



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

**Developing technology-neutral road rules for driver distraction –
Consultation Regulation Impact Statement**

14 August 2019

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the consultation regulation impact statement (CRIS) entitled *Developing technology-neutral road rules for driver distraction*¹ released by the National Transport Commission (NTC) in late June 2019. This submission follows on from our earlier feedback² to the NTC on its Issues Paper relating to the same subject.³
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 follows the structure of the CRIS, indicating in bold where the submission addresses the questions posed by the NTC in the Issues Paper. We have not answered all questions posed. We communicate from the outset that we do not support the options proposed in the CRIS.

Heavy Vehicle Drivers should have a different regime

4. NatRoad was of the view that the NTC would be proposing a separate system for dealing with distraction as it affects light vehicle drivers and heavy vehicle drivers respectively. This view is substantiated by statements in the prior Issues Paper along the following lines:

*Commercial freight and passenger vehicle drivers are sometimes required to use several devices as part of their usual work. Future legislation seeking to regulate driver distraction from the use of technology devices may need to consider these drivers separately to accommodate their needs and strike a balance between minimising their distraction and allowing them to perform their job.*⁴
5. This balance is not evident in the CRIS proposals. This is one reason that we do not support the recommended outcome suggested.
6. Clearly, there is also a required differentiation of those who are experienced, professional drivers and those who are inexperienced. One driver could cope with multi-tasking and react well to a number of demands whereas another less experienced or less competent driver could be distracted easily or not be able to cope with tasks that others could easily undertake. Because of this variation in drivers' abilities, NatRoad supports the proscription of specific behaviours for the general public, rather than the regulation of a generic notion of "distraction."
7. There also needs to be a very clear distinction between the sort of technology that is becoming increasingly used in new heavy vehicles to assist drivers and or add to the efficiency of an operation and technology that has the function, for example, of embracing discretionary personal tasks. The example used in the CRIS about the extension of

¹ [https://www.ntc.gov.au/Media/Reports/\(DF7196BE-9EE1-0B23-CEC5-A45C7A5295C5\).pdf](https://www.ntc.gov.au/Media/Reports/(DF7196BE-9EE1-0B23-CEC5-A45C7A5295C5).pdf)

² <https://www.ntc.gov.au/media/1940/ntc-issues-paper-developing-technology-neutral-road-rules-for-driver-distraction-warren-clark-national-road-transport-association-natroad-feb-2019.pdf>

³ [https://www.ntc.gov.au/Media/Reports/\(E3823D53-A6E8-C4B0-4C48-B557ABAD995A\).pdf](https://www.ntc.gov.au/Media/Reports/(E3823D53-A6E8-C4B0-4C48-B557ABAD995A).pdf)

⁴ Id at p18

technology to cover in-vehicle on-line shopping⁵ is clearly technology that has a distracting potential and the sort of technology that would often be available to light vehicle drivers.

8. On the other hand, in-cab fleet tracking and other modern telematics are improving heavy vehicle driving performance. Telematics devices are often connected to other in-cab driver interfaces that enable drivers to receive jobs, capture proof of delivery, complete pre-trip inspections and receive real-time feedback on their driving performance. These are all highly desirable functionalities from the point of view of road safety and task efficiency.
9. In seeking a so-called “technology neutral” solution to the problem of driver distraction the three types of distinction we have just set out should not be abandoned. There is a need to differentiate between heavy and light vehicle drivers, experienced and less experienced drivers and technology that is a valuable tool to assist heavy vehicle drivers as opposed to technology or technology based applications that are not related to the work task and therefore are innately “distracting.”

Question 1: What other factors should be considered in the problem statement?

10. As against the arguments to make the differentiation discussed in paragraphs 4-9 of this submission, the CRIS says:

Results of naturalistic driving studies indicate that distraction is not only a problem for regular drivers. Driver distraction is also prevalent in light vehicle and commercial vehicle operations (Olson et al., 2009).

11. The cited study by Olson et al found that commercial drivers should not be prohibited from talking on a “cell phone” or CB radio as this was not found to increase risk.⁶
12. Two other relevant critical issues were also isolated in the Olson study as follows:

Designers of dispatching devices consider the increased risk associated with using their devices and work to develop more user-friendly interfaces that do not draw the driver’s eyes from the forward roadway. Possible solutions include a hands-free interface and/or blocking manual use while the vehicle is in motion.

