



RTBU

**Comments in response
to the ONRSR Fatigue
Risk Management Review
Consultation Paper**

February 2019

Contents

Introduction	3
RTBU position of fatigue management	4
Recommendation 1: Continue to apply the current fatigue provisions of the Rail Safety National Law	5
Recommendation 2: ONRSR to complete a further review of the fatigue management provisions of the Rail Safety National Law in five years, if not required earlier	7
Recommendation 3: Note that ONRSR will produce guidance materials on fatigue risk management under the Rail Safety National Law to support operators	8
Other issue: Labour hire and increased casualisation of the rail workforce	9
Other issue: The implementation of an hours of work cap on all rail safety work within a risk-based system	10
Other issue: Strengthening the consultation requirements on operators under the RSNL where any changes are made to an operator's safety management system	11

Introduction

The Rail, Tram and Bus Union (RTBU) thanks the Office of the National Rail Safety Regulator (ONRSR) for the opportunity to make comments in response to the Fatigue Risk Management Review Consultation Paper.

The RTBU is unequivocal in its belief that strict standards of fatigue management must be consistently applied across all states and territories. We maintain a belief in the value of harmonised rail safety standards across Australia. However, these standards must be consistently high, not consistently low. We have serious concerns that attempts are being made to lower the bar, particularly with respect to fatigue management in Australia. The responses of industry throughout the review process is further evidence of this fact.

The RTBU welcomes ONRSR's recommendation to maintain prescribed outer limits of work and rest for drivers in NSW and Queensland. However, we are concerned that these prescribed outer limits – which ONRSR acknowledges “were the result of years of work practices and experience to form what are acceptable outer limits” – will not be applied across all jurisdictions. On a matter of such grave importance to ensuring the safety of both rail workers, commuters and the general public, this is fundamentally imperative.

There are three parts to the RTBU's comments in response to ONRSR's consultation paper.

First, we outline our evidence-based position on fatigue management.

Second, we respond to each of ONRSR's recommendations, specifically:

- **Recommendation 1:** Continue to apply the current fatigue provisions of the Rail Safety National Law.
- **Recommendation 2:** ONRSR to complete a further review of fatigue provisions of the Rail Safety National Law in five years, if not required earlier.
- **Recommendation 3:** Note that ONRSR will produce guidance materials on fatigue risk management under the Rail Safety National Law to support operators.

Finally, we address three other issues raised in the consultation paper, specifically, labour hire, a cap on the hours of work within a risk based system and consultation requirements.

RTBU position on fatigue management

The RTBU's position on fatigue management has consistently been underpinned by an Evidence Based Review.¹ It provides a powerful rebuttal of attempts to undermine a regime of maximum work hours and minimum rest periods.

A stand out feature of the Evidence Based Review is the link established between fatigue, reduced performance and elevated risk of injury. The Evidence Based Review identified numerous studies capturing accident data spanning ample years/personnel/accident reports revealing unequivocal increases in accident risk with increased shift duration.

Recent scientific evidence has shown there is a 30.4% increased risk of an occupational accident during the night shift and a clear exponential increase in accident risk beyond the 8th or 9th hour on shift.

The Evidence Based Review examines the international experiences in the rail industry and other sectors of the transport industry to determine what the international benchmark for addressing fatigue risks is. It concludes *“The evidence demonstrates that hours of work and shift limits form part of fatigue risk management systems world-wide in rail and other transportation sectors”*.

Internationally, Australia is the odd country out with its purely risk-based, co-regulatory approach. The international evidence in the words of the US Federal Aviation Administration is that *“hour of service limits should be the central part of any fatigue risk management system.”*

The Evidence Based Review concluded:

“Based on current practice within other countries and occupational sectors and taking an evidenced

based approach to risk from fatigue, this review supports that hours of service limits should be a central part of fatigue risk management within the rail industry, with additional fatigue risk management strategies incorporated within these limits.”

The Evidence Based Review makes a number of recommendations to translate this evidence into the design of working patterns that can be formulated to minimise fatigue.

These recommendations for future work include restricting consecutive night or early morning shifts, the allowing of adequate time off between shifts and establishing limits for maximum shift durations.

Furthermore, a “human factors” review conducted for the ARTC by Lloyds Register found that: “when driving down long sections of track all day, every day, drivers don’t need distractions to lose concentration”. It concluded that the threat of ‘micro-sleeps’ could occur at any time given long sections of repetitive “bland sections of track”.

