

## EXPLANATORY STATEMENT

### Road Vehicle Standards Rules 2018

Approved by the Hon Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

#### **Legislative Authority**

The Road Vehicle Standards Rules 2018 (**the Rules**) are made under the authority of the *Road Vehicle Standards Act 2018* (**the Act**). The Act provides the Commonwealth with powers to, among other matters, regulate the importation and first provision of road vehicles and certain road vehicle components.

Section 82 of the Act empowers the Minister to, by legislative instrument, make rules prescribing matters that are required or permitted by this Act to be prescribed by the Rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Sections 13, 19, 21, 23, 25 and 37 of the Act provide for other matters that can be included in Rules.

#### **Purpose and operation of the instrument**

The Act provides a modern framework for the Australian Government to regulate the importation of road vehicles into Australia, and the first provision of road vehicles in Australia. It includes measures to manage the risks associated with road vehicles and road vehicle components, and to ensure that road vehicles and approved road vehicle components provided in Australia meet certain safety, anti-theft and environmental standards. It achieves this by regulating road vehicle importation into, and the first provision of, road vehicles in Australia. The Act also gives effect to Australia's obligations regarding the international harmonisation of road vehicle standards.

The Rules set out matters that support the regulatory framework of the Act. The Rules provide for the keeping of a Register of Approved Vehicles, on which a road vehicle must be entered before a person may provide the vehicle for the first time in Australia. A vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway.

The Rules set out two pathways via which a vehicle can be entered on the RAV: the type approval pathway and the concessional RAV entry approval pathway. A road vehicle type approval applies to all vehicles of a particular type, while a concessional RAV entry approval applies to individual vehicles. There are certain criteria and considerations that must or may be taken into account when the Minister or Secretary is considering whether to grant each of these approvals, and certain conditions will apply to each approval. The Rules then set out a series of 'tools' – approvals that enable road vehicles to satisfy the requirements of these entry pathways, such as approvals relating to Registered Automotive Workshops, Authorised Vehicle Verifiers, Model Reports, and testing facilities.

Further, the Rules provide for:

- the grant of approvals to permit road vehicles to be imported to Australia

- the grant of approvals for components to be used in the manufacture and modification of certain road vehicles
- variation, suspension or revocation of approvals
- the compulsory and voluntary recall of road vehicles and approved road vehicle components
- miscellaneous matters such as publication requirements, review of decisions and delegation of functions and powers

An overview of each Part and a section by section explanation of the Rules is at [Attachment B](#).

## **Key principles**

### Clear legislation for safe, secure, and environmentally friendly vehicles

The Rules modernise and strengthen the existing regulatory framework whilst improving transparency and decision making. The Rules have been drafted to reflect modern legal drafting standards and improve clarity and readability for individuals and industry stakeholders.

For example, the Rules are structured with an improved regulatory logic. The Rules set out the arrangements for the RAV, and then set out two clear pathways for a vehicle to be entered on the RAV. The two pathways – type approval and concessional RAV entry – are clearly delineated in line with the risk profile of each pathway. Holders of road vehicle type approvals are approved to enter unlimited volumes of vehicles on the RAV. Given this significant privilege, holders of road vehicle type approvals are subject to strict requirements, such as full evidence of compliance with the national road vehicle standards, a conformity of production system, and design change controls. The type approval pathway manages risk by imposing strict eligibility criteria and conditions on holders of road vehicle type approvals.

The Government acknowledges that there are specialist vehicles, to which the Australian community requires access, that are not provided for under a type approval. These vehicles generally have higher risks as they are often granted concessions to the types of evidence they need to provide and lower conformity of production and design change control requirements. Commensurate with this risk profile, the concessional RAV entry pathway applies to individual vehicles, rather than ‘types’ of vehicles. This vehicle by vehicle approach ensures assessment of risk on the basis of the vehicle’s individual characteristics. This facilitates reasonable consumer choice while managing the risks to the community when granting concessions to the national road vehicle standards.

In addition to clarified regulatory logic, the Rules have been designed to provide a more level playing field for industry by clarifying the expectations and obligations of approval holders, and applying these transparently and consistently.

The *Motor Vehicle Standards Act 1989* and its regulations, which will be replaced by the Road Vehicle Standards Act 2018 and these Rules, do not consistently articulate the eligibility criteria for approvals, nor do they outline the conditions to which approvals are subject. While administrative processes ensure a certain level of consistency in assessment of

applications, the lack of legislative detail can result in inconsistent decisions and conditions across holders of the same approvals.

The processes for applying and assessing approvals in these Rules have been carefully crafted to ensure they reflect the Government's current, and future, expectations of approval holders. Clear eligibility criteria are set out for each approval. Standard conditions are set out in legislation and are placed consistently. Where conditions need to vary between different approvals of the same type, the Rules set out examples of what these conditions might look like – helping applicants understand in advance the conditions that may apply to their approval, once granted.

The powers of the Minister and Secretary to set additional conditions and suspend, vary, and revoke approvals are clearly articulated, as are powers for applicants to review decisions.

These deliberate efforts ensure every applicant is assessed according to the same eligibility criteria and that standard conditions are applied transparently. The powers of the Minister and Secretary are clearly articulated, and the rights for applicants to appeal decisions are enshrined in legislation. This helps to assure participants that all approvals are subject to the same standard conditions and have a good understanding of conditions that may be imposed on them – facilitating a level regulatory playing field for industry.

#### Flexibility for the future of road vehicles

The automotive landscape has changed dramatically in the last 30 years, with countless innovations in vehicle technology such as airbags, electronic stability control and antilock braking systems. There have been substantial advances in engine emissions control and anti-theft technologies such as on-board diagnostics and immobilisers. Today's vehicles are faster, safer, lighter, cleaner and harder to steal than ever before.

Into the future, vehicles are set to become even smarter, more autonomous, and more connected to each other and to infrastructure. It is vital that legislation regulating road vehicles is ready for these changes and can be used to respond rapidly and flexibly, facilitating innovation while maintaining safety and environmental protections. These Rules are an important part of this flexible framework as they provide much of the detailed regulatory requirements for the importation and first supply of road vehicles in Australia.

Rules are a relatively flexible form of legislative instrument. They are more readily made and amended than primary legislation, but are still subject to parliamentary oversight. The use of Rules helps achieve a balance between responsiveness to rapid changes and the need for appropriate parliamentary scrutiny.

In addition, each approval set out in these Rules has inbuilt flexibility through the ability to set a broad range of enforceable conditions. This provides a rapid and flexible means for the Minister or Secretary to respond to the dynamic environment of the road vehicle industry, ensuring innovative new safety, environmental, or anti-theft technologies can be recognised, while also providing effective regulatory oversight of these technologies.

In providing this flexibility, the Rules somewhat depart from the principle that the content of an offence should be clear from the offence provision. This delegation of offence content has been done in a way that is consistent with safeguards outlined in the *Guide to Framing Commonwealth Offences*. For example, the delegated content:

- only impacts holders of approvals, who have already applied for and agreed to the terms of that approval
- is contained in a public and free to access legislative instrument
- refers back to the relevant offence provision of the Act
- is clearly stated in the approval
- can be appealed if the Secretary or Minister has specified a condition to be placed on the holder of an approval beyond the standard conditions

This drafting ensures that, while the entire content of an offence provision may not be clear on the face of the offence, best practice safeguards are in place for approval holders. This retains protections for approval holders, while maximising the ability for the Minister and Secretary to respond to the rapidly evolving automotive landscape.

### More choice of road vehicles for Australians

These Rules acknowledge that there are specialist vehicles, to which the Australian community requires access, that are not provided for under a type approval. There are two ways these vehicles can be supplied: the concessional RAV entry pathway or the non-RAV entry import approvals. Vehicles permitted to be imported and supplied under concessional RAV entry arrangements are vehicles that do not or cannot meet the national road vehicle standards, but otherwise offer a benefit to the Australian community.

A specific example of a concessional RAV entry criterion is for specialist and enthusiast vehicles. Like the previous *Motor Vehicle Standards Act 1989*, these Rules establish a Specialist and Enthusiast Vehicles (SEVs) Register, including criteria for entry on the SEVs Register that better capture vehicles that are of a genuine specialist and enthusiast nature.

Under the Rules, the SEVs Register will allow for a vehicle to be listed three months after release in any country if the model or variant is not already available under a road vehicle type approval in Australia. In addition, where a particular model or variant is not available under a road vehicle type approval in Australia, it may be eligible for entry on the SEVs Register if the variant is sufficiently different to variants that are available in full volume.

Revised Registered Automotive Workshop (RAW) arrangements will replace the current RAW and New Low Volume concessional schemes. Both new and used specialist and enthusiast vehicles will be eligible for importation and supply through the concessional RAV entry pathway. The revised RAW arrangements will reduce regulatory and compliance costs for workshop operators, and allow commercially viable supply of a wider range of vehicles. Vehicles modified by RAWs will require vehicle by vehicle inspection before being entered on the RAV to ensure consumers are provided with high quality, compliant road vehicles.

The Rules also establish non-RAV entry import approvals. These approvals are designed to facilitate the importation of road vehicles that are not intended to be used on public roads in Australia. These vehicles can be imported and provided in Australia, but will not be entered on the RAV. This will allow the importation of vehicles that are in Australia on a temporary or permanent basis, for example, vehicles to be used in race or rally, testing and evaluation, or for public exhibition.

### Continued harmonisation with international standards

The Australian Government has a long-standing policy of harmonising Australia's vehicle standards with international best practice vehicle standards. The Rules facilitate this policy by ensuring that, when applying for certain approvals - such as road vehicle type approvals and road vehicle component type approvals - that approvals and other documents issued by the government of a country that is a contracting party to the *Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions* (the 1958 Agreement), can be used as evidence of a vehicle's compliance with national road vehicle standards.

### Improved compliance and enforcement powers

The Act delivers a modern and flexible regulatory framework, with a graduated toolkit for monitoring and enforcing compliance with the Act. A graduated enforcement toolkit enables any enforcement response to be proportionate to the risk the non-compliance presents.

The Rules contain provisions for the compulsory and voluntary recall of road vehicles that will or may cause injury or do not comply with the national road vehicle standards. Currently, recall powers applicable to road vehicles are contained in Schedule 2 of the *Competition and Consumer Act 2010* (Australian Consumer Law), however, this only provides for recalls in relation to consumer goods. The Rules include recall provisions modelled on those in the Australian Consumer Law, but with a broader scope, allowing the Minister responsible for the Act to issue recall notices in relation to road vehicles and road vehicle components, including those that are not consumer goods.

### **Consultation**

The Act and these Rules have been subject to an extensive consultation process from 2013.

#### 2013

In May-June 2013, the then Department of Infrastructure and Transport undertook a public consultation process on the *Motor Vehicle Standards Act 1989* and its Regulations to consider its currency and whether it remains effective and efficient. This included preparing a consultation paper, seeking public submissions, and running a series of open workshops in Sydney, Melbourne, Perth and Brisbane.

#### 2014

In January 2014, the Government approved the Terms of Reference for a comprehensive review of the *Motor Vehicle Standards Act* with a view to reducing regulatory costs to business and individuals and improving the safety and environmental performance of road motor vehicles. The 2014 review involved a public submission process along with public consultations on possible future options for the *Motor Vehicle Standards Act 1989*.

The Government also engaged Castalia Strategic Advisors to evaluate the cost and benefits relating to the potential relaxation of the current vehicle import policy settings. As part of this process, two reports were produced. The first report focused on the economic opportunities from reducing the current restrictions on the importation of used vehicles. The second report further refined the work of the first report and focused on the economic opportunities for

consumers to personally import vehicles from the UK or Japan—as both countries have comparable vehicle standards to Australia.

## 2016

Following the announcement of the reforms in February 2016, Government conducted a number of consultation sessions with key industry stakeholders. The sessions were used to brief industry and the community on the details of the reform package. The Government also conducted further consultations in September and October 2016 on the proposed thresholds for the specialist and enthusiast vehicle criteria.

## 2017

The Government conducted consultations throughout May and June 2017 on the Register of Approved Vehicles and the new certification arrangements for light trailers.

The Government also conducted further detailed consultations on the then proposed Personal New Import (PNI) scheme. The proposed PNI scheme allowed for individuals to personally import new vehicles from countries with comparable vehicle standards to Australia.

## 2018

In December 2017 the Government released an exposure draft of the Rules for public comment. The Government also held information sessions in major cities around Australia to brief industry and the community on the details on the legislation, including a draft version of this instrument. Following this consultation, the Government announced refinements to the draft Rules, which included:

- extending the original proposed period of approval timeframes for road vehicle type approvals, RAW approvals and AVV approvals
- amendments to the performance and campervan eligibility criteria for the Specialist and Enthusiast Vehicles Register;
- allowing heavy vehicles to be eligible for consideration for entry on the Specialist and Enthusiast Register—requiring these vehicles to be made fully compliant with the Australian Design Rules applicable at the time of importation in order to minimise community risk
- amending the draft Rules to allow for the modification of heavy vehicles, prior to provision to a customer, according to Vehicle Standard Bulletin 6 (the National Code of Practice for Heavy Vehicle Modification)

## 2019

In December 2018 and January 2019, the Government consulted with the Australian Information Commissioner (the Commissioner) in relation to certain matters in the draft Rules regarding the privacy functions of the Commissioner's role. These matters related to Part 2 of the Rules, specifically, the potential collection, use, disclosure and publication of personal information on the Register of Approved Vehicles. This consultation was in satisfaction of the consultation requirement in subsection 82(5) of the *Road Vehicle Standards Act 2018*. The Commissioner had no comment to make on the draft Rules.

## **Documents incorporated by reference**

The Rules incorporate the *National Code of Practice Heavy Vehicle Modifications* (the National Code, also commonly known as Vehicle Standards Bulletin 6) by reference in section 51. The National Code is published by the Australian Motor Vehicle Certification Board which includes representatives from the Australian Government, state and territory governments, and the National Heavy Vehicle Regulator. It sets out minimum national requirements for modifications to vehicles with a gross vehicle mass greater than 4.5 tonnes and trailers with an aggregate trailer mass greater than 4.5 tonnes, to ensure that these modified vehicles are safe and comply with the relevant standards. It also provides for Approved Vehicle Examiners to certify certain modifications to these vehicles. The National Code is a document available to the public free of charge on the National Heavy Vehicle Regulator's website. This ensure that every person interested in or affected by the law is able to readily access its terms, without cost.

## **Regulation Impact Statement**

A Regulation Impact Statement (RIS) was prepared in relation to policy options regarding the *Motor Vehicle Standards Act 1989* and policy options for its repeal and replacement with what would become the *Road Vehicle Standards Act 2018*. This RIS is included in the Explanatory Memorandum for the *Road Vehicle Standards Act 2018* and also applies to these Rules. The Office of Best Practice Regulation reference number for the RIS is 17240.

## **Details/Operation**

The Road Vehicle Standards Rules is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment A](#).

## **ATTACHMENT A – STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Road Vehicle Standards Rules 2018**

This Disallowable Legislative Instrument 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*.

#### **Overview of the Disallowable Legislative Instrument**

The *Road Vehicle Standards Rules 2018* (the Rules) are made under the *Road Vehicle Standards Act 2018* (the Act).

The Act provides a modern regulatory framework for the Australian Government to regulate the importation of road vehicles into Australia, and the first provision of road vehicles in Australia. It includes measures to manage the risks associated with road vehicles and road vehicle components, and to ensure that road vehicles and approved road vehicle components provided in Australia meet certain safety, anti-theft and environmental standards. It achieves this by regulating road vehicle importation into, and the first provision of road vehicles in, Australia. The Act also gives effect to Australia's obligations regarding the international harmonisation of road vehicle standards.

The Rules set out matters that support the regulatory framework of the Act. The Rules provide for the keeping of a Register of Approved Vehicles (RAV), on which a road vehicle must be entered before a person may provide the vehicle for the first time in Australia. A vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway.

The Rules set out two pathways by which a vehicle can be entered on the RAV: the type approval pathway and the concessional RAV entry approval pathway. A road vehicle type approval applies to all vehicles of a particular type, while a concessional RAV entry approval applies to an individual vehicle. There are certain criteria and considerations that must or may be taken into account when the Minister or Secretary is considering whether to grant each of these approvals, and certain conditions will apply to each approval. The Rules then set out a series of 'tools' – approvals that enable road vehicles to satisfy the requirements of these entry pathways.

Further, the Rules provide for:

- the grant of approvals to permit road vehicles to be imported to Australia
- the grant of approvals for components to be used in the manufacture and modification of certain road vehicles
- compulsory and voluntary recall of road vehicles and approved road vehicle components
- variation, suspension or revocation of approvals

- miscellaneous matters such as publication requirements, review of decisions and delegation of functions and powers

### **Human rights implications**

This Disallowable Legislative Instrument engages the following rights:

- the right to life
- the right to health
- the right to an effective remedy
- the right to a fair hearing
- rights of people with disabilities
- the right to privacy
- the right to presumption of innocence and privilege from self-incrimination

The promotion or limitation of each of these rights is considered in more detail below.

### **Rights to life and health**

Article 6.1 of the International Convention on Civil and Political Rights (ICCPR) sets out the obligation for party States to protect by law the inherent right to life. The United Nations Committee General Comment 6 (1982) states "...the Committee has noted that the right to life has been too often narrowly interpreted. The expression 'inherent right to life' cannot be properly understood in a restrictive manner, and the protection of this right requires that States adopt positive measures."