Designers of instrument panels consider the increased risk of adjusting panel controls. The authors suggest that designs be intuitive, user-friendly, and not require long glances away from the forward roadway.⁷

13. These findings fit in with the NatRoad position that designers of in-cab technology have a current duty to ensure so far as reasonably practicable that their products are without risks to health and safety when used at a workplace⁸, with a vehicle being categorised as a workplace where commercial tasks are undertaken.⁹
14. In the CRIS, these factors are not, with respect, adequately explored and, indeed, the following is said about functions that are clearly capable of distracting drivers:

⁵ Above note 1 at p27

⁶ [file:///C:/Users/Richard/Downloads/dot_17715_DS1%20\(1\).pdf](file:///C:/Users/Richard/Downloads/dot_17715_DS1%20(1).pdf) at xxvii

⁷ Ibid

⁸ Section 22 model WHS Act

⁹ For a comprehensive examination of this issue see

https://www.worksafe.qld.gov.au/_data/assets/pdf_file/0020/173072/vehicles-as-a-workplace-national-guide.pdf

While the design of these new functionalities would be likely to include considerations for safety, some risks may not be identified before the products enter the market.¹⁰

15. The proposition quoted in the prior paragraph appears to contradict the clear designer duties that exist when the particular product is used in a heavy vehicle that is a workplace. Why hasn't more attention been given to this fundamental duty? We would urge a re-think of the CRIS with more emphasis on this issue.

Question 2: Has the consultation RIS provided enough evidence to support the case for government intervention? What else should be considered and why?

16. No, the CRIS does not provide sufficient evidence about the level of driver distraction by category of driver and fails to disaggregate the data by relevant categories such as between commercial and other drivers, light and heavy vehicle drivers and those who are inexperienced and those who are experienced. There is insufficient evidence to lead to the conclusions made in the CRIS.
17. We believe that the following statement at page 30 of the CRIS is an insufficient basis for the lack of proper distinctions between relevant categories of drivers whilst at the same time indicating a recognition of the differences we have mentioned. There is a recognition of the factors we have isolated and then a dismissal of same on what we believe to be an inadequate basis:

As we discussed in the problem statement (see section 3.1), we recognise that distraction can affect different drivers in different ways. However, naturalistic driving studies show that activities that result in visual manual interactions significantly increase crash risk, regardless of the driver's age or driving experience and the purpose of the trip. For this reason, the options proposed in this consultation RIS do not make distinctions based on the type of driver.¹¹

Question 5: Do the proposed examples for proper control reduce the uncertainty about compliance with the offence in road rule 297(1)? What other elements do you think could be incorporated?

18. The manner in which proper control is sought to be re-defined in the CRIS is not sufficiently concrete to found an offence regime.
19. NatRoad members want to have an improved enforcement regime as part of the current Heavy Vehicle National Law (HVNL) review now underway. That was the clear message received from members when we consulted on the major issues affecting members, as set out in the NatRoad submission¹² on the first Issues Paper published by the NTC as part of the HVNL review process.¹³ The CRIS proposals appear to detract from more certain and open enforcement practices rather than adding to certainty.
20. The CRIS says that examples of proper control would include:
 - having directional control;
 - having acceleration and speed control; and

¹⁰ Above note 1 at p 27

¹¹ Id at p30

¹² <https://www.ntc.gov.au/media/2060/ntc-issues-paper-risk-based-approach-to-regulating-heavy-vehicles-warren-clark-national-road-transport-association-natroad-may-2019.pdf>

¹³ [https://www.ntc.gov.au/Media/Reports/\(36FCC036-E3B4-F885-CBE5-CB9DF08E308D\).pdf](https://www.ntc.gov.au/Media/Reports/(36FCC036-E3B4-F885-CBE5-CB9DF08E308D).pdf)

- detecting and safely responding to objects, events and other road users.¹⁴
21. These factors may be present because of other issues than distractions; for example, a heavy vehicle may lose some acceleration control where the driver “misses” a gear going up a hill. But generally, that is not related to a distracting element but is an error commonly made, especially by less experienced drivers, and would have the effect of indicating that the driver failed to have “proper control” because of the effect on acceleration.
 22. Another example provided by members is their need for heightened awareness around overhead bridges, particularly in isolated areas, where they often take their eyes from the road for more than 2 seconds. This vigilance could otherwise be construed as “distraction.” But it is motivated, in the words of our member, because of “poor lighting or no lighting on country roads, looking for signs of human activity i.e. rock throwers and suicide candidates.”
 23. The criteria in paragraph 20 above are too amorphous to permit a proper objective enforcement standard to flow. This is admitted to in the CRIS where it is said (with our words added in brackets):

*They (the examples) are not exhaustive, which would maintain a level of flexibility for police and drivers to exercise their judgement about what acceptable compliance looks like.*¹⁵
 24. What “acceptable compliance looks like” should be an emanation of the CRIS and how enforcement would be approached made much clearer. This is an issue which is clouded in the CRIS.

Question 7: Is the status quo option an accurate representation of the current state of the Australian Road Rules in relation to driver distraction? If not, please describe further.

