

Toll Group submission on “*Safe people and practices*”, National Transport Commission June 2019

Sarah Jones | General Manager Road Transport Safety and Compliance
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Purpose

To articulate Toll’s perspective on the existing and potential legal framework for safe people and practices in Australian road freight

Introduction

With over 125 years' experience, Toll Group, proudly part of Japan Post, operates an extensive global logistics network across 1,200 locations in more than 50 countries. Our 40,000 employees provide a diverse range of transport and logistics solutions covering road, air, sea and rail to help our customers best meet their global supply chain needs.

Toll Group welcomes the opportunity to provide feedback on the fourth paper released as part of the Review into the Heavy Vehicle National Law (HVNL). The *Issues Paper* produced by the National Transport Commission (NTC) is comprehensive and considered and Toll is in broad agreement with its observations.

Our response to the 11 questions posed by the NTC is laid out in this paper. The main points are:

- Toll agrees with the NTC that 'A safe heavy vehicle driver is one who is competent, fit for duty, authorised, alert and operating safely. They are capable of discharging all aspects of the heavy vehicle driving and operating task'.¹ Presently, the HVNL only explicitly requires drivers to be "authorised". The other attributes are merely implied or entirely absent.
- An obligation to acquire, maintain and foster the competencies, skills and behaviours to ensure the safety of the transport task should be explicit in the HVNL.
- Primary legislation is not the appropriate place to articulate precisely what those competencies, skills and behaviours are. These should be developed co-operatively with industry and available through Guidelines or similar.
- Where driver competencies are concerned, there are gaps between the expectations set by the licensing system, the HVNL, Workplace Health and Safety legislation and state-based road rules. The *Review of the National Heavy Vehicle Driver Competency Framework* (Austroads) is a useful starting point for developing the appropriate competencies.
- Similar frameworks are required for mechanics/repairers and others with safety critical roles in the supply chain.
- Obligations for drivers to be fit for duty and alert should be included in the law.
- Toll strongly supports the retention of the primary duties at s.26C in the HVNL.
- The primary duties must be enforced beyond drivers and operators.
- Toll supports the "drive or permit to drive" offences introduced for mass (s.96), dimension (s.102) and load restraint (s.111).
- Operators should be given access to NEVDIS to enable them to readily identify unsafe recidivist drivers.
- Drivers are not currently fully appraised of the occupational risk of vehicular suicide and can suffer considerable emotional and psychological trauma where it occurs.
- There is an increasing recognition that truck drivers are often first responders in the event of an incident but there is no requirement for truck drivers to attain basic first aid skills.
- The powers and obligations of the National Heavy Vehicle Regulator (NHVR) should include advising the Transport Infrastructure Council and National Office of Road Safety on network-wide risk that is outside the capacity of the road supply chain to direct and influence.
- Toll believes that the concept of "parties" in the chain of responsibility should be removed from the law, replaced with "persons that have control and/or influence on the transport task".
- A key objective should be to "professionalise" the industry in order to attract entrants and bolster the status and wellbeing of existing participants.
- Fitness for duty standards should apply in road as exist in aviation, rail and maritime.
- Driver licensing should be a national rather than state-based function.
- Drug and alcohol testing as per the Australian Standard should be mandatory in the HVNL.
- Transport Authorised Officers should have the powers to conduct drug and alcohol testing at roadside.
- The legal blood alcohol concentration for professional drivers in all states and territories should be 0.00%.

¹ National Transport Commission, *Safe People and Practices*, June 2019, p.16

- The Australian Road Rules relating to heavy vehicle drivers should be consolidated in the HVNL to create a “one-stop shop” for compliance purposes.
- How safety management systems theory applies to road transport has yet to be articulated. We welcome an explanation from the NTC.
- It is doubtful that safety culture can be legislated due to the difficulties in defining, measuring and enforcing it. Toll supports the development of credible, robust safety metrics that will enable industry benchmarking, assurance and marketing.

Question 1: Have we covered the issues relating to safe people and practices accurately and comprehensively? If not, what do we need to know?

Toll concurs with the paper’s assessment that:

‘A safe heavy vehicle driver is one who is competent, fit for duty, authorised, alert and operating safely. They are capable of discharging all aspects of the heavy vehicle driving and operating task’.² [My emphasis]

With the exception of “authorized”, the existing Heavy Vehicle National Law (HVNL) makes little to no provision for these requirements.

