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Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

rrat.sen@aph.gov.au

Dear Committee Secretary

Submission on Importance of a Viable, Safe, Sustainable and Efficient Road Transport Industry

I would like to thank the committee for the opportunity to provide comment on the importance of a viable, safe, sustainable and efficient road transport industry.

In offering my submission, I hope to inform the committee on issues in the road transport industry from the perspective of a heavy vehicle driver of nine years. I have worked for various transport companies and have extensive experience operating under all three of the National Heavy Vehicle Accreditation Scheme (NHVAS) accreditation modules.

This submission addresses (some but not all of) the terms of reference and identifies a number of other related matters.

a) Minimum award rate and sustainable standards and conditions

I support the introduction of enforceable minimum award rates and sustainable standards and conditions for all stakeholders in the road transport industry.

Over time I have observed a clear correlation between low cost contracts and poorly maintained vehicles, high risk behaviours and poor work conditions.

This observation is supported by an assessment of the financial viability of becoming an owner operator in 2018. After carefully considering all operating expenses, I acquired dozens of quotes directly from transport companies and on various load boards. Almost *all* of the quotes were below the total operating cost calculations. Some were as much as 37% lower. The only variable costs left to squeeze are wages and maintenance, operators are having to choose between paying themselves or maintaining their equipment.

Owner operators and small operators are already at a significant disadvantage due to much higher operating costs. As one example, 24/7 fleet utilisation in larger companies significantly reduces the operating cost per unit. In order to remain competitive, a small operator may have to squeeze variable costs (Maintenance, wages, compliance and conditions).

These implications could potentially be avoided by the implementation of safe and sustainable minimum rates for all operators in the road transport industry.

With reference to company drivers, I would say that pay rates and conditions overall are getting substantially worse. The award rate is not commensurate with the risks involved, skills & knowledge required or general working conditions of the industry. Due to the 24/7 nature and demands of the industry, the use of employment flexibility agreements / bargaining agreements have enabled many employers to strip employees of most (if not all) of the entitlements in the award. For example:

- Set ordinary hours
- Set start time
- Shift penalties
- Overtime penalties
- Meal allowances
- Paid meal breaks
- Minimum hours guarantee for a shift
- Public holidays

To illustrate this, I work full time for a company who pay a flat rate that is slightly higher than the award rate and *none* of the entitlements listed above. The company operates under Basic Fatigue Management (BFM) accreditation and our shifts can be anywhere up to 17 hours in length. Start times vary anywhere from 9am to 2pm and I am not notified of my start time until 0630am on the day that the shift commences. This means that my ordinary working hours could fall anywhere between 9am and 7am the following day with as little as 2 (or less) hours notice. Aside from the fact that this poses a critical fatigue risk, it also diminishes the chance of maintaining any sort of work / life balance and represents poor working conditions.

According to FairWork, any Individual Flexibility Agreement (IFA) or Enterprise Bargaining Agreement (EBA) must pass the 'Better Off Overall Test' (BOOT), however these tests are generally confined to the financial aspects and don't take into consideration the loss of other non pecuniary entitlements such as regular start times and ordinary hours as outlined above.

Transport is a very demanding job, one that has caused me to forfeit many things that everyday Australians take for granted. Since starting in the industry I've lost contact with many friends and family and have had to give up all of my sports and hobbies. The nature of the extended and sporadic hours means that I can never plan anything outside of work. I usually only see my partner on my days off even as a driver who returns home each night (at some point).

Transport workers make a lot of sacrifices to earn an income and should be remunerated in a way that reflects this. Overtime rates and shift allowances should be mandatory not only to compensate the driver for the sacrifices they make, but to remove the incentive for operators to force drivers to work excessive overtime and unfavourable shifts as a cost saving exercise.

In many cases, overtime wages cost operators significantly less than ordinary hours as they are not having to pay superannuation, sick leave accrual, annual leave accrual etc. This creates an obvious incentive to force drivers to work excessive overtime against their will.

In long distance operations, many drivers are forced to work excessive hours and are not paid for delays and (in many cases) loading / unloading. A driver who drives directly from depot to depot will

in many cases receive the same km rate as as a driver who loads, unloads and/or completes mulit-drops along the way.

There is a huge amount of down time in transport in relation to loading and unloading, much of which the driver is not paid for. Distribution centres commonly take up to 4 hours to load or unload and in some cases longer.

