



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to Austroads

Consultation RIS – National Heavy Vehicle Driver Competency Framework

28 October 2022

Executive Summary:

It is time to move heavy vehicle driver licensing in Australia to a nationally universal, competency-based system.

The National Road Transport Association welcomes Austroads' publication of the Consultation RIS but believes modifications to the proposed reforms need to be made.

NatRoad wants the proposal for post-licence behind-the-wheel supervised training to be dropped.

Members have also made it clear that they do not support a time-based heavy vehicle licensing system.

At present, licence progression is based on time served on a lower licence class. For a heavy vehicle driver to be eligible to apply to progress to a higher licence class, the driver must hold a licence for a prior vehicle class for a minimum period of one year.

There is often no record of actual driving experience during that period. In fact, actual driving experience is not required.

NatRoad policy is that if a person achieves the relevant competencies the time period between licence class attainment is irrelevant. Any revised Framework must be reformed on that basis.

NatRoad agrees that licence tests should reflect real-world conditions and, on that basis, should contain training on dealing with risky behaviour of light vehicle drivers. Austroads should recommend educational material and testing on how to drive around trucks be part of licensing requirements for light vehicle drivers.

The current licensing framework has only been implemented in four jurisdictions: New South Wales, Tasmania, Victoria and the Northern Territory. Problems caused by this lack of uniformity are exacerbated by inconsistent application.

Austroads should recommend to State and Territory governments that driver offence notification requirements be harmonised between jurisdictions.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to respond to the consultation request on proposed changes to heavy vehicle driver licensing in Australia. Austroads seeks feedback on a Consultation Regulation Impact Statement (Consultation RIS) which outlines and analyses proposed changes to the National Heavy Vehicle Driver Competency Framework (Framework).¹
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. Accordingly, NatRoad's principal focus in giving feedback on the Consultation RIS is from the perspective of heavy vehicle operators.
3. At the request of Transport Ministers, since 2017 Austroads has been undertaking a program of work to review and improve the Framework. Austroads' review aims to deliver a harmonised Australian licence training and assessment framework that produces safe and competent heavy vehicle drivers and reflects the current and future needs of heavy vehicle operators and the future freight task. This work is important for NatRoad members. The Framework establishes minimum competency and assessment standards for heavy vehicle drivers. An improved, up-to-date version should be rolled out across Australia and adopted uniformly by all States and Territories.
4. Unfortunately, as noted in the Consultation RIS, the current Framework has only been implemented in four jurisdictions: New South Wales, Tasmania, Victoria and the Northern Territory.² Problems for the industry that are generated by this lack of uniformity are exacerbated by variations in jurisdictional practice with regard to heavy vehicle licensing, including variations between jurisdictions that have implemented the Framework.³ Hence, NatRoad notes that not only must the new policy settings be appropriate to benefit the industry but there must be jurisdictional commitment to adoption of any revised Framework and related settings. There must be a commitment to uniform regulation.
5. NatRoad is supportive of the move to strengthen licence training and assessment standards based in a more comprehensive heavy vehicle driver preparation framework. The Consultation RIS has that purpose as well as including consideration of licence class eligibility and progression. A competency-based licensing framework for heavy vehicle licence class progression is also proposed.
6. Throughout the Consultation RIS a series of questions are posed. NatRoad has responded to a number of these questions, together with, where required, additional contextual information and detailing of NatRoad policy. It has to be noted, however, that the period of comment for the Consultation RIS seems truncated when measured against the time taken to reach the policy positions which it reflects. Accordingly, we have not been able to provide as many examples of how the current policy mess has manifested as would be the case if more time for feedback was given. Whilst generally supportive of reform, NatRoad has a number of concerns with some of the proposals in the Consultation RIS, as detailed below.

The Nature of the Problem

¹ [Consultation RIS – National Heavy Vehicle Driver Competency Framework \(austroads.com.au\)](https://www.austroads.com.au/consultation-ris-national-heavy-vehicle-driver-competency-framework)

² Id p 12

³ Also noted in the Consultation RIS Ibid

7. In Chapter 2 of the Consultation RIS a number of problem statements are set out. The first is Problem 1: “Heavy vehicle driver licensing is not sufficiently focused on key risks based on latest data and analysis.” Two questions are asked following an exploration of that proposition:

2.1. Do you have any evidence or are you aware of any additional research that could provide additional insights into the key risk factors affecting driver competency?

2.2. Are there any other key risk factors, other than those discussed in this section and outlined in Box 4 that should be further considered? If so, please explain what they are and how they affect the risk of heavy vehicle crashes and consider providing evidence to support your view.⁴

8. NatRoad’s initial response to the setting out of the safety question is that it is poorly framed, albeit elaborated on in Chapter 3 of the Consultation RIS.⁵ The following is said:

Heavy vehicles are over-represented in casualty crashes particularly those involving a fatality. While making up approximately 5% of the total vehicle fleet, they are involved in 16% of road crash fatalities and 4% of injuries. This should come as no surprise given the distances travelled, and their relative weight and size.⁶

9. The statements in the prior paragraph ignore the central factor that has persisted for some time: light vehicle drivers are at fault in 80-90% of fatal crashes with heavy vehicles. The Productivity Commission (PC)⁷ noted this phenomenon thus:

Most fatal incidents that involve heavy vehicles are not legally the fault of the heavy vehicle operator. BITRE reported that ‘available Australian evidence suggests that in approximately 80 per cent of fatal multiple-vehicle crashes involving heavy trucks, fault is not assigned to the heavy truck’.⁸

10. The PC also found:

Heavy vehicle safety has improved significantly over the past decade. The number of heavy vehicle crashes involving injury or death per kilometre travelled fell by about 40 per cent between 2009 and 2019. The fall in crash rates is likely to be due to factors affecting all vehicle types (for example, improvements in road infrastructure and new safety technologies).⁹

11. Notably the PC made this recommendation:

State and Territory governments should introduce new programs or continue with existing programs of education and enforcement to improve road users’ understanding of driving safely around heavy vehicles.¹⁰

⁴ Id p16

⁵ Id p23-24

⁶ Ibid

⁷ [National Transport Regulatory Reform - Inquiry Report no. 94 \(pc.gov.au\)](https://www.pc.gov.au/inquiry/transport-reform-report)

⁸ Id at p150

⁹ Id p148

¹⁰ Id p151

12. The relative weight and size of heavy vehicles over the time noted by the PC extracted at paragraph 10 above, increased for some combinations, particularly PBS vehicles, but those vehicles have a better safety record despite their increased mass and length.¹¹ Indeed, PBS articulated combinations had the lowest rate of crashes per distance travelled with 5.4 crashes per 100 million kilometres travelled, almost 70% lower than the rate for their conventional counterparts.¹² Accordingly, the statement made in the Consultation RIS that indicates the fatal crash involvement of heavy vehicles is axiomatically related to their size and the distance travelled is not made out and is overly simplistic. Further we note that when the Consultation RIS discusses hazard training/perception tests, it notes that:

