



**Regulation Review Committee
Parliament of New South Wales**

**REPORT ON THE ROAD TRANSPORT
(SAFETY AND TRAFFIC MANAGEMENT)
(ROAD RULES) REGULATION 1999**

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Table of Contents

Regulation Review Committee	1
Functions of Regulation Review Committee	2
Chairman's Foreword.....	3
The Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999.....	4
Failure to comply with the Premiers undertaking to consult the Committee before an amendment to the <i>Subordinate Legislation Act</i> is introduced into Parliament.	5
Failure to consider alternatives to the existing state law in the regulatory impact statement.	10
The complexity of the Regulation and the absence of any index or cross referencing with other road transport laws	13
The effect of the regulation on the discretion of courts.	17
The safety of the 40 Kilometre per hour school bus speed limit on high speed country roads	19

APPENDIX: Schedule of Witnesses

Regulation Review Committee

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Hon D. T. Harwin, MLC
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The Functions of the Regulation Review Committee

The Regulation Review Committee was established under the *Regulation Review Act 1987*. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

Chairman's Foreword

This report sets out the Committee's consideration of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*.

This regulation adopts the Australian Road Rules which is a form of National Scheme Legislation relating to the management and operation of the road transport system. It also includes and modifies some of the existing road law in New South Wales.

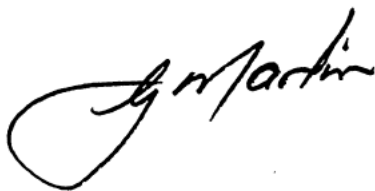
The Committee found that there were a number of serious defects in the preparation of the regulation and its Regulatory Impact Statement. Specific defects identified included the failure to consider alternative options for achieving the objectives of state variations to the national scheme, and the failure to assess the total costs and benefits of the regulation and its alternatives.

The Committee recommends that the Joint Standing Committee on Road Safety (the Staysafe Committee) be expressly included in any consultation program undertaken by the RTA when road safety issues are being addressed.

The regulation was part of a complex package of road transport laws which has been introduced without any index or cross referencing. The Committee recommends that the review by the Traffic Crimes Committee of issues arising under the regulation be expedited and that a formal report to Parliament be made on the recommendations of that review. The RTA should also inform the Committee of the outcome of its discussions with the New South Wales Police Service on the introduction of a proper index for the legislation.

The Committee found that the regulation limited the discretion of the courts in appeals. This particular issue must form a specific part of the current review by the Traffic Crimes Committee.

One of the existing state laws that has been included in the new regulation provides for the school bus warning system. This applies a 40 kilometre per hour speed limit to vehicles travelling in the same direction as a school bus that is stopped at the roadside. When it held its hearings in Orange, the Committee found this an issue of major concern on high speed country roads. Again, this is the subject of an ongoing inquiry commissioned by the Minister. The Committee recommends that this inquiry be expedited.



Mr Gerard Martin MP
Chairman

The Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

The object of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*, is to incorporate the Australian Road Rules, as approved by the Australian Transport Council and published by the National Road Transport Commission, into the law of New South Wales.

The Australian Road Rules cover the basic requirements that drivers, motorcyclists, cyclists and pedestrians need to follow in using the road system. The Australian Road Rules do not encompass all aspects of road use, leaving other law in the States and Territories to address matters such as] driver licensing, vehicle registration, roadworthiness, drink or drug driving, driving hours, log book requirements, and carriage of driver licenses.

The Committee obtained a briefing on the regulation from officers of the Roads and Traffic Authority on 16 March 2000. The Committee then held hearings in Orange on 15 and 16 May 2000, to see at first hand some aspects of the operation of the regulation in country areas, and hearings in Parliament House on 23 June 2000 and 16 November 2000.

The major issues that arose in the course of this inquiry were :

1. Failure to comply with the Premier's undertaking to consult the Committee before an amendment to the Subordinate Legislation Act is introduced into Parliament
2. Failure to consider alternatives to the existing state law in the regulatory impact statement
3. The complexity of the regulation and the absence of any index or cross referencing with other road transport laws
4. The effect of the regulation on the discretion of courts
5. The safety of the 40 kilometre per hour school bus speed limit on high speed country roads

These issues are discussed in detail in the remaining sections of this report.

Failure to comply with the Premier's undertaking to consult the Committee before an amendment to the *Subordinate Legislation Act* is introduced into Parliament

The Explanatory Note to this regulation states as follows:

"The objects of this Regulation are: (a) to incorporate the Australian Road Rules (as published by the National Road Transport Commission on 19 October 1999 and approved by the Australian Transport Council) into the law of New South Wales (Part 2), and (b) to make other provision with respect to road rules for roads and road related areas in New South Wales, and (c) to provide for miscellaneous other matters relating to the use of roads and road related areas by vehicles.