I support previous submissions in relation to the inadequacy of approved sleeper birth design standards and driver conditions. Vehicle combinations and capacities are getting bigger and bigger at the expense of driver comfort. Adequate space and air conditioning should be a mandatory standard to ensure the driver can get quality rest.

c) Regulatory impact, appropriateness, relevance and adequacy of legislative framework

The transport industry is highly regulated, the Heavy Vehicle National Law (HVNL) has close to 700 pages and there are various other associated regulations to consider. Heavy vehicle drivers can be liable for any contravention of these laws and regulations yet many have little (or no) understanding of the legislation or the implications. Anyone can obtain their Heavy Rigid (HR) licence in a day without *any* training in the relevant legislation and begin working the next.

New Chain of Responsibility (CoR) laws were introduced in 2018 with the intention to ensure that all parties in the supply chain share the responsibility of ensuring that breaches of the HVNL do not occur. While I support the idea of these changes, in my experience they have not been effectively implemented or enforced and have made little (or no) impact on day to day transport operations. The only changes that I have seen are the introduction of additional paperwork such as CoR declarations that ensure any liability for any breach of the NHVL is passed back on to the driver.

Unfortunately, one of my observations in the industry is that the most sought after drivers are the ones who have no understanding of the law, will sign any document that is put in front of them and will not ask any questions. There is such a substantial amount of this kind of paperwork in the industry that a "tick and flick" culture has emerged. More often than not companies are concerned only with the appearance of compliance and the existence of documentation to vindicate themselves in the event of any incident.

Drivers are expected to make multiple declarations of compliance daily, much of which is done without having the tools, information or knowledge available to the driver to make an accurate and honest determination. These declarations are required by both the transport companies and many other third parties such as customers, distribution centres etc. Some examples are:

- Declaring that they have enough driving hours remaining to complete all allocated tasks without knowing what has been, or will be allocated to them.
- Declaring that the load is restrained in accordance with the load restraint guide without receiving any load restraint training, without suitable load restraint equipment available and in many cases without being able to check the load restraint (eg. sealed trailers).
- Declaring that the vehicle or combination is roadworthy without receiving any relevant training and in the absence of any document clarifying what is and is not considered a roadworthy

defect.

- Declaring that a vehicle or combination is roadworthy before they actually inspect the vehicle/s. For example, before a trailer has been allocated to them.
- Declaring that the vehicle is roadworthy despite known defects in fear of repercussions.
- Declaring that a load is within legal mass and dimension limits without any means available to make that determination.
- Declaring the tare weight of vehicles or combinations without being provided with that information.
- Declaring that they are not suffering from fatigue no matter the circumstances in fear of repercussions.

There is an enormous amount of pressure on drivers to just "tick the boxes", most have little choice in the matter. Some drivers have absolutely no idea what they are signing or what the laws and implications are. Others fear losing their jobs or risking adverse action if they don't just sign the declarations as expected.

To illustrate this, while working for a national transport company, I would commonly leave blank or write 'N/A' on any part of a declaration that I could not make a proper determination on. For example, if there were no weighbridge facilities, on board scales or other means of accurately determining mass, I would not tick the box that declared that my load was within legal mass limits. I had done this for several months until one day, halfway through a shift, the manager sat me down for a formal interview and asked why I had not been filling out the declaration correctly. I explained that I cannot possibly be expected to legally declare that something is true and correct when I have no way of accurately making that determination. I was then given an ultimatum to either fill out a new declaration to his satisfaction or be sent home and issued with a number of non conformance records that in his own words "won't end well for you".

This is the new normal in the transport industry, thousands of false declarations are made every single day and despite the intentions of CoR laws, all liability remains with the drivers who are forced to take on these risks in order to earn a living.

Turning specifically to fatigue, s228(1) of the HVNL holds that 'a person must not drive a fatigue related heavy vehicle on a road while the person is impaired by fatigue'. In many cases this provision is contravened on a regular basis by drivers who are under pressure to get the job done and can commonly face repercussions if they were to report that they were impaired by fatigue. Maximum work hour operating limits are exploited by operators as a minimum standard that drivers are expected to work without feeling fatigued regardless of the circumstances.

Earlier this week I was called into the manager's office after declining an extra load in addition to an 11 hour allocation. My start time was sent to me via text message at 7.30am for a 9am start time the same day (several hours earlier than my usual start times). I was still asleep and only saw the text at 8am. I then had to jump out of bed and race straight to work without having breakfast or packing any lunch, dinner or water for the shift. At about 2pm an additional load was allocated to me via text message. I advised that I cannot accept the extra load because I cannot sustain an extended shift (14+ hours) without adequate notice to prepare for that shift. This led to a meeting with senior

management in which I believe the intention was to terminate my employment for "refusing a reasonable request".

