

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Road Vehicle Standards Bill 2018
and related bills [Provisions]

May 2018

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List of abbreviations

1958 Agreement	Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions
1998 Agreement	Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles
AAAA	Australian Automotive Aftermarket Association
AAT	Administrative Appeals Tribunal
APS	Australian Public Service
AVV	Authorised Vehicle Verifier
Bill	Road Vehicle Standards Bill 2018
Charges bills	Road Vehicle Standards Charges (Imposition—General) Bill 2018; Road Vehicle Standards Charges (Imposition—Customs) Bill 2018; and Road Vehicle Standards Charges (Imposition—Excise) Bill 2018
Committee	Senate Rural and Regional Affairs and Transport Legislation Committee
Consequential Provisions bill	Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018
Department	Department of Infrastructure, Regional Development and Cities
EM	Explanatory Memorandum
FCAI	Federal Chamber of Automotive Industries
Minister	Minister for Urban Infrastructure and Cities
MR	Model Report
MVS Act	<i>Motor Vehicle Standards Act 1989</i>
RAV	Register of Approved Vehicles

RAWS	Registered Automotive Workshop Scheme
Rules	Road Vehicle Standards Rules
RVSA	Road Vehicle Standards Act (proposed)
Scrutiny Committee	Senate Standing Committee for the Scrutiny of Bills
Secretary	Secretary of the Department of Infrastructure, Regional Development and Cities
SES	Senior Executive Service
SEV	Specialist and Enthusiast Vehicle
SEV register	Register of Specialist and Enthusiast Vehicles

Chapter 1

Introduction

Referral of the inquiry

1.1 On 28 March 2018, the Senate referred the provisions of the Road Vehicle Standards Bill 2018, the Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018, the Road Vehicle Standards Charges (Imposition—General) Bill 2018, the Road Vehicle Standards Charges (Imposition—Customs) Bill 2018, and the Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 to the Senate Rural and Regional Affairs and Transport Legislation Committee (committee) for inquiry and report by 7 May 2018.¹

1.2 The package of bills seeks to replace the *Motor Vehicle Standards Act 1989* and establish a new regulatory framework for the importation and supply of road vehicles and road vehicle components into the Australian market.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website, and wrote to a range of stakeholders inviting submissions by 17 April 2018. The committee received 34 submissions, as listed in Appendix 1. The submissions were published on the committee's inquiry webpage.

1.4 The committee did not conduct public hearings for the purposes of the inquiry, instead basing its deliberations on the written evidence provided. The committee's decision to hold the inquiry on the papers also took into consideration the fact that the Senate Rural and Regional Affairs and Transport Reference Committee had recently undertaken a lengthy and detailed inquiry into aspects of road safety in Australia which considered issues of road vehicle standards and importation.

Acknowledgement

1.5 The committee thanks the organisations and individuals that made submissions to the inquiry.

Structure of the report

1.6 The report consists of three chapters. This chapter provides background information on motor vehicle regulation in Australia. It also details the key provisions of the bills and consideration of the bills by the Parliamentary Joint Committee on Human Rights.

1 *Journals of the Senate*, No. 94–28 March 2018, p. 2978.

1.7 Chapter 2 of the report details the concerns raised by the Senate Scrutiny of Bills Committee, and Chapter 3 discusses the views raised in evidence to the committee. Chapter 3 concludes with the committee's views and recommendation.

Background

1.8 Strong and effective motor vehicle regulations have played an important role in maintaining road safety in Australia for the last 40 years. The Australian Design Rules, administered through the *Motor Vehicle Standards Act 1989* (MVS Act), ensure that vehicles entering the Australian market for the first time meet certain safety, anti-theft and environmental standards, such as the provision of seatbelts and airbags.²

1.9 In his second reading speech, the Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, (the Minister) noted that the annual road toll has more than halved since the introduction of the MVS Act, whilst the number of vehicles registered for use on Australian roads has grown at a rate of around two per cent per annum.³

1.10 The Road Vehicle Standards Bill 2018 and related bills have been introduced to replace the MVS Act which has been in force for almost three decades. During this period, consumer expectations, vehicle preferences, improvements in vehicle technology, and trends in global and domestic automobile markets have all undergone considerable change and transformation. Therefore, the Road Vehicle Standards Bill 2018 and related bills will provide a renewed regulatory platform to strengthen and modernise the current legislative framework.⁴

1.11 The Road Vehicle Standards Bill 2018 will also give effect to Australia's international obligations under the *'Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions'* (1958 Agreement) and the *'Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles'* (1998 Agreement).

2 Explanatory Memorandum, p. 5.

3 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/8f7b4904-e5ab-452a-8736-6158744bd454/0021/hansard_frag.pdf;fileType=application%2Fpdf (accessed 23 April 2018).

4 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018.

Consultations and reviews

1.12 Since 2000, the MVS Act has been subject to numerous reviews and extensive consultation processes on possible reforms. The development of the Road Vehicle Standards Bill 2018 and related bills was informed by these processes.⁵

1.13 In 2013, the then-Department of Infrastructure and Transport (now the Department of Infrastructure, Regional Development and Cities) held public consultations on possible changes to the MVS Act and its Regulations. During the exercise, almost 200 submissions were received, and a number of open workshops took place in major cities around the country.⁶

1.14 Many submitters to that process called for relaxed restrictions on the importation of used vehicles. In particular, submitters suggested expanding the range of vehicles allowed for importation to include newer vehicles and variants of vehicles currently available in the Australian market. Several submissions also highlighted that the current criteria used to grant vehicles entry onto the Register of Specialist and Enthusiast Vehicles was outdated.⁷

1.15 In 2014, a review of the MVS Act was announced, with a focus on reducing business costs and the regulatory burden, and to improve safety.⁸ The Department produced an Options Discussion Paper for public comment. Public consultations were also conducted throughout September and October 2014.⁹

1.16 In addition to the consultation process, the government commissioned three reports to evaluate the costs and benefits relating to the potential relaxation of the vehicle import policy:

- Report 1, known as Castalia I, focused on the economic opportunities that would emanate from a relaxation of the current restrictions on the importation of used vehicles;¹⁰

5 Explanatory Memorandum, p. 63.

6 Department of Infrastructure, Regional Development and Cities, *2013 Public Consultation on the Motor Vehicle Standards Act 1989 and Regulations*, https://infrastructure.gov.au/vehicles/mv_standards_act/2013_public_consultation_process.aspx (accessed 10 April 2018).

7 Department of Infrastructure and Transport, *Public Consultation Report: Motor Vehicle Standards Act 1989*, August 2013, pp. 2–4.

8 Department of Infrastructure, Regional Development and Cities, *2016 to 2017 reform process prior to exposure draft of Bills*, https://infrastructure.gov.au/vehicles/mv_standards_act/pre-reform-process.aspx (accessed 23 April 2018).

9 Department of Infrastructure, Regional Development and Cities, *Submissions to the 2014 Review*, https://infrastructure.gov.au/vehicles/mv_standards_act/2014_submissions.aspx (accessed 10 April 2018).

10 Castalia Strategic Advisors, *Reduced Used Vehicle Import Restrictions: Cost Benefit Analysis*, June 2014.

- Report 2, known as Castalia II, looked at the economic opportunities available to consumers to privately import vehicles from the United Kingdom or Japan – countries that have comparable vehicle standards to Australia;¹¹ and
- Report 3 provided a safety analysis of Australian concessional vehicle imports. The report analysed the crash risk of vehicles imported under concessional schemes such as the Low Volume Scheme, Personal Imports, Pre-1989, and the Registered Automotive Workshop Scheme, as compared to the non-concessional vehicles manufactured in similar years.¹²

1.17 In 2016, the government announced changes to the MVS Act. Included in the changes was a proposal to allow the personal importation of new vehicles from countries with comparable standards, and improved arrangements for the importation of rare and special purpose vehicles. Consultations on the changes took place in 2016 and 2017.¹³

1.18 Exposure drafts of the Road Vehicle Standards Bill 2018 package, and the associated Rules, were released in December 2017 for consultation. The Minister then introduced the package of bills in Parliament on 7 February 2018.

