

EFFECTIVE FATIGUE MANAGEMENT HVNL REVIEW ISSUES PAPER 2

SOUTH AUSTRALIAN ROAD TRANSPORT ASSOCIATION SUBMISSION 16 AUGUST 2019

1. About the South Australian Road Transport Association (SARTA)

SARTA is the peak industry body in SA and a member of the Australian Trucking Association (ATA) and we share the strong commitment to safety, professionalism and viability.

SARTA is in broad agreement with the ATA submission on this matter but we differ on some points; some of which are significant and others less so. For ease, we have adopted and adapted the ATA submission below, highlighting our points of difference in red underlined text.

2. Introduction

In May 2019, the National Transport Commission released its second issues paper for the Heavy Vehicle National Law review, *Effective fatigue management*.¹

This submission responds to the paper by setting out the ATA's overall vision for the new HVNL, before providing detailed responses to a number of the questions in the paper.

The submission does not respond to every question, but instead focuses on the key issues that need to be addressed at this stage of the review.

3. First Principles Approach:

Ministers have directed that the Review of the HVNL be undertaken on a First Principles basis. Accordingly, the first principle that should be considered in the context of the Fatigue Management aspects of what HVNL2.0 should provide is that the focus should be placed principally on the management of fatigue itself and not on the management of compliance with a default counting regime for work and rest. The current HVNL focusses primarily on managing compliance with counting rules, on the false presumption that this equates with managing fatigue; it does not.

There is no evidence, qualitative or quantitative, that demonstrates that fatigue is being effectively managed through the current HVNL Work-Rest Counting regime. On the contrary, there is ample and widespread evidence from drivers and operators across all sectors that the existing regime is an ineffective substitute and that it is in fact counter-productive. It often forces drivers to rest when they don't feel they need to and then, due to the limitations of the rules, they feel compelled to work whenever the rules do not require them to rest, simply so they can avoid adverse impacts on their overall hours and on their start time and other aspects of their work in the following day(s).

¹ NTC, [Effective fatigue management](#). May 2019.

The table at page 52 of the NTC Discussion Paper is insightful as it shows that just 11 of the 9510 fatigue offence matters considered in the NSW Criminal Court from 2014 to 2018 were actually fatigue related; all 9499 other offences (99.9%) were rules and clerical violations.

A genuine First Principles approach should consider dropping the prescriptive rules-based approach entirely and shifting the focus to an absolute obligation on all Parties in the Chain of Responsibility to manage fatigue effectively, by taking appropriate measures as far as reasonably practicable. HVNL2.0 should also provide for the appropriate enforcement of that obligation in the light of a fatigue-related incident with serious penalties when Parties are unable to demonstrate that, as far as reasonably practicable, they took appropriate measures to manage fatigue.

To make this work effectively the HVNL2.0 should:

1. Include a presumption of fatigue following a serious injury or fatality involving a Heavy Vehicle;
2. Place the onus on each Party to demonstrate that as far as reasonably practicable, they took appropriate measures to manage fatigue;
3. Establish substantial penalties for failure to manage fatigue, especially in the event of deaths attributable to a failure to manage fatigue;
4. **Not** prescribe Work-Rest Counting RULES but in their place the NHVR should issue guidelines (thus not obligatory) regarding:
 - a. appropriate standards and practices to manage fatigue, using either some simple flexible recommended limits on Work and Rest time, or through the operation of effective safe working practices;
 - b. Including managing Fitness for Duty as a key practice; and
 - c. Appropriate records that Parties may opt to maintain;
5. Require all HV drivers and at least one operations manager in each business operating HVs to undergo the formal Fatigue Management training.

This First Principles approach would:

1. Abolish the Work and Rest Rules;
2. Abolish the obligation to maintain Work Diaries (whilst encouraging through the guidelines the maintenance of appropriate records or Work and Rest.

This First Principles approach would align the fatigue management requirements for the Heavy Vehicle road transport industry with those that apply to countless other employers and their employees who drive vehicles on our roads as part of their work duties.

The existing rules and counting-based regime fails to focus effectively on managing fatigue, as will any similar regime including any proposed simpler set of rules in HVNL 2.0. The entire machinery of the existing paradigm of the Work-Rest rules and counting-based regime merely manages compliance with that regime, not fatigue. **The current approach is therefore NOT FIT FOR PURPOSE.**

The adoption of the above First Principles approach is our preferred option. We believe that it will be far more effective in managing fatigue and it would also offer the less important but significant benefit to both Government and industry of a dramatic reduction in the overall redundant administrative burden by eradicating the counter-productive and ineffective focus of the current rules and counting regime.

The following comments are offered in the alternative to the above First Principles approach.

3.4. Responses to issues paper questions

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?

Consistent with the ATA's vision for the HVNL,² this submission argues, in the event that our preferred First Principles Option is not adopted, that the Law should provide regulated businesses with two fatigue management options:

- a **new, performance-based framework that would enable operators to manage fatigue as a risk**, including by adopting new technology and proven fatigue management practices. This framework could provide the options of parties operating their own stand-alone fatigue management regimes of by being accredited and audited, which would be delivered by accreditation schemes regulated, but not run by, the NHVR. (question 9, page 13)
- a **simplified system of prescriptive fatigue rules**, to support businesses whose size or risk profile does not warrant a more complex approach. The new system would include **simpler but more flexible time counting rules** and a **much simpler work diary** (question 8, page 4)

The new system would bring **4.5-12 tonne trucks into the scope of these requirements**, but the modified record-keeping rules for local work would remain (question 2, page 4).

SARTA has long been concerned about fitness for duty and driver health. This submission proposes that **all commercial heavy vehicle drivers should have regular medicals against upgraded fitness for duty standards**. (Question 4, page 5)

SARTA's recommended approach would involve fundamental changes to enforcement, including a **dramatic reduction in penalties for prescriptive work and rest hour and record-keeping offences** and the removal of all non-safety-related offences. These penalties were set before the primary safety duty and offences in Chapter 1A of the Law were developed. Today, systemic fatigue management issues should be prosecuted as primary duty offences instead. (Question 11, page 14)

To implement these changes to the law and accommodate emerging technologies, the **structure of the law should be changed to adopt the three-tier legislative structure set out in the ATA's risk-based regulation submission**.³ Table 2 on page 8 summarises where the fatigue risk controls would be located in the new structure of the law.

The submission recommends that **all commercial heavy vehicle drivers should have a level of fatigue training**, and closes with recommendations about **electronic work diaries** and a length incentive to provide drivers with **more comfortable sleeper cabs** (Question 12, page 16)

² ATA, [A risk-based approach to regulating heavy vehicles](#). May 2019. 1-3.

³ ATA, May 2019, 10-11.

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?

