

**EVALUATION OF THE
IMPLEMENTATION OF THE
VEHICLE STANDARDS**

REPORT

March 2007



National Transport Commission

**Prepared by
Peter Rozen (Barrister)**

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Evaluation of the Implementation of the Vehicle Standards - Report

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REPORT OUTLINE

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Type of report:	Final Report
Objectives:	To evaluate and report on the implementation of nationally agreed road transport reforms
NTC Programs:	Monitoring, Maintenance and Review
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Abstract:	This report examines whether the State and Territory legislation and administrative documents that implement the nationally agreed <i>Road Transport Reform (Vehicle Standards) Regulations 1999</i> and the <i>Australian Vehicle Standards Rules</i> are uniform or consistent with these regulations.
Purpose:	Report for public release
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FOREWORD

The 2003 Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport gives the National Transport Commission responsibility for the monitoring of national transport reforms approved by the Australian Transport Council.

To fulfil this responsibility for the *Road Transport Reform (Vehicle Standards) Regulations 1999* and the *Australian Vehicle Standards Rules 1999*, the National Transport Commission undertook an evaluation of the implementation of these reforms by States and Territories.

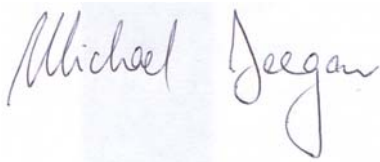
The consultant examined the extent to which each jurisdiction in Australia (the Commonwealth has an exemption from the Australian Transport Council) adopted the reforms and this report identifies any variances.

The evaluation focused on the intent of these reforms and outcomes achieved, rather than strict adherence to the 'black-letter law' of the Regulations and Rules. Therefore, jurisdictions' administrative procedures and guidelines, as well as relevant legislation, were considered.

Road agencies were consulted during this process to assist the consultant in understanding the mechanisms used by the agencies in implementing the reform.

The National Transport Commission has been critical, in some cases, of the lack of national consistency in implementation of national reforms agreed by Ministers sitting as the Australian Transport Council with consequences for safety and productivity outcomes (e.g. Effectiveness Review of the Oversize and Overmass Regulations, Mass and Loading Regulations and Restricted Access Vehicle Regulations). However, in this case, there has been broad acceptance and national alignment of model vehicle standards across all jurisdictions, and those involved are to be commended.

I would like to express my appreciation for the assistance of officers in each road agency for providing valuable information to assist in the finalisation of this report. I would also like to acknowledge the work of the consultant, Mr Peter Rozen of Counsel, for the preparation of the report and the National Transport Commission's Senior Policy Analyst Greg Deimos.

A handwritten signature in blue ink that reads "Michael Deegan". The signature is written in a cursive style and is positioned above a light blue rectangular stamp.

Michael Deegan
Chairman

SUMMARY

This report was commissioned by the National Transport Commission to examine how States and Territories have implemented the *Road Transport Reform (Vehicle Standards) Regulations 1999* (the Regulations) and the *Australian Vehicle Standards Rules 1999* (the Rules).

The Regulations were introduced to make provision in relation to the application of Vehicle Standards as laws of the Australian Capital Territory and the Jervis Bay Territory (extended to all States and Territories). The Rules were introduced to set standards about the construction and performance of motor vehicles, trailers and combinations that are uniform throughout Australia.

The evaluation of the implementation of the reform found that there is a high level of uniformity throughout the jurisdictions. Where there are departures from the national model rules, this is generally because of local factors. For example, provisions regarding road trains have not been implemented in Tasmania, because the topography and infrastructure in that State are not suitable for road trains, and there is no provision in any legislation to allow them.

In the preparation of this report States and Territories were asked to provide links to their legislation and administrative instruments that introduced the Regulations and Rules in the jurisdictions. This information was passed on to the consultant who compared the jurisdictional provisions (as provided) with the national reform. The consultant then prepared individual reports for each State and Territory. These reports were forwarded confidentially to the States and Territories and comments addressing any variances were returned to the consultant for further consideration. Taking this information into account the consultant compiled the final report.