Purpose of the bills

1.19 If enacted, the Road Vehicle Standards Bill 2018 will replace the MVS Act. The purpose of the bill is to:

- enable national road vehicle standards to be set for both road vehicles and their components, including environmental, safety and anti-theft standards;
- allow only vehicles that meet these standards to be imported into Australia (with some exceptions);
- establish a Register of Approved Vehicles onto which road vehicles must be entered before entering the Australian market; and
- establish a framework for recalling non-compliant road vehicles or components.¹⁴

1.20 The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 repeals the MVS Act and provides transitional arrangements and consequential amendments to support the commencement of the new legislation.

11 Castalia Strategic Advisors, *Reduced Vehicle Import Restrictions: Cost Benefit Analysis*, March 2015.

12 Monash University Accident Research Centre, *Safety Analysis of Australian Concessional Vehicle Imports*, August 2014, https://infrastructure.gov.au/vehicles/mv_standards_act/files/Safety_Analysis_of_Australian_Concessional_Vehicles.pdf (accessed 23 April 2018).

13 Department of Infrastructure, Regional Development and Cities, *Submissions to the 2014 Review*.

14 Explanatory Memorandum, pp. 5–10.

1.21 The Road Vehicle Standards Charges (Imposition—General) Bill 2018, the Road Vehicle Standards Charges (Imposition—Customs) Bill 2018, and the Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 allow for the imposition of charges for activities and services relating to the administration of the Road Vehicle Standards Bill 2018.

Overview of the bills

1.22 The package of bills establishes a legislative framework for the regulation and importation of the supply to market of road vehicles, and road vehicle components.

1.23 In his second reading speech, the Minister stated that the following five principles were used to guide the design of the new legislation:

- flexible and responsive legislation;
- clear and modern legislation;
- increased choice of road vehicles for Australians;
- improved compliance and enforcement powers to improve safety outcomes; and
- harmonisation with international standards.¹⁵

1.24 The following section provides an overview of the key provisions of each of the bills.

Key provisions of the Road Vehicle Standards Bill 2018

1.25 The Road Vehicle Standards Bill 2018 (the bill) is divided into six parts:

- Part 1 of the bill contains preliminary provisions, including definitions;
- Part 2 provides for the regulation and importation of road vehicles and road vehicle components, and introduces the new Register of Approved Vehicles, and the Register of Specialist and Enthusiast Vehicles;
- Part 3 provides for the recall of road vehicles and approved road vehicle components;
- Part 4 sets out the compliance and enforcement framework;
- Part 5 details administrative matters, including the use of computerised decision-making, delegation of the Minister's and Secretary's powers, and cost recovery; and
- Part 6 contains miscellaneous provisions including how the bill will interact with existing laws.

15 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018.

Preliminary provisions

1.26 Part 1 of the bill sets out the preliminary provisions of the new legislative framework for the regulation, importation and supply to market of road vehicles and road vehicle components. Clause 3 states that the objects of the proposed legislation are to:

- (a) set nationally consistent performance based standards that road vehicles must comply with before being provided in the Australia market; and
- (b) provide consumers in Australia with a choice of road vehicles that:
 - (i) meet safety and environmental expectations of the community; and
 - (ii) use energy conservation technology and anti-theft technology; and
 - (iii) are able to make use of technological advancements; and
- (c) give effect to Australia's international obligations to harmonise road vehicle standards.¹⁶

Definitions

1.27 A number of definitions are set out in clause 5 of the bill, including the definition of 'motor vehicle':

motor vehicle means a vehicle that uses, or is designed to use:

- (a) volatile spirit, gas, oil, electricity or any other power (other than human or animal power) as the principal means of propulsion; or
- (b) more than one of the powers mentioned in paragraph (a) (other than human or animal power) as a means of propulsion;

but does not include a vehicle used exclusively on a railway or tramway.¹⁷

1.28 Further definitions are provided in clauses 6 and 7 of the bill. In clause 6, a 'road vehicle' is defined as a motor vehicle designed solely or principally for use in transport on public roads; a trailer or other vehicle designed to be towed on a public road; a vehicle that is within a class of vehicles or specified vehicles determined in an instrument by the Secretary of the Department (Secretary); or a partly completed or unassembled vehicle that would otherwise be covered by the other road vehicle provisions of clause 6.¹⁸

1.29 The broad definition of a 'road vehicle' includes cars, heavy vehicles and caravans to ensure that they are also regulated under the bill.¹⁹

16 Road Vehicle Standards Bill 2018, sub cl. 3(1).

17 Explanatory Memorandum, p. 22.

18 Road Vehicle Standards Bill 2018, sub cl. 6(1).

19 Explanatory Memorandum, pp. 22–23.

1.30 Clause 7 defines a 'road vehicle component' as a component to be used in the manufacture of a road vehicle, including an assembly; a component that is within a class of components or specified components determined in an instrument by the Secretary.²⁰

Regulation of road vehicles and road vehicle components

1.31 Part 2 provides for the regulation of road vehicles and road vehicle components by allowing the Minister to determine road vehicle standards; establish the Register of Approved Vehicles; establish the Register of Specialist and Enthusiast Vehicles; create offences and civil penalty provisions for import contraventions; and permit Rules to be made to support the legislative framework and other related matters.

1.32 Clause 12 empowers the Minister to make standards for road vehicles and road vehicle components by legislative instrument, and through applying, adopting or incorporating other instruments. This includes the adoption of international technical standards, such as those established by the United Nations, the International Standards Organisation or the Australian Standards Organisation.²¹

Register of Approved Vehicles

1.33 Division 3 of Part 2 provides for the establishment of the Register of Approved Vehicles (RAV), which is intended to be the main entry pathway for road vehicles into Australia. Clause 14 provides that the Secretary must ensure the RAV is maintained by electronic means.

1.34 Clause 15 provides that a vehicle may be entered on the RAV if the vehicle satisfies the requirements of an entry pathway—that is, through the type approval pathway; the concessional RAV entry approval pathway; or any other pathway set out in the Rules. Contraventions relating to the entry of non-compliant vehicles on the RAV are set out in clause 16. Offences relating to dishonest, improper and incorrect information entered on the RAV are provided in clauses 17 and 18.

1.35 The concessional RAV entry approval pathway will allow entry of road vehicles that do not necessarily meet the national vehicle standards, but are able to meet one of the eligibility criteria for the pathway. This may include road vehicles that are older than 25 years, specialist and enthusiast vehicles, and vehicles that, if required to fully meet national standards, could not fulfil their intended purpose. The Explanatory Memorandum (EM) states that the Rules made under the bill will provide the eligibility criteria for this pathway.²²

20 Road Vehicle Standards Bill 2018, sub cl. 7(3) and sub cl. 7(4).

21 Explanatory Memorandum, p. 26.

22 Explanatory Memorandum, p. 28.

1.36 Clause 19 states that the Rules may also provide for the granting of approvals; conditions of such approvals; variation, suspension or revocation of such approvals; and obligations of former approval holders.

1.37 In Division 6 of Part 2 of the bill, clause 24 sets out contraventions pertaining to the entry of a road vehicle on the RAV. If a vehicle is not on the RAV, it is a contravention to provide it to another person in Australia or provide it for the first time in Australia. Exceptions apply if the road vehicle is provided to another person to have work done on it, to protect it, to store it, transport it to the importer or exporter, or 'in a circumstance set out in the rules'. This may include circumstances where work is underway on the road vehicle to meet compliance with a national standard, or to make it consumer ready, such as by installing upgrades or detailing the vehicle.²³ Clause 26 prevents the modification of road vehicles already entered on the RAV.

Register of Specialist and Enthusiast Vehicles

1.38 Clause 20 requires the Secretary to maintain a Register of Specialist and Enthusiast Vehicles (SEV register). The SEV register is for road vehicle make/models, and make/model/variants that have been assessed as genuine specialist and enthusiast vehicles, as per the Rules.²⁴

1.39 The EM states that vehicles registered on the SEV register must meet one of the six criteria to be set out in the rules. The six criteria are:

- Performance – high performance vehicles with specifications significantly superior to mainstream vehicles in Australia;
- Environmental – vehicles that offer environmental performance significantly superior to mainstream vehicles in Australia;
- Mobility – vehicles manufactured with special features to assist people with a disability;
- Rarity – vehicles of which only small quantities have been produced;
- Left-hand drive – vehicles originally manufactured as left-hand-drive, of which right-hand-drive versions are not available in any other country; and
- Campervans and motor homes – vehicles that have been originally manufactured as a campervan or motorhome.²⁵

Importation

1.40 Clause 22 provides for the importation of road vehicles into Australia, on condition that the person is the holder of a road vehicle type approval and an import

23 Explanatory Memorandum, p. 32.

24 Explanatory Memorandum, p. 31.

25 Explanatory Memorandum, p. 7.

approval, and is authorised to import the road vehicle. Clause 23 allows for Rules to be made in relation to granting approvals, the conditions of such approvals, and the obligations of former approval holders.

