

THE AUSTRALIAN ROAD RULES – WHAT ARE THEY AND WHERE ARE THEY GOING?

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“Motoring in Australia is daily taking on more of a national aspect by shedding its earlier parochial garb. Yet there are few fields in which legislative and regulatory inconsistency have freer play than in the Australian motoring world.

At the moment a motorist passing from one State into another has to unlearn much of what he has learned in his own State and to learn a lot that is strange to him. This produces irritation – or worse - in the motor owner and motor driver, and tends to unnecessary costs of traffic administration (which the motorist usually has to pay for). It also adds to traffic dangers through ignorance or unfamiliarity with local conditions or practices on the part of drivers.

Therefore, anything that can be done to lay down a national basis for motor traffic control must be of much practical value. Commonsense suggests that there should be uniformity instead of variety, and that the growing volume of interstate traffic requires a national instead of a local viewpoint in things common to traffic in all of the States. Were all motor vehicles kept within their own State boundaries, little disadvantage would arise from the present welter of confusing motor legislation, but when a system becomes national, a system (or lack of system) of arbitrarily fixed laws that differ substantially in matters in which there should be common agreement appears absurd, if not intolerable.

I do not consider that it would be very difficult, once the groundwork had been prepared, to induce the various State Governments to agree to a national conference of traffic authorities and representatives of the recognised motoring organisations in the Commonwealth to consider the whole issue.”

Hon J C Watson
President, NRMA of NSW
Australian Year Book, 1933

INTRODUCTION

Achieving uniform or consistent road rules throughout Australia has for many years proven to be elusive. However, national road rules are now tantalisingly close to being achieved. In January this year, Australia’s Transport Ministers voted by majority¹ to approve a set of Australian Road Rules² submitted to them by the National Road Transport Commission (“NRTC”). The Ministers’ vote is a major breakthrough in achieving uniformity or consistency in road transport regulation in Australia. The final step in putting the reform into place will come when States and Territories implement the Rules on or around 1 December 1999.

It would be impossible to tell the whole story of the Australian Road Rules in this paper. The story is simply too long and complicated. Instead, we will concentrate on broadly examining how the Rules were developed and consider some of their major features. In particular, we

¹ The Commonwealth and all States and Territories (except Western Australia) approved the Rules.

² At the time of writing the official copy of the rules can be located at www.nrtc.gov.au. However, in addition, the NRTC will have published the Rules in hard copy and CD formats by the time of the delivery of this paper. The Rules will continue to be available on the web.

want to emphasise how crucial it will be to maintain the Rules to ensure their continuing relevance. And in considering the importance of that factor, we wish to underline how important road safety research will be to improving the Rules in the years ahead and thereby advancing the road safety cause.

WHAT ARE THE AUSTRALIAN ROAD RULES?

The Australian Road Rules contain the basic rules of the road for drivers and riders of motor vehicles, riders of bicycles, pedestrians, passengers and others. In very broad terms, the rules deal with the following sorts of things:

- speed limits (for lengths of roads, areas and zones) and how they are set (e.g. by sign)
- rules about turns (left and right, U-turns and hook turns)
- changing direction (e.g. indicating) and stopping (e.g. stop signals)
- what to do when faced by traffic lights and arrows
- giving way in various situations (e.g. when facing stop or give way signs or lines, when not facing any lights, signs or lines, at pedestrian and children's crossings, etc)
- what to do when faced by particular traffic signs (e.g. turning signs) or road markings (e.g. traffic lane arrows)
- roundabouts
- level crossings
- keeping left, overtaking, driving in lanes or lines of traffic and merging, special purpose lanes
- restrictions on stopping (e.g. in or near intersections) and parking
- lights and warning devices
- rules for pedestrians including persons on wheeled recreational devices
- special rules for bicycle riders
- rules for persons travelling in or on vehicles (e.g. seatbelt requirements)
- miscellaneous road rules (e.g. driving a vehicle in reverse)
- specification of applicable traffic signs

THE PROCESS OF DEVELOPING NATIONAL ROAD TRANSPORT REFORMS – OVERCOMING THE EFFECTS OF LINES IN THE SAND

The NRTC is an independent statutory body established under Commonwealth legislation³ to give effect to two intergovernmental agreements⁴ entered into by the Commonwealth, the States and the Territories in 1991. These were recently changed by amending agreements entered into by heads of governments⁵.