Competent

It is rare for the HVNL to impose an obligation to ensure that a driver, vehicle repairer/maintainer, or other party have the requisite competencies, skills and behaviours for the transport task. The only points at which this directly occurs is for schedulers and drivers working under Basic Fatigue Management or Advanced Fatigue Management.

Admittedly, an obligation is implied through the requirement to “ensure” the safety of “transport activities” at s.26C, where “transport activities” includes:

(a) contracting, directing or employing a person—

(i) to drive the vehicle; or

(ii) to carry out another activity associated with the use of the vehicle (such as maintaining or repairing the vehicle);

The obligation is further implied through the requirement to identify and respond to risk. For example, Toll Group recently identified a rise in trailer coupling incidents which led to revised training procedures and a training refresh across the business. The link between risk management and competency assessment and development may appear self-evident. Nonetheless, there is benefit in making explicit an obligation to hold the requisite competencies, skills and behaviours to ensure the safety of the transport task.

Fit for duty

The HVNL does not refer to “fit for duty”. Instead, it includes a definition of “fit to drive a heavy vehicle”, ignoring transport tasks such as loading and unloading. We recommend adopting the phrase “fit for duty”.

“Fit to drive a heavy vehicle” has a limited application in that it is only used for drivers operating under Basic Fatigue Management and Advanced Fatigue Management (s. 457). No such obligation is imposed on drivers operating under Standard Hours and there is no offence attached to not meeting the obligation. In all the other instances in which “fit to drive a heavy vehicle” is referenced in the law it is in relation to authorised officers directing the movement of heavy vehicles for enforcement purposes.

² National Transport Commission, *Safe People and Practices*, June 2019, p.16

Authorised

Toll agrees that the HVNL, through the definition of “transport activities”, does require that drivers be authorised for the transport task. As we have argued in previous submissions, accessing licensing authority databases to confirm appropriate credentials is not always simple and efficient.

Alert

The HVNL only requires drivers to be “alert” to the extent that alert is synonymous with not being impaired by fatigue.³ It is possible for a driver to not be fatigued, but to be distracted and therefore not “alert”.

There is an increasing recognition of the extent to which distracted driving poses a safety risk.⁴ A weakness of the current Australian Road Rules is that they approach distraction through the devices and technologies likely to cause it, rather than defining and prescribing distraction itself. The law would benefit from an explicit obligation to be “alert”, thereby ensuring distraction is covered.

Operating safely

The HVNL is largely silent on the skills, attributes and competencies required for drivers to operate safely. In fact, it has very little to say about drivers altogether other than:

- stipulating maximum hours of work and minimum hours of rest;
- requiring training for drivers enrolled in BFM and AFM;
- imposing a requirement not to drive while impaired by fatigue (s. 228);
- requiring them not to drive where vehicles are in breach of mass (s.96), dimension (s.102) and load restraint (s.111);
- requiring them to carry permits and other documents, e.g. container weight declarations

The current framing of the law acknowledges how drivers may be influenced, directed and encouraged to adopt unsafe behaviours, but does not articulate what the inherently safe behaviours, attributes or competencies are. Primary legislation is not the best place for the detail, but a Guideline or industry communication would be helpful.

The fact that the driver is not required to acquire and maintain inherently safe competencies/attributes is odd when one considers the prevalence of driver error in crash statistics. The NTI’s data suggests that “losses arising from the actions/behavior of drivers (fatigue, inappropriate speed and driver error) continue to represent the majority of losses...at around 54% of all losses”.⁵

While Workplace Health and Safety laws require that workers be trained in order to be competent for their role, we feel there is benefit in making the obligation explicit in the context of the HVNL primary duty. In summary, Toll proposes that an obligation be imposed on drivers, mechanics/repairers and others with control and influence to be competent, fit for duty, authorised, alert and operating safely; and on operators/employers to do what is reasonably practicable to ensure it.

Question 2: What aspects of safe people and practices are currently regulated well? What needs to be regulated better?

Toll strongly supports the primary duties imposed at s.26C. The recognition of the relationship between speeding and fatigue and the potential pressure for drivers to “trade them off” is a useful advance in safe practices.

³ “Lack of alertness” is included as a sign of fatigue at s. 222, HVNL

⁴ “[O]f the “fatal five”, distracted driving is the least understood, least enforceable, and has a far greater impact on society than current data suggests”. Queensland Government, *National Summit on Driver Distraction*, 1-3 July 2019

⁵ NTI, *Major Accident Investigation Report*, 2019, p. 9

The reframed “drive or permit to drive” obligations for mass (s.96), dimension (s.102) and load restraint (s.111) and the fact that they are being enforced have sharpened management attention on sufficiency of and compliance with policies and procedures.

