

1989

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MOTOR VEHICLE STANDARDS BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Transport and Communications,
the Honourable Ralph Willis MP)

MOTOR VEHICLE STANDARDS BILL 1989

OUTLINE

This Bill gives effect to a recommendation by the Inter-State Commission that there be a common Australia-wide system of vehicle standards. Significant economies are expected from the abolition of multiple local design requirements.

The Bill empowers the Minister to make standards for all motor vehicles (including trailers), supplied to the Australian market for the first time, be they manufactured in Australia, new vehicle imports or secondhand imports. Standards made under the Bill may relate to matters of vehicle safety, emissions of gases or noise, and vehicle anti-theft.

It is intended that the Standards to be made under the Bill will initially call up the existing Australian Design Rules. These have been endorsed as national standards by the Australian Transport Advisory Council and the Australian Environment Council which are composed of Federal State and Territory Ministers for Transport and Environment respectively.

The Bill is intended to underpin national uniformity and prevent the benefits of a uniform system being diminished by requiring manufacturers and importers to comply with a range of local requirements. Standards made under the Bill are to supersede State or Territory design requirements even where the State or Territory requirement is more stringent than the standard made under the Bill.

It will also mean that all Australian citizens have the benefits of a high level of vehicle safety by ensuring manufacturers and importers comply with the same requirements.

Standards are to be made by the Minister by Order. An Order is a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

Provision may be made by regulation for procedures to be followed in affixing compliance plates to vehicles, including authorising manufacturers or importers to affix compliance plates to vehicles. Appropriate administrative arrangements are also authorised, and penalties provided to enforce the provisions of the Act.

FINANCIAL IMPACT STATEMENT

The Bill is expected to result in a small increase in expenditure, estimated at \$0.25m for each of the next two financial years and \$0.2m for each of the two financial years following. The Federal government currently devotes significant resources to the administration of the Australian Design Rules. These costs are recovered from vehicle manufacturers and importers, as are the costs of the present scheme. No increase in charges is envisaged at the present time.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

1. Provides for the Act to be cited as the Motor Vehicle Standards Act 1989.

Clause 2 - Commencement

2. Provides that sections 1 and 2 are to commence on Royal Assent; and that the rest of the Act is to commence a day or days to be fixed by Proclamation, or, if not proclaimed sooner, on 1 September 1989. This is to allow time for the making of the necessary regulations and finalisation of administrative procedures.

Clause 3 - Object of Act

3. This clause sets out the object of the Act, which is to ensure that uniform standards apply to road vehicles throughout Australia.

Clause 4 - Operation of Act

4. This is a formal provision intended to minimise the effect of any interpretation adverse to the constitutionality of the Act.

Clause 5 - Interpretation

5. This clause defines the terms used in the Act.

6. The terms "export vehicle", "imported vehicle", "locally made vehicle", "motor vehicle", "road motor vehicle", "road trailer", "road vehicle" and "standard vehicle" are defined in such a way as to enable the Act to apply to vehicles, whether manufactured in Australia or imported, which are powered by any means other than human or animal power, and are intended to be used for the transport of people, animals or goods on Australian roads. "Vehicles" includes trailers. Vehicle components are also covered.

7. Standards may relate to safety, control of emissions of gas and noise or prevention of theft of vehicles.

8. Vehicles intended for export are not covered by the Act.

Clause 6 - Act to bind Crown

9. Provides that the Act binds the Crown in right of the Commonwealth, of each of the States and internal Territories, but that nothing in the Act renders the Crown liable to be prosecuted for an offence.

PART 2 - NATIONAL STANDARDS

Clause 7 - Determination of national standards

10. This clause empowers the Minister to make national standards by Order.

11. Subclause (2) provides that an Order making a standard is a disallowable instrument. This means that:

it must be tabled in each of the Houses of the Parliament within 15 sitting days of its making;

it must be published in the Gazette;

if a motion for the disallowance of an Order is passed within 15 days of the Order being tabled, the standard ceases to have effect.

12. The first Order will promulgate as national standards the existing Australian Design Rules, which have been agreed as national standards by the Australian Transport Advisory Council and where appropriate the Australian Environment Council.

Clause 8 - Consultations before determinations

13. This clause provides that the Minister may before making standards consult with relevant State or Territory authorities, vehicle industry representatives, or representatives of road users.

14. It is intended that the Minister would consult with such parties before making a new standard, or a significant variation to an existing standard.