The agreements commit each of the nine jurisdictions to work together in the interests of reforming road transport for the operation of both heavy and light vehicles. The Act, which arose as a result of those agreements, established the Commission and its objectives. In broad terms, the NRTC seeks to develop national laws, policies and procedures to achieve four main things. These are:

- improved transport productivity
- improved safety

³ *The National Road Transport Commission Act 1991* (“the Act”)

⁴ See Schedules 1 and 2 to the Act

⁵ See Schedules 1A and 2A to the Act

- a cleaner environment
- lower administration costs.

An important part of the Commission's role is to establish a uniform or consistent regulatory environment for road transport across the nation. The NRTC was established to help road transport function in a way that allows it to function unencumbered by differing jurisdictional requirements that stifle efficiency and productivity and potentially compromise safety and the environment. That is, to overcome the effects of the so-called lines in the sand that represent State and Territory borders.

The Commission develops proposals in consultation with industry, governments and other stakeholders and then makes recommendations on national policies and legislation to Commonwealth, State and Territory Transport Ministers. A formal voting process set out in the intergovernmental agreements determines the outcome with each Minister's vote having the same value. If approved by a majority of Ministers, governments implement the reforms "on the ground" with the NRTC playing a broad coordination role. By any measure, this is a challenging process and the history of similar schemes is mixed due in no small part to the special problems posed by seeking to satisfy nine governments and their bureaucracies and industry and the public as well.

Initially, the intergovernmental agreements heavily emphasised the development of template legislation as a prime means of entrenching road transport reform in the laws of States and Territories. This is important background to an understanding of how the Australian Road Rules were developed. With the template legislation scheme in the national road transport intergovernmental agreements, legislation was intended to be enacted or made by the Commonwealth for operation in the Australian Capital Territory. The stated intention then was that that legislation was to be adopted virtually unchanged by each of the States and the Northern Territory thus establishing national uniformity. Then as the template was amended, so the theory goes, the law of other jurisdictions would change automatically.

While the Commission might still deliver reforms as template legislation in selected instances, it is more likely now that road transport reform will be delivered in model legislative form or even as policy. The emphasis today is targeted more at the speedy, on the ground delivery of reform without being bound up in process. In conjunction with jurisdictions, the Commission adopts a 'horses for courses' approach. In some instances the reduction of a reform to precise legislative wording might be critical or very important to its success. The Australian Road Rules are a good example of this. In other instances, such precision might be unnecessary or even a hindrance.

It is important at this juncture to make one crucial point. While the Commission is charged with developing reforms and obtaining approval from Ministers for them, it is the responsibility of States and Territories to entrench the reforms in their local laws. While the Commission can monitor progress it is largely powerless to ensure reforms are implemented on the statute books and "on the ground" in practice.

DEVELOPING THE AUSTRALIAN ROAD RULES: A POTTED HISTORY

The Hon J C Watson, who is quoted at the start of this paper, was a little ahead of his time as the first attempt to establish national Road Rules came in 1947. In that year, Australian Transport Ministers (constituted as the Australian Transport Advisory Council) established the Australian Road Traffic Code Committee. The first version of a National Traffic Code

was issued in 1958 and the last in 1988. While some jurisdictions adopted parts of the Code with some enthusiasm others ignored significant parts of it. Thus, despite a lot of hard work the success of this venture was mixed and crucially it did not result in national uniformity or detailed consistency in State and Territory traffic laws. In short, it did not achieve truly Australian Road Rules on the ground.

