

**AUSTRALIAN ROAD RULES
SEATBELT LEGISLATION
AMENDMENT PACKAGE 2005**

**REGULATORY IMPACT
STATEMENT**

November 2005



National Transport Commission

**Prepared by
National Transport Commission**

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**Australian Road Rules Seatbelt Legislation Amendment Package 2005,
Regulatory Impact Statement – November 2005**

Report Prepared by: **National Transport Commission**

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REPORT OUTLINE

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Abstract:	<p>Jurisdictions raised significant concerns regarding seatbelt legislation under Part 16 of the Australian Road Rules, "Rules for persons travelling in or on vehicles". As many of these concerns were policy related, the Australian Road Rules Maintenance Group decided to deal with these issues separately and established the Seatbelts Working Group. VicRoads undertook a lead agency role and prepared a research paper which was considered by the Australian Road Rules Maintenance Group when deliberating and making recommendations.</p> <p>It is predicted the proposed amendments will have two key benefits. First, a reduction in the number of unrestrained passengers killed or injured in motor vehicle crashes, and secondly, raising public awareness of the need for passengers to be correctly restrained.</p>
Purpose:	For approval by the Australian Transport Council
Key words:	seatbelts; Australian Road Rules; unrestrained passengers

FOREWORD

The National Transport Commission is an independent body established under an Inter-Governmental Agreement. It has an on-going responsibility to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road transport, rail transport and intermodal transport.

The Australian Road Rules were developed by the former National Road Transport Commission in consultation with relevant stakeholders, which included road transport agencies, police, road safety experts, motoring organisations, local government, members of the public and other interested parties. The Australian Road Rules were, in most part, an integration of jurisdictional laws, incorporating seatbelt and child restraint legislation.

The Australian Road Rules were approved by the Australian Transport Council in January 1999, as was a maintenance strategy by which the Australian Road Rules could be amended to ensure, as model legislation, that they reflect the contemporary needs of stakeholders and meet community expectations concerning road safety.

Although the Australian Road Rules were implemented nationally, the maintenance strategy has highlighted inadequacies in seatbelt legislation. While most jurisdictions have adhered closely to the Australian Road Rules in their jurisdictional legislation, some have opted to utilise the “law of a jurisdiction” provision to satisfy local needs, while others have gone beyond the model legislation regarding seatbelt laws to bring about, what they believe, is a safer approach. This Regulatory Impact Statement recommends modifications to seatbelt legislation that will bring the Australian Road Rules in-line with jurisdictional variations and introduce some new provisions to extend restraint requirements. These amendments should result in a reduction in the number of deaths and trauma in road crashes currently attributed to the non-use of seatbelts.

Extensive consultation has been undertaken between the National Transport Commission and representatives of all Commonwealth, State and Territory road safety, traffic, road transport and enforcement authorities, in order to identify and recommend the required changes.

This Regulatory Impact Statement together with the proposed amendments, is forwarded to the Australian Transport Council for approval. Subject to that approval, the amendments will be incorporated into the Australian Road Rules, and States and Territories will implement changes to jurisdictional legislation in accordance with their own protocols.

The National Transport Commission acknowledges the work undertaken by VicRoads in the development and presentation of a paper authored by Ms Grazyna Mackiewicz Senior Roads Corporation Officer (Psychology) “Seatbelt Legislation: Current Status and Issues for National Uniformity”.

A handwritten signature in black ink, appearing to read 'Stuart Hicks', with a stylized flourish at the end.

Stuart Hicks
Chairman

SUMMARY

Purpose

The purpose of this Regulatory Impact Statement is to describe the proposed changes to seatbelt legislation in the Australian Road Rules, and outline the impact of the proposals on various road user groups.

Background

In 2003, the Australian Road Rules maintenance strategy identified a number of issues concerning seatbelt legislation housed within Part 16 of the Australian Road Rules, and considered these as major policy issues requiring further consultation and research before being recommended to the Australian Transport Council for change. The Australian Road Rules Maintenance Group agreed to deal with seatbelt matters separately and progress them as a separate amendment package. A Working Group was formed with VicRoads taking a lead agency role.

VicRoads undertook to develop and present a research paper, covering all issues raised during the maintenance strategy on seatbelts, to the Australian Road Rules Maintenance Group for consideration before deciding on any change.

At a later date, the Australian Road Rules Maintenance Group agreed with the recommendations of that paper, which this Regulatory Impact Statement now addresses.

Main Issues

The use of seatbelts is a proven factor in reducing fatalities and the severity of injuries resulting from motor vehicle crashes. The inducement to wear seatbelts is generally achieved through effective education and enforcement strategies supporting legislation.

However, some areas of the legislative framework that underpins those strategies need to be changed to give a larger return on safety benefits to the community. The changes proposed in this Regulatory Impact Statement will achieve those aims by setting up model provisions for jurisdictions to implement.

The issues identified and addressed by this Regulatory Impact Statement are:

- prohibition on the carriage of unrestrained passengers in load areas of vehicles;
- driver responsibility for passengers who do not use a seatbelt where one is available;
- prohibition on the carriage of additional unrestrained children as passengers (after all seating positions fitted with restraints/seatbelts are occupied);
- prohibition on the carriage of additional unrestrained adult passengers (after all seating positions fitted with seatbelts are occupied);
- exemption from seatbelt requirements for a two-up driver occupying a sleeper compartment in a heavy vehicle;
- uniform medical exemptions from seatbelt wearing requirements;
- prohibition on the carriage of children under 1 year old in the front seat.

These changes will affect all road user groups to some degree, however, it is anticipated that no significant costs will be incurred (variances will be proposed for remote areas where necessary). The proposed changes include specific exemptions for particular circumstances and transition periods to allow for the phasing in of full compliance.

The proposed changes are vital in promoting greater public awareness of seatbelt (restraint) issues.

The principles of safety, traffic efficiency, consistency and reduced administration cost on which the development and acceptance of the Australian Road Rules were based, have guided the consideration of the proposed amendments by all jurisdictions.

Generally, the impact of the proposals on road users is not substantial; however, this is not necessarily the case in regional and remote areas of the Northern Territory and Western Australia, due to differing community needs and magnitude of travel distances. These aspects where recompense may be considered and certain exemptions and/or transitional periods may be allowed are discussed in the Regulatory Impact Statement.

It is predicted the inclusion in the Australian Road Rules of the proposals discussed will ensure that the Australian Road Rules reflect present-day expectations of the community and stakeholders to provide a safer motoring environment, and will also contribute to effective administration and enforcement of the Australian Road Rules.

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1. INTRODUCTION

This Regulatory Impact Statement documents various issues raised by the Australian Road Rules Maintenance Group, relating to seatbelt usage nationally. The proposed changes have been developed through the maintenance strategy endorsed by the Australian Transport Council in 1999. As part of this strategy, representatives of Commonwealth, State and Territory transport agencies have recommended the necessary changes by consensus or majority. If approved, the proposed changes will both modify existing laws and insert new ones.