Article 12.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) sets out the obligation for party States to take steps to achieve the full realisation of the right of all people to the enjoyment of the highest attainable standard of physical and mental health, including steps to improve all aspects of environmental hygiene.

The Act is a positive legislative measure to promote the rights of all road users to life and health through the delivery of improved vehicle safety, by:

- setting nationally consistent standards for the safety of vehicles provided to the Australian market
- improving the government's capacity to verify and enforce compliance with these standards
- allowing the government to be more responsive, adaptive and flexible to changes in the automotive industry in a manner that promotes safety, and
- enabling more active and a wider scope of regulation of the recall and rectification of potentially unsafe vehicles.

The Rules support these positive measures to support rights to life and health by setting out a series of approvals that must have been granted, and requirements that must be met, before vehicles can be provided for the first time in Australia.

Those approvals and requirements are designed to ensure that, before road vehicles are provided in Australia, they comply with national road vehicle standards, substantially comply with national road vehicle standards, or comply with standards comparable to the national

road vehicle standards. The national road vehicle standards set out the safety, environmental, and anti-theft requirements for vehicles provided in Australia.

While the Rules allow for certain levels of non-compliance with the national road vehicle standards, this is not in a way that limits the rights to life and health. For example, non-compliance with national road vehicle standards is acceptable in certain specific situations, such as:

- the compliance is substantial, and the non-compliance is minor and inconsequential
- the compliance is substantial and is to an extent that makes the road vehicle suitable for use on a public road in Australia – this can only be satisfied if it would not pose an unacceptable risk to public safety and would be appropriate for such use
- the compliance is to comparable standards

In all of these circumstances, the focus remains on the substantial or comparable compliance of vehicles with safety, environmental and anti-theft standards, continuing the promotion of the right to life and health. Therefore, while the Rules may not set the same level of assurance of compliance for all vehicles, the Rules promote the rights to life and health, even when certain concessions to compliance may be granted.

The Rules further promote the rights to life and health by:

- setting out requirements for the recall of road vehicles or approved road vehicle components that do not comply with national road vehicle standards or that will or may cause injury
- improving access to electric and hybrid vehicles that meet or exceed Australia's current emissions standards, but were not genuinely available to consumers in Australia

In addition, to the extent the Rules limit other human rights, they typically do so in order to protect rights to life and health as a priority.

### **Rights to an effective remedy and fair hearing**

Article 2(3) of the ICCPR sets out the obligation for party States to provide effective remedies determined and enforced by competent authorities (including courts and administrative tribunals) to any person whose rights or freedoms under the ICCPR are violated. Article 14(1) of the ICCPR sets out the right, in the determination of a person's rights and obligations in civil and criminal proceedings, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Rules engage and promote the rights to an effective remedy and fair hearing. Any decision by the Minister or Secretary to refuse, vary, suspend or revoke an approval may determine a person's rights and obligations. The Rules provide for the availability of an accessible and effective remedy and fair hearing in relation to such a decision through review by the Administrative Appeals Tribunal. Judicial review of decisions may also be available.

The Rules do not affect the availability of effective remedies in relation to decisions, action or inaction by the Department in the administration of the Rules, including under the Compensation for Detriment caused by Defective Administration Scheme administered by

the Department of Finance, resolution through the Commonwealth Ombudsman, or through judicial review.

Further, the Rules do not prevent a person from seeking an effective remedy from the Office of the Information Commissioner or in court in relation to any potential breach of their right to privacy under the *Privacy Act 1988*. The *Privacy Act 1988* regulates how the Australian government handles personal information, and partially implements Australia's obligations under Article 17 of the ICCPR to prohibit unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

### **Rights to a fair hearing and presumption of innocence (alleged contraventions considered in relation to approvals)**

Article 14(1) of the ICCPR sets out the right to, in the determination of a person's rights and obligations in civil and criminal proceedings, a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Minister or Secretary may have regard to whether the holder of an approval 'may have contravened' road vehicle legislation in their decision to vary, suspend, revoke or refuse approvals under the Rules. For example, when deciding whether to grant an approval, the Minister or Secretary may have regard to an alleged contravention, that led to the giving of an infringement notice or notification of a potential contravention of road vehicle legislation, in relation to a decision on an application or approval. If the Minister's or Secretary's consideration was limited to matters established in court only, the Minister or Secretary would have an inappropriately limited capacity to manage the risk associated with a regulated entity's likely future compliance, and may not be able to adequately prioritise vehicle safety.

This ability to consider alleged contraventions relates to the Minister or Secretary's administrative decision in relation to approvals (including to grant, refuse, vary, suspend or revoke an approval). It does not relate to criminal matters, and so does not engage the right under 14(2) of the ICCPR for a person charged with a criminal offence to be presumed innocent until proved guilty according to law.

As a safeguard to the Minister's or Secretary's ability to consider alleged contraventions, the Rules provide for the availability of review by the Administrative Appeals Tribunal. This engages and promotes the right to a fair hearing in relation to alleged contraventions not previously established in court.

### **Rights of persons with disabilities**

Article 4(1) of the Convention on the Rights of Persons with Disabilities (CRPD) sets out that party States undertake to adopt positive measures to implement rights for people with disabilities, and take into account the protection and promotion of their human rights in all policies and programs. Party States also undertake to promote the research and development, availability and use of mobility and assistive technologies, giving priority to technologies at an affordable cost.

Article 9 of the CRPD sets out the obligation of Party States to take appropriate measures to ensure access of persons with disabilities, on an equal basis with others, to the physical environment and transportation.

Access to vehicles that support the mobility of some persons with disabilities is provided under the concessional RAV entry approval pathway, in line with the Specialist and Enthusiast Vehicles Register mobility criteria. This increases the choice of vehicles that have mobility-assisting features, but are not available in Australia, such as:

- built in ramps for wheelchair access
- seating specifically designed to lift a person from an accessible position outside the vehicle into a standard seating position ('lift up and out' seat(s))
- one or more portable wheelchair car seats

This is a positive measure to increase the availability and affordability of vehicles that provide mobility features, in realisation of Article 4(1). It also supports the accessibility of transportation consistent with Article 9. Mobility features in vehicles can support the independence, as well as the full and effective participation and inclusion in society of some people with disabilities, a key principle of the CRPD.

### **Right to privacy**

Article 17 of the ICCPR prohibits arbitrary or unlawful interferences with the privacy of individuals. The right to privacy includes respect for informational privacy, including the right to respect for personal information, particularly its collection, storage, sharing and use, and respect for home, family and correspondence.

One of the objectives of the *Privacy Act 1988* is to implement Australia's obligations under Article 17 of the ICCPR to prohibit unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It promotes the protection of the privacy of individuals by placing protections on personal information. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, such as an individual's name, contact details, or documents containing information about them. The handling of personal information may be a potential limitation on the right to privacy.

Some measures in the Rules engage and limit the right to privacy. However, each limitation is in pursuit of and rationally connected to a legitimate objective, and is proportionate – only as extensive as is strictly necessary to achieve the objective.

### **Record keeping and use of personal information**

A Model Report is a package of information that plays a critical role in assisting holders of Registered Automotive Workshop approvals in modifying or manufacturing a vehicle to comply with national road vehicle standards, and Authorised Vehicle Verifiers in verifying this compliance. The Rules provide that an approval of a Model Report is subject to the condition that the holder of the approval keeps records including personal information (names and contact details) of those they have authorised to use the Model Report.

It is anticipated that in most cases, corporations will use Model Reports. This means that the contact information collected from Model Report users will mostly be the names and contact details of a corporation. This is not personal information and, therefore, will not engage the right to privacy. There may, however, be situations where Model Report is used by an individual. This collection, storage and potential use of personal information will engage the

right to privacy. It places a limitation on the right to privacy, but is rationally connected to, and proportionate to achieve, a legitimate policy objective.

The objective of the mandated collection and storage of this information is to promote the safety and compliance of vehicles, promoting the rights to life and health. In this sense, it is non-arbitrary. The collection, storage and potential use of names and contact information of Model Report users achieves this objective by enabling the holder of the approval to notify the user of the Model Report of any variations to the Model Report, for example:

- If an error was identified in the approved Model Report then those using Model Reports could be contacted and appropriate steps taken to identify and remedy consequences of the error.
- Users of Model Reports could be contacted if an updated version of that Model Report was available, to ensure that vehicles would not be modified or manufactured in line with a Model Report that is out of date.

This measure is proportionate as it is the minimum measure necessary to achieve the objectives of vehicle compliance and safety. No more information is mandated to be collected than is necessary to ensure that Model Report users are notified of variations to the Model Report. This measure limits the number of entities that collect the personal information to only one, and is less onerous than the alternative of requiring this information be provided to the Department.

#### Publication of personal information

##### *Holders of road vehicle type approvals and road vehicle component type approvals*

The Rules provide that road vehicle type approvals and approved road vehicle component type approvals are matters of public record and must be published on the Department's website. This will involve the publication of the name and, on the website, contact details of the holder of the approval. For road vehicle type approvals, it will also involve the publication of the name of the holder of the approval on the Register of Approved Vehicles, an online, publically accessible database that allows consumers and industry participants to search road vehicles by their Vehicle Identification Number (VIN). In most circumstances, holders of approvals will be corporations, however some holders of approvals may be individuals and the information to be published will be personal.

The publication of the name and contact details of a holder of an approval, in the rare circumstances that this is personal information, will be a limitation on the right to privacy but a reasonable and proportionate way to achieve the objective of public accountability relating to the provision of safe and compliant vehicles.

Holders of road vehicle type approvals have significant privileges granted to provide unrestricted volumes of road vehicles to the Australian market. Holders of component type approvals provide road vehicle components to the market that are certified to comply with national road vehicle standards and do not need to be subject to further testing to verify this. This is an optional certification. Holders of road vehicle type approvals and road vehicle component type approvals carry serious obligations to produce compliant vehicles and components without regulatory oversight of individual vehicles and components. The

publication of names provides public accountability and important visibility for consumers as to which entity was responsible for the importation or manufacture of a vehicle or component. Contact details help consumers access information in relation to their vehicles in a situation where, for example, the holder of a type approval has recalled an unsafe or non-compliant road vehicle or approved road vehicle component.

The measure is proportionate as the scope of the personal information potentially published is limited only to names and contact details, which are routinely in the public sphere for the conduct of business relating to these approvals. Alternatively, an individual wishing to protect their privacy may seek a different approval, such as via the concessional RAV entry pathway, which carries greater scrutiny of individual vehicles, requires less public accountability, and so does not require the publication of personal information.

#### *Holders of RAW and AVV approvals*

The Rules provide that the names and contact details of holders of RAW and AVV approvals must be published on the Department's website. Only corporations can hold these approvals. The right to privacy is not engaged as corporations are not afforded a right to privacy.

#### *Model Report and testing facility approvals*

The Rules provide that the names and contact details of the holder of an approval of a Model Report and the holder of a testing facility approval be published on the Department's website. However, holders of approvals may choose to opt out of the publication, or if their information is already published, to have this removed from the website. As holders of such approvals have the option to not have their information published, these provisions do not engage the right to privacy.

#### Information on Register of Approved Vehicles

A Road Vehicle must be entered on the Register of Approved Vehicles (RAV) before it is provided to the Australian market. The RAV will be an online, publically accessible database that allows consumers and industry participants to search road vehicles by their Vehicle Identification Number (VIN).

The Rules provide that if a vehicle is entered on the RAV by way of a road vehicle type approval, then the name of the holder of the road vehicle type approval will be entered on the RAV entry for that vehicle. The potential limitation on the right to privacy in relation to this measure is examined above at 'Publication of personal information – holders of road vehicle type approvals and road vehicle component type approvals'.

The Rules also provide that the Minister may make a determination as to further information that is included on the RAV, including information that will be publicly accessible. The determination making power is drafted broadly to ensure it can capture all information that may be relevant to ensuring the RAV is a suitable source of information about the status of compliance for vehicles that are being used on public roads. The publication of personal information is not precluded by the determination making power. Therefore, a determination under the Rules regarding information to be included on the RAV could potentially engage

and limit the right to privacy. However, the Rules themselves do not engage or limit the right to privacy in this regard.

The determination will be a Disallowable Legislative Instrument, which will be subject to its own scrutiny in relation to how its measures may promote or limit human rights through its own Statement of Compatibility with Human Rights. This will include an examination of how the information it may provide for the RAV to include, for example any personal information, may engage the right to privacy. This will help to ensure that any measure under the determination being rationally connected to, and proportionate to achieve, a legitimate policy objective.

In addition, the *Road Vehicle Standards Act 2018* at section 82(5) also requires that the Minister must consult with the Australian Information Commissioner before making legislative instruments under the Rules which relate to the collection, use, disclosure or publication of personal information on the RAV. This is an additional safeguard to ensure that any potential limitations on the right to privacy under any determination will be appropriate and in line with the *Privacy Act 1988*.

#### Requests for information and access to premises

##### *Holders of approvals*

The Rules place an obligation on various holders of approvals to provide the Minister, Secretary or an inspector further information, or access to their premises and records they hold, for the purpose of assessing their compliance with the Act, the Rules or an instrument under the Act or Rules as a condition of their approval.

In some cases, the obligation to provide information (which may in some circumstances be personal information or other types of private information), or access to premises for the purpose of an inspection (where premises relating to the approval are private or co-located with private information) may limit the right to privacy.

This obligation to provide information or access to premises (and the associated limitation on the right to privacy) is designed to achieve the objective of ensuring that each of the holders of approvals related to the manufacture, modification, import, testing or verification of road vehicles or approved road vehicle components provided to the Australian market comply with their legislative obligations and conditions of their approvals. This contributes strongly to the effectiveness of the regulatory framework in providing for compliance of vehicles with safety, environmental and anti-theft standards.

An important safeguard attaches to these measures. Requests for access to premises for the purpose of inspection may only be connected with ensuring compliance of vehicles with national road vehicle standards and other requirements connected with approvals granted under the Rules. This power is especially important in situations where holders of approvals operate overseas and the use of the monitoring and investigation powers set out in the *Road Vehicle*

*Standards Act 2018* may not be recognised. It is also vital in situations where holders of approvals do not consent to monitoring.

This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur without consent or a warrant. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. An approval granted under the *Road Vehicle Standards Act 2018* is such a licence.

The conditions of approval related to providing information (including access to premises) is not intended to be a power to enter premises or seize documents without consent, meaning that the Minister, Secretary or inspector cannot obtain information or documents from the holder of the approval, or inspect premises or things, unless the Minister, Secretary or inspector's request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.

### *Third parties*

The Rules establish the further obligation of holders of road vehicle type approvals and road vehicle component type approvals to arrange for the Minister, Secretary or an inspector to access the premises used in manufacturing and design of the vehicle or its components, or to inspect documents, vehicles or vehicle components, including those of third parties.

This does not directly obligate third parties to provide access to documents, vehicles, components or premises, nor does it allow the Minister, Secretary or an inspector to enter premises of third parties without their consent. If the third party does not provide access for the purpose of an inspection, this may be a breach of a condition of the road vehicle type approval or road vehicle component type approval. This creates an indirect obligation on third parties to provide access to their premises for inspection. These third parties are largely companies to whom the right to privacy does not apply, however in some cases they may be individuals. To the extent that this indirect obligation may limit the right to privacy of a third party individual, it is rationally connected to, and proportionate to achieve, a legitimate policy objective.

This measure pursues the objective of upholding compliance with safety, anti-theft and environmental standards of road vehicles and their components. Providing that the Minister, Secretary or an inspector may inspect the premises of third parties gives confidence that the holder of an approval has sufficient control and access over their supply chain. The breadth of design and manufacturing facilities to which holders of approvals must be able to arrange access goes to the complexity of the modern road vehicle supply chain, where networks of subcontractors may be producing vital safety components for holders of approvals or for the market. Control by the holder of an approval ensures that the appropriate quality controls can be established and monitored in support of the compliance objective.

This obligation is a standard condition of road vehicle type approvals and road vehicle component type approvals, which means that the obligation is applied transparently and consistently to holders of approvals, who voluntarily agree to this condition. An important safeguard attaches to this measure, that the inspections may only be for the purpose of determining whether road vehicles or their components comply with national road vehicle standards. This supports the proportionality of the measure.

#### *Pre-approval*

The Minister, Secretary or an inspector may request, in relation to most applications for approvals under the Rules, further information or to inspect individual vehicles, components, or premises for testing, verification, design or manufacturing related to the approval.

The applicant may refuse to provide further information or access to premises, although in such a circumstance the Minister or Secretary may refuse to consider the application. This is in pursuit of the objective of assessing the capacity of the applicant to uphold compliance with safety, anti-theft and environmental standards of road vehicles and their components.

The measure is proportionate as the Minister, Secretary or an inspector may only request access for the strictly limited purpose of ensuring that the applicant can comply with conditions of the approval if granted. It provides flexibility for the Minister or Secretary to only seek further information or inspection where this is considered necessary (for example, on the basis of a broader risk assessment or specific intelligence). This allows targeting of scrutiny on the basis of regulatory risk and is less burdensome to privacy and more proportionate to ensure compliance than the alternative of compulsory inspections of all relevant premises, road vehicles or approved road vehicle components to give confidence of compliance.

#### Information regarding personal circumstances of key management personnel

##### *Appropriately skilled personnel*

In relation to a number of approvals, the Minister or Secretary must be satisfied that staff employed, contracted or otherwise arranged to perform work in relation to the approval are appropriately skilled for the tasks they are performing.

The Minister, Secretary or inspector may request information about the appropriate skilling of the workforce of holders of approvals. Where this request is made, this may engage and limit the right to privacy of these individuals as their history of practical experience or academic qualifications may be private information. However, this measure would be in pursuit of the objective to ensure work is undertaken to the appropriate standard by competent staff, supporting compliance with national road vehicle standards.

