

Please Quote: VRPC005490
(File No: PC018774)

Mr Josh Munro
Coroners Registrar
Coroners Court of Victoria
Level 11, 222 Exhibition Street
MELBOURNE VIC 3000

Dear Mr Munro

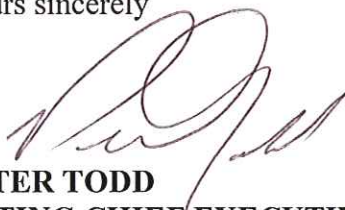
INVESTIGATION INTO THE DEATH OF GRAEME A DUNN

I refer to your letter dated 14 August 2013, regarding the coronial investigation into the death of Graeme Andrew Dunn.

I note the recommendations made by the Coroner, Ms Jane Hendtlass, on this matter. A written response to her recommendations is attached.

Should you require any further information, Mr Peter Taylor, VicRoads' Manager, Road Transport Policy (Tel: 9854 2903), would be pleased to assist.

Yours sincerely



PETER TODD
ACTING CHIEF EXECUTIVE

6/ 12 /2013

ENCL.



VicRoads' response to the recommendations of the Coroners Court in its Finding in the Inquest into the Death of Graeme Andrew Dunn

Heavy Vehicle National Law

VicRoads notes that all recommendations resulting from the inquest into the death of Graeme Andrew Dunn relate to laws and practices relevant to heavy vehicles. The following information regarding imminent changes to the national regulation of heavy vehicles is therefore provided as context for VicRoads' response to the Coroner's recommendations.

As the Coroner has acknowledged, a new body of heavy vehicle law, the Heavy Vehicle National Law (HVNL), will soon be applied in the majority of Australian States, including Victoria. The HVNL will be given effect in Victoria under the Heavy Vehicle National Law Application Bill 2013, which received Royal Assent on 4 June 2013. Once applied, existing Victorian law relating to heavy vehicles will, in most respects, be repealed. The current implementation date for this change is 10 February 2014.

Once the HVNL has commenced, responsibility for the administration and enforcement of the new law will rest with a new independent statutory authority, the National Heavy Vehicle Regulator (NHVR).

In a procedural sense, changes to the HVNL must be decided through a defined national process. The Standing Council on Transport and Infrastructure (SCOTI)¹ has responsibility for agreeing to the national law and any changes to it. Any vote on the national law, including any proposed amendments, will be carried upon the unanimous agreement of Ministers. SCOTI is advised by the Transport and Infrastructure Senior Officials' Committee (TISOC) and changes to the law are managed by the National Transport Commission (NTC). In proposing amendments to the Heavy Vehicle National Law, the NTC undertakes consultation with affected parties and government bodies.

VicRoads will therefore not be in a position to implement the Coroner's recommendations that involve amendments to the soon-to-be-repealed Victorian law, but will, where appropriate, refer the recommendations to the NHVR and the NTC for consideration by SCOTI as part of the ongoing development of national policies and legislation.

¹ The Standing Council on Transport and Infrastructure (SCOTI) comprises Commonwealth, State, Territory and New Zealand Ministers with responsibility for transport and infrastructure issues, as well as the Australian Local Government Association.

Recommendation 1

That VicRoads provide greater incentive for registered vehicle operators to report modifications that require re-registration by making the failure to do so within the relevant timeframe an indictable offence and by increasing the penalty. This would have the additional benefit of removing the 12 month time limit for prosecution.

This recommendation is supported in part and will be referred to the National Transport Commission.

VicRoads provides the following comments on the recommendation.

Indictable offences

Indictable offences are generally understood to be offences that are tried by both a judge and a jury in the higher courts, and are thus reserved for the most serious offences, which are normally offences involving deliberate or recklessly dangerous behaviour.

In Victoria, under Part 10 of the *Sentencing Act 1991*, an offence is indictable if it attracts a maximum penalty of at least 5 years imprisonment and/or a fine of 600 penalty units.

Under section 113A of the *Sentencing Act*, a summary offence can attract a term of imprisonment of up to 2 years -which can still reflect a serious offence. Most indictable offences are reserved for the *Crimes Act 1958*, although there are some exceptions to this, including two offences in the *Road Safety Act* that are expressed to be indictable.