The methodology included a comparison rating where:

- “uniform/consistent” (symbol U) – where the State or Territory was considered to be the same as the national reform (identical), or if not the same, the variance has no material effect on the intent of the reform; or
- “moderately inconsistent” (symbol M) – where the State or Territory was considered, in some respect, to differ from the national reform. In the circumstances where a material difference was considered to have an impact on nationally consistent outcomes of the national reform. States or Territories affected were asked for a response. This is shown in Table 3 of Schedule 2, whereas Table 4 shows where no further action is required; or
- “significantly inconsistent” (symbol I) – where the State or Territory was considered to differ appreciably from the national reform. In the circumstances where it was considered that there may be an impact on the national reform States or Territories affected will be asked for a response and this is shown in Table 1 of Schedule 2, whereas Table 2 shows where no further action is required.

To determine whether the reforms need to be amended (where there is a significant or moderate variance) the National Transport Commission must first determine whether the State or Territory which has varied from the reform has done so because of local issues or because of any perceived deficiency in the national reform. The Commission requested when responding to Table 1 and Table 3 of Schedule 3 that States and Territories provide answers to the following three questions:

- will the relevant provision of the national reform be adopted without modification (if so, when?); or
- if the relevant provision of the national reform will not be adopted for “local” reasons, what are they?; or
- is the relevant provision of the national reform in some way deficient and should be amended (relevant information and evidence should be provided)?

The National Transport Commission will consider all comment received before remitting moderate or significant variances to a maintenance group for consideration of resolution.

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1. INTRODUCTION

The National Transport Commission (NTC) is established by the *National Transport Commission Act 2003* (Cth) which was enacted to give effect to the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* (IGA) of December 2003.

The report is prepared as part of the NTC's responsibility to "monitor implementation of Agreed Reforms by the Parties and regularly report to the [Australian Transport] Council".¹

This report is concerned with the implementation by the Australian jurisdictions² of the:

1. Model *Road Transport Reform (Vehicle Standards) Regulations 1999* (the Regulations); and the
2. Model *Australian Vehicle Standards Rules 1999* (the Vehicle Standards).

Clause 12.1 of the IGA commits the parties of the IGA (each of the jurisdictions) the jurisdictions to use "their best endeavours to implement and maintain agreed Reforms in a uniform or nationally consistent manner". Such reforms "will be either referenced and/or substantively implemented in the Parties' legal and administrative frameworks, the choice being at the individual Party's discretion".³

1.1 The Regulations

The Regulations and the Vehicle Standards were made pursuant to s. 7 of the *Road Transport Reform (Vehicles and Traffic) Act 1993* (Cth) (the Vehicles and Traffic Act).

Regulation 3 of the regulations provides that:

The object of the regulations is to make provision in relation to the application of the Vehicle Standards as laws of the Australian Capital Territory and the Jervis Bay Territory.

Broadly speaking, the structure of the Regulations is that Part 1 'Preliminary' is concerned with such matters as incorporating the Vehicle Standards into the regulations, defining key terms, the status of notes and examples and the identification of offence provisions.

Part 2 is entitled 'Obligations of drivers and operators'. Regulations 9 and 10 explain what is meant by an "operator" of a "motor vehicle or trailer" and a "combination", respectively. There are also provisions in Part 2 that address vehicles that do not comply with the regulations.

Part 3 is entitled 'Exemptions made by the Minister'. The provisions in this Part are concerned with the making, amendment and revocation of exemptions that may be granted by the Minister pursuant to s. 17 of the Vehicles and Traffic Act.⁴

¹ *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* ('IGA'), Clause 5.1(f).

² i.e New South Wales, Queensland, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory, Victoria and Western Australia (the Commonwealth has a Ministerial exemption).

³ IGA, Clause 12.4(d).

⁴ Section 17 provides:

Part 4 of the Regulations is entitled 'Exemptions given by the Authority'. The Part confers on the regulatory authority the power to give, amend and revoke exemptions from provisions of the Regulations and the Vehicle Standards. Part 4 also contains provisions which allow an applicant for an exemption to seek a reconsideration and review of any such decision.

