NATROAD

NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to Transport for NSW

Draft Road Transport (General) Regulation 2021

29 July 2021

Executive Summary

This submission provides comments on draft Regulations proposed as a substitute for current regulations that operate as subordinate legislation pursuant to the Road Transport Act 2013, (NSW).

The submission considers that the RIS is insufficiently robust, that proper evidence on which to examine the provisions of the proposed new regulatory regime has not been gathered and that further work on the rationale and basis for the Proposed Regulation needs to be undertaken. This is especially the case having regard to the Productivity Commission's finding that NSW has more derogations from the Heavy Vehicle National Law than any other jurisdiction and that each derogation should be removed unless justified on the basis of safety. That exercise should have been undertaken but has not been attempted. On that basis NatRoad recommends that the Proposed Regulation not proceed until a better evidentiary base for all of its provisions has been prepared.

Introduction

1. This submission responds to the exposure draft Regulation, the *Road Transport (General) Regulation 2021* (the Proposed Regulation) designed to replace the *Road Transport (General) Regulation 2013* (the Existing Regulation)) and to the related Regulatory Impact Statement (RIS).[1] Whilst NatRoad appreciates the opportunity to comment, the period of consultation is too short. Changes of the nature proposed should be exposed for at least two months, not the 28 day period currently in play.[2]

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. In responding to the Proposed Regulation, the main perspective adopted is that of heavy vehicle operators who form the vast majority of NatRoad members. In addition, we provide constructive criticism of the RIS which we do not believe is sufficiently robust. Further, the opportunity to examine the utility of the Existing Regulation has not been adequately addressed.

Fundamental Purpose: RIS assertions not substantiated

4. NatRoad acknowledges that a main objective of the Regulation (Existing and Proposed) is to enable the *Road Transport Act 2013, (NSW)* (Transport Act) to operate as intended as a mechanism in achieving the Transport Act's objectives. This is summed up at the end of Option 1 in the RIS as follows:

   The Road Transport Act cannot operate as intended without a general regulation as it is instrumental in achieving its objectives.[3]

5. The RIS sets out that an aim of the legislative scheme is to ensure that NSW roads are safe for all road users. In this context the following is said about the use of penalty notices:

   As penalty notices are a cost effective and efficient way to deter unsafe driver behaviour on our roads, removing the ability of the Government to issue these infringements would likely increase fatalities and serious increases (sic).[4]

6. The RIS does not set any authority for this latter proposition. The rationale for penalty notices set out in the RIS is derived from NSW Law Reform Commission work.[5] That work is authority for the proposition that a penalty notice system was expected to save the time spent by motorists in attending court, reduce the costs of issuing and serving summons, and help relieve court

[1] Available here: https://www.transport.nsw.gov.au/projects/current-projects/consultation-on-draft-road-transport-general-regulation-2021?utm_medium=email&utm_campaign=Road%20Transport%20general%20Regulations&utm_content=Road%20Transport%20general%20Regulations+CID_47b7fee35b0f2fe62f1b79a764a0705b&utm_source=Email%20marketing%20software&utm_term=here

[2] See p 4 RIS above note 1

[3] Id at p11

[4] Ibid

[5] New South Wales Law Reform Commission, Report 132 Penalty Notices February 2012 cited at p 8 of the RIS above note 1

congestion.[6] However, there is no correlation shown in the RIS or referenced by the RIS between the infringement system, especially through the use of penalty notices, and a decrease in fatalities or serious incidents. The RIS does not reflect any research into any such connection. The penalty notice system is an aid to Government administration and contributes to revenue raised, that much is clear. The assertions in the RIS about the effects on road safety should not be made in the absence of research into this issue and are hence rejected by NatRoad.

7. We do acknowledge that penalties for traffic violations in the form of fines are part of the traffic law enforcement chain. According to deterrence theory, a sufficiently high chance of detection of a violation and a sufficiently high penalty will deter road users from committing traffic violations.[7] But no detailed analysis of the level of fines, especially an annual increase related to the yearly consumer price indexation of those fines, and a reduction in any incidents appears to be in evidence. We do not believe that the RIS adequately explores the system of penalty notices and has insufficient substance to found the assertion about road safety set out at paragraph 5 of this submission. **Transport for NSW should commission a study that looks at this issue, especially given the increase in the use of mobile speed cameras (without warning signs) recently introduced**.[8] We would commend a better focus on these issues and greater public debate of the related issues.

