



SUBMISSION

National Fatigue Issues Discussion Paper

6 July 2018

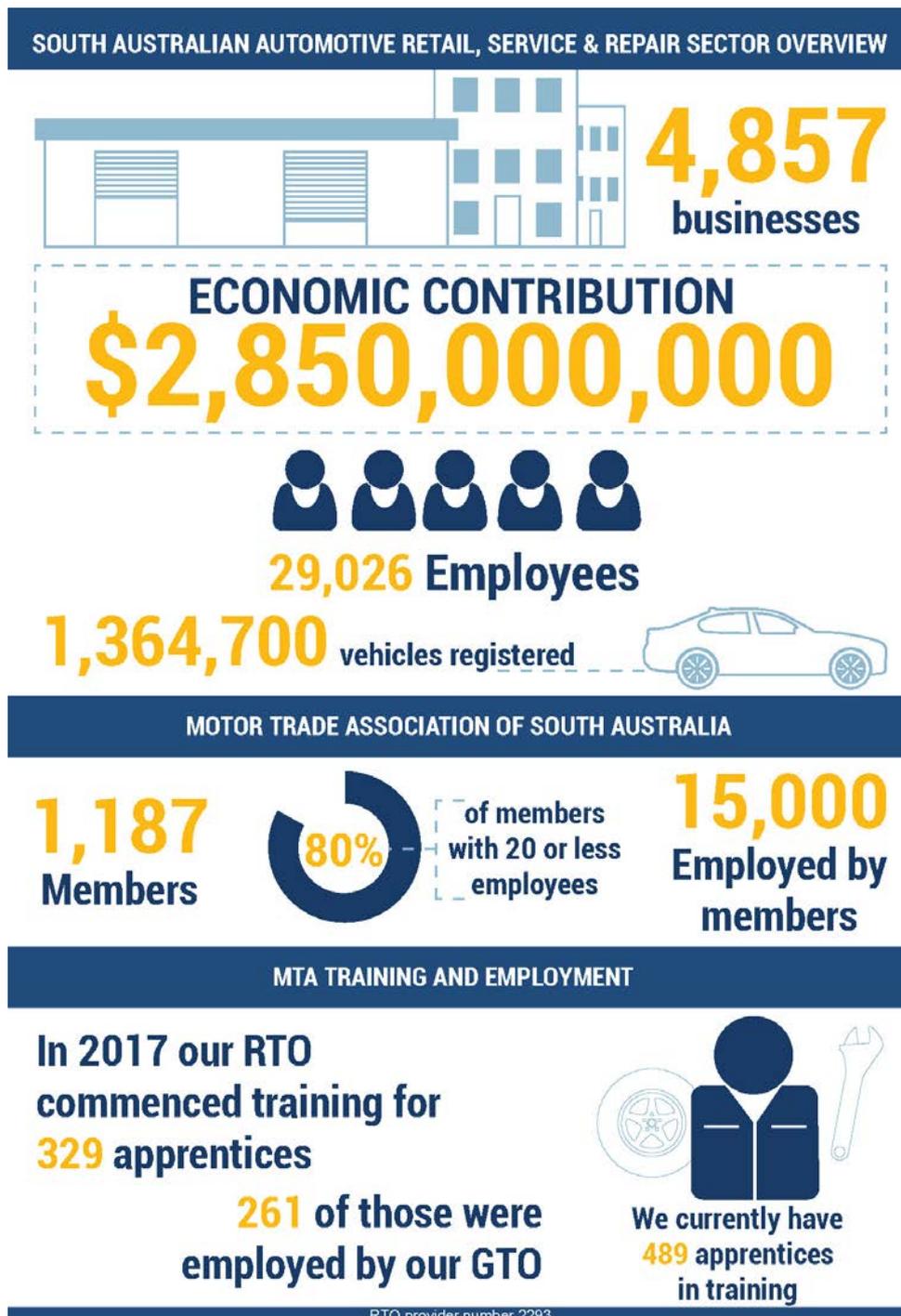
1. Contents

1.	Contents	2
2.	About Us.....	3
3.	Glossary	5
4.	Industry Consultation.....	5
5.	Executive Summary.....	6
6.	Key Recommendations	8
	Transitional arrangements clarification:.....	8
	Counting time outside NHVL jurisdictions	8
7.	Issue One – Transitional arrangements clarification.....	9
	Recommendations	11
8.	Issue Two – Counting time outside NHVL jurisdictions	12
	Point of origin baseline for counting time.....	13
	Federal legislation that override state specific requirements.....	13
	Most conservative fatigue management regime applies in cross jurisdictional journeys	14
	No change.....	14
	Recommendations	14
9.	Next Steps.....	15
10.	Submission Contact.....	15

2. About Us

The Motor Trade Association of South Australia is the only employer organisation representing the interests of the automotive retail, service and repair businesses in the state.

