



Australian Government

Department of Infrastructure, Regional Development and Cities

Traffic Laws in Norfolk Island

Consultation paper

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1. Introduction

Traffic is regulated in Norfolk Island by the *Traffic Act 2010* (NI) (the Act), the Traffic (General) Regulations (NI) and the Traffic (Fee) Regulations (NI) (the Regulations). These are continued laws of Norfolk Island, made by the former Norfolk Island Legislative Assembly.

This paper sets out proposed changes to improve the operation of the Act and to better align certain traffic rules in Norfolk Island with the rest of Australia in the following areas:

- recognising Australian P-plate licences
- preventing injuries from ute tray riding
- reviewing laws applying to electric scooters and other mobility devices
- enabling removal of abandoned vehicles
- deterring dangerous driving practices
- suspending a driver's licence
- improving data collection
- reviewing penalties.

These areas are being addressed based on observations about the suitability of the traffic legislation in Norfolk Island, in particular by participants in the justice system and recommendations made by the Coroner in 2014 and 2018.


The primary objective is to improve public health and safety, including the safety of the operator of the vehicle and any passengers or bystanders.

This process is designed to address deficiencies in the Norfolk Island traffic laws and, where appropriate, achieve consistency with laws operating in other Australian jurisdictions.

1.1 Purpose of this consultation paper

This consultation paper explains proposed changes to Norfolk Island traffic laws. It gives the community an opportunity to understand the proposed changes and provide comment. Community input is valued and will contribute to improvements to the Norfolk Island traffic laws.

There is an agreed process to follow when consulting with the Norfolk Island community about proposed changes to laws. This is set out in the Norfolk Island Legislation Consultation Framework published on the Department's website at www.infrastructure.gov.au/ni-legislation.



This process, which includes putting out this paper and seeking community feedback on the proposed changes, is consistent with that framework.

It is also consistent with law reform processes undertaken on mainland Australia, including by the Australian Law Reform Commission and other commissions such as the NSW Law Reform Commission.

1.2 Proposed way forward

The work to review and update traffic laws could be undertaken in two ways:

1. address currently identified issues in Norfolk Island continued law, including those raised by the Coroner
2. conduct a comprehensive rewrite of the legislation, including to introduce the following, appropriately adapted where possible, in Norfolk Island:
 - Australian Road Rules (ARRs)
 - Australian Design Rules (ADRs), and
 - Heavy Vehicle National Law (HVNL).

It is proposed to take the first option, being to address currently identified issues.

While the introduction of the ARR, ADR, and HVNL may be desirable in the long term, this would constitute a significant body of work and divert resources away from addressing more immediate higher priority issues that should be advanced in the short term.

This work is likely to result in changes to Norfolk Island continued laws. Principally these will be the Act and Regulations but may include the *Sentencing Act 2007* (NI) and, potentially, consequential amendments to other legislation.

2. Proposed changes

2.1 Recognising Australian provisional licences (P plates) in Norfolk Island

It is proposed to provide for recognition of P plates from Australian states and territories to remove difficulties for visitors with a provisional licence wishing to drive a motor vehicle in Norfolk Island.

It will also enable Norfolk Islanders who are temporarily residing on the Australian mainland or Tasmania, and who hold a provisional licence from an Australian state or territory, to drive when visiting the Island.

2.2 Preventing injuries from ute tray riding

Currently in Norfolk Island, riding in the back of a ute is permissible if the sides of the ute are at least 15 cm high and closed, and the rider is at least five years old and seated on the tray.

This practice has come under scrutiny following the Coroner's findings and recommendations of 13 December 2018.¹ The Coroner recommended amending the Norfolk Island Traffic Act to revoke existing s40A and s44G (2)(b) so that the provision in Australian Road Rule (ARR) 268 applies (relevant excerpt at **Attachment A**).² ARR 268 regulates how persons must travel in or on a motor vehicle, and adopting this Rule would prohibit travelling in the open ute tray.

It is proposed to prohibit the practice of riding in the back of open utes.

2.3 Reviewing laws applying to electric scooters and other mobility devices

It is proposed to review the laws applying to the safe use and legality of electric scooters and mobility devices used by people with disability or the elderly, including motorised wheel chairs.

