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Luis Gutiérrez
National Transport Commission Public submission:
Developing technology-neutral road rules for driver distraction
Level 3, 600 Bourke Street
Melbourne VIC 3000

By email: enquiries@ntc.gov.au

Dear Mr Gutiérrez,

Thank you for the opportunity to respond to some of the issues outlined in the Consultation Regulation Impact Statement (RIS) on developing technology-neutral road rules for driver distraction, dated June 2019¹.

As you will know, Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 31 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

As lawyers representing people injured in road accidents, we sadly see the terrible results that occur because of a split-second distraction on the roads. Maurice Blackburn, at any given point in time, is representing hundreds of people whose lives have been irreversibly changed by the actions of a distracted driver who has left no margin to make that error.

Consider the following case study:

Jane (not her real name) was returning home having been for a walk around her local park. Jane was crossing the small residential road she lived on when a car turned right into the street, cutting the corner and colliding with Jane about 10 metres from the entrance to the street.

Jane heard the 18 year old female driver say "Mum, I have to go, I have hit someone."

¹ National Transport Commission 2019, *Developing technology-neutral road rules for driver distraction: consultation regulation impact statement*, NTC, Melbourne

Jane suffered a severe fracture and dislocation of her shoulder, fracturing of osteophytes in her cervical spine, a 17cm scar and psychological injury.

The driver was issued with infringement notices for the use of a mobile phone whilst driving as on a probationary drivers licence and for failure to give way to a pedestrian, however a criminal prosecution was not recommended.

Maurice Blackburn is pursuing a common law damages claim for this client due to her serious injuries.

Pedestrians such as Jane are particularly susceptible to being the unwitting victims of driver distraction.

Maurice Blackburn also works extensively with two groups of road users who are particularly vulnerable to driver distraction – cyclists and motorcyclists.

Maurice Blackburn has been proud to advocate² alongside bicycle and motorcycle advocacy groups calling for greater awareness from drivers about the impacts that driving in a distracted manner can have on other road users. Campaigns such as SMIDSY (Sorry Mate I Didn't See You), and education campaigns around lane filtering, the appearance of motorcycles in car mirrors, and positive rider attitudes to safety are as needed now as they were when we introduced them almost a decade ago.

Recent research has revealed that Australian drivers are distracted around 45 per cent of the time on the roads³. The Australian Naturalistic Driving Study⁴ found that only 8 per cent this distraction was due to the driver completing technology-based tasks, despite many of the relevant road rules around driver distraction being technology based. Queensland's Department of Transport and Main Roads has released statistics that show that in 2017, 37 deaths and 1,124 hospitalisations were attributed to driver distraction and inattention⁵.

Statistics such as these, combined with the impacts of driver distraction, illustrate the importance of Australian road rules keeping pace with the ever-changing array of potential distractions. They clearly show that the 'regulate and educate' philosophy doesn't work, nor will a search for a solution that only addresses distraction by technology-based tasks.

It also illustrates the importance of this work by the NTC.

Maurice Blackburn notes the purpose behind the current consultation process, as described in the RIS⁶:

.... the NTC's analysis of the Australian regulatory framework found that current road rules related to driver distraction:

- *have not kept pace with the arrival of the smartphone and modern technology devices (including those built into the vehicle)*
- *inconsistently treat the sources of distraction and safety risks associated with certain behaviours*

² See for example <https://www.mauriceblackburn.com.au/blog/2016/march/31/5-things-motorcycle-riders-want-car-drivers-to-know/>

³ <https://www.abc.net.au/news/2018-10-09/australian-drivers-distracted-45-per-cent-of-time-finds-study/10355244>

⁴ See <https://www.ntc.gov.au/media/1938/ntc-issues-paper-developing-technology-neutral-road-rules-for-driver-distraction-kristie-young-monash-university-accident-research-centre-feb-2019.pdf>; p.4

⁵ See for example <https://www.qt.com.au/news/lawyer-reveals-worst-cause-of-crash-devastation/3814731/>

⁶ Ibid, p.17

- *can be confusing for road users and enforcement agencies regarding what technology devices are legal and illegal to use when driving.*

We also note the objectives of the inquiry, as noted in the RIS⁷:

The Australian Road Rules relating to driver distraction focus on specific types of technology being used by drivers, rather than the function of such technologies. They prevent or limit the use of particular technology devices – mobile phones, visual display units and television receivers – while permitting their use as driver’s aids. The current national rules date back to 1999, when texting and calling were the most common features of a mobile phone.

It goes on to say⁸:

This project seeks to ensure that the road rules achieve better outcomes for road users regardless of the technology used. The project will establish whether the current road rules manage the risks posed by all sources of distraction, including the use of technology devices. If required, the NTC will recommend what changes should be made to the Australian Road Rules.

Maurice Blackburn agrees that technology-neutral approaches are the best way to futureproof the road rules. We also agree with the finding in the RIS which states that⁹:

A technology-neutral approach to regulation could address the behaviours that result from distracting activities regardless of the device of technology.

