

## WA Government agencies' feedback

<b>Topic</b>	Developing technology-neutral road rules for driver distraction
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<b>Stakeholder Details</b>	
Name of person completing this submission	Simon Grieve, A/Road Safety Commissioner
Name of organisation making this submission	Road Safety Commission Department of Transport Western Australia Police Force
Contact person (name and role)	Matthew Samson, Principal Policy Officer
Contact details	P 6552 0873 M 0431 447 038 E <a href="mailto:matthew.samson@rsc.wa.gov.au">matthew.samson@rsc.wa.gov.au</a> PO Box 6348, East Perth WA 6892

### Summary

This document contains integrated feedback from the Western Australian State Government agencies listed above.

Australia's current road rules relating to driver distraction for technology devices:

- have not kept pace with the convergence of the mobile phone and new technology devices
- inconsistently treat the sources of distraction and safety risks associated with certain behaviours
- can be confusing for road users about what technology devices are legal and illegal to use when driving.

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.

The consultation regulatory impact statement (RIS) is comprehensive and sets the context, explains the current situation, the underpinning regulatory mechanisms, the need for reform to the existing framework and teases out various factors that require consideration.

The objective of the project is to see if there is a better way to regulate the safe use of technology devices as part of the road rules.

The consultation RIS proposes technology-neutral regulatory options for addressing driver distraction, analyses their potential impacts and presents an evidence base for deciding on a preferred option.

The consultation RIS lists the following options:

“.....

1. **Status quo:** *While this technology-based option does not align with the Transport and Infrastructure Council’s request for a technology-neutral approach, we have included it as the baseline to which all other options will be compared. The Guideline for Ministerial Councils and National Standard Setting Bodies requires that the ‘status quo’ and effectiveness of existing regulations should be considered as an option for meeting the objectives (Council of Australian Governments, 2007).*
2. **Prescriptive:** *This technology-neutral option proposes new prescriptive offences deterring specific high-risk behaviours.*
3. **Performance-based:** *This technology-neutral option proposes to address distraction by outlining the outcome sought by legislation, which is the safe execution of the driving task.*
4. **Hybrid:** *A technology-neutral option that combines elements from the previous two options and seeks to provide the benefits from both approaches while minimising their disadvantages.....”*

The consultation RIS preliminarily recommends option 4 “Hybrid Option” as the preferred option.

The following lists the consultation RIS questions together with comments from WA:

Question		Response
1.	What other factors should be considered in the problem statement?	All factors appear to have been appropriately included.
2.	Has the consultation RIS provided enough evidence to support the case for government intervention? What else should be considered and why?	Yes.
3.	Are there issues relevant to developing technology-neutral road rules for driver distraction not covered by the process for addressing the problem?	No.
4.	What other factors should be considered in the problem statement?	All factors appear to have been appropriately included.
5.	Has the consultation RIS provided enough evidence to support the case for government intervention? What else should be considered and why?	Yes.
6.	Are there issues relevant to developing technology-neutral road rules for driver distraction not covered by the process for addressing the problem?	No.

Question	Response
7.	<p>Can you provide evidence that would support a different treatment for cyclist distraction?</p> <p>Availability of research and findings on cyclists being distracted is limited. In most cases, it is more difficult for a cyclist to perform a distracting activity without affecting proper control of the vehicle therefore it could be argued that the law as it applies to cyclists should be stricter than it is for motorists. On this basis, it may be appropriate to apply greater restrictions such as not allowing cyclists to “Tap” the screen, although the inconsistency would only be warranted if there is evidence suggesting distracted cyclists is of greater concern than is currently thought.</p> <p>The definition of who the law applies to should be wide enough to include new modes of transport e.g. e-scooters and e-bikes.</p> <p>There is some limited research concerning cyclists being affected by distractions:  <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6139010/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6139010/</a>.</p>
8.	<p>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?</p> <p>The proposed definition of proper control provides better clarity of what is meant by the term, however “having directional control” or “longitudinal control” may narrow the definition of “proper control”. It may be successfully argued that the intentions of the driver are relevant to the consideration of whether they exercised control. This may need to be specifically addressed in the law.</p> <p>For example, the driver may argue they intended to drive at the speed or in the direction observed and therefore they had directional and longitudinal control, albeit that when judged objectively, they did not have what is considered ‘proper control’.</p> <p>Other offences, such as Careless driving, Dangerous driving, or Reckless driving may be more appropriate in such cases. However, it would be detrimental for the scope of rule 297(1) to be narrowed.</p>
9.	<p>Are the four options clearly described? If not, please describe the areas that may be missing.</p> <p>Yes.</p>
10.	<p>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.</p> <p>Yes.</p>
11.	<p>Are there any high-risk distracting behaviours and interactions that have not been addressed by the proposed new offences?</p> <p>No.</p>
12.	<p>Can you propose an alternative approach for discouraging long eyeglances off the roadway that is enforceable in practice?</p> <p>No.</p>

Question	Response
13.	Can you propose an alternative approach for discouraging high-risk voice-based interactions that is enforceable in practice? No.
14.	Would a fully outcomes-based approach effectively mitigate the safety risks from diverse sources of distraction? No. Mainly because the enforcement of outcomes-based rules is problematic and likely to see a drop off in enforcement interactions that will result in a decrease in the deterrence value of the law.
15.	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. Yes. However, the subjectivity of the performance-based outcomes may present enforcement challenges.
16.	Do you agree with the impact categories and assessment criteria? If not, what additional impact categories or assessment criteria should be included? Yes.
17.	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. Yes.
18.	Has the consultation RIS captured the relevant individuals or groups that may be significantly affected by each of the options? Who else would you include and why? There appears to be a lack of research in relation to the effect of distractions on cyclists. Whilst the intention of these rules is to improve road safety, there could be unintended consequences if the rules aren't applied appropriately to people cycling. The research recommends a hybrid approach of prescriptive regulatory responses to causes of distraction, as well as an outcomes-based approach to a broad range of causes of driver distraction. This approach will probably address any potential inconsistencies in the way the rules are interpreted between people riding or driving. An example of this might be the way the rules are interpreted interactions, such as drinking or eating – there may be situations where the same action performed in a different vehicle type has a different enforcement outcome.
19.	Has the consultation RIS used an appropriate analytical method for assessing the benefits and costs of the options? What else should be considered? The hybrid option is supported.