

Australian Historic Vehicle Interest Group

16 April 2018

Dr Jane Thompson
Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

By on line lodgement and email: rrat.sen@aph.gov.au

Dear Dr Thompson,

Senate Inquiry into the *Road Vehicles Standards Bill 2018* and related bills

Thank you for the invitation to make a submission about the matters the subject of the Bills.

BACKGROUND

AHVIG is a group of individuals from the Eastern States and South Australia concerned at the depletion of Australia's once-great Historic Car (cars over 30 years old¹) fleet and legislative and administrative barriers to its replenishment. We are all active in multiple Historic Car Clubs, and some of us are active in applicable State and Federal peak bodies, such as the Australian Historic Motoring Federation.

The Luxury Car Tax represents the greatest barrier to importation or reimportation of Historic Cars, and we have recently lodged a substantial Pre-budget submission with Treasury about this². A copy was sent to every Federal MP and Senator last month.

Another barrier is the reported arbitrary and inconsistent exercise of discretion and application of law by the Australian Border Force when Historic Cars are sought to be imported, where asbestos might be present. While asbestos is undoubtedly a scourge, there are ways to manage the risk (to nil) but Australia is alone in the world in how it applies the law, resulting in the loss of business and jobs opportunities and tourism revenue.

These and other obstacles to the importation (and reimportation) of Historic Cars effectively deprive Australians of business opportunities and jobs, locking them out of participation in the world-wide boom in interest and economic activity associated with Historic Cars.

This is of even greater concern now with the cessation of vehicle manufacture in Australia, with the skilled workers made redundant missing out on the opportunities enjoyed by others overseas.

¹ This is the internationally accepted age for Historic Cars and this is reflected in, for example, the Customs Duty exemption for such cars (*Customs Tariff Act 1995*, Schedule 4, Item 36).

² Accessible here <https://tinyurl.com/yabwuqqg>. This also explains more about AHVIG.

2.

RVSA CONCERNS

It is therefore of concern to note the additional proposed impediments to the importation or reimportation of Historic Cars contained in the Exposure Draft of the *Road Vehicle Standards Rules 2017* (RVSRs).

From 1989 to the present, cars made before 1989 were treated differently from those made after. This was due to the new legislative regime brought about by the *Motor Vehicles Standards Act 1989*, which saw the introduction of the Third Edition of the Australian Design Rules and responsibility for ADR application move from the States to the Commonwealth.

1. Absolute Right to Import a pre-1989 Car to be replaced by a Discretion

At present, such vehicles are imported under what is known as the “pre-1989” option, deriving from *Motor Vehicle Standards Regulation (MVSR) 17*, which relevantly provides (emphasis added):

“17 Approval to import vehicles of a certain age without identification plates

The Minister must approve an application to import a nonstandard road vehicle, or a vehicle that does not have an identification plate, if the vehicle was manufactured before 1 January 1989.”

That means the entitlement to obtain approval (in the form of a Vehicle Import Approval, or VIA) is absolute – the Minister has no discretion to refuse an application.

Contrast that with Section 35 of the proposed RVSRs, where the Minister is given a discretion to refuse an application for an “older vehicle” (the new nomenclature for vehicles aged 25 years or older). It relevantly provides (emphasis added):

“35 Criteria for deciding application

If a person applies for a concessional RAV entry approval in respect of a road vehicle on the basis of the eligibility criteria set out in section 36 [vehicles more than 25 years old], 37, 38, 39, 40 or 41 the Minister may grant the approval to the person in respect of the road vehicle if the Minister is satisfied that the relevant eligibility criteria are satisfied in respect of the vehicle.”

AHVIG does not understand why the existing absolute right is being removed, to be replaced by a Ministerial discretion. None of the explanatory material (the Explanatory Memoranda to the Bills, and the 13 Information Sheets) explains why this right is being taken away. AHVIG submits the absolute right currently prevailing for pre-1989 vehicles should be preserved.

This is particularly troubling for enthusiasts who take their Historic Cars overseas to participate in rallies and other events. In the past VIAs were granted for their reimportation as of right. Now whether they can be reimported will be the subject of the exercise of a Minister’s discretion.

2. New Inspection Obligation

Under the MVSRs, there does not appear to be any provision for overseas inspection of pre-1989 vehicles before a VIA may be granted.

However, under the RVSRs, Section 33(1)(b), a new entitlement to require inspection of a vehicle is introduced. Often, Historic Cars are sourced in remote places around the world, and the cost of arranging an inspection would be prohibitive.

3.

We submit this provision should not apply to importation of pre-1989 vehicles, as it does not currently apply.

