

Submission to: The National Transport Commission

Title: Review of the Australian Road Rules and
Australian Vehicle Standards Rules: Draft
Evaluation report

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1. Introduction

The National Transport Commission (NTC) has stated the objective of this review is to assess whether the Australian Road Rules (ARR) and the Australian Vehicle Standards Rules (AVSR) have met their intended outcomes and if it is necessary to improve the framework of the rules.

The heavy vehicle industry, more than any other road user, is confronted with different road rules daily. Particularly, if drivers are travelling from the West to the East or vice versa. The lack of national unity is an unnecessary burden that affects road safety and driver operation on Australia's roads.

The model law approach has not produced the best outcomes for road users and now the time has come to move to an applied law approach. The NTC have addressed the concerns of states and territories in changing the framework.

A national safety approach is needed in order to ensure intrastate, interstate, and foreign drivers can travel on all of Australia's public roads safely, and are compliant with the road rules.

2. Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include state and sector based trucking associations, some of the nation's largest transport companies, and businesses with leading expertise in truck technology.

3. Recommendations

Recommendation 1

The ATA recommends the NTC continue to work towards an applied law approach for Australian Road Rules (ARR) and Australian Vehicle Standard Rules (AVSR). An applied law approach will produce better road safety outcomes for Australia.

Recommendation 2

The ATA recommends the NTC not pursue its second draft recommendation and focus instead on the core activity of achieving national uniformity through an applied law approach to ARR and AVSR.

Recommendation 3

The ATA recommends the NTC should publish its forward maintenance work program in its annual report and improve stakeholder consultation in the area of road rules.

Recommendation 4

The NTC should use the national heavy vehicle regulator model as a mechanism for transitioning to model law to an applied law approach for ARR and AVSR.

4. Specific issues

4.1 National uniformity

The NTC summarises that there is a desire for a 'better joined-up government process', and it is positive to see that this recommendation has also been the view of many states and territories. There is clearly a need for better co-ordination of policy issues that affect multiple levels of government, specifically on matters affecting road safety.

In order for better communication to come to fruition a high level reference group could be established to co-ordinate broader policy and obtain expert input for policy development before issues are provided to the NTC for rule changes. The NTC believe the Transport Infrastructure Senior Official Committee (TISOC) is the best placed body to address this issue.

The ATA endorses draft recommendation 1 - 'the TISOC consider and implement processes and procedure designed to achieve more coordinated 'whole of government decisions for transport'.

4.2 The inclusion of national transport policy objectives and principles in the Rules

The NTC has recommended that the ARR and AVSR take account of the former Australian Transport Council (ATC) national transport policy visions, objectives and principles.

The NTC has also been criticised in the past for not sticking to its knitting and diverting its resources away from achieving core transport objectives. NTC's second draft recommendation is unnecessary and community expectations for transport should have been classed as an out-of-scope topic and left to responsible entities with the resources to address social issues properly.

The fact remains Australia does not have a uniform application of ARR and AVSR. Maybe when national uniformity for road users has been achieved through ARR and AVSR, then an entity (not the NTC) can examine social outcomes in the ARR and AVSR; if it is seen as a benefit for all road users.

4.3 Have objectives of the ARR and AVSR been met?

Evidence presented by the NTC indicates that while the reasoning behind the ARR is sound and straightforward the application of the original applied law has not been uniform in coverage.

The legal audit, which examined the significance of rule variations across states and territories found that 'state specific road rules varied by 3.6% from the national rules. Of the 100 variations across Australia, Western Australia accounted for 87'¹. This indicates that the model law approach to ARR has not produced optimum outcomes for road users.

The NTC state that the deviation in Western Australia has had minimal effect on road users. This leads to the question, if the effect is minimal why is the deviation necessary? Any state or territory that wishes to deviate from national model or applied law should give explicit reasons for the deviation and present a regulatory impact statement on the effects the deviation is likely to have.

The NTC's third draft recommendation supports updating the Australian Road Rules to introduce uniform rules throughout Australia for all road users; and to specify behaviour that supports the safe and efficient use of the road system.

The ATA supports the draft recommendation.

¹ Page 16 - NTC Review of the Australian Road Rules and Vehicle Standards Rules 2013

The NTC commitment to monitor national reforms the NTC helped develop (including the AVSR and ARR) and publish a performance report in its annual report from 2013 onwards, is a positive step. The ATA has recommended that there should be increased benchmarking of state and territory performance and the inclusion of a national uniformity score would increase the transparency in variations that are not currently easily accessible.

There appears to be greater national consistency with the AVSR, as the legal audit found only a 0.3% departure from national laws. National consistency has nearly been achieved. The NTC note the improvement in AVSR application is due to increased activity in this area from the National Heavy Vehicle Regulator (NHVR).

4.4 Why an applied approach should be adopted

States and territories have five main concerns in removing the current model law approach which have been mostly addressed by the NTC.

- 1) The model law works well and has produced good outcomes

The model law approach should be viewed against what outcomes would have been produced if the applied law approach to the ARR and AVSR had been enacted in 1999, as the former ATC intended .

The legal audit results show there has not been a national application of model laws. There are specific differences that expose drivers to additional safety risk.

