

Our ref: DG37197

10 SEP 2019

Office of the
Director-General

Department of
Transport and Main Roads

Dr Gillian Miles
Chief Executive and Commissioner
National Transport Commission
Level 3, 600 Bourke Street
MELBOURNE VIC 3000

Dear Dr Miles *Gillian*

Thank you for the opportunity to make a submission to the National Transport Commission's (NTC) consultation regulation impact statement (RIS) on technology-neutral options to regulate driver distraction.

The Department of Transport and Main Roads (TMR) offers the enclosed submission for your consideration.

The ultimate outcome of this review and amendment process must be a set of rules that are easy for the driving public to understand and are enforceable by the police. Therefore, TMR generally supports the Hybrid option (Option 4) with the expectation that it achieves this outcome.

I agree with your position outlined in the consultation RIS that the road rules, 'have not kept pace with the convergence of mobile phone and new technology devices,' and, 'can be confusing for road users'.

This view was shared by stakeholders at the recent National Summit on Driver Distraction who identified your efforts to develop technology-neutral road rules as a key initiative in reducing driver distraction on our roads.

TMR is currently finalising the roadmap made up of initiatives from the summit which is anticipated to be presented for consideration by the Transport and Infrastructure Council in November 2019.

There is no 'silver bullet' solution to this issue and it will take all parts of the ecosystem doing their part by implementing initiatives to improve road safety.

I value the strategic partnership our two agencies have forged around this issue and I commend the NTC on leading jurisdictions and the community through this journey.

If you have any questions or would like to discuss TMR's submission further, I encourage you to contact Ms Nicole Downing, Director (Road and Rail Safety Policy and Research), TMR, by telephone on (07) 3066 2652 or email at nicole.s.downing@tmr.qld.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Neil'.

Neil Scales
Director-General
Department of Transport and Main Roads

Enc (1)

Submission in response to the National Transport Commission's consultation Regulation Impact Statement on developing technology-neutral road rules for driver distraction

Driver distraction is a growing contributor to fatalities and serious injuries on Queensland roads. Crash data indicates that in 2018, there were 31 deaths and 1,352 hospitalised casualties as a result of crashes involving distracted drivers or riders.

This is not only a problem in Queensland but is occurring around Australia every day. The National Transport Commission's (NTC) leadership role is therefore critical to ensuring a cohesive national response, commencing with a uniform set of road rules. The Department of Transport and Main Roads (TMR) values the strategic partnership it has formed with the NTC in identifying suitable solutions relating to driver distraction.

Since the establishment of the National Driver Distraction Working Group in 2018, the two agencies have leveraged their collective knowledge and expertise and, brought together industry, government, academic and community stakeholders to address this problem.

TMR is progressing a multi-stage project and has applied a systems-based approach to understanding the causes of this issue, which revealed that drivers sit at the centre of a complex ecosystem of elements impacting their risk-reward decision-making process and influencing their use of a device while driving. These elements include:

- Mobile devices and applications
- Vehicles
- Insurance policies
- Telecommunication networks
- Infrastructure design
- Social attitudes
- Regulation
- Enforcement

TMR has since engaged with stakeholders from each element of the ecosystem to identify a range of suitable solutions to address driver distraction. TMR has also sought to generate a broader understanding and acceptance among stakeholders that everyone has a role to play in designing a safe system. In July 2019, TMR brought these stakeholders together at the National Summit on Driver Distraction.

The Australian Road Rules (ARRs) were highlighted by Summit participants as important in defining what is, and what is not, acceptable regarding the use of technological devices while driving. There was broad agreement among the stakeholders with the NTC's statement in the consultation Regulation Impact Statement (RIS) that the road rules, "have not kept pace with the convergence of mobile phone and new technology devices," and, "can be confusing for road users."

Encompassing discussions on regulation, participants took part in interactive dialogue along five strategy areas – designing for a safer interaction; mapping out the adoption of in-vehicle distraction mitigation technology; recognising vehicles as a workplace; encouraging greater compliance through enforcement; and changing driver behaviour. Participants identified potential programs of work under each of these strategy areas and plotted potential timeframes and key milestones for delivery of initiatives.

TMR has also investigated the feasibility of technology-based solutions to address driver distraction primarily resulting from the illegal use of mobile phones and other nomadic devices. The department engaged the market by requesting submissions to a Request For Information before inviting select respondents to a series of Technology Discovery Days to further explore the potential of their solutions. This market sounding exercise confirmed there is a competitive marketplace offering software, hybrid, sensory and enforcement-based solutions.

