



Department of Infrastructure, Transport, Cities & Regional Development

By email to

NorfolkIsland@infrastructure.gov.au

Re: Traffic Laws in Norfolk Island

I make the following comments on DITCRD's proposed amendments to Norfolk Island traffic laws.

GENERAL COMMENTS & SUBMISSIONS:

The changes proposed in the Consultation Paper will obviously have a broad effect on the Norfolk Island community. As such DITCRD's approach is not consistent with their published Legislation Consultation Framework. The Consultation Paper is a lazy document and fundamentally punitive in intent. These concerns regarding DITCRD's approach provide a basis to conclude that local consultation is fundamentally a token exercise.

I am not aware of the consultation and legislation proposal being publicized by Australian authorities within Norfolk Island. Placing a Consultation Paper on the DITCRD website is not local consultation.

I note that the Consultation Paper states:

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.

I'm not aware of local legal practitioners being consulted so I would infer that the legislative proposals primarily originate from the police, DPP or Coroner/Chief Magistrate.

I am making these submissions on the Consultation Paper as I was a signatory to the local petition circulated against changes to s40A and s44G (2)(b) .

I make the following submissions.

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.

SUBMISSION:

Provisional licence holders are not normally experienced drivers. Visitors to the Island are not uncommonly not familiar with their vehicle, road conditions around the Island and local traffic laws. They are routinely identifiable by driving excessively slow and turning or stopping unpredictably.

It would be sensible to still require Australian provisional license holders nevertheless to apply for an NI provision licence and, in particular, to satisfactorily demonstrate compliance with s.16A(1)(c)(iii) *Traffic Act 2010* that such a person-

“(iii) *has an adequate knowledge of the law relating to driving on Norfolk Island;*”

Conversely I would consider it inappropriate for local P-platers to be automatically entitled to drive in Australia, such as in metropolitan areas, without satisfactorily demonstrate knowledge of the applicable Australian traffic laws.

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.

SUBMISSION:

I strongly disagree with this proposal. I have owned and used trucks and utilities in Norfolk Island for many years and in my view the current legislative provisions are appropriate for Island conditions.

Passengers riding on the back of an open tray of a truck or utility is not a concern that has been raised by the Norfolk Island community. The practice is common and longstanding and arose out of the practical reality of needing a truck for many purposes in Norfolk Island. This safety issue was previously reviewed by the democratically elected Legislative Assembly. Sections 40A and 44G(2) were part of statutory reforms contained in the *Road Traffic (Amendment) Act 2011* passed by the Norfolk Island Legislative Assembly which included, in particular, the introduction of the requirement to wear seatbelts.

There is no attempt by DITCRD to justify the proposed abolition other than by mere reference to the recent Coronial inquest. This inquiry concerned the tragic death of a heavily intoxicated man who fell, or jumped, from the back of the open tray of a moving truck. I’m not aware of anything being other than a summary of the Coroners findings being published in the Gazette of 21 December 2018.

In that summary the following findings were referred to -

- (f) Any relevant circumstances concerning the death – The following should be noted as relevant:
- (i) Mr Seary was travelling unrestrained in the tray of a utility vehicle as is lawfully permitted under section 40A(1) and section 44G(2) (b) of the Traffic Act 2010 (Norfolk Island) (Traffic Act);
 - (ii) Mr Seary was significantly intoxicated with a blood alcohol content of .328;
 - (iii) There is no evidence that the driver's manner of driving contributed to Mr Seary's death. In particular, there is no evidence that he was speeding or otherwise driving dangerously; and

The notice also includes the following commentary –

COMMENTS PURSUANT TO THE ACT SECTION 32(3)

.....