The MTA Training and Employment Centre comprises of both our Registered Training and Group Training Organisations. It is the automotive industry's training provider of choice and is the largest employer of automotive apprentices in South Australia.



DIVISIONS



3. Glossary

MTA	Motor Trade Association of South Australia
NHVL	National Heavy Vehicle Law
NHVR	National Heavy Vehicle Regulator
NTC	National Transport Commission
SARTA	South Australian Road Transport Association

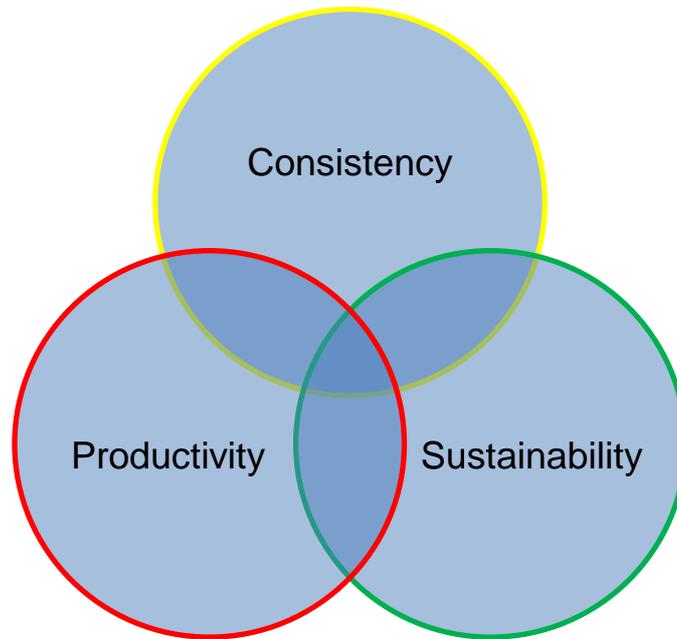
4. Industry Consultation

This submission summarises the views of the MTA's members. In developing this submission, the MTA has consulted with members in the bus and coach, and heavy vehicle transport sectors.

5. Executive Summary

The proposed solutions raised in relation to the matters canvassed by the National Transport Commission's discussion paper on Fatigue Management Issues have been vigorously opposed by transport industry operators.

The opposition to the solutions relate to three principle concerns:



Consistency

Members have identified that cross jurisdictional differences in fatigue management regimes pose challenges to the consistent application, interpretation, enforcement and reporting of fatigue management requirements.

The varied requirements add additional layers of complexity to an already complicated safety framework that is difficult to police and to comply with.

The MTA considers that a single federal approach across all states would simplify and clarify fatigue management requirements for all stakeholders.

Sustainability

Transport operators unreservedly expressed that safety is a paramount consideration in how they manage their business.

Transport company owners viewed requirements to impose excessive reset periods as a punitive measure that would harm honest operators both financially and in terms of safety.

Their strong view was that attracting and retaining quality operators would be made more difficult, in an industry already suffering from skills shortages because of these punitive measures and potentially less safe work environment. In the opinion of members, the drivers who remained in the industry would be more likely to find ways around the requirements than to comply.

Productivity

Operators and owners uniformly identified the risk to productivity in having multiple fatigue management regimes operating in parallel with no single point of reference.

In addition, excessive rest requirements both failed to take into account the unique circumstances of bus and coach operators who frequently take more rest breaks than are currently required.

Goods transporters identified that drivers would be stranded, unpaid, in other cities while undertaking their reset breaks while other drivers would have to be flown across the country to ensure vehicles were available to transport perishable items such as fresh produce.

An additional issue which emerged during consultations on this response relates to the complexity of the work diary reporting of driving and rest hours, which is considered to be too onerous and complex for the purpose it is designed for.

In response to the issues raised in the discussion paper, the MTA has made 11 recommendations which are explored further in this paper. These recommendations seek to provide a practical, industry led response to the matters raised that mitigate the risks of unintended consequences.

The MTA is grateful for the opportunity to comment on the matters raised in the discussion paper and looks forward to continuing to work with stakeholders on developing effective solutions.