Currently no hazard perception tests depicting real-world footage and visible hazards from the heavy vehicle perspective are used within the existing licence frameworks.¹³

13. NatRoad agrees that these tests should reflect real-world conditions and, on that basis, should contain training on dealing with risky behaviour of light vehicle drivers. That behaviour is obviously more fundamental to the prevention of fatal heavy vehicle incidents when compared with the behaviour of heavy vehicle drivers. Accordingly, one of the recommendations from the current project **should be a change in light vehicle licensing to ensure that there is material and testing on how to drive around trucks.**
14. In relation to Question 2.2, we note that there is a relationship shown between pre-licensing risk factors and heavy vehicle safety outcomes. Knowledge of prior offences and the number of demerit points accumulated by drivers is therefore at issue as a precursor to whether a driver is likely to be involved in a traffic incident. **This research should be a stimulus for Austroads to recommend to State and Territory governments the regularisation of driver offence notification requirements.** Those requirements are far from harmonised between jurisdictions.
15. Operators have a responsibility to prevent or minimise potential injury or loss by ensuring their transport activities are safe.¹⁴ Part of that duty is to ensure that drivers are fit for work and properly licensed to drive the heavy vehicle assigned to them, the nub of reforms to the training system. Operators need to be aware, for example, if a driver has accumulated demerit points so as to lose his or her licence. But NatRoad members find it difficult to obtain data about offences and other licensing details from employees and subcontractors, despite patchy requirements in employment and other contracts requiring same. We are concerned that there is no uniformity in Australian law for operators to securely access driver records and on road breaches of their drivers. A legislative change that brings in the right of all operators to access the driver records that forms part of the revised HVNL and which reinforces the research in Box 4 of the Consultation RIS, would assist industry safety¹⁵ and should form a recommendation emanating from the current

¹¹ [Review of Major Crash Rates for Australian Higher Productivity Vehicles: 2015 – 2019 \(nhvr.gov.au\)](https://www.nhvr.gov.au/review-of-major-crash-rates-for-australian-higher-productivity-vehicles-2015-2019)

¹² Id p3

¹³ Above note 1 p17

¹⁴ See in particular section 26C Heavy Vehicle National Law

¹⁵ This matter was communicated to the industry via a NatRoad opinion piece https://www.fullyloaded.com.au/industry-news/1907/opinion-access-to-driver-records-is-crucial?utm_source=Sailthru&utm_medium=email&utm_campaign=ATN%20EDM%2015%2007%202019&utm_term=list_fullyloaded_newsletter

process. Attachment A is a NatRoad submission on this subject which reinforces the preceding analysis.¹⁶

16. Problem 2 is: “arrangements governing heavy vehicle training and assessment are affecting the quality of driver training.” NatRoad submits that the arrangements for heavy vehicle trainers and assessors in different State and Territory jurisdictions are not uniform and that often heavy vehicle licences are granted to drivers who do not meet the level of competency required to achieve desired safety and efficiency outcomes. We do not have empirical evidence of this difficulty, but we receive a deal of member anecdotal feedback to that effect. We agree with the analysis about this subject in the Consultation RIS.¹⁷ In particular, because of the different combinations that are used in Australia compared with overseas jurisdictions, members **recommend that there be an additional training requirement that is placed on international drivers’ licence holders before they are licenced to drive in Australia.**
17. Problem 3 is: “heavy vehicle driver licensing is applied inconsistently even across jurisdictions which have adopted the Framework.” NatRoad submits that there is unacceptable variation in jurisdictional practice with regard to heavy vehicle licensing, including between the jurisdictions that have adopted the Framework.
18. Given the matters set out in paragraphs 16 and 17 of this submission, we have not answered questions 2.3 and 2.4 in the Consultation RIS.

Government Involvement

19. Chapter 3 of the Consultation RIS deals with the question of why government action is needed.
20. As is evident from the above discussion, we have some difficulty with how the safety problem is framed, a matter revisited in Chapter 3. We do not believe that a valid distinction should be drawn between fault attributed by Police against fault ascertained through the insurance process as is stated in the Consultation RIS thus: “It is worth noting that this is based on insurance data and therefore attributions determined for this purpose, rather than as a result of police investigation.”¹⁸ Obviously, from comments made earlier, the Productivity Commission did not recognise this distinction between police and NTARC data as a valid or necessary distinction. In essence, the statistics reflect the fact that many light vehicle drivers have not been properly trained about appropriate behaviour around trucks. That factor must not be discounted in any analysis of heavy vehicle licensing and training. The distinction drawn, just mentioned, is irrelevant.
21. Despite that caveat, we agree reform of the Framework would assist in the promotion of skilled, capable and safe heavy vehicle drivers and would provide better pathways for people seeking to have a career in heavy vehicle driving.

¹⁶ But note the recent change in NSW that makes access to driver demerits easier: [Heavy Vehicle Operator Safety Information Program - Schemes & programs - Heavy vehicles - Business & Industry - Roads and Waterways – Transport for NSW](#)

¹⁷ Above note 1 at p21

¹⁸ Id p23

22. Accordingly, we answer 3.1. Do you agree that there is a good case for government action? And 3.2. Do you agree with the policy objectives set out in this Consultation RIS: “Yes.”

Current Arrangements

23. Chapter 4 provides an outline of current arrangements.
24. In this context, NatRoad in particular does not support the basis of current licence progression. At present, licence progression is based on time served on a lower licence class. For a heavy vehicle driver to be eligible to apply to progress to a higher licence class, the driver must hold a licence for a prior vehicle class for a minimum period of one year. There is often no record of actual driving experience during that period and, in fact, actual driving experience is not required. Further, one large NatRoad member, for example, has indicated that the company has insufficient rigid driving tasks to sustain employment of drivers in the prior required class of licence before they are allocated the task of driving articulated vehicles. NatRoad policy is that if a person achieves the relevant competencies the time period between licence class attainment is irrelevant. Any revised Framework must be reformed on that basis.
25. We therefore agree with the statement in the Consultation RIS that “licence tenure requirements are simply a requirement to hold a licence for a period of time and there is no guarantee of how much, if any, behind-the-wheel experience a person has had during the period.”¹⁹ NatRoad supports the development of competency-based progression and for those rules (inclusive of qualifications of assessors) to be uniform throughout Australia.

