

# Notice of Final Rule Making 1701

## Private use of fatigue-regulated heavy vehicles – New work and rest hours exemption

30 January 2018

<b>NFRM</b>	1701
<b>Project</b>	N17-13 Private use of unladen vehicles project
<b>Issued by</b>	Productivity and Safety Division, NHVR
<b>Audience</b>	<p>This Notice of Final Rule Making (NFRM) will be of interest to:</p> <ul style="list-style-type: none"> <li>• Drivers of fatigue-regulated heavy vehicles (FRHV) operating under Standard Hours</li> <li>• Other persons who schedule, manage or influence these drivers</li> </ul>
<b>Consultation and response</b>	<p>Readers should note that this Notice of Final Rule Making (NFRM) contains a summary of responses (SOR) to Notice of Proposed Rule Making (NPRM) 1701. This NFRM includes the NHVR's summary disposition following the consultation as well as the detailed comments received by NHVR (Appendix A) and the NHVR's risk assessment of the new work and rest hours exemption (Appendix B).</p> <p>The <i>National Work and Rest Hours Exemption (Personal Use) Notice 2018</i> is the legal instrument that gives effect to this notice (Attachment 1).</p> <p>Associated advisory material (<i>Heavy Vehicle Advisory Publication 1701 – Personal Use of Fatigue-Regulated Heavy Vehicles</i>) has been published separately.</p> <p>This NFRM finalises the public consultation process in respect of the NPRM 1701.</p>

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## Foreword

On 5 September 2017, the National Heavy Vehicle Regulator (NHVR) published NPRM 1701 – Private use of fatigue-regulated heavy vehicles, which invited public comment on the proposed work and rest hours exemption permitting limited use of a FRHV for personal reasons.

The law requires that work and rest hours exemptions only be granted if:

- they are necessary to address unreasonable restrictions on operations of fatigue-regulated heavy vehicles
- accommodating the exemption hours under fatigue management accreditation would be unreasonable
- driver fatigue management practices allow drivers to safely manage fatigue risks
- drivers are likely to apply practices consistently and effectively

This NFRM sets out the NHVR's disposition to public comments received on the NPRM, following proposed national work and rest hours exemption:

- extending work in a 24 hour counting period under a Standard Hours driving arrangement by up to one hour, when that work is done for private, non-commercial purposes
- extending work in a 24 hour rest break under a Standard Hours driving arrangement by up to one hour, when that work is done for private, non-commercial purposes
- in regards to work done for private, non-commercial purposes in a 24 hour counting period, restricting its use to non-consecutive 24 hour counting periods
- in regards to work in a 24 hour rest break, restricting that work from the first and last three hours of the break
- in regards to work done for private, non-commercial purposes, limiting it to a single continuous period with specific protections to prevent abuse based on distance from base, availability of alternative transport, etc
- in regards to work done for private, non-commercial purposes, requiring additional work to be deducted from work limit of the next 24 hour counting period.

This NFRM:

- provides a background of the regulatory change proposed and consultation undertaken
- discusses the submissions made in response to NPRM1701
- provides an analysis of the responses and gives an NHVR response and disposition
- discusses the impact and gives an explanation of the changes
- provides the final changes and associated advisory materials.

The Regulator received 60 responses to the NPRM. The majority of responses supported the proposed changes, with only seven contending that it would not be acceptable on any terms. A summary of responses, together with the NHVR's disposition to them is attached to this NFRM at Appendix A.

The Regulator would like to thank those who participated in the consultation on the issues addressed in the NPRM. The input of stakeholders who are directly or indirectly affected by change proposals is appreciated and valued in the regulatory development process.

Geoff Casey  
**Executive Director**  
**Productivity and Safety**  
January 2018

# 1. Reference material

## 1.1 Definitions, acronyms and abbreviations

The acronyms and abbreviations used in this NFRM are listed in the table below.