6. Key Recommendations

The Motor Trade Association of South Australia makes the following 11 recommendations in relation to the matters raised in the National Fatigue Issues discussion paper:

Transitional arrangements clarification:

1. A single national requirement for the transition between solo and two up driving is required to order to clarify operator and enforcement officer obligations
2. The requirement for 48 hours rest plus two night rest out of the cabin not be included in the national standard
3. A seven hour break when transitioning to and from two up driving is sufficient to meet fatigue management objectives
4. This seven hours should include time resting in the cabin of the vehicle prior to the transition to solo driving
5. Two up bus drivers completing a journey that transitions to solo driving should be allowed to complete the journey without a reset, provided that they have sufficient driving hours available under two up driving within that 24 hour period
6. Enforcement agencies be further trained on the operation of two up driving and transitional arrangements
7. Industry engagement is required to take place to ensure the new standard is understood by operators
8. A subset of this engagement should include the simplification of the work diary

Counting time outside NHVL jurisdictions

9. A further discussion paper of the proposed models be developed for comment, with separate considerations made for the transport of goods as well as the transport of people.
10. Included in this discussion paper should be a recommendation as to the applicability of the most effective instrument to achieve a single federal requirement that captures all work and rest hours in each of the above two classes of transport, regardless of jurisdiction.
11. South Australian requirements should be viewed as striking the correct balance between driver safety and productivity, as compared to Western Australia and New South Wales.

7. Issue One – Transitional arrangements clarification

The NTC discussion paper describes the first issue for clarification as follows:

“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. Based on the current law, 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.”¹

Discussions with MTA members subject to the NHVL support the view that the current interpretation of its implementation is both variable and problematic.

Some operators stated that they had never heard or been advised of the requirement for 48 hours reset break following transition from two up to solo driving. They also indicated that such a requirement was unworkable in practice.

This view was most strongly supported by bus and coach operators who travel from Adelaide to the snowfields of Victoria.

They further indicated that one fundamental issue with the approach adopted by the NHVR is that people transport and stock and goods transport are treated identically under the NHVL.

People transport is fundamentally different from the transport of stock and goods in that:

- Rest stops occur more frequently and at unscheduled times
- Two up driving journeys occur at infrequent intervals
- Destination stays are of a longer duration

These factors pose two sets of challenges for operators.

First, as the discussion paper itself notes, there is a high degree of variability in the interpretation of the NHVL as it relates to the transition from two up to solo driving. The effect of this is often to have enforcement officers utilise solo driving requirements to determine compliance in two up situations.

Second, ascertaining the level of compliance after transitioning from two up to solo can be time consuming and administratively prohibitive, with

¹ HVNL Fatigue Issues, National Transport Commission, May 2018, p 3

requirements to locate and speak with the second driver about entries in their work diaries.

The use of solo driving parameters for enforcement acts as a disincentive for the widespread adoption of two up driving. The consequences of this include:

- Productivity losses as solo drivers take more rest breaks to comply resulting in longer journeys
- Greater costs if two up driver are required to continue to comply with solo driver arrangements
- More risk for solo drivers as they do not have a second operator with them, resulting in fewer breaks.

MTA Members have indicated that the requirement for a 48 hour reset period will have the practical effect of eliminating two up driving. For example, if two up drivers require a 48 hour reset rest as a result of a journey to Perth, the drivers will be 'stuck' in that city for two days away from family, and not be paid for this time.

It will also have the consequence of increasing the cost of flying drivers back to Adelaide, as well as to Perth to return vehicles to Adelaide. Members have indicated that in both the transport of people as well as fresh produce, the 48 hour reset requirement is unworkable. In the words of one member:

“We cannot allow this to go forward, it will cripple us.”

The transport industry already suffers from a serious shortage of young drivers entering the sector. To increase the work life imbalance and financially penalise drivers who comply with the transition requirements will have the unintended consequence of forcing out good operators and leaving the 'cowboys' in the industry.

Members have strongly stated that one of the key barriers to greater compliance with the fatigue management requirements is the complexity of both the regulations as well as the work diaries.

Accurately calculating the time to be counted and then recording it in the work diary can be challenging for operators who have limited time or have limited education. The end result is significant confusion and misreporting, however, this does not necessarily equate to operators acting unsafely.

Recommendations

Following consultation with our members, the MTA considers that a single national requirement for the transition between solo and two up driving is required in order to clarify operator and enforcement officer obligations.