Options to make the Framework more risk focused

26. Chapter 5 deals with the reform options to solve Problem 1. They are not mutually exclusive; the options build upon one another.
27. Option one is described and then the following questions posed:
- 5.1. Do you consider that the components of the ‘competency refresh’ option (strengthened competencies and assessment; online delivery including an HPT; requirement to hold an HC licence before an MC licence; new MC classes; alternate pathways for progression) will address Problem 1 as described in this Consultation RIS? Please provide evidence to support your view.*
- 5.2. Do you agree with the proposal to require a driver to have first held an HC licence before going to an MC licence?*
- 5.3. Are you aware of any implementation challenges associated with any of the components of this ‘competency refresh’ option? What type of transitional arrangements would be required to implement the components of the option?*
- 5.4. Are there any unintended consequences associated with any of the components of the ‘competency refresh’ option?*
- 5.5. Do you consider that any components of the ‘competency refresh’ option should not be pursued, or are there any additional components that should be added?*

¹⁹ Id p27

28. As indicated within the terms of **question 5.1**, option 1 has five key features. The Consultation RIS identifies a competency program which includes 184 elements outlined in Appendix B to the Consultation RIS. The narrative reflects industry feedback to some extent but does not align the re-design of competencies with a planned heavy vehicle driver apprenticeship. As touched on in this submission, NatRoad has consistently expressed strong support for improved driver training, comprising a nationally recognised qualification combined with supervised on-the-job experience and a move to competency-based licensing arrangements. The option of an apprenticeship pathway aligns with that objective. We therefore **recommend that there should be a re-framing of the reform options to encompass the development of an apprenticeship.**

29. In answering **question 5.2** we note that this option proposes that the current MC class licence be split into three separate licence classes based on the rationale thus:

The splitting of the current single MC class into three will allow driver training and assessment to be better targeted to the considerable difference in driving and handling techniques between vehicles with no dollies, double and triple road trains, and the quad road train configuration.²⁰

30. There are proposed, however, only two training and assessment steps to get a MC class 2 or class 3 licence. This is illustrated as follows:

1. From HC → MC1 or MC2
2. From MC1 or MC2 → MC3²¹

31. On reading this part of the Consultation RIS one member provided feedback as follows which is endorsed by the specialist NatRoad working group that assisted with the preparation of this submission:

Just like a 19M 'truck and dog' is equivalent to a 19M Semi – a 35M A-Double is equivalent to a 35M B-Triple. . That said, the competency required to operate either of these units is materially the same. The increased roll stiffness in a B-Triple is not a factor when assessing competency in driving these units on the road. They both have the same amount of articulation points, have the same length, and present to the road in the same weight. A-doubles <36.5m should be in the MC1 class, or B-Triples should be in the MC2 class.

32. The Consultation RIS says that under a new competency-based progression (in addition to and as an alternative to holding the prior licence class for 12 months with which we disagree) getting an MC3 would likely take between 16 weeks and 6 months.²²

33. One of the unknowns about this proposal is how it would affect current licence holders. This analysis is deferred, with the Consultation RIS stating that the matter would be dealt with at the implementation stage of reform. But it's too important an issue to leave hanging. Without an idea of how it would affect/disrupt current arrangements or if recognised prior learning would apply, we cannot support the proposed change.

²⁰ Id p36

²¹ Ibid

²² Ibid

34. The response in the prior paragraph establishes the major “transitional” hurdle for NatRoad per **question 5.3**. This transition would also be made difficult were the descriptors for the various multi-combination vehicles to change, as has been proposed in the reform of the heavy vehicle national law (HVNL), now stalled or the classifications not made precise along the lines of the feedback provided in paragraph 31 of this submission.
35. In relation to **questions 5.4 and 5.5**, NatRoad asks whether there has been an attempt to measure the cohort that would qualify as “supervisors” in relation to the supervision pathway? The extent of the availability of such personnel will have a direct bearing on the utility of this option. We note that the qualifications to achieve this supervisor status are described thus:
- *have held a heavy vehicle licence of the relevant class for at least five years*
 - *have completed a specific credential (to be developed by Austroads) which will be delivered either online or face to face. Estimated time to undertake the training and assessment will be less than one day.*
36. Under the option is the introduction of the requirement to hold an HC licence before progressing to an MC licence. That factor combined with the splitting of the MC class may, for some drivers, extend the time required to drive complex vehicles where they rely on tenure in a prior licence class to progress. But as indicated earlier, the tenure alone pathway should not remain part of the system. That characteristic of the proposal would perpetuate the problems that currently exist. Progression to these HC and MC classes should be competency based only.
37. Chapter 5 also sets out Option 2. This option consists of Option 1 plus proposed new eligibility requirements.
38. The following questions are posed in relation to Option 2:
- 5.6. Do you consider that the components of this option (eligibility criteria based on offence and/or crash history; requirement to hold an open car licence before obtaining an MR or HR licence) will address Problem 1 as described in this Consultation RIS? Please provide evidence to support your view.*
- 5.7. Are you aware of any implementation challenges associated with any of the components of the ‘eligibility criteria plus refresh’ option? What type of transitional arrangements would be required to implement the option?*
- 5.8. Do you consider that any components of the ‘eligibility criteria plus refresh’ option should not be pursued, or are there any additional components that should be added?*
- 5.9. Are you concerned that requiring an applicant to hold an unrestricted (open) driver’s licence before they can apply for an MR or HR licence will impact on driver availability? Why or why not? Can you think of any options for addressing any concerns you may hold?*
- 5.10. Are you concerned that the application of an eligibility criteria based on a serious offence history and/or a past crash history linked with an offence will impact driver availability or be considered unreasonably harsh? Why or why not? Can you think of any options for addressing any concerns you may hold?*
- 5.10. (sic) Can you think of any alternative ways or approaches for mitigating the risks intended to be addressed through the eligibility criteria?*
- 5.12. Are there any unintended consequences associated with the ‘eligibility criteria plus refresh’ option?*

5.13. Do you support trialling a young heavy vehicle drivers program? How should this program operate? What are the costs and benefits associated with this program?

39. In answering **question 5.6**, we are concerned about two issues. First is that the requirement to hold an open car licence before obtaining an MR or HR licence will mean that younger people will be precluded by an extra year from holding a heavy vehicle licence, noting the intention that they may apply for a light rigid licence. The notion of competence should be in play. If the person is competent despite any age or prior licence holding, they should be permitted to drive the relevant class of heavy vehicle. Hence, we oppose measures that do not allow for competency to be tested and as the basis for progression. Secondly, we reiterate our concern about the proposals not incorporating an apprenticeship pathway. That pathway must be integrated with any final reform proposals. We believe that the apprenticeship must be accommodated. This is important given member feedback that **the** industry wants the applicant to graduate as a professional truck operator rather than there being a narrow focus on aspects of the driving task.
40. In regard to the element of offence/crash history, we note that the Consultation RIS says "the offence history that would prevent a person from gaining or upgrading a heavy vehicle licence requires further consideration."²³ Some indicative offences are, however, set out. NatRoad believes that to avoid unfairness to individuals, there should be a pattern associated with these offences before they are used to preclude a driver from getting a heavy vehicle licence or progressing in licence class. That is, there should be, at the least, evidence of the commitment of more than one of the sorts of offences listed in the Consultation RIS before an exclusion applies (noting that the list of offences has not yet been determined). There should also be a time period after which the offence is no longer considered relevant e.g., at most 5 years.
41. In response to **Question 5.7** regarding issues with implementation, we also reiterate, strongly, the point made in paragraphs 14 and 15 of this submission. Any reliance on offence history requires reform of the driver offence notifications in place in the States and Territories, with a uniform, operator friendly system needing to be put in place. That system should ideally emulate the Queensland regime.
42. The Consultation RIS seeks to have submitters provide evidence to support the views maintained. The evidence that is in place to support an apprenticeship (Certificate III in Driving Operations) are set out at page 7 of the relevant Consultation Paper²⁴ published to obtain industry feedback on the proposal. Hence, in response to **question 5.8** we say that any changes to licensing competencies and training should ensure that an apprenticeship and its place in any new regime is made clear, and preferred. The evidence is in the referenced document which NatRoad strongly supports.
43. In answer to **question 5.9**, we refer to the response in paragraph 39 of this submission. Similarly, in response to **question 5.10**, we refer to our response in paragraph 40.
44. In response to the other questions, particularly **question 5.13**, the best way to assist young people is to proceed with and integrate an apprenticeship in the driver training and competency framework. We note that the nature and extent of a younger drivers heavy vehicle pilot trial is not set out in the current process. Yet there has been a great deal of