Toll believes that more needs to be done to articulate and promote driver competencies, attributes, behaviours and skills that make for safe people and practices. Where drivers are concerned, there are gaps between the expectations set by the licensing system, the HVNL, workplace health and safety laws and state-based road rules.

Unless a driver completes a qualification within the transport and logistics training package it is likely that their formal training is limited to the functional competencies required to drive a vehicle and to understanding the road rules. The licensing competency elements required for TLIC3004 “Drive Heavy Rigid Vehicle” are:

- Drive heavy rigid vehicle
- Monitor traffic and road conditions
- Monitor and maintain vehicle performance

There are no performance elements related to safety culture, understanding and applying road rules, anticipating light vehicle driver behaviour (a key risk for Toll group) or understanding obligations under the HVNL. Nor are there elements related to load planning, mass management, trailer coupling or load restraint.⁶ This is also true of the licensing competencies for heavy rigids, heavy combinations and multi-combination vehicles.

Apprenticeships in truck driving are fairly rare, partly because by the time a young person becomes eligible to hold a truck licence (at least two years after they acquire their light vehicle driver licence) they’ve already embarked on a career path elsewhere. (It is actually possible to acquire a recreational and commercial pilot’s licence at a younger age than a heavy vehicle licence in Australia).

Truck driving is about a great deal more than simply operating and controlling a heavy vehicle. Safe drivers need to understand the principles of load restraint and mechanical safety. They need to grasp the regulatory framework within which they operate and how to work within the rules and, ideally, towards best practice. They must have the professional and personal confidence to refuse to cart a load that they believe may be unsafe or non-compliant. This is no small ask. There is a natural disinclination for employees to “bite the hand that feeds them” and little recognition that exercising the obligation to refuse is an act of leadership. Leadership, in most cases, doesn’t just “happen”. Workers need to be encouraged and coached to see speaking out about safety as a personal, even a moral, obligation. They must also know they will be supported by their leaders and managers if they do speak out.

The challenge for Toll and other operators is how to equip drivers with the broad suite of soft and hard skills required to be a safe driver and, once acquired, how to maintain it. The fact that this is an industry-wide challenge is suggested by the results of the 2015 Transport and Logistics Skills Council report which found that teaching and training was the highest-ranked employer-identified skill need.⁷ Twenty three per cent of employers reported that they required teaching and training skills ‘to a great extent’ while 34% reported it was a need ‘to some extent’.

Picture 1 below illustrates Toll’s draft driver competency framework. It articulates the broad skills, attitudes and competencies we believe make for safe drivers.

⁶ It should be noted, however, that some of the Licensing Guidebooks issued by state authorities do address these issues. NSW’s *Heavy Vehicle Driver Handbook* is particularly comprehensive.

⁷ Transport and Logistics Industry Skills Council, Department of Education and Training, *Environmental Scan*, Canberra, 2015, p. 19

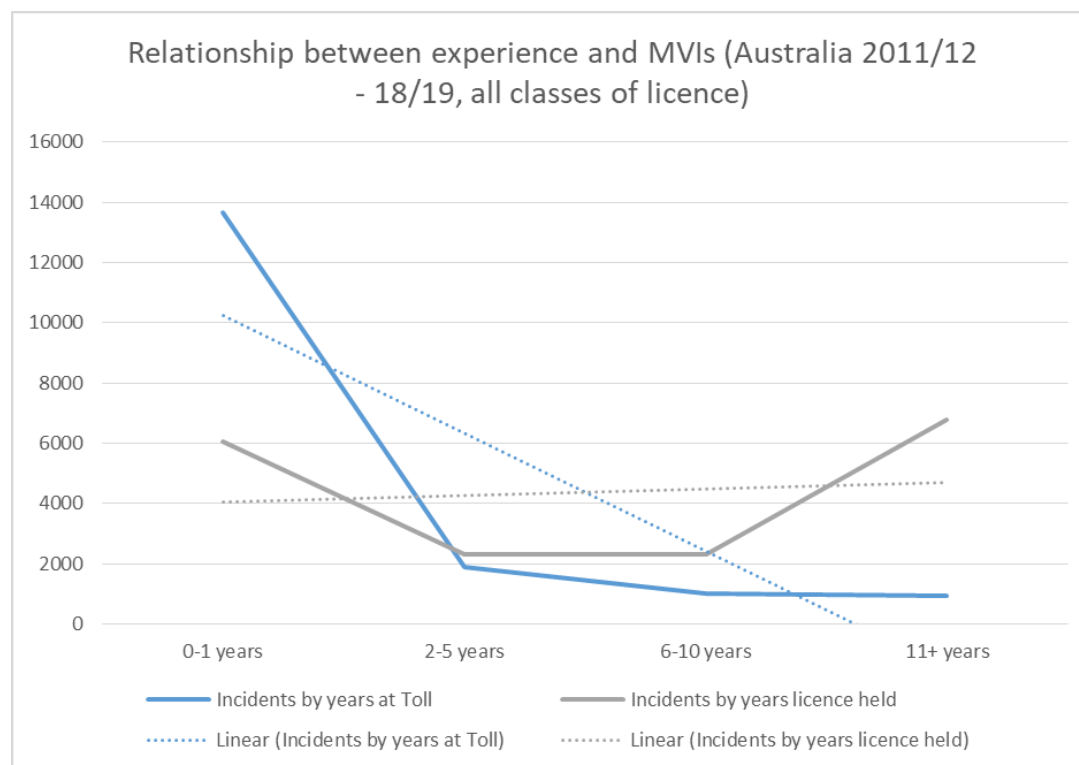
Picture 1: Toll's Draft Global Driver Training Framework