2. PROBLEM AND OBJECTIVES

The use of seatbelts by vehicle occupants has a correlation to the level of injury sustained in a vehicle crash. Wearing a seatbelt reduces the likelihood of a fatality and also reduces the likely seriousness and/or severity of injuries sustained by passengers and drivers. It is therefore imperative that the Australian Road Rules echo community and government desires to reduce such trauma by prescriptive means that allows not only standardised enforcement, but also facilitates educative programmes and promotes clarity of interpretation. The changes proposed to the Australian Road Rules address substantive areas that the Australian Road Rules Maintenance Group believes will achieve a reduction where the trauma is attributable to non-wearing of seatbelts. It should be noted that, the heavy vehicle industry needs special recognition to address fatigue related matters where two-up drivers need to utilise the sleeper compartment of a heavy vehicle (generally not fitted with seatbelts or restraints) to receive benefits in fatigue reduction.

The problems addressed by this Regulatory Impact Statement are as follows, and each will be dealt with separately:

- Risks associated with the carriage of unrestrained passengers in load areas of vehicles;
- driver responsibility for passengers who do not use a seatbelt where one is available;
- Risks associated with the carriage of additional unrestrained children as passengers (after all seating positions fitted with restraints/seatbelts are occupied);
- Risks associated with the carriage of additional unrestrained adult passengers (after all seating positions fitted with seatbelts are occupied);
- the need for an exemption from seatbelt requirements for a two-up driver occupying a sleeper compartment in a heavy vehicle;
- inconsistent medical exemptions from seatbelt wearing requirements; and
- prohibition on the carriage of children under 1 year old in the front seat.

3. PROPOSAL AND ALTERNATIVES

It is proposed that the Australian Road Rules adopt each of the recommendations outlined in the following Description of Amendments, to ensure national uniformity and consistency in road rules is maintained to produce a desired reduction in road trauma.

The alternatives to be considered are:

- do nothing, therefore maintaining the status quo or worsening the level of trauma by a deterioration of compliance;
- continued education programmes that can only reflect the current legislative regime; or

- adopting the proposed changes, thus providing a stronger emphasis on unrestrained passengers and modify education programmes to reflect the changes.

4. CRASH COST CALCULATIONS

For the purpose of this Regulatory Impact Statement:

- All calculations relating to crash costs are based on the Bureau of Transport and Regional Economics' report, *Report Road Crash Costs in Australia*.
- 1996 figures used in the Regulatory Impact Statement have been extrapolated to include CPI to 2005, giving the value of a fatality at \$1.86m and a serious injury at \$0.4m.
- The ratio between fatality and serious injury is estimated at 1:11.
- When applying a dollar figure to the potential saving that might be made by implementation of the proposed amendments, the authors could not locate any significant evidence that directly correlates with the proposed regulatory changes and actual cost saving. There were, however, some figures published in the Australian Transport Safety Bureau report "Benefits of Retrofitting Seat Belt Reminder Systems to Australian Passenger Vehicles". This information suggested that for frontal crashes it was seen that wearing a seatbelt where an airbag was deployed might reduce injuries, providing a saving in injury costs of 39%. The savings in injury costs for a side impact crash were estimated to be 21% and 41% in a rollover.
- The upper level savings are 41%, with 21% being the lower extremity, and an average of 34%. In calculating a cost saving for Items 5.2 (driver responsibility for passenger use of restraints where available), 5.3 (additional unrestrained child passenger), and 5.4 (additional unrestrained adult passenger), a conservative estimate of 20% is used, assuming 100% compliance.
- In the case of passengers travelling unrestrained in a load area of a vehicle, higher savings injury costs are likely, due to the high risk of injury in the event of a crash in these circumstances. No firm data is available to estimate the magnitude of these savings. Consequently a lower range estimate of 20% saving has been used and an upper estimate of 50% saving has been presented.

5. DESCRIPTION OF AMENDMENTS

5.1 Load areas - rule 268

The carriage of persons in load areas of motor vehicles has for some time been recognised as a problem.

While the Australian Road Rules provide compulsory seatbelt (restraint) legislation for persons travelling in motor vehicles, they do not prohibit the carriage of persons in enclosed load areas. "Enclosed" is defined in rule 268(2) as enclosed by the structure of the vehicle or a canopy, cage or other device that is fitted to the vehicle that is approved for the Australian Road Rules under another law of the jurisdiction. The structure of the rule allows jurisdictions to make modifications on an ad-hoc basis that best meets local needs.

Within the scope of these provisions:

- Victoria has tailored rule 268 to prevent persons travelling unrestrained in goods areas, unless the passenger is seated in a properly constructed seat appropriate for the age and size of the passenger, and wearing a properly adjusted and fastened seatbelt.
- The Northern Territory prohibits persons from travelling in open load spaces.
- New South Wales has specifically prohibited persons from travelling in the boot of a vehicle.
- Western Australia intends to modify its Open Load Space policy in 2005 to be in-line with the Northern Territory.
- South Australia prohibits persons from being carried in the load area of the vehicle, except where the rear is enclosed by the structure of the vehicle. Open space areas or areas enclosed only by a canopy, cage or canvas are not considered to be a “structure of the vehicle”.

The primary objective of seatbelt wearing legislation is compromised by allowing persons to travel unrestrained in load areas of motor vehicles. Although each of the measures mentioned have, to some degree, seen an improvement to road safety, they have fallen short of the protection that could be offered by absolute restraint use.

Victoria’s initiative came after recommendations from a Parliamentary Committee¹ and considerable analysis of crash statistics and cost/benefits in terms of road safety. A survey of 31,529 vehicles in rural towns in Victoria in 1989 found 212 passengers in the load area of vehicles: of these, 70% were unrestrained. Furthermore, of those unrestrained in other rear seating positions, 14% were sitting in positions where there was no seatbelt fitted. This represented 0.1% of vehicles in the sample having occupants travelling unrestrained in this way. To extrapolate more generally, the number was calculated to be 0.1% of registered vehicles in Victoria (3,039 in 1987)².

It was considered that education programmes alone would be insufficient to discourage or deter people from travelling unrestrained in the load areas of vehicles: legislative change would be needed.

For the period 2001-2004, post-implementation of changes to rule 268 in Victoria as there were no deaths recorded for passengers travelling in the load area of a motor vehicle whereas in the previous five year period (1996-2000) an average 2 deaths were recorded annually³.

When New South Wales banned the carriage of persons in a vehicle’s boot they noted there were no adverse reactions or problems identified and the change was generally well received: most drivers already believed it was illegal to carry persons in load areas. Victoria experienced similar community reaction when they introduced their requirements for occupant restraint in load areas.

¹ Report Upon the Enquiry into Vehicle Occupant Protection, Victorian Parliament Social Development Committee March 1990, recommendation 18

² VicRoads Seatbelt Issues Paper 2004

³ VicRoads Seatbelt Issues Paper 2004

Amendment Proposal

To amend rule 268 to prevent persons travelling in the load areas of motor vehicles, unless appropriately restrained.

