

11 September 2019

Mr Peter Harris
Chair, Heavy Vehicle National Law Review Expert Panel
National Transport Commission
Level 3, 600 Bourke Street
Melbourne, VICTORIA, 3000



Dear Mr Harris

Re: Submission – Effective fatigue management

The National Farmers' Federation welcomes the opportunity to provide a submission on the National Transport Commission's issues paper 'Effective Fatigue Management'. We also look forward to engaging further with the Review, including providing input on the remaining six issues papers on the Heavy Vehicle National Law (HVNL) review.

The NFF is the peak national body representing farmers and, more broadly, agriculture across Australia. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF. The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers. This includes road rules that support efficient domestic supply chains which, in turn, contribute to the international competitiveness of Australian agriculture.

As the peak industry body representing Australian agriculture, the NFF has a significant interest in the outcome of the HVNL Review. Agriculture is worth nearly \$60 billion annually to the Australian economy. Essential to the productivity of our industry is the ability of farmers to move machinery and freight on public roads in a safe, efficient and timely fashion.

For these reasons, the NFF welcomes a comprehensive review of the HVNL, including of its foundational principles. This submission builds on the key asks in our previous submission, *'A risk based approach to regulating heavy vehicles'*.

We note the twelve questions the issues paper asks and provide responses to questions 1, 3, 4, 6, 7, 8, 10 and 11.

1) How can we change our approach to fatigue management so we reduce fatigue-related incidents and deliver Australia's road transport task safely and efficiently?

The NFF believes there to be two major changes to the HVNL's management of fatigue which would reduce fatigue-related incidents and help deliver Australia's road freight task safely and efficiently.

Performance-based standards

The first change is the introduction of performance-based standards. In our submission to the first issues paper in this series, we argued that the balance between prescriptive and performance-based legislation could be better aligned. We argued that overly prescriptive legislation can hinder the ability of operators to innovate via new technology and methods.

We support an approach which gives operators more flexibility to choose how to comply with their fatigue-management responsibilities. Operators who have the capacity should be able to develop fatigue management systems and comply with the law by meeting performance-based standards, which would be set out in the HVNL. Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM) accreditation fall short of constituting performance-based standards because they still demand compliance in terms of work and rest hours. Case studies provided in the issues paper demonstrate how sophisticated technology can be used by operators to develop fatigue management systems which properly manage driver fatigue without the narrow focus on work and rest hours. As further support for performance-based standards, we note the NTC's point that 'operators have been critical of their [work and rest hours] incompatibility with the realities of conducting business'.¹

Operators who do not have the capacity to develop sophisticated fatigue management systems should be given the option of complying with more specific prescriptive requirements, i.e. standard work and rest hours. The reason for retaining an option to comply with prescriptive requirements is because small operators – a category into which the majority of farmers fall – often find it easier and more efficient to be presented with a set of specific requirements with which they must comply. The alternative – being required to develop their own fatigue management systems which satisfy HVNL rules and standards – can be complicated and time consuming for small-scale operators. It also introduces uncertainty as to whether their actions are legal. *Recommendation 2* in this submission would, if adopted, provide more flexibility for operators who choose to operate under the standard work/rest hours.

We note that HVNL Draft Regulatory Principle Four, which dictates that the legislation should 'provide flexibility for those operating across vastly different domains and under different models', is supportive of performance-based standards.

Recommendation 1: Introduce performance-based standards, where operators can choose to either adopt fatigue management systems which meet specified performance-based standards, or comply with standard work-rest hours.

Flexibility

The second major change to the HVNL's management of fatigue which we would recommend – and which would to a certain extent be facilitated by the introduction of performance-based standards – is greater flexibility for operators. As noted in the issues paper, 'the current HVNL does not recognise the diversity of operators and freight tasks. It does not adequately recognise: heavy vehicle uses and freight types have different operating requirements; the driving task differs between urban, regional and remote domains; operators have a different compliance capacity'.²

¹ National Transport Commission 2019, 'Effective fatigue management', p. 39.

² National Transport Commission 2019, 'Effective fatigue management', p. 35

We provide below a case study from an NFF Member which highlights the problems caused by this lack of flexibility.