The Australian Road Rules are not completely self-contained and need to be read with associated laws of each jurisdiction. Many of the Rules provide for "another law of this jurisdiction" to define terms used in the Rules for the purposes of application of the Rules in NSW, to permit things to be done in NSW otherwise prohibited by the Rules or to exempt persons in NSW from compliance with the Rules. Division 3 of Part 2 makes provision for such matters. Part 3 sets out some of the associated laws that are particular to NSW.

Parts 4 and 5 provide for the establishment and operation of various parking schemes. Part 6 provides for the issue of parking permits and mobility parking scheme authorities. Part 7 prescribes certain matters relating to alcohol or other drug testing of drivers and other persons on roads and road related areas.

Part 8 prescribes certain devices as prescribed traffic control devices for the purposes of section 50 of the Act and makes it an offence for a person to obscure any such device. Part 9 prescribes certain matters relating to the monitoring of heavy vehicles and vehicles carrying dangerous goods for the purposes of Division 2 of Part 5 of the Act. Part 10 provides for the establishment of schemes to assist children to cross roads and road related areas safely. Part 11 provides for certain heavy vehicles to be speed-limited. Part 12 enables police officers and certain council employees to seize vehicles that have been abandoned or illegally parked or that are obstructing traffic. Part 13 contains miscellaneous provisions.

This Regulation is made under the Road Transport (Safety and Traffic Management) Act 1999, including section 71 (the general regulation-making power) and Schedule 1, sections 19, 26 (b), 27, 46 (1) (b), 60 (1) (a), 64 (4) (b), 68 (1), 76 (1) and (5), the definition of prescribed traffic control device in section 50 and the definition of drug in the Dictionary to the Act."

The regulation is cognate with the package of reforms introduced by the Road Transport (General) Bill, the Road Transport (Safety And Traffic Management) Bill and the Road Transport Legislation Amendment Bill.

The last mentioned bill repealed the old traffic regulations, the Motor Traffic Regulations 1935, General Traffic Regulations 1916 and the General Traffic (Pedestrian) Regulations 1937, which had been the subject of numerous postponements of repeal under the Subordinate Legislation Act and adverse comment by the Regulation Review Committee in a number of reports through the 1990's.

The postponements were made because of delays in implementing the new Australian Road Rules, see previous reports of the Committee, and also the Staysafe 49 (1998) report on the process of developing uniform traffic law in Australia. The Committees were chiefly concerned that the major regulations regarding road safety in the state had gone unassessed in terms of their social and economic costs and benefits, as compared with other alternatives, from 1991 - when the old traffic regulations were due for staged repeal - until 1999.

In introducing the package in the Legislative Assembly, Ms Reba Meagher MP, the Parliamentary Secretary for Roads said

"... the Australian Road Rules cover the basic requirements that drivers, motorcyclists, bicyclists and pedestrians need to follow in using the road system. The rules do not cover driver licensing, vehicle registration, roadworthiness, drink or drug driving, driving hours and log book requirements, or carriage of driver licenses, which remain a matter for other law of the State. The substance of the majority of the road rules already in place across New South Wales will not change, as they are already consistent with the Australian Road Rules. New South Wales will retain and phase out over seven years a few existing rules such as the three-tier parking system.

By 1 December 2006 all existing no standing signs will be replaced with no stopping or no parking signs. Transitional arrangements until 1 December 2006 will enable the replacement of existing no standing signs within normal maintenance cycles. During this period it is intended that each location be assessed on safety grounds to determine appropriate signage. This will provide plenty of time for road users to learn to adjust their parking behaviour. Drivers, riders, pedestrians and other road users will be advised of the changes by way of a comprehensive public awareness campaign which will commence later this year.

The Australian Road Rules were widely circulated, by the National Road Transport Commission, for public comment in January 1995. The commission received in excess of 460 individual submissions resulting in the current draft. The comments received were generally supportive. Additionally, the benefits of uniformity are likely to be significant for those Australian road users travelling interstate, and those citizens changing their State of residence. If road users are to understand and observe traffic regulations and the meaning of control devices, these should be the same. This also makes the tasks of enforcement, administration and education much easier. "

In the debate in the Legislative Council, the Hon. J. H. Jobling MLC referred to earlier work by the Regulation Review Committee and the Staysafe Committee in reviewing the development of the Australian Road Rules. He said:

"After a lengthy overview, the Joint Standing Committee upon Road Safety, of which I am a member, published its Staysafe 49 report in December 1998. I will briefly refer to some of its recommendations. The Staysafe committee noted the decision by the then Minister for Roads to request the Roads and Traffic Authority to review the repeal of the old traffic regulations - the Motor Traffic Regulations 1935, General Traffic Regulations 1916 and the General Traffic (Pedestrian) Regulations 1937 - and to identify alternative possibilities for action.

The committee recommended that the Minister for Roads, in consultation with Ministers whose portfolio areas include road safety activities, require the Roads and Traffic Authority to conduct a comprehensive review of New South Wales traffic law as it applies to motorists, cyclists and pedestrians, using the draft Australian road rules and other appropriate documents. Once this is complete, the Roads and Traffic Authority should undertake a significant program of public education and consultation about the manner in which, and the form by which, the old traffic regulations are to be replaced. The introduction of new traffic legislation should be accompanied by a comprehensive regulatory statement and an assessment of the social costs associated with the new law.