To this end, we restrict our input into this inquiry to two areas:

- i. Our response to the consultation questions detailed in the RIS, and
- ii. Other matters of importance to Maurice Blackburn and our clients in relation to driver distraction.

Our response to the consultation questions detailed in the RIS

In the interests of expediency, we will restrict our commentary to just one of the consultation questions listed in the RIS, being:

Question 17: On balance, do you agree that the preferred option best addresses the identified problem? If not, which option do you support?

We note the NTC’s endorsement of Option 4 as their preferred option¹⁰:

Following our analysis of the four options through the qualitative cost-benefit assessment framework in Chapter 8, our preliminary view is that the hybrid option is the preferred option.

Maurice Blackburn is pleased to endorse and support the NTC’s stated preferred position that Option 4, the hybrid model, would be the most satisfactory way to move toward technology-neutral road rules.

⁷ Ibid, p.11

⁸ Ibid, p.12

⁹ Ibid, p.17

¹⁰ Ibid, p.8

We believe it is appropriate to rule out Option 1, the maintenance of the status quo, as an option in the current research, as it fails to address the Transport and Infrastructure Council ministers' specifications for this review, which is to identify potential technology-neutral approaches.

In supporting the NTC's adoption of Option 4, we are identifying that there would be significant difficulties in adopting either Option 2 or 3.

In relation to Option 2:

We note the description provided in the RIS¹¹:

The key element in this option is that it provides a clear list of high-risk behaviours and interactions that drivers should avoid regardless of the technology involved or even the source of distraction. This is a significant difference from the status quo, which indicates what drivers can and cannot do with specific devices.

This option would result in a set of offences targeting the observable behaviour undertaken by drivers that would be deemed as non-compliant. This option would address all causes of distraction that have been identified as of the highest risk of crashing by research.

Maurice Blackburn agrees there will be some areas where such a black-and-white tick list of expected behaviours would be useful, and remove subjectivity from the process of regulating behaviours.

We would argue, however, that the usefulness of behavioural expectations based around a prescriptive set of rules can only be as effective as the enforcement processes that apply.

We are also concerned that Option 2 runs the same risk of becoming outdated as the status quo.

For Option 2 to remain relevant regardless of technological advancements, it needs a catch-all overlay, such as that suggested by Option 3, which places the onus on the driver to be fit-for-task, rather than placing the onus on the observations of an enforcement agency.

Maurice Blackburn therefore believes that there is a clear need to also include a performance-based element to the road rules, as described in Option 3.

The RIS notes¹²:

In theory, all activities that do not impair the driver's proper control of the [vehicle] would be compliant under this option. However, states and territories could still apply their legislation for careless or negligent driving to regulate unsafe driver engagement in some of these activities.

It goes on to say¹³:

This option recognises that drivers can safely execute non-driving-related tasks if they self-regulate their level of engagement and type of activity in response to the demands of the road environment.

¹¹ Ibid, p.45

¹² Ibid, p.58

¹³ Ibid, p.65

Maurice Blackburn agrees that it is the combination of having a clear list of high-risk behaviours and interactions that drivers should avoid regardless of the technology involved, alongside an onus on the driver to ensure that they are not being distracted, that would prove the most effective regime for a technology-neutral set of road rules.

Other matters of importance to Maurice Blackburn and our clients in relation to driver distraction

Maurice Blackburn draws the NTC's attention to two additional matters for consideration:

- i. Maurice Blackburn notes the following statement from the RIS¹⁴:

The Australian Road Rules are model law. They form the basis of road rules in each Australian state and territory.

In our experience, the imposition of any new federal overlay of laws ends up seeking, as a priority, to protect the state or territory with the easiest requirements to satisfy.

Recognising that a number of states and territories are also looking closely at the issue of driver distraction, we believe that this project has the potential to ensure that the state/territory with the most effective processes should become the model or benchmark by which national compliance is judged.

Maurice Blackburn stresses the importance of working through State and Territory bodies in order to implement anything nationally.

Important elements of this conversation such as insurance and compensation schemes are all State/Territory based, so any over-riding federal overlays in relation to driver distraction must take these into account – otherwise implementation becomes a nightmare.

- ii. It is important that thinking for this project extends well into the future.

The Australian Road Rules, for example, currently assume only humans to be in control of vehicles.

The NTC is conducting some careful and methodical consultation into understanding the regulatory and legal framework that will need to exist for fully automated vehicles to be integrated onto the Australian road network.

That process is currently examining the level and nature of responsibility that rests with various parties, at the various levels of automation. This includes pre-market responsibility, as well as once the vehicles are on the roads, to ensure maximum safety standards are in place and therefore to maximise safety outcomes for all road users.

We encourage the NTC, in its ongoing and multi-faceted investigations into potential changes to the Australian Road Rules, to keep looking well into the future and adopt principles that are broad enough to withstand constant change.

¹⁴ Ibid, p.16

Should you wish to discuss anything in this submission in more detail, we would be pleased to make ourselves available to you. Please do not hesitate to make contact.

Yours faithfully,



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