The use of motorised, wheeled personal mobility devices, such as a Segway®, electric scooters and electric bicycles (e-bikes), would also be considered.

Public safety issues have been raised in Australian states and territories, and the review will take into account measures introduced elsewhere to prevent accidents involving the user of the device and/or others.

2.4 Enabling removal of abandoned vehicles

Currently, Norfolk Island Police are restricted to the removal of vehicles where there are reasonable grounds that the vehicle is causing, or likely to cause, a danger to other road users or the vehicle is obstructing the flow of traffic.

It is proposed to give the Norfolk Island Police authority to remove abandoned vehicles on public land, and that the registered owner be held liable for any costs involved in its removal.

2.5 Deterring hazardous driving practices

A range of proposed measures are summarised below to deter hazardous driving practices and protect the Norfolk Island community and visitors.

¹ On 14 April 2019 a summary of the coroner's findings and comments could be found at: http://www.norfolkisland.gov.nf/sites/default/files/docs/NIRC/Gazettes/2018_12_21%20Gazette%20No.%2051.pdf

² On 15 January 2019 the full suite of ARRs could be found at: <https://www.pcc.gov.au/uniform/Australian-Road-Rules-19March2018.pdf>

2.5.1 Dangerous driving

Dangerous driving is driving a motor vehicle recklessly or at a speed, or in a manner, which is dangerous to the public.

Currently under Norfolk Island traffic laws, a person can only be charged with dangerous driving in Norfolk Island if it occurs 'on a road'.

It is proposed to expand the areas where the offence of dangerous driving applies, including 'public places' (as defined in the Traffic Act) and off-road areas such as dangerous driving in a private field.

2.5.2 Drink driving

It is proposed to align drink driving measures with those in other Australian jurisdictions to strengthen the powers of the police and the Magistrate in relation to drink driving and suspected drink driving.

The changes would also address concerns about the operation of the sentencing provisions for Prescribed Concentration of Alcohol (PCA).

The following changes are proposed:

- currently police have authority to arrest a person without warrant for a drink driving offence where the person is apprehended while operating the vehicle. It is proposed to extend this authority to include situations where a person is no longer actually operating the vehicle but is thought to have been operating the vehicle. For example, where a police officer attends a motor vehicle incident and an amount of time has passed since the incident occur before the police officer's arrival.
- create a new offence punishable by penalties including disqualification of licence where a driver fails to comply with a police officer's request to provide a blood or breath sample.
- provide for mandatory disqualification of a driver's licence after a guilty plea or finding for a PCA offence, whether or not a conviction is recorded.
- make provision for interlock technology to be prescribed for driving under the influence (DUI) or PCA offences. An interlock device prevents a vehicle being started without the driver providing an acceptable breath sample. It is proposed to mirror a provision in Queensland legislation that does not require an interlock to be fitted where it is impractical, for instance, due to distance from an interlock installer. Legislating would ensure the technology could be employed in Norfolk Island if it were to become available and could be installed in Norfolk Island.
- ensure a novice driver recording a low, medium or high range PCA is subject to penalties consistent with those applying in other jurisdictions.

2.5.3 Drug driving

In 2014, the Coroner recommended legislative changes to include a provision for the random testing of drivers for both alcohol and other drugs. Random breath testing (RBT) for alcohol was introduced in Norfolk Island in 2015.

It is proposed to introduce drug testing laws similar to those applying in other jurisdictions to allow police to test drivers for drugs in their systems. This includes any substance that, on its own or in combination with alcohol, may influence the driving of the person who has taken the drug.

The process for drug testing would involve a Mobile Drug Test (MDT). This would operate alongside RBT for alcohol, giving police the power to test for illegal drugs at any time. Further information about MDT procedures in NSW, Queensland and the ACT is at **Attachment B**.

When stopping a driver for MDT or other reasons at the roadside, the police would be authorised to require the driver to undergo blood and urine testing if the driver's behaviour or driving is erratic and police suspect the driver is under the influence of illegal or prescription drugs. The tests cover a large range of legal and illegal substances that can impair drivers and can lead to a charge of DUI.