Requests for information about the appropriate skilling of the workforce when assessing an application for the grant of an approval may only be for the purpose of satisfying the Minister or Secretary that the criteria for granting an approval is met, or that the conditions of the

approval will be met. This ensures that the request will be well adapted to achieve the objective of ensuring compliance.

A request for information about the appropriate skilling of the workforce after an approval is granted may only be made for the purpose of the Minister, Secretary or an inspector assessing whether the holder of the approval is complying with the Act, the Rules or instruments made under the Act or Rules. The request must also be reasonably required. A request is unlikely to be reasonably required if there is an approach that better supports privacy and will similarly meet the objective of ensuring compliance in relation to the appropriate skilling of the workforce, for example:

- The applicant may satisfy the Minister or Secretary of the appropriate skilling of their workforce through a declaration, without having to provide evidence, in some cases where the Minister or Secretary considers the regulatory risk to be low.
- The Minister, Secretary or an inspector may request evidence of appropriate skills only for workers in key technical and supervisory roles, having regard to the level of oversight and complexity of the work being performed. This ensures that the scrutiny is adapted to the regulatory risk, and limits the scope of the private information being collected.

The ‘reasonably required’ threshold and available alternatives ensure that any request for information about the skilling of the workforce will be rationally connected to compliance, proportionate and well-adapted to achieve the objective of ensuring compliance.

#### *Age, bankruptcy and personal insolvency*

The Secretary must be satisfied that key management personnel of the corporation applying for the grant of a RAW approval are at least 18 years of age, not undischarged bankrupts or subject to personal insolvency agreements under Part X of the *Bankruptcy Act 1966*. The Secretary must also be satisfied of these requirements while the approval is in force.

The Secretary or an inspector may request evidence of the age or bankruptcy or insolvency status of key management personnel. Where this request is made, this may limit the right to privacy of these individuals, as their dates of birth and financial information are private information.

Holders of RAW approvals modify or manufacture road vehicles to meet requirements set out in Model Reports, ensuring that certain road vehicles can be entered on RAV via the concessional RAV entry pathway. The significance of this responsibility to ensure that vehicles are suitable to be provided to the Australian market, with limited regulatory oversight, makes it appropriate that holders of RAW approvals are expected to meet certain standards, including incorporation.

Requiring holders of RAW approvals to be corporations ensures that each of these typically small operations have given due consideration to the structure of their businesses. This helps ensure that their business has an effective structure to meet the obligations imposed by the approval. The incorporation requirement contributes to more robustly structured entities that

are better capable of delivering the responsibilities – including the compliance expectations – placed on them.

The requirements of RAW key management personnel to be at least 18 years of age, not subject to undischarged bankruptcy or a personal insolvency agreement is consistent with the standard that Directors must meet under the *Corporations Act 2001*. Key management personnel of RAWs (those with the responsibility to plan and control business operations and oversee regulatory compliance) will typically also be Directors of the corporation, although they are not required to be. The age and financial requirements ensure that similar minimum requirements apply to all key management personnel consistently and equally, contributing to the achievement of the objective to have entities structured in a way that supports their capability to meeting the compliance expectations placed on them.

These requirements are adapted to guard against vulnerabilities related to age and maturity, and financial vulnerabilities, having regard to the significant level of trust and responsibility that is held by Directors of corporations and key management personnel of RAWs.

This measure is proportionate as:

- The requirements are limited only to those who are key management personnel of the RAW, who carry greater responsibilities for oversight and regulatory compliance. The measure does not unnecessarily burden workers with lesser responsibilities.
- The requirements represent a modest standard for confidence in key management personnel that is not significantly intrusive or administratively difficult to establish.
- The requirements are consistent with the intention of other measures in the Rules that ensure an appropriate standard of trust and capability for the workforce and management. For example, other parts of the Rules place a requirement on a range of holders of approvals to ensure that their workforce is appropriately skilled, such as having appropriate academic qualifications and industry experience. The Rules also connect other qualities of key management personnel to the suitability of their corporation to hold various approvals, including whether they have or may have contravened road vehicle legislation. Age and financial requirements also connect the suitability of key management personnel to the overall suitability of a corporation to hold an approval.

For these reasons, the requirement for key management personnel to be over the age of 18 years and not subject to undischarged bankruptcy or personal insolvency agreements is a reasonable and proportionate way to give confidence in the capability of holders of RAW approvals to deliver the significant responsibilities they carry to ensure that vehicles are suitable to be provided to the Australian market.

### **Right to presumption of innocence (privilege against self-incrimination)**

Article 14(2) of the ICCPR sets out that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law, including the right not to be compelled to testify against oneself or to confess guilt.

The Rules place an obligation on various holders of approvals as a condition of their approval to provide the Minister, Secretary or an inspector with written answers to questions within a

reasonable time. These responses must relate to compliance by the holder of the approval with the *Road Vehicle Standards Act 2018*, the Rules, or an instrument made under the Act or Rules. A breach of this condition to provide written answers may be a criminal offence and so, to the extent that these answers may reveal breaches of offence provisions of the Act, the condition engages the privilege against self-incrimination in criminal matters.

Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that the Australian public are provided with vehicles that meet safety, environmental and anti-theft standards. Compliance with these approvals, which this condition monitors, is central to achieving this legitimate objective. The obligation to provide answers, which may reveal contraventions of the Act and lead to criminal prosecution, is a standard condition on a range of approvals. This condition is included as a standard condition in the Rules for a range of approvals to ensure that entities can understand this obligation attached to holding an approval in advance, and must not engage in activities (for example, manufacturing or importing vehicles and providing these to the Australian market) which require an approval if they do not wish to carry this obligation. Holding an approval is only appropriate where the Minister or Secretary is able to verify continuing compliance with the relevant obligations of holders of approvals, including under the Act and Rules. Therefore written answers given by the holder of an approval in response to a request of the Minister or Secretary do not attract a use immunity (i.e. freedom from criminal prosecution in relation to answers).

This measure is reasonable and proportionate given the extensive freedoms and substantial positions of trust that holders of approvals carry to test and verify compliance of vehicles and components, or to directly provide vehicles and components to the Australian market, with only limited regulatory oversight or inspection of vehicles, components, documents or facilities associated with their approvals.

This measure for requesting written answers is part of a suite of other information gathering powers, including powers of inspection of premises and documents, and is subject to safeguard of only being permitted to be used when reasonably required. This supports its limited usage as a minimum measure necessary to ensure the achievement of the compliance objective.

Answers may only be requested where relevant to determining whether the holder of an approval is complying with the Act, the Rules, or an instrument made under the Act or Rules, a further important safeguard ensuring that requests for written answers are proportionate and well adapted to achieve the objective of ensuring compliance by the holder of an approval.

### **Rights of equality and non-discrimination**

Discrimination is prohibited by Article 2 of the ICCPR, on a range of grounds including ‘other status’. Article 26 of the ICCPR provides that party States must provide equal and effective protection from discrimination by law. The *Age Discrimination Act 2004* recognises age as a ground on which it is unlawful to discriminate. The Human Rights Committee in its General Comment 19 on Non-Discrimination (adopted 1994) observes, “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.”

The Secretary must be satisfied that key management personnel of the corporation applying for the grant of a RAW approval are at least 18 years of age. The Secretary must also be satisfied of this while the approval is in force. This measure engages the rights of equality and non-discrimination in relation to age as a protected status but does not limit these rights.

Differential treatment will not constitute discrimination under the ICCPR if the aim is to achieve a legitimate purpose under the ICCPR. A legitimate purpose under the ICCPR includes other rights it identifies. This measure aims to secure the rights to life and health through ensuring that RAWs are structured in a way that supports their capability of meeting the compliance expectations placed on them, in relation to the safety and environmental standards of vehicles they provide to the Australian market. While imposing an age limit that constitutes differential treatment, it does so to achieve another legitimate purpose and so is not discriminatory.

The requirement of RAW key management personnel to be at least 18 years of age is consistent with the standard that Directors must meet under the *Corporations Act 2001*. Key management personnel of RAWs (those with the responsibility to plan and control business operations and oversee regulatory compliance) will typically also be Directors of the corporation, although they are not required to be. This ensures that similar minimum requirements apply to all key management personnel consistently and equally, contributing to the achievement of the objective to have entities structured in a way that supports their capability to meeting the compliance expectations placed on them.

This requirement is adapted to guard against one aspect of vulnerability – related to age and maturity – having regard to the significant level of trust and responsibility that is held by Directors of corporations and key management personnel of RAWs.

This measure is proportionate as:

- The age limitation only applies to those who are key management personnel (e.g. Directors) of the RAW, who carry greater responsibilities for oversight and regulatory compliance. It does not unnecessarily burden workers with lesser responsibilities and ensures that younger workers are able to contribute to RAWs in a range of positions other than management.
- Age is not significantly intrusive or administratively difficult to establish.
- The age limitation is consistent with the intention of other measures in the Rules that ensure an appropriate standard of trust and capability for the workforce and management. For example, other parts of the Rules place a requirement on a range of holders of approvals to ensure that their workforce is appropriately skilled, such as having appropriate academic qualifications and industry experience. The Rules also connect other qualities of key management personnel to the suitability of their corporation to hold various approvals, including whether they have or may have contravened road vehicle legislation. Age is another such requirement that connects the suitability of key management personnel to the overall suitability of a corporation to hold an approval.

For these reasons, the requirement for key management personnel to be over the age of 18 years is reasonable and proportionate to contribute to confidence in the capability of holders

of RAW approvals to deliver the significant responsibilities they carry to provide safe and compliant vehicles to the Australian market.

This measure also does not constitute discrimination under domestic laws. The *Age Discrimination Act 2004* provides that nothing done in direct compliance with Acts, (including the regulations and instruments under the Acts) mentioned in its Schedule 1 will constitute unlawful age discrimination. The *Road Vehicle Standards Act 2018* is listed in Schedule 1.

### **Conclusion**

The *Road Vehicle Standards Rules 2018* is a Disallowable Legislative Instrument that is compatible with human rights. It promotes the protection and realisation of a number of human rights enshrined in the treaties identified in the *Human Rights (Parliamentary Scrutiny) Act 2011*, and to the extent that it may limit human rights, those limitations are reasonable, proportionate, and adapted to achieve legitimate objectives.

## ATTACHMENT B – NOTES ON SECTIONS

### Overview of instrument

#### Part 1 - Introduction

Part 1 outlines preliminary matters associated with the Rules. These matters include the title, comments and authority for the Rules. Part 1 also contains a simplified outline and defines a number of expressed contained within the Rules.

#### Part 2 – The Register of Approved Vehicles

This Part provides for the keeping of the Register Approved Vehicles (the RAV) established under section 14 of the Act. Section 24 of the Act states that a road vehicle must be on the RAV before a person may provide the vehicle for the first time in Australia.

A road vehicle is only taken to be on the RAV if all of the information required to be set out by the Rules is entered on the RAV in relation to that vehicle. Information may only be entered on the RAV, or subsequently varied to correct errors, by the Secretary and certain other persons. The RAV must be made publicly accessible online, and certain information on that register must be available to any person who searches for a particular vehicle by its vehicle identification number. The Minister may make various determinations regarding the form and content of the RAV.

#### Part 3 – Entry on RAV via entry pathways

This Part sets out the pathways by which a vehicle may be entered on the RAV.

The Act provides that a vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway. This Part provides for two such pathways – the type approval pathway and the concessional RAV entry approval pathway. A type approval applies to all vehicles of a particular type, while a concessional RAV entry approval applies to an individual vehicle.

Both type approvals and concessional RAV entry approvals are subject to various conditions. The Secretary or Minister (as applicable) may impose certain conditions on approvals on a case-by-case basis, while others will automatically apply to all approvals.

#### Part 4 – Tools

This Part provides for the grant of a number of approvals to enable road vehicles to satisfy the requirements of entry pathways, and for the creation and maintenance of the SEVs Register. Approvals issued under this Part include Registered Automotive Workshops, Authorised Vehicle Verifiers, Model Reports and testing facilities. These tools may be used in order to ensure that a vehicle satisfies the requirements of a RAV entry pathway.

For example, a concessional RAV entry approval for a specialist and enthusiast vehicle requires a vehicle be modified or manufactured by the holder of a Registered Automotive Workshop approval in accordance with a Model Report. A Model Report must contain evidence of compliance, including evidence from the holder of a testing facility approval. A holder of an Authorised Vehicle Verifier approval is required to inspect vehicle before entry on the RAV.

## **Part 5 – Import Approvals**

This Part provides for the grant of approvals to permit road vehicles to be imported to Australia. This Part provides for three types of import approvals – RAV entry import approvals, non-RAV entry import approvals, and reimportation import approvals.

## **Part 6 – Type approvals for road vehicle component used or supplied for use in the manufacture of road vehicles.**

This Part provides for the grant of approvals in relation to components to be used in the manufacture or modification of certain road vehicles. The Secretary may grant a road vehicle component type approval if, among other things, the component complies or substantially complies with the relevant national road vehicle standards.

## **Part 7 – Variation, suspension or revocation of approval**

This Part provides for the variation, suspension and revocation of approvals. The Minister may vary, suspend or revoke an approval granted by the Minister under this instrument, either on his or her own motion, or following an application by the approval-holder. The Secretary has the same power in relation to approvals granted by the Secretary. The Part sets out a number of matters that the decision-maker must take into account when exercising these powers.

## **Part 8 – Recalls of road vehicles or approved road vehicle components**

This Part provides for the recall of road vehicles and approved road vehicle components. The Minister may initiate a compulsory recall of vehicles or components where (among other things) the vehicles or components may cause injury or do not comply with certain standards. The supplier must then take certain remedial action. A person may also initiate a voluntary recall on similar grounds, and must notify the Minister and certain other parties of the recall.

## **Part 9 – Miscellaneous**

This Part provides for a number of miscellaneous matters.

Division 2 requires the Secretary to publish details of various approvals granted under the Rules, as well as notice of certain decision to vary, suspend or revoke such approvals.

Division 3 provides for decisions that can be reviewed by the Administrative Appeals Tribunal. It also provides for which powers or functions the Minister and Secretary can delegate under the Rules.

## Section by section explanation

### Part 1 – Introduction

#### Division 1 – Preliminary

##### 1 – Name

1. Section 1 provides that the name of this legislative instrument is the Road Vehicle Standards Rules 2018 (the Rules).

##### 2 – Commencement

2. Section 2 provides that sections 1 to 3 of the Rules, which set out the name, commencement and authority of the Rules, commence the day after the Rules are registered. It also provides that sections 4 to 236 of the Rules commence at a day or days to be fixed by the Minister by notifiable instrument.
3. Sections 4 to 236 of the Rules must not commence more than 90 days before the commencement of section 15 the Act, which provides that a vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway. If no date is fixed by the Minister, or a date after section 15 of the Act commences is fixed, then sections 4 to 236 of the Rules commence at the same time as section 15 of the Act.
4. Anything else in the Rules that is not covered by sections 1 to 236 of the Rules will commence the day after it is registered.

##### 3 – Authority

5. Section 3 specifies that the Rules are made under the *Road Vehicle Standards Act 2018* (the Act).

#### Division 2 – Simplified outline of this instrument

##### 4 – Simplified outline of this instrument

6. It should be noted that, while simplified outlines are included to assist readers to understand the substantive provisions of the Rules, the outlines are not intended to be comprehensive. Readers should rely on the substantive provisions that follow the simplified outlines in each Part of the Rules.

#### Division 3 – Definitions

##### 5 – Definitions

7. Section 5 sets out definitions for the Rules. Notes are provided on some key definitions under the Rules below.
8. **Intergovernmental Agreement** – This definition refers to agreements that provide for the issue of a ‘Carnet de Passage en Douane’ for a vehicle to be imported into Australia (commonly known as Carnet vehicles) or agreements between international defence forces. These agreements generally allow importation and use of road vehicles in specific circumstances without the need to apply for the grant of import approvals.
9. **New vehicle** – the definition of new vehicle is a vehicle that has not been used in transport on a public road in overseas or Australia. There are a number of circumstances listed within the definition where a vehicle can have certain things done to it and still be considered a new vehicle. These certain things are designed to capture

various circumstances in the importation and supply chain before a vehicle is provided to a consumer. Other things may also be done to the vehicle which are not listed in the definition but do not constitute ‘use in transport on a public road’. This may be relevant, for example, to whether a vehicle may be entered on the RAV via the road vehicle type approval pathway, as only new vehicles may be entered on the RAV via this pathway.