Clause 9 - Testing of road vehicles

15. This clause authorises the Minister to make arrangements for:

the testing of vehicles and components;

inspection and auditing of manufacturing and testing facilities;

for the purposes of the Act. The arrangements are to be made as set out in regulations.

PART 3 - COMPLIANCE PLATES

Clause 10 - Compliance plates

16. This clause provides for regulations to set out the arrangements under which compliance plates may be placed on vehicles to indicate that the vehicles comply with standards. It should be noted that a "compliance plate" could be any kind of permanent mark placed on a vehicle, not necessarily a metal plate as at present (see the definition of "plate" in clause 5 above).

Clause 11 - Withdrawal of compliance plate authority

17. It is envisaged that the regulations prescribing arrangements for affixing compliance plates would authorise manufacturers or importers to affix compliance plates after approved testing. This clause empowers the Minister to cancel, suspend or vary authorities to affix compliance plates where he or she is satisfied that plates have been improperly affixed. The Minister must notify the authorised person in writing of the facts which in the Minister's opinion constitute grounds for cancelling, suspending or varying the authority and give the person an opportunity to show cause why the authority should not be cancelled, suspended or varied.

18. The decision to cancel, suspend or vary an authority must be notified in writing, and is reviewable by the Administrative Appeals Tribunal (see clause 39 below).

Clause 12 - Offence - placing compliance plate on nonstandard vehicle

19. This clause creates an offence of knowingly or recklessly placing a compliance plate on a non standard vehicle, punishable by a fine of \$12,000.

Clause 13 - Vehicles taken to have compliance plates

20. This clause provides that if approval has been given in accordance with the regulations to place a compliance plate on a vehicle, the vehicle is to be taken as having a compliance plate.

PART 4 - SUPPLY AND IMPORTATION OF VEHICLES

21. This Part creates a number of offences aimed at preventing the supply of nonstandard vehicles to the market.

Clause 14 - Nonstandard vehicles not to be supplied to market

22. This clause makes it an offence, subject to certain exceptions, to supply to the market a new vehicle that either is nonstandard or does not have a compliance plate. The penalty is a fine of \$12,000.

23. The exceptions to the general prohibition are that nonstandard vehicles, or vehicles not having compliance plates, may be supplied to the market with the Minister's written permission (which may be given subject to conditions), or under circumstances which may be prescribed by regulations. These exceptions are to make provision for bona-fide manufacture or testing of small numbers of vehicles, or of vehicles used for special purposes for which it is not thought appropriate to require that compliance plates be obtained.

Clause 15 - Nonstandard vehicles not to be used by manufacturers

24. This clause makes it an offence for a corporation that manufactures a new vehicle knowingly or recklessly to use that vehicle in transport in Australia if it is nonstandard, or does not have a compliance plate. The same exceptions are provided as by the previous clause. The penalty once again is a fine of \$12,000.

Clause 16 - Vehicles not to be made nonstandard

25. This clause creates two parallel offences of knowingly or recklessly modifying new vehicles in such a way as to render them nonstandard. Subclause (1) makes it an offence to do so; subclause (2) makes it an offence to hand over a new vehicle for the purpose of modification. A penalty of \$12,000 is set for each of these offences. Once again vehicles may be modified with the written permission of the Minister, or in circumstances prescribed by regulation. Of course, this provision would not prevent the modification of vehicles so as to exceed the requirements of a national standard, so long as the requirements of the national standard were still met.

Clause 17 - Importation of road vehicles subject to conditions

26. This clause imposes conditions on the importation of vehicles that are standard, or have compliance plates. The conditions are that:

the vehicle will when supplied to the market still be a standard vehicle and will still have a compliance plate;

the vehicle will not be modified by the importer or another person in a way that makes it nonstandard.

Breach of such a condition is punishable by a fine of \$12,000.

Clause 18 - Prohibition of importation of nonstandard vehicles etc

27. Clause 18 prohibits, subject to certain exceptions set out in clauses 19 and 20, the importation of vehicles which are nonstandard or do not have a compliance plate, or of nonstandard vehicle components. The importation of nonstandard vehicles or vehicles without compliance plates is punishable by a fine of \$12,000; of nonstandard components, \$6,000.

Clause 19 - Importation of vehicles requiring modification etc

28. This clause permits the importation of nonstandard vehicles or components, or vehicles not having compliance plates, if the Minister's written approval is first obtained. The Minister may impose conditions on such an approval for the purpose of ensuring that the vehicle or component is modified so as to become standard, or that a compliance plate is affixed, before being supplied to the market. It is intended that this provision would be used to facilitate the importation of vehicles where the importer will modify the vehicle to standard in Australia.