Although the primary duties in chapter 1A of the HVNL apply to all heavy vehicles, the issues paper points out that the full controls in chapter 6 only apply to 22 per cent of heavy vehicles.

The remainder are heavy vehicles that mass between 4.5 and 12 tonnes (31 per cent), or fatigue regulated heavy vehicles that undertake local work (47 per cent).⁴

4.5-12 tonne trucks

When the current fatigue laws were developed, it was decided to exclude the drivers of trucks massing between 4.5 and 12 tonnes because there was, at the time, little data on the incidence of fatigue for drivers of these vehicles. It was assumed, falsely, that long working hours were less of a problem for these drivers.⁵

The gaps in the data have now been filled.

- In 2013, Friswell and Williamson found that at least as many light drivers as heavy drivers experienced fatigue frequently and as a problem. More than half the drivers in both groups reported that they had gone to sleep at the wheel.⁶
- Internal Toll Group statistics, cited in its submission to this review, show that motor vehicle incidents are far more likely for pick-up and delivery than linehaul tasks. PUD tasks are typically carried out in smaller vehicles and over shorter distances.⁷

Given these clear fatigue issues, **SARTA and ATA members consider that the scope of the fatigue provisions in the new HVNL should include all trucks weighing more than 4.5 tonnes.**

The drivers of these vehicles should be subject to the same fatigue management requirements, including record keeping obligations, as the drivers of vehicles weighing 12 tonnes or more. These obligations, however, should continue to be modified by specific local work record-keeping rules, discussed below.

Local work

Sections 318 to 319A of the HVNL provide that drivers of fatigue regulated heavy vehicles do not need to maintain work diaries for work within a 100 kilometre radius of their home base. The drivers and their record keepers are instead obliged to keep an extensive range of trip records.

⁴ NTC, May 2019, 31.

⁵ NTC, [Heavy vehicle driver fatigue – final regulatory impact statement](#). December 2006. 72.

⁶ Friswell, R and A Williamson. "Comparison of the fatigue experiences of short haul light and long distance heavy vehicle drivers." *Safety Science* 57 (2013), 203-213.

⁷ Jones, S. *Toll Group submission on effective fatigue management*. July 2019. 7.

The NHVR has issued exemption notices:

- extending the 100 kilometre radius to 160 kilometres for the transportation of primary products between a primary production facility and another facility or a point of sale, processing or distribution⁸
- clarifying that the 100 kilometre radius applies, in NSW, to heavy vehicle sales and repair, manufacturing, and hire and rental.⁹

The local work record keeping rules were originally introduced to reduce the compliance burden on local drivers who travel short distances with frequent breaks during which they load or unload. It works well in urban areas, because it relieves these drivers of many hours of small entry paperwork every week.

The local area radius in rural settings needs to be larger than in urban areas because there is less congestion, speed limits are higher, and the economic base is spread more broadly.¹⁰

These principles of these arguments have merit. The local work record-keeping rules should be retained but the definition of Local-Work should be -changed, under First Principles, from the irrelevant distance-based approach to one that treats all HV work where the driver returns daily/nightly to sleep in their own bed at home, as local work, regardless of distance travelled or the geographic radius within which they worked.

The ATA's proposal to require all commercial heavy vehicle drivers to have a basic level of fatigue training (page 16) would help address the compliance issues raised in the NTC paper,¹¹ as would restructuring the NHVR's guidance material to make the local work rules more prominent.

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

The issues paper identifies licensing medicals under *Assessing Fitness to Drive* (AFTD) and accreditation as two of the three risk controls that reduce the likelihood of driving while fatigued.¹²

Neither risk control is effective.

As table 1 shows, most heavy vehicle licensing categories in Australia do not require medical assessments under AFTD. The notable exception is Western Australia, where all commercial vehicle drivers are required to have medicals at regular intervals.¹³

⁸ [National Primary Production Work Diary Exemption Notice 2018 \(No 1\).](#)

⁹ [New South Wales Fatigue Record-Keeping Exemption Notice 2019 \(No 1\).](#)

¹⁰ Keenan, K. Letter to the NHVR, 17 July 2018.

¹¹ NTC, May 2019, 30.

¹² NTC, May 2019, 20.

¹³ *Occupational Safety and Health Regulations 1996* [WA], s 3.131.

Table 1: Medical assessment requirements by state and territory

	Driver licence category ¹					
	LR	MR	HR	HC	MC	AC
NSW	✗	✗	✗	✗	✓	✓
Victoria	✗	✗	✗	✗	✗	✓
Queensland	✗	✗	✗	✗	✗	✓
South Australia	✗	✗	✗	✗	✗	✓
Western Australia ²	✓	✓	✓	✓	✓	✓
Tasmania	✗	✗	✗	✗	✓	✓
Northern Territory	✗	✗	✗	✗	✗	✗
ACT	✗	✗	✗	✗	✗	✓

Note 1: LR=light rigid; MR=medium rigid; HR=heavy rigid; HC=heavy combination; MC=multicombination; AC=accreditation.

Note 2: All commercial drivers in WA are required to have medicals.

Source: State driver licensing websites.

In addition, and as the ATA has previously argued,¹⁴ AFTD is not a fitness for job medical standard and has significant deficiencies:

- AFTD does not deal adequately with sleep apnoea, because it relies on the Epworth Sleepiness Scale (ESS): a subjective index of sleepiness. Peer reviewed research conducted from 2008 to 2011 found that **41 per cent** of Australian long-distance commercial drivers had obstructive sleep apnoea, but only **12.2 per cent** recorded a positive (>10) score when they filled in the ESS.¹⁵
- In 2008, the Queensland Centre for Medical Health Research found that some **6.3 per cent** of truck drivers had type 2 diabetes, compared to the Australian norm of **3.1 per cent**.¹⁶ Despite this finding, the urine glucose test for diabetes was removed in the 2012 edition of AFTD – it was medically deprecated – but not replaced with an updated test.
- Cardiovascular disease is a most significant issue for the trucking industry. In 2013, Elkington and Stevenson concluded that **37.3 per cent** of the drivers who participated in their major study of long-distance commercial drivers were overweight; a further **47.2 per cent** were obese.¹⁷ Despite this, the AFTD medical exam does not include routine screening for cardiac risk factors.

¹⁴ ATA, [Assessing Fitness to Drive: 2014 Review](#). 5 December 2014.

¹⁵ Sharwood, L et al (2012) "Assessing sleepiness and sleep disorders in Australian long-distance commercial vehicle drivers: self-report versus an 'at home' measuring device" in *Sleep* 35:4, 472.

¹⁶ Queensland Centre for Medical Health Research (2008) *Health Survey of the NSW Trucking Industry*. Work Outcome Research Cost-Benefit (WORC) Project. 63.

¹⁷ Elkington, J and M Stevenson, *The heavy vehicle study—final report*. 2013, 26. These percentages are across both the case and control groups.