TMR is committed to maintaining the momentum generated at the Summit and furthering the findings from the market sounding exercise to implement a range of suitable solutions to address this dangerous behaviour. These solutions, including changes to the road rules, provide a system-wide response necessary to solve driver distraction.

TMR commends the NTC on leading jurisdictions and the community in this process to review and amend the road rules relating to driver distraction.

Overview

The ultimate outcome of this review and amendment process must be a set of rules that are easy for the driving public to understand and are enforceable by the police.

TMR therefore generally supports the Hybrid option (Option 4) with the expectation that it achieves this outcome.

In response to the questions outlined in the consultation RIS, the department provides the following feedback below:

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

It is important to note that rule changes alone are unlikely to, of themselves, change behaviour or increase compliance. This piece of work must be done in conjunction with other initiatives to substantially impact compliance and safety.

Heavy vehicles present additional and unique issues with their increasing use of in-cabin technology. Further consideration should be given on how to manage the potential distractions in heavy vehicle cabins including, built-in dashboard displays with GPS systems, visual display units and other buttons, switches and gauges.

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

The consultation RIS has provided enough evidence to support the case for government intervention. However, the following should also be considered for inclusion and/or correction:

- Under section 2.3.2 "Technologies can assist with (and distract from) the driving task" (page 20), the first paragraph reflects the statistics based on drivers who admit to mobile phone use. To show the extent of the problem and further strengthen the case, it may be worth including that this is based on those who have made admissions, as the actual figures are likely to be higher. Therefore, in the interests of road safety, government intervention is necessary.
- Under section 2.3.3 "Transition towards automation" (page 21), the NTC's driver distraction project should apply to drivers at all levels of automation. That is, if a human is driving the vehicle, driver distraction laws should apply. The current distinction in the paper, that this should apply to vehicles with up to level 2 automation only, is incorrect.
- Under section 3.2.3 "Clarifying proper control" (page 33) the paper draws the conclusion that a small number of infringements for breaching rule 297 is evidence of uncertainty as to what "proper control" might mean. As there are many factors that can contribute to whether a breach is issued by enforcement, it may not be sound to draw a direct correlation between the cause and effect. This alone should not paint the picture for intervention.
- The NTC's automated vehicles program is considering safety issues for level 3–5 automation, but this will only regulate users where the vehicle is being used in an automated mode. For example, the fall-back ready user - who is monitoring the automated driving system and/or is expected to take back control when requested.
- Regardless of a vehicle's automated capabilities, if it is being driven by a human, laws relating to human drivers will apply. There will be cases where a level 3 or 4 vehicle is human-driven. For example, when the vehicle requests a human take back control or if a person overrides the automated driving system by choice. While it is less clear with level 5 vehicles, there is still a

possibility that a human may choose to drive, if the vehicle has relevant controls. This should be corrected.

- Under section 3.1 "Problem statement and the need for government intervention" (page 25, paragraph 6) it is noted that drivers choose to engage in the behaviour despite knowing the risks. In the isolation of other actions, including effective enforcement, it is likely that changing the rules will not address this problem. A clearer case for the linkage between the rules changes and behavioural change should be further highlighted.
- In section 3.2.3 "Clarifying proper control" (page 33) statistics are referenced from 2001 to justify the prevalence of activities such as eating and drinking and talking on a mobile phone. Given that mobile phones were used for a considerably different purpose at the time, the statistics may be distorted by the current prevalence of connected technology. If a more recent study is available this is likely to further bolster the case.

3. Are there issues relevant to developing technology-neutral road rules for driver distraction not covered by the process for addressing the problem?

It is important to note that treating all sources of distraction equally, while sound from a research perspective, must be approached differently depending on the regulatory approach.

For example, how one would regulate for a prescriptive approach is different to that of a principle-based approach. The enforcement issues also vary greatly. This complexity should be considered when developing the overarching policy response as any solution must practically be able to be implemented. It is suggested that this element be included in the process.

4. Can you provide evidence that would support a different treatment for cyclist distraction?

It is recommended to maintain consistency between how vehicle drivers and bicycle riders are regulated with respect to driver distraction to harmonise and simplify implementation of any changes as outlined under section 3.2.1 "Developing guiding principles for our options" (page 29). In addition, distraction and inattention also contribute to crashes involving bicycle riders. For instance, research into cyclist behaviour in New Zealand reveals 21 percent of cyclists who were primarily responsible for a crash were inattentive or their attention was diverted prior to the incident¹.

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?

The proposed principles would provide greater clarity in the road rules as it further defines what is proper control. However, the impact of this is unknown. It could also have an alternative effect of reducing the flexibility of the rule. The intent of the rule is that a driver must be able to drive the vehicle in such a way that the driver can reasonably respond to expected and unexpected events. By capturing this outcome, it ensures that dangerous outlier behaviours, not yet thought of by regulators, could be captured by enforcement.