8. In this context, we refer to evidence that a counter indicator to deterrence theory has been explored in Sweden[9] with success. The approach is commended. In essence, the authors compared the approaches in Victoria and Sweden to speeding and cameras. They found Victorian policy is based on the concept that speeding is a deliberate offence in which a rational individual wants to drive as fast as possible and is prepared to calculate the costs and benefits of their behaviour, a similar approach to that which underpins the NSW approach. The researchers concluded that the Swedish approach is based on a belief that safety is an important priority for all road users, and one reason why road users drive too fast is a lack of information. This recalibration of mind-set sparked a novel idea. Speed cameras were detecting vehicles breaking the speed-limit in Stockholm, but where a motorist came in under the limit, they were automatically entered into a lottery in which prizes were funded by fines. You obtained a reward for compliance not just a punishment for non-compliance. Whilst correlation is not cause, in 2018, Australia was in fourteenth on an OECD table of road fatalities per 100,000 people. Sweden sat at sixth.[10]

9. The re-thinking behind this study should be sufficient impetus for the RIS to have considered different models rather than solely focusing on deterrence theory unsubstantiated by empirical analysis and instead asserting that the penalty notice system assists safety in an unarticulated way.

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[6] Ibid

[7] See for example C Goldenbeld *Increasing Traffic Fines (2017)* *https://www.researchgate.net/publication/322790828_Increasing_traffic_fines*

[8] Reference to lodged NatRoad submission here

[9] Belin et al Speed Cameras in Sweden and Victoria Australia – A case Study Accident Analysis and Prevention Volume 42, Issue 6, November 2010, pp2165-2170 https://www.sciencedirect.com/science/article/abs/pii/S0001457510001983

[10] See https://www.bitre.gov.au/publications/ongoing/international_road_safety_comparisons

10. The RIS also canvasses that:

    The NSW Government also utilises revenue from camera detected speeding offences for infrastructure safety upgrades through the Community Road Safety Fund. Allowing the regulation to lapse would impact the ability of government to undertake these critical infrastructure upgrades which would have a detrimental impact on road safety outcomes.[11]

11. There is again no detailed examination of this assertion. In fact, there is evidence of community dissatisfaction with the Community Road Safety Fund, particularly as the amount of monies spent on "critical infrastructure upgrades" per the prior paragraph has been called in question.[12] Further, for heavy vehicles, most inappropriate speed crashes appear likely (in the absence of a full forensic investigation) to occur at less than the posted speed limit e.g. on bends. Accordingly, increased enforcement of the speed limit with the concomitant issue of penalty notices is unlikely to significantly reduce the incidence of these types of crashes. So, if speed enforcement is to be undertaken, it is better that it occurs on or adjacent to bends than on straight sections of road. These and related concerns are detailed in a NatRoad submission that expands this and related arguments that question the rationale of the current NSW mobile speed camera strategy.[13]

12. Continuing on this theme, the RIS conflates the fact of regulation and the terms of the Proposed Regulation with a number of other factors that contribute to road trauma thus:

    In NSW alone, the Centre for Road Safety has estimated that the cost to the community of 2019 road casualties using the Inclusive Willingness to Pay methodology was around $9.0 billion (2020 dollar values) Regulation of drivers and vehicles, compliance and enforcement, infrastructure treatments, education and communication are all parts of the framework which keep the impact of road trauma contained at this level.[14]

13. The extent to which controls on driver and operator behaviour imposed by the Existing and Proposed Regulation contribute to safety is not separately analysed. NatRoad acknowledges that it is difficult to isolate the effects of particular road safety programs on road accidents. But the RIS does not attempt that exercise or indicate an acknowledgement of the need for such work and therefore NatRoad submits that there should be further examination of the relationship between the form of the Proposed Regulation and any road safety effect.

14. The RIS indicates that despite the penalty notice system there remains a large burden on the courts from traffic and vehicle registration offences as follows:

    Even with the issue of penalty notices for most offences under road transport legislation, traffic and vehicle registration offences still made up 20% of charge matters dealt with by local courts in 2019.[15]

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[11] RIS at above note 1 p10

[12] See this report by the NRMA (October 2020) https://www.mynrma.com.au/-/media/documents/reports/its-not-fine.pdf?la=en&hash=1AA5E0CE88315E420C7823985BF122CD

[13] The submission is downloadable from the content of the media release at this reference: https://www.natroad.com.au/natroad-makes-a-clear-call-on-speed-camera-signage/news/

[14] Above note 1 at p 11 (footnote omitted)

[15] Ibid

15. The extract from the RIS in the prior paragraph shows that more detailed study of the penalty notice system and the rationale for the taking of these actions in local courts needs greater study, particularly as assumed efficiencies in the court system underpins the penalty notice system rationale. The question arises as to whether the quoted figure is an indication of the required or assumed efficiencies in the court system following on from the introduction and ongoing use of the penalty notice system or whether those efficiencies are no longer present. Indeed, one member's feedback on an earlier draft of this submission was: "The fact that 20% of local court matters are minor traffic offences suggests that the system doesn't work as it should." The underpinnings of the penalty notice system and its utility should be investigated and given reform priority.

