

# **Motor Vehicle Standards Amendment Regulations 2000 (No. 1)**

## **2000 No. 194**

### **EXPLANATORY STATEMENT**

#### **STATUTORY RULES 2000 No. 194**

Issued by the Authority of the Minister for Transport and Regional Services

*Motor Vehicle Standards Act 1989*

Motor Vehicle Standards Amendment Regulations 2000 (No. 1)

The object of the *Motor Vehicle Standards Act 1989* (the Act) is to achieve uniform vehicle standards to apply to road vehicles when they begin to be used in road transport in Australia.

Section 42 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 18 of the Act provides that, subject to sections 19 and 20, a person must not knowingly or recklessly import a road vehicle that is either nonstandard or does not have an identification plate.

Paragraph 20(1)(b) provides that a person may import a nonstandard road vehicle or a road vehicle that does not have an identification plate in prescribed circumstances.

Subsection 20(3) further provides that regulations may provide for the importation, whether generally or in specified circumstances, of a road vehicle, or a vehicle component with the written approval of the Minister. The subsection also provides that the Minister may issue an approval subject to conditions.

The purpose of the Regulations is to amend the Motor Vehicle Standards Regulations (the Regulations) to amend paragraph 9D(a) to extend the period of continuous overseas ownership and use, from at least 3 months to at least 12 months and to repeal regulation 9H.

The amendments to the Regulations result from the Review of the Motor Vehicles Standards Act 1989 (the Review) undertaken in 1999, as a National Competition Policy Review which was listed in the Commonwealth Legislation Review Schedule announced by the Treasurer in June 1996.

The Review was conducted by an interdepartmental Task Force which included members from the Department of Transport and Regional Services; the Department of Industry, Science and Resources; the Australian Customs Service; Environment Australia; and the National Road Transport Commission. The Review Task Force conducted extensive stakeholder consultation.

Under the Terms of Reference, the Review Task Force was required to review and report on the appropriateness of the legislation and its effectiveness and efficiency in improving vehicle safety, emissions and anti-theft standards and recommend to Government change that should occur.

The Review Task Force made a number of recommendations concerning used vehicle imports including:

1. extending the period of ownership and use requirement under the personal import scheme from 3 months to 12 months (page 104 of the report); and
2. importation of complete vehicles for dismantling be discontinued (page 102 of the report).

The arrangements for importing personal vehicles, set out in regulation 9D, enable migrants, Australian citizens and permanent residents who are returning from living overseas, to treat their vehicles as part of their personal effects. The Review Task Force considered that the requirement of a 3 month period of overseas use and ownership was not sufficient to prevent abuse of the scheme. The Review Task Force considered that extending the period of overseas ownership and use from 3 months to 12 months would be the most effective measure to ensure that the intention of the regulation is achieved.

The arrangements for importing used vehicles for dismantling purposes are set out in regulation 9H. The Review Task Force received numerous reports that many of the vehicles imported for dismantling purposes are being illegally directed to road use. That is, contrary to the intent of the provision, vehicles originally imported for dismantling are being presented for registration by other means, thus avoiding the safety and emissions compliance requirements and the \$12,000 tariff. There was evidence that some of these vehicles are used for "re-birthing" (ie a vehicle imported for dismantling assumes the identity of a similar wrecked Australian vehicle). The Review Task Force recommended that issuing import approvals for dismantling purposes be discontinued.

The amendments specify that:

- \* to import a nonstandard road vehicle, the period of continuous ownership and use is 12 months - (Regulation 9D)
- \* approvals to import road vehicles for dismantling are discontinued. - (Regulation 9H)

Details of the Regulations are in the Attachment.

The Regulations commence on gazettal.

## **Attachment**

### **NOTES ON CLAUSES**

#### **Motor Vehicle Standards Amendment Regulations 2000 (No. 1)**

##### **Clause 1 - Name of Regulations**

This clause provides for the Regulations to be cited as the *Motor Vehicle Standards Amendment Regulations 2000 (No. 1)*.

##### **Clause 2 - Commencement**

This clause provides that the Regulations commence on gazettal.