Fatigue Management and Transporting Livestock: Case Study

A farmer was transporting 3 decks of cattle from north-west of Mount Isa to Townsville for live export in December 2016, a journey of a little over ten hours. According to current standard hours requirements, a driver can be on the road for 12 hours, including breaks, before they are required to take a mandatory rest period of seven continuous hours.

The roads of north-west outback Queensland are frequently narrow, unsealed or poorly maintained, prone to flooding or becoming muddy in the wet season, or clogged with bulldust. On this journey, our member became bogged due to recent rain, leading to unforeseen additional time required for his journey.

The member wished to transport the cattle to their destination as quickly as possible to minimise the stress of the journey. They had not eaten for several hours as is standard practice to manage effluent and animal safety on long trips, and the trip had already been made longer and more difficult for the cattle by being bogged. He therefore attempted to finish the journey before his work time reached the 12 hour limit.

Half an hour away from his destination, however, the farmer reached the 12-hour work limit. He was forced to pull over and rest to comply with fatigue requirements. The cattle were then forced to stand on the back of a truck in a confined space for an additional seven hours.

This is one example of the conditions in regional areas like north-west Queensland that make prescriptive laws like the existing Heavy Vehicle National Law difficult to comply with for regional drivers. The shortage of drivers³ means that having an additional driver on journeys i.e. “two up driving” is not an option for most rural drivers – many farmers complain of the difficulty in getting just one driver to come to their property.

Finding properties to pull into can be difficult, as many property owners will not allow vehicles carrying livestock onto their property for valid biosecurity reasons, such as noxious weed seeds that might be present in fur or wool, or because the vehicle is carrying cattle from inside a cattle tick zone. Further contributing to the lack of appropriate places to stop while carrying livestock is the limited rest stops for heavy vehicles in regional areas⁴.

³ Department of Infrastructure, Regional Development, and Cities, 2018, “Inquiry into National Freight and Supply Chain Priorities”, accessed 26th July, 2019, <https://www.infrastructure.gov.au/transport/freight/freight-supply-chain-priorities/files/Inquiry_Report.pdf> Transport and Logistics Industry Reference Committee, 2019, “Transport and Logistics Skills Forecast 2019”, accessed 26th July, 2019, <<https://www.australianindustrystandards.org.au/transport-and-logistics-irc-skills-forecast-2019/>>

⁴ National Transport Commission, 2019, “Managing Fatigue in the Transport Sector”, Heavy Vehicle National Law Review, accessed 9th July, 2019, <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/3315/5807/6049/Final_fatigue_issues_paper_for_release_17_May_2019.pdf>

The current Basic Fatigue Management/Advanced Fatigue Management programs are costly and administratively burdensome for the small operators that make up the majority of service providers to regional areas (many of whom are owner-drivers)⁵. Further, the transport of livestock is often seasonal and not regular, making the administration and cost of these systems even more prohibitive for owner-drivers who only need to make a few long-distance trips a year.

Many farmers report that they do not want increased hours. They understand the dangers of driving whilst fatigued and accept the safety limits of driving more than 12 hours. The vast majority of people plan their travel to fit within this timeframe.

However, the lack of flexibility in fatigue management means that emergencies or unforeseen delays, of the kind that are a reasonably regular occurrence in the bush, can sometimes strand animals on the side of the road in summer less than an hour from their destination – a less than ideal situation.

Telemetry could be used to prove the reason for, and extent of, a delay in future cases. However, for many small operators, the cost of these systems means the adoption of this technology is some time away.

In the meantime, flexibility is needed. Strict, inflexible requirements for work and rest hours are sometimes incompatible with positive animal welfare outcomes. Also, they sometimes force drivers into sub-optimal situations such as needing to take a rest stop half an hour away from the destination.

We recommend that flexibility be incorporated into the new law by allowing drivers to exceed their work hour limit by a specified amount of time, provided they report this breach to the NHVR within a reasonable period of time. Operators could self-report through the already established Heavy Vehicle Reporting Line, and this reporting could trigger a requirement for a longer continuous rest period. Drivers should be required to justify their need for extra time allowance, in order to stop this hour of flexibility being seen as an extension to the maximum work time.