Definition/acronym/abbreviation	Description
<b>AFM</b>	Advanced Fatigue Management (a work and rest option under the NHVAS Fatigue Management Module)
<b>BFM</b>	Basic Fatigue Management (a work and rest option under the NHVAS Fatigue Management Module)
<b>FRHV</b>	Fatigue-regulated heavy vehicle (as defined in the Heavy Vehicle National Law)
<b>HVAP</b>	Heavy Vehicle Advisory Publication
<b>HVNL</b>	Heavy Vehicle National Law (as in effect in each participating jurisdiction)
<b>KCP</b>	Key Change Proposal
<b>NFRM</b>	Notice of Final Rule Making
<b>NHVR/Regulator</b>	National Heavy Vehicle Regulator
<b>NPRM</b>	Notice of Proposed Rule Making
<b>RIS</b>	Regulation Impact Statement

Table 1: Definitions, acronyms and abbreviations

## 1.2 References

### Regulatory references

Regulations are available on the Queensland Legislation website <https://www.legislation.qld.gov.au/>

Document	Title
<b>Section 266, HVNL</b>	Regulator's power to exempt class of drivers from particular maximum work requirements and minimum rest requirements

### Advisory material

Advisory publications are available on the NHVR's website <https://www.nhvr.gov.au/>

Document	Title
<b>HVAP 1701</b>	<i>Heavy Vehicle Advisory Publication – Personal Use of a Fatigue-Regulated Heavy Vehicle</i>

## 2. Summary of responses

### 2.1 Respondents

Following discussions with industry, the Regulator issued NPRM 1701 for public consultation from 5 to 30 September 2017. 60 respondents submitted comments to NPRM 1701. This number is the total respondent number returned to the Project Leader and may be different to the number of respondents for any given Key Change Proposal (KCP) as not all respondents responded to all KCPs.

The following respondents consented to having their names published:

Representative	Organisation
Mr Mark Baker	
Mr Jai Bennett	
Mr Rodney Brown	
Mr Richard Calver	<i>National Road Transport Association</i>
Professor Drew Dawson	
Mr John Duffy	
Mr Peter Guy	
Mr Rod Hannifey	
Mr Tony Hopkins	<i>National Road Freighters Association</i>
Ms Belinda Irwin	TOLL
Mr Ken Leacy	
Mr Ash Lowder	
Ms Suzy Maisey	
Mr Bill McKinley	<i>Australian Trucking Association</i>
Mr Mat Munro	<i>Australian Livestock and Rural Transporters Association</i>
Ms Jan Pattison	<i>Queensland Trucking Association</i>
Mr David Pomfret	
Mr Roger Riting	
Mr Steve Shearer	South Australian Road Transport Association
Mr Andrew Tough	
Mr Nick Twidale	
Mr Aaron Wade	
Mr Scott Walker	
Mr Len Welsh	

**Table 2: Respondents to NPRM 1701**

A further 37 respondents did not consent to having their names published including several drivers and other industry members, two policing agencies, and multiple fatigue experts.

## 2.2 Analysis of responses

Figure 1 summarises the responses received against each KCP in NPRM 1701. Not all respondents specifically addressed the KCP in their submissions. Where the KCPs were addressed indirectly, the NHVR has attempted to associate the comments received to one of the key proposals.