In its submission to the 2014 review of *Assessing Fitness to Drive*, the ATA recommended that the NTC should develop a new category 1 commercial medical standard, which would apply to drivers working under accreditation and DG licensing.¹⁸

Given the administrative difficulties involved in having two medical standards for truck drivers, the ATA has reconsidered this approach and now recommends that:

- all commercial heavy vehicle drivers be required to have medicals at regular intervals
- those medicals be carried out against an upgraded fitness for duty standard that includes enhanced screening for sleep apnoea, type 2 diabetes and cardiovascular risk factors.

Fitness for JOB vs Fitness For DUTY

There is an important difference between the concepts of fitness for the JOB as determined by the medicals, and fitness for DUTY prior to each shift. The above comments relate to the former and the role mandatory medicals play. The latter is the critical issue that presents as the major fatigue-related safety issue that is not currently well managed nor is it adequately covered in the HVNL.

SARTA considers that the new HVNL2.0 must, under either the First Principles Approach that we argued at the top of this submission, or under the alternative approach in the rest of this submission, provide that effective measures must be taken as far as reasonably practicable to ensure the fitness for duty of each driver immediately prior to commencement of their shift. This is not a matter that should be restricted solely to operators and drivers working under a safe practices regime, whether accredited or not. It should be a universal requirement, with scope for the parties to adopt an appropriate an effective methodology that suits their operation and circumstances, noting that very few operators are or can be in the position of being able to site and assess each driver's Fitness For Duty prior to each shift, so appropriate self-assessment methods will be required in most instances.

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?

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?

In the ATA's view, the best way to make the HVNL agile and to ensure it can accommodate emerging technologies is to adopt the three-tier legislative structure set out in our risk-based regulation submission.¹⁹

Under this regulatory model:

- the **primary legislation** would comprise an amended version of Chapter 1A; other key offences; overarching principles about enforcement, sanctions, reviews and appeals; corporate governance; and regulation and order/rule making powers.

¹⁸ ATA, December 2014, 3.

¹⁹ ATA, May 2019, 10-11.

- the **regulations** would provide more detail, including the penalty provisions for any work and rest hour and record keeping offences that remain following eradication of non-safety-related offences-
- There would be a new tier of **orders and standards** made by the NHVR. These would include rules for accreditation schemes and technology providers, the details of the prescriptive work and rest hours and prescriptive record keeping requirements.

Table 2 summarises how fatigue risk controls in the HVNL could be made to fit this model.

Table 2: Location of fatigue risk controls under the existing HVNL and the ATA model

Control	Existing location	ATA model
Safety duties relating to fatigue	HVNL Chapter 1A (CoR parties and executive officers)	Retain but remove prescriptive list of chain parties
	HVNL Part 6.2 (duty of driver to avoid driving while fatigued)	Retain within a general safety duty for workers and consolidate in Chapter 1A. The maximum penalty should not be increased
Accredited safety-based systems stream		
<u>Guidelines</u>	<u>N/A</u>	<u>New NHVR Guidelines</u>
Standards for accreditation schemes	N/A	New heavy vehicle accreditation scheme standards
Accredited operator fatigue standards	BFM/AFM standards and businesses rules as approved by ministers	Set by approved schemes in line with accreditation scheme standards
Prescriptive stream		
Prescriptive work and rest hours	Heavy Vehicle (Fatigue Management) National Regulation	New heavy vehicle fatigue standards
Offence provisions for prescriptive work and rest hours	HVNL Part 6.3	Heavy Vehicle (Fatigue Management) National Regulation
Prescriptive record keeping requirements	HVNL Part 6.4	New heavy vehicle fatigue standards
	Heavy Vehicle (Fatigue Management) National Regulation	New heavy vehicle fatigue standards
Offence provisions for prescriptive record keeping requirements	HVNL Part 6.4	Heavy Vehicle (Fatigue Management) National Regulation

The ATA's recommended approach would mean the NHVR could consider and approve best-practice approaches to fatigue management as new technologies evolve and are shown to work as regulatory tools.

Question 5 separately asks if training could be used to encourage continuous improvement. The ATA's response to this question is on page 16.

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?

The preferred First Principles Approach set out at the beginning of this submission would result in substantial alignment between the HVNL jurisdictions and non-participating jurisdictions' current regimes.

The ATA's risk-based regulation submission points out that only **4.1 per cent** of Australia's total road freight task in tonne-kilometre terms occurs between WA/NT and the HVNL jurisdictions.²⁰

The gains from trying to draft a new HVNL that meets the needs of all states and territories would be small or negative, if it proved achievable at all. The aim of the Review should be to produce a HVNL 2.0 that provides what is required for the effective regulation of a safe, productive and viable road transport industry, regardless of whether or not currently non-participating jurisdictions are likely to opt into the HVNL 2.0 regime.

There are cross-border fatigue issues between WA and the HVNL area that need to be addressed. These are:

- The need for operators to hold more than one accreditation and go through multiple overlapping audits
- Section 245 of the HVNL, which means that drivers travelling into Western Australia for seven days or fewer must comply with the HVNL work and rest hours and not the Western Australian rules.²¹

The need to rationalise the number of audits is best dealt with through mutual recognition arrangements between the accreditation schemes rather than legislation. This should NOT be done in a manner which delivers inappropriate and unfair advantage to operators from one jurisdiction over operators from other jurisdictions when operating in the other jurisdiction; for example it would be inappropriate to allow only WA operators to operate say 53.5m roadtrains within SA.

The best way to deal with section 245 is simply to leave it out of the HVNL2.0.

²⁰ ATA, May 2019, 9.

²¹ NTC, [HVNL fatigue issues consultation report](#), July 2018. 9.

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?

There are 46,000 road freight businesses in the HVNL states. 24,000 are non-employing businesses such as owner drivers or small companies where only the directors work in the business.²² In addition, the NHVR regulates many more non-transport businesses that operate trucks for their own internal purposes, such as operating farms, mines, or distributing their own products in urban areas.

Although some very small road transport businesses have **well developed and effective** safety **practices**, it would be unreasonable to expect the bulk of these businesses to adopt complex **safety management** systems.

Accordingly, the ATA considers that the new HVNL should include a **simplified system of prescriptive fatigue rules**, to support these businesses.

Simplifying the prescriptive fatigue rules

As the issues paper points out, the HVNL time counting rules are difficult to understand. They force drivers to work by the book rather than take sensible steps to manage their fatigue. It not uncommon for the current rules to:

- discourage drivers from taking a break early in a shift when they feel tired because of productivity consequences that may apply later
- prevent drivers from working when they are not fatigued, such as immediately after a seven hour continuous break when an overlapping 24 hour counting period still applies; and
- disrupt normal start times for the remainder of a 14 day work cycle if an unforeseen delay occurs to one start time, such as a two hour loading delay.