Finally, Part 5 includes miscellaneous provisions, including regulation 41 which addresses the application of the *Criminal Code Act 1995* (Cth) to the Regulations.

1.2 The Vehicle Standards

Rule 2 of the Vehicle Standards provides:

- (1) *The object of the Vehicle Standards is to set standards, about the construction and performance of motor vehicles, trailers and combinations that are uniform throughout Australia.*
- (2) *The standards are intended:*
 - (a) *to promote, throughout the life of motor vehicles, trailers and combinations, their safe use and efficiency and the protection of the environment; and*
 - (b) *to reduce the cost of transport administration.*

The Vehicle Standards are divided into 14 Parts and contain 176 Rules.

1.3 Jurisdictional legislation implementing the Regulations and the Vehicle Standards

State and Territory transport agencies were requested to specify the legislation that implements the Regulations and the Vehicle Standards in their respective jurisdictions. The legislation specified is listed in Schedule 1.

1.4 Identified variances

Schedule 2 shows those regulations or and rules that were identified as either moderately or significantly inconsistent with the Regulations and Vehicle Standards.

1.5 Schedule of Identified Differences

Schedule 3 summarises each regulation or rule in respect of which a variance has been identified and describes the position of the relevant State or Territory relation to the variance. Matters contained in Tables 1 and 2 require a response from the State or Territory named, whereas matters in Table 3 require no response as no further action was considered necessary.

-
- (1) *The Minister may, in accordance with the regulations and by notice in writing, declare that a specified requirement of the regulations does not apply to a specified person or vehicle.*
 - (2) *An exemption under subsection(1):*
 - (a) *applies only in the jurisdiction in which it is made; and*
 - (b) *may be unconditional or subject to specified conditions.*

SCHEDULE 1

Jurisdictional legislation implementing the Vehicle Standards

Victoria

The Victorian Road Safety (Vehicles) Regulations 1999 (the Victorian Regulations) came into effect on 1 May 1999 (reg 103). These regulations were made pursuant to the *Road Safety Act 1986* (VIC).

The scope of the Victorian Regulations is considerably broader than that of the Road Transport Reform (Vehicle Standards) Regulations 1999 (the Vehicle Standards Regulations). An aspect of the Victorian regulatory scheme is that a “vehicle” or “trailer” may not be used on a “highway” unless the vehicle or trailer is registered. A vehicle is only eligible to be registered if it complies with “the standards for registration” for the vehicle (regulation 202 of the Victorian Regulations). The phrase “standards for registration” is defined in regulation 105 of the Victorian Regulations as “the Vehicle Standards set out in Schedule 8.

The Vehicle Standards are implemented in Victoria as schedule 8 of the Road Safety (Vehicles) Regulations 1999.

Tasmania

The Tasmanian Vehicle and Traffic (Vehicle Standards) Regulations 2001 (the Tasmanian Regulations) came into effect on 24 October 2001 and were made pursuant to the *Vehicle and Traffic Act 1999* (TAS).

The scope of the Tasmanian Regulations is considerably broader than that of the Vehicle Standards Regulations. An aspect of the Tasmanian regulatory scheme is that a “motor vehicle” or “trailer” may not be used on a “public street” unless the vehicle or trailer is registered. A vehicle is only eligible to be registered if it complies with the vehicle standards (regulation 9 of the Tasmanian Regulations).

The Vehicle Standards are implemented in Tasmania as the Vehicle and Traffic (Vehicle Standards) Regulations 2001.

South Australia

There are no South Australian regulations which expressly implement the Vehicle Standards Regulations. However, provisions of the *Road Traffic Act 1961* (SA) address the same subject matter as is regulated by the Vehicle Standards Regulations.

The Vehicle Standards are implemented in South Australia by the Road Traffic (Vehicle Standards) Rules 1999.

Queensland

The Queensland Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999 came into effect on 1 October 1999 (Section 2) and laws made pursuant to the *Transport Operations (Road Use Management) Act 1995* (Qld).