Crash Cost Analysis

For the year 2000 40,397 casualty crashes in which a vehicle occupant was injured were recorded, in Queensland, New South Wales and Victoria. Accepting Victoria's research data (previously mentioned) that 0.1% of registered vehicles (in Victoria) were carrying unrestrained passengers in load areas of motor vehicles, then the conservative assumption that 0.1% of casualty crashes also had unrestrained passengers in load areas. On that assumption, 40 casualty crashes could have occurred while persons were being carried in a load area of a motor vehicle during the year 2000.

The three types of crashes considered are frontal, side impact and rollover, which have the following injury saving where a seatbelt was worn, 39% frontal, 21% side impact and 41% rollover: providing an average injury saving of 34% (Files et al 2002)⁴

Assuming at least 3 of the 40 crashes resulted in a fatality and 37 in serious injury, the total cost would be about \$20.2m. Applying a 20% average injury saving, a cost benefit of \$4m could be achieved. Should this change be even more successful in the reduction of fatalities or serious injury and a 50% injury saving was made, a cost benefit of \$10m could be achieved.

Benefits

The primary expected benefit is a reduction in the number of persons travelling unrestrained in load areas with a resultant decrease in the likelihood of a fatality and injury severity for those passengers in vehicles involved in crashes.

Costs

Points 1 and 3 (below) demonstrate little or no cost burden on Victorians or enforcement when similar changes were made in Victoria. Points 2, 4 and 5 illustrate some possible costs for alternative processes that could be undertaken by jurisdictions, if needed:

1. Costs of fitting seats and restraints - Surveys in Victoria suggest that approximately 0.1% of vehicles were used to carry unrestrained passengers in load areas when it was permitted. Making it an offence to do this will result in most people either ceasing the practice, or fitting seats and restraints. When this law was introduced in Victoria, there was no significant increase in the rate of fitting seats and restraints in the load areas of vehicles, suggesting that most people ceased the practice rather than fit seats and restraints, having a nil cost impact⁵.
2. Costs of alternative transport - There will be occasions when the alternative to carrying extra people in or on the load area of a vehicle will result in extra costs, in terms of additional vehicles or time and trips. On the basis of the Victorian survey data, it is estimated that about 9,000 vehicles in Australia carry unrestrained passengers in load areas each year when it is legal to do so. If an extra trip took 30

⁴ ATSB – Benefits of Retrofitting Seat Belt Reminder Systems to Australian Passenger Vehicles.

⁵ NTC consultant's Paper December 2004

minutes, and the time involved is valued at \$20 per hour, then an approximate value of the extra trips would be \$90,000⁶.

3. Costs of enforcement - The measure would not require additional surveillance activity by police, as offenders would be detected and penalised in the course of normal police operations.
4. Costs of a publicity campaign - For advertisements providing a general public benefit, it is generally possible to negotiate some free advertising time when paying for a campaign. Advice from VicRoads is that a television campaign, with supporting radio, print and public relations activities, is by far the most effective approach. They advise that the cost of such a campaign for Victoria is estimated between \$600,000 to \$800,000, depending on the length of the campaign and the number of different advertisements used. On this basis, it is estimated that the cost of campaigns in all States would be \$1.8 to \$2.4 million.

It is estimated that the cost of a more limited campaign, involving radio, newspaper and brochures (based on the cost of campaigns in Victoria), conducted nationally would be estimated to be \$450,000⁷.

5. Costs of free fitting of seats and restraints - It is estimated that the cost of fitting a seat and restraint is \$500. If all vehicles carrying unrestrained persons in load areas were to have a seat and restraint fitted, it is estimated there would be a requirement for about 9,000 units throughout Australia and the total cost of this would be \$4.5 million⁸. However, as previously indicated, Victoria had no appreciable increase in seatbelt installations when the load area restriction was introduced.

Summary

In addition to being the most cost effective means of reaching the desired outcome, the proposed regulatory approach would be the most desirable method of achieving the objectives of the proposal.

Recommendation

That the Australian Transport Council approve the proposed amendments to Australian Road Rule 268, thereby prohibiting persons from travelling unrestrained in load areas of vehicles.

5.2 Driver responsibility for passenger use of restraints where available - Rule 265

It is an offence for a driver to carry an unrestrained passenger who is less than 16 years of age in a motor vehicle. There is no similar provision where the passenger is 16 years of age or older.

In the calendar year 2000, Victoria, Queensland, Tasmania and Western Australia had a total of 78 deaths of unrestrained passengers (seatbelts available) involved in motor vehicle crashes, with another 58 in 2001 and 62 in 2002. In the same timeframe and resulting from similar circumstances, Victoria, Queensland and Tasmania had a total of 416 serious injuries and Western Australia 1520 people hospitalised (see Table 2).

⁶ National Transport Commission consultant's Paper December 2004

⁷ National Transport Commission consultant's Paper December 2004

⁸ National Transport Commission consultant's Paper December 2004

For the period 2000 to 2003 enforcement agencies in Victoria, Tasmania, South Australia, Queensland, New South Wales and the Northern Territory (other jurisdictions figures are unavailable) issued a total of 40,232 infringement notices to unrestrained adult passengers where a seatbelt was available for use by the passenger (see Table 1). Some passengers are clearly unresponsive to the protection offered by seatbelt use.

The proposed change will give drivers the same responsibility for passengers 16 years of age or older, as they already have for passenger less than 16 years of age: this does not alter the individual liability of a passenger 16 years of age or older. The Australian Road Rules will also then reflect the current legislative position held by New South Wales, Western Australia and South Australia. An exemption would need to apply for drivers of buses, motor cycles and taxis.

This then creates an anomalous position, in that, taxi drivers are exempt from liability for passengers less than 1 year of age, liable for 1 to less than 16 years of age and again not liable for passengers 16 years of age or older. It is proposed to support a position of no legal responsibility on taxi drivers, while driving taxis for hire or reward, for all passengers who do not wear a seatbelt while being carried in the taxi.

Amendment Proposal

To amend rule 265 to include an offence for a driver who drives a motor vehicle with an unrestrained passenger who is 16 years of age or older (exemptions will apply for drivers of certain classes of vehicles). Furthermore, an exemption for taxi drivers for passengers 1 to 16 years of age will be included.

Benefits

The inclusion of such a provision will signify to drivers the importance of seatbelt wearing by passengers and place the responsibility on both the passenger and driver. It will also provide the driver the necessary leverage to insist passengers wear seat belts. It is anticipated this change will see a decrease in the number of unrestrained passengers 16 years of age or older in motor vehicles, and a drop off in the level of injury or likelihood of fatality in a crash where passengers are involved.

Table 1 shows enforcement activity by infringement notices issued, and Table 2 indicates the same road user group and crash involvement.

Table 1. Infringement notices issued passengers 16 years of age or older who were not wearing a seat belt where one was fitted and available.