The complexity of the time counting rules has also been criticised by the courts. In *Ballantyne v National Heavy Vehicle Regulator*, Peek J commented that:

As to the examples in the log books issued to truck drivers I do consider that they could be more 'user friendly', particularly having regard to the audience to which they are addressed. It seems to me that, without in any way trying to be comprehensive, the single most obvious improvement might be to expressly state, loudly and clearly, that following the end of a major rest break there can be two overlapping 24 hour periods running at the same time.²³

The ATA proposes that the prescriptive fatigue rules – effectively an updated and substantially simpler version of standard hours – should be developed by the NHVR in consultation with industry and made as an order by the regulator (table 2, page 8). This would ensure that the rules could be changed as problems emerged, instead of forcing the regulator to look for administrative workarounds.

The principle should be to enable drivers to REST WHEN TIRED NOT WHEN REQUIRED

²² ABS cat 8165.0, June 2018.

²³ *Ballantyne v National Heavy Vehicle Regulator*, [2019] SASC 135.

The new standard hours rules should draw on fatigue science and the findings of the heavy vehicle driver fatigue project to:

- move the first short break requirement to a few hours into a driver's work time, to address the identified increase in drowsiness in the first three hours of a shift with an early start,²⁴ as well as the known issues with drivers settling into their shift patterns²⁵. Under our preferred First Principles approach this would be included in the proposed guidelines for effective fatigue management.
- remove the requirement that each short break must be at least 15 minutes. This requirement is not supported by the science, which shows that what is important is the break and respite from the driving task, not the minutes ticking by on a clock²⁶. The new rules should, however, require a minimum amount of total short rest during a shift, the timing and duration of each such Short Rest should be up to the driver.
- simplify the overlapping 24 hour periods in the time counting system, to enable a driver to recommence work after a compliant continuous sleep break.
- provide drivers with an extra one hour of flexibility at the end of a shift to help maintain regular shift patterns, maintain normal mealtimes, deal with unforeseen circumstances, reach a suitable rest area or get to their destination rather than be forced to take a seven hour rest break and then drive home at night.

The heavy vehicle driver fatigue project found that shifts longer than 12 hours were associated with an increase in drowsiness events.²⁷ In the ATA's view, the risks associated with this increase would be controlled, under the simpler prescriptive rules regime, by:

- restricting total driving time to 24 hours in a 48 hour period, so a driver working a 13 hour shift one day would be restricted to an 11 hour shift on the next day. Drivers operating under these rules would not be able to transfer more than one hour from one day to another
- the commercial heavy vehicle driver medical and fatigue training requirements in this submission.

In addition, it must be recognised that fatigue risks are multi-faceted and a level of flexibility in managing total work hours on any particular day would be beneficial for promoting consistent work patterns and better quality rest. The 2001 Fatigue Expert Group report identified the need for this flexibility,²⁸ but it was not implemented in the current version of standard hours.

Drivers and operators wanting even more flexibility would be accommodated through the performance-based framework (question 9, page 13).

²⁴ ²⁴ CRC for Alertness, Safety and Productivity, [Heavy vehicle driver fatigue project: final project report](#). February 2019. 13.

²⁵ National Truck Accident Research Centre, [2019 Major accident investigation report](#). 28.

²⁶ Fatigue Expert Group, [Options for regulatory approach to fatigue in drivers of heavy vehicles in Australia and New Zealand](#), February 2001. 38.

²⁷ Alertness CRC, 2019. 14.

²⁸ Fatigue Expert Group, 2001, 43.

Simplifying fatigue record-keeping

In addition to simplifying the work and rest hours, there is an **urgent need to simplify fatigue record-keeping**. Under the preferred First Principles approach the format and content of records would be a matter for each party, noting that they will be required in the event of a serious incident to be able to demonstrate that they took measures as far as reasonably practicable to manage fatigue and the Guidelines would recommend appropriate approaches to record keeping.

The existing national heavy vehicle driver work diary is complex and full of traps for drivers. Its 27 pages of instructions are policed with zero tolerance for trivial paperwork errors, such as failing to draw vertical lines between work and rest periods.²⁹

The ATA considers that the national driver work diary could be made more driver-friendly by:

- **Removing the licence number field.** All work diaries are numbered and linked to individual drivers. Given that every page of a work diary is numbered in the top right-hand corner, there is no legitimate compliance reason to require the owner to fill in their licence number on every page
- The **work and rest hour option boxes should be removed**, given that this work diary would only be used by drivers in the prescriptive stream of regulation
- The **total work and total rest boxes should be replaced**, given that they ask for meaningless information. For 24 hour periods, time is counted forward from the relevant major rest break, not from midnight, except in the rare occasions when a legal sleep rest ends at midnight. The boxes cause a great deal of confusion, including amongst general duty police officers.
- The **requirement for drivers to sign work diary pages should be removed**. Because work diaries are linked to individual drivers, signature evidence that a driver has filled out a page is not legally needed. It is, however, legally necessary for drivers to date work diary pages.
- The 'do not drive if you are impaired by fatigue' watermark should be removed – it could only have been written by a committee – and replaced with **useful guidance throughout the diary** that respects the expertise of Australia's professional truck drivers. The NHVR requires the inclusion of this guidance in new AFM programs now, including – for example – a warning that drivers with fewer than five hours of sleep will be impaired by fatigue.

In addition, the ATA proposes that the work diary requirements should be amended so that drivers only need to comply with the core safety-related, rules including the Sleep Rest requirement. Errors in the frequency or duration of individual Short Rests should not trigger offences and penalties.-

Attachment A sets out legislative drafting that would give effect to these recommendations.

The replacement work diary design should be tested through a case-control trial before it is finalised.

²⁹ NTC, May 2019, 43. The vertical lines rule is so ridiculous and easy for drivers to forget that a large trucking business recently asked the ATA for a consignment of 15cm promotional rulers. The business plans to issue each of its drivers with a ruler for the sole purpose of drawing the vertical lines.

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?

Draft principle 5 in section 4.5 of the issues paper suggests there should be flexible compliance options that enable operators to comply in a way that best meets their needs.³⁰

The ATA and its members agree.

In our view, the new HVNL must include a new, performance-based framework that enables operators to manage fatigue as a risk, including by adopting new technology and proven fatigue management systems. This view is consistent with the consensus statement from the NHVR's initial fatigue safety forum.³¹

The best way to implement this framework would be through a new accreditation system that would replace Chapter 8 of the Law.

Role of the NHVR under a new accreditation system

The NHVR would regulate **accreditation scheme providers** (including industry providers like TruckSafe) and **auditors**. Scheme providers would be required to meet a **National Accreditation Standard**, which would set out broad requirements for the schemes' business rules and standards (including for fatigue risk management).