The scope of the Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999 is considerably broader than that of the Vehicle Standards

Regulations. An aspect of the Queensland regulatory scheme is that a “vehicle” may not be driven or parked unless it complies with the “vehicle standards” for the vehicle.

The Vehicle Standards are implemented in Queensland as Schedule 1 of the Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999.

Northern Territory

The Northern Territory *Motor Vehicle (Standards) Regulations* came into effect on 1 May 2003 and were made pursuant to the *Motor Vehicles Act* (NT). The scope of the *Motor Vehicle (Standards) Regulations* is considerably broader than that of the Vehicle Standards Regulations.

The Vehicle Standards are implemented in the Northern Territory as Schedule 6 of the *Motor Vehicle (Standards) Regulations*.

New South Wales

The New South Wales *Road Transport (Vehicle Registration) Regulation 1998* came into effect on 29 June 1998 (Rule 2) and were made pursuant to the *Road Transport (Vehicle Registration) Act 1997* (NSW).

As its name indicates, the *Road Transport (Vehicle Registration) Regulation 1998* is concerned with the registration of vehicles in that State. Therefore, its scope is considerably broader than that of the Vehicle Standards Regulations. An aspect of the NSW regulatory scheme is that a “registrable vehicle” may not be used unless it complies with the “applicable vehicle standards” for the vehicle.

The Vehicle Standards are implemented in New South Wales as schedule 4 of the Road Transport (Vehicle Registration) Regulation 1998.

Australian Capital Territory

The Australian Capital Territory’s *Road Transport (Vehicle Registration) Regulation 2000* came into effect on 1 March 2000 and were made pursuant to the *Road Transport (Vehicle Registration) Act 1999* (ACT).

The scope of the *Road Transport (Vehicle Registration) Regulation 2000* is considerably broader than that of the Regulations.

Chapter 3 of the *Road Transport (Vehicle Registration) Regulation 2000* is concerned with the process of registering vehicles. A “registrable vehicle” is eligible to be registered if the vehicle “complies with the applicable vehicle standards” (section 26). Section 103 defines the “applicable vehicle standards” for a vehicle as “the requirements mentioned in schedule 1 that apply to the vehicle” (section 103).

The Vehicle Standards are implemented in the ACT as Schedule 1 of the Road Transport (Vehicle Registration) Regulation 2000.

Western Australia

The Western Australian *Road Traffic (Vehicle Standards) Regulations 2002* came into effect on 1 November 2002 (regulation 2) and were made pursuant to section 111 of the *Road Traffic Act 1974* (WA).

SCHEDULE 2

Table Comparing the Commonwealth Vehicle Standards Regulations and the Vehicle Standards with the Implementing Legislation and Policies of the Various Jurisdictions (only showing rules where there is a variance)

Code:

U = uniform/consistent

M = moderately inconsistent

I = significantly inconsistent

Clause Number	VIC	TAS	SA	QLD	NT	NSW	ACT	WA
Vehicle Standards Regulations								
6	U	U	I	U	U	U	U	U
7	I	U	I	U	U	I	U	I
10	U	U	M	U	U	U	U	U
16-20	U	U	I	U	U	U	U	U
21-40	U	U	I	U	U	U	U	U
Vehicle Standards Rules								
6	U	U	U	U	U	U	U	M
11	U	U	U	I	U	U	U	U
16	U	U	U	I	U	U	U	U
33	U	U	U	U	U	U	U	M
69	U	U	U	U	U	U	U	U
73	U	U	U	M	U	U	U	U
115	U	U	U	U	U	U	U	U
135	U	I	U	U	U	U	U	U
136	U	U	U	U	U	U	U	U
137	U	I	U	U	U	U	U	U
138	U	M	U	U	U	U	U	U
139	U	M	U	U	U	U	U	U
140	U	M	U	U	U	U	U	U
141	U	M	U	U	U	U	U	U
142	U	M	U	U	U	U	U	U

