



15 August 2019

National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 3000
Via website: www.ntc.gov.au

Dear National Transport Commission,

Re: Effective fatigue management issue paper

Queensland Transport and Logistics Council (QTLC) thanks the Commission for the opportunity to review the issues paper - Effective fatigue management. The paper as outlined will deliver a more harmonised, simplified, effective and industry focused legislation if the principles and willingness for reform indicated are achieved.

QTLC is a cooperative industry and Government advisory body that provides advice to industry stakeholders on the development, planning, regulation and operation of freight and logistics transport, infrastructure and services in Queensland. The Council works across all freight modes road, rail, air and sea to identify whole of Queensland freight solutions.

The QTLC believes the greatest impediment to reform will be accommodating differences in the freight task in different jurisdictions and harmonising different agency approaches to regulation and enforcement. States will find it difficult to relinquish control, the National Heavy Vehicle Regulator is already constrained in the reform process and the process by which traffic authorities and police will manage change is yet to be resolved.

This submission will address the issue of fatigue management through a series of recommendations and case studies. The case studies have been developed through interviews with industry and are provided as examples of issues.

Background

The HVNL was introduced to facilitate the movement of interstate transport by bringing together and harmonising several different state and national pieces of legislation. This iterative process has enabled complicated and prescriptive regulations to evolve that no longer effectively manage fatigue. For example, there are 112 logbook offences, 87 are administrative, 24 are in regard to hours of rest; only 1 is about fatigue impaired driving.

Under the current framework:

- a driver can be compliant with the prescriptive rules and still be impaired by fatigue.
- a driver can be fined for incorrect paperwork and not be impaired by fatigue and
- work diaries do not address drowsiness and in some instances, their restrictive process increases fatigue.

QTLC Recommends that:

- The review of the HVNL considers how to reduce the unintended consequences and administrative fines embedded in the current regulation.
- HVNL should remove the majority of the 112 logbook offence/fines, move logbook compliance to lower order regulation and reform process to reduce petty fines.
- The review should separate the compliance task from the fatigue management task and identifying regulatory options that balance the competing need for flexibility against the need for accountability.
- The regulator should identify the key components for safety and allow the industry to demonstrate compliance against defined criteria. This includes providing a safe process for sharing industry data with the regulator in a non-punitive way.
- QTLC supports a co-regulatory approach that accommodates best practice safety management systems developed by the operator to meet their freight task. This will enable the appropriate adoption of technology that optimises safety, the development of a safety culture and rewards for best practice. Jurisdictions and the national regulator will need to take a transparent and industry focused approach to develop tools to enable this approach.
- The regulator should be technology agnostic and promote the integration of technology into a system approach to facilitate sharing of data.
- Establishment of a rural emergency phone line to report unforeseen variations, time delays etc. and an ability to make up for the breach through additional time out or sleep requirements.

Scope of the fatigue issue

A driver waiting in line at the Port of Brisbane to unload a vessel will have very different fatigue profile to a long-haul driver on the road for a week or a driver that operate in a 100km radius works shifts and sleeps at home after every shift. The issue paper acknowledges the HVNL does not currently accommodate the significant difference in the risk profile for rural transport

including road condition limited rest areas, high temperatures and isolation. Equally smaller fleets and owner-driver operators have different capacity and capability in managing fatigue risk than large logistics providers regardless of their freight task

QTLC recommends the review should separate the compliance task from the fatigue management task and identifying regulatory options that balance the competing need for flexibility against the need for accountability.

Figure 1 CSIRO TRANSIT model highlights the type of vehicle combinations used in different parts of Australia. The map clearly demonstrates the differences in the east coast north-south trade and west of the Dividing Range. It is not surprising given these differences that Western Australia and the Northern Territory have decided not to participate in the HVNL harmonisation process. Industry has not indicated this is a problem for fatigue management perspective. However, they do not generally support the WA approach of managing fatigue under WHS legislation preferring the management of fatigue remains in the HVNL.

