



**NATIONAL TRANSPORT COMMISSION  
MODEL SUBORDINATE INSTRUMENT ON THE TRANSPORT OF DANGEROUS  
GOODS BY ROAD OR RAIL (MISCELLANEOUS) AMENDMENT 2022**

**AUSTRALIAN TRUCKING ASSOCIATION SUBMISSION  
10 MARCH 2022**

**About the Australian Trucking Association**

1. The Australian Trucking Association is a united voice for our members on trucking issues of national importance. Together, we represent the 50,000 businesses and 200,000 people who make up the Australian trucking industry.

**Introduction**

2. On 16 February 2022, the NTC circulated a consultation draft of proposed amendments to the Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail (MSI). The MSI provides the states and territories with a model for their dangerous goods laws, which give legal effect to the Australian Code for the Transport of Dangerous Goods by Road and Rail.
3. The ATA developed this brief submission in consultation with its members and the dangerous goods managers of member companies.

**Issues with proposed clause 11.1.8(3)(b)**

4. The proposed amendments include the insertion of a new clause 11.1.8(3),<sup>1</sup> as follows—

(3) It is a failure to comply with subclause (2) if:

(a) the prime contractor does not retain:

- (i) a legible hard copy of the document; or
- (ii) a copy of the document in electronic form; or

(b) the prime contractor can not produce a legible hard copy at any time during the 3 months at the request of an authorised officer.

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<sup>1</sup> sch 1 cl 13.

5. The amendment would allow prime contractors to retain documents in electronic form, but paragraph (b) would still require a prime contractor to produce a legible hard copy of a document if requested.
6. The retention of paragraph (b) in the MSI raises three issues. The paragraph is—
  - inconsistent with governments' digital strategies (pars 7-9)
  - inconsistent with and overridden by the states' electronic transaction laws (pars 10-13)
  - an unnecessary burden on both businesses and regulators (pars 14-15).

#### *Consistency with government digital strategies*

7. The Australian and state governments have adopted digital strategies to speed transactions and reduce the cost of regulation. Although the strategies vary from jurisdiction to jurisdiction, a key component is the concept of 'digital by default' or 'digital first.' Government services and transactions are to be carried out digitally as the first choice of customers, with other service modes available.<sup>2</sup>
8. The NSW Government strategy specifically recognises that this digital transformation requires a new approach to legislation—

existing legislative barriers will be removed where appropriate, respecting privacy considerations. In some cases this requires legislative amendment or clarification to enable the use of digital technology.<sup>3</sup>

9. Paragraph (b) is not consistent with governments' broader digital strategies. In fact, it is an example of the sort of legislative provision that governments are working to replace.

#### *Consistency with electronic transaction laws*

10. Following the development of the United Nations Model Law on Electronic Commerce in 1996, the Australian and state parliaments passed consistent laws to support electronic transactions.<sup>4</sup>

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<sup>2</sup> See, eg, Western Australian Government. [Digital strategy for the Western Australian Government 2021-2025](#). 3.

<sup>3</sup> NSW Government. [Digital NSW: Designing our digital future](#). 10.

<sup>4</sup> *Electronic Transactions Act 1999* (Cth); *Electronic Transactions Act 2000* (NSW); *Electronic Transactions (Victoria) Act 2000* (Vic); *Electronic Transactions (Queensland) Act 2001* (Qld), *Electronic Communications Act 2000* (SA); *Electronic Transactions Act 2011* (WA); *Electronic Transactions Act 2000* (Tas), *Electronic Transactions (Northern Territory) Act 2000* (NT); *Electronic Transactions Act 2001* (ACT).

11. These laws override provisions in other legislation that purport to require the production of hard copy documents. For example, the *Electronic Transactions (Victoria) Act 2000* relevantly provides—

**10 Production of document**

- (1) If, by or under a law of this jurisdiction, a person is required to produce a document that is in the form of paper, an article or other material, that requirement is taken to have been met if the person produces, by means of an electronic communication, an electronic form of the document, where (...)

**11 Retention of information and documents**

- (1) If, by or under a law of this jurisdiction, a person is required to record information in writing, that requirement is taken to have been met if the person records the information in electronic form, where (...)

12. The legislative schemes all allow regulations to be made to exempt specific laws, documents or transactions. But none of the states have chosen to prevent their electronic transactions laws from overriding paragraph (b).

13. Queensland has already derogated from the MSI and removed the hard copy requirement;<sup>5</sup> the Northern Territory and ACT regulations have not implemented the provision at all.<sup>6</sup> The inconsistency between the remaining states' electronic transactions laws and the MSI has the potential to cause confusion and disputes between regulators and operators.

*Regulatory burden on DG operators and regulators*

14. Governments have adopted digital transformation policies and electronic transaction legislation because handling printed documents is onerous, time consuming and costly for businesses and regulators.

15. There is no case for continuing to require prime contractors to produce hard copy documents, more than two decades after the passage of the first electronic transactions legislation and at a time when governments are seeking to digitise as many transactions as possible.

**Recommendation**

16. The ATA recommends that proposed clause 11.1.8(3)(b) should be amended to read—

- (b) the prime contractor can not produce a legible hard copy **or a copy of the document in electronic form** at any time during the 3 months at the request of an authorised officer.

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<sup>5</sup> *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018* (Qld). s 127(2)(b).

<sup>6</sup> *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Regulations 2011* (NT); *Dangerous Goods (Road Transport) Regulation 2010* (ACT).