²³ Id at p46

²⁴ [Consultation-Paper-Heavy-Vehicle-Driving-Apprenticeship-Model.pdf \(australianindustrystandards.org.au\)](https://australianindustrystandards.org.au/Consultation-Paper-Heavy-Vehicle-Driving-Apprenticeship-Model.pdf)

work and planning associated with going forward with an apprenticeship.²⁵ That is where the focus of resource allocation should be placed.

45. Chapter 5 also set out Option 3. It consists of Option 2 plus minimum requirements for post-licence supervised behind-the-wheel driving.

46. The following questions are posed in relation to Option 3:

5.14. Do you consider that the post-licence supervised driving proposal under the ‘supervised driving, eligibility and refresh’ option will address Problem 1 as described in this Consultation RIS? Please provide evidence to support your view.

5.15. Are you aware of any implementation challenges associated with the ‘supervised driving, eligibility and refresh’ option? What type of transitional arrangements would be required to implement this option?

5.16. Are there any unintended consequences associated with the ‘supervised driving, eligibility and refresh’ option?

5.17. Do you consider that any components of the ‘supervised driving, eligibility and refresh’ option should not be pursued, or are there any additional components that should be added?

5.18. What are your views on the relative benefits of pre-licence supervised behind-the-wheel time over post-licence supervised driving and the role of the licensing system in mandating minimum hours?

47. Having achieved a licence class and then having a post-qualification supervised driving regime imposed is not supported. We are unsure of why the alternative approach of increased behind-the-wheel experience and overall job readiness being part of the minimum hours of supervised driving in restructured pre-licence training has not been pursued. That omission should be better articulated. The Consultation RIS says that loading up the pre-qualification process “would increase the cost to licence applicants.”²⁶ But the consideration of costs for both an applicant and employers after the initial licence has been obtained are to NatRoad members more important costs.

48. We believe that a better approach is to have more pre-licence training in place. A process of post-qualification supervision and the threat of cancellation of a licence class already achieved seems to NatRoad to be counter intuitive with potentially higher costs e.g., the requirement to repeat the pre-licence competencies where a driver is, for example, unable to find suitably qualified supervisors to sign off on the post-licence driving standards (which are not crystal clear). This is revisited later in the Consultation RIS where at Box 11 the following is noted, with which we agree:

Those drivers who were unable to secure supervised driving experience from an employer would incur costs in seeking this through an alternate source or lose their recently obtained heavy vehicle licence.²⁷

49. Accordingly, in response to **question 5.14**, we indicate that we have doubts about the costs and benefits associated with the post-qualification supervised driving proposal. We do not proffer any targeted evidence in this context because the proposal does not reflect current

²⁵ [Heavy Vehicle Driver Apprenticeship Proposal - Australian Industry Standards](#)

²⁶ Above note 1 at p48

²⁷ Id p67

practice, save to the extent it reflects required training under WHS laws discussed below at paragraph 51. But we do note that the following is said by a work safety authority:

*In the event of a crash, following the management of the immediate response, a review should be undertaken to assess hazards to determine whether current controls are adequate. **There is evidence that the involvement of drivers in discussion groups to review incidents and their own behaviour can provide improvements in their safe driving performance that outweigh any benefits that might accrue from driver training programs, at far less cost.***²⁸

50. The sort of practice outlined in the above extract should be considered a better, more cost-effective practice than mandated post-qualification training. In addition, this practice could be integrated with hazard perception training, discussed earlier, and revisited in Chapter 7 of the Consultation RIS.²⁹
51. There is also the general overlay of WHS laws in relation to the proposed training. Would this training be presented as displacing or bolstering the legal requirement to train workers? ³⁰ One relevant duty for employers is to provide “any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.”³¹ That duty operates regardless of any new post-qualification training. But it is able to be tailored to the particular workplace and the particular employee, a matter commented on in Chapter 7 of the Consultation RIS.³² Post qualification training that is mandated and pre-set is not supported.
52. The element of additional training post licence has been thrown into stark relief by a recent case³³ in which the learned judge said:
- Holding a heavy vehicle licence is a regulatory requirement which ensures a minimum, but not always sufficient, standard of competence.*³⁴
53. In relation to **question 5.15**, there are a number of implementation challenges, including what would, we submit, be a costly governmental role with the issue of licences in 2 stages and the administration of a cancellation or confirmation process that would follow from the option’s implementation. This further reinforces concerns about costs in that it would extend bureaucratic processes.
54. From these responses, the answers to the remaining questions are clear. In essence, **we do not support the post-licence supervised behind-the-wheel driving proposal.**

²⁸ [Vehicles as a Workplace - Work Health and Safety Guide \(worksafe.qld.gov.au\)](https://www.worksafe.qld.gov.au) NatRoad emphasis

²⁹ Above note 1 esp at p60

³⁰ See s19(3)(f) Model WHS law [Model-WHS-Bill-21March2016 \(safeworkaustralia.gov.au\)](https://www.safeworkaustralia.gov.au)

³¹ Ibid

³² Above note 1 Box 12 p68

³³ *Cleanaway Operations P/L v Philip Hanel (Commonwealth:Comcare)* [2022] SASC 52 (26 May 2022)

³⁴ Id a t para 16 per Kourakis CJ

Options to Address Quality of Assessment and Training

55. Chapter 6 outlines the reforms proposed to address Problem 2.
56. The first element of the reforms is for Austroads to develop driver training and assessment material. The Consultation RIS says Austroads will establish a standard framework for training applicants to meet the Framework competencies. It will also develop a standard framework for assessing applicants against those competencies. This material would be regularly reviewed. We submit that this material should be made available as soon as possible, given the already long life of this project.
57. NatRoad supports the continued use of the VET sector to deliver the requisite training. The proposed apprenticeship needs to be integrated with the new, standardised training. The Consultation RIS says that:

As part of implementation planning, discussions will be held with the VET sector regulators and training providers to determine how increased standards, including potential introduction of mandatory minimum training times (which have been imposed by other regulators), could be achieved within a VET sector arrangement if this continues to be preferred.³⁵

58. These discussions should be accelerated, and the outcome published to industry stakeholders as a priority. The discussions should also encompass the place of apprenticeship arrangements in the reformed system. That will require VET co-operation.
59. The Consultation RIS also expresses that jurisdictions will continue to decide whether training and assessment is insourced or outsourced.³⁶ It would assist with consistency if the basis of outsourcing were to be agreed between jurisdictions and then made known to the industry.
60. The second element of the reform is for Austroads to develop material to support consistent jurisdictional management of heavy vehicle training and assessment providers. This is supported and links with the propositions in the prior paragraph.
61. The third element is the introduction of minimum training and behind-the-wheel time. Whilst there is a general move to competency-based training, it is proposed that Austroads will introduce minimum training and assessment periods to the Framework.
62. The following questions are posed:

- 6.1. Do you consider that the components of this option (standardised training and assessment material; increased consistency in management of outsourced providers; minimum mandated training and behind-the-wheel time) will address Problem 2 as described in this Consultation RIS? Please provide evidence to support your view.*
- 6.2. Are you aware of any implementation challenges associated with this option? What type of transitional arrangements would be required to implement this option?*
- 6.3. Are there any unintended consequences associated with this option?*

³⁵ Id p50 p50

³⁶ Ibid

6.4. Do you consider that any components of this option should not be pursued, or are there any additional components that should be added?

63. We answer question 6.1 as “Yes” subject to the prevailing issue of integration of the apprenticeship in the Framework. We answer “No” to questions 6.2 and 6.3. In relation to question 6.4, we say that the basis of the minimum hours behind the wheel set out in the Consultation RIS should be disclosed/better explained. At the least, the hours should be reviewed after a bedding down period.

Impact Assessment

64. Chapter 7 sets out how each policy option will lead to incremental changes in the benefits and costs for industry, government and the community.
65. Question 7.1 asks: *Are there impacts which you feel have been missed? If so, can you provide evidence of these impacts?* In this context, we reiterate the view about integration with an apprentice system and any impacts on that training path.
66. Question 7.2. asks: *Do you have any comments on the key assumptions and input values described in Appendix E? Do you have any data or evidence to support the determination of these assumptions?* The issue with apprenticeship integration also arises in this context. On its face most input values appear reasonable save for the cost of an assessor at \$33.00 per hour. This should at least match the cost of a driver indicated as \$45.00 per hour. Further, we believe that the cost benefit calculation should be made again, bearing in mind the NatRoad view of post-qualification driving assessment and the costs outlined at paragraphs 47 and 48 of this submission. The assumption about productivity is supported; that is as the use of more productive vehicles is currently constrained by driver availability, the reforms may potentially enable greater productivity in the industry via greater use of high productivity vehicle. If these are PBS vehicles, a more favourable crash outcome is indicated per the statistics set out at paragraph 12 of this submission.
67. We have not answered questions 7.3-7.15, given the assessment made in responding to Chapter 5. In essence, we believe that the element of post-qualification supervised driving would be counterproductive. Where the evidence shows that increased supervised driving creates better, safer drivers then that should be translated to pre-licensing requirements and the WHS laws used to determine the post qualification safety requirements, as discussed earlier.
68. In relation to the issue of driver history, we note the issues raised in Box 10 on page 65 of the Consultation RIS. We agree that the issues raised are important. In particular, we believe that it is important that the jurisdictions rationalise offence history and recording and that the following two dot points as raised in Box 10 be given priority resolution (together with the NatRoad recommendation of uniform operator reporting requirements):

Licensing systems do not currently interact with crash databases and costs will be incurred to integrate or interrogate across systems. • If the impacts of offences and crashes in other states and territories are to be taken into account, there will be a need for standardisation and exchange of offence data and access to interstate crash records.³⁷

³⁷ Above note 1 p65

Increased Medical Assessments

69. As part of the revision of the Framework, NatRoad notes that member feedback to date has included a need to better apply driver health assessments and to increase the effectiveness of driver screening. In essence, NatRoad supports new and expanded national fitness to drive standards to be linked with licensing and licensing renewal. If not incorporated within the Framework, at the least there should be agreement between the jurisdictions, co-ordinated by Austroads, which requires greater medical disclosure and reporting of conditions that affect the driving task, separately agreed.
70. Increased medical disclosure and associated reporting is a response to Problem 1 posed in the Consultation RIS. Ideally, increased medical standards should be supported by a driver fitness for duty standard in a revised HVNL. In the absence of such a reform, one jurisdiction has linked increased medical standards with truck driver licensing.³⁸
71. Other than this action by one jurisdiction, 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 want. NatRoad's recommendation is that Austroads should implement changes to *Assessing Fitness to Drive*³⁹ so that it separates the commercial standards for truck drivers and adds a series of screening tests for conditions like diabetes, sleep apnoea and psychiatric illness.
72. The anecdotal evidence of one member outlines this issue following a NatRoad call out to members for feedback on issues that were vital to consider in looking at licensing and competence thus:
- A new driver fell asleep driving a semi and hit a roadside sign before going bush. He caused over 600k in damages. Driver had just been through recruitment which includes an Austroads compliant BFM medical. After accident driver admitted he knew he had been suffering from sleep apnoea and admitted to lying to the medical examiner. This driver was employed at another company within days and continues to drive despite having another accident just a month later where he fell asleep and ran into the back of a stationary car.*
73. NatRoad supports a change in the sleep apnoea screening standard, the current failure of which is reflected in the member's experience.

Conclusion

74. NatRoad welcomes publication of the Consultation RIS. We believe, however, that modifications to the proposed reforms, especially the elimination of the proposal for post-licence supervised training, should be made. Members have also made it clear that the system should move fully to a competency based system not in any respect a time based system.
75. We would be happy to discuss any aspect of this submission with Austroads officers.

³⁸Discussed here: [ATA welcomes driver medical standards | News \(fullyloaded.com.au\)](#)

³⁹[Assessing Fitness to Drive | Austroads](#)



Submission to the National Transport Commission

Driver Offence Notification Systems

1 March 2021

Introduction

1. The National Road Transport Association (NatRoad) has conducted further research into driver offence notification requirements. We initially provided feedback on this issue as part of our response to the National Transport Commission (NTC) Issues Paper entitled *Safe People and Practices*¹ released by the National Transport Commission (NTC) in late June 2019. The Issues Paper was part of a series that informed the initial stages of the current review of the Heavy Vehicle National Law (HVNL).²
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 seeks the NTC to consider recommending the regularisation of driver offence notification requirements to State and Territory governments based on the Queensland model. That recommendation should emanate from the current HVNL review process.