Figure 1 – TRANSIT road ranking and heavy vehicle access

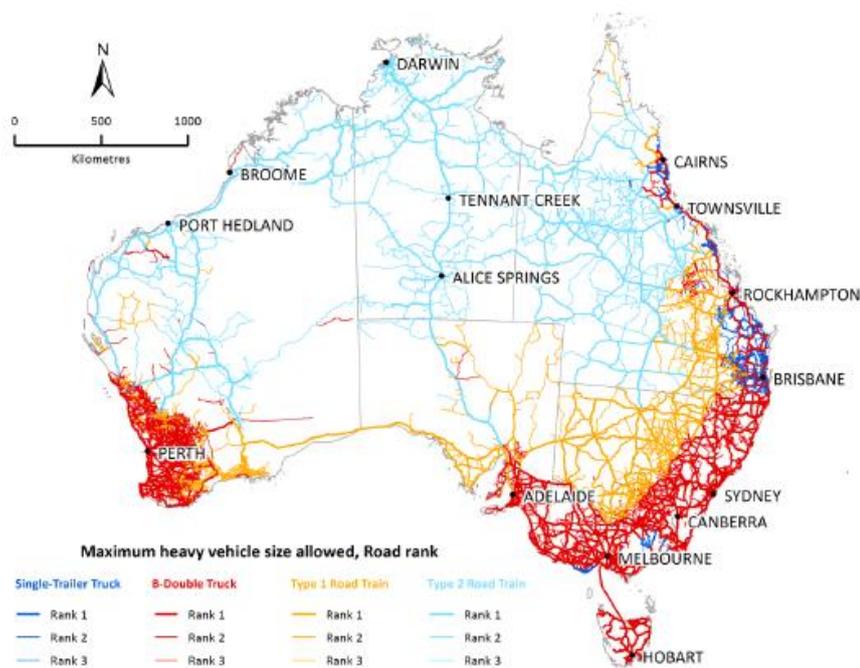


Figure 36 Current road layer used in TraNSIT showing road rankings and heavy vehicle access. A denser (Rank 3) road layer has been added at some locations, when required for some case studies

Safety Management Systems

In discussing the fatigue management challenge with industry, it became clear that the use of safety management systems or fatigue planning varies greatly across the industry. Large logistics companies highlighted the value of a holistic system-wide approach to safety. One that utilises technology as a tool in a safety management framework which includes active driver engagement and other safety planning tools. At the other end of the spectrum owner-operators might not have sophisticated systems but they are the business so their life, health etc. matters. They want to be safe but don't see the need for too much process.

Safety management is as much a culture as an enforcement activity and the HVNL only provides for enforcement options. All freight operators should have the opportunity to demonstrate fatigue management benchmarking against criteria established by the regulator. An operator should be able to utilise their record of safety management to demonstrate compliance in a more holistic way.

The HVNL does not accommodate or enable the promotion of operators with sophisticated fatigue management systems. There are no mechanisms for the regulator to reward best practice or innovation in safety management. There are no incentives for technology upgrades, increased monitoring or data sharing to reduce compliance costs. Attempts have been made through the Advanced Fatigue Management system, but low uptake indicates the program requires further refinement.

Striking the balance and providing appropriate flexibility for organisations with advanced systems and certainty for those without should be strived for. The issue is not more rules for some and more opportunity to demonstrate effective fatigue management systems or the use of technology for others. Rather the regulation needs to be flexible enough to accommodate a risk framework approach and delegate down options for a more prescriptive approach. Codes are an option, accreditations schemes or templates another. Regardless of the tool the aim is to increase safety culture and systematically reward best practice without increasing the compliance costs.

QTLC recommends a co-regulatory approach that accommodates the safety management system developed by the operator to meet their freight task, is facilitated in the legislation. This will enable the appropriate adoption of technology that optimises safety, embedding a safety culture and rewarding best practice. The regulator should identify the key components for safety and allow the industry to demonstrate compliance.

In addition, consideration should be given to the enforcement agency and their ability to assess a less prescriptive approach. Unanimously industry agrees arbitrary enforcement that penalises drivers for small breaches that have nothing to do with safety does not improve safety or build trust. The culture of enforcement is probably beyond the scope of the review however, any reform will need to consider the enforcement task their need for clarity and potentially provide the training necessary to consider a different approach.

