



Submission to the National Transport Commission

Assessing Fitness to Drive 2021

10 June 2021

Executive Summary:

NatRoad appreciates the NTC's commitment towards making *Assessing Fitness To Drive Guidelines (AFTD)* more user-friendly, but the review should have gone further. This is a policy area ripe for reform.

NatRoad wants new and expanded national fitness to drive standards to replace the *Guidelines* and is disappointed that proposals put forward in this and the previous submission are viewed as "out of scope".

A fitness to drive standard would incorporate greater medical disclosure and reporting of conditions that affect the driving task, and more consistent medical reporting, examinations and associated licensing requirements. The current review of the Heavy Vehicle National Law (HVNL) must involve consideration of a driver fitness for duty standard being placed in a revised law.

Current State and territory licensing arrangements mandate only minimum competencies and medical fitness to drive standards that fall well short of the health screening that our members seek.

Our view is the current AFTD guidelines are not suited to managing competency and fitness to drive on an ongoing basis. This is compounded by Western Australia requiring medical assessments that are based on AFTD.

The AFTD guidelines are not specific to heavy vehicles, are limited to driving tasks, and are not intended for use for regular health checks. Members use the AFTD guidelines as a de facto fitness for duty standard, and this will continue in the lieu of anything more suitable. The provisions dealing with commercial drivers in the current AFTD would be a good basis from which to build appropriate fitness to drive standards.

NatRoad would be pleased to work with the NTC to develop a FTD Standard that separates the commercial standards in the current guidelines and adds a series of screening tests (e.g., for diabetes, sleep apnoea and psychiatric illness) and stronger criteria based on principles of risk management.

NatRoad is supportive of minor proposed changes to the Guidelines that would grant commercial drivers with implanted cardioverter defibrillators conditional licences under new criteria; change standards in relation to seizures and epilepsy; and allow general practitioners to conduct periodic reviews of psychiatric and substance abuse conditions after an initial assessment by a specialist.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to respond to the National Transport Commission's (NTC) review of the guidelines *Assessing Fitness to Drive*. The NTC has published an interim review report¹ (Report) and draft revised guidelines² (Guidelines) for comment.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
3. This submission follows on from the initial submission dated 9 November 2020 (First Submission). As with the comments in that submission, our concerns appear to be designated by the NTC as "out of scope." The discussion below relates to three areas where the narrowness of the current review is acknowledged but our broader policies are, in any event, pressed.
4. The minor changes reflected in the Guidelines are supported as follows:
 - commercial drivers who have implanted cardioverter defibrillators may in future receive conditional licences under new criteria;
 - favourable changes have been made to the standards in relation to seizure and epilepsy; and
 - general practitioners, as opposed to specialists, may conduct periodic reviews of psychiatric and substance abuse conditions after an initial assessment by a specialist.

Intersection with Fitness for Duty

5. The current review of the Heavy Vehicle National Law (HVNL) involves a consideration of a driver fitness for duty standard being placed in a revised law. This is reiterated in the Report.³ We set out in the First Submission that as part of a revamped HVNL, it was proposed that all commercial heavy vehicle drivers should have regular medicals against upgraded fitness for duty standards, subject to other criteria being introduced into a revised HVNL. We are aware that the AFTD guidelines are not specific to heavy vehicles, are limited to driving tasks, and are not intended for use for regular health checks. However, they form the foundation of a fitness for duty standard in the absence of other specific material that stands in that capacity. Members use the AFTD guidelines as a de facto fitness for duty standard.
6. State and territory licensing arrangements mandate minimum competencies and medical fitness to drive standards that fall short of many of the positive programmes about health screening that members seek. The AFTD guidelines are not suited to managing competency and fitness to drive on an ongoing basis yet there is no substitute and the terms of the guidelines are therefore utilised. One of the anticipated outcomes from the HVNL review is regulations which prescribe driver fitness for work checks to support an overarching duty under the primary law to ensure drivers are fit for duty. In the notable absence of any other criteria to assess fitness to drive the AFTD guidelines are likely to be utilised in this context as well.

¹ <https://www.ntc.gov.au/sites/default/files/assets/files/AFTD-2021-Interim-report.pdf>

² https://www.ntc.gov.au/sites/default/files/assets/files/DRAFT_AFTD%202021_Public%20consultation_0.pdf

³ Above note 1 at p113

7. As we set out in the First Submission, we believe that this issue is further compounded by the required Western Australian medical assessments being based on AFTD.⁴
8. At the practical, everyday level, in the absence of fitness for duty standards, NatRoad advises members that they should obtain medical assessments of drivers based on AFTD. This will continue.
9. NatRoad would be pleased to work with the NTC about how a fitness for duty standard could be derived from separating the commercial standards in the current guidelines and adding a series of screening tests (e.g., for diabetes, sleep apnoea and psychiatric illness) and stronger criteria based on principles of risk management. As a preference we would ask that AFTD be strengthened especially in the light of evidence that heavy vehicle drivers are suffering greater mental health issues.⁵ But under the scope of the current project, we understand that is not a likely outcome.