##### **Clause 3 - Amendment of Motor Vehicle Standards Regulations**

This clause provides that the Motor Vehicle Standards Regulations are to be amended as set out in Schedule 1.

##### **Clause 4 - Transitional - approvals to import nonstandard vehicles for dismantling**

This clause provides that:

- \* applications to import nonstandard vehicles for dismantling made before 8 May 2000 will be assessed against the existing regulation 9H;
- \* applications to import nonstandard vehicles for dismantling made on or after 8 May 2000, but before 8 August 2000 will be assessed against the existing regulation 9H provided the vehicle was owned by the applicant before 8 May 2000; and
- \* the Minister may revoke approvals given under these transition arrangements.

This clause also provides consequential transitional arrangements for regulation 91.

##### **Schedule 1 - Amendments**

###### **Item 1 - Regulation 1**

New regulation 1 amends the name of the Regulations to the *Motor Vehicle Standards Regulations 1989* to align the citation with current naming conventions.

###### **Item 2 - Paragraph 9D(a)**

This item inserts new paragraph 9D(a) which provides revised requirements for personal imports such that

- \* a 3 months continuous ownership and use period applies for a vehicle owned by the applicant before 8 May 2000;
- \* a 3 months continuous ownership and use period applies to applications made on or before 8 November 2000; and
- \* a 12 months continuous ownership and use period applies in all other cases.

###### **Item 3 - Regulation 9H**

This item provides that the regulation allowing for the importation of nonstandard vehicles for dismantling is omitted.

**Item 4 - Regulation 9I**

This item deleted the reference to regulation 9H consistent with item 3.

# REGULATION IMPACT STATEMENT

## IMPORTATION OF VEHICLES FOR DISMANTLING

Prepared by the Department of Transport and Regional Services

July 2000

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### **1. INTRODUCTION.**

The Commonwealth Legislative Review Schedule identified the Motor *Vehicle Standards Act 1989* (MVSA) for review. The review was part of the Federal Government's commitment to examine all Legislation that has an impact on business.

An interdepartmental Task Force was established in 1998 to manage the review with the Federal Office of Road Safety (FORS) providing the chair.

The review was undertaken in accordance with the Council of Australian Governments (COAG) Principles and Guidelines for National Standard Setting and Regulatory Action and the requirements of the Competition Principles Agreement signed by the Commonwealth and all State and Territory Governments in April 1995.

The aims of the review were to:

- \* assess the appropriateness, effectiveness and efficiency of the Legislation;
- \* identify and assess the costs and benefits to industry of alternative arrangements for ensuring compliance with appropriate road vehicle standards and of harmonising Australian road vehicle standards with international vehicle regulation; and

\* report on the preferred approach for meeting future road vehicle standards requirements.

In line with the Terms of Reference the review also had the opportunity to consider specific issues such as the Low Volume Scheme, Australia's type approval system for vehicle certification, vehicle import arrangements and the effectiveness of the administration of the Act.

The Review Task Force made a number of recommendations concerning used vehicle imports including a recommendation that the importation of complete vehicles for dismantling be discontinued (page 104 of the report).

The Government provided its response to the Final Report on 8 May 200 and in a joint media release issued by Ministers Anderson and Minchin announced that the importation of complete vehicles for dismantling would be abolished, whilst still allowing the importation of used vehicle components.

## **2. STATEMENT OF THE PROBLEM**

Regulation 9H of the Motor Vehicle Standards Regulations provides that the Minister may approve an application to import a nonstandard road vehicle if the applicant undertakes that the vehicle, when it is imported:

(a) will be dismantled and sold as vehicle components; and

(b) will not be used in transport in Australia.

The provisions were incorporated to allow for an existing situation where a small number of damaged vehicles were imported for dismantling to meet the demand for parts. Significantly, there are no eligibility criteria, no time limit for dismantling, no actual dismantling requirements, no requirement for record keeping and no follow up action to check that in fact a vehicle has been dismantled.