That is not to mention research that has consistently concluded that forcing a worker to drive while fatigued is akin to forcing them to drive while under the influence of alcohol.

The Evidence Based Review, as well as feedback from our members has informed our responses to ONRSR’s recommendations.

¹ Clare Anderson, Shantha M.W.Rajartnam and Ron Grunstein, *Evidence Based Review of Shift Work Risk Factors for Fatigue and Accident/Injury Risk in the Rail Industry*. (Monash University and University of Sydney), March 2012.

Recommendation 1: Continue to apply the current fatigue provisions of the Rail Safety National Law

The RTBU welcomes the fact that the review has recommended that prescriptive outer limits of work hours in NSW and Queensland are maintained. However, we maintain our longstanding objection to the fact that these standards are an exception, rather than the national standard.

Australia's risk-based, co-regulatory and non-prescriptive approach makes us the odd country out when it comes to rail transport safety. Hours of work and rest limits form part of fatigue risk management systems worldwide in rail and other transportation sectors

The RTBU has many reservations about a purely risk-based approach to fatigue management and any attempts to downgrade prescriptive hours of work regimes. These include reservations about the lack of involvement of rail safety workers in risk assessment, and whether they have the requisite skills to comply with a combined approach to risk; reservations about the maturity of many accredited parties to understand and apply a risk-based approach; and reservations about regulators' ability to pro-actively manage risk.

Prescriptive outer limits of work hours

Throughout the review process, industry called for the removal of prescriptive outer limits of work hours that exist in NSW and Queensland. This was based on two flawed arguments. First, industry claims prescriptive requirements are a cost and regulatory burden. And second, it claims there is no evidence that such limits improve safety outcomes. Both claims are wrong and have the potential to reduce safety on our railways. Therefore, the RTBU welcomes ONRSR's

decision to maintain these existing limits.

Responding to industry's claims about cost and regulatory burdens

Industry representatives made no secret of their rationale for removing outer limits of work hours, arguing that compliance with these standards was a "cost and regulatory burden."

The RTBU strongly rejects the argument that compliance with basic standards like minimum breaks between shifts and maximum hours of work is some form of "burden." The negative connotations around the word "burden" is very alarming and a sign that industry will continue to call for the watering down of safety standards. It raises serious questions in the minds of rail workers that industry is intent on prioritising short-term profit over the safety of the rail workforce.

Responding to industry’s claims about a “lack of evidence”

The RTBU strongly rejects claims made by industry throughout the review process that there is no conclusive evidence relating to the safety benefits of prescribed hours compared with full risk-based frameworks.

What is most disturbing about proposals to remove specific NSW and Queensland standards is that they seek to undo controls that were implemented following inquiries that took place following fatal rail accidents. Prescribed hours have not been developed arbitrarily. Rather, they came directly from commissions of inquiry which were charged with finding out what went wrong when innocent people lost their lives in the rail disasters of Glenbrook and Waterfall.

Moreover, ONRSR acknowledged that “the review period only provided a limited window for collection of data” and that there are difficulties in measuring fatigue. This means the cause of an incident may not be reported as ‘fatigue’, even though it was a causal or contributing factor.

The lack of such evidence raises serious questions in relation to the claim that only three out of the 96 safety investigations conducted between January 2013 and August 2018 identified fatigue as a contributing factor. Applying the ONRSR’s own logic, it is highly likely that rail safety investigations underestimate the impact of fatigue.

The RTBU has consistently provided evidence to establish an unequivocal link between fatigue, reduced performance and elevated risk of injury, including the Evidence Based Review referred to in this submission. Our recommendations have always been informed by this evidence.

Our view remains that attempts to undermine prescribed outer limits of work hours and rests in a manner contrary to the conclusions of the evidence-based review are littered with assumptions and conclusions without presenting any corroborating evidence grounded in science or fact.

Recommendation 2: ONRSR to complete a further review of the fatigue provisions of the Rail Safety National Law in five years, if not required earlier.

A future review of fatigue provisions in the RSNL will be an opportunity to bring all jurisdictions up to the highest levels of safety - a case of “a rising tide lifts all boats”.

The RTBU’s concern is that the capacity of any future review to achieve this objective will be constrained by the requirement (as was the case in this review) to impose no additional cost or burden on the industry.

Any proposal - whether from the RTBU, ONRSR, fatigue experts or other stakeholders - to strengthen existing regulations or develop more prescriptive guidelines is met with strong opposition from industry.