1.41 Contraventions regarding misrepresentation and breaches of obligations are set out in the remainder of Part 2.

Recalls

1.42 Part 3 of the bill provides for the Minister to issue a recall notice to suppliers of vehicles or components for the purpose of safety or non-compliance with national road vehicle standards. Clause 37 allows for Rules to be made in relation to issuing recall notices, compulsory and voluntary recalls, and notification requirements.

1.43 Clauses 38 to 40 specify contraventions related to recalls, and the penalties for non-compliance. Clause 41 empowers the Minister, Secretary, or a Senior Executive Service (SES) employee to issue a disclosure notice to a supplier if there is a risk of injury, misuse, or non-compliance with the applicable national road vehicle standards.

Compliance and enforcement

1.44 Part 4 provides for the enforcement of the new legislation by triggering the *Regulatory Powers (Standard Provisions) Act 2014*. The appointment of inspectors with monitoring, inspection and enforcement powers for offences related to the bill is detailed in Clause 49. Clauses 50 and 51 establish monitoring powers, while clauses 52 and 53 set out powers for inspection.

Other provisions

1.45 Part 5 provides for administrative matters, such as the utilisation of computer programs for decision making purposes, information sharing, cost recovery and delegations of power. Clause 73 provides the Minister with the power to delegate all or any of the Minister's functions or powers to a Secretary or SES employee in the Department. Clause 74 provides the Secretary similar powers to delegate any or all of his or her functions or powers.

1.46 Clause 78 permits a road vehicle to be used in transport on a public road without complying with state or territory laws if it meets a number of conditions.

1.47 Clause 82 allows the Minister to make rules by legislative instrument that prescribe matters required or permitted by the new legislation, or if necessary or convenient to carry out or give effect to the bill.

Key provisions of the Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018

1.48 The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 (Consequential Provisions bill) is divided into four schedules.

1.49 Schedule 1 sets out transitional arrangements for national road vehicle standards. Under these arrangements, the road vehicle standards in force under the MVS Act will continue to be in force for 12 months after Royal Assent of the Road Vehicle Standards Bill 2018. Schedule 2 then repeals the MVS Act.

1.50 Schedule 3 outlines transitional provisions commencing on repeal of the MVS Act. Clause 2 provides that a vehicle standard in force under section 7 of the MVS Act will continue in force as if it were a national road vehicle standard determined under section 12 of the new Road Vehicle Standards Act. Other transitional provisions relate to changes to the supply and importation of vehicles, and arrangements for existing registered automotive workshops. Clause 29 provides that the Minister may make rules about matters of a transitional nature.

1.51 Schedule 4 provides for consequential amendments to existing legislation.

Key provisions of the Charges bills

1.52 The three Charges bills include the:

- Road Vehicle Standards Charges (Imposition—General) Bill 2018;
- Road Vehicle Standards Charges (Imposition—Customs) Bill 2018;
- Road Vehicle Standards Charges (Imposition—Excise) Bill 2018.²⁶

1.53 These bills allow the Commonwealth to impose charges in relation to the administration of the Road Vehicle Standards Bill 2018.

1.54 The EM notes that the imposition of charges will ensure that the government 'is able to develop the National Road Vehicle Standards; maintain appropriate compliance and enforcement arrangements; and provide support to consumers utilising the Road Vehicle Standards Bill'.²⁷

1.55 The authority to collect charges is provided by the Road Vehicle Standards Bill 2018 and the Consequential Provisions bill for the transitional period of twelve months.

1.56 The EM notes that the Charges bills do not contain the amounts of charges, as these will be prescribed in regulations, which are disallowable by Parliament. The EM argues that setting the charges through regulations will enable the Minister to consult with stakeholders on the amounts of the charges; make appropriate and timely

26 Throughout the remainder of the report, the Road Vehicle Standards Charges (Imposition—General) Bill 2018; Road Vehicle Standards Charges (Imposition—Customs) Bill 2018; and Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 will be referred to collectively as the Charges bills.

27 Explanatory Memorandum, *Road Vehicle Standards Charges (Imposition – General) Bill 2018; Road Vehicle Standards Charges (Imposition – Customs) Bill 2018; Road Vehicle Standards Charges (Imposition – Excise) Bill 2018*, p. 2.

adjustments to the charges; and ensure that there is a level of parliamentary scrutiny for the charges.²⁸

Commencement of the bills

1.57 A number of clauses of the Road Vehicle Standards Bill 2018 will commence on the day after the bill receives Royal Assent. The remaining clauses will commence a day and a year after Royal Assent is received. The bill will therefore be completely operational one year and one day after commencement.

1.58 The schedules of the Consequential Provisions bill commence on various dates, following the commencement of certain clauses in the Road Vehicle Standards Bill 2018.

1.59 The commencement dates of the three Charges bills are also dependent on the commencement of certain clauses in the Road Vehicle Standards Bill 2018. Some clauses of the Charges bills will not commence if clause 3 of the Road Vehicle Standards Bill 2018 does not commence.

Consideration by Parliamentary Joint Committee on Human Rights

1.60 The EM states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²⁹

1.61 The Parliamentary Joint Committee on Human Rights assessed the bills and reported that human rights concerns were not raised by the Consequential Provisions bill, and the three Charges bills.³⁰

1.62 At the time of writing, the Parliamentary Joint Committee on Human Rights had deferred consideration of the Road Vehicle Standards Bill 2018.³¹

28 Explanatory Memorandum, *Road Vehicle Standards Charges (Imposition—General) Bill 2018*; *Road Vehicle Standards Charges (Imposition—Customs) Bill 2018*; *Road Vehicle Standards Charges (Imposition—Excise) Bill 2018*, p. 2.

29 Explanatory Memorandum, p. 16.

30 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, 13 February 2018, p. 42.

31 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 285.

Chapter 2

Issues raised by the Scrutiny of Bills Committee and the Minister's response

2.1 In Scrutiny Digest 2 of 2018, the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) raised several concerns relating to the package of bills. The Minister responded to the Scrutiny Committee's concerns on 2 March 2018. The Scrutiny Committee then provided further comments in Scrutiny Digest 3 of 2018. The following section provides an overview of the Scrutiny Committee's concerns, and the Minister's response.

2.2 Many of the concerns raised by the Scrutiny Committee focused on the Road Vehicle Standards Bill 2018. It considered the three Charges bills together, and had no comment on the Consequential Provisions bill.¹

Scrutiny concerns relating to the Road Vehicle Standards Bill 2018

Broad delegation of legislative power

2.3 Subclauses 6(5) and 7(3) of the bill seek to allow the Secretary to determine, by legislative instrument, that a class of vehicles or a class of components is, or is not, a road vehicle or road vehicle component for the purposes of the bill.

2.4 The Scrutiny Committee raised concern that significant matters, such as the range of vehicles and components captured by the regulatory scheme, should be included in primary legislation to provide for comprehensive parliamentary scrutiny.² However, the Minister advised the Scrutiny Committee that the provision is intended to enable departmental officials with relevant technical expertise to conduct a timely assessment of vehicles and components. The Minister further noted that, if the scope of road vehicles and components could only be determined through the primary legislation, it could pose 'a significant threat to public safety'.³

Broad discretionary power

2.5 Subclauses 6(6) and 7(4) of the bill seek to allow the Secretary to determine, by notifiable instrument, that an individual vehicle or component is, or is not, a road vehicle or road vehicle component.

1 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 44.

2 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, pp. 29–30.

3 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 1–2.