10. **Variation** – Under the Rules, the definition of variant may have two meanings. In relation to the definition of a variant as it pertains to the Specialist and Enthusiast Vehicles Register, then the definition under section 128 of the Rules should be considered. In all other circumstances where used in the Rules, the ordinary meaning of variant applies.
11. **Vehicle category** – The *Vehicle Standards (Australian Design Rule – Definitions and Vehicle Categories) 2005* sets out, among other matters, the categories and subcategories of vehicles. For the purpose of these Rules, any reference to a category of vehicle should only include the main category unless otherwise specified or implied by the Act, Rules or any instruments made under the Act or Rules, and not the subcategory. For example:
  - NA (light goods vehicle) or NB (medium goods vehicle) are different categories of vehicle.
  - NA1 (light goods vehicle up to 2.7 tonnes gross vehicle mass) and NA2 (light goods vehicle over 2.7 tonnes gross vehicle mass) are not different categories of vehicles. These are considered to be the same category (NA), unless otherwise specified by the Act, Rules or any instruments made under the Act or Rules.
  - The Rules do not expressly reference any subcategories of vehicle, however a determination by the Minister under section 89 of the Rules regarding standards may differentiate between standards that apply to vehicles within a category. For example, within category LE, subcategory LEM vehicles (3 wheeled vehicles with ‘saddle’ type seating, that more resemble a motorcycle) require significantly different standards to apply compared to subcategory LEP vehicles (3 wheeled vehicles with two or seating positions that more resemble those of a passenger vehicle).
12. **Supporting information** – Supporting information is a key concept relating to road vehicle type approvals and road vehicle component type approvals. It is the information that sets out the design and componentry of a vehicle or road vehicle component covered by a type approval, and the manufacturing process of these, in detail. For a vehicle covered by a road vehicle type approval:
  - Supporting information is intended to include how a vehicle is to be manufactured, including source material, components and manufacturing process of each component of the vehicle and the vehicle as a whole, and the equipment used, that will affect the vehicle’s compliance with applicable national road vehicle standards.
  - Where this definition refers to ‘components’ of vehicles or ‘componentry’, this is intended to be interpreted broadly, including all components of a vehicle, not only including approved road vehicle components.

- For example, the grade of steel to be used, work instructions and diagrams indicating where weld points should be, method and equipment for welding, should all be indicated as part of the supporting information regarding the manufacture of the chassis of a vehicle.
- Supporting information is required to be developed and maintained as a key part of a road vehicle type approval. The holder of the approval is required by section 15 of the Rules to ensure that vehicles entered on the RAV under the approval have the design and componentry in accordance with, and are manufactured in accordance with, the supporting information for the approval. Section 27 requires that the holder of the approval implements a conformity of production system which governs the manufacturing process as set out in supporting information.
- Any changes to the design and componentry which could affect the compliance of the vehicle with national road vehicle standards should involve engineering analysis and testing as required, and associated updates to the supporting information, to ensure that the vehicle will comply with the applicable national road vehicle standards. Section 30 requires that the holder of the approval ensure that supporting information is kept up-to-date while the approval is in force, and records of all supporting information are kept for seven years after the approval ceases to be in force.
- Paragraph (e) of this definition sets out that it is permissible for the holder of an approval to have access to supporting information by contractual or other arrangement if they do not possess a copy of the supporting information themselves. This arrangement must be such that they can ensure that the Secretary can be provided a copy of or access to the supporting information by the holder of the approval within such reasonable time as specified in a written request by the Secretary as required by paragraph 30(b) of the Rules, and that the supporting information will be updated as required.

Supporting information for approved road vehicle components is defined similarly, and similar obligations apply for road vehicle component type approval holders regarding supporting information. However, there is no requirement to specify ‘components’ of the approved road vehicle component in supporting information. Further, the requirement to set out supporting information that applies to each variant only applies to vehicles. The concept of ‘variant’ is not relevant to road vehicle components in this context. Nevertheless, each vehicle or road vehicle component covered by a type approval must have supporting information that applies to it specifically, for example with differentiated information that applies to each variant of a model of vehicle.

## **Part 2 – The Register of Approved Vehicles**

### **Division 1 – Introduction**

#### **6 – Simplified outline of this Part**

13. Generally, vehicles used or that are to be used, on a public road must be entered on the Register of Approved Vehicles (RAV).
14. This Part provides for the following:

- what information must be included on the RAV for each road vehicle;
- who may enter the information on the RAV;
- for errors on the RAV to be corrected by the Secretary.

## **7 – Purpose of this Part**

15. Section 7 sets out the purpose of Part 2 of the Rules.
16. Section 19 of the Act prescribes what the Rules must and may provide for in relation to the RAV and approvals. Most relevant to Part 2 of the Rules is that section 19 of the Act requires that the keeping of the RAV, including the content and persons who may enter information on the RAV and the requirements of an entry pathway, be prescribed in the Rules.

## **Division 2 – Content of RAV**

### **8 – Information to be included on RAV**

17. This section sets out the information that is to be included on the RAV for a vehicle to be considered as entered on the RAV, in satisfaction of the requirement in section 19(1)(a)(i) of the Act that the Rules must provide for or in relation to the keeping of the RAV, including the content of the RAV.
18. The RAV will be an online, publicly accessible database that allows the public and industry participants to search for road vehicles by their Vehicle Identification Number (VIN). The RAV will also contain some information that is not publicly accessible, such as the details of the person or entity that entered the vehicle on the RAV. Such information that is not publicly available may be used by the Department in its compliance and enforcement operations.
19. Section 24 of the Act prohibits the provision of a road vehicle in Australia unless that vehicle is on the RAV or in circumstances where a relevant exception applies. Section 15(1) of the Act provides that a vehicle may be entered on the RAV (by certain persons as specified in the Rules) if it satisfies the requirements of an entry pathway. Section 15(2) of the Act specifies two entry pathways – the type approval pathway and the concessional entry pathway – and also allows for other pathways to be set out in the Rules.
20. Paragraph 8(a) provides that each vehicle entered on the RAV must have the date of entry recorded. Entry of a vehicle on the RAV is, in most circumstances, a minimum requirement for the provision of a vehicle for use on a public road in Australia. The date of entry is considered to be the date that the vehicle is considered compliant with the RAV entry pathway applicable to that vehicle. For example, a vehicle entering via the type approval pathway is considered compliant (fully or substantially) with the national road vehicle standards applicable to that vehicle at the point of its entry on the RAV.
21. Paragraph 8(b) requires that a road vehicle’s VIN be entered on the RAV. It is essential that a road vehicle’s VIN be entered on the RAV. A VIN is considered to be a vehicle’s “fingerprints” – no two vehicles should have the same VIN. It is intended that persons looking to purchase a vehicle will be able to search the RAV via a VIN. State and territory registration authorities use the VIN as the primary means to identify vehicles, and issue registrations for vehicles on the basis of the VIN.

22. Paragraph 8(c) provides that the applicable entry pathway for each vehicle must be included in the information on the RAV. This provides information to the public about how the vehicle entered the Australian market. This may also include further information, such as the specific eligibility criteria used to gain entry. The RAV will display certain information about the pathway through which the vehicle was entered on the RAV. Having this information publicly available online will support members of the public to understand, for example, whether the vehicle that they are looking to purchase may have some concessions against the national road vehicle standards.
23. Paragraph 8(d) provides that if the entry pathway for a vehicle is the type approval pathway, then the name of the holder of a type approval and the type approval number must also be recorded.
24. The information required under paragraph 8(d) may support, for example, the conduct of a compulsory recall. If a recall notice is in place for road vehicles supplied under a road vehicle type approval, the Department may be able to search the RAV via the name of the holder of the approval and the approval number. This ability to search via the name and approval number will assist in identifying road vehicles covered by a recall notice.
25. Holders of road vehicle type approvals may either be individuals or corporations. It is expected that the vast majority of holders of road vehicle type approvals will be corporations. However, holders of road vehicle type approvals who applied as individuals rather than under a corporation name should be aware that their name and type approval number will be publicly available on the RAV.
26. The introduction of the RAV is a crucial part of the reforms. It will provide the public with an easily accessible source of information about road vehicles that any person is interested in potentially purchasing. Through the RAV, any person will be able to check whether a vehicle advertised for sale is the vehicle that the VIN belongs to and the pathway through which the vehicle was provided to the Australian market. In practice, this means any person can identify whether a vehicle was entered on the RAV via the type approval pathway or concessional RAV entry pathway.
27. The RAV will also support the improved compliance and enforcement powers contained in the Act. It will increase the efficiency and effectiveness of the Government's compliance monitoring efforts by, for example, providing an accurate and timely source of information by recording the point in time that a manufacturer declares that the requirements of the RAV entry pathway have been met.

## **9 – Who may enter information on RAV**

28. This section sets out who may enter information on the RAV, depending on which applicable entry pathway a road vehicle is used to enter a vehicle on the RAV.
29. Subparagraph 19(1)(a)(i) of the Act provides that the Rules must provide for or in relation to the keeping of the RAV, including the content of the RAV and the persons who may enter information on the RAV. This section satisfies the requirement for the Rules to provide for the persons who may enter information on the RAV.
30. It is a contravention of a civil penalty provision under subsection 17(4) of the Act for a person to enter information on the RAV that relates or purportedly relates to a vehicle, when that person is not authorised by these Rules to enter the information on the RAV.

It is also an offence under subsection 17(1) of the Act for the person to do so, knowing that they were not authorised by the Rules to enter the information on the RAV.

31. Paragraph 9(1)(a) empowers the Secretary of the Department to enter a vehicle on the RAV for any applicable entry pathway. This power may be exercised in circumstances, for example, where a specific vehicle is not on the RAV because of a software error. If the Secretary is satisfied that the vehicle should be added to the RAV, then this provision allows for this to occur. The vehicle would still have to meet the requirements of an entry pathway set out under the Rules. This provision is not intended to be used as a discretionary power for the Secretary to enter vehicles on the RAV.
32. For the type approval pathway, the holder of the approval, or a person authorised by the holder of the approval, may enter road vehicles covered by the road vehicle type approval on the RAV. Any authorisation by the holder of a type approval for another person to enter road vehicles on the RAV is required to be in writing.
33. In relation to the concessional RAV entry approval pathway, an Authorised Vehicle Verifier (AVV) is empowered under paragraph 9(c) to enter vehicles on the RAV. This power for AVVs to enter vehicles on the RAV is expected to be largely used in relation to certain vehicles modified or manufactured by the holder of a RAW approval and verified by an AVV, at which point the requirements of the relevant entry pathway have been met.
34. There may also be other approvals where it is a condition that an AVV must verify, and then if satisfied with the inspection, enter a vehicle on the RAV. This may be the case, for example, where the holder of a concessional RAV entry approval uses an AVV to ensure the vehicle to which the approval is subject meets certain standards or requirements.
35. For the purposes of paragraph 9(1)(b) or (c), if information is entered on the RAV then it is taken to have been collected by the Secretary. This may be relevant, for example, for the purpose of establishing how the *Privacy Act 1988* applies.

#### **10 – Certain information on RAV to be publicly accessible**

36. Paragraph 19(1)(b) of the Act sets out that the Rules may provide for or in relation to the publication of information on the RAV. Section 10 of the Rules is made in accordance with that requirement.
37. This section requires the Secretary to establish a website that will allow the public to search parts of the Register of Approved Vehicles. The Secretary must ensure that a person is able to enter a VIN for a vehicle and, if there is an entry on the RAV in relation to the vehicle, to be able to assess specific information about the vehicle.
38. The following information in a vehicle's RAV entry must be publicly accessible by VIN search:
  - the date of entry on the RAV;
  - the entry pathway for the vehicle;
  - if the entry pathway was the type approval pathway, then the name of the holder of the road vehicle type approval and the approval number for the road vehicle type approval;

- any other information required by a determination made under section 12 of the Rules and is permitted under the determination to be made publicly accessible.
39. Users of the RAV, in particular people purchasing vehicles and registration authorities, are able to ascertain the pathway through which a road vehicle was entered on the RAV and therefore able to be provided to the Australian market.
40. An individual or corporation can make an application for the grant of a road vehicle type approval. Under section 10(c), holders of road vehicle type approvals will have their name published online. This means that the holder of a road vehicle type approval who is an individual will have their name published on the RAV. It is expected that the vast majority of holders of road vehicle type approvals will be corporations – however, an individual that is the holder of a road vehicle type approval must be aware that their name will be publicly available on the RAV. Alternatively, an individual wishing to protect their privacy may seek a different approval, such as via the concessional RAV entry pathway, which carries greater scrutiny of individual vehicles, requires less public accountability, and so does not require the publication of personal information.
41. Any publication of information on the RAV (including under this section of the Rules, or in accordance with a determination made under section 12 of the Rules) will be in accordance with the requirements of the Act, including the following
- Section 65 of the Act provides for persons to whom the Secretary may give information, a record or document, obtained in the performance of functions or exercise of powers by a person under the Act. For the purposes of the RAV, paragraphs 65(a) to (g) of the Act outline bodies or authorities with which the Secretary is expressly authorised by subsection 65(1) to share information. Bodies or authorities included are, for example, state and territory registration authorities, the Australian Competition and Consumer Commission (ACCC) or a body responsible for maintaining the RAV. This is not intended to limit certain information on the RAV from being made publicly available, as section 19(1)(b) of the Act allows for the Rules to provide for or in relation to the publication of information on the RAV.
  - Disclosure of information on the RAV to bodies outlined in paragraphs 65(a) to (g) will be necessary for varying reasons. For example, if a recall notice has been issued, the Department may work in conjunction with the ACCC. In such circumstances, it is necessary that the Secretary be able to share information on the RAV to the ACCC for the purposes of public health and safety.
  - It is important to note that subsection 65(3) of the Act prohibits road vehicle information on the RAV, disclosed to a body or authority under subsection 65(1), from being used or disclosed for a commercial purpose.
  - Subsection 82(5) of the Act anticipates that personal information may be published on the RAV, and requires the Minister to consult with the Australian Information Commissioner before the Minister makes Rules that relate to the collection, use, disclosure or publication of personal information on the RAV, or making Rules for the purpose of paragraph 65(1)(g) of the Act, prescribing to whom the personal information may be disclosed. The Minister was required to have regard to this consultation when making these Rules.

## **11 – Correction of errors on RAV**

42. Section 11 provides a process for the correction of errors on the RAV. The correction of errors on the RAV is a function necessary for the keeping of the RAV, which section 19(1)(a)(i) of the Act requires that the Rules must provide for or in relation to.
43. The RAV is the core element of the Act. It is the means by which the approval for a vehicle to be provided to the Australian market is recorded and evidenced. The public, industry stakeholders and state and territory registration authorities will rely on the RAV to as a source of information regarding whether certain vehicles meet the national road vehicle standards for safety, environmental and anti-theft and may be suitable to be registered for use on public roads. The RAV could also be used by Commonwealth authorities such as the Department of Home Affairs to assist in the examination and assessment of imported goods.
44. Subsection 11(1) provides that if the Secretary is satisfied that an error exists in the information on the RAV, the Secretary can correct the information by varying the entry. This includes the ability to remove a vehicle from the RAV.
45. Subsection 11(2) allows the Secretary to authorise the person who made the entry on the RAV to correct an error, provided they were authorised to enter the information under paragraph 9(1)(b) or (c) of the Rules.
46. Any person may notify the Secretary of an error on the RAV. Where the Secretary is satisfied that there is an error in the RAV entry, the Secretary may cause the information on the RAV to be varied, including by giving written permission to the holder of a road vehicle type approval or AVV approval to vary the RAV entry. In this case, the holder of an approval should vary the RAV entry as soon as reasonably practicable. It is expected that the RAV will display a record of when an entry has been varied.
47. One of the intentions of this section is to prevent the holder of an approval from dishonestly entering information on the RAV and later varying it to reflect the correct details related to that road vehicle. Additionally, this subsection allows the Secretary to keep a record of changes to RAV entries. The Department may also consider whether a section of the Act has been contravened and whether an enforcement response is appropriate. This could include giving an infringement notice, or in more serious cases, applying to a court for a civil penalty order or referring the matter for criminal prosecution.
48. Subsection 11(3) provides that information on the RAV cannot be varied unless it is in accordance with this section. A holder of an approval or a person authorised in writing by the holder of an approval cannot vary a RAV entry on their own accord without permission from the Secretary.
49. Error should be interpreted broadly in relation to this section. This could include an error such as clerical or typographical error. An error could also extend to where it is found that a RAV entry has been made on a fraudulent basis.

## **12 – Determination – information to be included on RAV etc.**

50. Subsection 12(1) provides the Minister with the power to determine, by legislative instrument, what information must be included on the RAV and whether such information is to be publicly accessible. Section 19(1) of the Act states, inter alia, that the Rules must provide for or in relation to the content of the RAV, and may provide

for or relation to the publication of information on the RAV. This section of the Rules provides in relation to the content of information on the RAV and its publication, by empowering the Minister to make a determination setting out these matters in further detail.

51. Subsection 12(2) allows, for the purposes of subsection 12(1), a determination to made for different information to be included on the RAV for different kinds of vehicles or for different entry pathways.
52. The intention of this section is to allow the Minister to determine what information should be included on the RAV for either all road vehicles, a class of road vehicles or a specific road vehicle. This determination making power is necessary to respond to the diversity of vehicle types and the information that is considered relevant for each type of vehicle.
53. For example, Gross Vehicle Mass is relevant information for a heavy passenger or commercial road vehicle. However, such information is not relevant to light or passenger road vehicles. Similarly, aggregate trailer mass is an important piece of information for all trailers but is not relevant to other road vehicles.
54. As the use of the RAV progresses, it is necessary for the Minister to have the ability to determine what information should be included. This flexibility allows the Department to respond to emerging technologies. For example, as autonomous vehicle technologies emerge, the Minister may require that information about a vehicle's computer system be specified in its RAV entry. There may also be circumstances where the Minister makes a determination, for example, that vehicles entered on the RAV via the concessional RAV entry pathway must have the country of origin included in the information being recorded on the RAV.
55. Where a determination made under this power requires personal information to be published, as per subsection 82(5) of the *Road Vehicle Standards Act 2018*, the Minister must consult with the Information Commissioner and have regard to any submissions made by the Information Commissioner before making the determination.