Fit for Work Means Properly Licensed

4. In the NatRoad submission dated 30 August 2019 on the Issues Paper, we emphasised that the strengthened COR laws reinforce that operators have a responsibility to prevent or minimise potential injury, danger or loss by ensuring their transport activities are safe. Part of that duty is to ensure that drivers are fit for work and properly licensed to drive the heavy vehicle assigned to them. Operators need to be aware, for example, if a driver has accumulated demerit points so as to lose his or her licence. This submission follows on from that vital proposition and outlines the current law in this context with a recommendation that the Queensland law be used as a model for all jurisdictions.

The Problem

5. NatRoad members find it difficult to obtain data about offences and other licensing details from employees and subcontractors. We are concerned that there is no uniformity in Australian law for operators to securely access driver records and on road breaches of their drivers. A legislative change that brings in the right of all operators to access the driver records that forms part of the revised HVNL would assist industry safety.³ Those safety considerations override any concerns around privacy breaches, as is articulated below.

¹ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.ntc-hvlawreview.files/3115/6161/3618/NTC_Issues_Paper_-_Safe_people_and_practices.pdf

² <https://www.ntc.gov.au/heavy-vehicles/safety/review-of-the-heavy-vehicle-national-law/>

³ This matter was communicated to the industry via a recent NatRoad opinion piece https://www.fullyloaded.com.au/industry-news/1907/opinion-access-to-driver-records-is-crucial?utm_source=Sailthru&utm_medium=email&utm_campaign=ATN%20EDM%2015%2007%202019&utm_term=list_fullyloaded_newsletter

6. Currently, the law is different in each State and Territory, as reflected in Appendix A to this submission.
7. The Queensland provision should form the basis of an HVNL reform. The COR positive safety duties mean that operators must have adequate information available to them that enables them to assess whether a driver does or does not have a current licence or whether, for example, actual or pending demerit points mean that the driver should not be permitted to drive.
8. The Queensland law was preceded by an extensive review process that was reflected in a report to the Queensland Parliament by the Transport and Public Works Committee (TPWC).⁴
9. In April 2018, the TPWC conducted an Inquiry into *Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 (QLD)*. As part of the inquiry, the Queensland Council for Civil Liberties (QCCL) in its submission⁵ raised concerns around the risk of information disclosure of employees who are victims of domestic violence to those who should not receive such information. In dealing with this concern, the TPWC Report cited the explanatory notes of the Bill subject to the Inquiry, stating that victims of domestic violence are able to apply to the Department of Transport and Main Roads (DTMR) to have their personal details and record suppressed, preventing disclosure.⁶
10. After extensive examination of privacy issues, the TPWC concluded, correctly in NatRoad's view, that the benefit the provisions confer, outweigh the privacy issues in contention.

Conclusion

11. As can be seen from Appendix A, the current law is a hodgepodge. NatRoad recommends that the NTC act as soon as possible to further investigate this area of the law with a view to recommending reform to the State and territory jurisdictions along the lines of the Queensland legislation.

⁴ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T482.pdf>

⁵ Queensland Council for Civil Liberties, Submission No 15 to Transport and Public Works Committee, *Inquiry into Heavy Vehicle National Law and Other Legislation Amendment Bill 2018 (QLD)* (26 March 2018) p 2.

⁶ *Heavy Vehicle National Law and Other Legislation Amendment Bill 2018*, explanatory notes, p 9.

Appendix A Driver Offence Notification Systems Legislation – Update from NatRoad submission made in 2019

Jurisdiction	Principal Act	Subordinate Legislation (if applicable)	Additional Information
NSW*	<i>Road Transport Act 2013 (NSW)</i>	<i>Road Transport (Driver Licensing) Regulation 2017 (NSW)</i>	No change to Regulation 112 ¹ since 30th of August 2019.
SA*	<i>Motor Vehicles Act 1959 (SA)</i>	<i>Motor Vehicles Regulations 2010 (SA)</i>	No change to Sub-regulation 7a ² of Regulation 98 since the 30 th of August 2019.
QLD*	<i>Transport Operations (Road Use Management) Act 1995 (QLD)</i>		<p>Insertion of s77AAA³ (effective on the 19th of June 2019) had the practical effect of introducing the Driver Offence Notification (DON) System.</p> <p>This was inserted by Section 47⁴ of the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2018</i> (QLD), section 47⁵ commenced ‘on a day to be fixed by proclamation.’⁶ However, it was never proclaimed and section 15DA⁷ of the <i>Acts Interpretation Act 1954</i> (QLD) enables provisions of an Act not yet commenced within 1 year of the assent day to commence on the next day. Therefore section 47⁸ commenced on the 19th of June 2019.</p>
VIC	<i>Road Safety Act 1986 (Vic)</i>		Part 7B permits the disclosure of ‘relevant information’ ⁹ to employers. ¹⁰ ‘Relevant information’ is stipulated under section 90J ¹¹ and includes ‘information collected or received by the Secretary [of the Department of Transport] in relation to the Secretary's registration or licensing functions and activities’ ¹² that include but are not limited to ‘granting, renewing, suspending or cancelling driver licences or learner permits and recording demerit points’ ¹³ ‘whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.’ ¹⁴

² *Motor Vehicles Regulations 2010 (SA) reg 98(7a)*

			<p>Disclosure is permitted under section 90K¹⁵ in allowing the ‘Secretary [Secretary of the Department of Transport] or a relevant person’¹⁶ to perform the function and activity of ‘providing information of community interest or benefit’¹⁷. It is also permitted whereby ‘its use or disclosure is reasonably necessary to lessen or prevent a serious threat to-’¹⁸ ‘an individual’s life, health, safety or welfare’¹⁹ as well as ‘public health, safety or welfare’²⁰ Consent of the ‘individual to whom the information relates’²¹ can also permit such disclosure.</p> <p>VicRoads allows third parties including employers to access information about persons pertaining to licences and offences. An application requires express consent of the person and a fee paid to VicRoads.</p>
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³ *Transport Operations (Road Use Management) Act 1995* (QLD) s 77AAA

⁴ *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (QLD) s 47

⁵ *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (QLD) s 47

⁶ *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (QLD) s 2

⁷ *Acts Interpretation Act 1954* (QLD) s 15DA

⁸ *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (QLD) s 47

⁹ *Road Safety Act 1986* (Vic) s 90J

¹⁰ *Road Safety Act 1986* (Vic) pt 7B

¹¹ *Road Safety Act 1986* (Vic) s 90J

¹² *Road Safety Act 1986* (Vic) s 90J(3)

¹³ *Road Safety Act 1986* (Vic) s 90J(3)(d)

¹⁴ *Road Safety Act 1986* (Vic) s 90J(3)

¹⁵ *Road Safety Act 1986* (Vic) s 90K

¹⁶ *Road Safety Act 1986* (Vic) s 90K(a)(i)