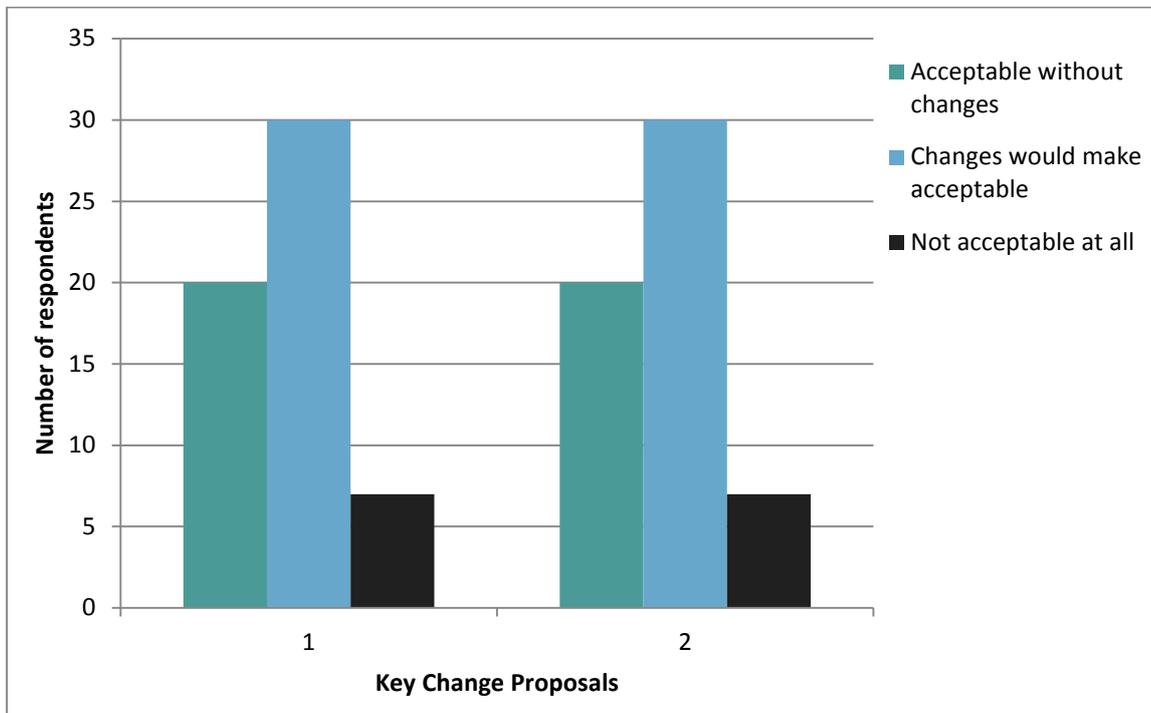


Figure 1: Analysis of responses

In terms of KCP 1 – permitting drivers of FRHVs up to one additional hour of work time for permitted personal activities during their 24 hour rest break:

- 20 respondents supported the proposal without changes
- 30 respondents supported the proposal with changes
- 7 respondents did not support the proposal at all.

In terms of KCP 2 – permitting drivers of FRHVs up to one additional hour of work time for permitted personal activities prior to their major rest break:

- 20 respondents supported the proposal without changes
- 30 respondents supported the proposal with changes
- 7 respondents did not support the proposal at all.

Appendix A contains a summary of responses submitted in response to the NPRM and the Regulator’s disposition to the feedback received.

The NHVR reviewed a number of policy settings after analysing comments received. In particular, the NHVR amended the proposed exemption to:

- remove restrictions that prevented use of FRHVs for permitted personal activity

- after a long rest break,
- within 500km of base, or
- if alternative reasonable transport was not available
- remove the requirement to deduct time spent working on permitted personal activities in one 24 hour counting period from the work limit of the next period.

Despite significant feedback from industry asking the NHVR to extend the exemption to cover drivers working under BFM and AFM work and rest options, the exemption will only apply to the Standard Hours work and rest option. The NHVR believes that restrictions on granting work and rest hours to drivers working under these options specified in the law prevent the exemption being broadened at this stage. In principle, the NHVR agrees that the exemption could be extended to BFM and AFM with similar conditions if the restrictions in the HVNL were amended.

### 3. Final rule

In consulting with industry stakeholders, the NHVR sought detail from industry about current practices and experiences. Some critique on aspects of the fatigue management regulatory framework in general has been assessed as being beyond the scope of the NPRM. Critique relating to the current fatigue management exemption powers has been accepted, but assessed as beyond the scope of the NPRM.

