



Australian Government

Department of Infrastructure, Regional Development and Cities

Senate Rural and Regional Affairs and Transport Legislation Committee

Inquiry into the provisions of the Road Vehicle Standards Bill 2018 and related bills

*Submission by the Department of Infrastructure,
Regional Development and Cities*

April 2018

Introduction

1. This submission is provided by the Department of Infrastructure, Regional Development and Cities (the Department) in response to the invitation from the Committee on 3 April 2018. The submission details the purpose of the Road Vehicle Standards legislation, summarises the consultation and review processes that developed the final policy, and responds to the issues for consideration - identified in the bill's referral to the Committee.
2. Governments in Australia have had a longstanding role in setting motor vehicle standards to deliver road safety and environmental outcomes. Over the past 40 years, the regulation of safety features has contributed significantly to reducing deaths and serious injuries from road accidents. Vehicle safety standards remain a key component in reducing vehicle crashes and the extent of injuries and deaths in a vehicle accident. Significant improvements have been achieved in vehicle accident injury and death outcomes as a result of regulating minimum performance standards in vehicle occupant protection, resulting in the widespread use of safety innovations such as crumple zones and airbags.
3. The legislative package before the committee consists of five bills:
 - Road Vehicle Standards Bill 2018
A Bill for an Act to provide a modern regulatory framework for the Australian Government to regulate the importation of road vehicles into Australia, and the first provision of road vehicles in Australia. This will replace the current *Motor Vehicle Standards Act 1989* (MVSA).
 - Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018
This Bill will repeal the MVSA upon full commencement of the Road Vehicle Standards Act (RVSA), make transitional provisions to provide for the regulation of road vehicles and road vehicle components during the transition from the MVSA to the RVSA and make consequential amendments to Commonwealth legislation to reflect the repeal of the MVSA and substitute relevant references to the RVSA.
 - Road Vehicle Standards Charges (Imposition—General) Bill 2018
 - Road Vehicle Standards Charges (Imposition—Customs) Bill 2018
 - Road Vehicle Standards Charges (Imposition—Excise) Bill 2018
These bills provide for the imposition of charges for activities and services relating to the regulatory administration of the RVSA. The Bills stipulate that the amount of the charges are not set at a level that recovers more than the Commonwealth's likely costs in administering the road vehicle standards legislation.

Review of the MVSA

4. Since 1989, the Australian Government has relied on the MVSA to control the safety, environmental and anti-theft performance of road vehicles entering the Australian market for the first time. Last reviewed in the year 2000, the MVSA and its regulations have become outdated with high regulatory costs as significant changes in global and domestic vehicle markets and vehicle technologies have occurred.

5. The current review of the MVSA has involved significant and ongoing consultation with industry and the community. An initial public consultation process in 2013 identified the need for a review of the currency and operation of the MVSA, and its regulations, to determine whether it remained effective and efficient. Feedback received indicated that the legislation's safety, environmental and consumer protection objectives were still relevant but aspects of the MVSA were outdated and compliance and enforcement options were limited.
6. This initial consultation led the Government to announce in January 2014 that it would examine the potential to reduce regulatory costs to business and individuals and improve the safety and environmental performance of road vehicles. In the context of substantial changes in the global and Australian automotive industries, the review sought to ensure the regulation of Australian motor vehicles continues to strike the right balance between appropriate safety standards, in line with international best practice, and consumer choice.
7. A second consultation process included the release of an Options Discussion Paper in September 2014, which presented a number of potential reform options for public comment. Public workshops held around the country facilitated stakeholder discussions and submissions on future options for the MVSA.
8. Options under consideration at this time included relaxing the regulation of imported used vehicles and introducing the option for personal importation of new vehicles. Further assessment of the costs of managing the risks of used vehicle provenance, and the adverse impact on the Australian vehicle fleet age, led the Government to rule out substantially increasing used vehicle imports in April 2015.

New legislative framework

Principles

9. In February 2016, the Minister for Urban Infrastructure and Cities, the Hon. Paul Fletcher MP, announced a package of reforms based on the extensive consultation process undertaken as part of the 2014 review.
10. The implementation of the announced reforms is guided by five principles:
 - Flexible and responsive legislation for the future of road vehicles;
 - Clear legislation for safe, secure, and environmentally friendly vehicles;
 - More choice of road vehicles for Australians;
 - Continued harmonisation with international standards; and
 - Improved compliance and enforcement powers.

