

**Submission to:** National Transport Commission

**Title:** ATA submission on the *Heavy Vehicle Fatigue Data Framework Discussion Paper*

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## **1. About the Australian Trucking Association**

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include state and sector-based trucking associations, some of the nation's largest road transport companies and businesses with leading expertise in truck technology.

## **2. Summary of recommendations**

### **Recommendation 1**

That the proposed NTC framework for the collection, analysis and publication of fatigue data to assess the impact of new policy or law reform be supported. The data collected under the framework should be de-identified. It should not be able to be used for enforcement purposes.

### **Recommendation 2**

That the fatigue data framework be placed under the auspices of a federal statistical and/or evaluation-oriented agency such as BITRE or the ATSB. The relevant entity should be responsible for receiving, compiling, holding, analysing and publishing de-identified heavy vehicle fatigue statistics.

### **Recommendation 3**

That the framework harmonise fatigue terminology, data collection and analysis approaches nationwide.

### **Recommendation 4**

That where appropriate data sources include information provided by coronial hearings and findings.

### **Recommendation 5**

That the framework be able to capture de-identified information on minor work and rest period breaches to support the development of future EWD policy.

### **Recommendation 6**

That the framework should enable the collection of data about the long (7 hour) rest break.

### **Recommendation 7**

That de-identified data used in the framework be publicly accessible and available to share and use by government agencies, researchers and industry. The research ethics principles in the framework must include ethics approval and access arrangements that recognise that industry groups require access to data on a timely basis to underpin submissions and policy development.

### **Recommendation 8**

That the fatigue data framework be evaluated after two years for the strength of its evidence base, and its capacity to improve heavy vehicle fatigue policy outcomes.

## **3. Introduction**

The NTC has released a discussion paper, *Developing a heavy vehicle fatigue data framework*. The purpose is to propose and explore a framework for evaluating real-world operational data to produce evidence to support future policy-making and fatigue law reform.

Fatigue reforms (model heavy vehicle fatigue laws) were introduced by government in 2008 and are widely agreed to have improved heavy vehicle safety. The discussion paper concedes that a better evidence base is needed before further reform is contemplated by government. The ATA agrees that “if data gaps are not addressed, there is a risk that any future review of the fatigue laws will be impeded by lack of data and insufficient evidence to substantiate reforms.”

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**4. Data**

As the NTC notes, the 2008 fatigue reforms aimed to provide a scientific and defensible set of rules for assessing driver fatigue. As a result, the model laws include prescriptive work and rest period rules, as well as incentives for operators to adopt driver fatigue management systems with the overarching HVNL requirement not to allow drivers to work when fatigued.

The paper states the framework’s purpose will be to ensure there is data on which to base future HVNL reform, saying:

*An optimal data framework includes data sources from government and industry, including insurers, operators and trade associations, and would include de-identified data related to both crashes and near misses.*

Thus the improved fatigue evidence base will be constructed from nationally standardised data reported by police and authorised officers plus various kinds of information that may be collected periodically from industry surveys and other research activities. An open data approach could be taken to allow for the publication and use of framework data by interested parties.

The ATA submits that coronial findings issued in all jurisdictions (i.e. including the NT, WA) will also provide a sound source of qualitative information. An open data approach is also supported to allow for the publication and use of framework fatigue data by interested parties.

The ATA further suggests the existing evidence base for fatigue management policy is not robust because the practical outcome is a rigid, theory-based, top-down system of rules that has not been improved by the recent introduction of voluntary electronic work diaries (EWDs).

In the ATA's view, current fatigue policy arrangements are:

### ***Theory-based***

Checking work diaries at the roadside for adherence to work and rest rules remains the only test that is consistently and widely applied by authorities to decide if a driver is fatigued. Yet work diary records (and the underlying statutory rules) do not help authorities decide if a driver is, as per HVNL section 223 (1), (a) feeling sleepy; physically or mentally tired, weary or drowsy; (b) feeling exhausted or lacking energy; and (c) behaving in a way consistent with those feelings.