A legitimate concern with this approach is that it could result in the establishment of very small accreditation schemes that could suddenly close. It could also, alternatively, result in the establishment of in-house, corporate schemes where accreditation became a condition of doing business with that company, resulting in many subcontractors being obliged to be 'accredited' in a potentially limitless number of such schemes. The simplest solution to avoid this would be the establishment of clear guidelines as to what constitutes effective fatigue management -which would facilitate a **single audit regime** which any and all such accreditation regimes should adopt, thus facilitating mutual recognition between schemes and mitigating against the need for subcontractors to be in multiple schemes.

The ATA considers that these concerns can be addressed through the creation of strong entry conditions for accreditation schemes, in the same way that the NHVR's guidelines for industry codes of practice are helping deliver strong, well-written industry codes.³²

Role of industry schemes

Industry schemes would be responsible for developing their own certification standards and business rules, as well as certifying operators against their standards.

³⁰ NTC, May 2019, 47.

³¹ NHVR, [Fatigue safety forum – summary of outcomes](#). 15 March 2019. The forum was held in October 2018.

³² NHVR, [Guidelines for preparing and registering industry codes of practice](#). 2017.

Common standards for medicals and training

Because of the complexity involved, and to make sure that employees could easily transition from one certified operator to another, there would be common standards for:

- truck driver medicals, although the schemes would be responsible for auditing operators to ensure their medicals were up to date (page 5)
- the necessary fatigue training units of competency (page 16)

Exemption from prescriptive fatigue requirements

Operators and drivers operating under this framework would be exempt from the prescriptive fatigue requirements in the HVNL, including the requirement for drivers to maintain work diaries although they may choose to do so as to meet the requirement to be able to demonstrate that as far as reasonably practicable they took measures to manage their fatigue.

These exemptions would be available to operators in any authorised accreditation or other alternative safe practices scheme, provided they passed the NHVR's compliance 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?

The new HVNL should require Parties to take full responsibility for management of risk as far as reasonably practicable. The issues paper cites rail and aviation fatigue regulation as examples of this approach; however:

- the Rail Safety National Law requires rail transport operators to have fatigue risk management programs that meet prescribed requirements.³³ Rail transport operators are audited against these requirements as part of their mandatory accreditation
- the Civil Aviation Orders set out comprehensive fatigue rules.³⁴

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?

Duties of persons exercising powers under the HVNL

In some states, the police have an important role in enforcing the HVNL. The police are not, however, required to comply with the NHVR's enforcement policies, guidelines and manuals. They have their own approach to enforcement.

This divergence in approach is unjustified now and would become even more problematic under the ATA's model for the law, where more businesses would operate under flexible

³³ RSNL, s 116

³⁴ CAO 48.1

fatigue arrangements than prescriptive work and rest hours and as the NHVR progressively takes over on-road enforcement in Qld, NSW, VIC and the ACT as they have done so in SA. It is intolerable that two approaches to enforcement be applied within any jurisdiction. ³⁵

Accordingly, the ATA considers that the police must be required to exercise their powers under the HVNL in accordance with NHVR policies and directions in notices. This could be implemented by amending s 697 of the Law. This approach should result in matters that are currently covered by NHVR Guidelines, such as the proposed Electronic Work Diary (EWD) Enforcement Guidelines and the HV Inspection Manual, becoming content of formal NHVR Notices.

Prescriptive work and rest hour and record-keeping penalties

The current HVNL imposes very high maximum penalties for minor work and rest hour and record-keeping offences that are of limited, if any, safety-related significance at all. As astutely noted by experienced operational police in SA who have repeatedly stated:

“IT’S IS NOT THE MINUTES BUT THE HOURS THAT ARE KILLING PEOPLE”.

For example:

- the maximum penalty for minor risk breach is \$4,390 or \$439 if the offence is handled by an infringement notice
- the maximum penalty for failing to record information in a written work diary is \$1,650, or \$165 if handled as an infringement.

These penalties for minor breaches of the fatigue rules do not make the roads safer. They act, instead, as a frustrating maze of random hazards for drivers. The result is that good, safe drivers are leaving the industry because they can so easily and unjustly be fined substantial portions of their wages over clerical and administrative matters under this BAD LAW.

As Chris, a driver who took a seven year break from driving trucks, said:

I stopped driving trucks seven years ago following two fines I received for 15 minute errors in my old log book that I carried in my truck for 28 days – as per law. On my way from Queensland on a Friday, I got stopped at Goondiwindi and Dubbo by RMS both in one day and fined for separate offences both over one month old. Simple mistakes, well in the past, that cost me a week’s wage.³⁵

The existing maximum penalties were set before the general safety duty offences in chapter 1A were introduced. Serious, systemic fatigue breaches can now be prosecuted as general duty offences rather than as multiple individual offences.

As a result, the maximum penalties for prescriptive fatigue offences – including record keeping offences – should be reduced to more appropriate levels.

³⁵ Cited in B Magill, *The driver shortage approach – reformed*. Daimler Truck and Bus Future Leaders’ Program report, 2019.

In addition, the ATA considers that historic work diary breaches -- prior to a driver's current counting period -- should be considered expired. There is no safety benefit in pursuing a driver for old breaches, although a pattern of work diary issues should be usable as evidence in prosecuting an offence under Chapter 1A of the Law.

A better internal review process for work diary offences

Under the current HVNL, it is difficult for a driver issued with an infringement notice for a work diary offence to exercise their right to have the matter heard in court.

The driver would, in due course, be issued with a court attendance notice to appear at a court near where the notice was issued. The driver could well be working on that date on the other side of Australia.

The costs are also prohibitive and generally serve to cause most drivers and operators afflicted with significant ineffectual penalties at the lower end of the scale to just 'cop it' and pay the fine because the cost of defending it exceeds to fine. There is no doubt at all in SARTA's view that far too many police are very well aware of this as they rack up offences and fines for these meaningless and inconsequential (in relation to safety outcomes) technical non-safety related breaches. It is not unreasonable that **most people in the industry quite understandably see this aspect of the HVNL and its enforcement as a great government-sanctioned rort.**

As a result, few drivers choose to exercise their right to a court hearing.

The new HVNL should include a better internal review process for work diary offences, so that drivers who wish to appeal an infringement notice can do so without the need to attend a court hearing and without the matter automatically being referred back to the issuing officer because the clear and consistent evidence is that the issuing officers seldom disagree with themselves, making a farce of this existing police practice.

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

Fatigue training

The 2018 review of the national heavy vehicle driver competency framework concluded that the existing licensing units for heavy vehicle drivers were inadequate.

As an example, the review compared the existing HR licensing unit (TLILIC2016 Licence to drive a heavy rigid vehicle) with ten known safety risk areas. The review concluded that the current unit completely failed to address six of those risks -- including fatigue -- and did not properly address the other four.³⁶

Further, the existing fatigue risk management units of competency, TLIF0005 (for drivers) and TLIF006 (for schedulers and their supervisors) are not fit for purpose.