Fortunately, Ministers and Commonwealth, State and Territory officers kept persisting and in the early 1990's Austroads commenced work on the Australian Road Rules project with a particular emphasis on the use of plain english. While Austroads advanced the Rules quite a way, in 1995 responsibility for the project was transferred to the NRTC.

The Australian Road Rules process has been an incredibly thorough one, and also difficult. During the period of its development, the Commission has chaired a multi-disciplinary Committee that has included, at one stage or another, policy officers, road safety specialists, traffic engineers, police, lawyers, legislative drafters and, at times, representatives of special interest groups. The starting point for their work was the rules that were in place in each jurisdiction. Detailed public consultations were also a feature of the policy development process.

By 1996, arguably most of the policy for the Rules was settled. Yet there was still widespread dissatisfaction with the state of the Rules. Many thought the document was unenforceable and therefore useless as a template or model law. And so, the group worked very intensively through 1997 and 1998 to ensure that the Rules were not only satisfactory in a policy sense but crucially were drafted in such a way that they were enforceable. In effect, the Rules were pulled apart and completely redrafted using the dedicated resources of the Commonwealth Office of Legislative Drafting who liaised with the Parliamentary Counsel's Committee as representatives of all State and Territory parliamentary drafters.

Finally, by the end of 1998, the Commission considered that the Rules were ready to be submitted to and voted on by Ministers. As we saw earlier, that vote was successful.

In the result, the Commission believes the process has produced a superior set of national Road Rules. We believe they are comprehensive, expressed as simply as possible and most importantly, will advance Australian road safety, although there may be room for further improvements.

SOME FEATURES OF THE RULES

Important substantive features of the Rules

The extent of the changes that the Australian Road Rules might bring to the laws of a State or Territory will largely depend on what those laws currently contain. It is therefore very difficult to make generalisations about the jurisdictional impacts of the Rules. The importance of the changes brought about by the Rules will vary from jurisdiction to jurisdiction. For example, while the banning of hand-held mobile phones while driving is a significant change for some jurisdictions, other jurisdictions have had such a ban in place for many years.

However, based on feedback from States and Territories it seems that the following matters, and the list is by no means exhaustive, are major changes for some jurisdictions:

- banning of hand-held mobile phones when driving⁶
- keeping left unless overtaking on multi-lane roads with a speed limit of more than 80km/h⁷
- the zip merge rule (a driver in a line of traffic that is merging with one or more other lines of traffic traveling in the same direction must give way to a vehicle if any part of that vehicle is ahead of the driver's vehicle, but only where there are no line markings or lane lines)⁸
- new stopping distances (various locations such as intersections, bus stops, crest or curve, railway crossings, children's crossings)⁹
- prohibiting U-turns at signalised intersections unless otherwise signed¹⁰
- giving way to pedestrians at slip lanes¹¹
- prohibiting the crossing of double continuous centre lines to enter or leave roads¹²
- prohibiting passengers travelling unrestrained in a vehicle's load space (eg utilities)¹³
- two tier parking (no stopping, no parking)¹⁴
- prohibiting the crossing of single continuous lines unless turning onto or off the road¹⁵
- requiring people on skateboards, in-line skates (wheeled recreational devices) and wheeled toys to give way to pedestrians on footpaths¹⁶
- allowing footpath cycling by children under 12 years old¹⁷

Features that assist with interpretation and understanding

One of the original ideas behind this latest attempt at developing a set of Australian Road Rules was that the Rules should be so simple that the book containing the Rules would contain not only the law but double as a traffic handbook as well. This laudable but undeniably ambitious idea was probably always doomed to failure. Early supposedly simple drafts of the Rules were deemed unenforceable by parliamentary drafters. The final approved version of the Rules is drafted in a plain english style favoured by Australian Parliamentary drafters and, we are told, has none of the fatal enforcement problems of the early drafts.