We need to see those regulations as soon as possible and ascertain the social costs associated with this law. The committee further suggested that the Minister for Roads adopt a cautious approach to the introduction of new traffic law. There may be an adverse impact of the introduction of any major revision in New South Wales traffic law concerning the general behaviour of motorists, cyclists and pedestrians, particularly if it takes place in late 1999 or early 2000, immediately prior to the Sydney 2000 Olympics and Paralympics. These points were part of four recommendations in Staysafe 49, which was presented to this Parliament. The long title of the Road Transport Legislation Amendment Bill states that it is:

"to amend the Subordinate Legislation Act 1989 to exempt principal statutory rules that include matters involving the implementation of certain intergovernmental road transport agreements from the requirement to prepare regulatory impact statements"

. . . The Government has known about this matter for some time, yet it has taken a long time to act. It is interesting to note the questions that came before the committee. Paragraph 2.9 of Staysafe 49 notes that the Carr Government advised that the Australian road rules were unlikely to be ready for implementation before 2000.

In May 1998 the Hon. Dr Andrew Refshauge, as Acting Premier, wrote to the Regulation Review Committee informing it of the proposal to postpone the automatic repeal of the regulations under the Traffic Act 1909 on 1 September 1998 by another State law amendment to the Subordinate Legislation Act. The Acting Premier acknowledged that:

... the regulations in question have been the subject of the maximum number of postponements under the Subordinate Legislation Act and

have had additional statutory postponements under the state law revision program. It is proposed to again effect a one year postponement in view of the fact that the national road transport reforms are continuing.

That statement is a rather severe reprimand and tends to give the lie to the statement of government action. Extraordinarily long delays have occurred. The Acting Premier then referred to a Cabinet Office proposal, which has since been rejected, and said that the traffic regulations should be placed beyond the reach of the Subordinate Legislation Act 1989. The Hon. Carl Scully, as Minister for Roads, wrote to the Regulation Review Committee stating: I refer to your request that the Regulation Review Committee be provided with details of the progress towards the introduction of national road transport law during the period from the date of the last postponement of the Regulations.

Paragraph 4.21 of Staysafe 49 states: Based on the comprehensive review of New South Wales traffic law as it applies to motorists, cyclists and pedestrians and the program of public education and public consultation, by the Roads and Traffic Authority, the Minister for Roads should then be able to introduce the appropriate new road traffic legislation to replace the old traffic regulations . . . notes and supports the significant concerns of the Regulation Review Committee that a full and comprehensive assessment of the financial impact of the new traffic regulations is necessary . . . recommends that an assessment of the social costs associated with the new traffic legislation also be undertaken. The question is, and I am unaware of the answer, whether a regulatory impact statement was produced. I will be interested to hear the Minister's response to that".

In response the Minister for Mineral Resources, and Minister for Fisheries said:

"I am informed that the regulations referred to by the Hon. J. H. Jobling are being prepared and will be available before December, as will a regulatory impact statement. The provisions are very complex and need proper consultation with all State agencies and the appropriate national bodies, and this has taken time. The Hon. J. H. Jobling said that the intent of the bills has been on foot for some time. Since 1947 various States have sought uniform road rules. It is pleasing to note that the Carr Labor Government has brought the process to a conclusion".

When the package was passed in June 1999, the Committee noted that it amended Schedule 3 to the Subordinate Legislation Act 1989 to provide that proposed principal statutory rules concerning matters involving the substantial implementation of the national agreement to make the Australian Road Rules that have been the subject of regulatory assessment, are exempt from the requirement under the Act for the preparation of a Regulatory Impact Statement, RIS, for a proposed principal statutory rule.

The Committee had not been consulted on that amendment despite an earlier undertaking by the Premier given in 1997 that where practicable he would have his officers undertake informal consultation with the Committee before bills which change procedures on regulations are introduced.

The explanatory note to the amendment states that although statutory rules that are substantially uniform or complementary with the legislation of the Commonwealth or other

States are already exempt from the requirement for an RIS, the exemption does not cover statutory rules made in New South Wales before the relevant legislation is introduced in the Commonwealth or other States and does not cover nationally agreed provisions that are implemented in New South Wales by statutory rules where neither the Commonwealth or another State has implemented the provisions as part of its law.

The use of this provision is of major concern to the Committee, as in a future case the national agreement could well provide that each state is to substantially adopt its own law with the exception of a few minor national provisions. In such a case the bulk of the regulation would escape assessment at both the national and State level.

The Committee recommends that the Premier again instruct his officers to undertake consultation with the Committee before bills which change procedures on regulations are introduced.

The Committee recommends that in future nationally agreed provisions that are implemented in New South Wales by statutory rules should not be exempt from the requirement for an RIS if neither the Commonwealth or another State has implemented the provisions.

Failure to consider alternatives to the existing state law in the Regulatory Impact Statement.

