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Dr Gillian Miles Chief Executive National Transport Commission Level 15/628 Bourke Street Melbourne VIC 3000 Via NTC portal

EFFECTIVE FATIGUE MANAGEMENT

Dear Dr Miles

Gas Energy Australia (GEA) appreciates the opportunity to respond to the National Transport Commission (NTC) Issues Paper Effective Fatigue Management (Issues Paper) released in May 2019. GEA offers the following response to the questions posed in the Issues Paper.

Question 1: 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?

Fatigue in the eyes of the Heavy Vehicle National Law (HVNL) Issues Paper is defined primarily as how a driver feels and the observation of driver behaviour, There are a significant number of factors that contribute to fatigue and it is not just "fit for duty" which makes up the focus of the Issues Paper.

GEA considers that a safe vehicle and suitable route also contribute to how a driver feels as he undertakes his task. These are part of the ecosystem that contribute to the driver's alertness and are covered under HVNL. Therefore they should also be part of the solution to reducing fatigue related road incidents. For example, curfews place restrictions on route management (eg, Bradfield Highway between the hours of 7 am and 9.30 am Monday to Saturday both days inclusive and between the hours of 4 pm and 6.30 pm Monday to Friday both days inclusive)¹. This requires either less direct routes or selecting drive times that are outside standard working hours. GEA suggests more inclusivity in combatting fatigue such as defining a safe vehicle as one that is registered, roadworthy, suitable for the task and safely loaded, and a suitable route as one that minimises fatigue and safety risks and excessive impacts on road infrastructure.

Question 2: 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?

GEA considers that the interactions of other laws and regulations that apply risk controls to ensure a safe and efficient heavy vehicle journey must be recognised and not duplicated. The question should not be what should be brought or not included, but how do we incorporate a holistic approach in the HVNL. How do workplace safety, environmental, licensing laws and regulations at all levels of government (federal, state and local) work together with the HVNL without duplication to achieve a safer outcome? GEA recommends the NTC develop a comprehensive matrix to understand the issues of duplication and also to identify any gaps.

Question 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?

GEA does not have the data to provide a response to this question.

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¹¹ <u>http://classic.austlii.edu.au/au/legis/nsw/consol_reg/rr2014104/s300.2.html</u>

Question 4: How should a new HVNL address driver health and lifestyle factors? What kinds of controls could be effective?

Simplifying this question, how should the HVNL treat individuals. Each driver has their own lifestyle factors and health. The HVNL must give direction within its remit ie when the driver is behind the wheel. Work health and safety laws are broader and cover individuals at work. But the laws must also allow the driver to take responsibility for factors that they control, their health and lifestyles. Within its remit, the HVNL must set the minimum standard for a driver and their conduct while they are in control of a heavy vehicle.

Question 5: 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?

Law and agility should not be included in the same sentence. The legislative change system cannot move in an agile way. Laws should be more target and performance-based leaving scope for regulation and guidance material to change quickly and adapt to shifts in community expectations or technology advancements.

Question 6: 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?

GEA considers that a tiered approach to regulation would allow emerging technologies to be introduced. There is no 'one size fits all' solution and segments under the HVNL must be afforded the ability to develop solutions.

A framework similar to the aviation industry that has a basic level of prescriptive requirements, with a second tier that still uses prescriptive rules but improves safety by broadening the scope beyond prescription to basic risk control mechanisms, with the most sophisticated level focusing on a risk management systems.

Question 7: 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 Northern Territory, other transport modes and other industries' fatigue management approaches?

GEA believes that all states and territories must recognise the importance of heavy vehicle road transport to the economy. The failure to have a common goal means derogation and worse failure by all jurisdictions to adopt the HVNL.

Question 8: 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?

GEA supports a tiered approach similar to that in use with the aviation industry which allows prescription at a basic-level and promotes innovation and adoption of technologies with a more risk-based approach at a higher level.

Question 9: 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?

The National Construction Code (NCC) is a performance-based code that offers a compliance model approach to regulation that is similar to that used in vehicle standards (Australian Design Rules and Performance Based Scheme)². The NCC sets performance requirements and then has two compliance mechanisms. Either a performance solution or a deemed to satisfy solution. The performance solution allows individual approaches (similar to the PBS where the performance requirements are outlined, and the system can be deigned to meet specific task requirements). These solutions are often flexible in achieving outcomes and encourage innovative

² <u>https://ncc.abcb.gov.au/ncc-online/How-it-works</u>

design and technology use. A performance solution is backed up by an assessment methodology. The deemedto-satisfy solution is a very prescriptive compliance solution which under the NCC includes materials, components, design factors and construction methods. For fatigue in the HVNL, this would align to prescriptive work and rest times, pre-work check and reporting requirements.

Question 10: 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?

As with any safety or risk management system, auditing is the key. Under a risk management approach, the regulator still has a requirement to ensure compliance. For example, a company has in-cab facial scanning and electronic work diaries implemented as risk control/reduction strategies for fatigue under an approved risk management system. This company would be subject to a lower number of roadside checks than a company that is operating under a paper based prescriptive system. To ensure compliance under this tiered approach, there is still a place for roadside enforcement, but regulators would be more proactive in auditing and systems evaluation.

Question 11: 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?

All parties, drivers, operators and regulators, want the same outcome - the safe transit of a heavy vehicle on the road. When it comes to fatigue, operators need to be in the loop when offences and compliance directions are issued to drivers on the roadside.

Question 12: What else would you like to tell us about effective fatigue management?

GEA suggests that the addition of **more** "risk-based requirements" without the removal of prescriptive regulation would just increase the compliance burden on industry and bind transport in red tape. New rules must recognise risk controls already covered by other legislation and remove redundant regulation as part of the process.

Conclusion

GEA acknowledges there are uncertainties related to risk evaluation, and that adopting risk-based regulations could make assessing compliance with regulation more difficult and require regulators to be scientifically and technologically well informed. Nevertheless, GEA considers a risk-based approach to regulation offers the prospect of better safety outcomes at lower cost. Consequently, GEA supports in-principle a tiered risk-based approach to regulation that takes account and is inclusive of other regulations and looks forward to working with the NTC on this project in the future.

Yours sincerely

John Griffiths CEO Gas Energy Australia