29. An offence is created, punishable by a fine of \$6,000, of contravening a condition imposed by the Minister pursuant to this section.

Clause 20 - Approval to import certain nonstandard vehicles

30. Subclause (1) of this clause permits the importation of nonstandard vehicles where they are to be re-exported, or in circumstances to be prescribed by the regulations. It is intended that the circumstances in which importation would be permitted would be the importation of evaluation vehicles, or bona fide personal import by individuals.

31. Subclause (2) permits the importation of nonstandard components where the components are to be used in the manufacture of vehicles for export, or in circumstances to be prescribed by the regulations. It is envisaged that this provision would be used to permit the importation of components for the maintenance of permitted nonstandard vehicles.

32. Subclause (3) authorises the regulations to make provision for the imposition of conditions by the Minister on a permission to import vehicles or components given pursuant to this section.

Clause 21 - No requirement to comply with certain standards

33. Where a law of a State or Territory requires a new vehicle to comply with a State or Territory design requirement, this clause will override that State or Territory law by stipulating that the vehicle may be supplied to the market, despite the State or Territory law. This provision is intended to ensure that the national standards made under section 7 are not rendered ineffective by the supply of standard vehicles being made unlawful.

PART 5 - ADMINISTRATION

Clause 22 - Administrator

34. This clause establishes the statutory office of Administrator of Motor Vehicle Standards. The Administrator is to be appointed by the Secretary of the Department of

Transport and Communications, and is to be an officer of the Senior Executive Service holding office within that Department.

Clause 23 - Delegation by Minister

35. This clause authorises the Minister to delegate to the Administrator all or any of his or her powers and functions under the Act, other than:

the power of making standards;

the power to cancel an authority to affix compliance plates.

Clause 24 - Fees

36. This clause provides that fees may be set by the regulations for the various services to be performed under the Act. The regulations may also make provision for the method of payment of such fees. The clause also provides that where an application or request under the Act is required by the regulations to be accompanied by a fee, the application or request is to be taken not to have been made unless the fee is paid.

Clause 25 - Appointment of inspectors

37. This clause provides for the appointment of inspectors. Inspectors are to be officers of the Federal public service or of the public service of a State or Territory. Inspectors are to be appointed by the Minister, who is also authorised to publish in the Gazette directions regulating the conduct of inspectors, with which inspectors are required to comply.

Clause 26 - Identity cards

38. This clause authorises the Minister to issue identity cards to inspectors, and requires a person who ceases to be an inspector to return his or her identity card as soon as practicable. A penalty of \$100 is provided for failure to do so.

Clause 27 - Powers of inspectors

39. This clause sets out the powers of an inspector as far as those powers are to be used in normal compliance monitoring. It is first stipulated that the various powers are for the purpose of finding out whether the Act, the regulations, and Orders under the Act are being observed. The powers are:

to enter premises (with the consent of the owner or occupier, or pursuant to a warrant issued by a magistrate - see clause 28 below);

to inspect any process in the manufacture of a vehicle to which the Act applies;

to inspect any machine, etc., used in the manufacture of such a vehicle;

to take samples of materials or components;

to interview persons employed on the premises;

to inspect or take copies of documents;

to seize anything that the inspector reasonably suspects may be evidence of the commission of an offence against the Act or regulations.

40. An inspector must, immediately on entering premises, inform the occupier of the purpose of the entry and produce his or her identity card.

Clause 28 - Monitoring warrants

41. While it is intended that normal monitoring inspections would be done in cooperation with manufacturers and importers, this clause provides for application to be made to a magistrate for the issue of a warrant authorising entry on premises for the purposes of the Act. The magistrate is to be satisfied by information verified by oath that it is reasonably necessary for the inspector to enter the premises.

42. The warrant must state whether entry is authorised at any time of day or night, or only at particular times, and a day when the warrant will cease to be effective, which must not be later than six months after its issue.

Clause 29 - Power to require information

43. This clause authorises an inspector who has entered premises pursuant to section 27 to require any person to answer questions, or produce documents, books or records.

Clause 30 - Offence-related searches and seizures

44. This clause extends the powers of an inspector where there are grounds for suspecting that on particular premises there is any thing which would be evidence of an offence against the Act or regulations. The inspector then may enter on the premises, either by permission of the occupier or under a warrant issued by a magistrate, and may search the premises for the thing and seize the thing if found.