¹⁷ *Road Safety Act 1986* (Vic) s 90K(a)(i)(C)

¹⁸ *Road Safety Act 1986* (Vic) s 90K(b)

¹⁹ *Road Safety Act 1986* (Vic) s 90K(b)(i)

²⁰ *Road Safety Act 1986* (Vic) s 90K(b)(ii)

²¹ *Road Safety Act 1986* (Vic) s 90K(d)

WA	Road Traffic (Administration) Act 2008 (WA)	Road Traffic (Administration) Regulations 2014 (WA)	<p>Section 14 of the Act permits disclosure of information for authorised purposes to prescribed persons.²²</p> <p>The meaning of ‘Authorised purpose’²³ is vague and includes ‘the purpose of performing functions under a written law or a law of another jurisdiction’²⁴, ‘a purpose related to the administration or enforcement of a written law or a law of another jurisdiction’²⁵ or ‘a purpose prescribed by the regulations for the purposes of this definition’²⁶ The meaning of ‘prescribed person’²⁷ is defined in the Regulations as persons or classes of persons who are a ‘member of the public’²⁸.</p> <p>While sub-Regulation 2a of Regulation 8²⁹ comes under the heading of ‘Disclosure of written-off vehicle register information’³⁰, section 31(2) of the <i>Interpretation Act 1984</i> (WA) states that the heading of a regulation ‘shall be taken not to be part of the written law.’³¹ Furthermore, the sub-regulation is stipulated to specifically apply³² to section 14(1)³³ of the <i>Road Traffic (Administration) Act 2008</i>.</p> <p>Section 15 of the Act permits disclosure for ‘road safety purposes’³⁴. Road safety purpose is defined as something which includes something with ‘the purpose of distributing information about road safety.’³⁵</p>
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²² *Road Traffic (Administration) Act 2008* (WA) s 14

²³ *Road Traffic (Administration) Act 2008* (WA) s 14(1)

²⁴ *Road Traffic (Administration) Act 2008* (WA) s 14(1)(a)

²⁵ *Road Traffic (Administration) Act 2008* (WA) s 14(1)(b)

²⁶ *Road Traffic (Administration) Act 2008* (WA) s 14(1)(c)

²⁷ *Road Traffic (Administration) Act 2008* (WA) s 14(1) (definition of ‘prescribed person’)

²⁸ *Road Traffic (Administration) Regulations 2014* (WA) reg 8(2)(a)

²⁹ *Road Traffic (Administration) Regulations 2014* (WA) reg 8(2)(a)

³⁰ *Road Traffic (Administration) Regulations 2014* (WA) reg 8

³¹ *Interpretation Act 1984* (WA) s 32(2)

³² *Road Traffic (Administration) Regulations 2014* (WA) reg 8(2)

³³ *Road Traffic (Administration) Act 2008* (WA) s 14(1)

³⁴ *Road Traffic (Administration) Act 2008* (WA) s 15(1) (definition of ‘road safety purpose’)

³⁵ *Road Traffic (Administration) Act 2008* (WA) s 15(1) (definition of ‘road safety purpose’ (b))

			<p>Information disclosed under both section 14³⁶ and 15³⁷ can include: ‘driver’s licence information’³⁸ and ‘demerit points information’³⁹. Section 143A of the Act⁴⁰ stipulates that a ‘person who is or has been engaged in the performance of functions under a road law’⁴¹ must not ‘record, disclose or make use of information obtained’⁴² unless they have the consent of the person to whom the information relates’⁴³.</p> <p>There is no such specific licence or offence notification scheme; however the Department of Transport has a tool called ‘Driver’s Licence Status Enquiry’ which allows persons to search their own status of their own licence or search for a licence ‘as authorised by law’. This tool can only check for licence status (excluding suspensions for unpaid fines). The Department of Justice allows checks with the consent of the subject to ascertain whether a licence has been suspended due to unpaid fines only. The Department of Transport also has a ‘Driver’s Demerit Points Enquiry’.</p>
TAS	<i>Vehicle and Traffic Act 1999</i> (Tas)	<i>Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010</i> (Tas)	<p>Part 8⁴⁴ permits disclosure of information contained on the Register which includes information pertaining to ‘driver licences’⁴⁵ and ‘demerit points’⁴⁶. Sub-regulation 2(a) allows the Registrar to divulge protected information ‘if and as the Registrar considers appropriate in the public interest for the purposes of the administration of an Act of this State, another State or a Territory, or the Commonwealth’⁴⁷.</p>

³⁶ *Road Traffic (Administration) Act 2008* (WA) s 14

³⁷ *Road Traffic (Administration) Act 2008* (WA) s 15

³⁸ *Road Traffic (Administration) Act 2008* (WA) s 14(2)(a) and s 15(2)(a)

³⁹ *Road Traffic (Administration) Act 2008* (WA) s 14(2)(d) and s15(2)(d)

⁴⁰ *Road Traffic (Administration) Act 2008* (WA) s 143A

⁴¹ *Road Traffic (Administration) Act 2008* (WA) s 143A(1)

⁴² *Road Traffic (Administration) Act 2008* (WA) s 143A(1)

⁴³ *Road Traffic (Administration) Act 2008* (WA) s 143A(1)(c)

⁴⁴ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) Pt 8

⁴⁵ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 124(1)(i)

⁴⁶ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 124(1)(iii)

⁴⁷ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 125(2)(a)

			<p>Sub-regulation 2(b) of Regulation 125 permits the Registrar to divulge information of a person on the Register if they have the person’s authorisation.⁴⁸ Sub-regulation 2(e) permits divulging ‘if and as authorised by administrative guidelines issues by the Minister’⁴⁹.</p> <p>Sub-regulation 1 of Regulation 126 permits certificates setting out information recorded in a register to be issued after receiving an application with a fee from an applicant.⁵⁰ However Sub-regulation 3 stipulates that information relevant to driver offences or licence status are ‘to be dealt with in accordance with administrative guidelines issued by the Minister.’⁵¹ Furthermore, subject to such guidelines, information may be disclosed in the forms of: certificates⁵², register extracts⁵³, orally (via telephone included)⁵⁴, ‘by means of the internet’⁵⁵ or by ‘any other means of communication the Registrar considers appropriate in the circumstances.’⁵⁶</p> <p>Tasmanian Transport Services allows information to be requested via application with a fee and implied driver consent. Furthermore, employers that manage employees that drive heavy vehicles can request for ongoing information with employee status reported up to 4 times a year.</p>
NT	Traffic Act 1987 (NT)		No legislation pertaining to notification of driver offences or licence status. However if a vehicle is impounded by police because of a hooning offence, and the driver is not the

⁴⁸ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 125(2)(b)

⁴⁹ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 125(2)(e)

⁵⁰ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(1)

⁵¹ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(3)

⁵² *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(4)(a)

⁵³ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(4)(b)

⁵⁴ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(4)(c)

⁵⁵ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(4)(d)