Year	Vic	Tas	SA	QLD	NSW	NT
2000	3106	591	842	1634#	2103	*
2001	2528	647	1060	3811	3371	*
2002	3526	818	1041	3910	2693	271
2003	3435	1075	1211	*	2348	191
# Data for August to December 2000						
* Data not available						

Table 2. Casualty crashes for adult passengers not wearing seatbelts where fitted and available.

Year	VIC		QLD		TAS		NSW		WA		ACT		SA		NT	
	D	S/I	D	S/I	D	S/I	D	S/I	D	S/I	D	S/I	D	S/I	D	S/I
2000	10	43	11	76	4	20			53	529*						
2001	5	35	18	102	3	15			33	428*						
2002	7	45	12	70	4	10			39	563*						

- *D* = deaths
- *S/I* = serious injury
- * = hospitalisation

Note: Data unavailable for NSW, ACT, SA and NT.

Crash Cost Analysis

During the period 2000 – 2002, Victoria, Tasmania, Queensland and Western Australia had a total of 198 deaths of unrestrained passengers in motor vehicles (where a seatbelt was fitted) and a further 1520 serious injuries. This equates to a total cost for fatalities of \$368.3m and for serious injuries \$608m and total cost to the community of \$976.3m.

If the proposed amendment was successful in preventing only 20% of the recorded fatalities or serious injuries, then it can be expected that the community cost would also be reduced by 20%: total estimated benefit \$195m.

Costs

If the proposed change is introduced, detection would follow the course of normal police operations. Upon discovery, police would issue an infringement notice to the driver as well as the unrestrained passenger. Increased time at the roadside and subsequent processing costs would be slight compared with the road safety gains.

A further cost may be expressed in terms of the pressure placed on drivers to insist on their passengers wearing seat belts. Although it is not practicable to place a monetary value on such a cost, it is considered negligible in the scheme of benefits returned.

Summary

The proposed regulatory measure will introduce a cultural change that will be at least as effective as any alternative, and the costs would be much lower.

Recommendation

That the ATC approve the proposed amendments to Australian Road Rule 265, thereby placing an additional responsibility on the driver to ensure passengers 16 years of age or older are restrained.

5.3 Additional unrestrained child passengers - Rule 266

Given that child safety (passengers less than 16 years of age) is a high priority road safety issue, it is desirable to reduce the number of unrestrained children carried in motor vehicles, thereby reducing the incidence of serious injury and the likelihood of death resulting from a crash. To achieve this goal, it is desirable to absolutely prohibit the carriage of unrestrained children in motor vehicles. This issue was recently raised for

consideration by Australian Transport Council and referred to the Australian Road Rules Maintenance Group by the Standing Committee on Transport⁹.

For the years 2000 to 2002 Queensland had 1 child between 0-7 years old killed in a motor vehicle collision, where no seat belt was fitted, and New South Wales had 5 killed between the ages of 0-8 years (not known if restraint fitted, but none were worn). In addition, in 2002 there were 40 unrestrained children (under 8 years) seriously injured, 19 in New South Wales and 21 in Queensland. Furthermore, Western Australia indicates that 20% of children admitted to hospital as a result of a crash were unrestrained.

Currently, it is not an offence to carry additional unrestrained children, once all seating positions with seatbelts are occupied: it is proposed to remove this provision.

At present, only the Australian Capital Territory and Queensland prohibit (albeit by different means) the carriage of any unrestrained child.

Table 3 indicates significant enforcement activity against drivers for having unrestrained children.

Table 3. Infringement notices issued to drivers for unrestrained passengers less than 16 years of age.

Year	Vic	Tas	SA	QLD	NSW	NT
2000	920	230	227	1022#	1090	*
2001	734	218	290	2281	1592	*
2002	1067	276	315	2310	1128	201
2003	985	284	405	*	1054	179

- # Data for August to December 2000
- * Data not available
- WA and ACT figures not available.

While desirable and necessary from a road safety perspective, objection can be expected regarding the impact such a change will have on large families. From a social justice perspective, the argument is that families with more than four children:

- may not be able to fit into the average car (properly restrained);
- may not be able or afford to own two cars;
- may not be able to purchase a suitable and affordable larger type of vehicle;
- may not be able to fit extra seats to their current vehicle; and
- may have problems relying on public transport.

This could have a greater impact on single parents and financially disadvantaged families with more than four children. Additional impediments to acceptance may occur in the area of blended families and the transportation of added children to and from special events.

To date, these arguments have been the primary basis against change in this area.

Amendment Proposal

To amend rule 266 to prevent a driver driving a motor vehicle with an unrestrained passenger who is less than 16 years old.

⁹ VicRoads Seatbelt Issues Paper 2004

Benefits

Evaluations of the effectiveness of laws relating to restraint usage suggest that, provided they are accompanied by appropriate penalties, enforcement and publicity, they can increase usage rates from around 20% to above 90%, and reduce fatality and casualty numbers by 20%. On this basis, the proposed measure could result in a reduction of 4 serious casualties each year¹⁰.

Crash Cost Analysis

Available records show that for the period 2000 – 2002, nine children died and a further 40 suffered serious injury from being unrestrained in a motor vehicle involved in a crash.

This equates to a total cost of approximately \$32m. If the proposed amendment was successful in reducing the rate of injury by 20% a proportionate reduction could be expected in the total cost. This could see a saving of \$6.4m.

Alternatives

Alternative non regulatory approaches could involve:

- subsidies to allow low income families with a large number of children to purchase vehicles with an appropriate number of seats, or to fit additional seats and restraints;
- organised “car pooling” schemes to arrange more appropriate transport for children where a seat with a suitable restraint was not available otherwise; or
- additional education campaigns.

The alternatives will produce only a minimal effect and not have the level of outcome as the proposed approach.

Costs

The Australian Bureau of Statistics Report 2003¹¹ indicates that the average family size in Australia is relatively small—3.2 persons for couple families, and 2.7 for single parent families. Therefore, for the average family, the proposed changes should not be of great concern. In addition, the Australian Bureau of Statistics June 2000 show a much smaller percentage of families in Australia with 4 or more dependents—3.1% (132,500) of couple families and 2.6% (20,300) of single families. As the average sedan has a seating capacity of 5 persons, some families in the singles category will not be affected by the proposed change. What must also be considered is which families, in real terms, will the proposed change impact on. The cost for families is therefore undeterminable.

Summary

There can be little doubt that the proposed change will benefit road safety and reduce crash costs and trauma to the community, by reducing the number of children less than 16 years of age from being seriously injured or killed if involved in a crash. There is also little doubt that some sections of the community will incur a financial cost to comply with the proposed change. However, it is considered that the community will generally accept the proposed change on the basis of the additional safety provided for children. Furthermore, it is anticipated that most sections of the community already believe that it is unlawful to

¹⁰ National Transport Commission Consultant’s Report December 2004

¹¹ Australian Bureau of Statistics Report June 2003

carry unrestrained children in vehicles, and on that basis, the proposed change is only formalising an active understanding.

However, consideration of remote areas will necessitate an allowance for sufficient transitional periods in some jurisdictions. It was also considered that defence provisions, such as hardship, maybe needed for exceptional circumstances, which should be specifically defined.