Case study

A large logistics company has implemented a fatigue management systems, utilising technology solutions in conjunction with a holistic system-wide approach and support tools. Each driver is required to log on using the MTDData console when they enter the cab. The MTD provides system checks that must be completed, an electronic work diary and all necessary details for the task, permits etc. An in-cab fatigue management camera registers fatigue and provides an audio alert and seat vibration. Images can be viewed remotely by the WHS manager in head office and all journeys are externally recorded and assessed. In addition, the trucks have a range of safety features including electronic automatic braking.

The logistics company advised that the technology does not work in isolation, it requires an integrated approach with the company's, drug and alcohol zero tolerance, no smoking in cabs, safety management system and fatigue management plans. All fatigue occurrences are reviewed by head office and actions taken to improve safety if there are any issues. The driver's overall health is examined through open discussion with drivers about their home life, health and wellbeing. Near misses are recorded and communicated to the driver and a three-strikes policy is communicated and well understood. The company is looking to be an employer of choice providing support for staff to operate in a safe environment.

The proof in the system is a significant reduction in incidents. The company operates a seasonal trade in far north Queensland and was experiencing significant number of incidents. After implementing the full safety process, providing additional training and support the following year there was only one significant event. To date this year there have been no issues but the season isn't finished yet.

Nothing in the current HVNL allows for a reduction in compliance costs or insurance premiums for this company. There is no ability to define the benchmark and meet an agreed target to receive concessions. The company has clear evidence their processes are working but the regulator cannot support these practices. The company has the ability to provide all the data for remote auditing and transparent systems for managing compliance and the new HVNL should provide a mechanism to accommodate and reward this approach.

Simplified process

Prescriptive rules have their place in the HVNL to simplify the process for those that want them. The issue paper recommends a two-tiered approach to the regulation. QTLC believes it is not for the industry to provide a solution for this approach rather the regulator should be able to provide a regulatory approach that empowers industry to act responsibly without adding an unnecessary burden on either option.

The volume of compliance processes a business is currently recording data for should also be considered when designing the next step in safety management. For example, livestock transporters have to comply with the Livestock Production Assurance scheme, Fit to Load animal welfare, WH&S, Chain of Responsibility and Biosecurity requirements for risk management. Any additional process added to the pile that does not link the overall risk assessment framework together is a burden.

Case study

Medium-sized enterprise with 15 trucks that primarily works within twelve-hour window drivers return home at the end of each shift is looking for support with fatigue management. The company initially participated in the Advanced Fatigue Management system but found record-keeping was overwhelming and the benefit unclear. The company has a good safety record and values the importance of safety calling out bad practice when they see it.

They currently have an ad-hoc approach to discussions about fatigue with drivers. They see their responsibility is to ensure drivers are not under time pressure to deliver and can manage fatigue for themselves. How the driver does this is up to the individual's discretion within the boundaries of their safety management system.

The business prided itself on building trust with drivers and did not want to utilise in-cab video as a fatigue management tool, it felt too much like spying. Work diaries were also useful to monitor driver behaviour from the business perspective. If a driver is cheating the system, it is recorded in the diary. The diary is not managing fatigue it is managing business risk.

Potentially there is an argument for a suite of non-regulatory tools that support fatigue management and are not regulatory instruments that require auditing. Given the work diary does not manage fatigue, identifying the key risk factors that need to be managed would be useful.

This business also highlighted the need for generic templates that assist small business operators to develop an auditable trail to support chain of responsibility requirements. The operator should have a clear understanding of what verified information the regulator needs to ensure due process and a fair assessment of fatigue management is available on request. QTLC recommends the regulator works with industry to develop these tools.

Work Diaries

The issue paper indicates that current reliance on prescriptive work and rest hours and on-road enforcement using work diaries is not the most effective way to manage fatigue. The current law can lead to a perverse outcome of being compliant but not always safe. A restructured HVNL should focus on controlling those risks that lead to on-road incidents, encouraging adoption of fatigue/safety related technology and move away from an insistence on compliance with rules that are not directly related to risk.

The HVNL should enable other options to manage compliance separating enforcement measures which are not commensurate with the level of risk from safety management. The fines prescribed in the legislation are not driving behaviour change and are delivering animosity between law enforcement and the trucking profession. Clearly, this animosity does not improve road safety.