All drivers involved in fatal crashes would undergo blood and urine testing for drugs and alcohol.

2.6 Suspending a driver's licence

2.6.1 Authority for police to immediately suspend a driver's licence

It is proposed to align legislation with other jurisdictions so police may immediately suspend a driver's licence where the driver:

- fails to comply with a police officer's request to provide a blood or breath sample
- falls within the high range PCA offence, or
- has exceeded the speed limit by more than 45kph.


The licence would be suspended until the matter is heard in court.

It is proposed that police will be given a power to issue an official caution for traffic offences, and that a provision be applied to allow this to be recorded in the offender's traffic record.

2.6.2 National recognition of licence suspension and disqualification

A driver's licence is not always physically surrendered when it is suspended in Norfolk Island, so it may be tempting for a person who has lost their Norfolk Island licence to drive in mainland Australia with the suspended Norfolk Island licence, whether or not local legislation prohibits that conduct.

This is also the case for a visitor to Norfolk Island, despite the fact that the Act makes it an offence to drive when a person's licence has been suspended or cancelled elsewhere.



If a loss of licence is not communicated between jurisdictions it is difficult to enforce these reciprocal provisions.

The following changes are proposed:

- require the Norfolk Island Registrar of Drivers' Licences to notify the jurisdiction where the licence was issued of the suspension/disqualification of the driver's licence. The Registrar will also be required to notify other jurisdictions when a Norfolk Island driver's licence is cancelled.
- make it an offence to hold a Norfolk Island driver's licence at the same time as holding a driver's licence issued by another Australian jurisdiction, and
- examine ways in which it may be possible for Norfolk Island Police and/or the Norfolk Island Registrar to establish whether a driver's licence from another jurisdiction is valid.

Any official caution would also be shown in a driver's traffic record and available to police and the Registrar of Drivers' Licences in Norfolk Island and, potentially, to police and registrars in other Australian jurisdictions.

2.7 Improving data collection for research purposes

It is proposed to allow information about drivers' licences or history of traffic offences or violations to be used for research purposes. Information would be aggregated and not allow for identification of offenders. It could provide useful evidence to improve traffic laws by comparing the type of offences in Norfolk Island with other jurisdictions.

2.8 Reviewing penalties for traffic offences

Compliance with road rules provides a safer environment for all road users. Penalties, Traffic Infringement Notices (TIN), and suspension of driving privileges play an important role in encouraging compliance with these rules. To achieve their purpose, the penalties need to be sufficient to be a deterrent for would-be offenders.

Norfolk Island victims of traffic offences are entitled to expect the same rights in terms of punishment of traffic offenders as victims in other parts of Australia.

It is proposed to review penalties for traffic offences and the administrative arrangements underpinning the enforcement and collection of fines.

There will be further consultation on the detail of any proposed changes before an amending ordinance is made.

3. Next steps

How can you have your say?

The Department invites your comments on the changes proposed in this paper by **Friday 21 June 2019**. You can make comments in writing to:

NI_Legislation@infrastructure.gov.au or to GPO Box 594, Canberra ACT 2601.

The Department intends to publish all submissions to this consultation paper, unless a submission is confidential or contains other information that is not suitable to publish. We will publish your name and any organisation you represent, but we will not publish any personal contact details such as your private email address or residential address.

If you would like part or all of your submission, including your name, to remain confidential, please indicate this clearly in the body of your submission. Automatically generated statements in an email are not sufficient. Confidential submissions will be kept securely and will only be disclosed to third parties where authorised or required by law.

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Excerpt from the Australian Road Rules

The Australian Road Rules (ARRs) contain the basic rules of the road for motorists, motorcyclists, cyclists, pedestrians, passengers and others and form the basis of Road Rules of each Australian state and territory.

These are model laws that have no legal effect and form the basis of Road Rules of each Australian state and territory. For the most part, each state and territory has copied the AARs into their own laws, however, not every provision of the Rules has been copied exactly in each state and territory. Also, there are a number of provisions in the ARR that specifically leave certain matters to state and territory governments to determine.

The AARs were first approved in 1999 by the former Australian Transport Council (now the Transport and Infrastructure Council). The Council consists of the ministers responsible for road traffic matters in each state and territory, and of the Commonwealth Minister responsible for transport matters.