The Coroner has noted the advantage of making the relevant offences indictable is that there is no time limit to prosecute an indictable offence, whereas prosecutions for summary offences must be brought within 12 months. However, it is possible to extend the time period for prosecution of summary offences, by including a provision to that effect in the legislation. Alternatively, leave of the court for an extension may be sought in exceptional circumstances. Thus the absence of a time limit is not in itself considered a sufficient justification for making an offence indictable.

For these reasons, VicRoads does not support the creation of an indictable offence.

Increased Penalties

VicRoads notes that the NTC is conducting a *Penalties Framework Review* of the HVNL which will consider the appropriateness of the monetary penalties that may be imposed by a court or via infringement notices, as well as the use of demerit points. The review will consider the penalties in light of principles of fairness, reasonableness and equity.

VicRoads will refer the Coroner's recommendation in regard to increased penalties to the NTC for consideration as part of this review.

Recommendation 2

That VicRoads, in addition to the ongoing requirement of notification pursuant to Regulation 225(3) of the Road Safety (Vehicles) Regulations 2009², require registered heavy vehicle operators to declare any repairs or modifications that change or may change the heavy vehicle's compliance with Australian Design Rules and roadworthiness requirements.

This recommendation will be referred to the National Transport Commission.

VicRoads provides the following comments on the recommendation.

Repairs vs modifications

The process of repairing the Meritor axle on the truck owned by Triainon Transport has been described variously as a *repair* and as a *modification*. VicRoads wishes to highlight that there can sometimes be a fine line between a repair and a modification. The distinction is important as these two types of vehicle work are treated differently by VicRoads and under both the current Victorian law and the new HVNL.

Through *Vehicle Standards Information Sheet – 8, Guidelines for Modifications of Vehicles*, VicRoads defines modifications as vehicle work that has the potential to affect a vehicle's compliance with the Standards for Registration, its structural integrity, the operation of its safety systems or its handling characteristics.

However, underlying these definitions is an understanding that, if the work being performed to a vehicle is to restore a damaged vehicle to the working condition prior to the damage, then the vehicle work may in fact be a repair and may not constitute a modification. In this way, a modification is limited to vehicle work that attempts to alter or change the way a vehicle or component performs.

In line with this, the provisions under regulations 21 and 56 of the *Road Safety (Vehicles) Regulations 2009* relating to vehicle modifications do not apply to repairs and may, potentially, not have applied in the case of the subject of this Coronial Inquest.

The definition of a vehicle modification under section 84 of the HVNL is currently under review. VicRoads will raise the importance of clarifying the distinction between a repair and a modification as highlighted by this case to the NTC for consideration as part of this review.

² The reference in recommendation 2 to regulation 225(3) of the Road Safety (Vehicles) Regulations 2009 may be a reference to regulation 225(3) of the 1999 version of the Road Safety (Vehicles) Regulations 2009. The equivalent reference in the 2009 Regulations is regulation 56(2).

Recommendation 3

That VicRoads provide greater incentive for registered vehicle operators to prevent drivers using vehicles that do not comply with the regulations. To do this, it should be an indictable offence for a registered vehicle operator to direct a driver to drive a non-compliant vehicle. The penalty attached to the offence should also be increased.

This recommendation is supported in part and will be referred to the National Transport Commission.

Please see the above comments with respect to indictable offences, in relation to this recommendation. A person who directs a driver to drive a non-compliant vehicle would be guilty of an offence under regulation 258 or 259 of the Road Safety (Vehicles) Regulations 2009.

However, once the HVNL commences, those regulations will no longer apply. The equivalent law will be sections 60 and 89 of the HVNL. Section 60 provides that "a person must not use, or permit to be used, on a road a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle." Section 89 provides that "a person must not use, or permit to be used, on a road a heavy vehicle that is unsafe". The offence in section 60 will carry a penalty of \$3000, or \$6000 where the standard that has been breached relates to a speed limiter. The offence in section 89 will carry a penalty of \$6000.

Thus, the equivalent offences will already carry a higher penalty than their Victorian counterparts.

As mentioned in the response to recommendation 1, the NTC is currently undertaking a review of penalties in the HVNL. VicRoads will refer this issue to the NTC to consider as part of this review.