Work diaries merely indicate if a driver has exceeded legally permitted hours in any nominated period. HVNL regulations (Ch. 6: Vehicle operations—driver fatigue) show it is illegal to:

- (a) drive while impaired by fatigue; **or***
- (b) drive while in breach of the driver's work and rest hours option; ...*

The law distinguishes between a driver's fatigue state, and adherence to a lawful driving schedule. Clearly there should be evidence available to identify if there is a breach of (a) and not just (b).

In other words, for the authorities to respond appropriately under HVNL s.223, the framework should assist them to make the law perform adequately in the cases of:

- A driver who is utterly compliant with work diary and law, but is nevertheless fatigued; and
- A driver who is neither compliant with work diary or law, but is nevertheless not fatigued.

### ***Rigid and not reflective of human behaviour***

Complying with current counting time rules is stressful and complicated for many drivers. The EWD initiative offered the promise of a less onerous but more efficient and accurate approach to compliance for drivers. But the inclusion of the eight minute tolerance for work periods only was a missed opportunity. It has effectively created a two-tier regulatory system, where operators and drivers using EWDs will face a significantly tighter regulatory regime than those using written work diaries.

The ATA also recommended the following to the NTC in 2009, yet in 2015 the EWD system was introduced without this refinement:

*The ATA recommends that as a matter of policy, if all governments want to foster optimal use of electronic systems for recording and monitoring fatigue management, that all governments agree to ensure that inconsequential technical breaches (such as a 14 minute and 52 second rest) are ignored, provided that those breaches fall within an agreed scale and frequency.<sup>1</sup>*

### ***Imposed top-down removing agency from the driver***

As the paper notes on page 17, industry stakeholders including the ATA have repeatedly asked for driver health and well-being to be taken into greater consideration when formulating fatigue policy. Fatigue rules which are carefully re-designed after an effective consideration of real-world data will help dispel widespread antipathy towards (written or electronic) work diaries.

Information technology should be used to accommodate and not distort human needs or behaviour. To this end, the ATA recommends that the fatigue framework should support the collection of data to determine if the long rest break of seven continuous hours should be reconsidered for its inherent

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<sup>1</sup> *Electronic Systems of Heavy Vehicle Driver Fatigue and Speed Compliance: Draft Position Paper*, ATA submission to NTC, September 2009.

inflexibility. The ATA does not seek longer work shifts but the collection of data surrounding the effectiveness of the long break.

Road-trains carry diverse loads through rural and regional areas so data collection relating to these combinations is a must. Road-train operators advise the prescriptive approach to fatigue is ineffective and that current rules better suit drivers in urban areas and on highways with more roadside amenities. In the interests of better rural road safety and productivity, the framework should capture data on the full range of driving tasks to reveal the range of driver needs which exists in Australia.

### ***Invasive***

Distrust of driver monitoring, particularly electronic, is acknowledged as a project risk on page 57 of the paper, i.e. that personal information will be identifiable and used for enforcement. At a time when the industry is highly regulated and driving trucks is reasonably unpopular as an occupation, the road freight transport industry objects to unreasonable levels of workplace surveillance and an increasing invasion of privacy.

It must be remembered that any data collected from driving personnel is always available for enforcement purposes and that an IT capacity to collect personal data is no justification for its collection and use by employers, IT consultants, other third parties or regulatory authorities.

It is usually the case (and probably more so in a sluggish economy) that individual drivers will consent to an employer's driver monitoring regime because they need the work that is offered. The ATA well understands an employer's chain of responsibility obligations not to allow a fatigued-impaired driver to drive, but the ATA cannot accept fatigue rules which are so theoretical and so onerous that they lure transport businesses into establishing draconian surveillance regimes for fear of liability.

