



**National Transport Commission Discussion Paper:
HVNL Fatigue Issues**

6 July 2018

Introduction

1. The National Road Transport Association (NatRoad), the Western Roads Federation and the Northern Territory Road Transport Association are pleased to make a joint submission on the Fatigue Issues Discussion Paper released by the National Transport Commission (NTC) in May 2018.
2. Our organisations represent road freight transport operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, express car carriers, as well as tankers and refrigerated freight operators.
3. The Discussion Paper seeks comments on two fatigue-related issues where there is a lack of clarity in the Heavy Vehicle National Law (HVNL). The first issue was initially raised by NatRoad after receiving complaints from members that drivers are being fined when transitioning from two-up driving arrangements to solo driving.
4. Based on the current law, drivers operating under a two-up arrangement are unable to transition to solo driving unless they are fully compliant with solo work and rest hours, or complete a reset rest break of 48 hours plus two consecutive night breaks. This means that there is no incentive for drivers to operate under a two-up arrangement. A two-up arrangement ceases when the second driver exits the vehicle, and the driver is then considered to be a solo driver.
5. The second issue relates to differences in the industry practice for counting work and rest time in non-participating jurisdictions and the requirements set out under the HVNL. The HVNL requires drivers travelling from a participating jurisdiction into a non-participating jurisdiction and back again within seven days to comply with work and rest hours under the HVNL.
6. At the outset, we submit that these issues arise due to the fundamental problems with the highly prescriptive fatigue regulations which remain complex and difficult to comply with. The current reliance on prescriptive work and rest hours and on-road enforcement using logbooks is not the most effective way to manage fatigue.
7. Given that the NTC has confirmed a complete review of the HVNL will be commenced later in 2018 and completed by the end of 2019 it is anticipated that feedback and recommendations arising from this discussion paper will be used to inform more effective, interim, arrangements. There is an expectation that all the HVNL legislation relevant to fatigue management will be fully revised.
8. Our submission addresses the questions raised in the Discussion Paper.

Transitioning between two-up and solo driving

Is reform of the HVNL and Regulation required to clarify work and rest times for drivers when transitioning between two-up and solo driving arrangements and back again?

9. Yes, addressing the gap in the law will reduce the risk of drivers being fined due to different interpretations of what is required. Without a regulatory change, there is no incentive for drivers to operate under two-up driving arrangements.
10. A nationally consistent approach is required for enforcement and this could be achieved in the short term by developing a nationally agreed policy for regulation of work and rest hours

when transitioning between two-up and solo driving arrangements and back again. This national policy could be followed in the long term by a legislative amendment.

11. However, it is important to avoid making changes that will add to the complexity and prescriptive nature of the fatigue rules.

If you are a two-up driver, please provide examples of your current two-up driving routes and how you apply the work and rest times to your transition to solo driving.

12. One of our members has provided an example of driver A and driver B operating solo hours in different trucks as normal. Drivers A and B then run two-up from Mildura to Brisbane. Once in Brisbane both drivers resume solo driving.
13. Given Mildura to Brisbane will involve both driver A and B 'resting' whilst the truck is moving it does not count as a 'stationary rest break' for their resumption of solo driving. Even if driver A has had five hours rest in the truck just before it stops in Brisbane, both drivers are required to have a seven hour stationary rest break before they can continue driving solo.

What work and rest times do you propose are applied to drivers when transitioning between two-up and solo driving and back again?

14. A solution is to allow the seven hour rest break to be taken in a sleeper berth while the truck is moving or stationary, or that the five hours rest under the two-up driving arrangement is counted with an additional two hours rest when transitioning to solo hours. A reset break should be recognised as being sufficient rest and the driver should not be penalised further.

How would your proposed approach impact upon you and / or your business?

15. The proposed changes would improve productivity and reduce costs as long distance trips can be completed in less time.

Counting work and rest hours in non-participating jurisdictions

16. The intention of this submission is to highlight the impact section 245 of the HVNL, with the NHVR interpretation, has on operators based in HVNL participating jurisdictions who cross borders into the Northern Territory and / or Western Australia on a regular or semi-regular basis as well as those NT / WA based operators travelling into HVNL regulated jurisdictions.

Should the HVNL apply to counting work and rest time during time spent in non-participating jurisdictions or should the laws of the non-participating jurisdiction apply to all work and rest time within those jurisdictions?