The number of vehicles imported for dismantling represented 14.5 per cent (3148) of the total vehicles for which individual import approvals were issued in 1998 (21,751) - 0.4 per cent of total new motor vehicle registrations. This represents a significant increase in the number of these vehicles, particularly over the last five years.

### **Import approvals issued for vehicles for dismantling(1)**

**Year      1993 1994 1995 1996 1997 1998 1999**

Number of Vehicles      646 786 924 1974 2736 3148 3172

Index      1.00 1.22 1.43 3.06 4.24 4.87 4.91

(1) Source: FORS Motor Vehicle Certification System.

In undertaking the Review of the Motor Vehicle Standards Act 1989, the Task Force received numerous reports that many of the vehicles imported for dismantling purposes are being illegally diverted to road use. That is, contrary to the intent of the provision, vehicles originally imported for dismantling are being presented for registration by other means, thus avoiding the safety and emissions compliance requirements and the \$12,000 tariff.

The current regulation specifies that vehicles imported for dismantling will be dismantled and will not be used in transport. The current arrangements do not prevent these vehicles being illegally diverted to road use. Vehicles are sold either without compliance plates or with compliance plates from another vehicle. Unsuspecting buyers are left with vehicles they are unable to register and therefore use. There is no assurance that these vehicles comply with safety and emissions

standards contained in the Australian Design Rules which are mandatory uniform national standards under the MVSA.

The extent of the problem is unknown and the reference to evidence provided to the Task Force, relate to anecdotal evidence only.

The current regulation is easily available and it is difficult to justify refusal to any particular applicant. Applicants undertake to dismantle, or supervise the dismantling of the vehicle before any part of it is supplied to the market. Compliance with undertakings which form part of the approval are difficult to monitor or audit and therefore the provision is difficult to enforce. As non compliance necessarily occurs after importation, enforcement is only by prosecution and the Commonwealth must satisfy a higher criminal standard of proof. There is a likelihood of only very minor penalties. To date there has not been any prosecutions in relation to the importation of complete vehicles for dismantling.

There is also a lack of an enforceable definition of what constitutes dismantling. Minor disassembly may be found to be dismantling in any challenge. For example, the simple removal of doors from a vehicle may provide a defence that the conditions of the permit had been complied with. However, this would enable the vehicle to easily be prepared for road use in circumvention of the MVSA. The related definitional problem of what constitutes a re-birthed vehicle and what constitutes a re-built one makes the ability to ensure compliance with this highly problematical. Customs control the import of vehicles at the border and maintain a definition of what constitutes complete vehicle.

The importation of incomplete vehicles (ie without engines, transmissions and rear axles) is not subject to the provisions of the MVSA.

The Auto Parts Recyclers Association of Australia (APRAA) recognised the problems involved with importing complete vehicles for dismantling and advocated a system whereby only applicants who have a dismantling licence or are licensed motor car traders can apply as recommended by the National Motor Vehicle Theft Task Force (2). APRAA volunteered to ensure that dismantling occurred. This self-regulation concept would have serious concerns for the Government in administering a scheme controlled by external agencies. The effectiveness of any regulation should be subject to adequate levels of inspection by law enforcement or fair trading agencies. The lack of Government control may open the scheme to further abuse. There are no current restrictions on who can import a vehicle for dismantling. Requiring all importers of these vehicles to become licensed motor car traders may in itself be restrictive and anti-competitive.

(2) Recommendation 6.3, Final Report, *Motor Vehicle Theft Reduction Plan*, September 1997, Victorian Department of Justice

### **3. OBJECTIVES**

The objective of the amendment is to prevent the illegal diversion to road use of complete vehicles imported for dismantling and inhibit the potential for adverse safety impacts arising from attempts to circumvent these requirements.

### **4. STATEMENT OF THE PROPOSED REGULATION AND ALTERNATIVES**

The proposed amendment involves repealing the current regulation under the Motor Vehicle Standards Regulations. The alternatives considered, including the proposed approach, are set out below.

#### **Option A - Status Quo**

Given the strength of criticism of the current arrangements from a variety of interested parties, maintaining the status quo was not considered feasible. Refer to section 6.2 of the Review of the Motor Vehicle *Standards Act 1989* report for the analysis of this option.