During the meeting my manager stated that "It pisses me off when blokes refuse something that's not unreasonable, you refused to do that load yesterday and it was not an unreasonable request".


It was also stated during the meeting by the training manager that "[because you have your BFM accreditation] We can legally and morally keep you here for 17 hours from the time that you walk in the front gate until you walk out".

The toxic culture highlighted above is becoming the new norm in the industry and demonstrates the gross exploitation of legislative operating limits and concessions. It is not the legislative intention that drivers should be expected or forced to work the maximum amount of hours permitted under the relevant work/rest option in the HVNL ([Fatigue management regulation](#)).

To clarify this, I refer to page 7 of every [National Driver Work Diary](#):

The primary responsibility of professional drivers is community safety.

The Heavy Vehicle National Law (HVNL) requires that drivers must not drive a fatigue-regulated vehicle on a road while impaired by fatigue. Similarly, a party in the chain of responsibility for a fatigue-regulated heavy vehicle must take **all** reasonable steps to ensure a driver does not drive the fatigue-regulated vehicle while impaired by fatigue.

 **It is against the law to drive a fatigue-regulated heavy vehicle if you are impaired by fatigue.**

The HVNL also provides outer limits for fatigue management for drivers of fatigue-regulated heavy vehicles.

The outer limits are designed to ensure the safe operation of fatigue-regulated heavy vehicles, however it is important to be aware that you can still be impaired by fatigue even when operating within these outer limits.

Regardless of how many hours you have worked or how much rest you have had, you must never drive if you are impaired by fatigue.

The maximum hours of work and minimum hours of rest under your work and rest hours option (for example, standard hours) are outer limits only:

- you can have more rest than the minimum required hours of rest, and you can rest at any time
- you do not have to work the maximum hours of work.

Used correctly, work diaries can help ensure that drivers and parties in the chain of responsibility meet their safety and fatigue management obligations.

Over the course of my career, I've reported feeling fatigued or declined additional work due to fatigue and:

- Had my pay docked
- Have been humiliated in front of my colleagues
- Received formal disciplinary action
- Have been threatened with termination
- Had my shifts changed unfavourably

These implications clearly discourage drivers from complying with all relevant legislation (not just fatigue related) and are the norm in the industry. On any given day there are thousands of heavy vehicle operators driving while impaired by fatigue who fear losing their jobs if they were to report this to their employers.

This culture will not change until:

- All parties in the supply chain are better educated in the laws, regulations and implications of contraventions.
- A clear avenue is established to report non compliance to a third party that are investigated and acted upon quickly.

- A demerit style system could potentially be implemented for responsible persons in the supply chain such as schedulers / allocators / managers etc to deter them from making unreasonable requests or demands.
- Where any infringement is issued, any influence by all parties in the supply chain is investigated.
- Investigations go beyond the shiny exterior of company policies, procedures and documentation in determining the reasonable steps defence. Objective evidence that the procedures are appropriately implemented and understood by all parties should be obtained.

Proper enforcement of the HVNL in general is lacking on all levels and until this changes it will remain an ineffective tool for deterring non compliance.

As an example, on-road enforcement in some states is nearly non existent. At the beginning of 2017 I moved to Queensland and have been driving for companies based out of Brisbane full time ever since. Despite passing heavy vehicle checking stations multiple times every shift for the last 3 years, I have never been pulled in for any inspections in Qld. In fact, I have never spoken to a Qld Transport and Main Roads (TMR) inspector on the road in my career to date.

Even when intercepts do occur on the road, the focus seems to be almost exclusively on issuing infringements to drivers (rather than other parties in the chain of responsibility) usually for breaches that have little to do with road safety such as clerical errors. A common example is an infringement for not recording the operators accreditation numbers in the drivers work diary even though these details are freely available on the documentation required to be carried by the driver.

The number of infringements issued to other parties in the supply chain compared with infringements issued to drivers is minuscule.

A reckless attitude toward compliance by operators has manifested in the absence of adequate enforcement. An "it'll be alright" attitude exists and any driver who does not conform to this is at risk of adverse action.

As an example of adverse action, I had raised concerns with one of my managers in relation to roadworthy defects that were not being attended to. His response was that 'refusal to use such [defective] vehicles will not be tolerated'. I then emailed him excerpts of the relevant legislation and vehicle standards. Two days later (without providing any response to that email), he changed me to day shift resulting in a significant loss of income (shift allowances). This was despite providing a letter not one month earlier to support my mortgage application that stated "with no planned changes in the future [name removed] would continue to be paid afternoon shift allowances".