The current exemption for children less than 1 year of age in taxis or public minibuses will be retained.

Recommendation

That Australian Transport Council approves the proposed changes to Australian Road Rule 266, thereby prohibiting children under 16 years of age from travelling unrestrained in a motor vehicle.

5.4 Additional unrestrained adult passengers – Rules 265 & 268

Similarly to unrestrained children (less than 16 years of age), passengers 16 years old or older (adults) are equally at risk when in motor vehicles where no seatbelts are available for use. Victorian data suggested that in 2003, 3 adult passengers were killed and 27 injured while travelling unrestrained in a motor vehicle, where no restraint was available. On that basis, it can be estimated that each year throughout Australia, 9 people are killed and 81 injured in such circumstances¹².

A further safety issue to be considered is that an unrestrained passenger in a motor vehicle under severe unexpected braking conditions or in a crash transposes into a missile in the vehicle's cabin, potentially resulting in a catastrophe that could otherwise have been avoided.

The Australian Road Rules do not prohibit the carriage of unrestrained adult passengers once all seating positions with seatbelts are occupied and all jurisdictions, with exception of Queensland, have adopted this position. The proposed change will prohibit the carriage of unrestrained adult passengers, when all available restraints are in use.

Exemptions

There can be no doubt that the proposed change will have benefits in road safety, however, as vehicle regulations generally rely on the Australian Design Rules as the standard for vehicle structure safety, they must be factored into the equation. The Australian Design Rules require vehicles post 1969 to be fitted with front seatbelts and post-1971, with front and rear seatbelts.

Additionally, some jurisdictions have separate rules that necessitate the fitting of seatbelts as a condition of roadworthiness. Both the Australian design Rules and jurisdictional variables need to be considered, therefore, it is planned to include an exemption in the proposed change so that the proposal only applies to motor vehicles where seatbelts are fitted in accordance with the Australian Design Rules, or are required to be fitted by other jurisdictional law.

Concerns surrounding remote areas have also been expressed by some jurisdictions. For example, in remote communities where people have hundreds of kilometres to travel to a

¹² NTC consultant's Paper December 2004

town, and access to vehicles is limited, overcrowding is commonplace. The proposed change will cater for such situations by allowing a jurisdictional variance.

Alternatives

Possible options could include:

- require the retrofitting of seatbelts to older vehicles (with an exemption for those where it is not possible); or
- provide a phase in period (e.g. 3 years) to enable owners of older vehicles to modify or update their vehicles.

Either of these options, while not achieving the maximum road safety benefit that the restraint of all passengers would provide, will be an improvement.

Amendment Proposal

To amend rule 265 and 268 to prevent a driver driving a motor vehicle with an unrestrained passenger who is 16 years of age or older (certain exemptions will apply).

Benefits

Evaluations of the effectiveness of laws relating to restraint usage suggest that, provided they are accompanied by appropriate penalties, enforcement and publicity, they can increase usage rates from around 20% to above 90%, and reduce fatality and casualty numbers by 20%. The proposed measure could therefore be expected to result in a reduction of 2 fatalities and 16 casualties throughout Australia each year¹³.

While some people will be affected by the alternatives. However, they are only attacking a segment of the problem, and would not be as effective as the proposed approach.

Crash Cost Analysis

In 2003, Victorian information shows that 3 adult passengers died and a further 27 were seriously injured as a result of being unrestrained in a motor vehicle involved in a crash, costing the community a total of \$15.7m.

If the proposed amendment was successful in reducing both fatalities and injuries in this area by 20%, the total cost would also be reduced by \$3.1m.

Assuming that 9 deaths of unrestrained passengers and 81 serious injuries occurred across Australia a total cost of \$49.1m could be expected. Again, assuming a saving of 20%, the proposed amendment could see a saving of \$9.8m.

Costs

Costs involved would be in:

- fitting restraints to older cars not fitted with restraints in all seating positions;
- providing additional or larger vehicle for some trips; and
- additional trips.

The cost of the alternatives proposed would depend on the extent to which people actually fitted extra seats, changed to larger vehicles, or organised extra trips, extra vehicles or car

¹³ NTC consultant's Paper December 2004

pooling. There could be administrative costs in setting up and promoting car pooling schemes. However, because of the variables involved, a demonstrative cost is undeliverable.

Recommendation

That the Australian Transport Council approves the proposed changes thereby prohibiting additional adults travelling unrestrained in a motor vehicle.

5.5 Sleeping compartments in heavy vehicles - Rule 267(1)

There is no allowance within the Australian Road Rules for two-up drivers of heavy vehicles utilising the vehicle's sleeper compartment to be exempt from wearing seatbelts. The proposed change seeks to remedy this defect by including an appropriate exemption.

Sleeper compartments in heavy vehicles serve to reduce driver fatigue on long trips by providing the opportunity to rest or sleep for two-up drivers (one driver sleeping whilst the other is driving).

Given that heavy vehicles frequently cross State borders on long hauls, and fatigue is a major factor in road crashes, it is remarkable that an impediment exists to a method of reducing fatigue where two-up drivers are employed and heavy vehicles are constructed with sleeper compartments. The proposed change provides relief drivers (two-up) with an exemption from seatbelt wearing requirements when occupying a sleeper compartment of a heavy vehicle.

There is only one locatable incident involving the death of a two-up driver using a sleeper compartment of a heavy vehicle since 1992.

The Australian Design Rules as they apply to sleeper compartments are apparently due for review and it is expected they will include restraint requirements. Although the proposed change is required for contemporary times, it will again need to be revisited when the Australian Design Rules review is finalised¹⁴.

Amendment proposal

To amend rule 267(1) by including a specific exemption to allow the resting driver in a two-up driving arrangement (heavy vehicles only), to occupy the sleeper compartment of the vehicle (Australian Design Rule compliant only).

Benefits

Sleeper compartments allow a two-up driver to reduce the risk of fatigue in a long haul operation. The proposed change will afford the opportunity of rest without fear of penalty.

Costs

It is not anticipated that there will be additional costs from the implementation of the proposed change. Anecdotally, sleeper compartments are already being used by two-up drivers with no additional deaths or serious injury being reported.

¹⁴ VicRoads Seatbelt Issues Paper 2004

Recommendation

That the Australian Transport Council approve the proposed changes to Australian Road Rule 267, thereby allowing two-up drivers to occupy the sleeper compartment of a heavy vehicle.

5.6 Nationally uniform medical exemptions from seatbelt wearing requirements - after Rule 267(3)(b)

All jurisdictions have provisions for people with medical certificates to be exempt from wearing seatbelts, many of which require an expiry date to be displayed on the certificate. Revised guidelines *Assessing Fitness to Drive*, for health professionals, were published in 2003¹⁵ and provide a detailed base for the assessment of medical exemptions from wearing a seatbelt. The guidelines include statements that medical certificates for seatbelt exemption can be valid for up to 12 months, and must display an expiry date.

