

INTERCAPITAL
TRANSPORT CONSULTANCY & PARA- LEGAL
Division of intercapital holdings p/l
Abn 90122425594

Jerry Brown-Sarre
Dip of LP

13 CLIFTON ST. EUROA .VIC
035795 2251
gj@oldhume.com
0409326832

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National Transport Commission
Level6
600 Bourke st Melbourne
Vic 3000

enquiries@ntc.gov.au

Submission
Review of the NHVL

Dear Sir /Madam

1/As a 60 year veteran of this industry as an employee driver, fleet owner, owner driver and independent contractor, the time has never been more appropriate to review and make changes to NHVL, fatigue management and other transport issues .

2/ I will attempt to give an opinion on all questions you have raised at this time

3 /I submit In this review grass roots drivers and individual contractors must have a say on the law that effects their lives and puts their lives at risk .

4/ Relying on any trucking associations or the Transport Workers Union as the only people to have input into these laws, denies the grass root employee drivers and independent contractors their rights under the constitution and puts the general public at inherent risk .These trucking associations and the TWU only represent a minority of the 47000 transport companies in Australia.

5/ *It is the role of governments to make laws for the good of the people, and I would add, within the rule of law, at this time governments state and federal have failed to do so under fatigue management .*

6/ As we have found out over the last 70 yrs ,university degrees and people who sit in glass houses who have never experienced this job have failed to understand the how this job effects different people and have framed laws that do not show the individuality of the transport drivers.

7/ I personally have been campaigning for driver safety and reform since 2000 an I have appeared and given evidence in all hearings on truck safety since that time including 3 years having direct input on the Road Safety Remuneration Tribunal.

NHVL question 1 and 5

8/The NHVL must apply across all states if that means some states have to make compromises so be it , or remove the word national from the entity and stay with state laws ,we can't have it both ways .

9/ We have improvement by the NHVL on permits system in the eastern states although we can still not get access to Victoria for type 1 road trains coming from the

northern states which is a major issue for operators needing that access because of objection from Victorian road authorities.

10/ For the NHVL to be effectual it must have national control over Fatigue Management across all Australia. But it must change from its current prescriptive law

11/ The W.A government argue it needs 17 hour day for its long distance drivers as grounds for not accepting to be part of the NHVA that argument has flaws that impose risk .

12/ I find no difference between a Victorian driver driving from Melbourne to Cairns to a WA driver driving from Perth to Broome the prescriptive hours what ever they may be should be the same should be the same.

13/ If the NTC accept the driving hour changes that will be recommended in this submission this should effect the W.A position

a/ There must be a national consistent law on heavy vehicle roadworthy across Australia the current national roadworthy law has no total effect unless it is a national law

b /We must have a national and consistent agreeable driving training and entry level into long distance transport across Australia for the safety of all road users. .

c/We must have a national interpretation of all driving law and penalties across Australia

Safety Issues On Roadworthy Vehicles question 4

14/ The industry must have national laws on fatigue and enforceable heavy vehicle roadworthiness law and vehicles operating in breach current ADR law .

15/ As a accredited Victorian heavy vehicle roadworthy inspection station our company observes just how unsafe some heavy vehicles are that are maintained and repaired by unqualified persons in all states, that put lives of drivers and the general public at foreseeable risk .

16/ It is our position that only qualified people should be involved the general maintenance and repairs of heavy vehicle where and when practicable, to reduce the inherent risk to the general public and drivers.

17/ This point should be carefully debated by the NTC as many people who repair or maintain heavy vehicles do not understand their responsibilities under s26D of the NHVL and may be putting lives of the public at risk

Fatigue Management under NHVL question 2,4.5.6

18/ It is an offence to drive while fatigued, however the majority of drivers are fatigued by simply complying with the prescriptive hours under the current Fatigue law and putting themselves and others at risk .

19 /It is never the intent of any driver to put his life at risk or the general public while simply doing his job ,drivers accept that we need to have laws on fatigue to ensure safety for all road users, but all they have ever asked is to have input into common sense law .

20/ Since the first driver logbooks of the fifties and the sixties prescriptive hours of

driving and rest have been forced on all long distance drivers as if they were the same person.

21/ Drivers have rebelled against these laws and I can attest the reason I have survived the 13million klms I have driven is by resting when I needed it, not when the log book told me to, as many surviving long distance drivers as have done over the many decades of current prescriptive provisions of the Act .