QTLC recommends the review of the HVNL considers how to reduce the unintended consequences and administrative fines imbedded in the current regulation. The excessively administrative process used to oversight work and rest needs to be reconsidered if the electronic work diary is adopted as a mandatory requirement.

Case study

Medium-sized livestock transport operator is considering whether to invest in electronic work diaries (EWD) and has been waiting for the regulator to determine if they are to be mandated. It is difficult to assess if there is an advantage to implementing them. The organisation has a safety culture, supports staff, provides training and has maintenance and safety systems but is often fined for small breaches of work-diary.

Transporting live animals has a different range of complexity to general containerised freight including:

- animal welfare considerations,
- a lack of WHS understanding at the producer pick up point,
- tight curfew timeframes imposed by the feedlot or abattoirs for delivery,

- difficult roads and
- permit requirement

It is impossible to contingency plan for every possible issue under these circumstances and there is no flexibility to manage driver safety and these factors simultaneously. The EWD would reduce foolish administrative mistakes, but it will not manage other risks. The expense of implementing EWD can be weighed up against the reduced administrative burden of compliance breaches but will also reduce flexibility around fatigue management.

Other rural livestock truckers have indicated their ability to manage fatigue is in many ways constrained by the work diary approach and if this was to be electronic any flexibility currently afforded will also be lost. Potentially the regulation in its current form does not lend itself to a technology solution.

Case study

Gladstone to Brisbane run

Start work at 3pm leave Gladstone, arrive Brisbane 9:30pm and pull up for the night (sleep 8.5 hrs.). Unload trailers at 6:30am and head back to Gladstone around 7:30 - 8:00 am stop for lunch have a rest and return to Gladstone after 3pm. This will tip you out of hours before you reach Gladstone/home even though the approach taken is safe. If you add a small job in before you leave Gladstone then the diary commences in the morning of the first day not the afternoon and having started a new 24-hour period, you are within the limits. Driving 6hrs and having a full night sleep before unloading and driving another 6hrs is a sensible process however, the work diary does not accommodate.

It would be a perverse outcome if the EWD provides the law enforcement officer with 28-days' worth of petty breaches which occurred due to inflexible requirements that are not managing fatigue. Equally current breaches that fine drivers if the EWD varies slightly from the manual diary are counter-productive. If safety is not compromised and the driver can accommodate the task within broad parameters of sleep and rest requirements, then this should be the goal of the reform process.

The other example often provided is around day time driver drowsiness. This can occur randomly and while the driver knows they would be better to take a rest the corresponding impact on their work diary make this a difficult decision. If EWDs are mandated under the current regulation this will further exacerbate this issue with no discernible benefit to fatigue management.

Cab size

The industry has also raised concerns about the difficulty resting in the restricted area of the sleeping cabs. The current measure from the kingpin to the tail light needs to be extended, as this length restriction is reducing bunk size. The length of the prime mover should accommodate the sleeper without impacting road surface and permit requirements.

No Blame Culture

The requirements of time-sensitive freight including agricultural products (grain harvest to port), cold store (horticulture), and live animals, may require different concessions to general freight particularly when the conditions under which the freight task is delivered are taken into consideration. For example, the livestock industry request access to open communication with the regulator when unforeseen issues arise. Grain producers also raised the issue of time sensitivity of harvest management. Farmers are rushing to fit harvest within weather permitting parameters. Likewise, sensitive horticultural freight has tight time frames for delivery to prevent spoilage. Managing fatigue with time constraints is an issue not well addressed.

Livestock case study

Queensland livestock trucking is primarily transacted west of the Dividing Range by small operators or owner-drivers using large vehicle configuration hauling long distances on some difficult roads. The nature of the cargo adds a layer of complexity to managing fatigue as animal welfare is an additional consideration. These drivers do not generally have sophisticated safety management systems but as sole business operators, their safety is key to their success.

Far north Queensland trucking company moves three decks of cattle from a property to the rail head at Julia Creek. The cattle have been mustered for the first time, branded and loaded on trucks. Not having been handled or crowded together ever before, they are nervous and jumpy. On the way to Julia Creek an incident occurs cattle are down and the others stumbling over them. The driver knows the best way to calm the situation is to pull over and let everyone rest and calm down. There is no knowing how long this might take. Further in the journey a mechanical issue occurs, and the truck driver is running out of time on his logbook.