45. Application may be made, pursuant to subclause (2), to a magistrate for the issue of a warrant. The magistrate is required to satisfy him or herself that there are reasonable grounds for the issue of the warrant. The warrant must state the purpose for which it is issued, the nature of the offence alleged, the times within which entry may be effected, a description of the things sought, and a day, not

later than one month after the warrant's issue, when it ceases to have effect.

46. An inspector acting on the authority of such a warrant is authorised to seize not only the thing specifically sought but also any other thing that the inspector reasonably believes may be evidence of an offence against the Act or regulations, and which must be seized in order to prevent its concealment, loss or destruction, or its further use in the commission of an offence.

Clause 31 - Obstruction of inspectors

Clause 32 - Failure to answer questions etc

47. These two clauses are designed to ensure that the powers given by the Act to inspectors cannot be thwarted by non-cooperation on the part of other persons. Clause 31 makes it an offence to hinder an inspector in the performance of his or her functions under the Act; clause 32 makes it an offence to answer questions, when required to do so by an inspector. Each of these offences is punishable by a fine of \$3,000.

Clause 33 - Agents

48. This clause empowers the Minister to appoint agents to assist in the performance of the Minister's powers and functions under the Act. Such agents would provide information, advice and assistance in the administration of the Act.

PART 6 - COURT PROCEEDINGS

Clause 34 - Evidence

49. This clause facilitates the prosecution of certain offences against the Act. It provides that where a prosecution is instituted for offences against sections 14, 15, 16 or 19 (which relate respectively to the supply of nonstandard vehicles to the market, the use of nonstandard vehicles, the modification of standard vehicles so as to make them nonstandard, and the importation of vehicles requiring modification) the Minister or an authorised person may give a certificate as to any conditions imposed by the Minister in originally giving permission. The certificate is to be prima facie evidence of the facts stated in it.

Clause 35 - Injunctions

50. This clause confers jurisdiction on the Federal Court of Australia to grant an injunction restraining a person from engaging in any conduct that would constitute a breach of the Act or regulations, or requiring a person to do anything where the refusal or failure to do that thing constitutes a breach of the Act or regulations.

Clause 36 - Conduct by directors, servants and agents

51. This clause provides that where, in proceedings in respect of an offence, it is necessary to establish the state of mind of a body corporate, it is sufficient to establish the state of mind of a director, servant or agent of the body corporate, and that the director, servant or agent acted within the limits of his or her actual or apparent authority. The state of mind of the director, servant or agent is then taken to be the state of mind of the body corporate.

52. The clause further provides that where a director, servant or agent of a body corporate, acting within his or her actual or apparent authority, engages in conduct, that conduct is taken to be conduct engaged in by the body corporate.

Clause 37 - Legal proceedings not to lie

53. This clause protects the Commonwealth from any legal action in respect of any loss incurred or damage suffered as a result of reliance on a compliance plate, a test carried out for the purposes of the Act, or any statement that a vehicle or component complies with a standard.

PART 7 - MISCELLANEOUS

Clause 38 - Law to apply in certain circumstances

54. This clause makes further provision for the case where a law of a State or Territory purports to require new vehicles to comply with standards other than those made under the Act.

55. Subclause (1) authorises the regulations to provide that such a law of a State, or a law of the State relating to registration of vehicles, is not to apply to vehicles used in trade, commerce and intercourse among the States or between a State and a Territory, or vehicles owned and used by corporations.

56. Subclause (2) authorises the regulations to provide that such a law of a Territory, or a law of a Territory relating to registration of vehicles, is not to apply to road vehicles.

Clause 39 - Applications for review

57. This clause provides for review of decisions under the Act or regulations, and confers jurisdiction on the Administrative Appeals Tribunal to hear applications for review.

Clause 40 - Statement to accompany notice of decisions

58. This clause provides that a notice in writing of a decision under the Act or the regulations is to be

accompanied by a statement setting out the right of application to the Administrative Appeals Tribunal for review of the decision, and the right to apply for a statement in writing of the reasons for the decision.

Clause 41 - Compulsory recall

59. This clause provides that a standard made under the Act is to be taken to be a "prescribed consumer product safety standard" for the purposes of section 65F of the Trade Practices Act 1975. This means that the compulsory recall provisions of that Act will immediately be available to compel recall of nonstandard vehicles.

Clause 42 - Regulations

60. This clause authorises the making of regulations prescribing the matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for the carrying out of, or giving effect to, the Act. It specifically authorises the provision by the regulations of

finer not exceeding \$1,000 for offences against the regulations;

transitional provisions for the recognition of approvals already given under the present arrangements.