We further recommend that:

1. The requirement for 48 hours rest plus two night rest out of the cabin not be included in the national standard
2. A seven hour break when transitioning to and from two up driving is sufficient to meet fatigue management objectives
3. This seven hours should include time resting in the cabin of the vehicle prior to the transition to solo driving
4. Two up bus drivers completing a journey that transitions to solo driving should be allowed to complete the journey without a reset, provided that they have sufficient driving hours available under two up driving within that 24 hour period
5. Enforcement agencies be further trained on the operation of two up driving and transitional arrangements
6. Industry engagement is required to take place to ensure the new standard is understood by operators
7. A subset of this engagement should include the simplification of the work diary

8. Issue Two – Counting time outside NHVL jurisdictions

The NTA discussion paper describes the first issue for clarification as follows:

“Industry has identified differences in the long-standing normal 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 in the last 7 days to comply with work and rest hours under the HVNL. However, long-standing normal practice has been for drivers to comply with the laws of the jurisdiction they are in at the time.”²

The issue of how to appropriately count time spent in non-NHVL jurisdictions is particularly vexed.

The MTA has considered a number of options to determine an appropriate method for counting time. They are summarised as follows:

1. **Point of origin baseline for counting time**

The point of origin of the journey would be used to determine the number of hours and operator obligations relevant for travel between participating and non-participating jurisdictions.

2. **Federal legislation that overrides state specific requirements**

This legislation would set a single national standards for fatigue management, negating considerations of participating or non-participating jurisdictions, and mandate the current NHVL requirement of participating jurisdictions, based on the model legislation.

3. **Most conservative fatigue management regime applies in cross jurisdictional journeys**

If a vehicle travels through multiple jurisdictions, the fatigue management regime of the most restrictive state, would apply for the duration of that journey. This will most likely be the NHVL participating jurisdiction.

4. **No change**

The current requirement to comply with the NHVL in participating states when in situ, combined with the requirement to comply with non-participating jurisdiction fatigue management laws, would continue as is.

² HVNL Fatigue Issues, National Transport Commission, May 2018, p 9

Point of origin baseline for counting time

While this option may appear appealing on the surface, the MTA considers that implementing it would present a conflict whereby vehicles would not be subject to the NHVL at any point in their journey. The unintended consequence of this would be overly circuitous routes that exacerbate driver fatigue rather than minimise it.

Federal legislation that override state specific requirements

The fundamental issue, as identified by SARTA in the discussion paper,³ is that the National Heavy Vehicle Law is not, in fact, national, due to its non-implementation by Western Australia and the Northern Territory.

This has created contradictions that make effective and efficient implementation of fatigue management processes extremely difficult.

The Commonwealth has powers and obligations under s92 of the Constitution to ensure that:

“trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free”

In *Cole vs Whitfield*,⁴ the High Court of Australia found that interstate trade can be fined as one of the following:

- Where a seller in one State contracts with a buyer in another State, and then delivers the goods between the two States
- Where a seller brings his goods across the border, finds a buyer in that other State, and then sells the goods to him
- Where a seller in one State contracts with a buyer in another State, and then delivers the goods between the two States, though without any contractual obligation to so deliver

The interstate transport of people and goods would meet the threshold for intervention by the Commonwealth under s92 of the Constitution, given the above legal precedent.

The effect of this would be to capture all relevant work and rest hours regardless of the jurisdiction in which these occurred.

³ HVNL Fatigue Issues, National Transport Commission, May 2018, p 11

⁴ *Cole v Whitfield* ("*Tasmanian Lobster case*") [1988] HCA 18

Most conservative fatigue management regime applies in cross jurisdictional journeys

This option, while affecting a similar outcome to creating overriding Federal legislation, would face significant resistance in instances where a tiny portion of the overall journey occurs in NHVL jurisdictions. Notwithstanding state based regimes, operators would be subject to the law of the most restrictive jurisdiction even if travel occurs in a small portion of the trip.

No change

Given the complexity and likely difficulty in implementing any of the other options, the MTA considered whether no change to the current arrangements is the least harmful. On balance, the MTA consider that this is not the case, as it would place transport operators in the invidious position of having to comply with multiple fatigue management regimes and retains the substantial risk of either significant lost productivity or non – compliance and associated penalties.

Recommendations

The MTA recommends the following actions:

1. A further discussion paper of the proposed models be developed for comment, with separate considerations made for the transport of goods as well as the transport of people.
2. Included in this discussion paper should be a recommendation as to the applicability of the most effective instrument to achieve a single federal requirement that captures all work and rest hours in each of the above two classes of transport, regardless of jurisdiction.
3. South Australian requirements should be viewed as striking the correct balance between driver safety and productivity, as compared to Western Australia and New South Wales.

9. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultations with industry on proposed changes.

10. Submission Contact

For further information relating to this submission please contact:

Nathan Robinson
Industry Policy Specialist
nrobinson@mtaofsa.com.au
08 8291 2000 or 0418 829 918