3. Having regard to the provisions of the Act section 32(3), I consider that it would be desirable to:
- a) Amend the Traffic Act to revoke existing s40A and s44G (2)(b) so that the provision in Australian Road Rule 268 applies;
 - b) Introduce a system utilising the available database or another appropriate facility, where it is mandatory for each person who holds a Norfolk Island driver's licence to provide, and update, their personal details including current residential address and phone number. This database or appropriate facility should be able to be accessed by the Norfolk Island Police Force;
 - c) Establish a clear documented procedure to ensure that Norfolk Island Police are notified as soon as possible of a traffic incident;
 - d) Employ a full-time appropriately qualified paramedic on Norfolk Island;

The Coroner is obviously empowered to comment on matters, including public health or safety or the administration of justice, connected with the death or fire the subject of the inquest or inquiry

However, technically and arguably clause 3 was not properly included in the gazette notice and exceed the terms of -

- s30(2) of the *Registration of Births Deaths and Marriages Act 1963* which specify the particulars to be notified which do not include commentary, and
- s.32(5) of the *Coroners Act 1933* which authorises publishing of findings not commentary.

Nevertheless the unfortunate death as set out in the contents of the Coroner's gazette notice does not, of itself, justify the revocation of ss 40A and 44G(2) of the *Traffic Act 2010*.

It is to be noted that there is no indication that the Coroner's sought alternative views before making such a recommendation.

It is also to be noted that a similar fatal outcome could have easily arisen from a heavily intoxicated person –

- travelling as a pedestrian on any of the Island's lit or unlit roads;
- travelling as a pillion passenger on a motor bike;
- driving a car, motor cycle or bicycle.

The terms (set out below) of a petition recently circulated within the community fairly indicate why the proposed changes should not be made –

1. *Riding on the back of an open tray of a truck or utility is tradition and a way of life for the people of Norfolk Island.*
2. *The people of Norfolk Island have been riding on the back of an open tray of a truck or utility since 1929.*

3. *Many families on Norfolk Island are reliant on utilising their truck or utility to carry family members and friends.*
4. *There is no publication of overwhelming statistics to warrant this stripping of a Norfolk Island tradition and way of life.*
5. *There is no publication of overwhelming public requests from the Norfolk Island community to warrant this stripping of a Norfolk Island tradition and way of life.*
6. *We do not live in Australia, we live on a remote isolated small Island with a maximum speed limit of 50km per hour.*

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.

SUBMISSION:

This future proposal to review is noted.

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.

SUBMISSION:

Where issues of road safety don't arise isn't this usually a Council rather than a Police function? In reality how much of a problem is this in Norfolk Island? DITCRD should have provided details of just how much of a problem this is in reality.

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.

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.

SUBMISSION:

This proposal is possibly based on a misreading of the *Traffic Act 2010*. There is ample scope in the Act to prosecute driving which endangers the public and which occurs on land to which the public has access.

Subsection 3(4) of the *Traffic Act 2010* provides –

“(4) Subject to subsection 3(5), a reference in this Act to a road includes a reference to a public place.”

“Public place is defined in s.3(1) as –

“public place” means a place, other than a road, that is —

(a) a wharf, jetty or foreshore; or

(b) a part of—

(i) a reserve under the Public Reserves Act 1997;

(ii) a recreational or sporting ground; or

(iii) any other open space,

to which the public has access, whether or not on payment of money for admission;

The essence of dangerous driving is being a danger to the public. If the public has access to an open space then that place is a “public place” for the purposes of the Act and the offences under s. 30 would seem to apply. The need to prosecute dangerous driving in a private space and in the absence of the public is not immediately clear.

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.

SUBMISSION:

This seems to refer to s.32(2) of the *Traffic Act 2010*.

- (2) *A member of the police force may arrest without warrant a person —*
- (a) *committing; or*
 - (b) *whom he reasonably suspects is committing, an offence under subsection (1).*

The power of arrest in the context of s.32(2) is preventative in nature. Why is a power of arrest needed or warranted where a person is not committing or is not reasonably suspected to be committing a drink driving offence?

- 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.

SUBMISSION:

DITCRD does not explain this proposal. The offence and sentencing option already exists. DITCRD should explain why they want a new offence.