As a result of the comments received to NPRM 1701, the final rule contains some amended or new elements.

#### 3.1 NHVR's disposition

The implementation of the *National Work and Rest Hours Exemption (Personal Use) Notice 2018*:

- exempts drivers of FRHV from Standard Hours work and rest limits
- reapplies Standard Hours work and rest limits but extends the work limit:
  - in a 24 hour counting period, and
  - in a 24 hour rest break
- by up to one hour, when that work is a permitted personal activity
- defines permitted personal activities as work done for private, non-commercial purposes as stipulated in the *Heavy Vehicle Advisory Publication 1701 – Personal use of a Fatigue-Regulated Heavy Vehicle*
- restricts permitted personal activities:
  - to a single continuous period
  - to non-consecutive 24 hour counting periods
  - in the first and last three hours of the 24 hour rest break
- requires drivers to record use of the exemption in their work diary.

#### 3.2 Impact of changes

Although a formal regulation impact statement (RIS) is not required for work and rest exemptions, a brief regulatory impact assessment was made by the NHVR. This assessment concluded that the change created by the proposed exemption was minor and potentially beneficial to industry participants.

The proposed change is undertaken within the regulatory framework approved by responsible ministers and does change the fundamental regulatory requirements within that framework.

The exemption hours are entirely voluntary and in order to be accessed require the consent of the owner/operator of the FRHV. Owners or operators of FRHVs being used for personal reasons may face costs associated with their FRHVs being driven but they have the opportunity to avoid these costs by withholding their consent for the use of the FRHV.

Feedback provided during consultation provided numerous examples of how the availability of additional work time could benefit drivers – allowing them to return home or access accommodation without having to pay for transport, allowing them to access essential services such as chemists, banks and post offices, and allowing them to undertake necessary preparations and essential maintenance tasks.

## 4. Implementation and review

### 4.1 Implementation and transition

The *National Work and Rest Hours Exemption (Personal Use) Notice 2018* was made on 30 January 2018 and will commence on 1 February 2018. Drivers will be able to use additional work time afforded by the exemption from 1 February 2018, subject to the conditions specified in the exemption notice.

Given that the exemption is generally beneficial to industry and does not create any new specific requirements for enforcement, no transitional period has been contemplated for this change.

To assist drivers and operators in using the exemption safely and compliantly the NHVR has prepared a *Heavy Vehicle Advisory Publication – Personal Use of a Fatigue-Regulated Heavy Vehicle*. The HVAP outlines:

- what constitutes permitted personal activity
- when the additional work may apply
- considerations drivers should make to ensure the additional work doesn't increase their fatigue risk, and
- requirements for drivers after using the additional work time.

The HVAP also contains guidance on how operators can incorporate the exemption into their fatigue risk management system.

### 4.2 Post-implementation reviews

The Regulator will monitor the new exemption on an ongoing basis and review it, as required.

Given the Regulator's disposition to extend the exemption to AFM and BFM, the NHVR will report to responsible ministers that the current restrictions on granting work and rest hours exemptions should be reviewed when the HVNL is next reviewed.

Following commencement, the NHVR will also write to the NSW government requesting they review the current statutory exemption in NSW in light of the national arrangement and determine if it should be amended or removed.

Additional information is available from Andreas Blahous, Fatigue Specialist.

<b>Email</b>	<a href="mailto:fatiguemanagement@nhvr.gov.au">fatiguemanagement@nhvr.gov.au</a>
<b>Telephone</b>	1300 696 487 (1300 MY NHVR)

## Appendix B - Summary of responses to NPRM 1701 – Private use of fatigue-regulated heavy vehicles

### A.1 Key Change Proposal 1 – Permit drivers of FRHV up to one additional hour of work time for permitted personal activities during their 24 hour rest break

#### A.1.1 Restriction for drivers operating under AFM and BFM

Seven respondents who support the proposed exemption, representing drivers and industry representatives, advocated for it to be extended to drivers operating under AFM and BFM. No respondent contradicted this.