Global Driver Training Framework (Draft Only)	
Skill	Compliance
In Cab Drive Assessment VoC assessment to ensure driver is competent to operate equipment to an acceptable standard.	Chain of Responsibility (online) Familiarises all staff with relevant legislation regarding chain of responsibility
Couple/Unequip Trailers Classroom presentation and practical assessment to ensure competence to comply with the procedure	Fatigue (online) Training and assessment on the fundamentals of fatigue risks and controls including the relevant regulations
MHE (Pallet, pallet jack etc) VoC to ensure suitable competence to operate equipment to an acceptable standard	Documentation/paperwork Familiarisation with the relevant documentation and record keeping that must be completed by an operator. Such documentation may serve several purposes such as compliance, payroll, proof of delivery and invoicing.
Load Restrain Classroom and practical assessment to ensure suitable competence to restrain freight, products and equipment for transit.	In Cab Systems Familiarisation and procedural awareness of fitted in vehicle monitoring systems. These may include GPS tracking, vehicle dynamics, real time fatigue and distraction, DVR cameras and driver interaction devices (for messaging, calls or drowsiness alarms)
Reversing VoC to ensure the operator is competent to reverse a vehicle safely	Roll over awareness Informational program aimed at providing operators and schedulers with the common causes of vehicle roll over, how such events happen and how to prevent them.
Truck Manoeuvring VoC to ensure operator is competent to manoeuvre the appropriate vehicle safely in the applicable space provided safely	Values and behaviours
Pre-Trip Inspections Demonstration of trailer features to ensure operator is able to inspect and operate to an acceptable standard	SPOT (Scanning, Predicting, Options, Taking Action) Group workshop and practical assessment to enhance drivers defensive driving behaviours to reduce MVI's.
Vehicle Familiarisation Demonstration of vehicle features to ensure operator is able to inspect and operate the vehicle to an acceptable standard.	ISF (Incident & Injury Free) Group workshop to improve safety awareness with the goal of affecting safety culture
Trailer Familiarisation Demonstration of vehicle features to ensure operator is able to inspect and operate the trailing equipment to an acceptable standard.	Here for the customer
3 points of contact Demonstration and practical assessment to ensure the operator accesses and egresses safely using 3 points of contact	Customer Promise group workshop to introduce employees to the Toll Customer promise
	Wellbeing
	TrafficSafe

It is worth noting how few of the skills and attributes are covered in licensing frameworks and even the Training and Logistics training package.

The extent to which drivers acquire the relevant skills and attributes on the job is suggested in chart 1 below. The chart indicates that propensity to be involved in a motor vehicle incident (MVI) is high for persons new to Toll and who have held their class of licence for a limited period of time. MVI incidence falls with length of tenure at Toll, a far stronger correlation than length of time holding the licence.

Chart 1: Relationship between MVIs and tenure at Toll and length of time driver licence is held



Regulatory mechanisms for identifying and managing drivers who are habitually unsafe in the course of their employment require improvement. Operators and employers have an obligation to “ensure” risk is managed, but must navigate sometimes unwieldy processes to access information about driver risk.

