

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 242

Issued by the Authority of the Minister for Infrastructure, Transport, Regional Development
and Local Government

National Transport Commission Act 2003

*National Transport Commission (Model Amendments Regulations: Australian Road
Rules – Package No. 5 – General) Regulations 2009*

*National Transport Commission (Model Amendments Regulations: Australian Road
Rules – Package No. 5 – Seatbelts) Regulations 2009*

Section 52 of the *National Transport Commission Act 2003* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The provisions of the Act are supported by the Inter-Governmental Agreement on Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA), which serves to formalise the cooperative arrangements between the Commonwealth, States and Territories and define the roles and responsibilities of the National Transport Commission, the Australian Transport Council and the jurisdictions. Clause 14 of the IGA requires the Commonwealth to submit model legislation for inclusion in schedules to regulations under the Act. The proposed Regulations would implement this commitment.

The Regulations provide Australian Road Rule provisions for nationally consistent implementation in each State and Territory. The Regulations are in model form to allow for implementation in each jurisdiction using the most convenient and effective regulatory manner available – for instance, the provisions may be incorporated into the law of a jurisdiction by way of amendment of existing legislation.

The proposed Regulations would repeal two sets of Regulations made in 2008 – the *National Transport Commission (Road Transport Legislation- Australian Road Rules) Amendment Regulations 2008 (No.2)* and *National Transport Commission (Road Transport Legislation- Australian Road Rules) Amendment Regulations 2008 (No. 3)*. Those Regulations contain model legislation that deals with general road rules and seatbelt amendments to the Australian Road Rules, but not in the form approved by the Australian Transport Council (ATC). The proposed Regulations would replace those Regulations with the model legislation approved by the ATC.

The proposed *National Transport Commission (Model Amendments Regulations: Australian Road Rules – Package No. 5 – General) Regulations 2009* would:

- (a) introduce amendments based on operational experience in all jurisdictions;
- (b) remove ambiguities that will facilitate the enforcement and administration of traffic law;
- (c) update the road rules to help achieve the desired changes to on-road behaviour;
- (d) simplify and clarify traffic laws to reduce confusion amongst road users and improve road safety; and

(e) amend the Australian Road Rules with respect to general traffic rules.

The proposed *National Transport Commission (Model Amendments Regulations: Australian Road Rules – Package No. 5 – Seatbelts) Regulations 2009* would amend the Australian Road Rules with respect to seatbelts.

The Australian Road Rules 5th Amendment Package Regulations were developed and refined through extensive consultations with the Commonwealth, State and Territory road safety, traffic, road transport and enforcement authorities. The Australian Road Rule maintenance process commenced in 2003 and continued in 2004 and 2005, during which a number of issues with the road rules were identified. Following face to face deliberations and discussions with the Australian Road Rules Maintenance Group, the NTC developed the 5th Amendment Package 2005 for consideration by Transport Agency Chief Executives (TACE) and the Australian Transport Council (ATC).

The model Regulations were circulated for public comment in July 2005 along with a draft Regulation Impact Statement (RIS). The RIS was assessed and approved by the Commonwealth Office of Regulation Review. The Regulations and RIS were approved by the Australian Transport Council (ATC) on 29 June 2006.

In 2008, the *National Transport Commission (Road Transport Legislation- Australian Road Rules) Amendment Regulations 2008 (No.2)* and *National Transport Commission (Road Transport Legislation- Australian Road Rules) Amendment Regulations 2008 (No. 3)* were registered on the Federal Register of Legislative Instruments (F.R.L.I.) in accordance with the procedures that govern the scheduling of legislation. Unfortunately, the versions of the Regulations which were made by the Governor-General were incorrect, earlier versions of the Regulations which had not been approved by the ATC.

Repealing the Regulations and replacing them with Regulations that contain the correct, ATC approved model legislation in the schedules will have the effect of correcting the historical record insofar as the Australian Road Rules are concerned.

In accordance with the legislative requirements set out in the *Legislative Instruments Act 2003*, the National Transport Commission (NTC) drafted the Regulations to repeal the erroneous Regulations (thus ensuring the correctness of the historical record) and replace the schedules containing the model legislation with the correct, ATC approved Regulations.

Section 7 of the Act provides that the regulations may set out model legislation, being legislation developed by the NTC in accordance with the IGA. Paragraph 7(2)(a) provides that model legislation does not have the force of law. The schedules to the regulations serve only as a repository for nationally agreed reforms, which may then be implemented by jurisdictions.

Item 44 of the table to subsection 44(2) of the *Legislative Instruments Act 2003* together with item 7 of Schedule 2 to the *Legislative Instruments Regulations 2004* operate to provide that the proposed Regulations would not be subject to disallowance. In addition, item 51 of the table to subsection 54(2) of the *Legislative Instruments Act 2003* together with item 4 of Schedule 3 to the *Legislative Instruments Regulations 2004* operate to provide that the proposed Regulations would not be subject to sunseting.