**NHVR's disposition:**

Under the HVNL, the NHVR cannot grant a work and rest exemption if the maximum work times and minimum rest times to apply under the exemption could reasonably be accommodated within BFM hours or AFM hours.

The additional work permitted by this exemption is well within the BFM and AFM hours so, despite agreeing in principle, the NHVR does not have legal grounds to broaden the exemption to drivers operating under BFM or AFM. For this reason, the NHVR will limit the exemption to drivers operating under Standard Hours.

The NHVR will write to the National Transport Commission asking for exemption making powers to be reviewed.

#### A.1.2 Restriction to unladen

The majority of respondents who supported the proposed exemption accepted it being limited to drivers of unladen vehicles or to prime movers only. One driver raised concerns about the capability and capacity of rest areas to handle unhitched trailers.

**NHVR's disposition:**

The NHVR will retain the restriction on using laden FRHVs for permitted personal activities.

#### A.1.3 Restriction if reasonable alternative transport available

Two respondents argued that the restriction on using a FRHV for permitted personal activity when alternative transport was available could lead to practical issues with compliance. One respondent supported the restriction.

**NHVR's disposition:**

The NHVR has reconsidered this restriction in light of the majority feedback and sought additional legal advice. Based on this advice, the NHVR will remove the restriction from the exemption.

The NHVR will, however, include guidance on drivers' travel to and from work in the *Heavy Vehicle Advisory Publication – Personal Use of FRHV*.

#### A.1.4 Publish guidance on exemption

Four respondents called for the NHVR to publish guidance for users of the exemption covering:

- when and when not to use the exemption
- what constitutes a fatigue-regulated heavy vehicle

- how to safely manage this time
- what to do after having used the exemption.

**NHVR's disposition:**

NHVR will publish a heavy vehicle advisory publication on the use of a FRHV for permitted personal activities to accompany the exemption.

### **A.1.5 Restriction on permitted personal activity in first and last 3 hours of the 24 hour period**

Eleven respondents wanted the restriction on permitted personal activities in the first and last three hours of the 24 hour period of restriction changed. Most argued that the restriction might prevent drivers from getting home and getting better quality rest. However one argued that it should only be seven hours prior to the end of the 24 hour break.

**NHVR's disposition:**

In principle, the NHVR supports the removal of this restriction given the strength of feedback received. However, this is an element of the NSW statutory exemption. If NHVR removed this restriction from the national notice, it would mean that a driver compliant with the national notice would be non-compliant with the NSW exemption. To ensure that the national arrangement is consistent with the NSW arrangement, the NHVR will include this restriction in the exemption notice. The NHVR will however, write to the NSW government requesting that they review their statutory exemption in light of the new national arrangements.

### **A.1.6 Restriction to outside 500 km from the driver's base**

Seven respondents wanted the restriction of permitted personal activities within 500 km from the driver's base changed or removed. Some respondents suggested within 100 or 160km as an alternative distance.

**NHVR's disposition:**

This restriction was introduced to prevent driver harassment – where companies schedule drivers in a way that they need to use additional time to get home. This scenario increases the likelihood that the driver will extend their work opportunity, potentially increasing the risk of the driver becoming impaired by fatigue.

The NHVR has considered the feedback in light of the introduction of new primary duties for transport operators, which require them to proactively manage all risks to public safety. Given that the original concerns are likely to be addressed by the new primary duties, the NHVR has removed the restriction from the exemption.

The NHVR will also publish guidance on how the exemption could work as part of a transport operators' safety management system.

### **A.1.7 Restriction on permitted personal activities on consecutive days**

Three respondents wanted the restriction on permitted personal activities on consecutive days changed – either removed or, in one case, changed to use on 12 in 14 or 24 in 28 days only.