To further demonstrate the attitude toward compliance, a low cost supermarket was recently in the federal court after concerns were raised by the Transport Workers Union (TWU) in regards to compliance and unsafe work practices. At the very same time as the hearing, in response to claims that safety and compliance concerns were generally treated with disdain, one of the schedulers for that company took to facebook saying that [the drivers who raised the concerns] were:

- "Oestrogen filled whingers" and
- "Bottom of the barrel employees"

These comments perfectly illustrate the overall culture adopted by some transport operations and are evidence of the clear lack of concern for, and/or knowledge of the HVNL and its implications by responsible parties in the supply chain.

There must be more education, enforcement and prosecutions at all levels in the supply chain before this will change. Drivers should be better educated not only in their own obligations, but also the obligations of other parties in the supply chain to ensure that they can identify unreasonable requests and ensure that they are equipped with the knowledge on how to deal with those requests.

There must be better support and assistance for drivers from the authorities and the regulator to assist them in dealing with unsafe work practices and unreasonable requests.

d) Training and career pathways

I support the introduction of training and career pathways to support, develop and sustain the road transport industry. I have observed a very low level of understanding of the relevant legislation by all parties in the supply chain. This is a serious concern and I strongly believe this needs to be addressed at all levels, however this submission focuses primarily on drivers.

(d)1 Licencing

Current licencing schemes for heavy vehicle drivers are inadequate for (at least) the following three reasons:

1. There is little or no requirement to have any working knowledge of the HVNL or other relevant regulations.
2. It is possible to progress through license classes with no experience. Currently a holder of a Car (C) license can obtain a Heavy Rigid (HR) licence in a day. 12 months later (even if they never drive a truck again in that time), they can obtain a Multi Combination (MC) licence in 1-2 days allowing them to drive b-double and road train combinations.
3. Training organisations offering licencing courses have increasingly low standards in terms of competency required to pass, driven both by the desire to maintain a high 'pass rate' and profit.

(d)2 Vocational Education and Training (VET)

There are VET programs specifically targeted at drivers including the [Certificate III in driving operations](#). Enrollments in this course have surged as a result of significant government investment by way of funding, subsidies and incentives. The purpose of these schemes are to address the skills shortage by creating new opportunity for employment through traineeships and creating opportunities for career development for existing workers.

Unfortunately, these programs have been ineffective in achieving the desired outcomes as operators and Registered Training Organisations (RTO's) were quick to realise the opportunity to capitalize on the government investment at the expense of the Australian taxpayer.

According to [data](#) from the National Centre for Vocational Education Research (NCVER), there were over 18,000 enrolments in this course alone in 2018. Despite this, a search on [seek.com.au](#) returns zero results for traineeships as a heavy vehicle driver. Not one new opportunity for a jobseeker to gain training and experience to address the skills shortage.

Rather than creating new jobs, existing company drivers are being signed up to traineeships as a money making exercise. In most cases there is no intention of advancing the drivers skills or licence class and in many cases there is no intention to provide any training at all. To illustrate this, the course completion rate for 2018 was 17.7% and even lower the previous year.

Employers receive sign on [incentives](#) every time they sign up a new trainee which is currently \$1,500 for a certificate III in Qld. Many transport companies have their own RTO's embedded in their company and would also collect the fully funded course fees, currently a minimum of \$4,839 in Qld ([User Choice funding](#)). This money is available as soon as a training contract is signed regardless of whether or not any training is provided and does not take into account various other incentives that are available to the employer.

In 2018 there were 6,305 funded enrolments resulting in approximately 5,189 non completions (based on a total completion rate of 17.7%). This equates to a cost of around \$32 million to the Australian taxpayer in 2018 for the non completed courses alone.

I was one of the many thousands of drivers who was signed up as a trainee by my employer in 2018 and did not complete (or even start) the course. I was not provided any training whatsoever, despite multiple complaints to the Qld Department of Employment, Small Business and Training (DET).

The few drivers who have completed the course remain in exactly the same positions as before they started their traineeship and are no more qualified to take on higher duties or work in a higher licence class. This makes the purpose of the government funding redundant. No new jobs, no upskilled workers to fill shortages and no career progression.