Factors such as directional control, acceleration and speed, and safely responding to objects are already elements considered as part of the offence from an enforcement perspective. It is also well understood from a public perspective that attention should be completely on the driving task despite this not always being observed in practice. Providing more information on the rule will not necessarily lead to better public understanding of outcomes.

Other jurisdictions, including Queensland, have additional penalty regimes which include offences such as driving without due care and attention and dangerous operation of a vehicle, which also need to be considered on the spectrum of dangerous and distracted driving activities. It should be clear where on the spectrum rule 297 sits to avoid overlapping interpretations where different

¹ NZTA (2017) New Zealand Transport Agency (NZTA) Cyclist crash facts. 2017. Wellington: New Zealand Transport Agency. <https://www.transport.govt.nz/assets/Uploads/Research/Documents/Cycling2017.pdf>

penalties can apply. There will always be an exception to a specific rule and rules of general application suffer less from this scenario.

6. Are the four options clearly described? If not, please describe the areas that may be missing

The options are sufficiently described.

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

The Queensland Road Rules (QRRs) should be added for completeness in section 4.2 "What is allowed and not allowed under this option" (page 40). The QRRs prohibit any driver of a vehicle from using a hand-held mobile phone while the vehicle is moving or is stationary but not parked, except an emergency vehicle or police vehicle.

"Use" includes holding the phone to, or near, the ear, whether or not engaged in a call; writing, sending or reading a text message on the phone; turning the phone on/off; and operating any other function of the phone.

Queensland has not adopted the current road rule ARR300 on the use of mobile phones. In Queensland, the rules do not specify that the mobile phone must be secured in a commercially designed mount fixed to the vehicle (as it does in Victoria and NSW for example).

Furthermore, in Queensland ride share drivers can accept bookings on mounted mobile phones by touching the screen under s300 of the *Transport Operations (Road Use Management—Road Rules) Regulation 2009* (QRR). However, they must comply with other rules such as maintaining proper control of the vehicle and driving with due care and attention.

8. Are there any high-risk distracting behaviours and interactions that have not been addressed by the proposed new offences?

The Hybrid option (Option 4), although generally supported, should clarify it would still meet the intent of the current ARR299(1)(b) by making it an offence to distract another driver with a television receiver or visual display unit "in or on" their vehicle.

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

The prescriptive option is not supported as it is impractical to enforce without sophisticated in-vehicle technology in all vehicles in line with principles.

Through the Queensland Driver Distraction Project, TMR has confirmed that Original Equipment Manufacturers are in various stages of developing and embedding in-vehicle distraction-mitigation technology in vehicles. Among these technologies is eye-tracking technology originally developed to identify and address instances of fatigue. This technology has rapidly evolved to identify instances of distraction when a driver's eyes are off the road for a prolonged period of time.

Drivers' headspace must also be recognised as playing a role in distraction-related crashes with a driver's emotional state, including stress and anxiety, increasing the risk of having a crash.

A distraction event triggered by a driver's emotional state can impair detection of important and/or hazardous road-related cues and can cause inattentive blindness where the driver is "looking but not seeing"².

This form of distraction does not lend itself to measures that seek to only address eye glances off the roadway.

² Cunningham, Mitchell & Regan, Michael. (2016). The impact of emotion, life stress and mental health issues on driving performance and safety. *Road and Transport Research*. 25. 40-50.

10. Can you propose an alternative approach for discouraging high-risk voice-based interactions that is enforceable in practice?

It is TMR's view that voice commands should be permitted. The objective of the project is "safe use" not "no use", this should be reflected in the policy outcomes.

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

While a completely outcomes-based solution is not preferred, the benefits of this approach are noted when combined with other activities. For example, sources of distraction will continue to change with technological developments, changes in road environment and infrastructure among many other factors. The performance-based outcome provides flexibility as it legislates for the outcome, not the individual elements.

TMR notes there are examples of outcome-based legislation that work effectively. However, the lack of clarity about what is, and is not, permitted under a fully outcomes-based approach could adversely affect driving practices, compliance and safety risks. Such an approach would need to be supported by clear advice to drivers, including the industry, about the effects of the approach. Such advice would need to be regularly reviewed as police prosecution practices and court outcomes develop. Within the context of Queensland's rideshare industry, this approach may have implications for ride-booking vehicle identification signs which could be subject to claims they cause, or contribute to, distraction. Under s90 of the *Transport Operations (Passenger Transport) Regulation 2018*, the vehicles must display an identification sign approved by TMR on the bottom right-hand side of the front windscreen when viewing the vehicle from the front and on the bottom left-hand side of the rear windscreen when viewing the rear of the vehicle.