Driver licensing is a state matter so information on licence currency, demerit points and driver history is held in multiple formats by state licensing authorities and state police forces. NEVDIS⁸ does provide a simple driver licence validity check for all jurisdictions but is only accessible to licensing authorities. We believe access should be extended to operators.

Toll must potentially access 12 separate systems across Australia in order to acquire the information about heavy vehicle driver licences in totality. This number rises to 19 systems when dangerous goods bulk licences are taken into account.

With the exception of Western Australia, all states and territories require driver consent to access licence status and demerit point information. No state with the exception of Victoria makes licence history available to operators. In all cases (except Victoria) only the driver can access this information. South Australia makes it legally possible for a police officer to advise an operator of cases of careless driving, excessive speed, reckless and dangerous driving, and driving under the influence of drugs or alcohol.⁹ Toll cannot comment on how often this power is used.

Most states and territories cite privacy reasons for why operators are not able to access records without consent, or history records at all. This rationale is questionable when one considers that Toll is advised of speeding vehicles, and indirectly drivers, through the speed camera system.

Furthermore, driver history is an important means of assessing driver risk given that past behavior can be an indicator of future behavior. It is difficult to see how Toll can acquit its CoR obligations in the absence of this data. Section 727 of the HVNL outlines the situations in which “protected information” can be used by officers. It includes:

“an activity associated with preventing or minimizing –

- (i) A risk of danger to the life of a person; or
- (ii) A risk of serious harm to the health of a person; or
- (iii) A risk to public safety”.

An individual whose driver’s licence has been suspended or cancelled could well constitute a risk to public safety if they continue to drive on public roads so there is a case to be made for direct access by operators to the records.

The nature of the industry is such that there is very little preventing a driver deemed to be unsafe by Toll from being hired elsewhere. For example, privacy and industrial laws prevent the disclosure of drug and alcohol use and performance issues to prospective employers. Toll has in fact dismissed a driver for unsafe and poor performance only for them to be hired elsewhere. This driver then went on to be implicated in an on-road incident that caused serious damage to a Toll vehicle. Fortunately the driver was unharmed. This incident and others like it has perhaps influenced Toll to err on the side of “keeping drivers in the tent” in the hope that coaching and development will modify their behaviour, rather than dismissing them – a judgement call that has, on occasion, been misunderstood by enforcement and regulatory bodies.

As with drivers that Toll determines cannot or will not meet its standards, Toll bars the use of certain subcontractors revealed through audit processes to present a risk. That risk can be legislative, commercial and cultural. While acknowledging that Toll’s standards can be above legislated minimums, and subcontractors that don’t meet them cannot therefore be said to be legally non-compliant, there are occasional instances of egregious non-compliance and road safety risk. Anti-competitiveness and privacy concerns mean that this information is not shared in the public space.

⁸ The National Exchange of Vehicle and Driver Information System (NEVDIS) is owned and operated by Austroads on behalf of the states and territories.

⁹ [Regulation 98 of the Motor Vehicles Regulations 2010](#)

Question 3: What should the future HVNL do to regulate safe people and practices so heavy vehicle drivers and others are safe? What risks are adequately managed by other regulatory controls? Are there any risks to the safe driver that are not currently regulated at all, and if so, how should these risks be regulated?

As noted in our responses to questions 1 and 2, Toll believes that more information is required on the competencies, skills, attributes and attitudes that support the safety of the transport task. Obligations should be placed on drivers and others in safety critical roles to demonstrate, and on operators to confirm, them. Drivers should also be required to be fit for duty, regardless of which fatigue system they operate under.

Drivers are not currently fully appraised of the occupational risk of vehicular suicide and can suffer considerable emotional and psychological trauma where it occurs. In some cases, drivers exposed to vehicular suicide never drive professionally again. Toll has pioneered research and awareness of this phenomenon and will be rolling out the Tracksafe program to ensure our drivers are prepared for the eventuality. There is an increasing recognition that truck drivers are often first responders in the event of an incident¹⁰ but there is no requirement for truck drivers to attain basic first aid skills.

Toll's experience is that the greatest on-road risk to our drivers is posed by third parties. The driving behaviours required of these third parties (cars, motorbikes, bikes) are stipulated in state-based traffic law. However, there is a genuine question mark over how well the current graduated licensing system educates others about how to drive safely around trucks.¹¹ There is no formal mechanism for operators to share/transmit risks that are outside of their control to the parties that can potentially influence them. This may account for why state and national road safety strategies are largely silent about truck/light vehicle interaction. The powers and obligations of the NHVR should include advising the Transport Infrastructure Council and National Office of Road Safety on network-wide risk that is outside the capacity of the supply chain to manage.