### **Part 3 – Entry on RAV via entry pathways**

#### **Division 1 – Introduction**

##### **13 – Simplified outline of this Part**

56. This section provides a simplified outline of Part 3 of the Rules.

##### **14 – Purpose of this Part**

57. Paragraphs 19(2)(a) and (b) of the Act set out that the Rules may provide for or in relation to matters including the grant of approvals to enable vehicles to satisfy the requirements of pathways for the entry of vehicles on the RAV (including the type approval pathway and other entry pathways), and the conditions of such approvals.
58. Section 14 of the Rules outlines the purpose of this Part of the Rules. This Part provides for and in relation to the requirements of the type approval and concessional RAV entry pathways, the grant of approvals for road vehicle type approvals and concessional RAV entry approvals, and the conditions of such approvals, in accordance with paragraphs 19(2)(a) and (b) of the Act.

## Division 2 – Type approval pathway

### Subdivision A – Requirements of the type approval pathway

#### 15 – Type approval pathway

59. Section 15 sets out the requirements to satisfy the type approval pathway.
60. Vehicles (including trailers) covered by a road vehicle type approval are vehicles that fully or substantially comply with national standards (only departing from them in minor or inconsequential respects, or not posing a risk to public safety and being suitable for use on a public road in Australia), and are approved for volumetrically unrestricted supply to the Australian market. The type approval pathway will be the most used pathway for vehicles being entered on the RAV before being provided to the Australian market.
61. Vehicles being entered on the RAV via the type approval pathway need not necessarily be road vehicles within the definition of ‘road vehicle’ in section 6 of the *Road Vehicle Standards Act 2018* and any determinations made by the Minister under section 6 of the Act. Vehicles covered by a type approval become road vehicles by virtue of being entered on the RAV. This is not the case for the concessional RAV entry pathway. Section 31 of the Rules sets out that only a road vehicle may meet the requirements of the concessional RAV entry pathway, only road vehicles are specified in the eligibility criteria for grant of a concessional RAV entry approval.
62. A person applying for the grant of a road vehicle type approval under Part 3, Subdivision B of the Rules will need to make an application in respect of a type of make and model of vehicle. For example, XYZ Cars is the make of vehicle. XYZ Cars wish to introduce their model, the “AA” into the Australian market. To do so, XYZ Cars would have to apply for the grant of a road vehicle type approval. The application for a road vehicle type approval can only be made for their “AA” model. If XYZ Cars wished to also introduce their “B” model, they would have to make a separate road vehicle type approval application. A road vehicle type approval can relate to different variants of a model, provided that none of the variants are so different that they should be considered a different model.
63. Subsection 15(1) provides that a vehicle of a particular type satisfies the requirements of the type approval pathway if, immediately before the road vehicle is entered on the RAV, the road vehicle satisfies the criteria set out in paragraphs 15(1)(a) to (f).
64. The requirement set out in paragraph 15(1)(a) is that there is a road vehicle type approval in force that applies to the relevant road vehicle. For example, if XYZ Cars wishes to enter a fleet of “AA” model vehicles on the RAV, then a road vehicle type approval must be in force for the “AA” model. If there is not a road vehicle type approval in force for XYZ Cars’ “AA” model at the time the vehicles are entered on the RAV, then it is likely that XYZ Cars would have contravened subsection 15(1) of the Act. If XYZ Cars have authorised another person in writing to enter the vehicles on the RAV and a road vehicle type approval is not in force when the vehicles are entered on the RAV, then XYZ Cars would have likely contravened subsection 15(2) of the Act.
65. Paragraph 15(1)(b) requires that the design and componentry of the vehicle is in accordance with design and componentry set out in any version of the supporting information under the road vehicle type approval that exists immediately before the

vehicle is entered on to the RAV. That supporting information documents test results that demonstrate the vehicle's compliance with the applicable road vehicle standards. Any significant changes to the design and componentry of the vehicles covered by the type approval must involve updates to the supporting information held by the holder of the approval that demonstrates the vehicle's compliance with applicable national road vehicle standards despite the design change.

66. This means that XYZ Cars must ensure that each individual road vehicle entered on the RAV under their road vehicle type approval has the same design and componentry that is set out in supporting information for the road vehicle type approval, including any updates to the supporting information made up to the point immediately before the vehicle is entered on the RAV. For example, XYZ Cars must ensure that the steering assembly used in each "AA" model vehicle has the design and componentry set out in the supporting information for the road vehicle type approval of their "AA" model, and if the design or componentry needs to change, that is underpinned by supporting information that demonstrates that the vehicle will comply with national road vehicle standards.
67. Paragraph 15(1)(c) requires that the vehicle being entered on the RAV was manufactured in accordance with the manufacturing process set out in the supporting information for the applicable road vehicle type approval.
68. Paragraph 15(1)(d) requires that a vehicle being entered on the RAV via the road vehicle type approval pathway must either:
  - Comply with the applicable national road vehicle standards as in force at the time the vehicle is entered on the RAV, or
  - Comply with the applicable road vehicle standards except in the respects or to the extent that the road vehicle type approval specifies that vehicles of that type are not required to comply with the applicable national road vehicle standards within the meaning of subsection 15(2)
69. The intention of paragraph 15(1)(d), supported by subsection 15(2), is to ensure that vehicles being entered on the RAV via the type approval pathway meet the applicable national road vehicle standards for safety, emissions and anti-theft at the time of entry on the RAV. The Secretary may grant a road vehicle type approval in respect of a particular type of vehicle that substantially complies with the national road vehicle standards but there are minor and inconsequential non-compliances with the national road vehicle standards. The Secretary may also grant a road vehicle type approval in respect of a particular type of vehicle that substantially complies with the national road vehicle standards and is suitable for use on a public road (also known as for a type of vehicles that are 'non-standard'). In these situations, the road vehicle type approval must specify the respects or extent to which the vehicle type can be non-compliant with the national road vehicle standards. If the individual vehicle complies with the national standards in every other respect, then the vehicle satisfies the requirements of this paragraph.
70. Paragraph 15(e) requires a vehicle being entered on the RAV via the type approval pathway to be a new vehicle. The type approval pathway has been designed for new vehicles only. Used vehicles may be eligible for RAV entry if they meet the requirements of the concessional RAV entry pathway. 'New vehicle' is a defined term.

71. Paragraph 15(f) requires a vehicle being entered on the RAV via the type approval pathway to either be in Australia unless the road vehicle type approval that applies to the vehicle states that vehicles of the relevant type can be entered on the RAV when outside Australia. This is intended to be used in circumstances where the Secretary is satisfied that the vehicle will be subject to a process of second stage of manufacture outside Australia.
72. For the type approval pathway, only the holder of the road vehicle type approval, a person authorised in writing by the holder of the approval, or the Secretary may enter a vehicle on the RAV (see section 9).

## **Subdivision B – Application for, and grant of, road vehicle type approval**

### **16 – Application**

73. This section sets out that a person can apply to the Secretary for the grant of a road vehicle type approval.
74. A road vehicle type approval allows the holder of the approval to provide unrestricted volumes of vehicles to the Australian market. Holders of road vehicle type approvals are given significant freedoms to import and provide vehicles without each vehicle being inspected. For example, holders of road vehicle type approvals can import thousands of vehicles per year with no individual vehicle checks. In return, high standards for integrity and honesty are required of, and more onerous requirements are imposed on, such persons.
75. This pathway allows holders of road vehicle type approvals, or a person authorised by the holder of a road vehicle type approval, to enter vehicles of a particular type on the RAV. A type is generally considered to be one model.
76. An application for the grant of a road vehicle type approval must be made in the approved form, and be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide the application, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The fee is designed to recover the cost of assessing the application.
77. A road vehicle type approval application also requires the applicant to provide a signed declaration. The declaration must state that:
  - at the time the application is made, the person is able to provide the supporting information for the road vehicle type approval;
  - while the road vehicle type approval is in force, and for a period of seven years after the approval expires, the person will be able to provide the original and any subsequent versions of the supporting information;
  - while the road vehicle type approval is in force, the person will ensure that the supporting information is kept up-to-date.
78. The form may require a further declaration, for example about whether certain matters are true, or the accuracy of the information provided.
79. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an

enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

80. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

#### **17 – Further information and inspection of premises etc.**

81. When the Secretary is considering an application for the grant of a road vehicle type approval this section makes it clear that the Secretary can request further specified information relevant to the application. This section also ensures the Secretary can request for the Secretary or an inspector to inspect premises where vehicles or components of vehicles of that type are designed or manufactured. It also ensures the Secretary can request for the Secretary or an inspector to inspect vehicles or vehicle components of vehicles of that type. Information that may be requested when assessing an application might include:
- further information about a type of vehicle’s supporting information
  - full test report for evidence of complying with national road vehicle standards, rather than a summary of testing evidence
  - further information regarding their conformity of production system
82. Due to the volume of vehicles that are entered on the RAV via the type approval pathway, it is essential that the Secretary or an inspector is able to undertake necessary checks to ensure that the road vehicles provided through this pathway meet the necessary safety, anti-theft and environment standards. There may be some applications for the grant of a road vehicle type approval, however, where the Secretary may require further information before considering the application. This power to request further information is necessary due to the vast array of road vehicles that will enter the Australian market under the type approval pathway.
83. The suitability of premises is directly related to the applicant’s ability to be granted a road vehicle type approval. Premises that may be inspected include where vehicles or vehicle components of vehicles of that type are designed or manufactured. It also allows for the Secretary or an inspector to inspect vehicles of that type, or vehicle components of vehicles of that type. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the road vehicle type approval. The applicant may refuse to provide access to premises; however, section 18 means that the Secretary may refuse to consider the application.
84. Subsection 17(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person’s application if the person does not comply with the request within the stated period.
85. The request must be complied with within 30 days, although the Secretary may specify a longer period, for example, if the request is particularly complex or extensive or requires international travel to complete.

## **18 – Secretary may refuse to consider application in certain circumstances**

86. Paragraph 18(a) sets out that the Secretary may refuse to consider an application for a road vehicle type approval if the application does not comply with subsection 16(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
87. Paragraph 18(b) sets out that the Secretary may refuse to consider an application for a road vehicle type approval if the applicant does not comply with a request made under section 17 within 30 days or a longer period if specified by the Secretary or an inspector, for example a request for further information or to allow or arrange for the Secretary or an inspector to inspect premises.
88. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
89. Section 230(a) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a road vehicle type approval.

## **19 – Criteria for deciding application**

90. Section 19 sets out the criteria that the Secretary may consider when deciding an application for the grant of a road vehicle type approval, as follows:
  - Subsection 19(1) prescribes the core requirements the Secretary must consider when deciding whether to grant or not grant a road vehicle type approval.
  - Subsection 19(2) outlines the kind of matters the Secretary may take into account when deciding whether a vehicle complies or substantially complies with the national road vehicle standards.
  - For vehicles that do not comply with some or all applicable national road vehicle standards, subsection 19(3) provides for the circumstances where non-compliance is appropriate.
  - Subsection 19(4) provides further information that is applicable in some circumstances where a road vehicle type approval application is made for a vehicle that does not meet all of the national road vehicle standards.
91. To understand the necessity of the requirements set out in subsection 19(1) it is important to understand the overarching concept of a road vehicle type approval. A road vehicle type approval allows unrestricted supply of vehicles that are of a particular ‘type’. Sufficient testing to satisfy the Secretary that vehicles covered by the road vehicle type approval will comply with national road vehicle standards will be required, for example testing to cover all variants covered by the approval. The holder of a road vehicle type approval then has to be able to satisfy the Secretary that they can make not just one of that ‘type’ of vehicle, but rather they have sufficient control over the manufacture of that type of vehicle, such that every vehicle of that type that is produced will perform the same way or better in relevant tests as the tested vehicle. This extrapolation of evidence from an individual test vehicle to many vehicles is the central premise of road vehicle type approvals. The ability to meet this extrapolation test is captured by the kinds of matters that the Secretary must take into account when considering whether to grant a road vehicle type approval.

92. Paragraph 19(1)(a) sets out that, in the first instance, the Secretary must be satisfied that the type of vehicle in relation to which the road vehicle type approval will be granted will comply with all applicable national road vehicle standards. There are limited circumstances in which types of vehicles that do not comply with national road vehicle standards can be granted a road vehicle type approval. These circumstances are set out in subsections 19(3) and (4).
93. Paragraph 19(1)(b) sets out a requirement that the applicant has control over all stages of the design, componentry, and manufacturing process for the type of vehicle. This control over the design and manufacturing process is vital for satisfying the Secretary that the applicant is capable of producing vehicles in accordance with a conformity of production process, and has control over any changes in the vehicle's design. This is fundamentally important to the extrapolation of test evidence to every vehicle that will be produced by the holder of a road vehicle type approval.
94. Paragraph 19(1)(b) also recognises that there are diverse business models in the road vehicle type approval space. Entities may not directly control, say, a certain production facility for a certain component. The Secretary is able to recognise this and instead be satisfied that the holder of a road vehicle type approval can, at the very least, access information about the design, componentry and manufacturing process for that component that may affect the relevant vehicle type's compliance with the national road vehicle standards. This must include information about any changes to these aspects of design etc.
95. Paragraph 19(1)(c) requires that, in addition to exerting control over, or having access to information about design, componentry and manufacturing process, the applicant is able to ensure that the design, componentry and manufacturing process is consistent. This is about making sure that the right components are used in the right order to make sure each vehicle of that type that is produced matches the vehicle that was tested to the national road vehicle standards. Again, this might not involve the holder of a road vehicle type approval carrying out the entire manufacturing process: the Secretary may be satisfied that there is a contractual arrangement in place between the applicant and a vehicle manufacturer under which the manufacturer is required to meet conformity of production standards.
96. Paragraph 19(1)(d) requires the applicant to be able to provide access to manufacturing premises for the purpose of determining whether the vehicle complies with the national road vehicle standards, or other matters related to compliance with the Act or instruments under the Act. A road vehicle type approval cannot be granted to an entity that is unable to arrange for access to manufacturing facilities for the vehicle. Being able to provide access to all design and manufacturing facilities is a vital responsibility for holders of road vehicle type approvals. The breadth of facilities to which they must be able to arrange access goes to the complexity of the modern vehicle supply chain, where networks of subcontractors may be producing vital safety components for the holder of a road vehicle type approval. The Secretary must be satisfied that the applicant can arrange this sort of access to be satisfied that they have sufficient control over, and access to, their supply chain. This access is only for the purpose of assessing compliance with national road vehicle standards and this legislation. Holders of road vehicle type approvals do not, for example, have to satisfy the Secretary about access arrangements for other purposes.

97. An example of how paragraphs 19(1)(a), (b), (c) and (d) might be satisfied in situations where the applicant is not the direct manufacturer is as follows. A motorcycle manufacturer might produce motorcycles for a number of different distributors. A company in Australia might wish to supply a type of motorcycle to the Australian market and seek a type approval for it, even though they do not own or operate the design and manufacturing facilities for that vehicle. The Secretary may be able to grant a road vehicle type approval, but the applicant would need to satisfy the Secretary that they had arrangements in place with the designer and manufacturer of the vehicle. That relationship would need to be such that the holder of a road vehicle type approval has all relevant information about the design, componentry and manufacture of the vehicles, knows about all changes to the design, componentry and manufacture of the vehicles and has an arrangement in place to ensure conformity of production. In addition, that company would need to have an arrangement with the manufacturer under which it could arrange access to any premises associated with the manufacture of the vehicle for the Secretary or an inspector to assess compliance with the applicable national road vehicle standards and any other relevant requirements under the Act, Rules or any instrument under the Act or Rules.
98. Paragraphs 19(1)(e) and (f) set out that the Secretary needs to be satisfied that the applicant will be able to maintain and supply all versions of supporting information to the Secretary, while the road vehicle type approval is in force, and for seven years after its expiry. This goes to the applicant's record management capabilities, as well as their ability to generate appropriate records. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
99. Paragraph 19(1)(g) requires the Secretary to be satisfied of the applicant's ability to satisfy conditions, such as the conformity of production condition and ongoing compliance with the national road vehicle standards.
100. Subsection 19(2) sets out the type of evidence that the Secretary can consider when determining whether a type of vehicle complies with the national road vehicle standards. This, in essence, sets out the standard of acceptable evidence. This includes testing that is conducted by approved testing facilities, testing conducted in accordance with UN agreements, approved road vehicle components, Model Reports that relate to the vehicle and declarations made by the applicant. In addition, the Secretary can consider information that goes to the accuracy of test evidence, component approvals, and declarations. The Secretary cannot take into account other matters when it comes to consideration of subparagraph 19(1)(a)(i) and paragraph (3)(a), despite section 20.
101. Paragraph 19(2)(e) is intended to ensure that heavy trailer manufacturers can use a Model Report to demonstrate compliance with national road vehicle standards.
102. Paragraph 19(2)(f) is intended to allow the Secretary to take into account existing road vehicle type approvals when deciding an application for the grant of a road vehicle type approval. For example, road vehicle type approvals held by people other than the applicant may be considered for the purpose of granting a road vehicle type approval for new vehicles to be subject to second stage of manufacture.
103. Paragraphs 19(2)(g) allows the Secretary to take into account any matter or thing specified in an applicable national road vehicle standard to be acceptable as evidence

- of compliance with that standard, or an element of that standard, as in force at the time the Secretary decides the application.
104. Paragraph 19(2)(h) allows the Secretary to take into account any information about whether the matters mentioned in paragraphs 19(2)(a) to (g) demonstrate that vehicles of the type to which the application relates comply with the applicable national road vehicle standards. For example, the Secretary may take into account the fact that a testing facility has or may have breached road vehicle legislation when considering whether a testing report from that facility demonstrates whether the vehicle to which that testing relates complies with the applicable national road vehicle standards.
  105. Paragraph 19(2)(i) allows the Secretary to take into account any information relevant to assessing the accuracy of the matters in paragraphs 19(2)(a) to (g). For example the Secretary may take into account information that suggests that a declaration made in an application to satisfy any of the matters in 19(2)(a) to (g) is false or misleading.
  106. The purpose of paragraphs 19(2)(h) and (i) are to ensure that the Secretary is not unnecessarily impeded in decision making, and may take into account relevant considerations that are related to the other factors in 19(2), for example the likely compliance or accuracy of information presented paragraphs 19(a) to (g).
  107. Subsections 19(3) and (4) set out the circumstances in which the Secretary can grant a road vehicle type approval in relation to a type of vehicle, where the type of vehicle does not comply with the applicable national road vehicle standards. The first circumstance is where the road vehicle subject to the application substantially complies with applicable national standards and the vehicle's non-compliance is only in minor or inconsequential respects. This may also be referred to as a 'standard vehicle with minor and inconsequential non-compliance'.
  108. The second circumstance is where the type of vehicle substantially complies with applicable national standards, and this compliance is to an extent that makes it suitable for use on a public road in Australia. A type of vehicle complies with applicable national road vehicle standards to an extent that makes it suitable for use on a public road in Australia if the vehicle would not pose an unacceptable risk to public safety and would be appropriate for such use. This may also be commonly known as a 'non-standard' type of vehicle.
  109. An example where subsections 19(3) and (4) may apply is if a person was seeking a road vehicle type approval for an emergency services vehicle that complied with some but not all applicable road vehicle standards, and if it was required to comply with all applicable national vehicle standards, it would not be able to perform a function that it was designed or manufactured to perform. If the Secretary was satisfied it complied with applicable national road vehicle standards to the extent that made it suitable for use on a public road, namely it would not pose an unacceptable risk to public safety and would be appropriate for use as an emergency services vehicle on public roads, the Secretary may decide to grant an approval.
  110. Subsections 19(3) and (4) may also allow for the grant of road vehicle type approvals covering vehicles that are over-width, but where the state or territory is willing for these to be used on public roads for a particular purpose.
  111. In considering whether paragraph 19(3)(b) is satisfied, the Secretary can, due to the operation of paragraph 20(c), take into account any other matter that the Secretary considers relevant. For example, the Secretary could consult with state and territory

registration authorities as to whether a type of vehicle would be suitable for use on a public road. If state and territory registration authorities considered the vehicle unsuitable (e.g. because it would pose a risk to public safety), the Secretary could take this into account in deciding whether to grant or refuse the relevant road vehicle type approval application.