⁵⁶ *Vehicle and Traffic (Driver Licence and Vehicle Registration) Regulations 2010* (Tas) reg 126(4)(e)

			registered owner, a copy of the impounding determination will be given to the registered owner and to any operator as stipulated by s29AD(4)b of the <i>Traffic Act</i> ⁵⁷ .
ACT	<i>Road Transport (Driver Licencing) Act 1999 (ACT)</i>		<p>Section 9 stipulates that ‘information in the driver licence register or demerit points register is kept securely and disclosed with this Act or another law in force in the ACT’⁵⁸.</p> <p>After section 9 in the Act, the notes state that the Territory privacy principles in schedule 1 of the <i>Information Privacy Act 2014 (ACT)</i>⁵⁹. Additionally that access to the register may be sought under the <i>Freedom of Information Act 2016 (ACT)</i>⁶⁰.</p> <p>Under the Principle 6 of the <i>Information Privacy Act 2014</i>⁶¹, regarding information that a public sector agency collected for a particular primary purpose, the agency cannot disclose that information for another secondary purpose⁶² unless ‘the individual has consented to the use or disclosure of the information’⁶³. While not specifically defined in the <i>Information Privacy Act 2014 (ACT)</i>, according to the Office of the Australian Information Commissioner website regarding Australian Privacy Principle 6.77, primary purpose is taken to mean the original purpose of collection.⁶⁴</p> <p>The public sector agency may disclose information about an individual, if that ‘individual would reasonably expect the public sector agency to use or disclose the information for the secondary purpose’⁶⁵. This secondary purpose can either be for</p>

⁵⁷ *Traffic Act 1987 (NT) s 29AD(4)(b)*

⁵⁸ *Road Transport (Driver Licencing) Act 1999 (ACT) s 9*

⁵⁹ *Information Privacy Act 2014 (ACT) sch 1*

⁶⁰ *Freedom of Information Act 2016 (ACT)*

⁶¹ *Information Privacy Act 2014 (ACT) sch 1 Pt 1.3 (Principle 6)*

⁶² *Information Privacy Act 2014 (ACT) sch 1 Pt 1.3 (Principle 6.1)*

⁶³ *Information Privacy Act 2014 (ACT) sch 1 Pt 1.3 (Principle 6.1 (a))*

⁶⁴ "Chapter 6: APP 6 — Use Or Disclosure Of Personal Information", *Office Of The Australian Information Commissioner* <<https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-6-app-6-use-or-disclosure-of-personal-information/>>.

⁶⁵ *Information Privacy Act 2014 (ACT) sch 1 Pt 1.3 (Principle 6.2 (a))*

			<p>disclosure of ‘sensitive information-directly related to the primary purpose’⁶⁶ or ‘not sensitive information- related to the primary purpose’⁶⁷.</p> <p>The public sector agency may also disclose information when ‘a permitted general situation exists in relation to the use or disclosure of the information by the public sector agency’⁶⁸. ‘Permitted general situation’⁶⁹ is defined as when ‘it is unreasonable or impracticable to obtain the individual’s consent’⁷⁰ for disclosure and that ‘the agency reasonably believes that the collection, use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of an individual, or to public health or safety’⁷¹. Another ‘permitted general situation’⁷² is when ‘ the agency has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the agency’s functions or activities has been, is being or may be engaged in’⁷³ and ‘ the agency reasonably believes that the collection, use or disclosure is necessary in order for the agency to take appropriate action in relation to the matter’⁷⁴.</p> <p>The public sector agency may also disclose information if ‘the public sector agency reasonably believes that the use or disclosure of the information is reasonably necessary for 1 or more enforcement-related activities conducted by, or on behalf of, an enforcement body’⁷⁵.</p> <p>Section 8 of the <i>Freedom of Information Act 2016</i> (ACT) permits an agency ‘to release government information held by the agency to a person in response to an informal</p>
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⁶⁶ *Information Privacy Act 2014* (ACT) sch 1 Pt 1.3 (Principle 6.2 (a)(i))

⁶⁷ *Information Privacy Act 2014* (ACT) sch 1 Pt 1.3 (Principle 6.2 (a)(ii))

⁶⁸ *Information Privacy Act 2014* (ACT) sch 1 Pt 1.3 (Principle 6.2 (c))

⁶⁹ *Information Privacy Act 2014* (ACT) s 19(1)

⁷⁰ *Information Privacy Act 2014* (ACT) s 19(1)(a)(i)

⁷¹ *Information Privacy Act 2014* (ACT) s 19(1)(a)(ii)

⁷² *Information Privacy Act 2014* (ACT) s 19(1)(a)(ii)

⁷³ *Information Privacy Act 2014* (ACT) s 19(1)(b)(i)

⁷⁴ *Information Privacy Act 2014* (ACT) s 19(1)(b)(ii)

⁷⁵ *Information Privacy Act 2014* (ACT) sch 1 Pt 1.3 (Principle 6.2 (e))

			<p>request by the person.’⁷⁶ Division 5.1 of the Act, details a formal ‘access application’⁷⁷ process. Section 38⁷⁸ stipulates that when ‘disclosure of the information may reasonably be expected to be of concern to a person or another entity other than the Territory (<i>a relevant third party</i>)’⁷⁹, the agency must ‘take reasonable steps to consult with the relevant third party before deciding to give access to the information’⁸⁰. The disclosure of information is stipulated to ‘may reasonably be expected to be of a concern to a relevant third party’⁸¹ who is an individual⁸² when it is ‘personal information about the individual’⁸³ or when disclosure would reasonably be expected to, affect the person’s rights under the <i>Human Rights Act 2004</i>^{84,85}.</p> <p>Section 28(2)m of the <i>Road Transport (Driver Licencing) Act 1999</i> (ACT) allows provisions to be made ‘in relation to the disclosure of personal information in the driver licence register or demerit points register’⁸⁶.</p> <p>Licence history searches can be conducted with an application and a fee. However, unless they are approved by the Road Transport Authority, they require the written consent of the person subject to the search.</p>
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⁷⁶ *Freedom of Information Act 2016* (ACT) s 8

⁷⁷ *Freedom of Information Act 2016* (ACT) s 30

⁷⁸ *Freedom of Information Act 2016* (ACT) s 38

⁷⁹ *Freedom of Information Act 2016* (ACT) s 38(1)(b)

⁸⁰ *Freedom of Information Act 2016* (ACT) s 38(2)

⁸¹ *Freedom of Information Act 2016* (ACT) s 38(3)

⁸² *Freedom of Information Act 2016* (ACT) s 38(3)(a)

⁸³ *Freedom of Information Act 2016* (ACT) s 38(3)(a)(i)

⁸⁴ *Human Rights Act 2004* (ACT)

⁸⁵ *Freedom of Information Act 2016* (ACT) s 38(3)(a)(ii)

⁸⁶ *Road Transport (Driver Licencing) Act 1999* (ACT) s 28(2)(m)