While I recognise and support the need for further training for drivers, the current schemes need to be reviewed. Funded traineeships should only be on offer where there is a genuine opportunity for the trainee to gain additional skills and experience. For example where:

- The employee is a new employee without a heavy vehicle license and will gain a heavy vehicle license and experience as part of the traineeship or;
- The employee is either a new or existing employee with a heavy vehicle license and will gain a higher class of licence and experience in that class as part of the traineeship or;
- The employee is a new or existing employee with a Multi Combination (MC) licence and will gain further knowledge and experience in that class as part of the traineeship.

Operators and RTO's who have collected incentives and funded course fees for training that was not provided should be made to repay these monies to the government.

(d)3 Non Accredited training

In essence, the primary duty provisions of the HVNL (s26C) require an operator to ensure that breaches of the HVNL do not occur. It would seem logical that one of the things required to do this would be to ensure that staff are appropriately trained.

In my experience the only "training" provided by operators is throwing a stack of paper at the driver and having them sign it so that it can be filed in the training records and used as evidence to avoid liability, and to establish a reasonable steps defence should it be required. Often the driver would not actually be given sufficient time to read through the documents.

I believe that there should be more robust and mandatory training programs that ensure competence with heavy vehicle laws and heavy vehicle operations.

g) Impact of new technologies

Technology has the potential to drastically improve compliance and road safety if designed and adopted for those genuine reasons rather than for the appearance of compliance and the establishment of a reasonable steps defence.

(g)1 Telematics

Some telematics systems actually encourage drivers to make false declarations of compliance due to poor user experience / workflow.

To illustrate the above, I previously used a telematics system with a national carrier. When starting work the first thing you would need to do after signing in to the telematics system was a pre start check on the prime mover. Next you would have to do the CoR and fitness for duty declarations.

What this means is that before a trailer / load has been allocated to a driver, they must have already declared that:

- The combination (truck and trailer) is roadworthy
- The load is within legal mass and dimension limits
- The load is restrained in accordance with national load restraint guidelines

The workflow for the vehicle pre start check also encourages drivers to just check the boxes. Each item in the check is displayed individually on the tablet one at a time with no skip option. The order could be something like this:

1. Check tyre tread (done outside the vehicle)
2. Check for warning lights on dash (inside the vehicle)
3. Check tail lights (outside)

And so on...

To save repeatedly climbing in and out of the cab the driver would just record everything as roadworthy.

(g)2 Fatigue monitoring technology

Fatigue monitoring technology such as [Guardian](#) allegedly prevents fatigue and reduces fatigue incidents by up to 90%.

While fatigue monitoring technology certainly has its place in preventing accidents, I say that it has zero ability to *prevent* or *reduce* fatigue events, rather it may (in some but not all cases) *detect* a fatigue event as it occurs.

There is a distinct difference between *prevention* and *detection*. The former is *proactive* and the latter *reactive*. The risk management hierarchy places *reactive* measures at the lowest level (the least effective measure to reduce risk).

The HVNL s228(1) holds that "A person must not drive a fatigue-regulated heavy vehicle on a road while the person is impaired by fatigue."

By the time a fatigue monitoring system *detects* a fatigue event, an event has already occurred as has a subsequent breach of the HVNL rendering it an ineffective tool for *preventing* fatigue events.

If a fatigue monitoring system can save a life, then it is worth every cent, however they cannot possibly *prevent* fatigue. Concessions should not be made in the area of *preventative* fatigue management justified by the use of fatigue monitoring technology.

A far more effective tool for preventing driver fatigue is ensuring proper scheduling, for example:

- Ensuring sufficient advance pre-trip notice of schedules
- Ensuring consistency in rosters and start times

In my experience, some operators who use fatigue monitoring technology seem to think that it is an exemption from complying with other preventative fatigue measures.

i) Other related matters

(i)1 National Heavy Vehicle Accreditation Scheme (NHVAS)

The NHVAS scheme has three accreditation modules (Mass, Maintenance and Fatigue) that offer various concessions to participating operators. While some of the issues raised in this submission may apply to all modules, I will be focusing on the fatigue management module for the purposes of keeping the submission as brief as possible.

(i)1.1 Fatigue Management Accreditation

Basic Fatigue Management (BFM) accreditation allows up to 14 driving hours in any 24 hour period, and the Advanced Fatigue Management (AFM) allows up to 16.

To clarify the above, these are "work hours" not shift lengths which could be significantly longer. If a driver was to work 14 hours the absolute *minimum* shift length would be 15 hours (in order to comply with work / rest requirements) and commonly up to 17 hours.