112. Section 230(b) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant an application for a road vehicle type approval.

## **20 – Other considerations**

113. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of a road vehicle type approval.
114. The Secretary can consider whether the person – or if the applicant is a body corporate, any key management personnel of the corporation – has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation has, or may have, contravened this legislation, the Secretary may take this into account in deciding whether to grant or refuse the relevant application. Key management personnel is a defined term in section 5 of the Rules.
115. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 20(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant’s suitability to hold a road vehicle type approval.
116. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary’s consideration of the application.
117. Paragraph 20(c) also allows the Secretary to take into account any other matter that the Secretary considers relevant in deciding whether to grant or refuse to grant a road vehicle type approval to a person. The broad ability to take into account other relevant matters is required given the complexity and diversity of different vehicles in relation to which applications for road vehicle type approval applications may be received. It also allows the Secretary to respond to the rapidly changing automotive technology landscape. It is important to note that the other matters must be relevant to the applicant’s ability to fulfil the requirements of the approval.

118. Despite section 20 allowing other relevant matters to be taken into account, there is a specific limitation to this. When assessing a type of vehicle's compliance with the applicable national road vehicle standards the Secretary can only take into account the matters listed at subsection 19(2).

## **21 – Timeframe for deciding application**

119. This section provides that a decision on an application must be made by the Secretary within 60 business days after receiving the application.
120. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants. The level of scrutiny of road vehicle type approval applications is proportionate to the fact that unlimited volumes of vehicles may be entered on the RAV and provided to the Australian market under a type approval.
121. It also provides that the 'clock' measuring 60 business days will stop when the Secretary makes a request for further information or to inspect premises under section 17 and will resume once the request has been complied with by the applicant in full.

## **22 – Period of road vehicle type approval**

122. This section provides that a road vehicle type approval will remain in force for a period of seven years, unless otherwise revoked earlier. A road vehicle type approval will commence on the day specified in the approval, allowing the Secretary to set a start date for the approval.

## **23 – Notice requirements for grant of road vehicle type approval**

123. This section requires the Secretary to notify an applicant if their application for the grant of a road vehicle type approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:
- the road vehicle type approval number
  - the name of the holder of the road vehicle type approval
  - the national road vehicle standards applicable to the type of vehicle
  - the respects in which, or the extent to which, vehicles of that type are not required to comply with the applicable national road vehicle standards in order to be entered on the RAV under the road vehicle type approval
  - the conditions to which the road vehicle type approval is subject
  - the day that the road vehicle type approval comes into force
  - that the road vehicle type approval expires at the end of the period of seven years after it comes into force, unless it is revoked earlier
124. This section requires the Secretary to specify in a road vehicle type approval any conditions to which the approval is subject. While Subdivision C sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to

the application or matters related to the application, or to advancements in vehicle technology.

125. For example, an applicant may apply for the grant of a road vehicle type approval for a fully autonomous vehicle. In such a situation, depending on how the vehicle is constructed, the Secretary may wish to impose specific conditions about how the autonomous system should be manufactured and updated. This ensures the Secretary can respond flexibly to the diverse circumstances that occur when regulating an industry as diverse as the automotive industry.
126. Subsection 23(3) provides that the approval may specify that, under certain circumstances, vehicles of the type covered by the approval may be entered on the RAV when the vehicle is outside Australia. Subsection 23(3) provides for circumstances, for example, where second stage of manufacture under a road vehicle type approval occurs to new vehicles. Approval holders that undertake second stage of manufacture can leverage off existing road vehicle type approvals for the base vehicle, allowing them to hold a road vehicle type approval for the modifications to a base vehicle, without necessarily providing evidence for the base vehicle. This will, in effect, allow second stage of manufacture to occur overseas, consistent with current market practice. It will result in two RAV entries – one for the base model and one for the completed vehicle.
127. As per section 223, a road vehicle type approval is a matter of public record and is published on the Department's website. This will involve the publication of the name and contact details of the holder of the road vehicle type approval on the Department's website. Holders of road vehicle type approvals can be individuals or corporations, however it is expected the vast majority of holders of road vehicle type approvals will be corporations. Individuals who apply for the grant of a road vehicle type approval will be made aware that, if successful, their name and contact details will be publicly available on the Department's website.
128. The publication of the name of the holder of an approval is an important part of the accountability for holders of road vehicle type approvals. Holders of road vehicle type approvals have significant privileges granted to provide vehicles that comply with safety, environmental, and anti-theft standards. Members of the public must have the ability to know who is accountable for the vehicle that they are driving to ensure they can correctly identify the party responsible for their vehicle's compliance. Therefore, the publication of the name of the holder of an approval, in the rare circumstances that this is personal information, is a reasonable and proportionate way to ensure accountability for the provision of safe and compliant vehicles.

#### **24 – Notice requirements for refusal to grant road vehicle type approval**

129. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
130. Because section 24 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the

findings on material questions of fact and refer to the evidence or other material on which those findings were based.

### **Subdivision C – Conditions applying to road vehicle type approvals**

#### **25 – Conditions of road vehicle type approval**

131. Section 25 states that a road vehicle type approval granted under Subdivision B will be subject to any conditions specified in the approval and conditions set out in Subdivision C.
132. Section 25 makes it clear that any condition specified in the road vehicle type approval, including additional conditions not specified in Subdivision C but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
133. Section 230(c) of the Rules provides that the holder of a road vehicle type approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the road vehicle type approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **26 – Condition about compliance with national road vehicle standards**

134. Paragraph 26(1)(a) creates a condition that the holder of a road vehicle type approval must ensure that the road vehicles covered by the approval comply with the applicable national road vehicle standards. The time that the holder of the approval must ensure that the vehicles comply with those standards is at the time the vehicles are entered on the RAV. The applicable national road vehicle standards are those in force at the time the vehicle is entered on the RAV.
135. Paragraph 26(1)(b) requires the holder of a road vehicle type approval, as a condition of their approval, to be able to produce evidence, at all times, that:
  - demonstrates that, at the time of entry on the RAV, vehicles covered by the approval comply with the applicable national road vehicle standards
  - the Secretary could take into account for the purpose of section 19(2)
136. In effect, the expectation placed on holders of road vehicle type approvals by this section is that for every vehicle they enter on the RAV, they should have supporting documentation applicable to that individual vehicle that demonstrates that the vehicle entered is compliant with the national road vehicle standards. For example, if they have vehicle that is a ‘type X’ vehicle, they would need to have evidence that demonstrates that the individual vehicle was each vehicle being manufactured would perform the same or better in tests as the tested vehicle, and each vehicle would be in accordance with the supporting information related to ‘type X’ vehicles.
137. Section 19 sets out a list of evidence that is acceptable for demonstrating compliance with the national road vehicle standards. This is the kind of evidence that is acceptable for demonstrating compliance under this condition.
138. Subsection 26(2) states that subsection 26(3) applies where the road vehicle type approval specifies that vehicles covered by the approval are not required to comply

with certain applicable national road vehicle standards in certain respects or to a certain extent in order to be entered on the RAV under the approval.

139. Subsection 26(3) mirrors the condition in subsection 26(1) relating to the holder of the approval ensuring compliance with the applicable road vehicle standards and being able to produce evidence that the vehicle complies with these standards, except in the respects, or to the extent, as set out in the approval.
140. Subsections 26(2) and (3) ensure that, where a road vehicle type approval has been granted in relation to a type of vehicle that substantially complies with the national road vehicle standards (i.e. subsection 19(3) applies to the vehicle), the holder of the approval is required to ensure compliance of the vehicles, at the time they are entered on the RAV, with national road vehicle standards to the extent they are relevant to the vehicle (i.e. the extent specified in the road vehicle type approval).
141. For example, a road vehicle type approval may state that vehicles of the relevant type do not need to comply with applicable national road vehicle standards concerning lighting and light signalling devices, for example school buses with flashing lights. A holder of an approval in this situation would be required to ensure that each vehicle covered by the road vehicle type approval complies with all applicable national road vehicle standards, except for those concerning lighting and light signalling devices in the way specified in the approval. While the supporting documentation required by paragraph 26(1)(b) would not have to demonstrate that the vehicle is compliant with the lighting and light signalling device standards, the holder of a road vehicle type approval would still be required by section 27 to have supporting information about the assembly and conformity of production of lighting and light signalling devices in the vehicle .

## **27 – Condition about a conformity of production system**

142. Section 27 states that a condition of a road vehicle type approval is that the holder of the approval implement a conformity of production system. This system must govern the manufacturing process detailed in the supporting information for the road vehicle type approval and must ensure that vehicles of the relevant type satisfy the requirements of the type approval pathway at the time of entry on the RAV.
143. Conformity of production involves control over all stages of a vehicle's design and manufacturing processes to ensure that vehicles provided to the Australian market meet the applicable national road vehicle standards. The intention of this condition is to ensure that the holder of the approval has a system in place that means each vehicle is being produced in a consistent manner to that provided in the supporting information. This means that each vehicle being manufactured would perform the same or better in relevant tests as the tested vehicle, and each vehicle would be in accordance with the supporting information, irrespective if it was the first or last vehicle being made, so that the vehicles being manufactured also meet the national road vehicle standards.
144. When undertaking compliance operations in relation to conformity of production systems, the Department may take a multifaceted approach. For example, the Department may focus an audit on the structure of certain vehicles such as buses, specifically on the grade of steel used and welding points on those vehicles. In such circumstances, the Department may:

- inspect a design centre and information relevant to the design of vehicles by the holder of an approval, then
  - inspect the accounts section of the holder of that approval, to ensure the grade of steel purchased is the same that is outlined in the supporting information, then
  - inspect the instruction documentation used by manufacturing workers in the construction of the vehicle, for example, weld quality and location, and then
  - inspect the steel being used on the manufacturing floor and determine whether the persons constructing the vehicle are following the instruction documentation
145. Members of the public rely on holders of road vehicle type approvals to provide vehicles that are consistent across a fleet of vehicles. It is vitally important that potential vehicle purchasers and vehicle owners have confidence that the vehicle they purchase will perform the same or better than vehicles of that type subject to crash testing, and other tests. This condition assists to ensure that vehicles being supplied to the Australian market are manufactured in a manner that results in consistent compliance with safety, environmental, and anti-theft standards.

#### **28 – Condition about notifying the Secretary of errors in RAV entries**

146. This section requires the holder of a road vehicle type approval, as a condition of their approval, to notify the Secretary of any error in information entered on the RAV under the approval of which they become aware. An accurate and up to date RAV will provide accurate information for the public about how a vehicle (searchable by VIN) entered the Australian market, including whether the vehicle may have some concessions against national road vehicle standards. It will also support the improved compliance and enforcement powers under the Act. The holder of an approval must notify the Secretary as soon as practicable after becoming aware of the error. The notification of an error to the Secretary must be in writing. Errors may include anything from data entry mistakes to fraudulent entries.
147. This condition will assist in assuring that the information kept on the RAV is current and accurate. As holders of road vehicle type approvals or people authorised by holders of road vehicle type approvals will be the main source of information being entered on the RAV, it is essential that such a condition be placed on road vehicle type approvals to ensure that the RAV is accurate and up to date.

#### **29 – Condition about providing information etc. to the Secretary or an inspector**

148. Section 29 requires, as a condition of a road vehicle type approval, that the holder of an approval provides information, documents, and written answers, on request. It also requires, as a condition of a road vehicle type approval, that the holder of an approval allows or arranges for the Secretary or an inspector to inspect premises or things associated with the design or manufacturing process, on request.
149. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with

the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.

150. A request by the Secretary or an inspector must be in writing. It is a condition of a road vehicle type approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
151. While the condition in section 29 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that vehicles which may be used on a public road meet safety, environmental and anti-theft standards. The condition in section 29 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of approval with the conditions of their approvals. This condition also supports the collection of information which may support the broader objectives of the Act, and to support the monitoring of compliance by holders of approvals with their broader obligations under the Act, the Rules, or instruments made under the Act or Rules.
152. Holders of road vehicle type approvals are given significant freedoms to provide unrestricted volumes of vehicles to the Australian market without each vehicle being inspected. Of the 1.2 million vehicles that entered the Australian market in 2017, 98 percent were new vehicles. It is expected that similar volumes of new vehicles will be entered on the RAV via the type approval pathway once the reforms commence. With such a large number of vehicles being entered on the RAV and therefore the Australian market through this pathway, it is essential that the Department can effectively regulate holders of road vehicle type approvals.
153. Section 29 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises or things associated with the design or manufacturing process, unless the Secretary or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
154. Information available to the Secretary or an inspector in connection with requests under section 29 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.

155. The powers under paragraphs 29(a) to 29(d) may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraphs 29(a) to 29(d) allow holders of approvals to provide information in a structured manner within a reasonable period of time.
156. Paragraph 29(a) requires the holder of a road vehicle type approval to provide or arrange access to the original and any subsequent versions of supporting information for a road vehicle type approval, if requested by the Secretary or an inspector. Supporting information sets out in detail how a vehicle complies with applicable national vehicle standards, and is critical to the Secretary's decision whether to grant a road vehicle type approval. The ongoing reference to supporting information by the holder of a road vehicle type approval is critical to their ability to ensure that vehicles are designed and manufactured in a way that complies with the approval for vehicles of that type. It is essential that the Secretary or an inspector can request access to this information for a broad range of purposes. For example, the purpose of such a request may be to ensure that the holder of an approval has access to all supporting information necessary to support a conformity of production system.
157. Paragraph 29(b) requires the holder of a road vehicle type approval to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.
158. It is intended that the phrase "reasonably requires" be interpreted broadly. Holders of road vehicle type approvals have the ability to provide unrestricted volumes of certain types of vehicles to the Australian market, without the oversight of an independent vehicle inspection for each vehicle. Consequently, holders of road vehicle type approvals should expect to produce a broad range of information to satisfy the Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules.
159. Section 29(c) requires the holder of an approval to provide any other information or documents, specified in a request by the Secretary or an inspector. This is subject to the limitation that the information or documents specified in the request must be about vehicles to which the approval applies. The Secretary or an inspector is not limited to requesting information for the purpose of assessing whether the holder of an approval is complying with the Act, Rules or instruments made under the Act or Rules or ensuring the vehicles to which the approval applies comply with applicable national road vehicle standards. A request for information under section 29(c) may be to achieve a different purpose consistent with the objects of the Act, for example, to broadly support the Department's administration of recalls of road vehicles or approved road vehicle components under Part 3 of the Act.