Given the entirely different legislative regimes applying pre and post 1 January 1989, in particular, with the multiple Australian Design Rules applying to vehicles manufactured after that date, there may be a case to differentiate between “older vehicles” made pre and post that date, with the current system being preserved for those made before.

3. Reimportation Obstacle

We refer also to the provisions regarding “reimportation” of motor vehicles, commencing at RVSR Section 147 and note with concern those provisions can only be utilised if those vehicles are already on the Register of Approved Vehicles, or bear a post 1 January 1989 compliance plate.

Enthusiasts with pre-1989 cars – some of which have been in Australia since 1900 – will not have their vehicles on the RAV, and nor will they be able to affix a plate indicating compliance with the post 1989 ADRs.

AHVIG SUBMISSION

For the above reasons AHVIG submits that applying the proposed new provisions to pre-1989 cars will cause needless administrative burdens, for no demonstrated benefit, as well as introducing a level of uncertainty about whether owners can bring back to Australia their cars taken overseas for Historic Car events.

For that reason AHVIG submits that the existing pre-1989 scheme as found in *Motor Vehicle Standards Regulation* 17 (cited above), entitling the grant of a VIA for pre-1989 vehicles, as of right, should be preserved. This would resolve all the concerns listed above.

A copy of RVSR sections 32 to 36, with amendments to some of those sections underlined necessary to effect this change, is attached.

I, or other members of AHVIG, are prepared to travel to address the Committee on any of the above matters if the Committee considers that would be of value.

Yours sincerely,

Douglas Young
Chair

[Former: Chair, Business Law Section, Law Council of Australia, and a number of its expert committees, Qld Managing Partner of Blake Dawson Waldron (now Ashurst Australia), and President of the Vintage Car Club of Qld Inc 2012-16].

4.

Attachment - Suggested Amendments to RVSRs as underlined:

Subdivision B—Application for, and grant of, concessional RAV entry approval

32 Application

(1) A person may apply to the Minister for the grant of a concessional RAV entry approval in respect of:

(aa) a road vehicle manufactured before 1 January 1989; or

(a) a road vehicle that is an older vehicle; or

(b) a road vehicle that is to be modified by the holder of a RAW approval; or

(c) a road vehicle on the grounds of a special exemption;

(d) a road vehicle that is to be imported as part of the person's personal effects;

(e) a road vehicle that is a trailer;

(f) a road vehicle on the grounds that the vehicle is suitable for entry on the RAV.

(2) The application must be:

(a) in the approved form; and

(b) accompanied by:

(i) such documents as are required by the form; and

(ii) the application fee.

Note: The Minister may refuse to consider an application if it is not in the approved form (see section 34).

33 Further information and inspection of road vehicle

(1) The Minister may request a person who has made an application under section 32 for a concessional RAV entry approval in respect of a road vehicle listed in section 32 (a) to (f) [ie excluding s.32(1)(aa)] to do either or both of the following to assist in deciding the application:

(a) give the Minister further specified information relevant to the application;

(b) allow the vehicle to be inspected.

(2) A request under subsection (1) must:

(a) be in writing; and

(b) state that the request must be complied with within the period of 30 days starting on the day the request is given, or within such longer period as the Minister allows.

34 Minister may refuse to consider application in certain circumstances

The Minister may refuse to consider an application if:

(a) it is not in the approved form; or

(b) a request made under section 33 in relation to the application is not complied with within the period mentioned in paragraph 33(2)(b).

34A Approval to import vehicles of a certain age

The Minister must approve an application to import a road vehicle, if the vehicle was manufactured before 1 January 1989.

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35 Criteria for deciding application

If a person applies for a concessional RAV entry approval in respect of a road vehicle on the basis of the eligibility criteria set out in section 36, 37, 38, 39, 40 or 41 the Minister may grant the approval to the person in respect of the road vehicle if the Minister is satisfied that the relevant eligibility criteria are satisfied in respect of the vehicle.

36 Eligibility criteria—older vehicles

(1) A road vehicle satisfies the eligibility criteria set out in this section if:

(a) the vehicle is in one of the following vehicle categories:

- (i) Passenger Car (MA);
- (ii) Forward-control Passenger Vehicle (MB);
- (iii) Off-road Passenger Vehicle (MC);
- (iv) Moped - 2 wheels (LA);
- (v) Moped - 3 wheels (LB);
- (vi) Motor cycle (LC);
- (vii) Motor cycle and side-car (LD);
- (viii) Motor tricycle (LE);
- (ix) Light Goods Vehicle (NA); and

(b) the vehicle has a relevant build date that is on or after 1 January 1989 and at least 25 years before the date of the application for a concessional RAV entry approval in respect of the vehicle.