In December 2016, when the units were being developed, the ATA argued that:

³⁶ Austroads, [Review of the national heavy vehicle driver competency framework](#). Report AP-R564-18, May 2018. 38.

- the units needed to increase the participants' understanding of what caused fatigue and what would make drivers safe, not just provide information on how to comply with the law
- there needed to be a greater appreciation of the limits of what could be learned within a single unit and the limited timeframes involved.
- strong consideration should be given to requiring participants to demonstrate the practical application of their new knowledge within the workplace as part of the assessment process.³⁷

None of these concerns were adequately addressed in the development of the units. The development process was characterised by a lack of effective consultation, a badly misnamed quality assurance process and an indifference to the actual requirements of the Law and the NHVAS BFM/AFM standards.

At present, government training support is only available for traineeships, apprenticeships or full vocational certificates. There is a strong argument that support should also be available to industry participants who wish to undertake single units of competency or skill sets.

Accordingly, the ATA considers that:

- all commercial heavy vehicle drivers should receive fatigue training as part of the driver licensing process, perhaps through an online module
- the NHVR mandated fatigue units should be revised to focus on what causes fatigue and fatigue prevention
- government training funding should be available to industry participants who need to undertake these units, given the importance of improving fatigue management and safety in the industry.

Electronic work diaries

Under the current HVNL, drivers using written work diaries count time in blocks of 15 minutes, with rest time rounded down and work time rounded up.³⁸ In contrast, electronic work diaries count time at one minute intervals.³⁹

In an attempt to deliver equitable treatment between drivers using written and drivers using electronic work diaries, EWD drivers operating under standard hours or BFM can exceed a work period by up to and including eight minutes in 24 hours.⁴⁰

In the ATA's view, the eight minute tolerance does not deliver equity between users. Accordingly, the ATA considers that **both written and electronic work diaries should record time on the same basis, in 15 minute intervals, with EWDs having the added flexibility of those intervals being able to start at any time whereas the current Paper Work Diaries are restricted to each period commencing on the quarter hour.**

In addition, the ATA considers that the **technological assumptions in the law about EWDs should be reviewed.**

³⁷ ATA, "Fatigue management accreditation units." Email submission to Australian Industry Standards, 5 December 2016.

³⁸ HVNL, s 246

³⁹ HVNL, s 246A(2)

⁴⁰ *Heavy Vehicle (Fatigue Management) National Regulation*, ss 5(4), 8(4), 9(4), 10(4).

Section 326, for example, makes it an offence for a driver to have more than one electronic work diary, as distinct from a single 'record'. This section would make it unlawful for a driver to download an app onto multiple devices and use them, as convenient, to access a common database of work and rest hours.

The ATA further considers that:

- there should be incentives for uptake to ensure the adoption of EWDs is low cost or cost neutral, particularly for small operators
- the EWD standards should continue to ensure that devices offered by different vendors are compatible and that data can be transferred without vendor lock in.

EWDs should also not be so designed as to be required to do the enforcement officers' jobs for them. The current NHVR construct for EWDs requires that at the press of a button the EWD should provide an officer at the roadside a list of all breaches over the past 28 days. This is inappropriate and inconsistent with the basic tenants of law and enforcement and it would also place EWD users at a distinct disadvantage as compared to users of paper Work Diaries. It is naive in the extreme to assume that EWD users will never breach because their EWD will control their Work rest Patterns to ensure compliance; humans don't consistently work that way.

EWDs suffer the exact same fatigue management failing as paper work diaries; they manage Rules Compliance NOT Fatigue.

Sleeper cab dimensions

Truck drivers and, in particular, long distance truck drivers know that the size of their truck's sleeper cab has a critical effect on their comfort and sleep quality.

ADR 42 sets out the minimum legal requirements for sleeper berths, which include the following bunk dimensions:

- 1,900 mm of bunk length
- 530 mm of bunk width at the shoulders, reducing to 440 mm after 1,200 mm
- 630 mm of headroom, noting that the horizontal and roof corners of the berth can be rounded to radii not exceeding 270 mm.⁴¹

These dimensions are not large enough for comfort when drivers can be living away from home for a week or more.

The CEO of the Queensland Trucking Association, Gary Mahon, received overwhelming support when he argued at the 2019 NatRoad conference that **combinations with large sleeper cabs should be able to access a length increase**, which would need to be implemented through both ADR 43 (for single vehicles) and the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (for combinations).

After considering a number of options, the ATA considers that **the best way to give effect to the incentive would be to allow bonneted prime movers with sleeper cabs of more**

⁴¹ ADR 42, par 16.3.

than 1,220 mm nominal width to be coupled to 13.2 metre reference dimension trailers throughout the network as well as 12.3 metre reference dimension trailers.⁴²

The incentive would be available for sleeper cabs up to 1,320 mm wide.

At present, a 13.2 metre trailer can only be used if the total length of the combination falls within the dimensional limits prescribed in the national regulation. For example, the dimensional limit for a semitrailer is 19 metres.⁴³ The incentive would represent a small relaxation of the overall dimensional requirement.

The primary technical issues that need to be considered in any length increase are overall length and low speed off-tracking (LSOT) performance.

Given the small size of the dimensional increase, overall length is not considered to be a major hurdle.

LSOT performance needs to be considered more closely, however. To validate the concept, the ATA modelled the LSOT performance of five combinations using the Queensland DTMR's VPath package.⁴⁴

Table 3 (page 19) summarises the results and shows that all the combinations modelled achieve an LSOT performance that is better than the Austroads reference vehicle (7.5 metres) and in line with the PBS level 1 performance standard (7.4 metres).⁴⁵

The detailed modelling results are in attachment B.

Table 3: VPath analysis of bonneted prime movers with wide sleeper cabs

Prime mover	Sleeper (mm)	Trailer (m)	Overall length (m)	Swept path (m)
Austroads reference	N/A	12.30	19.00	7.5
Mack Superliner	1,320	13.20	19.80	7.4
Kenworth T909	1,270	13.20	19.75	7.3
Kenworth T659	1,270	13.20	19.95	7.4
Freightliner Coronado 122	1,320	13.20	19.82	7.4

Source: ATA engineering analysis using DTMR VPath model

⁴² Reference dimensions are taken from the kingpin to the rear of the trailer. A 12.3 metre reference dimension trailer is a 45 foot trailer; a 13.2 metre reference dimension trailer is a 48 foot trailer.

⁴³ *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*, sch 6 s 3(1)(a).

⁴⁴ Department of Transport and Main Roads [Qld]. [Vehicle path](#).

⁴⁵ NHVR, [Performance-based standards scheme – the standards and vehicle assessment rules](#). 10 November 2008. 37.