**NHVR's disposition:**

Whilst acknowledging concerns of the respondents, the NHVR believes that the use of additional time on consecutive 24 hour counting periods could potentially result in a higher risk of driver fatigue impairment. To prevent this, the NHVR will retain the restriction in the exemption.

The NHVR acknowledges that drivers seeking greater flexibility on consecutive days can obtain this by gaining accreditation for BFM or AFM accreditation, which require countermeasures to offset any potential increased risk of driver fatigue impairment.

### **A.1.8 Payback permitted personal activities**

Two respondents wanted the restriction that requirement time spent in permitted personal activities to be paid back in the next 24 hour counting period. However, each respondent had a different view on what was required on this issue. While one respondent wanted the restriction removed, the other argued that the amount of time paid back should be two times the amount of time spent on permitted personal activities.

#### **NHVR's disposition:**

Given the lack of consensus in industry, the NHVR will retain the current restriction in the exemption notice.

### **A.1.9 Broader review of fatigue laws**

Multiple respondents (including industry representatives, managers/supervisors, and drivers) called for a broader change to the fatigue laws. Only one respondent said they supported the current law and did not want them changed.

#### **NHVR's disposition:**

Comments of this nature are outside of the scope of the NPRM. These comments were referred to the relevant unit within the NHVR for their consideration.

### **A.1.10 Record keeping requirement**

Four respondents commented on the proposed record keeping requirements. The majority supported the requirement as proposed but two respondents (one compliance manager and one driver) suggested that drivers collect additional corroborating evidence (e.g. meal receipts/hotel bills) to show that the permitted personal use meets the definition in the exemption. One respondent asked for record keeping requirements to be clearly articulated in the guidance associated with any exemption.

#### **NHVR's disposition:**

No change has been made to the exemption. The NHVR will publish guidance on record keeping requirements, including potential sources of corroborating evidence.

### **A.1.11 Prior permission from owner**

An industry representative body and one large transport operator indicated that they wanted the exemption to require drivers to get prior permission from the FRHV owner before undertaking any permitted personal activities in it. They observe that the FRHV is the owner's asset and unauthorised use may have legal and insurance implications.

The possible legal implications of unauthorised use of the FRHV were also raised by a fatigue expert with significant forensic experience, who observed that transport operators would still be accountable for drivers' actions taken as permitted personal activities. However, in subsequent discussions it was conceded that the exemption would not change the liability as, currently, liability would apply to drivers using light vehicles prior and after "work".

#### **NHVR's disposition:**

Whilst the NHVR accepts the issue is significant, this issue does not relate to work and rest limits and is, therefore, outside of the jurisdiction of the NHVR. The NHVR will not introduce new restriction in the exemption.

The NHVR will, however, publish guidance on drivers obtaining prior permission to use a FRHV from the vehicles' owner in accompanying documentation.

### A.1.12 Duration of permitted personal activities

Two respondents, both drivers, called for up to three hours of permitted personal activities, instead of one hour.

#### **NHVR's disposition:**

The NHVR assessed the safety implications of extending the time allowed for permitted personal activities in the exemption and concluded that such a change would increase the likelihood of driver fatigue impairment, as it had the potential to extend a driver's work opportunity and decrease their sleep opportunity. Accordingly, the NHVR will not increase the duration of permitted personal activities.

### A.1.13 Definition of permitted personal activity

Several respondents commented on the definition of permitted personal activity. A number of specific situations were submitted for consideration including:

- driving the vehicle home at the end of a journey,
- dropping a vehicle off for maintenance,
- making minor repairs, changing tyres and servicing the vehicle,
- picking up items for immediate use on the vehicle (e.g. spare parts or tyres),
- preparing for the next journey, and
- driving historical vehicles at club meetings.

Respondents had mixed opinions about including cleaning the FRHV as a permitted personal activity. Whilst some respondents saw it as an optional activity that reflected their personal pride in their vehicle, others were concerned about the potential for transport operators to use this exemption to put pressure on the driver to clean the vehicle for commercial reasons.