Clause Number	VIC	TAS	SA	QLD	NT	NSW	ACT	WA
159	U	I	U	U	U	U	U	U
160	U	M	U	U	U	U	U	U
161	U	M	U	U	U	U	U	U
163	U	M	U	U	U	U	U	U
164	U	M	U	U	U	U	U	U
165	U	M	U	U	U	U	U	U
166	U	M	U	U	U	U	U	U
167	U	M	U	U	U	U	U	U
168	U	I	U	U	U	U	U	U
169	U	I	U	U	U	U	U	U
170	U	I	U	U	U	U	U	U
171	U	I	U	U	U	U	U	U
172	U	U	U	I	U	U	U	U
173	U	U	U	I	U	U	U	U
175	U	U	U	I	U	U	U	U

SCHEDULE 3

Identified Differences

Introduction

Material differences identified in the report were categorised by the independent consultant as uniform, moderately inconsistent or significantly inconsistent. A comprehensive table of the findings of uniform, significant inconsistency or moderate inconsistency is attached to the December 2006 report on *Evaluation Implementation of the National Vehicle Standards*. The **Tables** in this Schedule are to assist in the understanding of the nature of the differences.

A reference to “Rule” is a reference to the Vehicle Standards and a reference to “Regulation” is a reference to the Road Transport Reform (Vehicle Standards) Regulations 1999.

To assist the NTC to determine future direction with matters that were considered inconsistent and for which responses were sought from the States and Territories, the NTC requested that when responding to Table 1 and Table 3, answers to the following three questions were incorporated:

- will you adopt the relevant provision of the national reform without modification (if so, when?); or
- if you will not adopt the relevant provision of the national reform for “local” reasons (if so, what are they?); or
- if you believe the relevant provision of the national reform is in some way deficient and should be amended (relevant information and evidence should be provided).

Table 1 – Items of significant inconsistency to be referred to the jurisdiction for response

Principle number	Description and Issue
Rule 11	<i>Rule 11 states that a provision the Vehicle Standards does not apply to a vehicle or combination if it is exempt from: (a) the provision under another law of this jurisdiction; or (b) the corresponding provision of the law of another jurisdiction.</i>
	Queensland There is no equivalent provision in the Queensland legislation.
Rule 16	<i>Rule 16 states that a reference to a national standard is a reference to a national standard as in force from time to time (a “national standard” is a national standard under the Motor Vehicle Standards Act 1989 of the Commonwealth (rule 15))</i>
	Queensland There is no equivalent provision in the Queensland legislation.
Rule 173	<i>Rule 173 provides that a restored vehicle is taken to have been built when it was originally built.</i>
	Queensland There is no equivalent provision in the Queensland legislation.
Rule 175	<i>Rule 175 provides that for the Vehicle Standards, a distance between 2 parallel lines is measured at right angles between the lines.</i>
	Queensland There is no equivalent provision in the Queensland Schedule.

Table 2 – Items of significant inconsistency where no further action is proposed because the inconsistency has no material effect on the intent of the national reform.

Principle number	Description and Issue
Regulation 6	<i>Notes are used throughout the Regulations and regulation 6 explains that a note is explanatory and is not part of the regulations.</i>
	<p>South Australia</p> <p>There is no equivalent provision in the South Australian legislation.</p>
Regulation 7	<i>Examples are used throughout the Regulations and regulation 7 explains that an example is part of the Regulations, but is not exhaustive and does not limit (but may extend) the meaning of the provision and states that the example and the provision must be read in the context of each other, but if there is an inconsistency the provision prevails.</i>
	<p>Victoria</p> <p>There is no equivalent provision in the Victorian legislation. However, Victoria advises that examples will form part of its Regulations when re-made in 2009.</p>
	<p>South Australia</p> <p>There is no equivalent provision in the South Australian legislation.</p>
	<p>New South Wales</p> <p>There is no equivalent provision in the New South Wales legislation.</p>
	<p>Western Australia</p> <p>There is no equivalent provision in the Western Australian legislation.</p>
Regulations 16-20	<p><i>Regulation 16 provides that the Minister under section 17 of the Road Transport Reform (Vehicle and Traffic) Act 1993 may declare that a person or vehicle is exempt from a specified provision of the Vehicle Standards.</i></p> <p><i>Regulations 17 – 20 deal with when exemptions may be amended, when they may be revoked, compliance with conditions and notices.</i></p>
	<p>South Australia</p> <p>There are no equivalent provisions in the South Australian legislation.</p>