Industry’s refusal to constructively engage with any proposal that may, for the purpose of improving safety, have an additional cost on operators is a clear example of why prescriptive standards, including outer limits of work hours, in regulation are necessary.

Recommendation 3: Note that ONRSR will produce guidance materials on fatigue risk management under the Rail Safety National Law to support operators.

Any guidance materials developed by ONRSR must involve input from the RTBU and our members. Currently, rail workers are given a far from adequate say in the development of fatigue management policies, including risk assessments, and other safety policies.

Workers are often only consulted and asked for their views once a decision has already been made.

This specific recommendation evolved following ONRSR's decision, following stakeholder feedback, not to pursue with the introduction of a Code of Practice. ONRSR will use the work that has been done thus far to develop the code as "the basis for developing robust guidance on fatigue risk management."

Importantly, the development of an updated guidance note and/or future Code of Practice must not result in the removal and transfer of important fatigue management provisions from regulations into legally ambiguous materials.

Other issue: Labour hire and increased casualisation of the rail workforce

The increased use of labour hire has a significant impact on rail safety, including in relation to fatigue. Despite existing accountabilities in the RSNL, there is often disparity between what is in legislation/regulation, and what is reality “on the ground”.

“Buck passing” between labour hire companies and host employers is not unusual, regardless of obligations under RSNL and contractual arrangements. As the consultation paper points out, “ongoing monitoring of labour hire workers poses greater challenges for operators than in managing permanent staff whose work scheduling they almost solely control...[operators] are reliant on assessments and declarations made by labour hire workers (who may be working multiple jobs) or labour hire companies (for whom the worker is not the primary employee) about a worker’s ‘fitness for duty.’”

Some labour hire firms operating in the rail industry only have manager-limited structures, whereby its employees do not form part of the business’ WHS structure.

The rise of labour hire and other forms of precarious and casualised employment in the rail industry makes it increasingly difficult for workers to fulfil their requirements under Section 56 of RSNL. This section requires workers to take reasonable care of his/her own safety and that of others which includes not undertaking rail safety work when fatigued.

However, labour hire and casual workers are in a weak industrial position. The RTBU is concerned that workers in this position may have concerns about informing their employer/host employer that they cannot undertake rail safety work (due to fatigue), out of fear that this may impact adversely on whether they receive future work.

We acknowledge that amending the RSNL in response to these issues would require major legislative reform, something largely outside the scope of this review. However, given the predicted growth in labour hire within the rail industry, the RTBU will continue to monitor and raise concerns with ONRSR.

Moreover, if relevant industrial legislation is amended to improve rights for labour hire workers, it may be necessary to make associated amendments to the RSNL.

Other issue: Implementation of an hours of work cap on all rail safety work within a risk-based system

Based on current practice within other countries and occupations – and taking an evidence-based approach to risk from fatigue – hours of service limits are a central part of fatigue risk management within the rail industry, with additional fatigue risk management strategies incorporated within these limits.

Specifically, the following should apply to all rail safety workers in general (noting the specific hours for traincrew in NSW and Queensland, which should apply across for traincrew across all Australian jurisdictions):

- Minimum time between shifts;
- Maximum shift duration ranging between
- 9-12 hours depending on the occupation;
- Maximum number of shifts and hours which can be worked over any 14-day period; and
- Minimum length of breaks during shifts.

We note that industry opposed this option, citing what it believed were the small number of incidents which, according to investigations, had fatigue as a causal factor. This claim is irresponsible. As this submission has pointed out – and as has been acknowledged by the ONRSR – fatigue is often underestimated as a factor in rail safety incidents.

Another common argument against hours of service limits is that they “could be misunderstood and create the risk of becoming the de facto ‘safe’ limit.” There is no reason this should be the case, especially given that operators are obligated under the RSNL to consult with rail safety workers, HSRs and unions, when developing their fatigue risk management programs.

Other issue: Strengthening the consultation requirements on operators under the RSNL where any changes are made to an operator's safety management system

The RTBU has major concerns about the extent and effectiveness of current consultation processes.

In our experience, consultation processes often only commence once a decision has already been made about changes to an SMS.

It is vital that any guidance material is developed with significant input from the RTBU and our members.

We note that ONRSR proposes to develop guidance material to clarify expectations for consultation under the RSNL.



RTBU

Rail, Tram & Bus Union (National Office)

Office: Level 2, Trades Hall,
4-10 Goulburn Street, Sydney NSW 2000
Phone: 02 8203 6099 Fax: 02 9319 2096
www.rtbu.org.au