

16 August 2019

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National Transport Commission
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HVNL Review Issues Paper – Effective Fatigue Management

Thank you for the opportunity to provide comment on the Effective Fatigue Management Issues Paper as part of the Review of the Heavy Vehicle National Law (HVNL). I think this Issues Paper provides a good overview of the challenges. The exception seems to be in the enforcement area where whilst the Paper touches on examples of the perverse outcomes we see today, in my opinion it does little to transparently tackle the “elephant in the room” to highlight the crippling problems being experienced with the current prescriptive enforcement philosophy.

From my perspective, the two most important areas where the HVNL Review needs to impact are:

- improving safety for our people and the broader community through a more effective approach to fatigue management
- delivering a vastly improved approach to access and thus productivity

Improved safety and better productivity are the essential ingredients we must deliver out of this process bearing in mind all this will be in vain if we don't reinvent the approach to enforcement to target high risk activities rather than minor and work diary administrative errors.

As I stated in my response to the first issues paper, there is little doubt in my mind that most participants and regulators agree that the overly prescriptive approach of the current Law must be replaced by a more modern, realistic, flexible and risk-based structure that copes with the dynamic sector in which it operates.

NHVR Forums have been a great opportunity to debate issues around fatigue

I have been fortunate enough to participate in the two Forums run by the NHVR in October 2018 and July 2019 respectively. The recently circulated draft Outcomes Paper from the latest Forum provides in my opinion a very good overview of the challenges involved – and includes options and ideas about what a future framework and supporting control mechanisms might look like. In the main, I endorse the Forum outcomes and suggest the NTC pursue the options canvassed.

I have also read the ATA submission and in the main, agree with most of the points they make. One key exception is continuing the current exemptions but I'm happy to consider if there is perhaps a better way to providing greater transparency into the sectors which currently have exemptions which will lift accountability for fatigue outcomes.

Specific comments on key areas follow.

Manage fatigue not just working hours

There seems to be the overwhelming consensus that we need to move away from the historical approach of the HVNL (Question 1) of simply counting working hours by prescription (100s of pages of it) to one which focuses on setting a realistic framework that better manages fatigue outcomes and improves safety.

I know this is a big ask and it will be a giant step for those involved in managing the current outdated approach – but we must build confidence and trust with them that we can deliver better safety outcomes. Provided the right systems and transparency are in place, this needs to include greater flexibility to companies and drivers to better manage their fatigue and trips overall rather than trying to put them in a “one size fits all” prescriptive and often unsafe framework.

Technology advances are a “game changer”, providing a giant boost in safety outcomes

As a starting point (Question 6), it is no secret that RFT has invested heavily over the last few years in implementing fatigue and distraction detection device technology across our whole fleet. We are also continuing to participate in the Volvo/Monash University/Seeing Machines initiative to take this technology to the next level. As I’ve said in many forums recently, I see this technology as a real “game changer” in improving safety. I was extremely happy when I first saw the driver images the equipment provides in addition to realising the warnings the driver receives in real time. For the first time in my (very) long career, we have a safety tool that puts us in front of possible incidents and assist the driver do the task more safely. it saves lives.

We can talk all we want about technology including EWD’s, but I consider fatigue and distraction detection technology is a real-life saver. With this technology, we can provide true flexibility, better safety and transparency when used in the right way with the right support mechanisms.

Shared Responsibility concept – with an added dimension or two

The NHVR Fatigue Forum assisted in advancing my thinking about the responsibility we all share to keep improving our safety outcomes. This “shared responsibility” concept is growing (slowly) across the supply chain with some of our customers embracing the Chain of Responsibility (CoR) but there is still a very long way to go in this area to get the culture right.

Importantly, we need to ensure the new HVNL and CoR Laws work effectively “hand in hand” in the future.

I do see EWD’s being part of a total solution in the longer term so we can accurately record our work hours including time spent in places like distribution centres. This will help improve transparency and accountability with our customers for delays they cause which impact safety where today, all the pressure is still pushed back on the driver and operator. However, a warning, I don’t think EWD’s will become a valuable and acceptable tool until we are focusing on managing fatigue in a flexible way rather than merely counting hours and sanctioning minor administrative errors.