ARR 268 – How persons must travel in or on a motor vehicle

(1) A person must not travel in or on a part of a motor vehicle that is not a part designed primarily for the carriage of passengers or goods.

(2) A person must not travel in or on a part of a motor vehicle that is a part designed primarily for the carriage of goods unless:

(a) the part is enclosed, and

(b) he or she occupies a seating position that is suitable for the size and weight of the person and that is fitted with a seatbelt.

Note that **enclosed**, for a part of a vehicle, means enclosed by:

(a) the structure of the vehicle, or

(b) a canopy, cage or other device fitted to the vehicle that is approved, for the Australian Road Rules, under another law of this jurisdiction

Mobile Drug Test (MDT) in other jurisdictions

New South Wales (NSW)

Mobile drug testing has been in place in NSW for over a decade.

MDT detects recently used four common illegal drugs: ecstasy, cannabis, cocaine and methamphetamine (including speed and ice).

MDT can be conducted at roadside operations along with random breath testing (RBT), or by NSW Police in vehicles patrolling the roads.

As with RBT, a driver will be stopped by police, asked for their licence and to complete a breath test for alcohol. The driver will then be asked to wipe an MDT test stick down their tongue to check if they have illegal drugs in their system. The results take a few minutes to appear and the driver must wait until police say they are in the clear. Most drivers test negative and are soon on the road again.

If an MDT test is positive, the driver will be taken to a roadside testing van or bus, or back to a police station to provide a saliva sample. This sample will also be tested and if positive, the driver will be banned from driving for 24 hours. All samples are sent to a laboratory for analysis. If the laboratory confirms the positive roadside result, police will contact the driver and charge the driver with driving with the presence of an illegal drug.

If the driver is stopped for MDT or other reasons at the roadside and the driver's behaviour or driving is erratic and police suspects the driver is under the influence of illegal or prescription drugs, the police can require the driver to undergo blood and urine testing. The tests cover a large range of legal and illegal substances that can impair drivers and can lead to a charge of driving under the influence (DUI), which has serious penalties.

All drivers involved in fatal crashes undergo blood and urine testing for drugs and alcohol.

Queensland

Mobile drug testing has been in place in Queensland for over a decade.

Police officers can conduct roadside drug testing at random breath testing sites, mobile and/or stationary vehicle interceptions, or after a traffic crash. Roadside drug testing allows police to conduct saliva testing in conjunction with RBT or as a standalone check. The roadside drug testing process operates in a similar way to RBTs.



Police will ask the driver to provide a saliva sample for the purpose of testing for:

- THC—the active ingredient in cannabis
- Methylamphetamine—also known as speed and ice
- MDMA—the active ingredient in ecstasy.

Prescription drugs and other illicit drugs can't be detected using a roadside drug test.

The driver will undergo a preliminary saliva test (screening test). If a negative result is returned the driver will be free to go. If a positive result (relevant drug detected) is returned the driver will be taken to an authorised place for a second saliva test. (If an instrument is not available to conduct the second test, the driver may also be taken to an authorised place and the driver will be required to provide a specimen of blood.)

If the second saliva test is positive for drugs, the driver licence will be suspended for either 24 hours or suspended until the driver's first court appearance dependant on any pending relevant court matters the driver may have.

The saliva sample will then be sent to Queensland Health for a further analysis. A Certificate of Analysis will be issued and presented to the driver and the magistrate at the initial court appearance.

Australian Capital Territory (ACT)

ACT Policing commenced Random Roadside Drug Testing (RRDT) in May 2011.

RRDT tests for cannabis, methamphetamine (speed and ice) and MDMA (ecstasy).

The testing only relates to the 'presence' of a drug in the driver's system, there is no limit like drink driving. RRDT is a three step process before the driver could be charged with an offence. The first two steps are undertaken by police on the roadside.

First an oral test is used, followed immediately by a 'preliminary oral fluid analysis' using an instrument called a Drug Detection System. If the person is unable to provide a saliva swab, a blood test may be used.

A third 'confirmative' positive laboratory test is required before a driver is charged; this is conducted by the ACT Government Analytical Laboratory.