Section 32(9) of the *Traffic Act 2010* presently provides

- “(9) *A person who—*
- (a) *fails to comply with the reasonable directions of—*
 - (i) *a member of the police force; or*
 - (ii) *in accordance with Regulations for the taking of a blood sample, an approved person,*
given for the purposes of taking a sample of breath for analysis or a blood sample under subsection (3);
 - (b) *if required by a police officer under subsection (3) to submit to a breath analysis, refuses or fails to submit to that analysis in accordance with the directions of the officer;*
 - (c) *if detained under subsection (4), removes himself or herself from the presence of except with, and in accordance with, the permission of the member;*
 - (d) *fails to comply with a requirement or reasonable direction of a member of the police force issued in accordance with this section;*
 - (e) *wilfully does anything to alter the concentration of alcohol in the person's blood if the person is required by a police officer to submit to a breath analysis or blood analysis — between the time of the event referred to in*

subsection (3) in respect of which the person has been required by a police officer to undergo breath analysis and the time when the person submits to the breath analysis or blood test,

commits an offence.

Penalty — 30 penalty units or 6 months imprisonment or both.

*Note: 1. An offence under this paragraph (c) is a ‘major driving offence’.
2. Part 8 provides for suspension and cancellation of licences.”*

The offence under s. 32(9) of the *Traffic Act 2010* is a serious one and the penalties are appropriate.

In addition, s. 131 of the *Sentencing Act 2007* presently allows for cancellation or disqualification from obtaining a drivers licence where a person who is found guilty or convicted of an offence used a motor vehicle when committing or to facilitate the commission of the offence.

- 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.

SUBMISSION:

Under s. 46(1) of the *Traffic Act 2010* disqualification and cancellation are mandatory following conviction for a major driving offence.

However, the sentencing options available to a Court include, under s.7 of the *Sentencing Act 2007*, where a person has been found guilty of an offence a power to deal with that person without recording a conviction.

A Court also has discretion under s.131 of the *Sentencing Act 2007* to order cancellation and disqualification from holding a driver’s licence where a person has been found guilty of an offence and used a motor vehicle when committing or to facilitate the commission of the offence. In exercising its discretions the Court must have regard to the specific terms, guidelines and principles of the Act.

DITCRD wishes to interfere with a Court’s sentencing discretion. DITCRD should explain why they wish to.

- 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.

SUBMISSION:

Interlock technology might be a good idea but until the practicalities and responsibilities of implementing it have been addressed legislating in the abstract seems like mere window dressing and potentially a waste of time.

- ensure a novice driver recording a low, medium or high range PCA is subject to penalties consistent with those applying in other jurisdictions.

SUBMISSION:

What are the differences? DITCRD should explain why this proposal is desirable or necessary. Mere difference from other jurisdictions is not, of itself, a sound reason to legislate.

2.5.3 Drug driving

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

SUBMISSION:

It's not possible to comment on this proposal in the absence of details.

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.

SUBMISSION:

Immediate licence suspension is immediate punishment. This reverses the presumption of innocence in favour of summary punishment by a police officer. DITCRD should explain why this is necessary or appropriate in Norfolk Island.

2.6.2 National recognition of licence suspension and disqualification

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.

SUBMISSION:

Provided the system applies equally in both directions to Australia and to Norfolk Island this is unobjectionable.

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.

SUBMISSION:

This is unobjectionable.

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.

SUBMISSION:

No comment.

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.

SUBMISSION:

This is a ridiculous statement.

Norfolk Island victims of traffic offences are, as a matter of higher priority, entitled to expect the same rights of compensation that applies in Australia.

The absence of a nominal defendant for persons injured by an unregistered or unknown vehicle is a serious defect in the traffic laws of Norfolk Island.

If DITCRD wishes to engage in review of the traffic laws of Norfolk Island it should first apply itself to the adequacy of victim compensation under those laws. Consideration could usefully be given to establishing a no-fault accident compensation scheme as in some Australian jurisdictions.

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.

SUBMISSION:

Noted.