2.6 The Scrutiny Committee noted that these provisions seek to grant the Secretary broad powers, with no legislative criteria as to the matters that must be taken into account, when making such determinations. The Scrutiny Committee expressed concern that notifiable instruments are not subject to the same scrutiny requirements imposed on legislative instruments. Finally, the Scrutiny Committee questioned why the determinations would not be subject to merits review.⁴

2.7 In his response, the Minister suggested that the determination-making power for individual vehicles would only be used 'in complex cases where definitive advice is considered by the Secretary to be in the interests of meeting the objectives of the Bill'. This would ensure that the community is provided sufficient protection, without unduly hindering the supply of individual specialist vehicles.⁵

Incorporation of external material into the law

2.8 The Scrutiny Committee expressed concern regarding subclauses 6(8), 7(6) and 12(2) which allow instruments under the bill to make 'provision for a matter by applying, adopting or incorporating any matter contained in any other instrument or writing as in force or existing from time to time'.⁶

2.9 The Scrutiny Committee has longstanding concerns where provisions in a bill allow the incorporation of legislative provisions by reference to other documents as such an approach 'raises the prospect of changes being made to the law in the absence of parliamentary scrutiny'. It can also create uncertainty in the law to the extent that those obliged to obey the law may not have adequate access to its terms. The Scrutiny Committee made the point that, as a matter of principle, any member of the public should be able to freely and readily access the terms of the law.⁷

2.10 In his response, the Minister stated that the approach taken is consistent with the MVS Act, whereby the Minister is permitted to make national road vehicle standards by harmonising them with international best practice. Furthermore, the EM explains that such determinations will allow the law to keep step with the road vehicle industry, and incorporate technical standards developed and agreed by the United Nations, as well as national vehicle standards of other countries.⁸

4 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, pp. 30–31.

5 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 2–3.

6 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 31.

7 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, pp. 31–33.

8 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 3–4.

2.11 While the Scrutiny Committee agreed that 'the benefit gained from the adoption of best-practice standards clearly outweighs the detriment that arises where such standards are not freely and readily available', it requested that the information provided by the Minister be included in the EM, and left the appropriateness of the provisions to the Senate as a whole.⁹

Reversal of evidential burden of proof

2.12 A number of provisions in the bill seek to introduce offence-specific defences, which reverse the evidential burden of proof.

2.13 The Scrutiny Committee noted that subsection 13.3(3) of the *Criminal Code Act 1995* provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification bears an evidential burden in relation to that manner. Individuals therefore have a right to be presumed innocent until proven guilty. The Scrutiny Committee pointed out that, in the *Guide to Framing Commonwealth Offences*, matters included in an offence-specific defence are permitted where it is peculiarly within the knowledge of the defendant, and where it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. The Scrutiny Committee laid out its concerns with subclauses 16(3), 24(3), 24(4) and 32(2) in Scrutiny Digest 2 of 2018 and requested the Minister's detailed justification.¹⁰

2.14 In his response, the Minister advised that subclause 16(3) prevents vehicles that do not meet the requirements from being entered on the RAV. He noted that paragraphs 16(3)(a), (b), (c) and (d) provide a defence if the only reason that the vehicle did not comply with the entry pathway was due to the use of a non-compliant component represented by its supplier to be covered by a component type approval. The Minister continued:

The precise details of the design and manufacture of the vehicle, and the procurement and use of components, is peculiarly within the knowledge of the type approval holder. It is a core requirement of type approvals that the type approval holders retain this information in 'supporting documentation', rather than provide this information to the Department to gain an approval. While the Department can access this information by requesting it, this is a costly and resource intensive exercise, requiring the Department to request a full outline of the design and manufacturing process and spend time to develop a detailed understanding of one type approval holder's production process.

The type approval holders, to whom this offence relates, should already have both the documentation, and a detailed understanding of their own

9 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, pp. 246–251.

10 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, pp. 33–36.

processes. This means that in addition to the type approval holder being the specific holder of this knowledge, it is significantly more difficult and costly for the prosecution to disprove, rather than for the defendant to establish the matters in paragraphs (a), (c), and (d).¹¹

2.15 With regard to clause 24, the Minister advised that, although the Department may have access to records of non-RAV entry import approval holders, the question of whether a specific vehicle relates to the non-RAV entry import approval is known to the defendant. Having access to the vehicle, and its sale and importation documents, the defendant would be able to link the vehicle and non-RAV entry import approval. For this reason, it would be significantly more difficult and costly for the prosecution to disprove, rather than for the defendant to establish, the matter.¹²

2.16 With regard to subclause 32(2), the Minister advised that it is appropriate to reverse the evidential burden as any false or misleading information or documents will be peculiarly within the knowledge of the defendant. The Minister noted that this provision is consistent with other Commonwealth legislation, such as the *Biosecurity Act 2015*.¹³

2.17 In Scrutiny Digest 3 of 2018, the Scrutiny Committee noted that it is not clear that the matters set out in paragraph 24(3)(f) would be peculiarly within the knowledge of the defendant, particularly given that the Rules are yet to be made.¹⁴

Strict liability offence

2.18 Clause 38 of the bill sets out a strict liability offence in cases where a person refuses or fails to comply with a recall notice, or a person supplies to another person a road vehicle or component to which a recall notice relates. A strict liability offence removes the requirement for the prosecution to prove that the defendant intended to cause the circumstance, or was reckless or negligent. According to the Scrutiny Committee, the *Guide to Framing Commonwealth Offences* states that strict liability is only appropriate where the offence is only punishable by a fine of up to 60 penalty units for an individual. However, the Scrutiny Committee noted that the proposed offence in this case is subject to a maximum penalty of 1050 penalty units for an individual.¹⁵

11 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 5.

12 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 5.

13 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 6.

14 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 257.

15 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 36.

2.19 In response, the Minister advised that the proposed number of penalty units is 'vital for ensuring the integrity of the regulatory regime' such that 'the supplier does not consider non-compliance with the recall notice to be a less expensive or more attractive option'. The Minister noted that the likelihood of an individual committing the offence is very low, and that the strict liability offence is already applicable to individuals who are supplying consumer goods, such as road vehicles, under the existing Australian Consumer Law.¹⁶

2.20 The Scrutiny Committee acknowledged the Minister's advice that the likelihood of an individual committing the offence is very low, and requested that the key information provided by the Minister be included in the EM.¹⁷

Privilege against self-incrimination

2.21 Clause 41 of the bill provides the Minister, the Secretary, or an SES officer with the power to issue disclosure notices in certain circumstances. Subclause 42(1) provides that a person is not excused from giving information or evidence, or producing a document, as required by a disclosure notice on the ground that doing so might tend to incriminate the person or expose them to a penalty.

2.22 Subclause 42(2) provides a 'use immunity' for individuals with respect to such self-incriminating information. It states that the information, evidence or documents provided in response to a disclosure notice are not admissible in evidence against the individual in civil or criminal proceedings, with the exception of proceedings relating to a refusal or failure to comply with a disclosure notice, knowingly providing false or misleading information in response to a disclosure notice, or knowingly giving false or misleading information to a Commonwealth entity. However, the Scrutiny Committee noted that the bill does not provide a 'derivative use immunity', which would prevent information or evidence indirectly obtained from being used in criminal proceedings against the person.¹⁸

2.23 The Minister's response outlined a number of reasons why a derivative use immunity for this offence is not appropriate. He noted that the disclosure notice provisions in the bill are designed to be consistent with existing requirements in Australian Consumer Law. He also stated that the inclusion of a derivative use immunity may provide an incentive for non-compliant suppliers to withhold information, thereby delaying relief to potentially serious community harm. A derivative use immunity may also prevent the Department from sharing information with other relevant departments and authorities, including the Australian Competition

16 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 6–7.

17 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 260.

18 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 37.

and Consumer Commission. Finally, the Minister noted that the suppliers most likely to be subject to disclosure notices are type approval holders, which are more likely to be corporate bodies. As such, it is unlikely that the disclosure notice provisions will affect individuals.¹⁹

2.24 The Scrutiny Committee noted the Minister's advice and requested that the key information provided by the Minister be included in the EM.²⁰

Broad delegation of administrative powers ('other persons')

2.25 Clauses 50 and 52 of the bill trigger monitoring and investigation powers under the *Regulatory Powers (Standard Provisions) Act 2014* which include coercive powers such as entry and inspection. Subclauses 50(5) and 52(4) would allow authorised persons to be assisted by 'other persons' when exercising powers of performing functions or duties in relation to monitoring and investigation.