The proposed change provides that medical certificates for seatbelt exemptions should replicate the requirements in *Assessing Fitness to Drive*.

A transitional period would be required to publicise the changes and educate those affected. Exceptions will be provided for passengers with musculo-skeletal conditions.

Furthermore, rule 267(3)(a) allows certificates issued under a law of a jurisdiction. It is intended to retain this provision to allow jurisdictions to issue other certificates where appropriate under laws.

Amendment Proposal

To amend rule 267(3) by the inclusion of a new paragraph requiring that medical certificates used under the rule are valid for 12 months only, must display an expiry date and must be signed by a medical practitioner. However, there will be a provision that allows a jurisdictional exemption from the rule where local administrative requirements use different certificates.

Benefits

- greater uniformity across jurisdictions; and
- people moving between jurisdictions would not be required to obtain new exemptions.

Costs

The foreseeable additional costs would relate to extra administrative expenses associated with promoting the changes and educating those affected.

Recommendation

That the Australian Transport Council approve the proposed changes to Australian Road Rule 267(3) to include a new paragraph specifically dealing with medical certificates, in that they are valid for up to 12 months and must display an expiry date.

¹⁵ Austroads *Assessing Fitness to Drive: Commercial and Private Vehicle Drivers*, Austroads and the National Road Transport Commission 2003

5.7 Prohibition on the carriage of children, under one year old, in the front seat

It is well documented that the safest place for children is in the back row of seats. United States data (1988 – 1995)¹⁶, compared the threat of death in a fatality with passengers less than 12 years old occupying the front seat against those in the rear seat. It is of interest to note 26,000 children were involved in fatal crashes during this period. The study concluded that this age group (restrained or unrestrained) were at lower risk when occupying the rear seat. The study also showed that restrained children in the back seat were subject to 38% less risk than those in the front seat.

Of the age group, those aged one to four years old had 41% less risk when in the rear seat, while those five to 12 years old had 30% or less. The study also indicated that rear seat occupancy was safer in frontal collisions by 47%, rollovers by 43% and side impacts by 32%.

In light of this research, greater child safety could be gained by prohibiting the carriage of children in the front row of seats. However, seatbelt legislation in the Australian Road Rules effectively has three categories: they are children less than one year of age, children less than 16 years of age and adults 16 years old or older. Ideally, prohibition from carrying all children in the front seat should be applied, however, this would be a quantum leap and acceptability rejected as children present in various sizes that, for example, may make it difficult to justify why a 15 year old could not sit in the front seat. On the other hand, the same cannot be said for children less than one year of age, there can be no compelling argument why a prohibition should not be applied for front seat travel, where the vehicle has two or more rows of seats.

Benefits

The direct benefit will be a reduction of injury or death of children under one year of age that would, apart from this change, have occupied the front seat.

Costs

It is considered costs would be negligible, as anecdotal evidence suggests that drivers are already of the belief that it is unlawful to have a child under the age of one year old occupy the front seating position (restrained or not).

Recommendation

That the Australian Transport Council approve the proposed change, thereby prohibiting children under the age of one year old from being carried in the front seat of a motor vehicle where the vehicle has two or more rows of seats.

6. IMPACT ASSESSMENT

Although the development and implementation of the Australian Road Rules eliminated the vast majority of differences in road rules between States and Territories, some remained. The maintenance strategy included addressing these remaining issues, as well as the bringing together of other jurisdictional changes since the Australian Road Rules

¹⁶ Braver, Whitfield and Ferguson, Seating Positions and Children's Risk of Dying in Motor vehicle Crashes, Injury Prevention, 1998, 4:181-187

implementation. The aim was to provide uniform and contemporary rules that stakeholders were able to use and understand. The acceptance of the changes proposed in this Regulatory Impact Statement forms an integral part of the process of achieving this aim.

The principles of safe, efficient and sustainable road laws have been taken into account during contemplation of the proposed changes. Apart from remote area application, there have been no significant negative impacts identified by the Australian Road Rules Maintenance Group, should the changes be adopted. Nevertheless, it is recognised that there may be additional costs on some road users, however, it is anticipated that they would not be substantial.

The prohibition on unrestrained:

- passengers travelling in load areas;
- adults in motor vehicles; and
- children in motor vehicles;

may require modification to vehicles (additional seats), changing vehicles or a change in travel habits for some people, however, any disadvantage will be outweighed by the corresponding increase in safety levels.

The main objectives are to improve road safety and achieve a reduction in injuries and fatalities to unrestrained car occupants, through more effective use of seatbelts.

The benefits and costs of the proposed amendments can be summarised as follows.

Benefits

- uniformity of seatbelt policy across jurisdictions;
- prevention of vehicle overcrowding;
- prohibiting passengers from travelling in load areas will reduce injuries/fatalities;
- contemporary rules will assist in achieving the desired on-road behaviour by all road user groups;
- greater public awareness of the need for vehicle occupants to be properly restrained;
- the ability for two-up drivers for heavy vehicle to reduce fatigue, thereby reducing the incidence of fatigue driving; and
- a total crash cost saving of \$216m could be accomplished.

Costs

- some additional costs may be imposed on larger families in achieving compliance with the proposed changes;
- it is likely that some costs will be incurred in the process of publicising the changes and amending relevant road law information materials;
- administrative costs incurred in amending record systems; and
- in instances where a proposed change requires a change in the behaviour of road users, or imposes a new requirement, those who do not comply may incur a cost in the form of a penalty; such individual costs are however outweighed by the benefits to the community in terms of improved road safety.

7. RECOMMENDATION

It is recommended that the proposed changes as described in this Regulatory Impact Statement, be approved by the Australian Transport Council for subsequent incorporation into the Australian Road Rules.

8. CONSULTATION

In order to identify and agree with the necessary changes, extensive consultation has been undertaken between the National Transport Commission and representatives of all Commonwealth, State and Territory road safety, traffic, road transport and enforcement authorities. Wider consultation with relevant bodies, such as motoring associations and third party insurers, was also performed by representatives within their States or Territories and considered in preparing their responses to the proposals.

The draft Regulatory Impact Statement and draft amendments were also release for public consultation in December 2005 and further comment/endorsement was sought from Transport Agencies Chief Executives in May 2006.

Attachment 1 provides a list of persons/organisations who provided comment during the public consultation stage.

Attachment 2 provides a summary of responses received during formal consultation on the draft proposal.

9. IMPLEMENTATION

Any changes must be made in accordance with the Australian Transport Council approval processes required by the *National Transport Commission Act 2003* and then incorporated into the Australian Road Rules. Individual jurisdictions subsequently adopt the Australian Road Rules published by the National Transport Commission by reference, a schedule to regulation or by legislative amendment. Implementation occurs only after the Australian Transport Council approves the changes, which will be sought in 2006.

10. REVIEW

In accordance with procedures approved by the Australian Transport Council, members of the Australian Road Rules Maintenance Group will continue to monitor the application of the Australian Road Rules in individual jurisdictions, to ensure their effective operation. Proposals for any future changes may need to be considered on the basis of experience with the application of particular provisions or the identification of new laws that may be required.