According to the NHVR [accreditation guide](#), the aim of Fatigue Management Accreditation is to achieve improvements in road safety and transport productivity. The Fatigue Management Module is primarily about road safety, but it also provides added flexibility for operators who implement auditable accredited systems to manage driver fatigue.

In my experience the scheme has been ineffective in its primary objective of road safety, and has been exploited by operators for the purposes of gaining operational concessions and the appearance of compliance with road transport laws.

In most cases accreditation is seen by operators as a licence to force their drivers to work excessive hours. Some common phrases I hear while working for accredited operators are:

- "You have your BFM, so we can make you drive for 14 hours a day"
- "We can keep you here for 17 hours a day"
- "You have your BFM so it's your job to manage your own fatigue"

Instead of being treated as *maximum* operating limits, the extended driving hours are treated as a minimum expectation that a driver should be prepared to work on any given shift without notice.

In order for a company to gain or maintain BFM accreditation they must meet the [BFM Standards](#). There must be a Fatigue Management System in place documenting all policies and procedures of how these standards are met.

In order for a driver to operate under BFM they must:

1. Undertake training in *TLIF0005 - Apply a fatigue risk management system*; and,
2. Be inducted into the operators fatigue management system

I have *never* been inducted into an operators fatigue management system at *any* accredited company I have worked for, despite the fact that I hold (and am legally obliged to carry with me) a signed document from the operator to certify that I have. In fact, operators are commonly refusing drivers access to their fatigue management systems (precisely what happened to me again earlier this week).

This in itself is not compliant with (at least) 3 of the 6 BFM Standards, specifically:

- 3.1 - *The operator has steps in place to ensure anyone involved in the management, operation, administration, participation and verification of the fatigue management system is made aware of the operator's current fatigue management policies and procedures.*
- 3.2 - *All persons who hold a position of responsibility under the operator's BFM system are identified and have been inducted and regularly updated in the operator's fatigue*

management policies and procedures.

- *4.2 - Authorities, responsibilities and duties relating to the BFM management system are current, clearly defined and communicated to all appropriate personnel.*
- *6.1 - Policies, procedures and instructions covering all activities required to meet the BFM standards are authorised, current, clearly defined and available to all relevant personnel.*

In my experience, fatigue management systems are created for the sole purpose of passing audits. In many cases they are sold to operators by auditors. They are made up of policies and procedures that meet the standards but are generally not relevant to the operators business or business unit. There is usually no intention to implement these systems and the document will remain on the shelf collecting dust until the next audit.

Drivers are denied access to these documents because they contain policies and procedures that are not adhered to and may raise concerns if they were aware of this.

This is of serious concern as operators are abusing the scheme in order to force their drivers to work excessive hours when they have no working systems in place to properly manage the increased risk of fatigue.

To illustrate this, I refer to the aforementioned conditions of the company that I currently work for who run shifts anywhere up to 17 hours. Drivers receive a text message at approximately 6.30am with their start time for their shift that day which could commence anywhere between 9am and 2pm. This means that the driver could be finishing work anywhere between 5pm and 7am the following morning. Schedules are regularly changed and extended during the shift without notice or consultation with the driver. If you decline any allocation for any reason you will be intimidated by senior management and possibly face summary dismissal.

Below are the BFM standards for scheduling and rostering:

- 1.1 schedules and rosters are documented
- 1.2 schedules and rosters are monitored and regularly reviewed
- 1.3 action is taken to minimise fatigue risks when altering schedules and rosters
- 1.4 guidelines are in place for the use of relief/casual drivers where required
- 1.5 the increased fatigue risk for a driver returning from leave is considered in scheduling and rostering of the driver
- 1.6 drivers are to have input into schedules where practicable to ensure trip plans are reasonable
- 1.7 schedulers provide sufficient advance pre-trip notification to ensure drivers can comply with legislation
- 1.8 schedules and rosters are planned to be reasonable and achievable under legislative operating limits.

I had asked one of the driver trainers if I could view the fatigue management system so that I could determine the procedures that were in place to manage fatigue risks. My request was denied.

I then asked how the current scheduling and rostering system met the BFM standards. The driver trainer that I asked (who conducts in house BFM driver training in *TLIF0005 - apply a fatigue risk management system*) stated that he had never heard of the BFM standards. While I was still in his office, he searched 'BFM standards' on google and I had to assist him in finding the correct result.

In summary of the above:

1. The BFM standards are a minimum set of standards that an operator must meet in order to be eligible for BFM accreditation.
2. The Fatigue Management System (FMS) is a manual containing all of the policies and procedures that an operator has in place detailing how the above standards (1) are met.
3. TLIF0005 is a course for drivers that covers how to apply the FMS above (2).
4. The driver trainer at an accredited company who provides accredited training in the above (3) has never heard of the BFM Standards (1).