As the Committee was not advised of the bills before they were introduced it sought details from the Roads and Traffic Authority and the Cabinet Office of the regulatory assessment of the road rules and asked whether any state variations to the national scheme will be made and whether these will be subject to an RIS under the Subordinate Legislation Act 1989. Arguably state variations could also be exempt from the requirement to prepare an RIS as they could be said to involve the substantial implementation of an intergovernmental agreement.

The Committee was advised that the Commonwealth regulatory assessment was contained in a number of RISs prepared by the National Road Transport Commission, (the NRTC). The Committee was also advised that there would be state variations to the national scheme and that these would be the subject of RIS under the Subordinate Legislation Act 1989.

The State Regulatory Impact Statement

The State Regulatory Impact Statement was referred to the Committee on 2 December 1999. It had been prepared for three regulations, two of which were subsequently consolidated into the present regulation. The third regulation was the Road Transport (General) Regulation 1999

Objectives

The objectives of the consolidated Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 as stated in the RIS are to:

- incorporate the Australian Road Rules into NSW legislation;
- impose standards of conduct on road users;
- impose special speed limits;
- define signs, road markings and traffic control devices;
- impose requirements for safety equipment; and
- provide for the regulation of paid parking schemes;
- provide for alcohol or other drug testing of drivers;
- provide for prescribed traffic control devices;
- provide for the monitoring of heavy vehicles;
- provide for schemes to assist children to cross roads; and
- provide for certain heavy vehicles to be speed-limited.

With respect to item one the RIS indicates that an RIS for the Australian Road Rules was published by the NRTC and was accompanied by extensive consultation.

The provisions in items 2 to 11 adapt the rules to the existing NSW law by, among other things, enabling that to be done in New South Wales which would be otherwise prohibited by the Rules. These ten items are the state variations to the national scheme that had to be assessed in an RIS under the Subordinate Legislation Act 1989.

Options

While the RIS acknowledges that the Subordinate Legislation Act requires that alternative options for achieving the objectives of the regulation must be considered, it states in item 7.1 that New South Wales has agreed to the development of nationally consistent road law under the arrangements coordinated through the NRTC and the approach of this legislation is to make minimal changes needed for nationally consistent road law. The RIS indicates that any alternative must imply greater changes to current New South Wales law than would result from the proposed regulations and would go beyond the purpose and objectives of the proposed regulations.

What this effectively means is that the old traffic regulations have been rolled over with minimal changes and without any identification of alternative options for achieving their objectives.

Costs and Benefits

The RIS states that the costs of adopting the Australian Road Rules in New South Wales law are outlined in the NRTC's RIS. As for the state variations adopting the existing law the RIS states that the proposed regulations will not add to the ongoing costs and that the introduction of this major reform with minimal change must result in minimum cost to achieve the objective.

However it must be noted that clause 1 (c), Schedule 2 of the Subordinate Legislation Act requires the total costs and benefits of the regulation and its alternatives to be assessed, not merely the marginal costs and benefits of any minor changes to the existing law.

Consultation

An extensive consultation program is set out in the RIS. However, it was noted that the Staysafe Committee was not included within the consultation process, despite the Staysafe Committee tabling a specific and critical report on the process of developing the Australian Road Rules in 1998. This departs from an undertaking given by the Acting Minister for Roads to the Regulation Review Committee in 1996 to arrange for Staysafe to be consulted by the RTA when road safety issues are being addressed in proposals for regulatory change.

In a letter dated 26 August 1996 the Acting Minister for Roads advised as follows:

I refer to your recent letter (ref: 2410), concerning discussions on June 6, 1996 with the Committee on a regulation to the Traffic Act 1909.

The Roads and Traffic Authority (RTA) already consults widely with its stakeholders when developing proposals for regulatory change in the road safety and traffic management area. Nevertheless, I agree that it would be beneficial to seek the views of Staysafe when road safety issues are being addressed.

I have therefore arranged for Staysafe to be consulted in these instances."

The Committee asked the RTA why this consultation with the Staysafe Committee had not taken place. The RTA said that Staysafe had discussions with the NRTC on the Australian Road Rules when they were being prepared, but they conceded that Staysafe had not been consulted on the New South Wales regulation or RIS.

The Commonwealth Regulatory Impact Statements

Copies of two RISs produced by the NRTC on the Australian Road Rules, dated November 1998 and August 1999, were provided to the Committee with the State RIS. They tend to concentrate on the costs to Government rather than identifying compliance and social costs to the public.

The total cost of implementation of the rules in New South Wales is said to range between \$24,381,000 and \$50,083,000. The reason for this variability is the major cost item, is the change from the three tier parking system to the two tier system of "no stopping" and "no parking" zones. Depending upon the speed with which this is introduced this is said to cost between \$6 million and \$ 30 million in New South Wales.

The Committee has never seen such a degree of variability in costs in an RIS before and this raises concerns whether the NRTC's RIS have been properly prepared. The Committee notes that at the Commonwealth level there is as yet no parliamentary oversight of the RISs and thus the NRTC's RIS was never subjected to any rigorous parliamentary scrutiny.

