



# Draft Heavy Vehicle National Law Amendment Bill and Regulations

21 November 2024

Victoria Police thanks the National Transport Commission (NTC) for the opportunity to provide feedback on the draft Heavy Vehicle National Law (HVNL) Amendment Bill (Amendment Bill) and the draft Heavy Vehicle National Amendment Regulations (Regulations). The following comments have been endorsed at Executive Command level.

## General comments

Consistent with feedback previously provided through formal and informal mechanisms, Victoria Police retains concerns about the proposed amendments to HVNL and the effect they will have on road safety.

Firstly, the proposal to replace the previous fatigue management systems with the new Alternate Compliance Accreditation (ACA) framework carries a number of risks for operators, road users and the public at large. To manage these risks, the ACA framework must contain strong oversight measures and minimum safety standards as determined by fatigue experts. The current ACA framework lacks the necessary safety controls to ensure best fatigue management practices are upheld by the heavy vehicle industry.

Secondly, Victoria Police stresses the need for a national mechanism to enable law enforcement agencies to refer unsafe ACA schemes or operators to the NHVR for investigation, action and resolution. Finally, Victoria Police reaffirms its position on the proposed penalty amendments as contained in the joint ANZPAA Road Policing Network Response.

## Fatigue management

### ACA oversight

Victoria Police strongly advocates for the inclusion of safety control measures in the ACA legislative framework. The legislation should stipulate maximum work hour limits and minimum rest periods to ensure ACA applications are approved in accordance with scientifically recognised safety standards.

At present, there is limited information regarding how ACA applications will be assessed for safety. The current Advanced Fatigue Management (AFM) controls include an independent review of high-risk applications, scoring the application against a risk matrix defined in the Risk Classification System (RCS) and a prescribed outer limit of driving no more than 15 and a half hours in a 24-hour period. Neither the draft Bill nor Regulations contain any detail about how ACA applications will be assessed for safety, including whether the current RCS and associated Business Rules and Standards will apply.



Given the introduction of ACAs will increase the number of operators with a bespoke driving schedule, it is crucial that there is strong oversight of the assessment process for granting an ACA.

#### Prescribing outer limits for ACA

Victoria Police recommends prescribing the current thresholds for escalated risk contraventions outlined in Table 3 of Schedule 2 as the outer limit for ACAs.

Victoria Police believes that the absence of cumulative outer limits, which exist under the RCS used to guide the AFM system, will result in an unacceptable increase in fatigue-related risk to heavy vehicle drivers and all road users. Using these thresholds as the outer limit provides mitigation against accumulated fatigue and provides further checks and balances as recommended by the RCS.

#### Scheduled split rest breaks

Victoria Police strongly opposes the introduction of scheduled split rest breaks as it will result in an unacceptable increase in fatigue-related risk to heavy vehicle drivers and all road users.

According to the National Truck Accident Research Centre (NTARC), the proportion of major truck crashes caused by fatigue has dropped dramatically over the last two decades, largely due to the introduction of driving hour reforms and logbooks. Nevertheless, fatigue remains a significant problem for the truck driving industry and is the largest factor in truck driver deaths, accounting for 60 per cent of truck driver fatalities in 2021. For this reason, it is crucial that the amended Bill and Regulations align with the science on fatigue management.

Under the current Heavy Vehicle National Law, a split rest break is not compliant. The RCS refers to a minimum sleep opportunity of seven hours being required before the commencement of work. This is based on research which found that a minimum of six hours of sleep is required to provide a suitable recovery break and that a seven-hour window is the minimum rest time required to achieve six hours of actual sleep.

The introduction of split rest breaks will result in an increase of rostered breaks that do not meet the minimum required sleep opportunity identified by fatigue experts, creating subsequent road safety risks.

### **Mechanism for law enforcement to refer safety concerns to the NHVR**

Victoria Police recommends the proposed law includes a national mechanism to enable law enforcement agencies to refer unsafe ACA schemes to the NHVR for further investigation and obliges the regulator to respond to the referring agency with an outcome or assessment.

As the overseer of the ACA framework, the NHVR is responsible for ensuring ACA schemes meet safety requirements and are properly complied with by the operator. In the aftermath of a collision, police will assess the driver's ACA scheme to identify any factors that may have contributed to the traffic incident. If investigating officers identify safety concerns – either relating directly to the ACA scheme or to the driver's use of the scheme – those officers then require a process to refer their findings to the NHVR. Further, to manage road safety risks, it is important to include a mechanism for the NHVR to inform the referring agency of any outcomes.



Accordingly, Victoria Police recommends establishing a referral mechanism that would include:

- NHVR conducting an immediate review of the ACA
- An interim action allowing the NHVR to sup-end the ACA if serious safety concerns are identified
- A mandated response from NHVR, to the referral agency, outlining what action is or is not taken and sufficient reasons for the outcome.

In the absence of such a referral mechanism, it is likely that drivers will continue to operate under ACA schemes identified by law enforcement as high-risk. This poses an obvious and avoidable danger for the driver, road users and the public at large.

#### **Proposed penalty amendments**

Victoria Police reaffirms the ANZPAA Road Policing Network Response to the NHVL Penalties Review which was submitted to the NTC on 17 September 2024.

The ANZPAA response emphasises that safety is the paramount concern for policing agencies when considering NTC's proposed penalty amendments. Victoria Police remains concerned that the proposed penalty reductions for fatigue management offences sacrifice safety for the sake of industry in the form of a penalty reduction.

For penalties to remain an effective deterrent, the cost of the fine needs to outweigh the financial advantage of breaching the law. The proposed penalty scheme significantly reduces the cost of fines for 'operating under standard hours' offences by 25 per cent. Likewise, it is proposed to reduce fines for offences relating to permits by 50 percent. Victoria Police is concerned that a reduction in these penalties could incentivise non-compliance and reinforce appetites to absorb fines as the cost of doing business.

Victoria Police is particularly concerned with the proposed reduction in penalty amounts for record keeping offences. Accurate work diary records are essential for safety and enforcement. Penalties for work diary misuse (e.g., use of multiple diaries to hide breaches) should remain high to deter this behaviour. Accordingly, the substantial reduction in offences for work diary misuse is opposed by Victoria Police.