16. In other words, the introduction of the Proposed Regulation creates the opportunity to determine whether the current system is in fact delivering the assumed benefits that the RIS sets out. Without further analysis that question cannot be answered.

Changes Proposed: Benefits?

17. The first identified benefit of the Proposed Regulation set out in the RIS is reducing the complexity of the rules around pay parking.[16] This is an irrelevant consideration for heavy vehicles given Rule 200 of the *Road Rules 2014*[17] with its pro forma cap on heavy vehicle parking for one hour, albeit that the restriction does not apply when heavy vehicles are loading or unloading.[18] We note that the RIS also indicates a view that the changes relating to loading zone schemes will increase efficiency. We do not understand how that is the case when "fair and equitable access for goods vehicles" is assessed as being facilitated by a maximum 30 minute expiry time for loading zone access: see Regulation 122(2) of the Proposed Regulation. This appears to be related to getting a regime in place that will be easier to enforce, not at all motivated by customer benefit.

18. NatRoad understands that the changes will affect efficiency of enforcement and that this will benefit administration of the Proposed Regulation. There is, however, no evidence to substantiate these benefits, a matter that should be quantified.

19. NatRoad notes the following rationale for the changes proposed:

    Benefits from remaking the Regulation with amendments would be realised through a more streamlined regulatory framework where anomalies, repetition and outdated provisions are removed.

20. These criteria are supported by NatRoad and we bear them in mind in the analysis which follows. In addition we believe that Transport for NSW should have adopted criteria that increased consistency of regulation with other jurisdictions given that the freight task in particular is countrywide. For heavy vehicles this may be a matter that is achieved in part through the HVNL

[16] Above note 1 at p 12
[17] Also made under the Transport Act
[18] Road Rule 200(2) in particular

review currently in progress[19] but heavy vehicle licensing and registration are excluded from the HVNL. Further there are many NSW derogations from the HVNL.[20] NatRoad agrees with the Productivity Commission that: "Any derogations from national law should either be justified by evidence or removed."[21]

21. NatRoad submits that the review of the Proposed Regulation should be an opportunity for Transport for NSW to follow this Productivity Commission advice:

    State and Territory Governments should remove derogations that result in additional compliance costs which cannot be justified on the basis of safety, and where any cost of removing the derogation is commensurate with the expected safety benefit.[22]

The Regulation in Detail

22. This section of the NatRoad submission looks at the Proposed Regulation in detail, having regard to the prior comments, and isolates a number of specific regulations where greater scrutiny and change is recommended. Where we do not make comment, we are not opposed to the relevant provision, subject to a more detailed analysis being undertaken by Transport for NSW that seeks to remove derogations based on the criteria recommended by the Productivity Commission. We have not tracked derogations from the HVNL in the Proposed Regulation, given the time constraints on response mentioned earlier in this submission. We do strongly believe, however, that this is an exercise that needs to be undertaken, reinforcing the message given by the Productivity Commission thus:

    New South Wales has the most derogations, which usually add to the requirements in the HVNL. Most derogations relate to enforcement operations, often creating inconsistent standards and application of HVNL enforcement powers.[23]

23. Members have informed NatRoad that reform of enforcement is the number one priority in the current HVNL review and when examining the many regulatory instruments that comprise the regulatory regime for heavy vehicles.

24. **Regulations 4 and 5** relate to extending responsibility of the offence regime to operators where a heavy vehicle exceeds 100 kilometres per hour on a NSW road or there is the dropping of oil or grease from a vehicle onto a NSW road. NatRoad asks the question as to whether these provisions have led to greater safety in NSW, evidence of the extent of prosecutions and other evidence that would show that these provisions have utility. This is especially the case given that Regulation 4 would appear to emulate a chain of responsibility (COR) obligation imposed on an operator under the HVNL, especially in relation to speeding. NatRoad questions the need for the continuation of these regulations as they apply to heavy vehicles, a matter reinforced in member comment on an earlier draft of this submission. Transport for NSW should consider how they fit with COR

[19] https://hvnlreview.ntc.gov.au/
[20] Productivity Commission *National Transport Regulatory Reform* (2020) https://www.pc.gov.au/inquiries/completed/transport/report/transport.pdf
[21] Id at p8
[22] Id at p16
[23] Id at p89

obligations (noting that they only affect the operator, not other chain parties) and act to have them, for heavy vehicles, placed in a reformed HVNL.