2.26 The Scrutiny Committee expressed concern that the EM does not specify who the 'other persons' may be, and whether they will be required to possess appropriate training and experience.²¹ However, the Minister noted that, as a wide range of expertise may be required during an investigation, such as emissions testing, software engineering, translation or interpretation services, further prescription in the EM 'would limit the ability of authorised persons to obtain the assistance of appropriately qualified persons'.²²

2.27 The Scrutiny Committee left the matter of legislative guidance about the appropriate skills and training required of 'other persons' to the Senate as a whole.²³

Broad delegation of administrative powers (subclauses 73(5) and 74(5))

2.28 Subclauses 73(5) and 74(5) state that the Rules may provide for the delegation of all or any of the Minister's functions or powers, and the Secretary's functions or powers, to an Australian Public Service (APS) employee. In Scrutiny Digest 2 of 2018, the Scrutiny Committee raised concern that these subclauses allow for the delegation of administrative powers to a relatively large class of persons, with little to no specificity as to their qualifications or attributes.

19 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 7–8.

20 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 263.

21 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 38.

22 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 8.

23 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 265.

2.29 The Scrutiny Committee noted that the EM sets out 'core principles' with respect to delegation. However, it noted that there is no legislative requirement that they be followed. It expressed its preference that delegates be confined to the holders of nominated offices or to members of the SES.²⁴

2.30 In response, the Minister noted that the Minister or Secretary is required to consider most applications from industry within 30 to 60 days, with close to 200 000 decisions expected to be made each year. Given the expected high volume of decisions of varied complexity, there is 'significant administrative efficiency to be gained' through the delegation of less complex decisions to appropriately trained APS staff. The Minister further advised that a Delegation Instrument managed through the Department ensures that the delegation of powers is determined on a risk management basis. He noted that departmental staff who exercise powers and functions under the current MVS Act receive 'appropriate training and support to make effective and lawful decisions' and would continue to do so under the new legislation.²⁵

Immunity from liability

2.31 Subclause 81(1) seeks to prevent legal proceedings being brought against the Commonwealth in respect of any loss incurred, or any damage suffered, due to a reliance on an entry of a road vehicle on the RAV or the SEV register, and for a number of other activities associated with the new legislation. Additionally, subclause 81(2) seeks to prevent criminal and civil proceedings being brought against the Minister, the Secretary, an inspector, or an APS employee in the Department in relation to the function and duties set out in the bill if conducted in good faith.

2.32 The Scrutiny Committee expressed concern that these proposed provisions remove the common law right to bring an action to enforce legal rights, unless, in the context of anything done in connection with the performance or purported performance of functions or duties, it can be demonstrated that lack of good faith is shown. It further noted that courts have taken the position that bad faith can only be shown in very limited circumstances.²⁶

2.33 The Minister made the point that clause 81 is consistent with section 27 of the MVS Act. He noted that allowing the Minister, Secretary and departmental employees to be criminally responsibly or civilly liable for losses incurred due to reliance on, for example, approvals granted under the new legislation, would be 'detrimental and

24 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, pp. 40–41.

25 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, pp. 9–10.

26 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 42.

unfair'. He argued that it would place an additional legal burden on the Department which could delay decisions and result in a more cautious and restrictive approach.²⁷

Review rights

2.34 Subclauses 82(1) and 82(2) set out a number of specific matters that the Minister may make Rules for by legislative instrument. Paragraph 82(2)(c) specifies that the Rules may provide for the review of a decision made under the new legislation or any rules or instruments made under the legislation.

2.35 The Scrutiny Committee noted that significant matters, such as access to merits review, should be set out in primary legislation. In cases where these matters are left to delegated legislation, the Scrutiny Committee suggested that it should be a requirement that delegated legislation set out what decisions will be subject to review rights. Furthermore, it pointed out that, as the bill does not specifically subject any decisions to review under the *Administrative Appeals Tribunal Act 1975*, persons affected by a decision would not be able to seek a review under the Administrative Appeals Tribunal (AAT).²⁸

2.36 In his response, the Minister advised that:

The Bill allows the Rules to set out which decisions can be subject to merit review, but does not require that decisions must be subject to merit review. This drafting ensures that when the Rules are made there are no foregone conclusions about the suitability of a decision for merits review. Instead, the drafting provides the Minister with the scope to consider the suitability of each decision point for merits review, taking into account the unique circumstances and requirements of the matter. This allows for a more nuanced and considered approach to merits review.

The Committee may wish to note that the draft Rules provide extensive rights to merit review by the AAT (see clause 219).²⁹

Scrutiny concerns relating to the Charges bills

2.37 The Scrutiny Committee considered the three Charges bills together.

Charges in delegated legislation

2.38 Each Charges bill seeks to impose a charge as a tax in relation to prescribed matters related to the administration of the Road Vehicle Standards Bill 2018 and the Consequential Provisions bill. The Charges bills provide that the amount of charge

27 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 10.

28 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 43.

29 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, p. 11.

payable in each case may be prescribed by the regulations, and that the regulations may either set out the amount of the charge payable or a method for working out the charge.

2.39 In Scrutiny Digest 2 of 2018, the Scrutiny Committee stated it is for the Parliament to set a rate of tax. Therefore, guidance in relation to the method of calculation of the charge, and/or a maximum charge, should be provided in the primary legislation to enable adequate parliamentary scrutiny.³⁰

2.40 The Minister assured the Scrutiny Committee that regulations are subject to motions of disallowance and scrutiny by the Senate Standing Committee on Regulations and Ordinances. As such, rates of tax set out in delegated legislation may be scrutinised by Parliament at the appropriate time.

2.41 The Minister further stated that the amount of a charge or the method for calculating a charge is appropriate to include in the regulations, rather than primary legislation, to allow a flexible approach to the development of national vehicle standards, and other measures necessary for the 'dynamic' vehicle industry. He added that the Department has undertaken to review the charging points under future regulations twelve months after their commencement. Thereafter the Department will conduct reviews of all existing and potential charging activities at least every five years.³¹

30 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 2 of 2018*, 14 February 2018, p. 46.

31 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *Response to Senate Scrutiny Committee – Road Vehicle Standards Bill*, 2 March 2018, [pp. 12–13].

Chapter 3

Views raised in evidence

Support for the bills

3.1 A large majority of the submitters to the inquiry supported the overall policy intent of the Road Vehicle Standards Bill 2018, and commended the government for its modernised legislative approach.¹

3.2 Mr Trevor McPherson highlighted the point that the bill reduces an unnecessary cost to some users by removing the need to replace in-service items such as tyres, catalytic converters, filters and charcoal canisters, regardless of the age of the imported vehicle.² Karaday also supported these changes.³

3.3 The Federal Chamber of Automotive Industries (FCAI) recognised that the proposed legislation will continue the government's policy to harmonise new vehicle standards with international standards and that it caters for future developments in international vehicle regulations.⁴

3.4 The FCAI also welcomed the introduction of independent Authorised Vehicle Verifiers (AVVs). The proposed legislation will facilitate the establishment of a network of approved corporations known as AVVs to verify that vehicles entering the Australian market via a Registered Automotive Workshop comply with relevant standards. According to the FCAI, the requirement for AVVs to access each vehicle delivered by a Registered Automotive Workshop to establish its identity, will ensure that the vehicle is free from structural damage and meet its type approval.⁵ NatRoad added that AVVs will assist to 'level the playing field' for Registered Automotive Workshops by ensuring vehicle standards are consistently applied.⁶

3.5 Nichibo was also supportive of the establishment of an AVV network. However it noted that more could be done to establish a business case to assist those businesses which may consider becoming an AVV. According to Nichibo, this could

1 See, for example: Federal Chamber of Automotive Industries, *Submission 14*, p. 20; Caravan Industry Association of Australia, *Submission 20*, p. 5; RACQ, *Submission 2*, p. 2; Australia and New Zealand Driverless Vehicle Initiative, *Submission 27*, p. 3; Australian Automotive Dealer Association, *Submission 24*, [p. 1]; Motor Accident Commission, *Submission 33*, p. 2.