Opinions on the inclusion of refuelling in the definition of permitted personal activity among respondents who supported the exemption were also divided. Some felt it was obviously work and others felt it could be covered by the exemption in certain circumstances. A police agency (who did not support the exemption) argued that including refuelling in the exemption was clearly contradictory to the definition of work and hampered their ability to effectively monitor compliance with work and rest rules.

#### **NHVR's disposition:**

Based on this feedback the NHVR will amend the definition of permitted personal activity to include the principle that activities for commercial reasons are not permitted personal activities for the purpose of the exemption. Combined with the restriction on transport operators making demands, this approach allows the maximum amount of flexibility, without undermining the definition of work.

The NHVR will retain refuelling in the definition of permitted personal activities as it is currently included in the NSW statutory exemption. However, the NHVR will review this position should NSW remove or revise the statutory exemption in NSW.

### A.1.14 Corroborating evidence

Two respondents, both drivers who supported the exemption, called for a new requirement that drivers provide documentary evidence to support the permitted personal activity.

#### **NHVR's disposition:**

Whilst keeping corroborating evidence can help drivers validate the use of this exemption should they be questioned, the NHVR believes that this should not be a mandatory requirement as there is already a requirement for drivers to make records in their work diary. Accordingly, the NHVR will not introduce this as a new requirement.

The NHVR will, however, publish guidance on record keeping requirements, including potential sources of corroborating evidence.

### **A.1.15 No alcohol**

One respondent suggested that the NHVR introduce a new requirement that drivers cannot consume alcohol immediately prior to using a FRHV for a permitted personal activity.

#### **NHVR's disposition:**

Whilst the NHVR accepts the issue of drug impairment is significant, this issue does not relate to work and rest limits and is, therefore, outside of the jurisdiction of the NHVR. Further, the NHVR notes that the Australian Road Rules already address this issue.

The NHVR will not introduce new restriction in the exemption.

## **A.2 Key Change Proposal 2 – Permit drivers of FRHVs up to one additional hour of work time for permitted personal activity prior to their major rest break**

### **A.2.1 Restriction for drivers operating under AFM and BFM**

Seven respondents who supported the proposed exemption, representing drivers and industry representatives, advocated for it to be extended to drivers operating under AFM and BFM. No respondent contradicted this.

#### **NHVR's disposition:**

Under the HVNL, the NHVR cannot grant a work and rest exemption if the maximum work times and minimum rest times to apply under the exemption could reasonably be accommodated within BFM hours or AFM hours.

The additional work permitted by this exemption is well within the BFM and AFM hours so, despite agreeing in principle, the NHVR does not have legal grounds to broaden the exemption to drivers operating under BFM or AFM. For this reason, the NHVR will limit the exemption to drivers operating under Standard Hours.

The NHVR will write to the National Transport Commission asking for exemption making powers to be reviewed.

### **A.2.2 Restriction of permitted personal activity prior to major rest break**

Five respondents argued permitted personal activity should be allowed either prior to or after the major rest break.

#### **NHVR's disposition:**

The NHVR risk assessed the work opportunity and sleep opportunity associated with permitted personal activity prior and post the major rest break and found no difference in risk rating, so long as the permitted personal activity was undertaken in one single period.

Accordingly, the NHVR will remove the restriction from the exemption.

### **A.2.3 Daylight driving only**

One respondent, who supported the exemption, suggested that the permitted personal activity should only occur during daylight. This was to avoid the circadian effects and ensure visibility.

**NHVR's disposition:**

Having reviewed the fatigue body of knowledge, the NHVR believes that adding such a restriction is not justified.

**A.2.4 Seven hour major rest break**

Two respondents supported the requirement to have at least a seven hour major rest break. No one objected to this requirement.

**NHVR's disposition:**

The NHVR will retain the current restriction.

**A.2.5 Maximum 12 hours of driving in 24 hour period**

One fatigue expert suggested that driving be limited to a maximum of 12 hours in a 24 hour period.