A number of major costs items also appear to have not be included within the RIS. For example, costs associated with changes to enforcement activities by police and other agencies (e.g., local councils) were not identified or costed.

The Committee finds that alternative options for achieving the objectives of state variations to the national scheme in the regulation were not identified and fully assessed as required by the Subordinate Legislation Act.

The Committee draws the attention of Parliament to the failure by the RTA to comply with the requirement of clause 1 (c), Schedule 2 of the Subordinate Legislation Act for the total costs and benefits of the regulation and its alternatives to be assessed, not merely the marginal costs and benefits of any minor changes to the existing law.

The Committee recommends that the Staysafe Committee be expressly included in any consultation program undertaken by the RTA when road safety issues are being addressed in proposals for regulatory change.

The complexity of the regulation and the absence of any index or cross referencing with other road transport laws

The complexity of the regulation was the most common concern that emerged in the course of the inquiry.

The Chief Magistrate of New South Wales in a submission on the RIS said that the courts, legal practitioners and the general public will have to refer to at least eight sources to ascertain the traffic law in NSW.

She said that even before its commencement, this legislative framework is seen as leading inevitably to confusion and error. She said:

“I am very disappointed that the opportunity has been missed to consolidate the traffic laws into one act of parliament. Such a consolidated statute would have been useful both for those who appear regularly in local courts and for those who preside in them. More importantly, I think the community is entitled to expect that all laws affecting road users will be located in one accessible document. In this regard I note that the Attorney-General’s Department has taken the decision to stop distributing pamphlet copies of acts to courthouses. Copies of regulations have never been uniformly reliably distributed. When essential matters are buried in voluminous and numerous regulations, how can the community be properly said to have reasonable access to the relevant law?”

She also believed that it was poor policy to provide for penalties and disqualification for serious speeding offences in regulations. Clause 154 of the new regulation provides for these but it substantially reproduces existing provisions of the Traffic Act, s 4A (1)-(1B), (5B) and (5BA))

The Chief Magistrate said that such offences are among the most common heard before local courts, and while some benefits of flexibility in the capacity of Parliament to vary such penalties may be achieved, she believes the offences are sufficiently serious to warrant their inclusion in the principal Act, with the increased level of scrutiny which that affords.

The Committee considers that this is an option that should have been considered when the RIS for the regulation was prepared.

The Chief Magistrate was also concerned that maximum penalties were provided for individual offences in the regulation rather than one maximum penalty for all offences under the regulation. She believed it was undesirable to have a range of differing monetary penalties in a regulation.

The Committee heard evidence from officers of the Roads and Traffic Authority that the Attorney General had set up an independent committee to address the issues raised by the Chief Magistrate and a significant number of other issues. The formal title of that committee is now the Traffic Crimes Committee.

The Traffic Crimes Committee is said to be reporting to three Ministers, the Hon. Bob Debus MP, Attorney General, the Hon. Paul Whelan MP, Minister for Police, and the Hon. Carl Scully MP, Minister for Transport and Minister for Roads, on a range of issues, including:

- minimum penalties and judicial discretion;
- the effect of the Fines Act on driver licensing,
- the use of radar detectors;
- death or injury caused to persons falling from vehicles;
- the arrangements that will be made for appeals to the Administrative Decisions Tribunal, at the moment, the appeal process is still through the Local Court;
- demerit points appeals;
- the periods of disqualification;
- driver knowledge tests;
- certificates of evidence;
- habitual offenders scheme;
- criminal proceedings involving children;
- identification of unlicensed driving;
- sentencing procedures in relation to driver licensing;
- number of plates on motor cycles;
- pedestrian traffic, particularly concerns raised by the police and others about the habit of students and others washing windows on roads or roads-related areas;
- dangerous parking; and
- the hiding of number plates from police radar equipment and RTA radar and photographic equipment.

The witnesses from the New South Wales Police Service were concerned that Traffic Crimes Committee was looking at particular problem issues rather than taking a holistic approach to the regulation.

The witnesses from the New South Wales Police Service said that one of the major problems was that the road law was formerly in one Act and three regulations. It is now in eight Acts and fourteen regulations and this impacts on officers ability to enforce the law. They said that none of the law is cross-referenced and that lawyers are ringing the Police to find out the related provisions.

Superintendent Sorrenson said: “the only solution I can see from our point of view at the moment is some sort of an A to Z index, whereby I can look up “Accident” and it tells me that it is Rule 204 of the Australian Road Rules, it is Clause 1234 of the Transport Legislation or whatever, or I look up “License”, and it gives me some reference point to go to these parts. In my wildest dreams I cannot see how that Constable out there now, pulling that person up who has got a set of number plates sitting on the back seat of the car, that are obviously being used for something else, will know “Does this come under the legislation there, or does this come under there, have I got power to take these plates, have I not? Can I do it, does it need to be more than fourteen days, does it not?” and all these myriad of questions that arise that previously, there it is, chapter and verse.