Legislative drafting for key ATA proposals

Amendment to existing section 295 of the HVNL

295 National regulations for information to be included in work diary

- (1) The national regulations may provide for—
 - (a) work diary requirements for the driver of a fatigue-regulated heavy vehicle; and
 - (b) the manner in which information is to be recorded in the driver's work diary; and
 - (c) any other matter relating to information that is to be recorded in the driver's work diary.
- (2) Without limiting subsection (1), the national regulations may provide—
 - (a) for information to be recorded on a daily basis (including each period of work time and rest time the driver has on a day) or on some other stated basis; and
 - (b) for information to be recorded immediately before or after a period of work time or rest time; and
 - (c) for information to be recorded when finishing work for a day; and
 - (d) for information to be recorded when there is a change of the driver's base; and
 - (e) for information to be recorded when there is a change of the driver's record location; and
 - (f) for information to be recorded regarding the parties to a two-up driving arrangement.
- (3) Without limiting subsections (1) and (2), the national regulations may provide that, if the driver stops working on a day and starts a major rest break that will continue until the end of the day, the driver may stop recording information for the day when the driver stops working and starts the major rest break.

Amendment to existing section 291 of the HVNL [*provision to be transferred to Part 3 of the Fatigue Regulation as an introductory provision to Part 3]

Application of this Part

- (1) This Part applies if the driver of a fatigue-regulated heavy vehicle—
 - (a) is undertaking 100+km work under standard hours; or
 - (b) was undertaking 100+km work under standard hours in the last 28 days.
- (2) However, this Part does not apply to the driver of a fatigue-regulated heavy vehicle who is working under an approved fatigue management accreditation scheme.
- (3) For the purposes of this section, ***approved fatigue management accreditation scheme*** means an accreditation scheme that deals with fatigue management and that is approved by the Regulator as an approved accreditation scheme in accordance with section 458.

Amendment to existing regulation 15 of the Fatigue Regulation

15 Information to be recorded immediately after starting work

- (1) Immediately after starting work on a day, the driver must record—
 - (a) the day of the week and date; and
 - (b) the registration number of the fatigue-regulated heavy vehicle; and
 - (c) the driver's name; and
 - (d) whether the driver is a solo driver or operating under a two-up driving arrangement; and
 - (e) the address of the driver's base, unless the driver has previously recorded the address in relation to the work and it is still current; and
 - (f) the address of the driver's record location, unless the driver has previously recorded the address and it is still current; and
 - (g) the time zone of the driver's base.

Amendment to existing section 293(1) of the HVNL (plus additional sub-sections (3) and (4)) [*provision to be transferred from HVNL to Part 3 of the Fatigue Regulation]

Driver of fatigue-regulated vehicle must carry work diary

- (1) The driver of a fatigue-regulated heavy vehicle must—
- (a) keep a work diary; and
 - (b) ensure:
 - (i) the driver's work diary records adequate information to determine whether the driver has complied with the driver's work and rest hours option or, under the more flexible option, demonstrate that they have managed their fatigue as far as reasonably practicable;
 - (ii) the driver's work diary records the information required to be recorded under Subdivision [x] for each day in the previous 28 days; and
 - (iii) the driver's work diary is in the driver's possession while the driver is operating the vehicle.

Maximum penalty—

- (2) Compliance with Subdivision [x] as far as reasonably practicable is adequate for compliance with section 293(1)(b)(ii).
- (3) There is taken to be **compliance** as far as reasonably practicable with the requirements of Subdivision [x] if there is no reasonable doubt as to whether the driver has complied with the driver's work and rest hours option even though one or more of the requirements of Subdivision [x] may not have been strictly complied with.

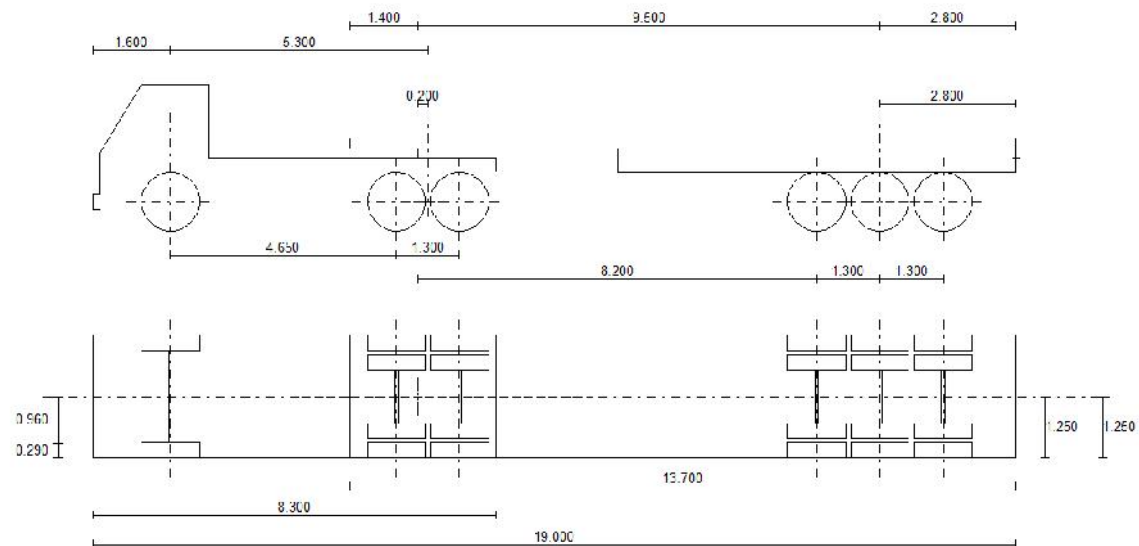
Amendment to existing section 300 of the HVNL [*provision to be transferred from HVNL to Fatigue Regulation]

Application of Div [x]

- (1) This Subdivision states how the driver of a fatigue-regulated heavy vehicle who is required to record information in the driver's work diary under Subdivision [x] must record the information.
- (2) Substantial compliance with this Subdivision is adequate for compliance with this Subdivision.
- (3) There is taken to be **compliance** as far as reasonably practicable with the requirements of this Subdivision if there is no reasonable doubt as to whether the driver has complied with the driver's work and rest hours option even though one or more of the requirements of this Subdivision may not have been strictly complied with.

