



Australian Government

15 August 2019



Australian
**Small Business and
Family Enterprise**
Ombudsman

National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000

via email: hvnlreview@ntc.gov.au

Dear HVNL Review Team

Heavy Vehicle National Law (HVNL) Review – Effective Fatigue Management

The Australian Small Business and Family Enterprise Ombudsman (The Ombudsman) supports a flexible approach to ensuring heavy vehicle operators meet their compliance obligations. While fatigue management under the current HVNL has not functioned as effectively as it could, reducing driver fatalities amongst small and medium enterprises (SME) and the broader freight industry should drive the direction of the future HVNL. Our specific feedback is as follows.

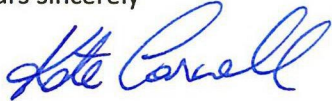
1. The Ombudsman recommends that the future HVNL fatigue management framework clearly links to the legal requirements for managing the known risks and reviews the enforcement approach in such instances where companies avoid charges by placing the compliance charge against the driver. This would help in protecting drivers who are employed by large companies as independent contractors. The Ombudsman supports the safety assurance approach in the new HVNL. Non-compliance infringements should be in proportion with the fatigue threats and consequences when the behaviour is clearly repeated. However, regulations must be clear, simple and in line with the tasks being undertaken rather than as a means to enforce punitive infringements with no clear link to safety and fatigue management, including in the case of one-off accidental errors. Additionally, drivers need to be protected from workplace repercussions when self-assessing their fatigue levels to ensure a 'safety first' approach is delivered instead of bowing to pressure to keep driving from higher up the supply chain.
2. The Ombudsman recommends a harmonised fatigue management approach framework review be undertaken. Safety culture around fatigue management should be driven by simple and flexible compliance that accounts for the resources of operators whose risk profile may not warrant highly prescriptive and complex systems. For example, this would apply when an operator is 20 minutes away from their home destination being allowed to continue on instead of having to stop and rest for an hour long period or more. Further, the Ombudsman supports an increase in adequate rest areas across Australia, which would include expanding upon the minimum facilities outlined in the 2005 National Transport Commission report *National Guidelines for the Provisions of Rest Area Facilities*.¹ The Ombudsman recommends that all major and minor rest areas have dedicated heavy vehicle parking spaces to ensure that drivers do not need to continue to the next stop when all spaces are taken by other road users.
3. The Ombudsman recommends a review into the use of fatigue management technology where instances of using it to push drivers to be non-compliant with fatigue requirements are identified. Such a review would encourage uptake and trust in fatigue management technology, increase

¹ [https://www.ntc.gov.au/Media/Reports/\(A8DBD5B6-402D-4CD0-DD04-E00AB1507CD7\).pdf](https://www.ntc.gov.au/Media/Reports/(A8DBD5B6-402D-4CD0-DD04-E00AB1507CD7).pdf)

compliance and discourage poor performance through the option of naming and shaming those that push drivers to be a risk to themselves and the public. The Ombudsman supports the implementation of fatigue monitoring and detection technology in both the HVNL framework and into heavy vehicles for those that want to invest in the technology. However, consideration needs to be given to not impose significant capital costs to retrofit heavy vehicles. Phasing in such a provision may assist if this measure is introduced. The proposed requirement for all new heavy vehicles to be fitted with fatigue monitoring and detection technology would enable costs to be minimised and incorporated into the purchase price.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Rowen Murphy on 02 6121 3382 or at rowen.murphy@asbfeo.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kate Carnell', written in a cursive style.

Kate Carnell AO
Australian Small Business and Family Enterprise Ombudsman