11. COMPETITION STATEMENT

The proposed amendments would have no adverse impact on competition or trade.

**ATTACHMENT 1: LIST OF PERSONS PRESENTING SUBMISSIONS
(SUMMARISED IN ATTACHMENT 2) ON THE
AUSTRALIAN ROAD RULES SEATBELT LEGISLATION
AMENDMENT PACKAGE 2005**

1. Australian Automobile Association.
2. SHARKEY, Gwen
3. Parliamentary Counsel NT
4. NSW Taxi Council Ltd
5. RACV
6. ROWAN, Phil
7. Royal Australian College of Surgeons
8. VicRoads
9. Western Australian Office Road Safety
10. Kidsafe Western Australia
11. NSW RTA
12. Rural City of Wangaratta (Vic)
13. Department of Infrastructure, Energy and Resources (Tas)
14. NRMA
15. Manningham City Council (Vic)
16. Britax Childcare Pty Ltd
17. HUTCHEON, Peter
18. SOUTHWICK, Simone
19. Acting Parliamentary Counsel, NT
20. Queensland Transport
21. RACQ
22. ACT Government

ATTACHMENT 2: SUMMARY OF SUBMISSIONS RECEIVED ON THE AUSTRALIAN ROAD RULES SEATBELT LEGISLATION AMENDMENT PACKAGE 2005

Rule 265 - Wearing of seatbelts by passengers 16 years old or older

Comment

- It is possible that the legislation will have unintended consequences for some groups, particularly Aboriginal people living in remote areas who are particularly likely to travel in overcrowded vehicles. Overcrowded vehicles were identified as a key issue in the *Aboriginal Road Safety Stakeholder Implementation Manual* produced in Western Australia in 2005. A 2000 study of indigenous road trauma found that not using seat restraints to be one of the two major contributing factors to the deaths of Aboriginal passengers. This study found, inter alia, that overloading vehicles and not using seat restraints were common behaviour in Indigenous groups. Only 7% of indigenous people involved in fatal crashes in remote areas were using protective devices. In remote communities where people have hundreds of kilometres to travel to a town and access to vehicles is limited, overcrowding is commonplace there is little alternative. Addressing the issue is not simply a matter of making the driver responsible. It is important that the legislation is drafted in a way that does not disproportionately affect people with large families or who live in remote areas with limited transport options.
- Guides in tourist buses should be exempt in city/town situations so that they can face passengers when talking.
- How is a driver supposed to enforce seat belt usage for an adult? The responsibility should lie with the over 16 year old without a belt. He/she is old enough to accept responsibility. Why criminalise the driver as well. While the Regulatory Impact Statement suggests the potential offence by the driver will provide the driver with 'leverage' to make the passenger wear a seat belt, it appears instead to put an innocent person at risk of committing a criminal act based on the action (or inaction) of another.
- Drivers should not be responsible for passengers over 16 to be restrained.
- Rule 265 does not allow for vehicles that do not have seat belts fitted such as vintage vehicles. For instance, subrule 265(1) makes the driver responsible for passengers unless the passenger is exempt under 267.
- There is no reference to motorbike in the rule and therefore the note need not contain the term.
- Retain the existing subrule 265(4) since passengers must not sit in the front row of seats unless the passenger is in a seat belt or there is not another seat in the back.
- The age bracket should be under 18 rather than under 16.
- 265(4) introduces unnecessary complexities. A person who is exempt from wearing a seat belt need not give up a seat since all passengers are required to wear seat belts.

Discussion

There is a particular problem involving indigenous people in remote communities as included in comments. The option of ‘another law of a jurisdiction provision’ remains to allow jurisdictions to exempt drivers in particular locations. This is because the proposed subrule 265(1) exempts the driver from responsibility, provided the passenger is exempt under rule 267, and rule 267(1)(a) in turn allows ‘another law of a jurisdiction to be applied.

Guides in tourist buses need not be facing passengers. Microphones are usual equipment that adequately caters for communication needs.

The concern that the rule has potential to put an innocent person at risk of committing a criminal act based on the action (or inaction) of another was considered by the Australian Road Rules Maintenance Group.

When endorsement was sought from Transport Agencies Chief Executives Tasmania and the Australian Capital Territory advised they supported all amendments except the proposed provision that makes a driver responsible for the adult passenger. Tasmania indicated that it could make an innocent person liable, whereas, the Australian Capital Territory thought there may be human rights issues involved. Western Australian endorsed the entire package but did note these concerns.

The Australian Road Rules already contain a provision that make a driver liable for the actions of passengers (under 16 years of age); the proposed provision is simply an extension to adults (albeit in another rule). It is assumed that most jurisdictions also have laws that deal with *aid and abet* the commission of an offence. The Australian Road Rules Group does not believe they are setting precedence by the introduction of this rule.

In starting a journey the driver can visibly check that passengers are all restrained but the passenger may have undone the seatbelt later. The Australian Road Rules Maintenance Group felt that a driver would most likely have a defence at law if he/she could not reasonably be aware that the seatbelt was undone while he/she was driving.

As far as vintage vehicles are concerned, proposed subrule 267(1) provides exemptions.

The note after the proposed rule 265(1) should not mention ‘motor bike’.

Rule 265(4) has been replaced as agreed to by the Australian Road Rules Maintenance Group since the provisions disallow the carriage of more passengers than there are seat belted positions.

The age group of under 16 has been in place in jurisdictions for many years and this is not proposed to be changed. Age groupings are a matter for future consideration by the Australian Road Rules Maintenance Group.

Rule 265(4) will apply where a vehicle does not have seat belts fitted to all seats, such as can apply in some jurisdictions to vehicles manufactured prior to certain dates. In those vehicles, albeit as rare as they are, it is desirable that a person who is exempt from wearing a seat belt does not occupy a seat belted position in lieu of someone who does not have an exemption.

Outcome

1. Delete “motor bike” in the note after rule 265(1); otherwise proceed with the amendment as drafted.
2. List the issue of ages relating to driver’s responsibilities and use of child restraints for future consideration by the Australian Road Rules Maintenance Group.

Rule 266(3) and (4), including note

Comments

- The proposed subrule 266(3) requires that if a vehicle has two or more rows of seats a person under 1 cannot be in the front row. There are instances where vehicles of certain age are required to have seat belts in the front but not the rear. Accordingly, since baby capsules rely on seat belts, a baby cannot be carried in those vehicles.
- Sports cars can have very narrow rear seats where a baby restraint may not be able to be fitted.
- Concern for large families where sitting in the rear of a station wagon is necessary for travel.
- The age groupings of under 1 and under 16 years old are no longer appropriate. Consideration should be given to different age groups corresponding with development.
- Delete new subrule 266 (4A) since it introduces unnecessary complexities since all passengers are required to wear seat belts.
- The term “he or she” should not be used.