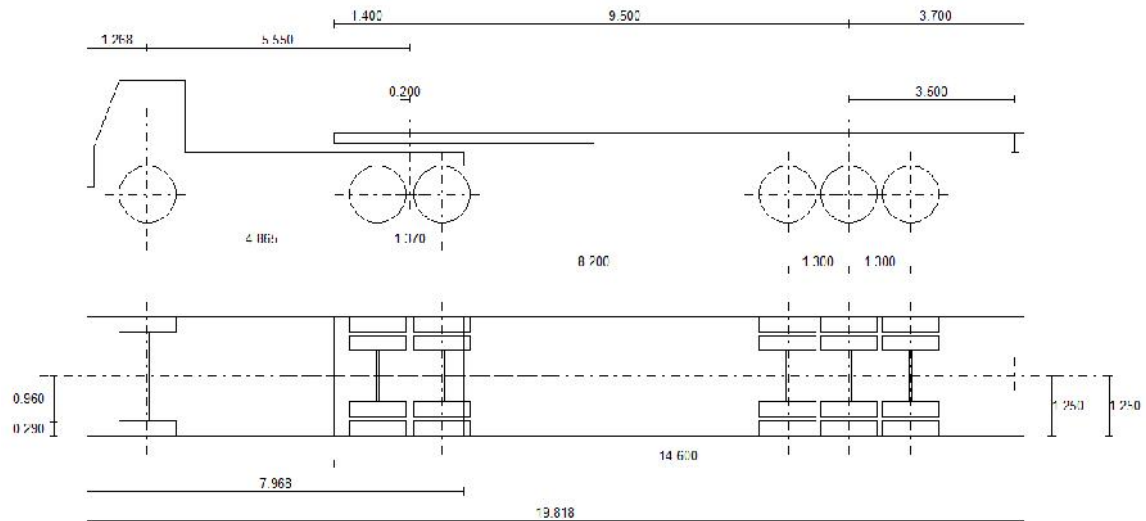
Combinations modelled and results

Austroads 19 metre semitrailer based on an ADR 43 semitrailer, maximum dimension kingpin to rear of 12.3 metres and maximum “S” dimension 9.5 metres; reference benchmark vehicle.



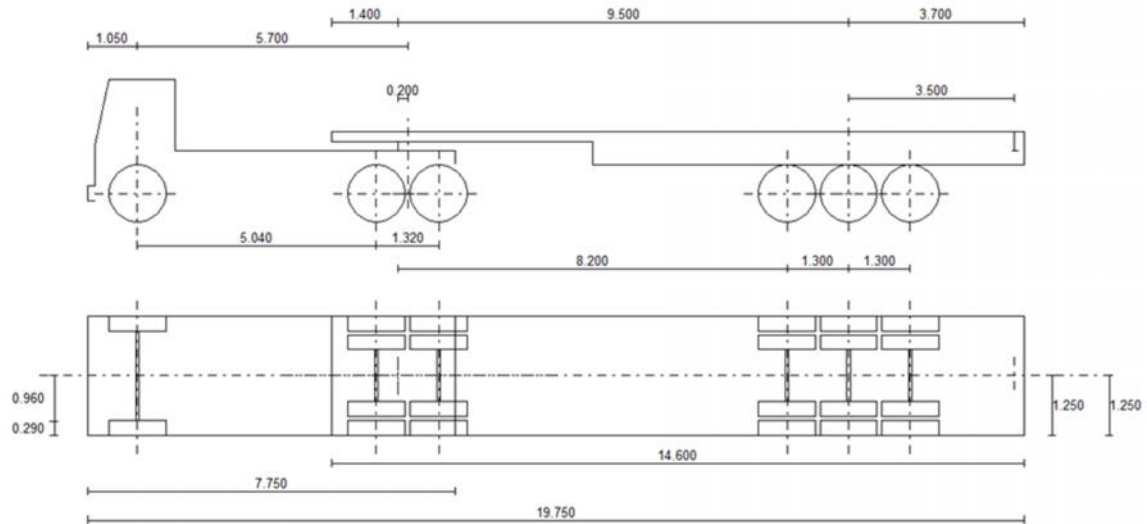
Prime mover	Dimensions (m)	Semitrailer (12.3 m)	Dimensions (m)
Front overhang	1.6	Rear overhang	2.8
Wheelbase	5.3	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path	7.5 metres		

Nominal 20 metre semitrailer combination based on a Mack Superliner with a 5.55 metre wheelbase, 1,300 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



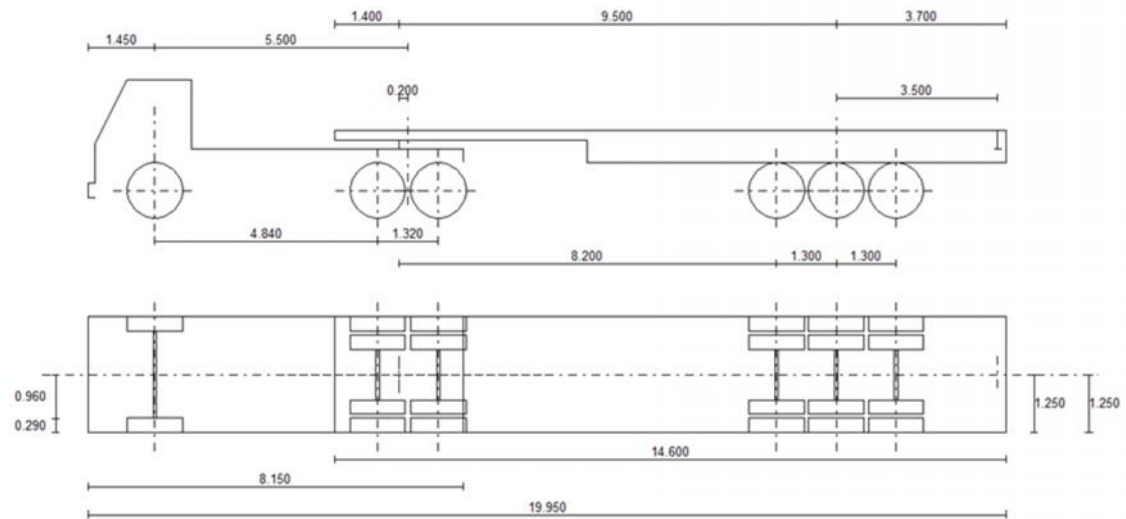
Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.27	Rear overhang	3.7
Wheelbase	5.55	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.4 metres	✓

Nominal 20 metre semitrailer combination based on a Kenworth T909 with a 5.7 metre wheelbase, 1,250 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.05	Rear overhang	3.7
Wheelbase	5.7	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path	7.3 metres ✓		

Nominal 20 metre semitrailer combination based on a Kenworth T659 with a 5.5 metre wheelbase, 1,250 mm sleeper and bull bar) and a 13.2 metre trailer under the proposed incentive.



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.45	Rear overhang	3.7
Wheelbase	5.5	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path	7.4 metres		



Prime mover	Dimensions (m)	Semitrailer (13.2 m)	Dimensions (m)
Front overhang	1.42	Rear overhang	3.7
Wheelbase	5.4	Wheelbase	9.5
Fifth wheel	+0.2	Axle group spread	2.6
Swept path		7.4 metres	