The Rules contain a number of other interesting features that are quite revolutionary in Australian and possibly in the traffic law in other countries. Each of these features is aimed at helping readers to interpret and understand the law¹⁸. Firstly, the Rules contain a Reader's Guide which is aimed at providing a general introduction to the content and structure of the Rules. Secondly, the Rules make use of example diagrams to assist in the interpretation of particular rules. For instance, sub-rule 33 of the Rules outlines how drivers are to make right turns. In basic terms, the rule says that if a road marking exists indicating how a right turn should be made, a driver must turn as indicated by that road marking (rule 33 (2)). However,

⁶ SA, Tas, Qld, NT

⁷ ACT, NT, Tas, Vic

⁸ Vic, Tas, Qld

⁹ Tas, SA

¹⁰ ACT

¹¹ ACT

¹² NSW, NT

¹³ Qld, Vic

¹⁴ NSW

¹⁵ Qld, Tas

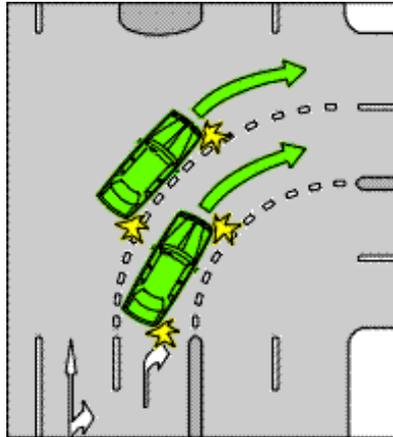
¹⁶ Qld, Vic

¹⁷ SA, Vic

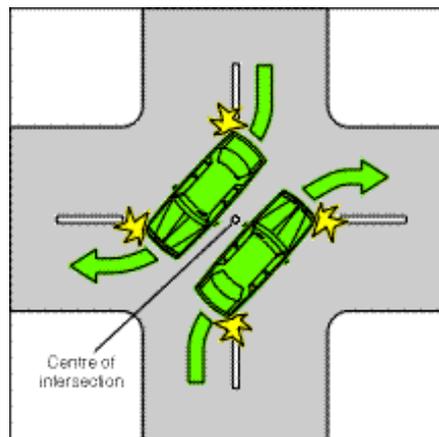
¹⁸ See Division 2 of Part 1 of the Rules to ascertain the legal effect, if any, of these features. For example, a note in the Rules is explanatory only and has no legal effect (see rule 8). However, an example in the Rules, whether reproduced as a diagram or narrative is part of the Rules and therefore has legal meaning (see rule 6).

if there is no such road marking, a driver must make the right turn so that the driver passes as near as practicable to the right of the centre of the intersection. Both of these situations are made clear by diagrams as follows:

Example 1
Making a right turn as indicated by road markings



Example 2
Making a right turn from a road with no road marking
indicating how to make the turn



This feature is used throughout the Rules, most notably to help explain give way rules. Also, examples in narrative form supplement many rules too, again to help readers with particular rules and generally to make the law clearer.

This leads in to another feature of the Rules. The Commission has produced the Australian Road Rules in colour. This is another quite revolutionary development in Australian traffic law and Australian law generally. Each of the common and standard road signs and alternative signs is reproduced in colour in the rules. We hope that most if not all States and Territories adopt the colour feature. Even if some choose not to, the colour diagrams in the Rules can be viewed and interpreted satisfactorily in black and white too (as can be seen above).

Notes supplement many individual rules and sub-rules. The purpose of notes varies, but they can alert readers to the fact that a term used in a rule is a defined term (and where the definition can be located), advise readers about other relevant rules or provide other types of

assistance. Rule 140 of the Rules provides an illustration of how notes are used¹⁹. This rule reads as follows –

“140 No overtaking unless safe to do so

A driver must not overtake a vehicle unless:

- (a) the driver has a clear view of any approaching traffic; and
- (b) the driver can safely overtake the vehicle.

Offence provision.

Note 1 *Approaching, overtake* and *traffic* are defined in the dictionary.