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.

The proposed combination of prescriptive and performance-based components in the Hybrid option is generally supported.

This option sufficiently addresses all the sources of distraction that can significantly reduce driver performance and focuses on deterring specific high-risk behaviours. It is less likely to suffer from issues with enforceability. This approach needs to also recognise the risks of listing overly prescriptive behaviours which may increase complexity and limit flexibility leading to increased confusion among the driving public and hindering enforceability by police.

As outlined in this submission's response to Question 8, the sources of distraction should meet the intent of the current road rules for television receivers and visual display units as being located "in or on the vehicle", in part, due to the emergence of new advertising technologies, such as roof mounted screen-based advertising given their potential for causing distraction.

13. Do you agree with the impact categories and assessment criteria? If not, what additional impact categories or assessment criteria should be included?

The three criteria, Effectiveness, Efficiency and Coherence are broad and are generally supported.

It is noted that it is difficult to measure the first two principles against a high-level policy intent. Effectiveness will be determined down the track and is largely dependent on how the legislation is written, implemented and understood.

14. Does our analysis accurately assess the road safety benefits for each reform option?

The analysis accurately assesses the road safety benefits for each reform option with the road safety benefits under some options demonstrating that some changes are likely to have more impact than others.

15. Is the assumption that technology related distraction crashes would be 24 per cent higher in the absence of existing laws plausible? If not, can you provide any evidence that supports a different estimate?

It is noted the underlying assumptions supporting the cost-benefit analysis are adapted from the resulting 24 per cent reduction in distraction-related fatalities following the introduction of *Distracted Driving Safety Act* in Washington DC in 2004. This does not account for unique differences between Washington DC and the Australian context such as driving conditions, vehicle type, infrastructure design and road rules.

It may be beneficial to apply a localised example from the introduction of relevant rules based within the Australia. However, in the absence of a local measure, TMR accepts that this consultation RIS presents an acceptable comparative measure.

16. 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?

Options 2 - 4 will impact the taxi industry, and this is not currently discussed in the RIS. Under the ARRs and QRRs, taxi drivers can currently type an address into a dispatch system while driving, subject to the requirement to be in proper control of the vehicle however, Options 2 - 4 indicate that this will be prohibited. It is suggested that the taxi industry is specifically consulted to ascertain the likely costs of the proposed changes.

Furthermore, the consultation RIS adequately considers the impact on lighter commercial vehicles but could stand to give further consideration to heavy vehicles and the broader heavy vehicle industry.

In terms of who has responsibility for distraction (2.3.1), the justice system and police should be included given that appropriate penalties and enforcement of the road rules can influence whether a person chooses to engage in a particular behaviour.

It is also suggested to include reference to the mutual benefits and impacts, if any, between this project and the NTC's Autonomous Vehicle program.

17. Has the consultation RIS used an appropriate analytical method for assessing the benefits and costs of the options? What else should be considered?

The issue has been thoroughly analysed for the current stage of work. It is noted that this paper seeks to obtain endorsement of a policy approach to regulation. The next phase in determining what legislation under the agreed model would look like is likely to require a similar thorough analytical approach. This could potentially be based upon alternative measures.

TMR also notes a technology-neutral approach may encourage innovation from the market. For instance, there is ongoing transformation in the design and delivery of taxi dispatch systems with purpose-built dispatch devices giving way to a focus on Software as a Service automotive dispatch solutions which utilise off-the-shelf mobile phones and tablets. A technology-based approach would further accommodate this and other technological innovations.

18. On balance, do you agree that the preferred option best addresses the identified problem? If not, which option do you support?

TMR supports the Hybrid option (Option 4) as the preferred approach taking into consideration responses to questions in this consultation RIS.

It provides scope and flexibility to address the issue of drivers working across multiple apps or phones. It also provides a consistent approach across the different sectors of the industry (taxi, limousine and ridesharing), regardless of the device or technology used by drivers.

Prohibiting any interactions that involve drivers looking away from the road for more than two seconds might address this emerging risk. However, any time limit might be considered arbitrary if it is not informed by the current level of research.

This approach should enable clear advice to be given to industry about what is, and is not, permitted to aid compliance and enforcement. For instance, in recent years Queensland's personalised transport industry has been substantially reformed. The personalised transport market is evolving and new rideshare providers continue to enter the market. Some rideshare drivers are now affiliating with multiple providers such as, Uber, Ola and Didi. These drivers actively seek trips across multiple apps or phones whilst driving. This has the potential to increase driver distraction and associated safety risks.