

21 October 2010

Nick Dimopoulos
Chief Executive
National Transport Commission
L15/628 Bourke St
MELBOURNE VIC 3000

Re: Improving the Basic Fatigue Option

Dear Mr Dimopoulos 

Thank you for the opportunity to provide comment on the "Improving the Basic Fatigue Management Option" discussion paper of August 2010. Thank you again for providing an extension of time for submissions.

The ATA's view on the three issues are:

Split Rest

The ATA wishes to ask that the NTC further consider the industry's suggestion to amend the current split rest defence. This will allow drivers, and only drivers, the ability to choose to make use of split rests as an allowed right within some clear rules.

We are not asking for additional time for split rest to be scheduled or for split rest to be allowed on consecutive days. We fully understand the need for adequate rest. The aim of the reform was to change the focus from driving time, toward rest time in a fatigue management environment. So we need to provide drivers with rules that facilitate rest opportunities that fit their needs and the tasks before them.

Rightly or wrongly, AFM is beyond the reach of many drivers and companies at present. The aspiration is simply too high in relation to where they currently are, even if they are growing within the fatigue management framework, as they have transitioned from the Transitional Fatigue Management System to BFM. However, we hope a positive BFM experience may lead to more operators looking at AFM in the future.

Currently, most drivers find the idea of having to defend a decision to take a split rest is actually a deterrent, and as such they do not use this option. Drivers fear that defending a split rest breach will be costly and time consuming. It is regarded as simply impractical by most drivers. Hence, the intended use of the option within BFM to provide 'driver initiated rest opportunities' is not being delivered.

However, feedback to us is that some drivers are particularly keen to use this option, as it increases the ability to take sleep when needed, not when scheduled. Experienced drivers have for many years managed their fatigue using a 8 hour 'split rest' approach under the former '6 hour' long rest period rules by taking a 2 hour "nana nap" at another time.

We know from NTI data that fatigue is a real issue on return to work. The risk during this first period of work is in the first five hours, as the drivers are establishing their "work rhythm". There is strong argument that facilitating driver-initiated napping in this time is something the law should clearly provide for.

However, under the current rules, a driver can legally disadvantage themselves by taking rest early in the first 24 hour period, such that the compressing effect of the time counting rules mean that planned rest and work cannot be completed. The penalty structure pressures drivers to be more focused on avoiding technical breaches in his/her work diary that will occur later in the cycle, rather than being allowed (and encouraged) to listen to their body requirements at the time and take rest accordingly.

You will be aware that each long rest break commences a new 24 hour period. Under BFM drivers seeking to use the available hours of drive time have only three flexible rest hours and that at least one of these will be taken up with short rest breaks between drive periods. Hence, taking a 2 or 3 hour sleep opportunity early in the cycle, without a split rest option, is a disadvantage. We are concerned that the incentive in the current rules is to push on when tired, rather than rest.

Drivers need flexibility to be able to take rest when tired and a workable split rest provision will assist greatly.

It must be remembered that many drivers are not on shifts, they are on task work, where tasks vary day by day. These drivers want flexibility to rest when tired and where facilities or conditions maximise the benefits of sleep. They are after quality sleep, naps, and rest. In our view, this applies to a large portion of the long distance freight operations and many other owner-drivers, including many rural and regional operators.

We believe that trained, accredited BFM drivers seeking access to split rest will convert that split rest into quality fatigue management (sleep) opportunities.

Our understanding is that much, if not all, of the risk assessment work previously cited by the NTC's expert advisers during development of the fatigue laws relates to shift workers. The relevance to drivers living and working from their vehicles on task work is questionable and the literature dealing directly with truck drivers seems very modest.

Further, Ann Williamson, in Appendix A, talks of the need for time for other personal activities like eating, showering etc. This appears to assume that truck drivers are like other workers and will perform the activities of daily living in the same window of time that contains their major sleep opportunity. However, this is false as the fact is for many truck drivers these activities cannot be conducted in the same place as quality sleep, due to lack of facilities and services, and the nature of the job. In fact, Australian Road Rule 200, puts a limitation on stopping in built up areas, and so precludes such an option for drivers away from home base or company depots. BFM drivers receive specific training about fatigue, recognising its onset, and counter measures. They are accredited, and it is reasonable to trust these trained professionals to make an appropriate decision about using split rest. Particularly if the law allows this option and prevents others interfering in the driver's decision, because the law ensures such rest cannot be scheduled or imposed by employers of customers.

There are sound reasons for allowing split rest and changing ARR 200 to allow drivers to rest in built up areas for a period of statutory rest. However, we accept that there are also sound reasons for requiring long rest breaks (7 hours rest). We note that split rest is actually 8 hours of rest. The logical progression from where we currently are is to allow the current split rest opportunity to be 'as of right' rather than only a defence with the safe guard that the option cannot be exercised on consecutive days.

Alternative 14 Day Cycle

The addition of a BFM sub-option that supports a 14 day cycle, where rest is largely taken within a night rest period, is a useful extension to effective fatigue management options. This is particularly useful for early start rosters, for example servicing urban areas with motor vehicle fuel that needs to be delivered within retail outlets operating hours, but outside traffic peak periods and peak sales periods. We also point out that this flexibility is strongly sought by livestock and bulk carriers servicing agricultural industries. The ATA therefore support the provision of the additional optional 14 'day work' cycle for BFM. It is essential that offering this option does not interfere with the over-night line haul operations currently operating safely within BFM, and that workable, understandable rules apply for drivers who may move between sub-options. Ideally, it will be one BFM with additional flexibility, as the core safety provisions of focusing on rest and managing 'night and long hours' work are retained.

However, we believe the proposal as put should allow a little more flexibility for operators and drivers doing 'day work'. Rather than focus exclusively on a 12 day cycle followed by 48 hours continuous rest, the rest should be allowed to be 2 x 24 hour periods off within the 14 day period. Please note, this is clearly about options for drivers whose sleep is largely during night hours. We note that the 'night and long hour' rules provide high levels of risk mitigation and the additional flexibility does not impinge this.

Definition of Night Rest

We support the proposed change to allow the night rest period to start at 9pm, as it extends the time within which night rest may be taken. This allows for early start rosters, which will assist operators and drivers who have relevant circumstances. This change is also important in supporting the optional 14 day fatigue management cycle discussed above. Again, we note that the 'night and long hour' rules provide high levels of risk mitigation and the additional flexibility proposed here does not impinge this.

Additional Matters

One additional matter we would like to see the NTC address, is to consider allowing work diary entries to be set aside for local work under BFM and AFM operations, where equivalent records are generated and kept through run sheet manifests with drop, start, finish and other means so that the "required" information is available.

The request to make changes to allow limited personal use of heavy vehicles during "days off" when the driver is away from home is something we would like to see advanced. It is about giving drivers the opportunity to do their other living needs like washing, shopping, and taking some time out.

Finally, we appreciated the opportunity to work with the NTC to try to address problems caused by agencies adopting different time counting rules as it causes significant grief on the roadside. However, we need to advise you that many drivers and operators are disappointed the process is taking so long to be resolved.

I trust these comments are useful and we are happy to assist the NTC further with this matter.

Yours sincerely

Stuart St Clair
Chief Executive