Question 4: Does the primary duty and chain of responsibility in the current HVNL comprehensively cover the people who can influence the safe driver and their practices? What improvements are needed?

Toll strongly supports the introduction, and retention, of the primary safety duties in the HVNL.

However, Toll questions the wisdom of applying the duties to chain of responsibility "parties" where those parties are defined in the law (i.e. operators, employers, loaders, packers, consignors etc). We suggest changing this for two reasons.

Firstly, drivers are not currently parties in the chain. This exclusion made sense when the law used an extended liability model and therefore required an initial primary offence committed by the driver, but this is no longer the case.

Further, drivers as a peer group have a strong influence on other drivers. Sometimes, peer disapproval of unsafe behaviours is a powerful form of behaviour modification. While on-road behaviours undoubtedly reflect supply chain influence, drivers do have agency, especially in organisations that value a strong safety culture.

Secondly, if persons or roles are not explicitly included as a "party" they can be encouraged to think they carry no obligations under the law. Thus stevedores could claim they were not a party as, prior to

¹⁰ <https://www.smh.com.au/national/tackling-the-hidden-issue-of-truckies-acting-as-paramedics-on-remote-australian-roads-20190726-p52b7c.html>

¹¹ For example, the NSW driver knowledge test contains 364 questions. Of these, 1 asks a question about light and heavy vehicle interaction; 2 questions relate to traffic signs featuring trucks.

October 2018, “unloaders” were not a defined party. Similarly freight forwarders, brokers and agents will sometimes disavow responsibilities because they are not a defined “party”.

Toll suggests that rather than relying on the concept of defined parties that obligations be applied to “persons that have control and/or influence on the transport activity”.

Question 5: How can the HVNL support better training and a higher level of driver competency? How can it support ongoing professional development?

Industry and government should work together to develop a matrix of competencies, skills, attributes, attitudes and behaviours designed to support supply chain safety. The *Review of the National Heavy Vehicle Driver Competency Framework* is a useful place to start for drivers.¹² Similar frameworks for mechanics/repairers, loaders, packers, loading managers etc would be helpful.

A key objective should be “professionalisation” of the industry. It is not uncommon to hear truck driving described as “unskilled”. Despite the importance of truck driving to the economy and the skill required to do it well, it is accorded a low professional status which makes it unattractive to potential entrants and impacts the health and wellbeing of those in the industry.¹³

The case study on professionalisation of the meat industry published in the NTC’s 2013 *Compliance Review* is useful in this context. It is reproduced at Appendix A.

Question 6: Is driver health and medical fitness managed as well as it could be? Is there a case for regular medical assessments for drivers (and possibly other parties), similar to those for Safety Critical Workers in the Rail Safety National Law? Is the Rail Health Assessment Standard a good basis for a heavy vehicle medical assessment standard?

Toll is concerned that the absence of fitness for duty standards in road transport is having a negative effect on driver health and wellbeing. Around 12% of the on-road and driver fatalities that involve Toll are caused by non-work related issues.¹⁴ These principally relate to drivers’ cardiovascular health.

The approach to cardiovascular health in Assessing Fitness to Drive (AFTD) is limited in that it largely relies on driver self-report, does not include screening for diabetes or hyperlipidaemia, and does not include an ECG. This may account for why many drivers that die as a result of cardiovascular disease have no prior knowledge of the presence of the condition.¹⁵

The Australian Trucking Association has also expressed reservations about the limitations of AFTD, principally with regards to diabetes, screening for sleep apnoea and cardiac screening.¹⁶

Our view is that the law should mandate fitness for duty standards as occurs in the rail, maritime and aviation sectors.

¹² Austroads, Research Report AP – R544-18, *Review of the National Heavy Vehicle Driver Competency Framework*, May 2018

¹³ Shattell, Apostolopoulos, Sonmez and Griffin, “Occupational Stressors and the Mental Health of Truckers”, *Issues in Mental Health Nursing*, vol. 31, 2010, pp. 561-568

¹⁴ Based on data from 30 June 2007 to 6 February 2019

¹⁵ Routley, Staines, Brennan et al, *Suicide and Natural Deaths in Road Traffic – Review*, MUARC, August 2003, p. 20

¹⁶ ATA, [Submission to Assessing Fitness to Drive: 2014 Review](#), December 2014

Question 7: Should heavy vehicle driver licences be national? If so, should this be by mutual recognition, nationalisation or some other approach? If licences shouldn't be national, why not? Should licensing progress subject to experience rather than arbitrary timeframes?