Note 2 A driver is not permitted to overtake another vehicle by crossing a single continuous dividing line only, a single continuous dividing line to the left of a broken dividing line or 2 parallel continuous dividing lines — see rules 134 (2) and 132 (2).⁵

ADOPTION OF AND MAINTENANCE OF THE AUSTRALIAN ROAD RULES

When the Australian Road Rules were in the final stages of negotiations, States and Territories began to turn their minds to how they would adopt the Rules. It seems clear that methods of adoption will vary across the nation. Some jurisdictions will pick up the Rules in a quasi-template fashion and adopt the Rules as published by the Commission. We understand that other jurisdictions will adopt the Rules by a “mirror” approach and basically reproduce the Rules in their local law. The situation will only become clear when all jurisdictions have finalised their adopting legislation and the Rules are in force locally.

States and Territories made a powerful point to the Commission when the Rules were being concluded. In essence, the jurisdictions said that the value of national Road Rules would dissipate quite quickly, given the dynamic nature of traffic law, unless the Commission established a process to ensure the Rules were kept up to date. The Commission agreed that a maintenance process was necessary and submitted an appropriate proposal on an in principle basis to Ministers. Ministers then specifically approved the establishment of a maintenance process for the Rules when they approved the Rules themselves. Since that time the details of the process have been settled with States and Territories and have been put into practice twice²⁰ since the Rules were approved in January. More amendments are expected in the future as the Rules develop over time.

The Commission acts as the coordinator of the Road Rules maintenance group and we take this responsibility very seriously. It would be tragic if the national uniformity and consistency that is anticipated to emerge from the Australian Road Rules process were lost due to a failure to keep the package current and relevant.

Jurisdiction Exemptions

The vast bulk of the 351 rules and Schedules that comprise the Australian Road Rules were determined by consensus. A further eight rules were subject to a special Ministerial vote. At

¹⁹ The notes have been bolded in part and enlarged for illustrative purposes.

²⁰ The Rules were amended largely in minor ways on 30 June 1999 and on 11 October 1999. The amendments are incorporated in the Rules. See footnote 2 about availability of the Rules.

a guess, about 98% of the document is settled in the sense that it could be adopted virtually unchanged by States and Territories. However, it would be remiss of us not to mention that some issues could either not be settled during the negotiations and were left to local law for the present rather than delay the Rules. In other instances, it was simply agreed that some things were not appropriate to be dealt with in a national document²¹.

The Commission regards the gradual minimisation of jurisdiction exemptions as a perfect example of how the maintenance process might be used not only to maintain national uniformity or consistency but also to enhance it.

Other Potential Maintenance Activities

More fundamentally, new road safety policies and strategies will undoubtedly emerge from time to time. One would expect many of these to be underpinned by research and investigations by, for example, people attending this conference or by the organisations you represent.

THE IMPORTANCE OF ROAD SAFETY RESEARCH TO THE FUTURE OF THE AUSTRALIAN ROAD RULES

The Commission believes that when implemented by States and Territories, the Australian Road Rules will entrench a wide variety of tried and tested provisions in Australian traffic law that will go some way to enhance road safety. The future challenge will be to build on that platform and to raise the safety bar higher wherever and whenever that is needed. Vigorous and authoritative road safety research will be crucial to that endeavor. Without sound research that provides a clear and unarguable case for change, that change is difficult to achieve through the systems in which we operate.

And so, we wish to leave you with this thought. The best and most persuasive research often leads to changes in a law such as the Australian Road Rules. We look forward to your endeavors in road safety and enforcement in the years ahead. That work will be critical to further improvements to the Rules and consequently to Australian traffic law. And through that means, as one of many, we can achieve further reduce road deaths and injuries.

²¹ A simple example of this latter situation is the definition of “emergency worker” in the Dictionary at the back of the Rules. Emergency workers are exempt from a number of provisions of the Rules and should and will cover different people in different States and Territories due to the diversity of emergency functions and organisations in each jurisdiction.