2 Mr Trevor McPherson, *Submission 8*, [p. 5].

3 Karaday Pty Ltd, *Submission 10*, [p. 3].

4 Federal Chamber of Automotive Industries, *Submission 14*, p. 7.

5 Federal Chamber of Automotive Industries, *Submission 14*, p. 15.

6 NatRoad, *Submission 23*, pp. 10–11.

be as simple as extending the authorisation period from two to five years, to enhance the return on investment and provide more commercial certainty.⁷

3.6 With regards to the civil penalty regime triggered by the new legislation, the Caravan Industry Association of Australia was generally supportive. It noted that the provision of false or misleading information with regards to a road vehicle or road vehicle component would be adequately penalised through the offences set out in clause 31 of the bill. However, it suggested that the penalties regime could go even further to ensure that non-compliance with the national road vehicle standards are policed satisfactorily.⁸

3.7 Support was also expressed in relation to the modernisation and strengthening of certain safety standards. The Caravan Industry Association of Australia noted that allowing trailer manufacturers who supply less than four vehicles a year to self-certify compliance was a 'significant step forward', with those supplying more than four vehicles required to register with the Department to obtain type approval. It explained:

The streamlining of provisions whereby heavy trailer manufacturers will be able to utilise a Model Report (MR) to allow a single assessment by the Department is also a sensible and more efficient way of gaining type approvals. We also warmly welcome the government's commitment to compliance with and enforcement of, RVSA obligations supported by enhanced monitoring and investigation powers, and new enforcement tools...⁹

Concerns raised in evidence

3.8 Whilst many of the issues raised in evidence concerned the regulatory details contained in the draft Rules, submitters to the inquiry also highlighted a number of provisions in the bills for which they held concerns. The following section details those concerns and provides the Department's response to them.

Risk to Australian businesses

3.9 Under the proposed legislation, the existing twelve concessional importation pathways are to be consolidated into two distinct streams – temporary/non-road use vehicles, or road use vehicles. Road use vehicles may be imported through the revised Registered Automotive Workshop Scheme (RAWS).

3.10 As part of the current arrangements, the RAWS allows for the importation and supply of used specialist or enthusiast vehicles to the market in Australia. The New Low Volume Scheme (NLVS) for new vehicles allows for the supply to the market of up to 25 or 100 new vehicles per vehicle category. The NLVS for new vehicles is

7 Nichibo, *Submission 11*, p. 4.

8 Caravan Industry Association of Australia, *Submission 20*, p. 4.

9 Caravan Industry Association of Australia, *Submission 20*, p. 6.

limited to vehicle make/models that are on the Register of Specialist and Enthusiast Vehicles.

3.11 Under the proposed changes, the new RAWs will encompass some vehicle types currently supplied under the existing RAWs and the NLVS. As the current NLVS will not exist under the proposed changes, RAWs will be amended to cater for both new and used vehicles under revised arrangements. Therefore, under these changes, Registered Automotive Workshops will be able to modify both new and used specialist and enthusiast vehicles, rather than just used vehicles. In addition, existing New Low Volume manufacturers will be able to become Registered Automotive Workshops.

3.12 The Australian Automotive Aftermarket Association (AAAA) raised concerns with regard to the inclusion of the NLVS under RAWs. The NLVS provides a major concession in that it allows alternative forms of evidence to be submitted against some Australian Design Rules. According to the AAAA, there is significant evidence from local manufacturers to demonstrate that Low Volume Approvals have been granted without the requirement for individual vehicle inspection. It argued that this is because individual vehicle inspections are 'unnecessary for these minor modifications and impose a prohibitive financial burden on consumers, which acts as a disincentive to upgrade a vehicle's suspension to make it safer'.¹⁰

3.13 The AAAA argued that the proposed incorporation of the NLVS into the RAWs, coupled with the additional requirement of individual vehicle inspections, could impact up to 500 vehicle upgrades per annum per company. It estimated that the cost for businesses to change to the proposed scheme will be close to \$500,000 per company. It noted that these proposed changes will have the practical effect of 'shutting down the market' for Gross Vehicle Mass (GVM) upgrades on lower volume platforms as they will not be economically viable.¹¹

3.14 The AAAA raised a number of additional concerns regarding the proposed incorporation of the NLVS into RAWs including significant safety concerns. It upheld the view that the proposal required a full engineering and regulatory assessment.¹²

3.15 The RAWs Association raised specific concerns regarding the viability of the existing 130 small Registered Automotive Workshops under the proposed changes. It suggested that the changes will benefit major vehicle manufacturers and importers, as well as major vehicle dealer networks at the expense of smaller Registered Automotive Workshops by restricting vehicles imports to only those determined by

10 Australian Automotive Aftermarket Association, *Submission 12*, p. 4.

11 Australian Automotive Aftermarket Association, *Submission 12*, p. 5.

12 Australian Automotive Aftermarket Association, *Submission 12*, p. 6.

manufacturer supported retailers.¹³ It held the view that the reforms would 'concentrate power within big business' and that small businesses participating in the RAWS will lose 'thousands of direct and downstream jobs'.¹⁴ It suggested that the draft bill threatens the existence of the RAWS industry with the potential loss of 130 mum and dad businesses and 1200 jobs.¹⁵ It continued:

A simple example demonstrates the effect of tightening regulation: The RAWS campervan segment processes 400 used and new vehicles per annum. 350 of them are used vehicles. The proposed new rules restrict imports to new campervans only. That will effectively reduce the campervan segment to just 50 vehicles – an unviable level of business.¹⁶

3.16 A number of other submitters raised concerns about the impact of the proposed changes on small businesses including vehicle importing services. The Auto Services Group, a small business based in Adelaide, noted that without any certainty regarding the number of imported vehicles that will enter Australia following enactment of the bill, questions remain regarding the viability of the independent imported vehicle industry, with some businesses facing the prospect of shrinking in size or having to close down.¹⁷

3.17 The Auto Services Group highlighted that the two reports commissioned by the Department in 2014 and 2015 had concluded that the importation of used vehicles in greater numbers would provide significant financial savings to Australian consumers while also reducing the fleet age and improving overall vehicle safety. It argued that the proposed changes had failed to adhere to these findings as the proposed new Rules will provide for a restricted automotive market which will reduce the number of vehicles eligible for import by 75 per cent.¹⁸

3.18 The Auto Services Group informed the committee that the proposed changes have already begun to take a toll on local businesses. It submitted that:

Managing the mental health of our fellow industry members has become a priority in the last twelve months, as many come to terms with the prospect that their businesses, into which they've invested countless millions of dollars without any form of government assistance, will shrink in size or close down. Some operators have already opted to close their doors rather than go through the stress of wondering whether their businesses will still be viable in the future.¹⁹

13 RAWS Association, *Submission 19 – Supplementary Submission*, p. 4. Also see: Mr Trevor McPherson, *Submission 8*, pp. 2–3.

14 RAWS Association, *Submission 19*, p. 1.

15 RAWS Association, *Submission 19*, p. 2.

16 RAWS Association, *Submission 19*, p. 8.

17 Auto Services Group, *Submission 4*, [pp. 3–4].

18 Auto Services Group, *Submission 4*, [p. 4].

19 Auto Services Group, *Submission 4*, [p. 3].

3.19 AutoTerminal Australia suggested that without sufficient modelling to indicate the number of vehicles expected to be eligible under the new Rules, there is a lack of business certainty. This view was echoed in evidence from the Australian Imported Motor Vehicle Industry Association which suggested that the proposed changes will not provide the vehicle volumes necessary to avoid business closures and automotive job losses.²⁰

Campervan and motorhome conversion

3.20 The Senate Selection of Bills Committee report drew attention to the specific impact of the new legislation on businesses importing vehicles for the purpose of conversion to campervans and motorhomes.²¹

3.21 A unique pathway under the current SEV eligibility criteria allows for the importation of vehicles for the purpose of conversion to campervans and motorhomes. According to the RAWS Association, a loophole within the legislation was utilised by many Registered Automotive Workshops who imported thousands of cars without subsequent conversion and enjoyed a highly profitable business.

3.22 Notwithstanding this point, it noted that there are many companies employing Australian workers currently using this scheme appropriately and that the total removal of used vehicles for fabrication into campervans or motorhomes would be 'negligent and dismissive of the business that use this criteria correctly'. It suggested, therefore, that the removal of this provision could damage many small businesses, and potentially impact on the tourism industry, which services a high volume of backpackers and 'grey nomads' through the provision of campervans and motorhomes.²²

3.23 Hybrid Australia echoed this view, explaining that:

The department's rule change would restrict import of vehicles building into Campervans/Motorhomes. If enacted this rule change would effectively shut down a segment that delivers more benefits to the Australian economy than just providing affordable campervan/motorhomes. Our family business, Hybrid Australia is one of these businesses that will be forced to shut down.²³

3.24 Conversely, the Caravan Industry Association of Australia welcomed the new legislation and expressed hope that the legislation would be 'implemented expeditiously', stating:

20 AutoTerminal, *Submission 21*, [p. 4]; Australian Imported Motor Vehicle Industry Association, *Submission 16*, [p. 3].