160. Section 29(d) requires the holder of the approval to provide written answers to questions, specified in a request by the Secretary or an inspector. This is subject to the limitation that the holder of the approval only needs to provide written answers to questions about vehicles entered on the RAV under the approval. To provide a written answer to a question, the holder of an approval may be required to provide specific information, or undertake new analysis or research. This may be necessary, for example, where information or documents provided to the Secretary or inspector are difficult to understand without further analysis, research or other work being undertaken. This is not intended to limit the meaning of ‘information’ or ‘documents’ in paragraphs 29(b) or 29(c). For example, a request for information or documents under paragraphs 29(b) or 29(c) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
161. The Secretary or inspector may request a written answer where, for example, they have reason to believe that vehicles of a type covered by a road vehicle type approval are being provided for the first time in Australia without the vehicle being entered on the RAV. In such a case, the Secretary or an inspector may question the holder of a road vehicle type approval about their processes for importing such vehicles under the road vehicle type approval. The Secretary or an inspector may also, for example, request the holder of a road vehicle type approval provide written answers to questions about certain vehicles that have been entered on the RAV and whether they have been fitted with a component, such as an airbag, that may be subject to a recall.
162. Paragraph 29(e) sets a clear expectation, applied consistently and transparently to all holders of road vehicle type approvals, that inspection of relevant premises is also an important part of holding an approval. It does this by requiring the holder of the approval to allow the Secretary or an inspector, on their request, to inspect premises where vehicles covered by a road vehicle type approval, or components of those vehicles, are designed or manufactured. It also allows for the inspection of things associated with the design or manufacturing process of such vehicles and components, including, documents, vehicles and components. These premises are largely commercial or industrial facilities.
163. Paragraph 29(e) has been carefully crafted to limit its application and link it to its objective. It can only be used to access premises and things for the purpose of assessing whether vehicles entered on the RAV under the approval comply with the applicable road vehicle standards.
164. This approach is generally consistent with the Attorney-General’s ‘Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers’, which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.
165. Under section 29(e), an approval holder may be requested to arrange for the Secretary or an inspector to inspect premises of third parties associated with the design or manufacture of vehicles covered by the approval, or components of those vehicles. This section does not directly require third parties to provide access to documents, vehicles, components or premises, nor does it allow the Secretary or an inspector to

enter premises of third parties without the consent of the holder of the approval or the third party. However if the third party does not allow inspection of their premises for the purpose of an inspection, the approval holder may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.

166. Section 29(e) pursues the objective of upholding compliance of vehicles entered on the RAV and their components with national road vehicle standards, including safety, anti-theft and environmental standards. Providing that the Secretary or an inspector may inspect the premises of third parties gives confidence that the holder of an approval has sufficient access to and control over their supply chain. The breadth of design and manufacturing facilities to which holders of approvals must be able to arrange access goes to the complexity of the modern vehicle supply chain, where networks of subcontractors may be producing vital safety components for holders of approvals. Control by the holder of an approval ensures that the appropriate quality controls can be established and monitored in support of the compliance objective.

### **30 – Condition about keeping up-to-date records of supporting information**

167. Section 30 sets a condition on the holder of a road vehicle type approval that they must:
- keep a record of the original and any subsequent versions of supporting information for the approval for a period of seven years after the approval expires or is revoked
  - ensure that the supporting information for the approval is kept up-to-date while the approval is in force
168. This condition does not require the holder of a road vehicle type approval to constantly be providing all their original or subsequent versions of supporting information to the Secretary or an inspector. The intention of this condition is to ensure that holders of road vehicle type approvals have proper systems in place to develop, maintain, and store supporting information, and provide these to the Secretary as required.
169. For example, the Secretary or an inspector may want access to supporting information that relates to the critical components that affect performance of the vehicle against the applicable national road vehicle standards and the design change controls that relate to those critical components. As a further example, the holder of a road vehicle type approval is required to have all supporting information in relation to the grade of steel used in the manufacturing of a road vehicle type approval road vehicle up-to-date and available, including the original and subsequent versions.
170. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.

### **Division 3 – Concessional RAV entry approval pathway**

#### **Subdivision A – Requirements of the concessional RAV entry approval pathway**

##### **31 – Concessional RAV entry approval pathway**

171. Paragraph 19(1)(a) of the Act sets out that the Rules must provide for the requirements of an entry pathway (i.e. a pathway for a vehicle to be entered on the RAV if the requirements for that pathway are met). This Subdivision provides for the requirements of the concessional RAV entry pathway, as required by the Act.
172. Paragraphs 19(2)(a) and (b) of the Act set out that the Rules may provide for or in relation to matters including the grant of approvals to enable vehicles to satisfy the requirements of pathways for the entry of vehicles on the RAV (including other entry pathways), and the conditions of such approvals. The concessional RAV entry pathway is an ‘other entry pathway’ for the purpose of paragraph 19(2)(a)(ii) of the Act.
173. The Rules recognise that there are certain situations where a vehicle may be appropriate for entry on the RAV, and therefore suitable for use on a public road, even though the requirements of the type approval pathway are not met. This Division sets out the second pathway for a vehicle to be entered on the RAV – the concessional RAV entry pathway.
174. This pathway is for road vehicles that are not provided to the Australian market under a road vehicle type approval and either do not meet all of the applicable national road vehicle standards, or have not provided the Secretary with sufficient evidence that the vehicles meet the applicable national road vehicle standards. All vehicles provided via the concessional RAV entry pathway are taken to be provided with a concession against the full compliance required by the type approval pathway.
175. The concessional RAV entry approval pathway includes vehicles 25 years or older, vehicles to be modified by the holder of a Registered Automotive Workshop (RAW) approval (for example, certain specialist and enthusiast vehicles), special purpose vehicles, personal effects vehicles, trailers in limited numbers, and road vehicles that are otherwise suitable for entry on the RAV.
176. Vehicles being entered on the RAV via the concessional RAV entry pathway must be road vehicles before entry on the RAV within the definition of ‘road vehicle’ in section 6 of the *Road Vehicle Standards Act 2018* and any determinations made by the Minister under section 6 of the Act. Section 31 of the Rules sets out that a road vehicle may meet the requirements of the concessional RAV entry pathway, and road vehicles are specified in the eligibility criteria for grant of a concessional RAV entry approval. This is not the case for vehicles being entered on the RAV via the type approval pathway. Vehicles covered by a type approval become road vehicles by virtue of being entered on the RAV and do not necessarily need to be road vehicles at the time they are entered on the RAV.
177. Section 31 of the Rules sets out, at a high level, how a vehicle is entered on the RAV via the concessional pathway. It must have a concessional RAV entry approval, any conditions that need to be met prior to RAV entry occurring must have been met, and the vehicle generally has to be in Australia. Subparagraph 31(c)(ii) allows for exemptions to the requirement that the vehicle be in Australia, however the concessional RAV entry approval for the vehicle must specify that it can be entered on

the RAV when the vehicle is outside Australia, providing flexibility for unforeseen circumstances.

178. Paragraph 31(b) requires that, where a condition sets out that it must be met before RAV entry, that the condition has been met. This will be most commonly used for specialist and enthusiast vehicles, which must be modified by the holder of a Registered Automotive Workshop approval, and inspected by the holder of an Authorised Vehicle Verifier approval, before RAV entry can occur.

## **Subdivision B – Application for, and grant of, concessional RAV entry approval**

### **32 – Application**

179. This section sets out that a person can apply to the Minister for the grant of a concessional RAV entry approval.
180. An application for the grant of a concessional RAV entry approval must be made in the approved form, and be accompanied by such documents required by the form and the payment of the application fee. An approved form helps the applicant understand exactly what information that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Minister to decide whether to grant the approval, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
181. The fee is designed to recover the cost of assessing the application.
182. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
183. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

### **33 – Further information and inspection of road vehicle**

184. When the Minister is considering an application for the grant of a concessional RAV entry approval this section makes it clear that the Minister can request further specified information relevant to the application. This section also ensures the Minister can request for the Minister or an inspector to inspect the vehicle that is the subject of an application for grant of a concessional RAV entry approval. These requests are intended to assist the Minister in deciding whether to grant a concessional RAV entry approval.
185. Information that may be requested when assessing an application might include specific documentation that relates to the eligibility criteria in relation to which the application was made. For example, further information may be required in relation to a vehicle imported as part of a person's personal effects. The Minister may request further information from the applicant to illustrate that whilst the vehicle was overseas it was available to the applicant for use on a public road. In such circumstances, an applicant may respond to such request by providing evidence that the vehicle was

registered in the applicant's name overseas, which could include documentation from a registration authority.

186. Another example of a request for further information could be where the Minister requests further information from the applicant that applies for a vehicle that the applicant considers would not be able to operate for the purpose for which it was designed if it were modified or manufactured to meet the applicable national road vehicle standards (i.e. applies for a concessional RAV entry approval under the special purpose vehicle eligibility criterion). The Minister may request information that illustrates how the vehicle, if modified to meet national road vehicle standards, would no longer be able to operate for the purpose for which it was designed.
187. The Minister may also request that the applicant allow or arrange for the Minister or an inspector to inspect the vehicle. An example of where the Minister may request to inspect a road vehicle could be when considering an application relating to a trailer with an aggregate trailer mass of 4.5 tonnes or more. In such circumstances, the Minister may be concerned that the evidence provided by the applicant that the trailer complied with national road vehicle standards was not true and complete, and the Minister was concerned that the vehicle did not meet those standards and therefore should not be given a concessional RAV entry approval. The Minister, when considering the application, may believe it is necessary to inspect the trailer so that they can be satisfied that it fully or substantially meets the applicable national road vehicle standards and is suitable for use on a public road.
188. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Minister can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the concessional RAV entry approval. The applicant may refuse to allow a vehicle or premises to be inspected, however section 34 means that the Minister may refuse to consider the application.
189. Subsection 33(2) sets out that a request under this section must be in writing and state that the Minister may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Minister or an inspector. For example, the Minister may provide for a longer period if the request for further information is overly detailed or an inspection is in a remote area.

### **34 – Minister may refuse to consider application in certain circumstances**

190. Paragraph 34(a) sets out that the Minister may refuse to consider an application for a concessional RAV entry approval if the application does not comply with subsection 32(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
191. Paragraph 34(b) sets out that the Minister may refuse to consider an application for a concessional RAV entry approval if the applicant does not comply with a request made under section 33 within 30 days or a longer period if specified by the Minister, for example a request for further specified information or to allow or arrange for the Minister or an inspector to inspect the vehicle.
192. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.

193. Section 230(d) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a concessional RAV entry approval.

### **35 – Criteria for deciding application**

194. Section 35 provides that if a person applies for the grant of a concessional RAV entry approval, the Minister may grant the approval if the relevant eligibility criterion are satisfied in respect of the vehicle. Sections 36 to 41 set out the relevant eligibility criteria.
195. Section 230(e) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a concessional RAV entry approval.

### **36 – Eligibility criterion – older vehicles**

196. This section sets out the eligibility criterion for concessional RAV entry approvals to be granted in respect of older vehicles. Subsection 36(1) provides that a road vehicle can satisfy this criteria if the Minister is satisfied that vehicle is of a category listed in subparagraph 36(1)(a) and the relevant build date is at least 25 years before the date of the application for the concessional RAV entry approval.
197. Subsection 36(2) sets out how the relevant build date is to be calculated. Subsection 36(2) provides that the relevant build date is the date that the assembly of the vehicle was first completed or, if the vehicle has been significantly modified, the date that the last significant modification was completed.
198. The intention of paragraph 36(2)(a) is for the relevant build date to be considered when the vehicle was first driven or moved from the manufacturer’s production line or production facility, after the vehicle’s body shell and powertrain assemblies were joined. This is the equivalent to the concept of the build date developed and used by Australia’s automotive industry.
199. The purpose of paragraph 36(2)(b) is to exclude vehicles that may have been 25 years or older but have had extensive modifications that have significantly changed the original specification and/or performance of the vehicle. The Minister should make an assessment based on the combination of both the extent of any modifications to the vehicle and the effect those modifications have on the performance and design of the vehicle.
200. Examples of modifications that are likely to be taken into account when considering whether there have been significant modifications to a vehicle are:
- a left-hand to right-hand drive conversion;
  - a body modification such as a chopped roof, full body kit, replacement of the front or rear panels with a cowl, or replacement of the original body with a new/replacement body;
  - a modification to the chassis such as the addition of a roll cage, relocation of suspension location points for geometry changes or to allow for larger section tyres, or enlargement of the transmission tunnel to accommodate a non-standard transmission;

- an engine change and/or modification such as the addition or upgrade of a turbocharger or supercharger, addition of a nitrous oxide injection system, or an engine change to a non-standard or optional engine;
- a front suspension change such as the installation of an aftermarket suspension system, installation of major suspension components from a different vehicle type, or changing and modifying wheel hubs to accommodate components;
- a rear suspension change such as the installation of an aftermarket suspension system, or installation of major suspension components from a different vehicle; or
- a braking system change such as the installation of an aftermarket braking system, installation of braking components from a different vehicle type or changing or modifying wheel hubs to accommodate components.

201. This is not a comprehensive list of alterations that could be considered significant modifications. Further guidance will be made publicly available by the Department in what modifications are likely to be considered significant.

202. It is not the intention of this section to allow replicas of older vehicles, which includes substantially or completely rebuilt vehicles, to be eligible for a concessional RAV entry approval. Additionally, vehicles that have been substantially modified in such a way that they do not fit the original manufacturer's design are not intended to meet the requirements of this eligibility criterion (even if those modifications improved the safety or other performance of the vehicle) unless 25 years have passed since the last significant modification occurred.

### **37 – Eligibility criterion – vehicles to be modified by the holder of a RAW approval**

203. Section 37 sets out the eligibility criterion for vehicles that will be modified or manufactured by the holder of a RAW approval. A road vehicle satisfies this eligibility criterion if the Minister is satisfied that all of the following requirements are met.

204. Paragraph 37(a) requires that the vehicle is one of the following:

- listed on the Specialist and Enthusiast Vehicles Register
- a used vehicle with two or three wheels, for example a used motorcycle
- a road vehicle that has been entered on the RAV via the type approval pathway, that has not been provided for the first time in Australia, and that has been or will be subject to second stage of manufacture by the holder of a RAW approval

205. Paragraph 37(b) requires the applicant to own, or intend to own, the vehicle in relation to which the application was made. The exception to this is where the vehicle is to be subject to second stage of manufacture. The use of the language 'intend to own' is to allow applicants interested in buying a vehicle certainty that the vehicle will be granted a concessional RAV entry approval before they purchase the vehicle.

206. Paragraph 37(c) requires the applicant to have, or be able to access, an approved Model Report that applies to the vehicle. It is intended that 'able to access' might be satisfied by an approved Model Report existing and being accessible to the applicant.

207. Paragraph 37(d) requires the Minister to be satisfied that the applicant will be able to comply with the condition to which the approval will be subject, for instance those

conditions imposed under Subdivision C. Particularly relevant to this eligibility criterion are the requirements set out at section 48 – that the vehicle be modified by the holder of a RAW approval and the modifications verified by the holder of an AVV approval.

### **38 – Eligibility criterion – special purpose vehicle**

208. Section 38 sets out the eligibility criterion for special purpose vehicles. Examples of the types of vehicles that may fall within this eligibility criteria include certain cranes and garbage trucks.
209. Subsection 38(1) notes that a vehicle satisfies this eligibility criteria if the Minister is satisfied that the vehicle does not comply with the applicable national road vehicle standards and the vehicle would not be able to operate for the purpose it was designed to if:
- it was modified to comply with the applicable national road vehicle standards, or
  - the original design was in accordance with the applicable national road vehicle standards.
210. Paragraph 38(1)(c) still requires a special purpose vehicle to comply with the applicable national road vehicle standards to the extent it makes it suitable for use on a public road. For example, a road vehicle that is a crane may still be required to comply with the applicable national road vehicle standards relevant to the steering assembly, even if it cannot meet other national road vehicle standards due to it impeding on the operational requirements of the vehicle.
211. Subsection 38(2) provides that, in respect to paragraph 38(1)(c), a vehicle is suitable for use on a public road in Australia if it would not pose an unacceptable risk to public safety and would be appropriate for such use. Subsection 38(3) empowers the Minister to request evidence when considering paragraph 38(1)(c). Under this power to request further information when considering paragraph 38(1)(c), the Minister may accept evidence that, for example, illustrates that such a vehicle is used on public roads currently, either in Australia or internationally.
212. The applicable national road vehicle standards against which the compliance of the vehicle should be assessed for the purpose of this eligibility criterion are those in force at the time the Minister decides the application.

### **39 – Eligibility criterion – personal effects**

213. The personal effects eligibility criterion 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, provided the Minister is satisfied that the road vehicle and applicant meet the requirements of this eligibility criterion.
214. Despite corporations being able to apply for the grant of a concessional RAV entry approval, the personal effects criterion is intended to only cover individuals. Companies or corporations are not able to satisfy the requirements of this eligibility criterion (for example, a corporation cannot migrate to Australia or live overseas).