17. The Western Roads Federation and the Northern Territory Road Transport Association note concerns that some operators who are not based in the non-participating jurisdictions assume that the fatigue requirements when they enter the NT or WA are lax, which is of course not the case.
18. Western Australia has a combined work health and safety and transport law-based fatigue management system for heavy vehicle drivers. It is mandatory that all transport operators who travel into WA have WA Heavy Vehicle Accreditation (WAHVAS), including fully compliant third-party audits.
19. The NT maintains a performance-based approach to managing driver fatigue under its work health and safety laws.

20. WA and the NT recognise that WAHVAS and NHVAS fatigue modules are compliant systems in their own right and drivers can continue to operate under them when they cross borders into the WA or the NT. However, if drivers operating under those systems choose to no longer adhere to them when crossing borders into the non-participating jurisdictions then they must have an alternate safety management system in place to demonstrate how fatigue risk is mitigated. Repeal of section 245 would not remove this obligation.
21. In WA the fatigue risk management approach has been designed to accommodate increased flexibility in scheduling and recognizes the additional psychological and psycho-social benefits of rest days at home. As such the maximum work hours in a 14-day period is 168 hours. Under the more prescriptive and rigid Basic Fatigue Management (BFM) rules of the HVNL the maximum work hours in a 14-day period is 144 hours.

Is the current provision for counting time spent in participating and non-participating jurisdictions appropriate?

22. As indicated in our introduction, the current reliance on the prescriptive work and rest hours under the HVNL is not the most effective way to manage fatigue.
23. Our preference for regulating fatigue is a performance-based approach as adopted in Western Australia and the Northern Territory that applies risk management processes in relation to how a company will schedule trips; roster drivers; establish a driver's fitness to work, educate drivers in fatigue management; and establish and maintain appropriate workplace conditions.
24. The impact of section 245 of the HVNL will vary depending on how frequently transporters cross into and out of the WA or NT and whether they are caught by the 7-day timeframe. This has the effect of applying two different work and rest regimes on drivers in the WA and NT simply based on the amount of time they spend in these non-participating jurisdictions.
25. Use of the 7-day period as the determinant of record-keeping under HVNL fatigue rules is arbitrary. It may have been selected to facilitate administrative management in the checking of work diaries by enforcement officers but there is no other rational reason for the selection of 7 days.

If you do not believe the current provision is appropriate, what alternative counting time provision do you propose is applied to drivers when driving between participating and non-participating jurisdictions?

26. Drivers based in participating jurisdictions who make journeys into WA or NT and do not operate under WAHVAS and NHVAS fatigue modules or cannot satisfy the WA or NT fatigue requirements should continue to comply with the HVNL work and rest hours as a default.
27. Drivers based in WA or the NT should be allowed to follow their jurisdictional laws until they drive into a participating jurisdiction, when they must comply with the HVNL by recording their work and rest hours from the end of the last rest break of 5 or more hours before entering the participating jurisdiction.

Are you able to provide evidence about how the operation of the provision is or is not addressing the intended fatigue risk?

28. This submission does not intend to debate whether the HVNL is superior or inferior to the laws applicable in the NT or WA for the management of fatigue, however the different

interpretations of safe work and rest hours has created considerable administrative complications for the industry and for regulators.

29. In the NT Alice Springs based operators travelling into and out of South Australia on a regular basis are most exposed to section 245. Whilst these operators understand and comply with their obligations under section 245 continuous compliance with this section of the law and with BFM is problematic and penalises drivers who incur 'rest days' at remote locations such as Glendambo or Marla (in SA) or Kulgera (NT) rather than at home base, with family, in Alice Springs.
30. The imposition of the HVNL via section 245 is too rigid and prescriptive to effectively promote safety, and instead has potential to create additional fatigue risks due to other factors impacting mental health and well-being.
31. Schedulers of larger Alice Springs-based businesses, with WHS fatigue risk management systems in place have implemented journey management plans whereby drivers minimize their travel into SA to a maximum of once per week and instead conduct work on other routes inside the NT. This example serves to highlight a difficulty for NT-based road transport operators and a way that the industry has 'worked around' the problem, rather than seeing section 245 as an effective law for the management of fatigue risk.