Finally, it should be noted that to help alleviate industry's current misgivings about the protection of personal and commercial data under the law, and to remove any misunderstandings, the ATA is working on a policy paper for publication towards the end of the year on the privacy legislation that surrounds the operations of drivers and their employers, including the quality of the protection afforded under current law and any loopholes that should be closed.

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## 5. Framework

In 2014, Transport and Infrastructure Council ministers considered *inter alia* the effects of counting time rules on fatigue. Due to a lack of consensus between fatigue experts, and between jurisdictions, the ministers acknowledged research was needed to understand links between work/rest hours and fatigue levels and the degrees of risk posed by work schedules leading to the NTC's current proposal for a data framework. Ministers also rightly requested that any such framework not be limited to the issue of counting time.

In late 2014, the ATA, and its member association NatRoad, helped provide feedback to the NTC on the framework concept including information about the type of fatigue, crash and incident data that some operators collect and how those operators assess a driver's fitness to work.

Not surprisingly, the NTC's survey findings found that operators collect rich data sets because:

*Operators are managing driver fatigue on a daily basis and seek to use data to look forward to ensure that a driver is not impaired by fatigue – whereas enforcement agencies are focused on identifying fatigue and breaches of the law retrospectively.*

The paper proposes that the improved evidence base will be constructed from nationally standardised data reported by the police and authorised officers plus data from periodic research. Various activities are proposed to update the framework and these are supported:

- standardisation of crash investigation recording.
- improved data collection
- industry surveys, and
- forming partnerships for new scientific research.

The NTC paper discusses the need to embed human research ethics principles in the framework. The ATA's experience with other data custodians is that they often:

- assume, incorrectly, that researchers work for large organisations with their own human research ethics committees
- assume that the research is being conducted with long lead times.

The research ethics principles in the framework must include ethics approval and access arrangements that recognise that industry groups frequently require access to data on a timely basis to underpin submissions and policy development.

In developing the framework, the NTC suggests various priority areas for investigation. The ATA suggests the addition of three more, as set out in the table on page 8.

<b>Item</b>	<b>Priority areas for investigation</b>	<b>ATA position</b>
3.1	Impact of nose-to-tail schedules on driver fatigue	The ATA does not believe these shifts reflect industry practice. However, better data should indicate if nose-to-tail shift are hypothetical or real.
3.2	Quantity and quality of sleep attained in major rest breaks	Supported for better analysis. Could be included in research under priority area 3.8.
3.3	Night-time driving and ending shifts at night	Supported for better analysis. Could be included in research under priority area 3.8.
3.4	Continuous hours of work – including BFM and AFM	More flexibility for drivers within shifts is required. Technology can be used in a smart way to create flexibility at the driver's discretion.
3.5	Minimum rest times for BFM two-up drivers	Supported for better analysis.
3.6	Impact of local work	Supported for better analysis. Different freight tasks are fatiguing in different ways and distance is not the only sound measure.
3.7	Threshold application of fatigue laws and record-keeping	Supported for better analysis.
3.8	Driver well-being and fitness to work	Supported for better analysis. Outcomes from first shift after a long break should be investigated.
3.9	Unlawful activities	Supported for better analysis.
3.10	Prioritisation of fatigue issues	Supported for better analysis. Key issues should readily self-prioritise after sufficient real-world data emerges.

<b>3.11</b>	<b><i>Long rest break flexibility</i></b>	<b><i>For safety reasons, the ATA recommends that the framework enable collection of data about the long (7 hour) rest break.</i></b>
<b>3.12</b>	<b><i>Management of minor breaches</i></b>	<b><i>The ATA suggests that analysis of real-world data should reveal whether persistent multiple minor breaches of both work and rest periods arise through the use of EWDs.</i></b>
<b>3.13</b>	<b><i>Road trains</i></b>	<b><i>The ATA recommends the framework should specifically enable the collection of fatigue data relating to regional and remote road train operation.</i></b>

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