22/ The cost and the need of enforcement on fatigue safety for transport drivers and the general public could be minimised if this review by the NTC accepts the fact that if we, the drivers, agree with the law then we can, and will self comply, this will reduce the risks to themselves and the general public, and that those are the grounds for grass root drivers to be actively involved in this review of the laws that effect them.

23/ Amendments to fatigue management law since 1968 when National Fatigue Management laws were 1st introduced have always been the same, where the people to whom the laws apply, have been denied input on hours of rest needed by individual drivers, this is an issue that various academic experts with their university degrees with no practical knowledge of long distance driving have made the laws and failed.

24/ Provisions of the Fatigue law have always crossed the line into other statutes and have discriminated against transport drivers, denied them their rights of the rule of law, and provisions of human rights.

25/ The right not to give evidence against oneself is a fundament right of law ,which denied under the fatigue management act ,and is discrimination and fails the equality tests when this human right of law is denied to a minority of Australian workers, and is denied wholly for revenue by the states .

26/ Offences under the current NHVL fatigue management are draconian for a summary offence and far exceed the fines for indictable criminal offences of similar risk to the public, but that is where the state governments have come from, the early drivers log books it was about safety, the fines now are factored into the yearly budgets and revenue.

27/ Bearing mind the NHVL is written by Qld parliament, passed with that states intent, the basis for the law is for revenue from offences.

28/ The big stick of the NHVL on fines does not change on when an individual driver is fatigued, furthermore, it belies common sense for a book drafted by lawmakers to say to any driver at any time of the day or night, to state a fact, **you now fatigued and you will stop for a prescribed time**, when the driver knows he is not fatigued or it is unsafe to stop.

29/ At this time every road authority except possibly WA is in breach of its primary duty under s28D of the NHVL Chain of Responsibility Act 2018.

30/ At no time can every heavy vehicle travelling on any road of any jurisdiction in Australia stop for a prescribed time as set out on the fatigue act, simply because, the provisions needed to comply are not available, WHICH ARE, proper heavy vehicle parking areas or pull offs, at the appropriate distances needed to allow for all trucks on that highway, at that time, to stop when and if needed. .

31/To allow for complete compliance for the current prescriptive law and safety for all road users we would need heavy vehicle parking areas every 25 klm which roads authorities would say is not practicable or possible.

Blacks law ,legal maxims *The law does not seek to compel a man to do that which he cannot possibly perform.*

32/ I have advised for this to be a defense to prosecution for some offences under the NHVL Fatigue Management Act

33/ All heavy vehicles drivers agree we have to have laws, and we need to obey laws, but if a law puts our lives and the general public at risk, we cannot obey it, and this supported by the rule of law .

Blacks law ,legal Maxims *When the reason, which is the soul of a law, ceases to exist, the law itself should lose its operative effect.*

12 Hour Driving Work Day, Standard hours s249 NHVL

34/ We must have sensible reform, it has been long established by the drivers, both employee drivers and independent contractors, that a 12 hour work day every 24 hours is all they need to work but retain an option to work 14 hour days if required for that day only.

35/ Where the problem arises out the fatigue laws over the years where it was a compulsory prescriptive 10 hour break per 24 hours, drivers rebelled against this,as there were no sleeper cabins in those days ,drivers were forced to sleep laying across seats or in a sleeping bag ,a pillow over the steering wheel or other means, and it was impossible to conform to the laws ,even then some drivers need this rest time, others don't.

36/This was changed in later years to one prescriptive minimum 6 hour break in 24 hours which was more accepted by drivers, but again some drivers need this, others don't .

37/Then in the last amendment of the national driving hours that was changed to a prescriptive miniumn7 hour break, the extra hour was added because the fatigue experts said after waking up drivers needed extra time to have a wash and eat before starting work, which again ignores the difference between individuals, and where and when the rest stop is taken.

38/ When resting between town's away from roadhouses or proper truck rest areas where there are no facilities to eat and toiletries available when the temperature can be minus 1 degree or plus 50 degrees, when is not practicable or impossible to rest for the minimum hours as prescribed, there has to be drivers discretion allowed on if he is fatigued and safe to drive .