- 2) The model law approach provides states and territories with flexibility

The flexibility accompanied with model laws may seem attractive to government. However, we are discussing safety and compliance-related road rules. We would expect states and territories to want similar if not exact road safety outcomes. The flow on effects of changing a model law is simply a consideration, not a constraint to changing to an applied law approach.

The NTC paper states that “There is little reason to believe the model law approach can produce significantly improved outcomes in this respect, it has consistently led to widely varied implementation periods over 15 years²”.

The flexibility in application has presented differing implementation times. Removing the flexibility of implementation would improve the situation with a shorter gap between full roll out.

- 3) The model law approach allows states and territories to innovate

The NTC has stated that under an applied approach states and territories will retain the right to amend the road rules. Under an applied approach, the advantage is that new road rules will be made explicit to road users in all states or territories to which the Act applies.

- 4) States and territories want to retain their right to control their laws.

As stated above, states and territories can still produce their own road rules through the applied law system. The applied law approach may also prove to be a valuable system for states and territories to re-evaluate non-uniform rules. For instance, the individual state law which Victoria cites as the benefit of model law (i.e. that of taking lawful U turns) may need to be considered in the broader road safety application.

² Page 30 - NTC Review of the Australian Road Rules and Vehicle Standards Rules 2013

5) Staying with the model law approach will be cheaper than changing to an applied law approach

We cannot forget that applied law for ARR and AVSR was introduced in 1999; however, the majority of states and territories, apart from NSW and the ACT, did not comply with the ATC ruling. If all state and territories had implemented applied law the costs today would be zero, as applied law would be in force.

The NTC has yet to finalise its cost benefit analysis to see whether an applied law approach would be financially viable. The qualitative approach would suggest that an applied law approach would achieve uniform laws and improve road safety.

An advantage to road users of the applied law approach is that any differences in state or territory rules will be clear and understandable. Any divergence from the national rules will need to be included in the legislation or regulation of the state or territory that is making the deviation.

There are also savings to be made for road agencies through an applied law approach. Co-financed joint national communications could be coordinated to introduce new rules and updates.

There is also a very important opportunity to harmonise learner driver manuals. People learning to drive, regardless if it is a light or heavy vehicle, need to be provided with clear consistent information on road rules. A national approach to road safety would be the most favourable outcome. An applied law approach would provide this.

Given the NTC evidence provided, the ATA supports the NTC's draft Recommendation 4.

The NTC's Recommendation 5 states that applied law approaches should be prepared for light vehicles. As the heavy vehicle standards rules are picked up in the NHVR this application is appropriate.

4.5 Implementation plan

The NTC is keen to finalise an execution plan for a transition to applied law for ARR and AVSR. The NTC has identified the NHVR implementation mechanism as an appropriate example to follow.

Identifying Queensland as the jurisdiction to implement the changes to the ARR and AVSR applied laws may present timing issues with new NHVR law.

The NTC suggests improvements for new and updated rules would be an enhancement on the current system of sporadic implementation of road rules.

The publishing of the forward maintenance work program, as part of the NTC's strategic planning process, and improving stakeholder consultation, will ensure that research priorities are planned and undertaken across the transport sector.

It is very important that industry is consulted on specific road rules that may affect the heavy vehicle industry.

These changes will improve the transparency surrounding the NTC's work in harmonising road rules. The ATA endorses the NTC draft recommendations 6 and 7.

4.6 Performance based, prescriptive or advisory rules

As stated in the previous ATA submission, prescriptive rules provide drivers and enforcement with defined rules that explain offences better to drivers and do not present the vagueness of performance based rules.

4.7 Industry experience with the National Heavy Vehicle Regulator

The ATA has supported national consistency in road rules. The creation of the NHVR is set to harmonise heavy vehicle national law and be a one stop shop for heavy vehicle related issues such as access permits.

The industry has embraced the concept of the NHVR, given the frustrating process which existed operators had to deal with individual states in laws and application processes.

NHVR is enacted through an applied law approach, which has proved to be moderately successful. However, one state, Western Australia, has not signed the intergovernmental agreement and this limits the future success of the NHVR and the full national harmonisation of heavy vehicle laws and applications for the industry.

The applied law approach has given states and territories flexibility to stick to specific state laws. For instance, NSW has retained a unique speed limiter fault deeming provision - outside nationally agreed policy. While this is not an outcome that industry supports, the applied law approach has not stopped NSW from implementing this variation. However, only two truck-related differences now remain, which is far fewer than before.

Nevertheless, from industry's perspective, if an applied law approach does not provide a hundred per cent commitment to the enacted state law, road users will view the mechanism as a failure, and little better than the model law approach. Hence, applied law must be robust, contain only justified derogations, transparent and be fed back into the policy review process. In other words, if the derogation is really valid, why is it not applied law?

5. Conclusion

As noted in this submission, the ATA supports a move to an applied law approach for road rules and vehicle standards, as it will produce better road safety outcomes due to consistent rules across the nation. However, the fact is that the road rules and vehicle standard rules were originally envisaged as being an applied law approach in 1999. This approach had to be abandoned in 2004 due to the majority of states not adopting the applied approach. States and territories need to be genuinely committed to national uniformity and their role in national road safety if the applied law approach is to be successful.

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