### **Option B - Tighten the Current Arrangements**

Due mainly to difficulties in arriving at a definition of a dismantled vehicle and setting a time limit for a vehicle to be dismantled tightening the current arrangements was not considered feasible. Refer to section 6.2 of the Review of the *Motor Vehicle Standards Act 1989* report for the analysis of this option.

### **Option C - Rescind the Current Regulation**

Under this option, regulation 9H of the Motor Vehicle Standards Regulations would be rescinded and complete vehicles would no longer be able to be imported for dismantling. This option is the preferred option.

### **Option D - Render Vehicles Incapable of Road Use**

The option of rendering vehicles imported for dismantling included consideration of requiring vehicles to be cut in half or having a section of the body removed. Given the potential for adverse road safety implications and high administrative burden this option was not considered feasible. Refer to section 6.2 of the Review of the *Motor Vehicle Standards Act 1989* report for the analysis of this option

## **5. IMPACT ANALYSIS**

### **Option C - Rescind the Current Regulation**

Under this option, regulation 9H of the Motor Vehicle Standards Regulations would be rescinded and complete vehicles would no longer be able to be imported for dismantling.

Under this Option, it would be necessary for the vehicles to be dismantled prior to entry into Australia. The importation of incomplete vehicles (ie without engines, transmissions and rear axles) is not subject to the provisions of the MVSA and would continue. An import approval would not be required.

### **Identification of Affected Parties**

#### Importers/Auto Parts Recyclers

Discontinuing the importation of complete vehicles for dismantling would disadvantage legitimate importers/recyclers. APRAA advised that Japanese suppliers prefer to sell whole vehicles, rather than dismantle them and sell individual parts. This arrangement suits the association's members as it results in less panel damage than containerised individual components. Dismantling would either be moved offshore (to Japan) where labour costs are high or restricted to dismantling of vehicles supplied originally to the Australian market. However, with the introduction of the GST 1 July 2000, the difference in costs between importing complete vehicles and importing individual parts may be narrower. Further, it is suggested that the shipping of parts may be more cost effective than shipping complete vehicles and may also offset labour costs.

The cost of dismantling in Japan is difficult to determine because of the problem of what constitutes dismantling and the wide variation of cost of vehicles. The Australian Customs Service has the responsibility of deciding whether a vehicle is a complete vehicle or has been dismantled.

#### Loss of Local Employment

The stakeholders claimed that the dismantling of vehicles overseas and the importation of parts only is not cost effective and that this would result in a loss of local employment with a shift to overseas labour. APRAA estimated that some 2000 employees would be affected however discussions failed to identify these numbers with any great accuracy. No quantification of the financial impact on APRAA members was received from the association. This figure is inconsistent with the number of vehicles imported, see attachment.

### Small Business

Those businesses involved in importing complete vehicles for dismantling would incur additional costs resulting from the difference in labour costs here and offshore. It is unlikely that any businesses would 'close-down' as no members of the industry rely solely on the importation of complete vehicles.

### Consumers

Unsuspecting buyers of re-birthed vehicles will not be left with vehicles they are unable to register nor be exposed to potentially unsafe vehicles ie vehicles that do not comply with Australian safety and emission standards.

There will be minimal impact on consumer choice as if the vehicles are in demand they will continue to be imported as parts.

### Government

Australian Customs Service - reduction in administrative burden in processing approvals. Potential losses in collecting customs duty and sales tax revenue.

Department of Transport and Regional Services - reduction in administrative burden in processing approvals.

State and Territory Governments - reduction in numbers of illegal vehicles presented for registration.

Australian Federal Police/State Police - reduction in administrative burden in investigating circumventions of the MVSA.

Rural and Regional Services - would not impinge on existing key regional and rural services and/or the overall level of those services.