What the new legislation achieves

11. The resulting Road Vehicle Standards Bill 2018, and supporting legislation, modernises and strengthens the legislative framework for the future provision of road vehicles in Australia. It replaces physical compliance plates as the marker of a vehicle's suitability for supply in Australia with an online, publicly searchable database – the Register of Approved Vehicles (RAV). It strengthens the Government's ability to monitor and enforce compliance with vehicle standards by triggering the *Regulatory Powers (Standards Provisions) Act 2014* - providing a standardised

suite of monitoring, investigation and enforcement powers. The Bill also includes powers to issue recalls for all road vehicles and all non-compliance with National Road Vehicle Standards.

12. The legislation package streamlines road vehicle approvals by consolidating import and supply pathways and provides the framework for revised Specialist and Enthusiast Vehicle and Registered Automotive Workshop arrangements - including the introduction of independent third party vehicle inspections.
13. The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 provides the automotive industry a twelve-month transitional period from the commencement of the Road Vehicle Standards Bill. During this period, provisions of the MVSA will continue to have effect to assist entities operating under the old law update their business operations in response to the new regulatory environment. It also provides incentives to certain approval holders to become early adopters of the new regulatory framework.

Continued consultation

14. In developing the legislation throughout 2016 and 2017, the Department continued a series of consultation sessions with stakeholders including manufacturers, the specialist and enthusiast sector, regulatory agencies and the general community. This ongoing consultation resulted in the Government revising its proposed Specialist and Enthusiast Vehicle eligibility criteria and concluding the community risks of the proposed personal new vehicle import scheme outweighed the benefits.
15. The release of exposure drafts of the legislation, including the five bills and the supporting Road Vehicle Standards Rules in December 2017, initiated a new round of public consultation. Over 340 stakeholders participated in workshops around the country during January and February 2018 and the Government received 86 written submissions.
16. The draft legislation was well received by stakeholders involved in the motor vehicle industry's supply of the large majority of vehicles to Australian consumers.
17. This not only included the Federal Chamber of Automotive Industries, the Caravan Industry Association of Australia and the Australasian Automobile Dealers Association, on-line enthusiast vehicle media outlets have been positive in their reviews of the increased access to genuine specialist and enthusiast vehicles such as the left hand drive manufactured only vehicles.
18. Significantly, no issues were raised in the consultation that required amendments in the bills introduced to Parliament.
19. The Rules contain much of the detail of the reforms, ensuring flexibility to accommodate increasing change in the structure of the automotive industry and the technology of road vehicles. Some individual businesses, typically occupying market supply niches, raised concerns over the viability of their business due to specific detail changes in the regulatory framework.
20. The Government is working with these individual stakeholders to refine the detail of the Rules, or subsequent technical and administrative arrangements. Key areas include modifications prior to first provision to market, allowing heavy vehicles to be imported through the SEV

eligibility pathway subject to meeting ADRs, conversion to campervans for genuine purposes and the definition of 'variant' in the legislation.

Reduced regulatory burden

21. The current regulatory framework imposes regulatory costs on industry and individuals of around \$249 million a year.
22. The changes to the regulation of road vehicles under the new package of bills will create regulatory burden reduction opportunities in the order of \$69 million per annum. Of this, almost \$20 million is derived from streamlining elements such as the introduction of the RAV and consolidation of concessional schemes. Around \$4 million of these savings accrue to small businesses like the Registered Automotive Workshops. Approximately \$49 million in savings comes from improving the ability to continue harmonisation with international standards.

Issues for consideration

23. The following two matters were raised as issues for consideration in the referral of the Road Vehicle Standards bills to the Committee.

Risk to Australian jobs due to falling demand for expensive conversions of campers from regular vehicles and the loss of potentially all compliance checks to overseas workshops