This lack of understanding and knowledge is clearly not compliant with the BFM standards, specifically standard 3 (fatigue knowledge and awareness) and standard 4 (responsibilities).

The training provided (especially in house training) in many cases focuses on the extended driving hours rather than the procedures to minimise the increased risk of fatigue.

The manager of the above mentioned company actually told me that "it's not a good idea to go looking in to the standards or the HVNL".

This is a clear indication that (at least) some accredited companies are concerned only with operational concessions rather than compliance and safety. Their fatigue management systems exist only to satisfy audit requirements and are poorly implemented (if at all).

A fatigue management system is the backbone of any BFM accreditation. The fact that most BFM drivers have never seen or even heard of a fatigue management system clearly indicates that the scheme is *fundamentally* flawed.

Additionally, accreditation is being used to justify safe and compliant operations both to customers and to the courts. In reality the operator is only compliant on paper and do not actually implement their policies and procedures in the workplace.

(i)1.2 Auditing

Under the NHVAS, operators undergo an audit at regular intervals by an NHVAS approved auditor who is approved and registered with the NHVR. The [NHVAS Audit Framework](#) states at 2.1 that the purpose of an Audit is to:

- Verify objective evidence related to an operators management system
- Assess how successfully these systems have been implemented
- Determine the effectiveness of an operators systems in meeting NHVAS standards
- Provide evidence concerning the mitigation of problem areas

- Identify opportunities for improvements in the operators management system

In my experience the auditing system has been absolutely ineffective in achieving the above objectives for (at least) the following reasons:

1. There is little (or no) verification of *objective evidence*
2. Auditors are selected and appointed by the operators themselves
3. Consecutive audits can be conducted by the same auditor

With reference to (1) above, *Objective evidence* is defined as:

“data supporting the existence or verity of something that may be obtained through observation, test or measurement.”

In reality, auditors are simply verifying the existence of documentation that is compliant with the standards rather than objectively verifying that these systems have been successfully implemented.

With reference to (2) and (3) above, the fact that an operator can (in most cases) select their own auditor is a clear disincentive for an auditor to assess an operator as non compliant. In an industry where there are only around 120 approved auditors, word would spread very quickly if any of them were failing operators in their audits. This would be bad for business.

Similarly, the two consecutive audit rule opens the door for repeat business and is an obvious incentive for the auditor to “go easy” on the operator.

I put it to the committee that *no* NHVAS accredited company that I have worked for was even *remotely* compliant with all of the relevant standards.

Concerns with the ineffectiveness of the NHVAS auditing system have previously been raised in submissions by Mark Williams and Allan Price.

To ensure the integrity of the NHVAS scheme I make the following recommendations (applicable to all three NHVAS modules):

1. Raise the standard of objective evidence that is acceptable in relation to conformance with the relevant standards. For example, where a procedure exists, conformance and competence should include verification through questioning and consultation with a sample of relevant personnel including drivers (selected by the auditor).
2. A sample of drivers, schedulers, managers and executives should be assessed for competence in both the operators management systems and their relevant qualifications (TLIF0005 / TLIF0006 etc.)
3. All participants and relevant personnel should be notified of on audit and provided with contact details for the auditors so that they can report problem areas to be addressed during the audit.
4. All audits (whether scheduled or triggered) should only be conducted by an auditor appointed by the regulator.

5. No consecutive audits should be conducted by the same auditor.

(i)1.3 Fatigue Management Training

In my experience, competence with the required fatigue management units of competency for drivers, schedulers and managers is alarmingly low. It seems that operators and schedulers have developed a misconception that by completing the fatigue management course drivers are immune to fatigue and can be expected to work excessive hours on demand.

The course ([TLIF0005](#)) in part, teaches drivers that (some of) the causes of fatigue are:

- Lack of sleep
- Irregular sleep / work patterns
- Extended shifts
- Driving during times that you'd naturally be sleeping
- Poor sleep quality
- Environmental stresses (heat, noise etc)

It is said that a person that has been awake for 17 hours has a driving ability similar to that of a driver with a blood alcohol concentration (BAC) of 0.05 and 0.15 BAC after 21 hours.

The course teaches the fundamental principle that the only cure and / or prevention for fatigue is quality sleep.

Contradictory to these principles however, upon completing the course, drivers are permitted (and expected) to work under conditions where they are regularly subjected to all of the above.