Recommendation 4

That the National Heavy Vehicle Regulator ensure that the National Heavy Vehicle Accreditation Scheme is expanded to include all Victorian heavy vehicle operators who perform their own maintenance in-house.

This recommendation will be referred to the NHVR to be considered as part of a review of the National Heavy Vehicle Accreditation Scheme.

In October 2013, the New South Wales Minister for Roads and Ports, Duncan Gay, wrote to the NHVR requesting a review of the effectiveness of the NHVAS; in particular, a review of the effectiveness of the maintenance management of trucks enrolled in the scheme.

VicRoads will raise the Coroner's recommendation as part of this review.

Recommendation 6

That VicRoads review and re-publish their advice to heavy vehicle repairers in Victoria in the context of new arrangements involving the National Heavy Vehicle Regulator using Mr Dunn's death as an example of the long-term consequences of inappropriate repairs.

This recommendation will be implemented.

VicRoads currently provides repair advice in relation to vehicle body repairs on light vehicles in VicRoads' *Vehicle Standards Information Sheet 25*. This information sheet was developed to provide guidance for light vehicle body repairs under the written off vehicle repair scheme.

In consultation with relevant industry groups and the NHVR, VicRoads will re-draft *Vehicle Standards Information Sheet 25* to more broadly cover repairs to all vehicles types (motorcycles, trailers, light vehicles and heavy vehicles) and to components beyond the vehicle body.

Recommendation 9

That VicRoads require registered owners, operators and drivers of commercial heavy vehicles to undertake training in basic vehicle maintenance to enhance their understanding and appreciation of regular maintenance in an effort to improve safety awareness.

This recommendation will not be implemented; however an alternative action has been proposed

In order to impose a requirement as recommended by the Coroner, VicRoads would have to make a vehicle maintenance course a condition of registration. However, requiring heavy vehicle drivers, owners and operators to undertake compulsory vehicle maintenance training is a requirement that would apply to the driver, not the vehicle.

Alternatively, requiring all heavy vehicle operators and drivers to undergo mechanical training as a licence condition would create an insufficient nexus between the requirement and the vehicle, as it is possible to become a registered operator without actually being a driver. Such a condition would also impose a heavy regulatory cost to a significant sector of the public while addressing a problem that is limited to only a very small number of vehicles and crashes. It is therefore unlikely that such training could be justified on a cost/benefit analysis.

Further, as the Coroner's report outlined that the crack that caused the hub and wheel to detach from the axle was obstructed by fixed plates on the axle housing, in a practical sense it is unlikely that a basic maintenance course would result in this type of defect being noticed or remedied.

Nevertheless, VicRoads' guidance to heavy vehicle licence holders, *the Victorian Bus and Truck Drivers' Handbook* states that drivers must carry out daily inspection of their vehicles before they are driven, which includes a check for vehicle damage. VicRoads will clarify this section to further outline owners' and drivers' responsibility to ensure that the vehicle they are driving has had any crash damage repaired correctly.

Also the Council of Australian Governments Standing Council on Transport and Infrastructure has agreed to a review of the National Heavy Vehicle Accreditation Scheme, to be led by the National Heavy Vehicle Regulator, and to bring forward to 2013-14 the National Transport Commission's scheduled review of heavy vehicle inspection regimes.

Recommendation 10

That VicRoads undertake or authorise a prevention study to provide insight into motivational factors behind heavy vehicle operators use of their vehicles when they have not been properly maintained.

This recommendation will be referred to the National Transport Commission and the National Heavy Vehicle Regulator.

The Coroner has recommended studying the motivational factors behind heavy vehicle operators' use of vehicles when they have not been properly maintained. Heavy vehicle maintenance is a national issue and it is considered that such a study be undertaken on a national basis.

It is VicRoads' preliminary view that issues of heavy vehicle maintenance and usage are primarily driven by the economics of heavy vehicle ownership. It is also reasonable to assume that some heavy vehicle operators trade off productivity against the need to regularly maintain their vehicle.

There are also underlying economic factors behind the average age of the heavy vehicle fleet (17 years for heavy rigid vehicles and 12.1 years for articulated trucks). Replacement times for vehicle are generally driven by the cost of operating the vehicle against the cost of replacement.

VicRoads will recommend that a study be undertaken as part of the National Heavy Vehicle Regulator's forward work program.

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