Option C would provide for the highest reduction in circumvention of the MVSA compared to Option A and B and greatest benefit to the community. Several government departments would see a reduction in the administrative burden of processing these import applications and entry. The assessment is full cognisant of the concerns of APRAA and its members and the impact of having the vehicles dismantled offshore. While rescinding the scheme will not absolutely ensure complete vehicles cannot be subsequently rebuilt from parts, it will sufficiently deter illegal operators. The impact on the legitimate operator, on balance, is warranted. It is also cognisant of the frustration of the Australian Federal Police, State Police, State and Territory Registration Authorities and Customs in being unable to prosecute or enforce the MVSA.

It is therefore considered preferable to discontinue the issuing of import approvals for complete vehicles for dismantling.

## **6. CONSULTATION**

This issue was considered in the light of a Review of the *Motor Vehicle Standards Act 1989* that was included in the Commonwealth Review Schedule announced by the Treasurer in June 1996.

Consultation began with the establishment of a Task Force to conduct the review. The Task Force was chaired by the Federal Office of Road Safety and included representation from the Australian Customs Service, Environment Australia, the Department of Industry, Science and Resources and the National Road Transport Commission all of whom have responsibilities related to vehicle standards. The work of the Task Force was overseen by an Independent Reference Committee which represented the broader community, industry and consumer views. It was chaired by Dr Roger Mauldon (a former Industry Commissioner) and included Mr Don Dunoon (a former Chief Engineer of Nissan Australia Ltd) and Mr Lauchlan McIntosh (Executive Director of the Australian Automobile Association) and sought to ensure that the review process was strategic and effective to reflect as widely as possible the views of all stakeholders.

The Task Force advertised nationally in December 1997 for input to the review (some 3,000 identified stakeholders were invited to provide input) and received 55 submissions from stakeholders. Additionally, the Task Force held meetings around Australia with stakeholders (including those who did not lodge a submission) to ensure the widest possible spread of stakeholder views were gathered. The issue of dismantling was the subject of two meetings with APRAA in Melbourne. APRAA advised the Task Force that it has a membership of about 330 businesses out of some 1200 auto parts recyclers currently operating Australia-wide. Of their membership about 70 per cent are involved in the importation of vehicles and parts from Japan. Considerably less import complete vehicles. Dismantling was also the subject of meetings held by the Task Force with the NSW Road Transport Authority, the Australian Federal Police and the South Australian Police, and the Australian Customs Service. Discussion proved critical in assisting the Task Force's identification and consideration of options.

Throughout the review, the Task Force maintained a web page on the Department's Internet site through which interested parties were able to access the list of submissions, issues paper, Terms of Reference and the draft report.

The draft report and its associated recommendations were released by the Minister for Transport and Regional Services, The Hon John Anderson MP, on 12 May 1999 for consideration and comment before the report was finalised. This provided an opportunity for all interested parties to put their views to the Task Force prior to the final report being considered by the Government. The Task Force considered comments from more than 100 stakeholders.

## **7. IMPLEMENTATION**

As described in the Cabinet Submission, the issuing of approval for vehicles for dismantling will cease 3 months after the date of announcement by Government. This is to prevent the ongoing submission of applications well after the regulation is rescinded. Avenues will still exist for the issue of approvals on compassionate grounds.

The change to the regulation will be in accordance with guidelines for altering subordinate Legislation,

## **Attachment**

### **Data from *Review of the Motor Vehicle Standards Act 1989* report.**

- \* 330 dismantlers in Australia - majority recycle vehicles from Australian market
- \* 20% of these are involved in import of complete vehicles OR components
- \* 3000 complete vehicles are imported each year for dismantling

Assuming all 20% (66) of dismantlers above import ONLY complete vehicles, this gives approximately 45 vehicles per dismantler per year.

Assuming each vehicle takes one person, 10 working days to almost completely dismantle a vehicle (down to sub-components eg carburettor, alternator, clutch, strip engine and interior etc.)

In 48 working weeks this person could dismantle 24 vehicles. Therefore, the loss of 3000 vehicles is equivalent to 125 full time positions.

However, this is worst case scenario and further dismantlers could not survive purely by importing complete vehicles when demand is so low. The supply of imported parts may become more expensive. This needs to be offset against the (damning) submissions made by the Australian Federal Police, Customs and the State, Registering Authorities.