25. The current rules 299 and 300 contain appropriate examples of technology that is viewed as a driver’s aid and is exempted.
26. NatRoad supports a continuation of these exemptions in any new regime, inclusive of technology that assists heavy vehicle drivers.
27. The CRIS states that in regard to Rule 299 that its terms do not “clarify whether drivers can legally interact with displays that are part of in-vehicle systems while the vehicle is moving or stationary (but not parked).”¹⁶
28. NatRoad notes that dispatch systems are appropriately part of the exemption. These systems depend on interaction with the driver and, with respect, we believe that it is clear drivers do and should be able to interact with these systems. They can reduce the stress associated with the driving task by making clear, for example, delivery destination time slots and/or related changes. They are integral to the heavy vehicle driving task, not a distraction.
29. The exemptions for helpful technology must not be lost in the process of change.

Question 9: Can you propose an alternative approach for discouraging long eyeglances off the roadway that is enforceable in practice?

30. The basis of the question is not supported. The CRIS promotes the discouragement of drivers looking away from the forward roadway for more than 2 seconds. But this is a

¹⁴ Above note1 at p34

¹⁵ Ibid

¹⁶ Above note 1 at p 40

common occurrence where commercial drivers check their mirrors, as found in the Olson study referred to earlier. In this context members have provided examples of their required behaviour where light vehicle drivers are driving without caution. For example, one member noted the need to constantly check mirrors:

“As cars are erratically speeding up from behind, changing lanes. (I’m) trying to work out where the car will end up.”

31. The CRIS says that the 2 second time interval threshold is to “allow drivers to perform safety-enhancing activities such as using rear-view mirrors and scanning the driving environment.”¹⁷ But for a heavy vehicle driver side mirrors, or more frequently in modern trucks, cameras assist with the safe driving task and these glances may exceed 2 seconds but be safe.
32. Checking mirrors frequently permits a heavy vehicle driver to see potential road hazards, such as tailgaters, animals near the road, potholes, and pedestrian and rail crossings. Inadequate use of mirrors can lead to serious injuries or fatal crashes. As stated, these checks may take longer than 2 seconds. And, in any event, how is a system based on length of glance able to be properly enforced? It leaves too much discretion in the hands of enforcement officers and is not necessarily an effect of distraction. It is the wrong test.
33. We note that in respect of the prescriptive option the CRIS says: “The exemption for driving aids in rules 299 and 300 (except for video displayed by safety enhancing functionalities) would not be maintained under the technology-neutral approach in this option. Addressing risky behaviours or interactions regardless of the source of distraction would make this exception inapplicable and inconsistent with the project objectives.”¹⁸
34. We reiterate that we support the exemption of a range of technological applications, such as those mentioned in the CRIS like video feed from rear-view screens and load monitoring cameras. Nothing said in the CRIS is a powerful argument for any alternative view.
35. We note a concerning component of the CRIS’ explanation of the new prescriptive regime option. It says:

*We note that driver engagement in ‘allowed’ interactions or behaviours does not necessarily imply that they are deemed safe. Under this option, driver engagement in any interactions or behaviours that result in observable impairment of driving performance could be subject to the new offence addressing long eyeglances off the road or the states’ and territories’ legislation regarding careless or negligent driving.*¹⁹
36. An “observable impairment of driving performance” is insufficiently clear as a basis for enforcing a road rule. “Long eye glances” are not necessarily a reason for a change in the control of a vehicle. For example, a light vehicle might cut in on a heavy vehicle that was in a mandated left lane in order for that light vehicle to take an exit (the lived experience of members on the restricted area of the Monash Freeway where heavy vehicles must be in the two left lanes). The heavy vehicle driver may brake heavily and lose an element of control, even moving sharply to the side after checking mirrors and the like so as to avoid the consequences of light vehicle behaviour. Enforcement officers might not necessarily realise that the heavy vehicle was exhibiting these characteristics because of the interaction with the light vehicle and therefore believe the heavy vehicle driver to be in breach of the new

¹⁷ Id at p47

¹⁸ Id at p 50

¹⁹ Id at p51

rules about distraction. This would be unacceptable. It flies in the face of lived on-road experience.

Question 11: Would a fully outcomes-based approach effectively mitigate the safety risks from diverse sources of distraction?

37. This option would exacerbate the problems mentioned in paragraphs 21 and 22 of this submission. The CRIS emphasises that the examples of proper control as defined in the CRIS would be even more important were this option to be introduced.²⁰
38. Further the CRIS takes too far the correlation between poor lane keeping and driving at reduced and/or consistent speed and driver distraction. Whilst this correlation is supported by the research mentioned in the CRIS, it fails to take into account the type of issues mentioned at paragraph 20 and 32 of this submission.
39. The CRIS seems to exclude the driver aid technology from this option, a matter strongly opposed. This is because “focusing on the effects of distraction on driving performance, regardless of the source of distraction, would make these exceptions inapplicable.”²¹ But the issues we raise in this submission about interactions that might be thought distracting: missing a gear, being forced into an otherwise “dangerous” driving manoeuvre because of light vehicle behaviour, thoroughly checking mirrors and appropriately interacting with safety enhancing technology, should be permitted not punished.

