

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 294

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

National Transport Commission Act 2003

*National Transport Commission (Model Law on Engine Brake Noise
Limits) 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 Regulations would implement this commitment.

The purpose of the Regulations is to make various amendments to the model Australian Vehicle Standards Regulations and the model Australian Vehicle Standards Rules 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 objects of the Regulations are:

- (a) to amend the Australian Vehicle Standards Regulations to provide that a breach of the maximum noise level in the Australian Vehicle Standards Rules is an offence;
- (b) to provide jurisdictions with drafting notes which incorporate suggested model evidentiary provisions. The objective of these model evidence provisions is to assist regulators with the enforcement of breaches of engine braking noise levels set out in the Australian Vehicle Standards Rules;
- (c) to insert a definition of a device that measures and records heavy vehicle engine brake noise in the Australian Vehicle Standards Rules;
- (d) to provide that the measurement of a heavy vehicle's engine braking noise must be in accordance with the method set out in the *National In-Service Engine Brake Noise Test Procedures for Heavy Vehicles*; and
- (e) to state the noise level a heavy vehicle using engine braking cannot exceed.

The NTC developed the Regulations in partnership with the Department for Transport, Energy and Infrastructure South Australia, the Roads and Traffic Authority New South Wales and VicRoads. It was then refined through extensive consultations with transport agencies,

truck manufacturers, industry representatives, government policymakers, environment agencies and members of the Land Transport Environment Committee.

The policy proposal which led to the development of the Regulations was preceded by a review of the noise related to Australian Design Rules and engine brake noise. This earlier process provided an opportunity for stakeholders to discuss noise from engine brakes. Stakeholder comments from this earlier review included community representatives, manufacturers and the Federal Chamber of Automotive Industries. These comments were utilised in the development of the NTC draft policy proposal for engine brake noise (including the model legislation).

The draft legislative package was released for a two month public comment in June 2006. The package was released along with a Regulation Impact Statement (RIS). The RIS was assessed and approved by the Commonwealth Office of Best Practice Regulation. Additional public consultation was also undertaken by the NTC and included the following:

- convening panels drawn from the community to listen to and assign ‘annoyance’ values to a range of engine brake recordings; and
- making recordings of noise from engine brakes available, by compact disc and the NTC’s website, for anybody to decide if the noise is acceptable or is unacceptable; and
- running a series of seminars that included listening these recordings of noise from engine brakes around the level of the proposed in-service standard; and
- holding a meeting of acoustics experts to peer review the analysis undertaken; and
- meetings and discussions with stakeholders to explain the reform and listen to stakeholder views.

Following the public consultation, the Regulations and RIS were circulated to members of the Transport Agencies Chief Executives on 1 June 2007 for their consideration. In addition, under the *Intergovernmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*, the NTC was required to ensure that there was appropriate consultation with the National Environment Protection and Heritage Council. This requirement arises when an NTC proposed reform has a material impact on the environment. In view of these requirements, the package was submitted to the National Environment Protection and Heritage Council for noting in October 2007. The legislative package was then submitted to the Australian Transport Council for voting. The package was unanimously approved on 26 October 2007.

Section 7 of the Act provides that 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 are not 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 Regulations are not subject to sunset.