My concern is that and then the subsequent impact of that on the general compliance by motorists with the road rules that we all know are there for a purpose, to make people drive safer, to keep defective vehicles off the road, and all that sort of thing. If the end result of this is a lessening of those things does that then breed in some people that 'Well, if I am not going to get picked up for this it is okay to do it' but they are hypotheticals for the future as to how it goes.

But as I say, I think just from what you have heard thus far, clearly there is confusion within police officers as to how they should apply this. It would be interesting to know, well the general motorists are just unaware of all these things so they cannot be confused about it because they do not know about all the changes, that the accident reporting procedures and driving of unregistered motor vehicles and all those things have all changed. The changes are far more than roundabouts and buses having the right to pull out from the kerb."

The RTA officers advised that they were negotiating with the police about the form such an index might take and how useful it would be. They said they may well go down that path.

The witnesses from the New South Wales Police Service said that one of the causes of the complexity of the legislation was the fact that New South Wales had adopted the Australian Road Rules by reference while other states had incorporated the relevant provisions in the text of their regulations. The RTA said that the agreement of Ministers at the Australian National Transport Council was that all jurisdictions would pick up the Australian Road Rules by reference but in fact only two jurisdictions New South Wales, and the Australian Capital Territory have picked up the Australian Road Rules as a publication. All other jurisdictions have picked it up by adopting the law in various forms into their own legislation.

Maintenance meetings are held on the national scheme legislation in order to ensure that it is working effectively. The Police witnesses said that they had a raft of issues for discussion at the last maintenance meeting on the legislation but they were voted against on a number of critical issues by States which had not taken up the legislation in the same way as New South Wales. Accordingly, they said that the mode of adoption affects how New South Wales police carry out their enforcement activities and that they are at a disadvantage.

The RTA said that the Australian Road Rules were the smallest component of the overall changes to the national legislation regarding road transport law in Australia. However, Mr Faulks, Manager of the Staysafe Committee, said that this small component has probably had the biggest cost effect, particularly in terms of traffic policing and the operation of the justice system. He said that the costs of that whole process of adopting the Australian Road Rules have been significantly underestimated and significantly understated in the documentation that has appeared to date.

The Regulation Review Committee is concerned that this new review by the Traffic Crimes Committee is in effect a substitute for the detailed assessment that should have been made in the regulatory impact statement for the regulation before it was introduced. The fact that the issues arising from the regulation itself will now be considered with a number of unrelated issues may prevent proper assessment. Furthermore it is unclear whether there will be a formal report as such on each of these issues.

The Committee Recommends that the review by the Traffic Crimes Committee of issues arising under the regulation be expedited and that a formal report to Parliament be made on the recommendations of that review. The RTA should also inform the Committee of the outcome of its discussions with the Police Service on the introduction of a proper index for the legislation.

The effect of the regulation on the discretion of courts

The Chief Magistrate said as follows in her submission on the regulation:

"Of particular concern to magistrates is the formula adopted for the provision of appeals to Local Courts. Clause 6 of schedule 2 to the Road Transport (General) Regulation 1999 adopts similar terminology to clause 52 of the Road Transport (Driver Licensing) Regulation 1999, which commenced earlier this year. Clause 6 provides in subclause (vii): 'A Local Court must hear and determine an appeal made to it under this clause and may confirm with or without variation or disallow the decision appealed against, or make such other order in the circumstances as to the court seems just'. Subclause (viii) provides: 'For the purposes of varying a decision of the authority under subclause (vii), the court may exercise only such powers as the authority could have exercised under the Road Transport (Driver Licensing) Act 1998 or the Road Transport (Driver Licensing) Regulation 1999 when making that decision.

In the past, appellants have appealed demerit-point cancellation of a license essentially on the ground that having regard to their character, special needs and overall driving record their license should not be cancelled. Magistrates hearing such appeals were able to deal with appeals in a variety of ways which accorded with the concept of 'make such other order in the circumstances as to the court seems just'. For example, a particular offence might be disregarded and an appellant permitted to retain his or her driver's license, but with the majority of demerit points remaining on the license. Essentially it was possible to have regard to the overall driving record of the appellant and formulate a just order.

Under the present law the powers of the authority are almost all expressed with mandatory terms in the governing legislation. Section 16 of the Road Transport Driver Licensing Act 1998 appears to contain one of the few discretionary powers capable of being exercised by the authority, and the only discretionary power which relates to the accrual of demerit points. Accordingly a magistrate exercising only such powers as the authority could have exercised has no general discretion to 'make such other order in the circumstances as to the court seems just'. Certainly the example referred to in my previous paragraph could only result in an order to confirm or disallow the decision, neither of which would necessarily be a just result.