This would also address the problem experienced by drivers in regional areas of being unable to comply with the standard hours due to a lack of rest stops in some regional areas.

This flexibility in work/rest hours due to unforeseen or extenuating circumstances would be a flexibility for those choosing to operate under standard work and rest hours rather than performance-based standards. The introduction of performance-based standards would itself constitute an improvement in flexibility.

Recommendation 2: Allow drivers to exceed their work hour limit by a specified amount of time, provided they report this breach to the NHVR within a reasonable period of time.

⁵ National Transport Commission, 2019, “Risk-based heavy vehicle regulation”, Heavy Vehicle National Law Review, accessed 9th July, 2019, <[https://www.ntc.gov.au/Media/Reports/\(36FCC036-E3B4-F885-CBE5-CB9DF08E308D\).pdf](https://www.ntc.gov.au/Media/Reports/(36FCC036-E3B4-F885-CBE5-CB9DF08E308D).pdf)>

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?

The introduction of performance-based standards would provide opportunity for operators to design fatigue management systems which take into consideration the different risk levels associated with different work hours.

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

It is our view that the scope of a law to regulate the use of heavy vehicles on public roads extends only to those activities directly associated with the operation of heavy vehicles on public roads. We question whether it is reasonable for the HVNL to be regulating the health and lifestyle of drivers outside of when they are engaged in activities directly related to the operation of a heavy vehicle.

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

A key problem with overly-prescriptive legislation is that it restricts the uptake of innovative methods and technologies, both of which are key drivers of productivity. We believe that there may be a role for emerging technologies in the fatigue management systems which companies use to meet performance-based standards. Again, we draw attention to the fatigue-monitoring technology used by Toll and Ron Finemore and to the clear and significant advantages of these systems over the standard work/rest hours in that they more accurately identify fatigued drivers and impose less of an administrative burden than work diaries.

While there is the possibility that these sorts of technologies will supersede work and rest requirements in terms of effectiveness, these requirements will not necessarily be made obsolete. Specific prescriptive requirements such as standard work/rest hours should remain in the HVNL as an optional alternative to performance-based standards.

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 flexibility in work and rest requirements in Western Australia under the Occupations Safety and Health (OSH) Regulations, which allow requirements to be met 'so far as is reasonably practicable' (variations from the standard hours must be minor, reasonable, not a regular occurrence and not increase the risk of fatigue)⁶, would have prevented the negative animal welfare outcomes outlined in the case study. We suggest that this be examined as a potential solution to the problem of inflexibility in the standard work hours.

⁶ National Transport Commission 2019, 'Effective fatigue management', p. 24

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?

Standard work and rest hours should remain in the HVNL, for the reasons outlined in previous answers.

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?

Operators of heavy vehicles should be entrusted with as much freedom and responsibility as is possible without posing risks to safety and road infrastructure. This is why we have called for the introduction of performance-based standards while retaining the option of standard work and rest hours. It allows operators to choose whatever level of responsibility best suits their needs and circumstances. We have no view on what it would mean for performance-based standards to give operators 'full responsibility'.

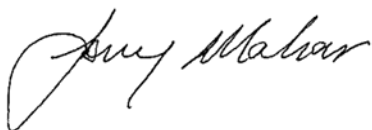
11) How can we get the best overall value from a compliance and enforcement strategy for fatigue management? How are scarce resources best allocated, and what tools do regulators need? What provisions in the law do operators need?

We note that HVNL Draft Regulatory Principle Five, which calls for 'sanctions and enforcement tools that reflect the severity of the risk'. We have no view on what particular enforcement tools are appropriate to each type of breach, so long as they are in line with this principle.

We also note concerns that parties in the Chain of Responsibility are not being properly held to account when their behaviour hinders the ability of drivers to properly manage fatigue. An example of such behaviour is unloaders falling several hours behind schedule, which puts pressure on the drivers to engage in unsafe behaviour so that they can meet deadlines.

Please do not hesitate to contact Prudence Gordon, General Manager, Trade and Economics (pgordon@nff.org.au, or 0404670434) should you have any questions with regards to this submission.

Yours sincerely



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