The recent NHVR Forum discussions have also highlighted the responsibility of drivers and others to ensure they get sufficient sleep within their rest breaks. The question of fitness for duty needs more clarification as I feel there is little understanding in the industry of what is meant by sufficient sleep to avoid possible impairment.

At RFT, I intend to trial sleep monitoring devices to see if this is a viable option to assist educate and also measure how much sleep drivers are actually getting as its critically important that drivers better understand that fitness for duty does impact their fatigue.

It sounds simple but we want drivers knowing when they are right to drive (good to go) and also when they need to have a break for safety reasons.

If a company has the right protections in place to manage these situations, they should have the flexibility to do this within an agreed framework. Our drivers will embrace this concept as it will mean they can do their job with pride knowing they can record everything they do instead of being anxious and stressed about meeting unrealistic non safety related prescriptive controls that don't work for them.

Current HVNL acts as a straight-jacket on innovation

The fatigue and distraction technology advances we've seen in recent times have highlighted and are a great example of the restrictions and limitations in the current approach to the Law in that the NHVR doesn't have the regulatory flexibility to encourage/reward companies to embrace and adopt this technology.

The new HVNL should simply provide a broad and understandable framework which allows the NHVR through subordinate authority (your question 9) to be more dynamic and quickly adjust to ever changing advances. The HVNL should set outer limits and key principles with the remaining regulatory matters covered in flexible instruments which can adapt as advances are made,

Of course, our biggest fear is that we will get another perverse outcome where investment and use of such safety equipment will deliver a worse regulatory outcome to what we have today i.e. it will be used against us as we've consistently seen with our investment in other technology overtime

We need to remove the incentive in the Law that encourages some enforcement authorities to target us. Rather, the Law should encourage the use of their limited resources to pursue those who seriously flout the Laws and who gain a commercial advantage. They don't make an investment in safety. We need to build the trust and confidence with these authorities that this approach will lead to a better focus on safety outcomes.

No derogations, meeting the needs of all Australian states and learning from others

Question 7 covers the holy grail of regulators – let's find a way to make it right for everyone. I'm not sure this will ever happen. Instead, maybe we can achieve shared principles and consistency between the eastern and other states. We need to ensure we don't "die in a ditch" if it doesn't happen.

As agreed in the NHVR Forum, it would be far better and of greater advantage if we put our effort into achieving a "no derogations" outcome across the eastern states. I think it is beholden on the NTC to work with the legislative drafters across all these jurisdictions to ensure the HVNL is adopted without amendment in those states. This would be a real step forward and a great outcome in pursuing a more consistent enforcement regime and we shouldn't accept a "this is too hard" response from the various jurisdictions, they need to modernise their approaches as well.

I don't have a problem in looking at other sectors experiences in the fatigue management area with the proviso we understand they are different. Flying a plane and driving a truck might have a few common threads, but not many.

Enforcement/Enforcement/Enforcement – the focus should be on better safety outcomes

The simple answer is yes to Question 8, and as outlined in Section 4.5 of the Issues Paper, the new HVNL should be easy to understand and meet. But delivering against this goal will take some effort.

In addition, we need to remove the current obvious administrative burden and remove the perverse outcomes, one example amongst many being the counting up and counting down rule.

Don't push or allow people to opt out

A word of caution – the future prescriptive (or just tell us what to do) option is necessary but it must not just provide the opportunity to opt out of meeting fatigue management obligations as some see the standard hours system doing today. We are all aware that some operators use the standard hours tier simply because they don't invest in safety compliance costs and also because then there is little or no transparency on their method of operations. I'm not saying all these are unsafe because in some cases, they are forced to do this because the current system doesn't provide the flexibility to do the task safely. And for some, sanctions are just a commercial cost of doing business leaving the broader social consequences and costs to the community as a whole to bear.