Discussion

The exemption provisions under 267 do not specifically cover vehicles that have seat belts in the front seats and not the rear seats. However, the purpose of the proposed rule 266(3) was to prohibit the carriage of children under 1 year old in the front seat of any motor vehicle. Rule 266(2) prohibits the carriage of unrestrained children under 1 year old. The application of the two subrules brings about the desired outcome that relates directly to this group of passengers.

However, 266(2) will now need to be excluded from the proposed 267(1A).

Rear seats in sports cars are required to have seat belts and as such a baby capsule should be able to be accommodated (even though the passenger-side seat may need to be slightly forward).

The provision to require the carriage of no more passengers than seat-belted positions available is based on safety. The provision may need to be transitioned to give people time to change car types if necessary to accommodate more passengers in seat belted positions.

The age breaks of less than 1 and under 16 are under investigation and will be considered at a future time.

Subrule (4A) will apply where a vehicle does not have seat belts fitted to all seats, such as can apply in some jurisdictions to vehicles manufactured prior to certain dates. In those vehicles, albeit as rare as they are, it is desirable that a person who is exempt from wearing

a seat belt does not occupy a seat belted position in lieu of someone who does not have an exemption. This subrule has been re-drafted and the re-draft combines rules 256(4) and 266(4A) in the one subrule, now 267(8).

The drafter advises it is common practice to use the term “he or she” in drafting styles. It signifies common language, removes the abstract and clarifies who the rule applies to. Acting on the drafter’s advice it is not intended to remove the phrase.

Outcome

1. Proceed as drafted.
2. Exclude the proposed rule 267(1A) from rule 266(2).

Paragraph 266(6)(b)

Comments

- If rule 266(6)(b) is proposed to be deleted for consistency, then 266(6)(a) should also be deleted since all children are required to be restrained and there is no need to define what an approved restraint being “available” means.

Discussion

The drafter advises that 266(6)(b) is necessary for the provisions of 266(2) and should remain.

Outcome

1. Proceed as drafted.

New subrule 267(1A) and (1B)

Comments

- New subrule (1A) is quite wrong since it effectively allows any child (even under 1) to be carried unrestrained if there are no seat belts available. The subrule should be changed to read: “A person over 16 years of age in or on a motor vehicle...”
- Given that Australian Design Rules allow for some vehicles to have seat belts only in the front and not the rear seats, it is appropriate to delete the word “any” from

Discussion

The exemption to wearing a seat belt applies to all passengers in vehicles where there are no seat belts. Child restraints require seat belts to anchor at least part of the device and while it is true that babies can be carried in motor vehicles that do not have seat belts, these are limited to very few vintage passenger cars and buses.

Outcome

1. Re-draft rule 267(1A) (b) so that the exemption applies to the seat rather than the vehicle.

Rule 267(3)(a)

Comments

- The rules should allow only medical certificates as certificates that provide exemptions to wearing seat belts. The Regulatory Impact Statement only refers to medical grounds.
- Tasmania does not support medical certification without the authority also approving the exemption. A jurisdictional law provision is required.

Discussion

At least one other jurisdiction allows exemptions to seat belt wearing other than medical grounds and the certification for other purposes are required.

Tasmania has indicated non-support for the provision as it stands unless another law of a jurisdiction is provided. This would represent a departure from national consistency and would raise doubts about the validity of a medical certificate issued in another jurisdiction having force in Tasmania.

Outcome

1. Include a “law of a jurisdiction” provision to satisfy the Tasmania’s needs.

New subrule 267(3A)

Comments

- The terminology in (3A)(a) and (i) are vague. It should be clarified that a medical certificate must be signed by a medical practitioner.
- Define a “medical practitioner” as being as determined by the jurisdiction.
- Amend subrule (3A)(a)(i) by replacing “is not required to wear” with “exempt from wearing”.
- Replace “he or she” to be consistent with the rest of the Australian Road Rules.

Discussion

It appears necessary and appropriate to define a “medical practitioner” and to include that the certificate must be signed by the medical practitioner in (3A) and is applied on the basis of a medical condition.

As previously discussed there is no need to remove “he or she”.

Outcome

1. A definition of medical practitioner will be included.
2. Include that the certificate must be signed by a medical practitioner and that the exemption must relate to a medical condition.

New subrules 267 (6) and 267(7)

Comments

- Adopt a national definition of “heavy vehicle” for this rule. The use of truck or bus introduces complications.
- Change the order of “bus” and “truck” in the note after 267(6) since that is the order in the subrule.
- Replace “he or she” in 267(6) to be consistent with the rest of the Australian Road Rules.

Discussion

Western Australia uses the term “heavy vehicles” for heavy vehicle speed zones and using the term heavy vehicles would complicate its legislation. However, the issue is about catering for two-up driving irrespective of the size of a truck. The proviso is that the vehicle has a sleeper compartment.

Definitions mentioned in Notes are in alphabetical order throughout the Australian Road Rules. Therefore, the inclusion is consistent with other Notes.

As previously discussed there is no need to remove “he or she”.

Outcome

1. The rule will be re-drafted to ensure that it only applies to trucks or buses fitted with sleeper compartments.

Subrule 268(2), including the note

Comments

- Exemptions should be extended to people who are undergoing or giving bona fide medical treatment.
- Exemptions are required for parades, processions, etc. (special events approved under another law of a jurisdiction).
- Exemption should be extended to drivers of and passengers in a police vehicle or emergency vehicle.
- It should be made clear in the subrule that where there is a seat in a part of a vehicle designed primarily for the carriage of goods that it must have a seat belt fitted and the person must be wearing the seat belt.
- Replace “he or she” in (2)(b) to be consistent with the rest of the Australian Road Rules.

Discussion

There are currently no exemptions from this rule for passengers undergoing medical treatment or for those giving medical treatment, apart from those in or on a police or emergency vehicle as provided for in subrule 268(5). The ability to exempt 'others' using jurisdictional law is available vide subrule 268(6). It is considered reasonable to exempt passengers undergoing bona fide medical treatment and those giving medical treatment.

Exemptions for people riding in 'luggage' compartments of vehicles in parades and processions are able to be given under subrule 268(6) – another law of a jurisdiction.

It appears reasonable that where there is a seat in a luggage area it should have a seat belt and the person must also wear it. While rule 265 requires passengers to wear a seat belt if fitted, it is suggested appropriate to include in rule 268(4B) the provision that the seat in what is primarily a luggage area, must have a seat belt fitted. Therefore paragraph (c) should be added to the proposed 268(2) after (b) e.g. "and (c) the seat has a seatbelt fitted."

As previously discussed there is no need to remove "he or she".

Outcome

1. Add a new amendment to include passengers who are giving or receiving bona fide medical treatment (see proposed 267(6)).
2. Include that the seat must have seatbelts fitted.

Subrule 268(4B) (a) and (b)

Comments

Making the driver responsible for passengers being restrained under subrule 265 also applies to subrules 268(4A) and (4B)

Discussion

Making drivers responsible for passengers to be in seat belted positions and wear a seat belt is the major thrust of the amendments.

Outcome

1. Proceed with the amendment as drafted.