Many of my colleagues have expressed concern at the confusing form of the subject provisions and some clarification ought to be provided in order to indicate what kind of discretion's are envisaged. This is particularly important because it is evident that legal practitioners and the public are generally unaware that the legislative basis for license appeals has changed, with summonses continuing to be issued for the old formulation of 'fit and proper person to hold a driver's license' as the foundation of the appeal. This is a direct consequence of including important matters in regulations which are by their nature less accessible to the

community. As a result there are many disappointed members of the public wasting time at court in futile appeals.

I should observe that if there are to be appeals of any kind arising from the provisions of the new regulations, it would be preferable to give the courts a clear and unfettered discretion to 'make such other order in the circumstances as to the court seems just'. If such a policy is not for any reason acceptable, it is obviously important that certainty be provided as to the scope of the discretion that is envisaged by government."

The RTA officers indicated that this is one of the matters that the Traffic Crimes committee will review.

The Committee accordingly recommends that the review by the Traffic Crimes Committee of this issue be expedited and that a formal report to Parliament be made on the recommendations of that review.

The safety of the 40 kilometre per hour school bus speed limit on high speed country roads

Clause 40 of the regulation provides as follows:

40. Passing school bus displaying 40 km/h speed limit sign

(1) The driver of a motor vehicle approaching from the rear a bus (whether stationary or in motion) on which is displayed a sign in a form similar to the form illustrated at the end of this clause must not pass the bus on a road at a speed of more than 40 km/h if the warning system of the bus is activated.

Penalty and disqualification: a person who contravenes this subclause is guilty of an offence and is liable to a maximum penalty and a period of disqualification (if any) determined in accordance with clause 154.

(2) This clause does not apply in relation to a length of road to which a sign referred to in clause 3 (1) (a) of Schedule 1 applies under Part 3 of the *Australian Road Rules* (read together with clause 3 of Schedule 1).

The Committee heard evidence at its hearing in Orange that this requirement is impractical on high speed country roads. Representatives from the New South Wales Police Service, the local councils and bus companies were concerned that there could be a major accident where vehicles were forced to stop suddenly and there could be a chain reaction.

Mr Johnston, Traffic Administration Officer of Orange City Council said that Council was mainly concerned with the chain reaction accident on the 80 kilometres or 100 kilometres an hour roads outside the town limits where someone stops sharply, below the crest of a hill or around a curve, and a semi-trailer or heavy vehicle is coming and doesn't get the chance to stop.

The Police Regional Traffic Co-ordinator for Dubbo, Sergeant Reichart said that it was one of the most dangerous pieces of legislation for rural areas he had ever come across. He said:

“We are creating a dramatic change in traffic conditions right beside the very thing we want to try to protect....”

For motorists travelling on rural roads to be able to comply with this bit of legislation, you are expecting them, in the space of 12½ metres, to reduce their speed from 100 or 110 kilometres to pass the bus. The legislation deals only with travelling at 40 kilometres an hour when passing the bus, which is 12½ metres. You then have to reasonably expect the motorist to have some sort of a braking period to get down to that speed. We do not have any problem with the legislation in an urban area where drivers have to reduce their speed from 60 or 70 kilometres to 40 kilometres an hour. That is a reasonable expectation. But in the country, on these rural roads with high speed limits, we believe it is not a reasonable expectation.

On the issue of enforcement, it is a piece of legislation that the Police Service cannot enforce or finds it very difficult to enforce, based on our current guidelines. At the moment, compliance with the regulation is low. Whether that has to do with limited police enforcement or whether people consider it dangerous to obey the speed limit is something that I cannot answer. However, I have had numerous calls from members of the community, so I can only relate this on anecdotal terms because I do not have any records of those phone calls, but they do relate to near misses with vehicles on a highway slowing down suddenly and lines of traffic behind them being unable to stop and skidding. In one case at Molong, it was relayed to me by a bus driver down there, a semi-trailer was in the process of starting to jackknife towards the back of his bus which was fully laden with school kids.....

Insofar as the visibility of the lighting system at the back of the bus, at this stage I would like to say I agree with the amber colour. Studies have shown that the amber colour is the most visible colour in the light spectrum and therefore would be the most suitable. However, we expect our emergency vehicles to have high candle power lighting systems as well as our council vehicles and roadworks vehicles at the side of the road. With our school buses we are looking at lower candle power blinkers virtually. These lights might be all right when one is coming up behind a vehicle in an urban environment but when you are coming up behind them in a high-speed environment and the bus is offset to the road, as they usually pull off the road slightly, the lights are virtually impossible to see. So, relating that back to the motorist and the reasonable expectation that you have to give them some sort of warning that this is happening, I think it is impractical for them to comply with the regulation.”

He indicated that he had not been consulted or made aware of the introduction of the school bus warning system even though he had been the regional traffic co-ordinator for five years. He said that he had spoken to his fellow regional traffic co-ordinators in the country and they all have similar concerns to his.