Blacks law ,legal maxims *The law does not seek to compel a man to do that which he cannot possibly perform.*

39/ What these law makers will not except is that when the individual drivers body clock says you body has had enough rest, it's time to go to work, or it may need more than the prescriptive time. Compelling a driver stay for the extra time to satisfy words in a book, will make him more bored and fatigued and put the driver and the general public more at risk.

40/ Industry has been advised that the NTC has, through a survey by CRC of 300 drivers and other means, obtained new evidence of when fatigue is known by various means but basically by eye movement, but I don't see evidence of how they forecast body fatigue that will occur first, and my professional opinion by experience, the main cause of all fatigue related accidents in heavy vehicle and cars.

41/ This has never been an issue, everyone accepts we can all suffer from fatigue,

everyone accepts we all need sleep when that occurs, but the Fatigue Management Acts is framed to penalise fatigue because the NTC and its fatigue experts refuse to acknowledge, and show evidence of when an individual body is unfatigued which is the absolute bottom line reason of needing fatigue law.

Blacks law, legal maxim, when the reason, which is the soul of a law, ceases to exist, the law itself should lose its operative effect.

42/ This has always been the point that no academic expert can predict or will comment on but instead say, just use a prescriptive time for all drivers that will be near enough.

What has concerns to me is that academic fatigue experts are confusing the times of rest that heavy vehicle drivers need against professional experience of rest and sleep times, that that differs from rest times that ordinary people require for their general health in their own home .

43/ Personally what my professional experience has taught me and many other drivers, is that some days my body clock has woken me after 2 hrs, 3 hrs, sometimes 12 hrs or any times in between ,**but every day is different** ,and the same applies to every driver, **as every individual body clock is different** , and this applies when I am either at my place of abode or in a heavy vehicle .

44/ What minimum rest time an individual driver needs today, will change tomorrow and I will put my professional opinion on this point against any other academic fatigue expert.

45/ Forcing prescriptive rest times to be the same for every driver is wrong in law and morally wrong and puts drivers and the general public at risk every day and is in breach of s26D of the NHVL and COR Act .

46/ The fatigue law states that driving between midnight and 6 am is the dangerous period, for some drivers it is, for other drivers it's not, and every individual driver knows or should know his weakness.

47/ The framers of law must start treating drivers as adults not children

48/ When a statute puts the public or driver's lives at risk then the law must be changed

The legal maxim applies in law ,

Blacks law, legal maxims, the law shall not, through the medium of its executive capacity, work a wrong.

49/ It is my opinion Government entities and people who frame law are legally bound to liable for risks under s 26D COR if laws they make put lives at risk .

50/ It has been accepted by the industry more heavy driver lives have been lost trying to conform to NHVL Fatigue Management laws than those who don't conform because of the inherent danger they face being compelled into driving while fatigued in order to adhere to the prescribed rest times.

51 /It is my opinion, the time a body needs to reboot itself from fatigue has been settled by police and safety experts from all states, with the fatigue program that is advocated every holiday period by the safety messages put out to motorist, *when you are tired stop for a power nap until you feel fit enough proceed* ,a power nap is considered ¼ to ½ hour .

It is my opinion these messages put an estoppel on prescriptive hours of rest provisions of fatigue law. .

Blacks law of legal Maxims, An argument drawn from a similar case, or analogy, avails in law

Basic Fatigue Management S253 NHVL

14 hour driving work days

52/ This is a contradiction of safety on fatigue as it eats into the fatigue rest patterns as set out in standard hours .

53/ If the proposal that we set out later in this submission was accepted many drivers would use BFM hours only if they want for that day .

54/ Many drivers have trouble adapting the rest patterns that are necessary using the current Basic fatigue law on permanent basis .

55/ The proposal amendment times would be able to be adapted easily by BFM drivers and makes their fatigue more manageable and easy to adhere to .

56/ This was a lobbying plan from employer organisations and some independent contractors to have their vehicles work longer hours so that they could earn more money to compensate them from poor freight rates that they operate under, and it cost companies nothing as drivers are not compensated for this time.

57/ It is now a provision of the Act used by major transport and small companies as leverage on who they hire as an employee driver or as a subcontractor .

58/ If you do not have BFM accreditation you will not be hired and there is no requirement to prove or show at or after 14 hours work or driving you will be able to drive while not fatigued .