There is no rational reason why driver licensing should be left to the states rather than managed consistently at a national level. Driver licensing was included in the initial COAG reform and only excised for pragmatic reasons relating to tight timeframes. The policy justification remains unchanged, albeit *all* driver licensing (i.e. heavy and light) may require inclusion to achieve benefits of scale.

Toll supports issuance of licences on the basis of demonstrated competencies rather than arbitrary timeframes.

Question 8: Should the HVNL do more to help manage drug and drink-driving? For example, should it include a drug and alcohol management program requirement such as the one required in rail? Is on-road enforcement enough?

Toll conducts a rigorous drug and alcohol testing program. The results of our program suggest that we do not have a systemic problem with drugs and alcohol. However, we support a requirement for all workers in the supply chain to be free from alcohol and illicit drugs during the conduct of transport activities. Accordingly we support an obligation in the HVNL for drug and alcohol testing to be conducted as per the Australian Standard.

Transport Authorised Officers should have the power to conduct roadside drug and alcohol testing.

While recognising that this is outside the NTC's remit we strongly oppose legal blood alcohol limits above 0.00 for professional drivers.

Question 9: Do the Australian Road Rules do enough to manage driver distraction, speeding and other on-road behaviours? Is the primary duty in the current HVNL rigorous enough to manage the practices of chain of responsibility parties who can influence a driver to operate unsafely?

Toll supports consolidating all the heavy vehicle driver behavioral and road use rules into the HVNL. Vastly more needs to be done to manage driver distraction (we acknowledge the separate work the NTC is doing in this space). We are missing standards on how alerts, alarms and interventionist technologies more generally should be applied in the context of the human-machine interface. Where, for example, should speeding alerts be positioned to catch the driver's attention, but not misdirect them from the driving task? What is the hierarchy of importance between haptic, audio and visual alarms? What responsibilities apply to OEMs in this regard?

The Australian Road Rules are outdated in terms of how they approach distraction. We acknowledge that this is being addressed through another project.¹⁷

The primary duty is a sound mechanism and Toll is strongly supportive of its retention. It simply needs to be rigorously enforced. Toll has consistently argued that there is too little investigation along the supply chain and that drivers and operators are a disproportionate focus. Enforcement is a key mechanism in challenging unsafe behaviours and practices.

¹⁷ National Transport Commission, *Developing technology-neutral road rules for driver distraction*, Consultation Regulation Impact Statement, June 2019

Question 10: How can the future HVNL encourage a stronger role for safety management systems in a way that doesn't disadvantage smaller or more seasonal operators? Can registered industry codes play a role in supporting smaller operators to develop safety management systems?

"Safety Management Systems" has emerged as a mantra over the last two years without any meaningful exploration of what it means in a road transport context.

A 2012 review by the Australian Transport Safety Bureau did not identify any relevant literature in relation to safety management systems and road transport.¹⁸

This is not surprising when one considers that safety management systems are typically associated with co-regulatory models where the regulated parties are "ring-fenced", that is they are identified at the point of entry and highly visible to the Regulator. Aviation, maritime and rail all work on this principle. Road transport, self-evidently, does not. There are no barriers to entry and the NHVR does not know how many entities it regulates, from where they operate, what they cart, who they employ, and what routes they use.

Toll welcomes an explanation from the NTC on how safety management system theory applies to road transport in Australia.

Question 11: How can the future HVNL nurture a culture that places a high level of importance on safety?

Culture is a nebulous concept. We have all experienced what it is to be in a good workplace culture and a bad one, but it is difficult to precisely identify what makes each so.

While a positive safety culture is essential for safe outcomes, it is difficult to see how an obligation for a safety culture belongs in law. How is it to be defined, measured and enforced? What will constitute its absence or presence? Are enforcement officers in a position to reasonably judge?

Measuring safety culture requires a set of agreed, robust and methodologically consistent KPIs. There may be a role for the NHVR in developing these metrics. If credible such metrics can be useful benchmarking, marketing and assurance tools, but they do not belong in primary legislation.