Question 12: Does the proposed combination of prescriptive and performance-based components in the hybrid option sufficiently address all the sources of distraction that can significantly reduce driver performance? If not, please elaborate

40. We again refute the assumptions on which this question is based. The hybrid option also has the same reliance on the idea of “proper control” as defined in the CRIS.
41. Just like with the performance-based option, the offence in rule 297(1) (a driver must not drive a vehicle unless the driver has proper control of the vehicle) would be amended to incorporate examples of proper control that includes highlighting the need to have lateral, longitudinal and velocity control, and the ability to respond to hazards. This is too broad an offence and captures the behaviours that we have mentioned earlier that could be entirely unrelated to distraction.
42. NatRoad also supports a clear exemption for all technology that enhances the driving task and is an aid to heavy vehicle drivers and operators. No matter how the road rules change this exemption must be part of the law.

Question 14: Does our analysis accurately assess the road safety benefits for each reform option? Please provide any further information or data that may help to clearly describe or quantify the road safety benefits.

43. The CRIS contains two important propositions:

Emerging transport technologies can provide opportunities to improve transport productivity and reduce deaths and injuries. We consider that enabling these technologies to reach their potential is essential for improving our living standards and Australia’s competitiveness.

²⁰ Id at p58

²¹ Ibid

*Technological neutrality in the road rules for driver distraction provides an opportunity to encourage innovation and ensure that technology with the potential to improve road safety is not prohibited.*²²

44. We agree wholeheartedly with the first proposition and therefore reinforce the need for exemptions for heavy vehicle driving safety and efficiency.
45. But having a broad definition of “proper control” that might be affected by matters other than distraction is not supported. The broad based offence could distort the development of technology that enhances safety for heavy vehicle drivers. The duty of designers to take this issue into account is ignored, as expressed earlier in this submission.
46. We note that the CRIS acknowledges the enforcement problems with creating a broad based offence relating to driver behaviour: “law enforcement agencies have noted the significant enforcement challenge of requiring police to detect the eyes-off-road behaviour under various conditions. This could result in overzealous or too lenient enforcement in detecting this offence.”²³
47. Nothing in the CRIS assures NatRoad that the new offences would not suffer from this problem. Poor enforcement is already manifest in respect of heavy vehicles; a matter highlighted in NatRoad submissions to the HVNL review. Introducing a law where the preceding regulatory documents highlights difficulties of enforcement therefore raises a red flag.
48. The CRIS also admits that the evidence of distraction as a contributing feature of accidents is insufficient: “the research and data on distraction as the cause of motor vehicle accidents is sparse and the proportion of technology-related distraction more so.”²⁴ The CRIS assumes 9 percent contribution. It then further assumes that the percentages derived are evenly distributed across crash types. Those assumptions are, to say the least, questionable. That returns us to the point made earlier in this submission that for a proper evidence based consideration of a change in the law we would like to see a disaggregation of the statistics between vehicle types, particularly a greater focus on heavy vehicles, and research which isolates the differences between professional and non-professional drivers.
49. The way the new law would be enforced is manifestly unclear from the CRIS. Before NatRoad offered support for a change in the law, its enforcement and any exemptions relating to technology that aided the driving task should be much clearer.

Conclusion

50. Throughout the CRIS there is an emphasis on the fact that the way in which proper control would be established under the new law would enable the observable causes and consequences of behaviours and interactions that can impair a driver’s control of a vehicle to be the basis of the new offence. But we have shown, through examples relating to heavy vehicles, that this is not necessarily the case and is not a necessary consequence of “distraction.”
51. NatRoad would oppose the CRIS proceeding as a decision RIS unless there were clear exemptions for the use of technology that adds to the efficiency and safety of the heavy

²² Above note 1 at p92

²³ Above note 1 at p79

²⁴ Id at p75.

vehicle driving task and the manner of enforcement of the proposed new rules was clear and certain.

52. We note, in this context, that the NTC in the recently released (late June 2019) Issues Paper entitled *Safe People and Practices*²⁵ recognised that:

*Heavy vehicle drivers use many devices and technologies in their vehicles. They've been using communications technologies in their vehicles for decades, though emerging mobile technology has become more common in recent years (NTC, 2018, p. 17). They also interact with navigation devices, fuel-economy coaching appliances, fleet management devices, workflow devices, in-cab fleet tracking and communication systems and, more recently, electronic work diaries (NTC, 2018, p. 17).*²⁶

53. The ability to utilise this technology should not be lost in a move to crack down on broad-based “distraction” that fails to properly distinguish the heavy vehicle driving task.

²⁵ 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

²⁶ Id at p 40