Medical Disclosure

10. NatRoad policy is for greater levels of medical disclosure to operators and other parties where a driver has an illness or injury, and any associated prescribed medications, which may affect the driving task.
11. The concern just articulated falls within the category of excluded matters set out in Part 5 of the Report under the heading “mandatory reporting.”⁶ That material indicates that stakeholders seek a mandatory requirement to be included where doctors must report patients to the relevant driver licensing authority if the driver is unfit to hold a driver’s licence. NatRoad is of this view.
12. The Report notes that this requirement is currently in place in South Australia (SA) and the Northern Territory (NT).⁷ The alleged ethical dilemma of doctors discussed in the Report in this context (patient or community interest first) has been resolved in these jurisdictions in favour of the community interest. NatRoad recommends that the NTC, in this context or in fulfilling its broader remit, should recommend that similar provisions to those which apply in SA and the NT should be legislated in all States and Territories. These provisions specifically reflect a duty owed to the public. We would prefer that in a restructured, uniform system the two provisions would be enacted so that both medical practitioners and the Registrar of Motor Vehicles in each State and Territory were possessed of the duties reflected in the below provisions:

SA: s 148(1) *Motor Vehicles Act, 1959*:

Where a health professional has reasonable cause to believe that—

⁴ https://www.transport.wa.gov.au/mediaFiles/licensing/LBU_F_DL_M106A_MedicalAssesstInst.pdf

⁵ See <https://www.icare.nsw.gov.au/employers/industry-and-partners/industry-hub/your-industry/transport/mental-health-injuries-in-the-truck-driving-industry#gref>

⁶ Above note 1 at 112

⁷ Ibid

- (a) *a person whom the health professional has examined holds a driver's licence or a learner's permit; and*
- (b) *that person is suffering from a physical or mental illness, disability or deficiency such that, if the person drove a motor vehicle, the person would be likely to endanger the public,*

the health professional is under a duty to inform the Registrar in writing of the name and address of that person, and of the nature of the illness, disability or deficiency from which the person is believed to be suffering.

NT: s 11 Motor Vehicles Act, 1999:

(1) In this section

(a) "registered person" means a medical practitioner or an occupational therapist, optometrist or physiotherapist who has a right of practice under the Health Practitioners Act; and

(b) a reference to a person who is licensed to drive a motor vehicle includes a reference to a person who is licensed to drive a motor vehicle under a law of another country, a State or another Territory of the Commonwealth.

(2) If it appears to the Registrar that –

(a) a person applying for a licence or the renewal of a licence under section 10;

(b) a person applying for a permit licence under section 9; or

(c) a person who is licensed to drive a motor vehicle,

is physically or mentally incapable of driving a motor vehicle with safety to the public or is physically or mentally unfit to be licensed, the Registrar may require the person to be medically examined by a medical testing officer.

(3) If a person who is licensed to drive a motor vehicle is suffering from a physical or mental incapacity that may affect his or her ability to drive a motor vehicle with safety to the public, the person, or his or her personal representative, must notify the Registrar of the nature of the incapacity or unfitness.

(4) If a registered person reasonably believes that a person he or she has examined –

(a) is licensed to drive a motor vehicle; and

(b) is physically or mentally incapable of driving a motor vehicle with safety to the public or is physically or mentally unfit to be licensed,

the registered person must notify the Registrar in writing of the person's name and address and the nature of the incapacity or unfitness.

Forms

13. Another issue caught up in the narrowness of the review process is changes to and the utility of forms that facilitate the processes required in obtaining medical assessments and in reporting to licensing authorities.⁸ These forms should be uniform. They should assist medical practitioners. The forms published by Austroads⁹ are useful. The dual purpose of AFTD comes to the fore in this context.
14. Austroads has developed forms that assist the conduct of health assessments for fitness for duty for commercial vehicle drivers. Similarly, forms that are to be used for the licensing process should be as readily accessible and uniform rather than available from the State and Territory licensing authorities. Members want consistency in the relevant forms. That should be an aim of the revision exercise currently underway.

Conclusion

15. There have been minor, welcome changes to AFTD. There has been no fundamental restructuring of the guidelines. NatRoad, in this submission, has highlighted three areas where policy changes should be made but which appear to be out of scope in the current context.
16. We would urge the NTC to take up the policy issues raised in this submission albeit that occurs in a different context.

⁸ Discussed at above note 1 p113-114

⁹ <https://austroads.com.au/drivers-and-vehicles/assessing-fitness-to-drive/for-commercial-drivers/forms>