25. **Regulation 7** proscribes the driving of a vehicle in contravention of Road Rule 294-1. This Road Rule essentially requires Transport for NSW written permission before an articulated vehicle or another vehicle tows another vehicle. But given the many exceptions in the Rule, particularly per Rule 294-3(f) which excludes "a vehicle or combination of vehicles with a GVM or GCM over 4.5 tonnes," we question the utility of Regulation 7. At the least it should clearly be confined to light vehicles. What evidence is there of prosecutions under its terms as an indicator of its necessity? How has it benefited road safety?

26. **Regulation 8 and Regulation 10** have the effect of extending the responsibility of an offence to operators not to use lights in the manner proscribed by Road Rules 218-1 and Road Rule 220. Again in respect of heavy vehicles, we believe that COR laws would better cover this issue and evidence of the necessity of applying these regulations to heavy vehicles seems absent.

27. NatRoad considers that **Regulation 11** should be incorporated within the legislation dealing with dangerous goods, that is the *Dangerous Goods (Road and Rail Transport) Regulation 2014 (NSW).* What is the utility in having these specific provisions in the Proposed Regulation? We similarly believe that Road Rule 300-2, where the proscribed behaviour is set out, should form part of the dangerous goods regulatory scheme. That would ensure the rules relating to the carriage of dangerous goods were in a scheme that related to regulation of that subject matter, an issue of common sense as well as more efficient or "streamlined" regulation referred to in paragraph 19 above.

28. Regulation 12 extends the proscription in Road Rule 300-3 about driving lengthy vehicles in certain parts of Sydney to the transport operator. Prior comments about COR also apply in this context in relation to heavy vehicles.

29. Regulation 28 extends to a transport operator the proscription of placing a "do not overtake turning vehicle" sign on a vehicle unless it is at least 7.5 metres long. Road Rule 316-2 relates to the offence a driver commits in the same circumstances. NatRoad believes that this Regulation could be subsumed into the current *Vehicle Standards Bulletin 12 (VSB12): National Code of Practice Rear Marking Plates for all motor vehicles over 12t GVM and for all trailers over 10t GVM*[24] *(VSB-12)* and its terms incorporated as a Code within NSW law. Currently, there is a clash between the terms of VSB-12 and other Road Rules, a matter on which we have extensively consulted with Transport for NSW without a satisfactory outcome to date.

30. Regulation 122: we refer to the comments made in paragraph 17 of this submission. We would suggest giving discretion of parking authorities to issue permissive tickets for longer than the 30 minute period set as a maximum by Regulation 122(2). This limitation will not facilitate efficient loading or unloading of heavy vehicles; we believe that the requirement will be deleterious. There is already a crisis in heavy vehicle parking and rest areas in NSW and this new requirement will compound the problem, an issue that Transport for NSW currently has under investigation.

[24] https://www.nhvr.gov.au/safety-accreditation-compliance/vehicle-standards-and-modifications/vehicle-standards-bulletin-12

31. **Regulations 132-138** relate to penalty notices. We refer to earlier comments in this context. How are the penalty levels set out in Regulation 134, based on any evidence, appropriate? Where is there any evidence that these levels are fair when measured against the maximum penalty and how have these levels been calculated having regard to that maximum? Has Transport for NSW revisited any of the NSW Law Reform Commission work, mentioned earlier in this submission, given that it was published in 2012? Does it remain current and, if so, based on what evidence?

Conclusion

32. NatRoad does not believe that the appropriate level of scrutiny or evidence has been brought to bear to properly assess the utility and cost/benefit of the Proposed Regulation. Many so-called safety benefits are assumed. No empirical work is in evidence. The purpose of the HVNL is to streamline heavy vehicle regulation nationally. Treading into COR territory haphazardly in road transport regulations seems like an unnecessary derogation and one that should be remedied.

33. The Proposed Regulation should be delayed in its introduction until a more robust exercise has been undertaken in regard to scrutinising each provision of the Proposed Regulation on the basis of the criteria established by the Productivity Commission and against a proper evidentiary base. The Existing Regulation should be "rolled over" whilst this exercise proceeds.