24. Under the current SEV eligibility criteria, a pathway exists for the importation of used vehicles for the purpose of conversion to campervans and motorhomes. It is widely recognised, both within the sector and by other stakeholders, this pathway is being exploited for the purposes of supplying thousands of used people movers to the Australian market that have not undergone the required conversion into a campervan or mobile home. This is a highly profitable business model due to the significant arbitrage available on these vehicles and the minimal compliance work undertaken.
25. The average age of vehicles imported through this loophole has increased, now 8 - 12 years old, and the number of vehicles annually imported has remained stable at around 3,300 per year. As these vehicles receive concessions against Australian vehicle standards, the loophole is acting to circumvent the safety standards expected by the community.
26. The draft Rules retain a pathway for the importation of used vehicles originally provided in their source market as campervans or mobile homes, as the Government has recognised there is genuine market demand for some campervans and mobile homes that are not available in Australia. Further, the Government has agreed a two year grandfathering arrangement for the two current popular models to enable businesses based entirely on the exploitation of this loophole to transition to vehicles eligible under the new SEV arrangements.
27. In response to the 2018 consultation that identified a small number of businesses who legitimately converted imported used vehicles into campervans and mobile homes, the Government has indicated a change to the Rules that will allow for the importation of used vehicles intended for substantive conversion to campervans and motorhomes. This proposal has been welcomed by the individual businesses and RAWs sector. Compliance monitoring,

through the introduction of a third party vehicle verification requirement on vehicles processed through the RAWs sector, will mitigate the risk of returning to the current misuse of this importation pathway.

28. The Government expects the new opportunities provided by the increased range of eligible vehicles, and the reduced compliance costs, will at least maintain the numbers of vehicles being processed by registered automotive workshops.
29. The draft Rules describe a new specialist and enthusiast scheme that removes the current caps on the number of vehicles an individual Registered Automotive Workshop can process in a calendar year, increases access to different variants of a vehicle available in Australia and establishes several new objective eligibility criteria such as environmental performance, mobility access and originally manufactured in left hand drive only.
30. The Government is positively responding to calls from the Registered Automotive Workshops sector and is further adjusting some of the other parameters defining a specialist and enthusiast vehicle such as simplifying the power to weight performance threshold - thus providing more eligible vehicle variants. The Government has also flagged a change to the draft Rules to require the new third party vehicle inspections be conducted in Australia – to further increase consumer assurance of vehicle safety and conformance with the required standards.

Risk of noncompliance with Australian road safety, environmental and anti-theft standards with rogue overseas operators who are much harder to audit

31. The automotive industry is global in nature with vehicles supplied to various markets from multiple source countries. Overseas manufacturers provide the large majority of vehicles to the Australian market. These vehicles are new and fully compliant with Australian vehicle standards and manufacturers can provide assurance of conformity of production in their facilities. The Department maintains a team of highly qualified and experienced vehicle industry auditors who undertake routine audits of domestic and overseas manufacturing facilities.
32. For the limited number of vehicles granted concessions to full compliance with Australian vehicle standards, both new and used, there is less certainty of the final compliance status of a vehicle at the point it is provided to the Australian market.
33. The new legislation reduces the risk of non-compliance with the required conditions of importation for any vehicle with clear drafting, new tools and improved enforcement powers that can be applied both domestically and internationally. This includes more transparent condition making powers on vehicle approvals, extending the regulatory reach of the legislation to other important entities in the supply chain of a vehicle (such as testing facilities) and introduction of third party verification requirements for vehicles imported and modified through the specialist and enthusiast concessional pathway.
34. As noted in paragraph 31, the Government is proposing to require these independent vehicle inspections to occur domestically.
35. The bill's improved compliance and enforcement powers also rest on triggering the *Regulatory Powers (Standard Provisions) Act 2014*, which contain a standard set of provisions to deal with

monitoring, investigation and the use of civil penalties, infringement notices, enforceable undertakings and injunctions in the enforcement of legal obligations.

36. This allows contravention of the legislation to be addressed through a spectrum of enforcement options proportionate to the risk the non-compliance presents. The result will provide better regulatory outcomes for the community, level the playing field for industry and produce fairer compliance and enforcement outcomes for regulated entities.
37. The bill also gives the Minister the ability to issue a recall notice for compulsory recalls of road vehicles and road vehicle components and sets the framework for voluntary recalls. These provisions replicate and extend the current recall powers contained in the Australian Consumer Law to include recall notices in relation to road vehicles and road vehicle components that are not consumer goods and in relation to a non-compliance with any national vehicle standard.
38. The bill also provides for extraterritorial application. It will extend to acts, omissions, matters and things occurring outside Australia, ensuring the Commonwealth can regulate persons under this bill if they are located outside Australia. While it is recognised there are challenges in bringing an overseas entity to account in the Australian court system, proven non-compliance with the conditions associated with the importation approval for a vehicle can be addressed through amendment, suspension or revocation of that approval – potentially denying that entity further business in Australia.