Mr Faulks, Manager of the Staysafe Committee, said that the New South Wales Police Service was involved throughout the Staysafe inquiry in 1994 into the safety of school children during school travel involving buses and that the recommendation about 40 kilometres around school buses was now six years old. Mr Faulks stated that the reason for the recommendation was that the Staysafe Committee Members believed that no children should be placed in danger of being killed in a road crash during school travel, and that the risk of death was reduced if vehicles passed school buses discharging school buses at a speed of 40 kilometres per hour. Mr Faulks also suggested that consultation mechanisms within the Police Service on such proposals needed to be improved.

Mr Faulks subsequently advised that it was not the case that the 40km/hr speed limit cannot be enforced. Chief Superintendent Sorrenson, Commander (Traffic Services), has indicated to the STAYSAFE Committee that there has been a successful prosecution and conviction of a driver detected by a police officer speeding past a stopped school bus. This is, however, the only conviction Chief Superintendent Sorrenson is aware of for ‘excess speed’ associated with a 40 km/hr speed limit around a school bus.

The RTA witnesses said that the bottom line is that all drivers no matter where they are driving, need to drive to the conditions of the road, and that a bus in school travel time is a circumstance that a driver must anticipate and for which a driver must be prepared to slow down.

Mr Faulks, Manager of the Staysafe Committee, agreed within this assessment, noting that when analogous situations occurred on country roads, including the presence of slow moving farm vehicles such as tractors, grain headers, etc., or livestock, the same requirements to keep a proper lookout and to drive according to the circumstances applied.

The RTA witnesses said that in their attempt to try to improve the visibility of the change in zone from 100 kilometres per hour to 40 kilometres per hour, they have been negotiating for additional advance warning signs to be made visible on the roadway, and where that roadway lends itself or, alternatively, does not lend itself to additional signs, they are considering the use of flashing lights above advance warning signs for the 40 kilometres per hour speed limit and also extended mast arms, especially on multi-lane roads, where larger vehicles may obscure the previous sign, to advise that they are moving into a reduced speed zone.

They further indicated that the road and transport consultancy firm ARRB Transport Research is conducting a three phased evaluation of the speed limit. The first phase is to do some interviews with all key stakeholders both in metropolitan and rural areas. That includes bus operators, bus drivers, police, Department of Transport, the RTA, and commuters. The second phase, which is also almost complete, is looking at the crash data, both in metropolitan and rural areas when a bus has been considered a factor in that crash, and that is almost complete. The third phase is recommendations on how the RTA should proceed with the initiative.

The Committee recommends that the evaluation of the school bus speed limit conducted by ARRB Transport Research should be expedited and on conclusion should be made available to the Committee.

Schedule of Witnesses

At Orange on Monday 15 May 2000 and Tuesday 16 May 2000

Councillor Richard Niven, the Mayor of Orange City Council;
Sergeant Greg Reichart, Traffic Co-ordinator, New South Wales Police Service, Dubbo;
Sergeant Bernie Schulte of Orange Highway Patrol;
Mr Allan Johnston, Traffic Administration Officer, Orange City Council;
Ms Karen English, Road Safety Officer, Orange City Council;
Mr James Newman, resident of Blayney;
Mr Garry Davis, resident of Orange;
Mr Malcolm McDonald resident of Orange;
Mr David White resident of Orange;
Mr Peter McQuie resident of Parkes;
Mr Eddie Ogden Manager of Ogden's Coaches, Wellington, and Chairman of the Orana Branch Bus and Coach Association;
Mr Jeff Neill Manager of Dubbo Coaches;
Mrs Marjorie Bollinger of the Highway Safety Action Group, Orange;
Mr Ian Faulks, Manager of the Joint Standing Committee on Road Safety.

At Sydney on Friday, 23 June 2000

Mr Alan Ritchie, Manager, Dangerous Goods, New South Wales Environment Protection Authority;
Mr Geoff Mellor, Director, Noise Policy, New South Wales Environment Protection Authority,
Ms Donna Rygate, Director, Regulation and Audit, New South Wales Environment Protection Authority;
Mr John Brewer, General Manager, Road Safety Strategy, Road Traffic Authority;
Mr Phillip Margison, General Manager, Traffic Management, Road Traffic Authority;
Ms Maureen Elliott, Manager, School and Youth Programs, Road Traffic Authority;
Mr Robert Reece, Senior Legislation Officer, Road Traffic Authority;
Chief Superintendent Ron Sorrenson, Commander, Traffic Services Branch, New South Wales Police Service;
Sergeant Ron Dorrough, Traffic Laws Officer, Traffic Policy Section, New South Wales Police Service;
Ms Diane Miller, Division Manager and Policy Officer, Motor Traders Association;
Mr Jeremy Pritchard, Private Driver Advocate.

At Sydney on Thursday, 16 November 2000

Mr John Brewer, General Manager, Road Safety Strategy, Road Traffic Authority;
Ms Maureen Elliott, Manager, School and Youth Programs, Road Traffic Authority;
Mr Robert Reece, Senior Legislation Officer, Road Traffic Authority;
Sergeant Ron Dorrough, Traffic Laws Officer, Traffic Policy Section, New South Wales Police Service;
Mr Ian Faulks, Manager of the Joint Standing Committee on Road Safety