I appreciate that users are diverse and have different needs but everyone who drives a truck should be fit for duty throughout the trip and as mentioned earlier, have a shared "safety" responsibility for ensuring this is the case. We collectively have more work to do in this area to define what this might mean but this shouldn't stop us highlighting its importance to achieving better safety outcomes.

No exemptions

I know that the first reaction of some to a new structure which reduces their working hours will be "we need an exemption" because we are somehow different. I agree there are different needs but don't consider there should be exemptions, so as a start point, let's:

- include all vehicles 4.5 tonnes and above in a new fatigue management framework
- require all drivers of these vehicles to have a base requirement for fatigue management training
- provide an option to those who want to do nothing to manage their fatigue and responsibilities of substantially reduced working hours below the current standard hour's regime.

Those who "hide" from their current obligations and flout the main intent of the current Law for commercial gain (I'm talking about serious offences here, not the minor ones which cause so much grief) will in the main look to continue to do so under a new HVNL too. We can make it harder for them to do this through providing less entitlements (thus encouraging them to at least think about complying) and better targeted enforcement. This can only be achieved if the new HVNL is realistic and flexible enough to encourage safer operations.

Taking full responsibility for fatigue and working hours

Whilst we are being bold and to answer your question, yes, those who have the right systems and transparency could take full responsibility for their fatigue risk and how this is managed. Many companies self-insure today, and I see this option as no different. Importantly, I think it would also help with improving driver retention and recruitment. Currently, we lose too many good drivers due to an overly prescriptive approach as they can't afford to lose hundreds or thousands of dollars a week for simple administrative or minor errors.

This obviously doesn't mean these companies can pursue unsafe operations, the opposite is the fact as they will be open to audit and the outer controls of the broader framework. I personally think this would encourage safer operations rather than the opposite as they would not want to lose that greater flexibility and would be encouraged to continue to improve based on experience.

Counting time into the future – fatigue should be the focus and transparency in local work is essential

Finally, I understand counting work time will still be a requisite for a future scheme. Given this, there will be huge difficulties and complexities associated with having a workable and effective approach that meets all needs. This includes in my view, the unsolvable question of defining what is work? That's why I think the focus needs to shift to managing fatigue and measuring sleep as part of a fitness for duty requirement.

Counting work time will become easier if we remove the minor sanctions and administrative error focus currently in the HVNL and at the same time, simplify the work diary; perhaps the NTC can genuinely enlist the help of drivers to do this rather than a group of non-users who simply have shown they don't understand.

EWD's will also perhaps become a reality if we can let drivers and companies proudly record what they do within the right framework without fear of losing money, licenses or businesses. In particular, we need to ensure there is far greater transparency in the local work area to manage fatigue. I see in my own business through our fatigue detection device data that the main fatigue challenges are occurring anytime during the shift and at any time of the day which is counter intuitive to what we might have thought would be the case.

Conclusion

The HVNL Review provides the opportunity to agree that we have moved past counting hours of work as the sole measure of fatigue. We understand working hours are part of fatigue management but much better safety outcomes can be achieved with more flexibility especially for those who embrace better systems and greater transparency to prove they do what they say they do.

The positive flow on impact to driver recruitment and retention through removing monetary penalties for non-safety related minor sanctions and providing flexibility to encourage safer operations will in my view be substantial. The growth of our business and others is now being severely retarded purely on the basis of not being able to employ sufficient drivers. The key reason driving this is that drivers (and their families) simply don't want to work under this approach which they see as having no safety benefit but huge personal financial risks. This is not good for safety nor for the economy.

Finally, I would hope we all can openly acknowledge that there have been substantial improvements in heavy vehicle safety in the last two decades including a big focus on improving fatigue outcomes. This has been a collective effort across many fronts and has delivered good results.

I'm hoping this HVNL Review can deliver on and continue that trend, remove the obvious problems with the current HVNL and also deliver an effective enforcement focus on those who are not attempting to comply with realistic rules.

I'm happy to expand on these matters if appropriate.

Kind Regards



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