle's identification.

Despite this level of detail, drivers of coaches with VMD's fitted must still maintain Work Diaries. There is a need for the introduction of rules that accept the use of data from the operation of the vehicles (similar to what occurs in WA and NT). This would enable operators to attain greater hours within which their performance is monitored through online systems. This both enables easier management of the task and allows regulators to make evidence-based decisions on fatigue management around breaches, accidents, non-compliance etc., without spending as much time 'on the ground'.

Q7: How can the new HVNL meet the needs of all Australian states and territories? What should the new HVNL adopt from Western Australia and the Effective fatigue management: issues paper May 2019 10 Northern Territory, other transport modes and other industries' fatigue management approaches?

As outlined in the Issues Paper, the Australian heavy vehicle industry is diverse. Heavy vehicles operate in vastly different environments and face diverse risk profiles (p.47). One way of acknowledging this diversity is by establishing a proper risk- based approach to fatigue management.

We support the work health and safety approach to regulating fatigue for drivers of heavy vehicles that is used in Western Australia, the Northern Territory and in other transport modes, as an option for bus and coach operators. A new HVNL should also recognise state-based accreditation obligations for buses where these exist, and not duplicate what already exists. It is notable in this context, that s.222A of the Heavy Vehicle National Law (NSW) exempts bus operators applying for AFM or BFM accreditation from the requirement to submit criminal records and driver health assessments because these mirror state bus operator accreditation requirements.

As mentioned earlier, the bus and coach sector is subject to separate risk-based legislation administered under passenger transport legislation, which requires operators to establish safety management systems, vehicle maintenance management systems, driver health monitoring systems, among other requirements. The current HVNL makes no allowance for this systemic approach and its legislation complicates, and in many cases duplicates, the requirements found in passenger transport legislation. In view of this

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alternative compliance regime, we would question whether the heavy vehicle regulatory framework should even be applied to the bus and coach industry. At the very least, the new HVNL needs to acknowledge and allow for the alternative compliance systems mandated for public transport providers.

We also support the WA approach, discussed on p.24 of the Issues Paper, in which drivers may vary their work hours but only under certain circumstances. Variations must be minor, reasonable, not a regular occurrence and not increase the risk of fatigue. Schedules should be organised to meet the standard, but it is accepted that there may be situations where drivers are delayed, and the schedule may need to be adjusted. Page 24 also notes that in WA there are no prescribed forms or standard record-keeping books for driving hours. We would support not prescribing a format. We note however, that for some - generally smaller - operators, there may be a level of prescription needed or desired.

Q8: Are prescriptive rules desirable in a new HVNL? If so, how can we simplify rules in the HVNL to make them easier to understand so that they're easier to comply with?

We recognise that the prescriptive approach of the current HVNL is sometimes preferred by small operators; the view that 'tell me exactly what to do and I'll do it'. If there is to be prescription, the rules and processes need to be simple so they can be communicated to and readily followed by operators and drivers. Equally, however, this prescriptive approach creates a heavy compliance burden for some industries that are already regulated under state Passenger Transport regulation and accreditation schemes.

In view of this disparity, we would recommend a two tier approach in the HVNL which allows smaller operators to comply with prescriptive legislation, while allowing other operators to apply the systems-based approach; for example, enabling the implementation of safety management and vehicle management assurance systems to be used as evidence of compliance.

HVNL needs to set minimum standards for a risk-based system to which operators can comply, and also make available a set of plain English prescriptive documents that operators can use if they prefer.

Q9: Would the compliance options described in section 4.5 be a more effective approach to regulating fatigue management? If so, what should be included in the new HVNL, its subordinate documents, or elsewhere, such as in work health and safety laws? How would the appropriate fatigue management option be allocated to an operator – by self-selection or other means?

There should be flexible compliance options that let operators comply in a way that best meets their needs. As outlined above, we believe there should be a two-tier approach in the HVNL allowing smaller operators to comply with prescriptive legislation, while allowing other operators to apply the systems-based, safety assurance approach outlined in 4.5 of the Issues Paper. Employers with appropriate safety systems should have the option of independent auditing, in place of the current on-road enforcement system.

The appropriate fatigue management compliance option should be chosen by the particular operator.

In terms of the content of the HVNL, the legislation should outline the high-level outcomes required e.g. not letting a driver drive while fatigued, while retaining flexibility for employers who choose a systems-based approach, on how they will meet that outcome.

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Q10: Should the new HVNL give operators the option of taking full responsibility for risk management? What would be the roles of the regulator and roadside enforcement in such a system?

Operators should be provided with the option to take full responsibility for risk management. In a proper risk-based fatigue management system, there should be no need for BFM, AFM, or other such regimes. As in WA, the system should accommodate minor, reasonable, irregular variations that do not increase the risk of fatigue.

Regarding the role of the regulator, under the Victorian bus accreditation system, for example, the regulator approves each operator's Risk Management System based on regulatory guidance, and audits operator records, but does not prescribe the format of the system. Similarly, in NSW under the Bus Operator Accreditation Scheme, the operator's systems are self-audited at least annually and are subjected to an independent audit every three (3) years.

We again note that some smaller operators, to whom such an approach can be burdensome, may prefer more prescriptive rules and standards to follow.

Q11: How can we get the best overall value from a compliance and enforcement strategy for fatigue management? How are scarce resources best allocated, and what tools do regulators need? What provisions in the law do operators need?

Regarding regulators, e.g. TSV in Victoria and the RMS/TfNSW in NSW, any on-road enforcement should work collaboratively with industries who adopt a risk-based approach, to ensure that the best system is in place for all stakeholders. HVNL should seek to support operators who implement advanced technology or fatigue management systems based on appropriate risk assessment. We believe that operators with auditable risk management systems should be less exposed to on-road and other enforcement by the regulator.

Education rather than penalties should be the main strategy used on an ongoing basis. However, the guidance materials need to be written for an industry readership, not for tertiary-educated policy makers. We also support eliminating minor compliance breach fines. Penalties for administrative errors and minor non-compliance should be cumulative to reduce the extent of fines and to put the focus on repeat offenders.

The HVNL should recognise good compliance performance and establish an alternative compliance regime, allowing on-road enforcement resources to be targeted towards poor performers. The HVNL needs a stronger performance and risk-based approach that provides operational flexibility, is less prescriptive and offers performance based alternative compliance approaches for operators to meet the law. The current safety standards applied to buses and coaches via accreditation should also be recognised by the legislation.

Significant penalties should apply to repeat offenders who do not take action to rectify their practices or who deliberately impede data recording or reporting. Heavier penalties should fall on serial/repeat offenders.

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Q12: What else would you like to tell us about effective fatigue management?

We accept and agree with the six regulatory principles outlined at page 44 of the Issues Paper; namely a HVNL that provides:

- Safer outcomes
- Effective fatigue risk management
- Continuous improvement in risk controls
- A harmonised (rather than a uniform) approach
- Simple and flexible compliance options
- Efficient enforcement and proportional sanctions.

We believe that these principles provide the basis for an appropriate risk-based fatigue management system. We look forward to seeing how these broad principles are translated into practical measures in the new legislation for the bus and coach sector and other parts of the heavy vehicle industry.

Further inquiries relating to this submission can be directed to Mr Michael Apps, Executive Director, Bus Industry Confederation on (02) 6547 5990.