¹⁸ In a systematic review in 2012 the Australian Transport Safety Bureau identified SMS literature relating to aviation, rail, maritime, construction, major hazard facilities, cross industry and manufacturing. There was nothing on road. Thomas, *A Systematic Review of the Effectiveness of Safety Management Systems*, Australian Transport Safety Bureau, 2012, p. 15

Appendix A

Below is an extract from the National Transport Commission's *Heavy Vehicle Compliance Review Consultation Draft*, September 2013

16.2 Professionalisation: The National Meat Industry Training Advisory Council experience

The meat industry of 20 years ago shared much in common with the transport road freight industry of today.²⁸⁴ It was a male-dominated environment popularly considered to be unskilled and lacking in professional standards. There was virtually no formal training for industry employees and no formal standards in place to promote and maintain quality control. Little attention was given to hygiene standards. The poorer quality meat processors undercut the good operators and took them down with them in a 'race to the bottom'.

Industry practices came to light in the early 1980s with the 'roo in the stew' meat substitution scandal leading to the 1982 Woodward Royal Commission. The result was a greater focus on industry regulation, with around 2000 government meat inspectors appointed to oversee meat production. However, this level of scrutiny was unsustainable and led to a shift towards quality assurance and auditing.

A key element in the shift was the 'professionalisation' of the industry. The National Meat Industry Training Advisory Council – MINTRAC – was established to 'provide highly valued products and services to the Australian Meat Industry in the areas of education and training'.²⁸⁵ The council is industry governed and funded, with industry sources contributing around \$1.5 million per year to its operation. The governing board includes the peak employer body (the Australian Meat Industry Council), the meat industry union (the Australasian Meat Industry Employees Union), meat processing plants and the Australian Meat Processor Corporation.

Once established MINTRAC developed training packages that set competencies for the industry. The result is the Australian Meat Industry Training Package (MTM11),²⁸⁶ which provides nationally recognised training from a Certificate I in Meat Processing through to a Vocational Graduate Certificate in Agribusiness. In 1994 there were no formal qualifications in meat processing. Through a concerted industry-driven campaign this has radically altered to the current situation where around 85% of the industry now either have a qualification or are working towards attainment.

According to MINTRAC this professionalisation has been central to promoting consumer confidence in the industry, changing the compliance culture and – crucially – changing the industry's self-image. The 'normalising' of standards through training and other means led to a widespread cultural change

²⁸⁴ Information contained in this case study was provided by Clive Richardson, Project Officer, MINTRAC.

²⁸⁵ http://www.mintrac.com.au/site.php?nav=about&subnav=a&page=a_1.

²⁸⁶ [http://training.gov.au/\(S\(s2w20xsvwo4yipjafqbmzjil\)\)/Training/Details/MTM11](http://training.gov.au/(S(s2w20xsvwo4yipjafqbmzjil))/Training/Details/MTM11).

whereby the best means of enforcement is now the group's own intolerance of those who do not comply. This is consistent with recidivist research, which suggests that a significant predictor of recidivism is when drivers normalise their behaviour and believe that others are doing the same thing.²⁸⁷ The influence of the peer group on culture was expressed by a MINTRAC project officer who advised the project team that:

*When you're dealing with a hyper masculine target group you've got to change the culture so they self-police through ridicule of people doing the wrong thing because they're displaying poor stockman-ship.*²⁸⁸

By way of contrast, there are no formal qualifications required even in the vehicle maintenance and vehicle mass management modules of the NHVAS, despite these modules ostensibly being reserved for the cream of the heavy vehicle industry. Training and educational requirements in the vehicle maintenance and mass management modules are vague and informal stating only that 'persons who hold a position of responsibility under the ... system are trained in and familiar with the specific policy procedure and instruction they are to carry out'.²⁸⁹

Only the fatigue module has formal qualification requirements and then only two units of competence within the Transport & Logistics training package as follows:

- (1) any person that drives a heavy vehicle must demonstrate competence with TLIF1007C Apply fatigue management strategies
- (2) any person who is a scheduler as described in the heavy vehicle driver fatigue legislation, or who supervises or manages drivers and scheduling staff, must demonstrate competence with TLIF6307A Administer the implementation of fatigue management strategies.²⁹⁰

The Driver Cadetship program offered by the Victorian Transport Association was developed, in part, to equip drivers with both the technical skills required to drive a heavy vehicle *and* with the knowledge of OH&S and CoR obligations required to operate safely. A drive to professionalise the industry through formal qualifications devised and promoted by industry could have an impact on self-regulation. It also has the potential to challenge the stereotype of the industry as 'blue collar', 'unskilled' and 'unsafe' – a stereotype that frustrates drivers and operators and (perhaps) colours the experience of on-road enforcement.