**NHVR's disposition:**

The NHVR accepts that this limitation is intended to provide a safety control and will include it in guidance to accompany the exemption.

## Appendix C - NHVR’s risk assessment of new work and rest hours exemption

### B.1 Assessment against the Fatigue Risk Classification System

The NHVR assessed the most permissive work and rest hours that could apply under the exemption against the Fatigue Risk Classification System (FRCS), to develop a worst case risk profile. This profile was compared to the risk profile associated with Standard Hours (solo) available to all drivers. The table below shows the risk profile for both exemption hours and Standard Hours.

Principle	Risk rating	
	Standard Hours	Exemption Hours
Reduce the time spent continuously working	0 (29.4% rest)	0 (23.5% rest)
The more frequent breaks from driving the better	3 (5 ½ hours)	3 (5 ½ hours)
Ensure an adequate sleep opportunity	3 (7 hours)	3 (7 hours)
Maximise adequate night sleep	3 (28.6% night rest)	3 (28.6% night rest)
Minimise shifts ending between 00:00 to 06:00h	3 (71.4% night rest)	3 (71.4% night rest)
Minimise extended shifts	3 (17 hours)	3 (17 hours)
Prevent accumulation of fatigue with reset rest breaks	3 (Not required)	3 (Not required)

**Table 3: FRCS analysis**

Based on the FRCS analysis of the worst case scenario, the work and rest exemption will not increase the fatigue risk faced by drivers. A detailed breakdown is provided below.

#### B.1.1 Work related rest breaks

One of the most important determinants of fatigue is ‘time-on-task’ – the amount of time spent undertaking a single activity. Breaks from driving within a work opportunity reduce performance impairment.

##### Reduce the time spent continuously working in the work opportunity

Despite reducing the amount of discretionary rest available to drivers, the percentage of discretionary rest when a full hour of permitted personal activity is worked is still within baseline levels. Accordingly, the exemption does not change the risk rating on this principle.

##### The more frequent breaks from driving the better

The exemption does not change the maximum risk rating on this principle.

#### B.1.2 Recovery rest breaks

The likelihood of fatigue impairment increases as sleep decreases or the more drivers are required to work when they would normally sleep. Under the Fatigue Risk Classification System, sleep opportunities between

work opportunities need to provide enough time to obtain sufficient sleep in order to reduce the likelihood of unsafe levels of fatigue and prevent work during normal sleeping hours.

**Provide an adequate sleep opportunity in order to obtain sufficient sleep**

The exemption preserves the requirement for at least seven continuous hours of rest in a 24 hour counting period. Accordingly, the exemption does not change the maximum risk rating on this principle.

**Maximise adequate night sleep**

The exemption does not change the maximum risk rating on this principle.

**Minimise shifts ending between 00:00 to 06:00h**

The exemption does not change the maximum risk rating on this principle.

**Minimise extended shifts**

The exemption preserves the requirement for at least seven continuous hours of rest in a 24 hour period. As a result, it also preserves the maximum work opportunity as 17 hours, the same as for Standard Hours. Accordingly, the exemption does not change the maximum risk rating on this principle.

### **B.1.3 Reset rest breaks**

The research literature indicates that the likelihood of fatigue (and fatigue-related risk) increases across subsequent shifts. This has been referred to as a 'cumulative sleep debt'. A reset rest break (two consecutive nights off, with the day off between) counters cumulative sleep debt. In general, the shorter the time between reset rest breaks, the lower the cumulative sleep debt.

**Reduce the accumulation of fatigue with reset rest breaks at least 30 hours between work sequences**

The proposed exemption does not change the requirement to have a reset rest break. Whilst, in practice, permitted personal activity in the 24 hour rest break may technically increase the duration between reset rest breaks, the NHVR believes that the impact of one hour of work should not undermine the effectiveness of the rest in addressing a driver's cumulative sleep debt.