21 Senate Standing Committee for Selection of Bills, *Report No. 4 of 2018*, 28 March 2018, [p. 8].

22 RAWS Association, *Submission 19*, Attachment 1, p. 3. Also see: AutoTerminal Australia, *Submission 21*, [p. 4].

23 Hybrid Australia, *Submission 15*, [p. 1].

Caravan Industry Association of Australia is particularly pleased that the RVSA includes tougher measures in getting RV [recreational vehicle] product onto the road for manufacturers, and far reaching penalties for businesses not adhering to their compliance obligations.²⁴

Department response

3.25 The Department noted that the current regulatory framework imposes regulatory costs in the order of \$249 million per year. It made the point that, by streamlining elements of the new regulatory framework, such as the introduction of the RAV, and consolidating the twelve existing concessional approval pathways, businesses will be expected to save almost \$20 million. Of this, around \$4 million will accrue to small businesses such as Registered Automotive Workshops.²⁵

3.26 With regards to the volume of vehicles expected to enter the country through the revised importation pathways, the Department informed the committee that it anticipated that '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'.²⁶

3.27 As previously noted, under current arrangements, New Low Volume Manufacturers are able to supply up to 25 or 100 new vehicles per category per year, depending on the vehicle category. However, under the reforms, they will be able to supply vehicles that comply with the SEV criteria under the RAWs, with the benefit of model reports, or under type approvals in 'unlimited numbers'.²⁷

3.28 The Department made the point that these changes will replace not only the existing RAWs and NLVS, but also the Low Production Passenger Car Scheme and some of the arrangements for second Stage of Manufacture. Overall, the reforms aim to remove unnecessary regulatory requirements while improving compliance. At the same time, the Model Reports are expected to streamline and reduce the amount of compliance documentation by replacing the current 'evidence packs' used by Registered Automotive Workshops. Furthermore, and as previously highlighted, for these Registered Automotive Workshops:

24 Caravan Industry Association of Australia, *Submission 20*, p. 2.

25 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 5.

26 Department of Infrastructure, Regional Development and Cities, *Submission 13*, pp. 5–6. The EM states that the reforms to the SEV eligibility criteria and RAWs compliance requirements will enable the RAWs industry to 'continue at similar volumes as currently processed'. Explanatory Memorandum, p. 104.

27 Explanatory Memorandum, p. 104.

There will be no caps on the number of vehicles proposed by a single workshop or entered onto the RAV using this pathway.²⁸

3.29 The Department acknowledged that there would be costs involved in implementing these changes including industry adjustment costs to RAWs and the New Low Volume Importers, depending on their current specialisation and business model. However, it also highlighted the benefits of consolidating the concessional schemes, noting that it would provide increased clarity for import decisions as regulatory processes are simple, streamlined and clear.²⁹

3.30 The Department directly addressed stakeholder concerns regarding the SEV eligibility criterion which allows the importation of used vehicles for the purpose of campervan and motorhome conversion. It stated that it is 'widely recognised' within the industry that this importation pathway is 'a loophole' exploited for the purposes of supplying thousands of used people movers to the Australian market which have not undergone the required conversion into a campervan or mobile home.

3.31 The Department highlighted that this is a highly profitable business model due to the significant arbitrage available on these vehicles, and the minimal compliance work undertaken. It further noted that the average age of vehicles imported through this pathway has increased, now 8 to 12 years old. Moreover, as these vehicles receive concessions against Australian vehicle standards, the loophole is 'acting to circumvent the safety standards expected by the community'.³⁰

3.32 At the same time, the Department acknowledged that there is genuine market demand for some campervans and mobile homes that are not available in Australia. As such, the proposed two-year grandfathering arrangement will ensure that the two most popular models can continue to be imported into the country. It argued that businesses, and particularly those based entirely on the exploitation of this loophole, will have a transition period during which to adjust their schedules to meet the new SEV requirements.³¹

3.33 The Department further advised that, based on the consultations that took place in 2018 with regards to the draft Rules, the government is now working to allow for the importation of used vehicles 'intended for substantive conversion to campervans and motorhomes'. To ensure that businesses continue to comply with Australian standards, third party vehicle verification would be required under the new legislation.³²

28 Department of Infrastructure and Regional Development, Road Vehicle Standards Bill 2017. Registered Automotive Workshops – Information Sheet 2. December 2017, https://infrastructure.gov.au/vehicles/mv_standards_act/files/Info_Sheet_2_RAWs.pdf

29 Explanatory Memorandum, p. 98.

30 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 5.

31 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 5.

32 Department of Infrastructure, Regional Development and Cities, *Submission 13*, pp. 5–6.

Non-compliance with Australian vehicle standards

3.34 Some submitters expressed the view that the new legislation could pose a threat to Australia's high road safety standards, by allowing the importation of vehicles that do not meet Australian standards.³³

3.35 The FCAI drew the committee's attention to the criteria for entry on the SEV register, questioning 'what concessions to the national safety and environmental standards will continue to be allowed'.³⁴ In particular, the FCAI questioned the suitability of micro-car subcategory vehicles that may be eligible for importation under the environmental criteria of the SEV register:

The FCAI does not support the inclusion of such micro-cars into the environmental criteria as many vehicles that would meet these criteria do not meet modern safety standards (both occupant protection and active safety) and therefore are not suitable for operation on Australia's road environment.³⁵

3.36 A similar concern was expressed by OT Solutions regarding the mobility criteria for SEV register entry:

...the act will enable used Japanese vehicles with disability related modifications to be imported and sold without the same level of compliance and safety that is currently required within Australia.³⁶

3.37 Assistive Technology Suppliers Australasia emphasised the need to maintain Australian Standards across all vehicles, whether for daily use or for a specific disability need. Such an approach would ensure that all vehicles adhere to appropriate safety standards, regardless of whether they had entered through the RAWS, or through a concessional import pathway.³⁷

3.38 Submitters acknowledged that the establishment of AVVs would play a vital role in ensuring that road vehicles that have been modified by a Registered Automotive Workshop meet an acceptable standard of quality.³⁸

3.39 Under the proposed changes, AVVs can operate outside Australia. However, some submitters expressed concern that the operation of AVVs overseas could undermine the government's safety focus. The Truck Industry Council argued:

33 See, for example: Truck Industry Council, *Submission 22*, [p. 9]; OT Solutions Pty Ltd, *Submission 3*, [p. 1].

34 Federal Chamber of Automotive Industries, *Submission 14*, p. 8.

35 Federal Chamber of Automotive Industries, *Submission 14*, p. 13.

36 OT Solutions Pty Ltd, *Submission 3*, [p. 1].

37 Assistive Technology Suppliers Australasia, *Submission 9*, pp. 1–2.

38 See, for example: Nichibo, *Submission 11*, p. 4; Federal Chamber of Automotive Industries, *Submission 14*, p. 16.

Allowing RAWs's and AVV's to operate overseas and not conduct (at least) a final inspection within Australia to ensure compliance does not address the current issue of some RAWs's supplying non-compliant vehicles. Once entered into service the ability of Federal or State governments to locate and inspect SEV's non-complying vehicles is currently a significant issue...³⁹

3.40 The FCAI added:

To meet the Government's consumer rights policy objectives, the final AVV inspection must be conducted within Australia at the RAWs facility.⁴⁰

Department response

3.41 The Department emphasised the point that the automotive industry is global in nature, and that overseas manufacturers provide a large majority of vehicles to the Australian market. However, it noted that the combination of 'highly qualified and experienced vehicle industry auditors' and 'a spectrum of enforcement options' will ensure that any contravention of Australian standards is prevented.⁴¹

3.42 According to the EM, in the case of differing international and Australian standards for mobility access vehicles, the new legislation will require 'that the Australian Standards...be used as a compliance requirement – which can be done by a Registered Automotive Workshop using a Model Report'.⁴²

3.43 With regards to compliance, the Department stated that the bill provides for improved compliance and enforcement powers through triggering the *Regulatory Powers (Standard Provisions) Act 2014*, which contains a set of provisions to deal with monitoring, investigation and the use of civil penalties, infringement notices, enforcement undertakings and injunctions.⁴³

3.44 The new legislation also provides the Minister with powers to issue a recall notice for road vehicles and road vehicle components where necessary, and sets the framework for voluntary recalls. These provisions replicate and extend the current recall powers contained in the Australian Consumer Law.