59/ The NTC and the NHVA need to explain, to the ordinary person and industry how, if you are fatigued after driving 12 hours AND A DANGER TO THE PUBLIC and yourself, and guilty of an indictable offence, what magic occurred to the driver, that to the ordinary person is a tangible thing, that makes a driver a less risk or the same risk, driving/working for 14 hours daily than he is working a 12 hour standard day.

In reality the acceptance of BFM time provisions raises an argument of estoppel against the penalties that apply to ordinary hours provisions of the HVL S98, s99, s100 .

Advanced Fatigue Management s 257 NHVL

60/ When trying to explain this provision of the Fatigue law to the ordinary person, they are astounded, as is any person with common sense in the industry, trying to understand, how, if you are fatigued after driving 12 hours, AND A DANGER TO THE PUBLIC and yourself, and guilty of an indictable offence, what magic occurred to the driver, the vehicle the employer, what is the tangible thing to the ordinary person, that a driver can now drive/work safely at 16 hours per day and not pose a risk to other road users . NHVL s98, s99, s100 of the Act

61/ This was /is the most inane provision of the Fatigue Management Act ever made law in our history.

62/ This provision lobbied for by major transport companies to ensure their vehicles are used to the maximum time available daily and despite their arguments to the contrary they have no ability to know, prove they are not putting drivers or the general public at risk for their own financial greed .

63/ How does the draconian penalties for breaches under the ordinary time for risk disappear without tangible evidence that this provision does not contravene s26d of COR?

64/ THIS PROVISION OF THE NHVL Fatigue law SHOULD BE REPEALED by the NTC immediately, this provision is an absolute and identifiable inherent risk to every road user under NHVL s26D of the Chain of Responsibility Act .

65 / Major transport companies are relying on this provision are trying to hood wink the NTC and the NHVA to keep this provision for their own financial gain at the risk of the general public.

66/The NHVL and the NTC should understand that the system major transport companies are adapting to justify this provision to put various types cameras in cabins to prevent accident that is based watching drivers eyes for droop or other reactions will not solve the problems or the risk of this provision.

67/ What the NTC and NHVA and all the alleged fatigue experts these major transport companies are using, and don't know, or want to acknowledge, is a fact that only experienced long distance drivers can attest to, because they have survived it usually over many years ,body fatigue .

68/ By the time the eyelids are drooping or the drivers head is nodding, the driver has been fatigued for some hours, fatigue does not only apply to eyes closing as these in truck camera evidences is supposedly showing, but also applies to the body in fatigue, which is a more dangerous fatigue that in most case caused the inevitable fatal accident or the risk of both heavy vehicle and car drivers .

69/This is a point that can only be evidenced or explained by a personal attendance by a driver who has the actual experience.

70/ I have failed to find any evidence that any person medical or other has the knowledge or ability to make a prescriptive statement that any particular driver, has the physical or mental capability who at some time in the future will be a competent driver and not put himself or the general public at risk after driving/working 16 hours.

71/ Any medical expert who can assess a driver as physical or and mentally fit to drive 16 hour days at some time the future leaves themselves liable for an offence under s26D of the NHVL COR law in the event of that driver is involved in an accident that causes death or injury.

72/ As a professional driver who has worked up to 20 hour days and who knows the how fatigue overtakes the body I can attest seeing drivers working with 16 hour work diary, at the end of the 16 hours driving in a manner dangerous to the general public and themselves .

73/ It should be part of any accident involving a heavy vehicle that the work diary plan used by the driver be it paper or EWD be used to find out if the driver was fatigued in mind or body and should be investigated, but until transport drivers deaths are included in as a work related death that won't happen

74/ It is my opinion that while acceptance by the government of the AFM remains in the Act; it forms an estoppel against any driving hour breach in both Standard or BFM provisions and at some time will be challenged in a court of law.

75/ It could be argued, the acceptance by authorities of the driving hours allowed in AFM is sufficient to estopp the class of definitions of breaches of s98, s99, s100 in both standard and BFM provisions.

Blacks law of legal Maxims, An argument drawn from a similar case, or analogy, avails in law

76/ New Proposal, The NHVA Fatigue Management Law question 6

I personally have long worked on the drivers opinion of safety, which is , Working on a 12 hour driving in 24 hrs of time starting work, that leaves 12 hours of rest, grass root drivers have held that the mandatory minimum rest time should be no more than 4hours with a further 2 hours minimum at the drivers discretion after any 4 hrs of driving time , and the remaining 6 hrs of rest be at the drivers discretion for that 24 hour period .