Of further concern is the quality of training. Currently training must be provided by a NHVR approved RTO, however this training still commonly takes place in house. This can be either through approval of a training branch of the company or by way of a partnership agreement with an approved RTO.

In house training is problematic because in many cases operators are only interested in the operational concessions (extended driving hours) and so that is the only part of the course that is taught. This is only 1 of the 36 performance criteria required to be competent in TLIF0005.

As an example, the company that I work for provides accredited training for this course in about 15 minutes during inductions conducted by the same driver trainer mentioned previously who himself has never heard of the BFM standards. The course should take around 6 hours.

From speaking with other drivers it is evident the vast majority working under NHVAS accredited schemes have absolutely no understanding of the relevant standards and legislation.

To ensure the quality of fatigue management training I make the following recommendations:

1. Fatigue management training should be provided only by external RTO's approved by the regulator.
2. Training partnerships between operators and approved RTO's should not be permitted.

3. Refresher training should be conducted every 12 months and include an assessment that is contextualised to ensure working knowledge of the operators fatigue management systems. This should also be conducted externally by a third party not associated with the company.

(i)1.4 Regulatory Support

In my experience, support from the regulator (at least for drivers) is inadequate. I have reported on numerous occasions operators not allowing drivers access to their fatigue management systems. On each occasion they have confirmed that this is required in order to comply with the fatigue management standards but not once has it resulted in any sort of action or intervention.

In fact, when I asked for advice on what to do next given the operator was still refusing to show me the FMS, I received no response.

To ensure adequate support for participants I make the following recommendations:

1. Fatigue management systems should be approved by and registered with the regulator.
2. A support system needs to be in place for drivers to obtain advice specific to a registered FMS and report non compliance that can be actioned immediately.

(i)1.5 Enforcement

As is evident in a number of publications by the NHVR, the regulator has adopted the idealistic view that "most operators want to comply". I say the contrary is true and that most operators want to *appear* compliant for the purpose of gaining operational concessions.

The scheme's primary objective of road safety is being undermined by inadequate enforcement and a 'slap on the wrist' approach towards non compliances.

HVNL s462(1) "A heavy vehicle accreditation granted under this Law is subject to the condition that the operator who holds the accreditation must comply with the relevant standards and business rules."

Accreditation is a privilege granted to operators who comply with *all* of the relevant standards, not an entitlement. The NHVR needs to do away with the 'slap on the wrist' approach and start suspending or cancelling accreditations of companies who do not comply with *all* of the relevant standards.

A more proactive approach to compliance and enforcement needs to be adopted. Until there is adequate enforcement, operators will continue to exploit the scheme and fatigue incidents will continue to occur.

Conclusion

The transport industry is awash with legislation and liability, all of which ultimately falls in the hands of drivers who are forced to accept these risks in fear of losing their jobs. Operators and other parties in the supply chain have adopted a 'papersafe' culture where the policies and procedures are seldom

followed by anyone, in reality compliance is quite often unofficially discouraged. When an incident occurs they can simply lay blame on the driver for not following the company procedures.

Concessional schemes including the NHVAS are exploited for competitive advantage. In particular, the fatigue management scheme has had quite a perverse effect contrary to the original primary objective of road safety.

This culture has been facilitated by regulatory deficiencies and inadequate enforcement at all levels.

The root cause behind the vast majority of issues raised in this submission is profit. In order to win contracts companies are having to undercut each other and then find ways to cut costs in order to remain profitable. These variables are almost always compliance, wages, maintenance and conditions.

I can honestly say that I have grave concerns about the road transport industry. Even as a driver who understands the implications of making false declarations or driving while fatigued, I still do it often for two reasons:

1. I fear losing my job if I don't.
2. Drivers who try to comply with the law (eg. refuse to tow a defective trailer or refuse to drive while fatigued) are labelled as troublemakers and have a difficult time finding work.

Additionally, the above reasons are why I feel it necessary to make this submission anonymously.

In summary, I suggest to the committee that the matters addressed in the inquiry as a priority should include:

- 1. Minimum enforceable rates and sustainable standards for all road transport activities.**
- 2. Inadequacy of regulatory enforcement at all levels.**
- 3. Review of training and career pathways.**
- 4. Review of the NHVAS scheme.**

I would like to thank the committee for the opportunity to provide comment on the importance of a viable, safe, sustainable and efficient road transport industry.

I am happy to provide any further information if needed. Should you need to contact me please reach out to the Transport Workers Union (TWU).

Sincerely,

A concerned transport worker