3.45 In addition to these measures to reduce non-compliance with Australian vehicle standards, the Department notes that the bill provides for extraterritorial application. This ensures that persons located outside of Australia that demonstrate non-compliance with the conditions required for the import approval for a vehicle, can

39 Truck Industry Council, *Submission 22*, [p. 5]. Also see: Federal Chamber of Automotive Industries, *Submission 14*, p. 3.

40 Federal Chamber of Automotive Industries, *Submission 14*, p. 16.

41 Department of Infrastructure, Regional Development and Cities, *Submission 13*, pp. 6–7.

42 Explanatory Memorandum, p. 101.

43 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 7.

be appropriately regulated. Whilst the Department acknowledged the difficulties associated with bringing an overseas entity to account in the Australian court system, it noted that the amendment, suspension or revocation of an import approval may potentially deny that entity further business in Australia—thereby preserving Australia's road safety, environmental and anti-theft standards. It added that the government is proposing to require these independent vehicle inspections to occur domestically.⁴⁴

Reduction in personal choice of vehicles

3.46 The RAWs Association argued that the changes provided for in the bill may limit Australian consumers' choice in vehicles. It suggested that this reduction in personal choice would result from the 'very restrictive' definition of a 'variant', removal of the Personal Import Scheme,⁴⁵ and tighter rules for entry on the SEV register.⁴⁶

3.47 The draft Rules provide that the Secretary may enter a variant of a road vehicle model on the SEV register if the variant has not been provided in Australia, at any time, under a road vehicle type approval. Prestige Motorsport argued that this is 'a step backwards from the current scheme' and creates an 'unreasonable' restriction on the import of model variants that are no longer sold in Australia.⁴⁷

3.48 AutoTerminal Australia submitted that the cessation of the Personal Import Scheme will force Australians to purchase domestic cars that are older, more costly, and with significantly more mileage.⁴⁸ RAWs Association echoed this view, suggesting that continuing the scheme would have allowed up to 30 000 vehicles into the country.⁴⁹

3.49 Mr Jeff Ash added that a tightening of the current SEV criteria for importation would restrict his freedom of choice in purchasing vehicles from overseas,⁵⁰ whilst Karaday urged the committee to join the international market 'instead of being

44 Department of Infrastructure, Regional Development and Cities, *Submission 13*, pp. 6–7.

45 The Personal Import Scheme allows migrants settling in Australia, and expatriate Australian citizens returning permanently to Australia after a long period overseas, to bring their personal road vehicle with them, where the vehicle has been owned and used for a period of 12 months or longer. It is only available to individuals. Source: Department of Infrastructure, Regional Development and Cities, *Personal Imports Option*, https://infrastructure.gov.au/vehicles/imports/import_options/pis.aspx (accessed 24 April 2018).

46 RAWs Association, *Submission 19*, pp. 13–15.

47 Prestige Motorsport, *Submission 1*, [p. 2].

48 AutoTerminal Australia, *Submission 21*, [p. 3].

49 RAWs Association, *Submission 19*, p. 10.

50 Mr Jeff Ash, *Submission 17*, [p. 1].

restricted and held back from enjoying the freedom of choice' that consumers in other nations now enjoy when purchasing road vehicles.⁵¹

3.50 A number of submitters also drew on the findings of the 2014 Productivity Commission Report to argue for a relaxation of import restrictions to 'improve the choice of the Australian car buyer'.⁵²

3.51 Auto Services Group agreed with this, stating:

It is ludicrous that new car dealers and the Government should consider a used imported vehicle a "parallel import" once the model has been withdrawn from sale through new vehicle dealers in Australia (particularly when the review team has already publicly conceded that even genuine parallel importing would have no effect on new vehicle sales).⁵³

Department response

3.52 In his second reading speech, the Minister noted that the new legislation aims to 'strike a balance between applying appropriate safety, environmental performance and security standards to vehicles entering the Australian market for the first time and providing as much consumer choice as possible'.⁵⁴ The focus on consumer choice is one of the five principles on which the Minister relied in designing the new package of legislation.

3.53 With regards to the Personal Import Scheme, the Department informed the committee that it had conducted a series of consultation sessions with stakeholders about the scheme throughout 2016 and 2017. The decision to remove this aspect of the legislation was a direct result of this consultation process which established that 'the community risks of the proposed personal new import scheme outweighed the benefits'.⁵⁵ The Regulatory Impact Statement provides further justification for the change:

The Government's more detailed work has been unable to negate the cost and complexity of providing appropriate consumer awareness and protection arrangements. This would include investigation of each vehicle

51 Karaday Pty Ltd, *Submission 10*, [p. 1].

52 AutoTerminal Australia, *Submission 21*, [p. 3]. Also see: Karaday Pty Ltd, *Submission 10*, [p. 3]; Australian Imported Motor Vehicle Industry Association, *Submission 16*, [p. 2]. The Productivity Commission's 2014 Report, titled 'Australia's Automotive Manufacturing Industry' recommended that the government 'progressively relax the restrictions on the importation of second-hand passenger and light commercial vehicles', p. 163.

53 Auto Services Group, *Submission 4*, [pp. 4–5].

54 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/8f7b4904-e5ab-452a-8736-6158744bd454/0021/hansard_frag.pdf;fileType=application%2Fpdf (accessed 23 April 2018).

55 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 4.

before it was imported to Australia; ensuring consumers were aware that the manufacturer's warranty may not apply in Australia; and establishing systems to deal with a manufacturer's safety recall. It would also have been necessary to ensure that subsequent purchasers of a vehicle, which had been personally imported into Australia as a new vehicle, were aware of this fact—and the consequences of this, such as the manufacturer's warranty not applying. In weighing these issues up against the modest benefits of the personal import arrangements—including price reductions estimated to be less than 2 per cent across the market—the Government concluded that the benefits did not justify the cost and complexity of this particular change.⁵⁶

Committee view

3.54 The committee acknowledges the majority support for the policy intent of the bills and the general agreement that the proposed legislation provides a flexible and responsive framework for road vehicle standards in Australia. It also appreciates that an extensive consultation process has been undertaken over a number of years and that 'no issues were raised in the consultation that required amendments in the bills introduced to Parliament'.⁵⁷

3.55 The committee notes the concerns expressed by some submitters about the regulatory framework for concessional vehicle importation, which is to be set out in delegated legislation. However, it appreciates that the government is working to refine the details of the Rules and subsequent technical and administrative arrangements provided for by the bills, and will continue to consult with stakeholders throughout this process.⁵⁸

3.56 The Road Vehicle Standards bills package will set minimum performance standards for safety, environmental performance and anti-theft security for all vehicles entering the Australian market. Noting that the *Motor Vehicles Standards Act 1989* has operated for nearly 30 years, the committee recognises that the package of bills will provide for a modern, clearer and more updated regime to set and maintain Australian road vehicle standards.

Recommendation 1

3.57 The committee recommends that the bill be passed.

56 Explanatory Memorandum, p. 68.

57 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 4.

58 Department of Infrastructure, Regional Development and Cities, *Submission 13*, p. 4.

Senator Barry O'Sullivan
Chair

Appendix 1

Submissions received

Submission Number	Submitter
1	Prestige Motorsport
2	RACQ
3	OT Solutions Pty Ltd
4	Auto Services Group
5	Vulcan Motors Pty Ltd
6	Australian Historic Vehicle Interest Group
7	Mr Tony Kotevski
8	Mr Trevor McPherson
9	Assistive Technology Suppliers Australasia
10	Karaday Pty Ltd
11	Nichibo Australia
12	Australian Automotive Aftermarket Association (AAAA)
13	Department of Infrastructure, Regional Development and Cities
14	Federal Chamber of Automotive Industries
15	Hybrid Australia
16	Australian Imported Motor Vehicle Industry Association
17	Mr Jeff Ash
18	Heavy Vehicle Industry Australia
19	RAWS Association
	Supplementary submission
20	Caravan Industry Association of Australia
21	Autoterminal Australia
22	Truck Industry Council
23	NatRoad
24	Australian Automotive Dealer Association
25	Automobility
26	Mr Robert Holmes
27	Australia and New Zealand Driverless Vehicle Initiative
28	Queensland Law Society
29	Australian Historic Motoring Federation
30	Mr Chris Wohmann
31	Norden Group

- 32** Test-Trak
- 33** Motor Accident Commission
- 34** Motorhome Conversion Co.