Drivers are consistent that all work time should not exceed 6 days per week

77/ This is the Fatigue plan I have adopted contrary to the written law and has kept me alive in my 60 years of professional driving and I stand by it

Electric Work Diary

78/ While at this time not Mandatory, but the NHVA is pushing for more companies to voluntary embrace the technology of EWD

79/ Major companies are agreeing to use Electric Work Diary to assist in their application to use AFM ,it doesn't matter what hours the driver has driven at any given time or if he is physically capable and safe to drive 16 hours a day , using EWD gives them protection from the massive fines possible under COR law for offences under danger to public risk .

80/ While some major companies will only use EWD on their linehaul vehicles for their attempted compliance with COR law, but the job of a driver does not only mean, steer the vehicle, other responsibilities arise and there is no record of that .

81/ Other transport companies will use them in all their operations ,and the risk is that the EWD will not record any time spent outside the cabin or when the key is turned off ,or what the driver was doing ie; loading unloading ,repairing vehicles ,washing vehicles or other work related time.

82/ What was found by us in our participation in the RSRT, that major supply chain associations like ALC, AI GROUP and others, will promote the use of EWD by their major transport customers if it will assist in their members enjoying a reduction in freight costs as it was evident that they want to divert and abrogate any responsibilities to the transport company for transport risk while moving their goods as they don't believe that are liable for any risk of the transport task.

83/ It is our opinion that until an EWD can record all time driving **and working** it can never be mandatory across the industry.

84/ If this does ever happen the technology would be embraced by the whole industry as we could have the evidence to make every major prime contractor, hirer and or supply chain participant pay drivers and subcontractors for their total time worked while doing that freight task ,this will save lives .

Driver Training questions 4,5

85/ The NHVA must take over control of heavy vehicle driver training across Australia.

86/ This to me is an absolute primary duty that the NTC and the NHVA owe to the general public under 26D of the COR Act ,NHVL

87/ The Industry is attempting to design and use computerised programs to cover the lack of knowledge and ability of drivers, with ESC, EWD, automatic gearboxes .ABS braking and many other devices .

88/ Proper heavy driver training over the years would have saved the need all of this

89/ Current new drivers don't have luxury of learning on the job as the older drivers did, they must learn and know before they are let onto highways

90/ Currently the knowledge, ability of drivers being passed by these driving schools is pathetic and dangerous to the general public and a majority should never have been passed.

91/ There has to be reform into what is being taught both physically and orally to these applicants to properly prepare them for driving on highways of Australia. They are not taught what do, how to react properly if an unforeseeable event happens, mainly because some or maybe the majority heavy vehicle driver trainers don't know .

Basically and one can drive a truck forward that is the least of the ability needed to be safe on a public road in a heavy vehicle .

92/ To do this any person who applies for a license to teach should have to tested for their knowledge and ability and I make this comment after dangerous advice was given to a group of learners drivers at DECA in Shepparton when I was in attendance

93/ A panel of hands on experienced long distance drivers both employee and independent contractors should set the criteria on what is needed to know and teach for the protection of the general public and new drivers, not a panel of people with university degrees .

94/ It is not only the Australian road rules, road law, load restraint ,they need to know, but knowledge that is intrinsic to this industry for their own survival and the public safety..

95/ The drivers are not told the heavy vehicles engines must not exceed particular revolutions on downhill runs,when to give way to other heavy vehicles to avoid an accident, practices that are not are part of workplace law. how many people know its what you know to do in the the 1st hundredth of second after blowing a steer tyre that will decide your fate or the fate of others .

96/ When a new driver leaves a depot for the first time with his or her HC or MC license on a road he/she has never travelled, they need to know what is coming after driving over the top of particular hills.

97/ A list by experienced drivers and explanation on every dangerous hill in Australia could be done for them to learn where they are, and how to descend them especially after the latest deadly crashes on Mt Ously in NSW and the lofty ranges into Adelaide, Green mount range into Perth, the constant crashes on the Cunningham's gap in QLD to name just a few, and new drivers should be tested on that knowledge.