Managing fatigue requires a no-blame culture but there are no blame-free ways to report or manage individual issues. The ability for rural operators to report an incident and request assistance or a logbook exemption is not currently available. As highlighted in the above case study, electronic work diaries will provide additional audit compliance but will not be effective if there is no option for the trucking industry to alert authorities to necessary breaches.

The heavy vehicle confidential reporting line is an important step in the right direction. However, the main reason for reporting is to manage competitive disputes where one operator's contract is undercut by another that can undercharge due to lax compliance processes. This is not the same as an ability for a truck driver to report extenuating circumstances, that might delay a delivery, forcing the driver to breach time or permit requirements. The ability to notify other enforcement agencies of these breaches and seek approval for action taken is also vital. Conversely the regulator will require a decision framework to manage unreasonable or too frequent requests. All decisions in regard to managing fatigue should be measured against the same risk criteria.

It is important to note all drivers consulted agreed that twelve hours was optimal driving and that no more than fourteen should be allowed.

Technology

Fatalities in crashes involving prime movers decreased by nearly 40% between 2007 and 2013 but have been relatively constant over the last four years. Fatalities in rigid truck crashes have been relatively stable over the last ten years¹ Budd and Newstead (2014)² research on the potential safety benefits of emergency crash avoidance technology found readily available technologies including Autonomous Emergency Brake Systems, Electronic Stability Control, Fatigue Warning Systems, and Lane Departure are very effective in reducing fatal crashes. The study found nationally AEBS was estimated to save 67 lives per year LDW 16 lives, ESC 11 lives and FWS 10 lives per year. ESC for heavy vehicles and RSC for trailers are proven technologies that prevent or minimize crashes however they are not being voluntarily taken up by industry.

The HVNL does not appropriately recognise the potential role of technology to reduce and record fatigue incidence. The adoption of technology will grow, and the regulation needs to be flexible enough to accommodate this evolution.

A process/framework for establishing the veracity of the technology adopted needs to be established. Potentially trucks will carry a 'black box' that records all of the on-board safety data in the future. However, without the right regulations, there will be no requirement for technology solutions to integrate into one point of data capture and the black box theory won't

¹National Heavy Vehicle Braking Strategy Phase II – Improving the Stability and Control of Heavy Vehicles - Regulatory Impact Statement April 2018

² Budd L. and Newstead S. 2014, *Potential Safety Benefits of Emerging Crash Avoidance Technologies in Australasian*

evolve. Instead, each new instrument will report using their platform and oversight by the regulator will be difficult.

New technologies are becoming available all the time providing for improved safety options. QTLC is particularly interested in results from fatigue management headband technology currently being trialled at the Port of Brisbane. This technology enables the driver to responsibly and flexibly manage their fatigue.

Industry has indicated it is looking for certainty in the legislation about the use of technology before investing. Rigidity in the current legislation is not providing improved fatigue management techniques processes or practical realities to be accommodated. The benefits, time savings and regulatory benefits are not currently clear.

The question for fatigue management is how the HVNL can promote the uptake of new technology through concessional schemes or co-regulatory approaches. There are pros and cons to mandating upgrades and these need to be balanced within the constraints of the legislation. The ability to support the industry to implement systems that manage fatigue, reduce compliance burden and increase safety is ultimately the goal of the reform.

Nationally there is a push for increased productivity across all sectors, yet Australia keeps slipping further down the international productivity list. There is a risk the review of HVML adds more layers of prescription and compliance as it did in the last iteration. QTLC hopes the review is an opportunity to consider the freight task as a whole, pull back on compliance and focus on productive outcomes. Successful reform will lead to a reduction in fatigue related accidents, an increase in drivers understanding and taking proactive steps to manage fatigue and an increase in productivity due to a reduction in compliance actions that are not addressing fatigue.

For any further information please contact Renata Berglas, Chief Executive Officer, Queensland Transport and Logistics Council, on phone 0433 939 106 or email ceo@qtlc.com.au

Regards,



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