Principle number	Description and Issue
Regulations 21-40	<p><i>These provisions deal with the Authority:</i></p> <ul style="list-style-type: none"> • <i>giving, amending and revoking exemptions on application;</i> • <i>certain provisions about exemptions;</i> • <i>amending and revoking exemptions other than on application;</i> <i>and</i> • <i>reconsideration and review of decisions about exemptions.</i> <p>South Australia</p> <p>There are no equivalent provisions in the South Australian legislation.</p>
Rules 135, 137, 159 and 168-171	<p><i>These rules relate to specific road train requirements.</i></p> <p>Tasmania</p> <p>There are no equivalent provisions in the Tasmanian provisions. Tasmania's topography and infrastructure is not suitable for road trains, and there is no provision in any legislation to allow them.</p>
Rule 172	<p><i>Rule 172 states that a vehicle is taken to have the equipment mentioned in the Vehicle Standards only if the equipment is in working order.</i></p> <p>Queensland</p> <p>The Queensland response in the 1st round consultation was that this provision is given effect by regulations 5(a), 5(d) and 5(e) of the Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulations 1999. However, these regulations do not specifically state that the equipment must be in working order.</p>

Table 3 – Items of moderate inconsistency to be referred to the jurisdiction for response

<i>Principle number</i>	<i>Description and Issue</i>
Rule 33	<i>The rule makes detailed provision for the location and effectiveness of mudguards and spray suppression.</i>
	Western Australia Rule 27 of the Western Australian rules implements this provision. However, it does not implement the requirement for spray suppression on B-doubles.

Table 4 – Items of moderate inconsistency where no further action is proposed because the inconsistency has no material effect on the intent of the national reform.

Principle number	Description and Issue
Regulation 10	<p><i>Regulation 10 provides a definition of “operator” of a combination as the “registered operator” of the first or only vehicle forming part of the combination. Regulation 10(2) states that if another person is responsible, that other person is also the operator of the combination.</i></p> <p>South Australia</p> <p>The duty concerning compliance of a vehicle with the Vehicle Standards is imposed under the South Australian Act on the “operator” and the “owner” of the vehicle (section 112). These terms are defined in s. 5 of the South Australian Act. However, the definition does not extend to a person responsible for the maintenance of the vehicle.</p> <p>Although the variance is moderate it should not affect the overall intent of the reform.</p>
Rule 6	<p><i>Examples are used throughout the Rules and rule 6 explains that an example is part of the Rules, but is not exhaustive and does not limit (but may extend) the meaning of the provision and states that the example and the provision must be read in the context of each other, but if there is an inconsistency the provision prevails.</i></p> <p>Western Australia</p> <p>There is no equivalent provision in the Western Australian legislation.</p>
Rule 73	<p><i>Rule 73(1) defines the term ground clearance. Rule 73(2) describes the ground clearance for a motor vehicle or combination.</i></p> <p>Queensland</p> <p>The Queensland provision is reg 27 of the Transport Operations (Road Use Management – Mass, Dimension and Loading) Regulations 2005, which provides similar provisions to rule 73(1) and (2). However, the Queensland provision does not have the exemption provided by rule 73(3) for vehicles with less than 4 wheels.</p> <p>Additionally the Queensland provision relates to “vehicles” defined under their <i>Transport Operations Road Use Management Act 1995</i>; <i>vehicle</i> includes any type of transport that moves on wheels and a hovercraft but does not include a train or tram. However, rule 73 relates to a motor vehicle or combination (the Queensland provision is broader).</p>

Principle number	Description and Issue
Rules 138 – 142, 160 & 161, 163 - 167	<p><i>These rules relate to specific road train requirements.</i></p> <p>Tasmania</p> <p>There are no equivalent provisions in the Tasmanian provisions. Tasmania's topography and infrastructure is not suitable for road trains, and there is no provision in any legislation to allow them.</p>