98/ sometimes we get a second chance after accidents, but a majority of times in heavy vehicles there is no second chance, one accident and you are dead and or the general public is a statistic.

99/ Ideally, consideration should be given by the NTC and the NHVA to show some real leadership to design a heavy vehicle simulator that could show some these mountain ranges and, similar to airplane simulators, when unforeseen events could be made happen to get reaction from the learner driver to prevent an absolute risk to the general public.

100/ Every driver before being granted a heavy vehicle license, which is a privilege, it should be mandatory to have to pass a simulator test for reactions to unforeseeable events.

101/ These are used in Canada by firms before drivers get jobs especially before a job driving on the ice highways and should be mandated in every state in Australia for new drivers .

102/ Every major transport company should invest in a simulator to test their new drivers ability before hiring, and or to teach them as a primary duty of care.

103 /Every heavy vehicle learner driver must learn and be able to reverse any combination that the license is applicable to, and this was heightened by the Sydney airport tunnel debacle that made news across the world via the media when a driver could not reverse his vehicle out of the tunnel.

Compliance interpretation of laws question 8 and 10

104/. **Victorian Charter of Human Responsibilities Act 2006**

Your right to recognition and equality before the law (section 8)

Everyone is entitled to equal and effective protection against discrimination, and to enjoy their human rights without discrimination

Covenant on Economic, Social and Cultural Rights (ICESCR).

engages the right to just and favourable conditions of work under Article 7

105/ A right for all people to be treated equally and not discriminated against is a human right.

106/ When a heavy vehicle driver can be pulled over stopped unlimited times in any journey it is harassment, when no other person in their work place is treated like this it is discrimination that can cost driver hours of their time over a long distance journey

107 A right to be innocent until proven guilty is a human right
When enforcement authorities pull over a heavy vehicle there is a presumption of, this driver will be guilty of something, they just have find out what they can use for a breach, this is discrimination that can cost a driver his liberty.

108/ It is the responsibly of the NTC and NVHL to make provisions in the law that prevent harassment of drivers in the course of their work and ensure their liberty is not taken from them.

109/ The NHVA are taking over enforcement of NHVL law in the states slowly and are putting teams in place in some states with the intent to take over enforcement of NHVL in all states.

110/ The biggest problem we have now across enforcement is interpretations of the law by these on road authorities

111/ Personal interpretations that rely on changing words of a NHVL or statute law , fatigue law and load restraint law is common especially in NSW on breaches of the load restraint provisions to suit the occasion.

Blacks law ,legal maxims

That is the construction of the law which the words indicate what is enforceable.

And In default of the law, the maxim rules.

112/ Road enforcement authorities know that drivers cannot afford the time or money to travel interstate to fight corrupt infringements and many infringements are given to drivers on this knowledge by enforcement officers.

113/ One common act by road authorities, if nothing can be found wrong on inspection of the vehicle and driver, and without cause, is to demand a driver prove his speed limiter is working, this simple demand has a \$460 plus time cost to the vehicle owner to obtain that proof that the speed limiter is compliant, and is known as a Clayton's infringement, in other words, harassment.

114/ The NTC and NHVA must make it an offence under NHVL for road authorities to knowingly infringe drivers for offences that are not in statute or trivial to road safety and for harassment of drivers

115/ False interpretations of roadworthy LAWS that result in infringements of trivial matters, just to record a breach should not be allowed

Blacks law of legal Maxims, the law does not notice or care for trifling matters

116/ Running a single wheel on or over the fog line is the latest craze of the NSW RMS, it is discriminatory, I have never read of a case where an ordinary motorist has been breached for this offence, period.

117/ This industry is losing its experienced long distance drivers in droves because the current prescriptive laws, harassment and penalties.

118/ This poses a massive risk on all Australian road users and only proper review of these laws, as submitted, can prevent this drain on this industry in the interest of safety to the public.

119 / questions 3,9

All transport law should be based on risk to drivers and the public, it must be based on common sense, not deny drivers and owners common law rights of discrimination, or harassment and have input from every party to the law, remembering that the less costly and simple enforcement of law is self compliance, which can be obtained by drivers having input into laws that affect them.

I remain available at any time to explain any contents of this submission.

Thank you for the opportunity to make this submission.

Jerry Brown-Sarre

