

Case learnings – November 2023

Facts of the case

In April 2020, a heavy vehicle operated by a transport company collided with stationary vehicles resulting in the deaths of four persons. At the time, the driver was driving whilst fatigued and under the influence of drugs and alcohol.

Following the collision, an investigation was commenced in relation to the business practices of the Company in the lead up to the collision.

The subsequent investigation revealed the following over a 7 month period prior to the collision:

- More than 40% of the Company's driving shifts had one or more fatigue-related breaches;
- Across approximately 1,900 driving shifts, more than 800 shifts had a number of fatigue breaches;
- The supervisor checked and endorsed over 500 of the 800 offending shifts;
- 2.6% (22) of the breaches within the 800 shifts were identified by the Company;
- No non-conformance reports were issued to drivers by the Company for Heavy Vehicle National Law ('HVNL') breaches;
- The primary contractor for the Company had raised Critical Non-Conformance Reports against the Company for repeated fatigue breaches by their drivers;
- Evidence of falsified timesheets under other employee names to avoid detection were used and approved by Senior Management.



The charge

The Company was charged as an operator with a Category 1 offence under the HVNL for failing to implement systems and procedures to properly manage drivers' fatigue and/or fitness for duty. In doing so, the Company exposed individuals to the risk of death, serious injury or illness, being reckless to that risk. This meant that the Company was aware its conduct may expose another to the possibility of death or serious injury, but proceeded regardless.

The Company's Managing Director was charged as an executive with failing to exercise due diligence to ensure the Company complied with its safety duty.

The sentence

In November 2023, a Magistrate convicted and fined the Company \$2,800,000 but discounted the fine on account of the plea of guilty to \$2,310,000. In addition, the Court made a prohibition order prohibiting the Company from conducting any transport activities for a period of 12 months.

The Managing Director was convicted and fined \$22,500 and is subject to a Supervisory Intervention Order with conditions to undertake further education.

In the sentencing remarks, and during the hearing, the Magistrate made the following comments:

- Acknowledged the victims' families and offered his condolences;
- Managing Directors cannot put their hands over their ears and eyes to avoid responsibility;
- Managing Directors must take positive steps to monitor and ensure compliance with the HVNL and company policies;
- The primary duty under the HVNL, and its obligations, are fundamental to ensure safety as it is well-known that speed and fatigue are major contributors to deaths on Australian roads;
- Obligations under the HVNL are not the same as for normal companies due to the type of risk that heavy vehicles pose to others on the road;
- The Managing Director knew there was a problem, accepted the word of someone that

was in the problem, and did not do anything further;

- Found it difficult to accept the Managing Director was not aware of the issues within the Company and it would demonstrate a significant flaw in the Company structure if he was not;
- It is not relevant to consider if the Managing Director knew or did not know about all the issues. The Managing Director had some knowledge and was aware of the requirements under the HVNL;
- Industry must be made aware of the dangers heavy vehicle pose to road users and the consequences of their actions;
- Executives of companies, and people who hold positions of influence in companies, must ensure they have an active role in ensuring their company complies with its primary duty under the HVNL.

This sentence is significant in that it is:

- One of the most serious examples of a breach under the HVNL;
- The second sentence for a Category 1 offence under the HVNL in Australia.

Key takeaways for executives

- Ensure that your fatigue and fitness for duty policies and procedures comply with your obligations under the HVNL and the Master Code;
- Ensure that all workers are properly trained and inducted in how to identify and recognise risks of fatigue and/or fitness for duty and the Company's policies and procedures in relation to them;
- You must have a system to deal with non-compliance of the HVNL and that system needs to be monitored for compliance;
- You cannot just be told something, you must ensure it has or is occurring;
- There is no point having procedures and policies where the drivers are not aware of them or trained in them;
- Responses to any breaches of the HVNL must be real and timely;
- As an executive, remain proactive in your organisation's business activities and request regular briefings from your staff to ensure you

remain up to date with developments and risks;

- As an executive you cannot push your responsibility onto others.



Guidance for operators

- Company policies and procedures are compliant with the fatigue and/or fitness for duty requirements as set out under the HVNL and the Master Code;
- Risks are identified and policies and procedures are in place to minimise those risks;
- These policies and procedures are regularly updated, monitored and reviewed; and
- Ensure those policies and procedures are followed and staff are trained in them.

These reasonably practicable measures are just examples of potential controls that you can implement and should be read in conjunction with those outlined in the registered industry [Master Code](#).

For more information:

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