215. Paragraph 39(1)(a) requires that either more than five years has passed since the applicant was granted, or the applicant has not previously been granted:
- a concessional RAV entry approval under the personal effects eligibility criteria in respect of the same or another vehicle, or
  - an import approval under regulation 13 of the Motor Vehicle Standards Regulations 1989 in respect to the same or another vehicle
216. Paragraph 39(1)(b) sets out requirements in relation to the applicant's ownership of the vehicle.
217. Subparagraph 39(1)(b)(i) requires the applicant to own the vehicle at the time the application is made. Evidence that illustrates ownership may be requested to satisfy this requirement. Examples of documents that can be used to illustrate ownership could, for example, be a purchase document (this could be an invoice/receipt for deposit or full payment) for the vehicle.
218. Paragraph 39(1)(b)(ii) requires the applicant to have become the owner of the vehicle while living outside Australia on a permanent basis. This eligibility criteria is not intended to be used by persons who export their vehicle from Australia and then wish to reimport the vehicle. It is also not intended to provide a pathway for those who buy their vehicle while holidaying overseas and wish to import their vehicle into Australia at the conclusion of their holiday. A reimportation import approval, that can be applied for under Division 4 of Part 5 of the Rules, is the appropriate mechanism for people wishing to do this.
219. Paragraph 39(1)(b)(iii) requires the applicant to have owned the vehicle for a period of at least 12 months immediately before the relevant date. The 12 month period must be continuous. For example, a person who owns a vehicle for 6 months, sells it, then repurchases the vehicle for a further 6 months would not qualify.
220. The relevant date for the purpose of section 39 is the date on which the applicant first arrived in Australia, for the purpose of living in Australia indefinitely, from the country in which the applicant had been living on a permanent basis. In the circumstances where there is more than one date, paragraph 39(4)(b) provides that the latest date is considered the relevant date. This may be a date set in the future for which the applicant has evidence that they will arrive in Australia.
221. The specific point in time that a person first arrives in Australia for the purpose of living indefinitely is intended to occur on the last date of arrival in Australia where a person has been living overseas (i.e. had their permanent place of residence there), then arrives in Australia with the intention of shifting their permanent place of residence to Australia. This takes account of the fact that people may go back and forth between Australia and overseas many times in the process of moving to Australia, but ensures that there is a single date that can be identified as the date on which the person started living in Australia with the intention that this be permanent. This also takes account of the fact that a move to Australia to live here permanently, then move overseas, then again move to Australia with the intention of living here permanently. In both of these cases, the latest date that a person moves to Australia with the intention of living here on a permanent basis is the 'relevant date'.
222. Paragraph 39(1)(c) requires the applicant to apply for a concessional RAV entry approval under the personal effects eligibility criteria within 6 months of the relevant

date. This may be any time before the relevant date or within 6 months after the relevant date.

223. Paragraph 39(1)(d) requires that the applicant intends to live in Australia indefinitely. An applicant must be able to provide evidence to the Minister of this. Depending on the circumstances of each applicant, evidence that may support this could include, but is not limited to:
- a letter from the applicant's employer, confirming employment and under what conditions
  - applications for Australian medical insurance, bank accounts and driver's licence
  - application forms for permanent residency in Australia
224. Paragraph 39(1)(e) requires that an applicant must be of an age that entitles him or her to hold a licence or a permit to operate a vehicle on public roads in Australia or in the country in which the vehicle was available to and used by the applicant under subsection 39(2) before the relevant date.
225. Paragraph 39(1)(e) and subsection 39(2) require that the vehicle was available to the applicant for use on a public road, in the country outside Australia in which the person was living on a permanent basis, during the period of the applicant's ownership of the vehicle. Paragraph 39(1)(e) and subsection 39(2) also require that the vehicle was in regular use by the applicant on public roads in that country, substantially by the applicant, with the remainder of use being by a person authorised by the applicant to use the vehicle. This means that the vehicle must have been available to be driven by the applicant at all times during the period of ownership. Evidence to establish availability would include that the vehicle is registered in the applicant's name and was garaged throughout the period, so that the applicant could drive the vehicle. Additionally, evidence that the applicant held an appropriate licence to drive the vehicle overseas may assist in confirming the vehicle was available to use, and regularly used, by the applicant.
226. Paragraph 39(1)(e) and 39(3) require that the applicant, at the date of their application under this section, satisfy one of the following requirements:
- be entitled to remain in Australia permanently
  - have applied to become an Australian citizen, or permanent resident within the meaning of the *Australian Citizenship Act 2007*, or for a visa that would allow them to remain in Australia indefinitely
  - hold a visa that entitles them to become a permanent resident. The intention is for the Minister to not have regard to whether there are time or circumstantial restrictions on the entitlement to become a permanent resident under such a visa.

#### **40 – Eligibility criterion – trailers**

227. Section 40 sets out the eligibility criterion for trailers. The intention of section 40 is to provide a pathway for low volume trailer manufacturers or importers to enter vehicles on the RAV without seeking a road vehicle type approval. These vehicles will be entered on the RAV via the concessional RAV entry approval pathway on a vehicle-by-vehicle basis.

228. Manufactures or importers who provide up to four trailers with an aggregate trailer mass of more than 4.5 tonnes, or four trailers with an aggregate trailer mass of 4.5 tonnes or less to the Australian market in a 12 month period do not need to obtain a road vehicle type approval if they meet the requirements of the concessional RAV entry pathway under this eligibility criterion.
229. Subparagraph 40(1)(a) requires that for a trailer with an aggregate trailer mass of more than 4.5 tonnes, the applicant has not been granted concessional RAV entry approvals in respect of more than four such trailers, and likewise for trailers with an aggregate trailer mass of 4.5 tonnes or less. ‘Such’ in this context is intended to refer to the aggregate trailer mass, whether more or less than 4.5 tonnes. It is intended that an applicant could, for example, be granted a concessional RAV entry approval in respect of a cumulative total of up to eight trailers in a 12 month period: up to four trailers with an aggregate trailer mass of more than 4.5 tonnes, and up to four trailers with an aggregate trailer mass of 4.5 tonnes or less.
230. Subparagraph 40(1)(b) requires the trailer meets the requirements set out in paragraphs 40(2), (3), (4) or (5). These set out how trailers must fully or substantially comply with applicable national road vehicle standards, and what different requirements apply for trailers with an aggregate trailer mass of more than 4.5 tonnes, and trailers with an aggregate trailer mass of 4.5 tonnes or less.
231. Paragraph 40(2) and (4) relate to trailers that fully comply with applicable national road vehicle standards. For trailers with an aggregate trailer mass of 4.5 tonnes or less, the application must include a signed declaration that the trailer complies, or will comply at the time the trailer is entered on the RAV, with the applicable national road vehicle standards. The applicable national road vehicle standards are those in force at the time the application is made. For trailers with an aggregate trailer mass of more than 4.5 tonnes, the application must include the same signed declaration, plus evidence that demonstrates that the trailer complies or will comply at the time it is entered on the RAV, with those standards.
232. Paragraphs 40(3) and (5) relate to trailers that substantially comply with applicable national road vehicle standards. For trailers with an aggregate trailer mass of 4.5 tonnes or less, the following requirements must be met:
- The application must detail the respects in which the trailer does not comply or will not comply at the time the trailer is entered on the RAV, with the applicable national road vehicle standards. The application must also include a declaration that the trailer, in all other respects, complies or will comply at the time the vehicle is entered on the RAV, with those standards. The applicable national road vehicle standards here are those in force at the time the application is made.
  - The trailer must either have non-compliance with the applicable national road vehicle standards described above that is minor and inconsequential, or it must comply with the applicable national road vehicle standards to an extent that makes it suitable for use on a public road in Australia, namely that it would not pose an unacceptable risk to public safety, and would be appropriate for such use. The applicable national road vehicle standards here are those in force at the time the Minister decides the application.

For trailers with an aggregate trailer mass of more than 4.5 tonnes that substantially comply with applicable national road vehicle standards, the same requirements must be met, plus the application must include evidence that demonstrates that the trailer complies or will comply at the time it is entered on the RAV, with the national road vehicle standards in force at the time the application is made.

233. Evidence from the National Heavy Vehicle Regulator (including performance based approvals), and consultation with state and territory registration authorities, are examples of what the Minister may take into account when considering whether the vehicle is suitable for use on a public road.

#### **41 – Eligibility criterion – road vehicle suitable for entry on RAV**

234. This section provides that a road vehicle meets this one of the required eligibility criteria for the grant of a concessional RAV entry approval if the vehicle is suitable for entry on the RAV.
235. The intention is for section 41 to be used in rare and exceptional circumstances, consistent with the objects of the legislation, the purpose of the RAV, and the broader structure of the RAV entry pathways.
236. When considering the purpose of the RAV and the RAV entry pathways, relevant factors may include:
- The practical result of RAV entry, which is generally use on a public road, and the vehicle’s suitability for use on a public road.
  - Consistency with other eligibility requirements for entry of vehicles on the RAV. RAV entry is generally only approved for to vehicles that either demonstrably meet the national road vehicle standards (the type approval pathway), or those that substantially meet the national road vehicle standards but, due to certain operational limitations or specific specialist and enthusiast applications (that are agreed to and set out in legislation), are unable to fully comply with the national road vehicle standards.
237. An example of where this eligibility criterion may be met – and a determination made to support the Minister being satisfied that it is met – is as follows. A person moves overseas and purchases a vehicle. After being overseas and using the vehicle regularly for a number of years, the person falls unwell with a significant medical condition and does not regularly use the vehicle for 12 months before they decide to move home to Australia permanently. At such a point in time, the person would not quite satisfy the personal effects eligibility criteria as the vehicle would not have been owned and regularly used by the applicant overseas for at the 12 months before moving to Australia to live indefinitely. In such circumstances, however, the Minister may decide that it is appropriate to grant the person a concessional RAV entry approval, given the intent and spirit of section 39 and the broader objectives of the Act.
238. The Minister must take into account matters set out in guidelines made by the Minister under section 42 for the purpose of deciding whether a road vehicle satisfies this eligibility criterion. Additionally, the Minister may also consider section 43 of the Rules, which encompasses a person’s compliance history, whether the vehicle is, or could be made, fit for use on a public road and any other matter considered relevant to the application.

#### **42 – Minister may make guidelines regarding suitability for entry on RAV**

239. This section provides that the Minister may make guidelines setting out matters that must be taken into account for the purpose of deciding whether a road vehicle satisfies the eligibility criterion in section 41, that the road vehicle is suitable for entry on the RAV. Guidelines under this section must be a legislative instrument.
240. In making the guidelines, it is intended that the Minister consider the purpose of the RAV, and the broader structure of the RAV entry pathway, as well as the overarching objectives of the legislation, in particular, providing the public with a choice of road vehicles that meet safety, environmental and anti-theft expectations of the community.

#### **43 – Other considerations**

241. This section allows the Minister to take into account a number of other factors when deciding an application for the grant of a concessional RAV entry approval.
242. The Minister can consider whether the person – or if the applicant is a body corporate, any key management personnel of the corporation – has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation has, or may have, contravened this legislation, the Minister may take this into account in deciding whether to grant or refuse the relevant application. Key management personnel is a defined term in section 5 of the Rules.
243. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 43(a) and (b) allows the Minister to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Minister may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Minister will have evidence of a contravention and this evidence will be relevant in considering an applicant’s suitability to be granted a concessional RAV entry approval.
244. The payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to that infringement notice may be relevant to the Minister’s consideration of the application.
245. Another consideration is whether the vehicle that is the subject of the application is, or could be made, fit for use on a public road. The intention of this consideration is to ensure that these eligibility criteria for concessional RAV entry approvals do not provide pathways for vehicles that are not road worthy, are written off in other countries, have structural damage, or are being imported for their components only.
246. This section also allows the Minister to take into account any other matter that the Minister considers relevant in assessing the application. For example, information relating to the vehicle, or the purposes for which the vehicle may be used.

247. The broad ability to take into account other relevant matters is required given the diversity of different road vehicles in relation to which applications for concessional RAV entry approvals may be received. Road vehicles that are eligible for this pathway are also offered some concessions against the applicable national road vehicle standards. As concessions are given against national road vehicle standards, it is essential that the Minister is able to consider all appropriate and relevant matters when deciding an application. It is important to note that the other matters must be relevant to the applicant's ability to fulfil the requirements of the approval.

#### **44 – Timeframe for deciding application**

248. This section provides that a decision on an application must be made by the Minister within 30 business days after receiving the application.

249. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.

250. It also provides that the 'clock' measuring 30 business days will stop when the Minister makes a request for further information or to inspect premises under section 33 and will resume once the request has been complied with by the applicant in full.

#### **45 – Notice requirements for grant of concessional RAV entry approval**

251. This section requires the Minister to notify an applicant if their application for the grant of a concessional RAV entry approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:

- the name of the holder of the approval
- details of each road vehicle to which the approval applies, which includes make, model and vehicle identification number of the vehicle
- the day the approval comes into force
- the day that the approval expires
- in the case of a trailer to which subsection 40(3) or (5) applies (where the trailer substantially complies with applicable national road vehicle standards), the respects in which, or the extent to which, the trailer is not required to comply with the applicable national road vehicle standards
- any conditions to which the approval is subject

252. This section requires the Minister to specify in a concessional RAV entry approval any conditions to which the approval is subject. While Subdivision C sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Minister. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.

253. When considering this section, it is important to note the diversity and breadth of vehicles that can be entered on the RAV through this pathway. It is not intended for

this section to facilitate AVV inspections to occur overseas – these should occur in Australia.

#### **46 – Notice requirements for refusal to grant concessional RAV entry approval**

254. This section provides that, if the Minister refuses to grant an approval, then the Minister must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Minister considered that led them to the view that those requirements were not satisfied.
255. Because section 46 requires the Minister to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Minister to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

#### **Subdivision C – Conditions applying to concessional RAV entry approvals**

##### **47 – Conditions of concessional RAV entry approval**

256. Section 47 states that a concessional RAV entry approval granted under Subdivision B will be subject to any conditions specified in the approval, a condition that the holder of the approval must allow or arrange for the Minister or an inspector to inspect the vehicle if requested in writing, and conditions set out in Subdivision C.
257. Section 47 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision C but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
258. Subsection 47(2) outlines some of the conditions that may be specified in a concessional RAV entry approval. This is not an exhaustive list of conditions that may apply to a concessional RAV entry approval and it does not limit the kind of conditions that can be placed.
259. Paragraph 47(2)(a) allows for a condition to be placed on an approval that requires a vehicle to be exported or destroyed within a specific period.
260. Following on from the previous paragraph, paragraph 47(2)(b) allows for a condition to be placed on an approval that requires the holder of an approval to provide evidence to the Minister that a vehicle has been exported or destroyed within the specified period. Evidence of a vehicle being exported may include a contract or invoice for shipping. Similarly, evidence of a vehicle being destroyed may be an invoice for the destruction of the vehicle, however the Minister may require further evidence of this.
261. Paragraph 47(2)(c) allows for a condition to be placed on an approval that requires the holder of the approval to modify the vehicle within a specified period before it is entered on the RAV. This may be used, for example, where, for a vehicle to be considered suitable for entry on the RAV under section 41, it may have to be modified to make it suitable for use on a public road.
262. Paragraphs 47(2)(d) and (e) allow for a condition to be placed on an approval that requires the holder of the approval to have the vehicle, or modifications to the vehicle, verified by an AVV. This is not intended to be widely used, but given the diversity and breadth of vehicles which may be entered on the RAV via the concessional RAV entry

pathway, this section anticipates that there may be other circumstances where it is appropriate that a vehicle be verified by an AVV. This provides the Minister with appropriate flexibility to respond to these circumstances.

263. Paragraphs 47(2)(f) and (g) allow for a condition to be placed on an approval that requires the holder of the approval to keep certain records for a specific period or provide specified records to the Minister or an inspector, if requested. This condition would vary depending on the eligibility criteria. For example an approval granted under the 25 year or older criterion may be required to retain evidence about the vehicle's age.
264. Paragraph 47(2)(h) creates a condition that prohibits the holder of the approval from giving another person access to the vehicle to which the approval applies. Similarly, paragraph 47(2)(i) allows for a condition to be placed on an approval that specifies how the vehicle to which the approval applies may be used.
265. Section 230(f) of the Rules provides that the holder of a concessional RAV entry approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the concessional RAV entry approval. Reviewable conditions are those additional conditions specified in the approval (and therefore 'imposed' by the Minister), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **48 – Condition applying to approvals for vehicles to be modified by registered automotive workshops**

266. It is a condition of concessional RAV entry approvals granted on the basis of the eligibility criteria in section 37 of the Rules (vehicles to be modified by the holder of a RAW approval) that the road vehicle to which the approval applies must not be entered on the RAV until both of the following steps have occurred:
  - the holder of a RAW approval has modified or manufactured the vehicle in accordance with the requirements set out in an approved Model Report that applies to the vehicle, and then
  - the holder of an AVV approval has verified the vehicle or modifications of the vehicle in accordance with section 100, which sets out how verifications must be conducted by AVVs

#### **49 – Condition about providing information etc. on request**

267. Section 49 requires, as a condition of a concessional RAV entry approval, that the holder of an approval provides information, documents, and written answers, on request. It also requires, as a condition of the approval, that the holder of the approval allows or arranges for the Minister or an inspector to inspect premises where activities are carried out under or in relation to the approval.
268. While the condition in section 49 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety, environmental and anti-theft standards. The condition in section 49 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of concessional RAV entry approvals with the conditions of their approvals.

269. A vehicle may be entered on the RAV – and then provided to the Australian market – if it satisfies the requirements of the concessional RAV entry pathway. It is essential that the Department can effectively regulate holders of concessional RAV entry approvals, to ensure that the holders of approvals meet their obligations. For example, where the holder of a concessional RAV entry approval was granted the approval under the eligibility criterion in section 37 (vehicles to be modified by the holder of a RAW approval), it is crucial that the required modification does take place in accordance with the Rules and conditions of the approval to ensure that the vehicle meets the applicable national road vehicle standards and is suitable for use on a public road.
270. Section 49 is not intended to be a power to enter premises or seize documents without consent, meaning that the Minister or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises, unless the Minister or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
271. Information available to the Minister or an inspector in connection with requests under section 49 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
272. The Minister or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
273. A request by the Secretary or an inspector must be in writing. It is a condition of a concessional RAV entry approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Minister or inspector to take account of the specific circumstances relating to the approval or request. The Minister or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
274. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of concessional RAV entry approvals should expect to produce a broad range of information to satisfy the Minister or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules. A request for information

- under section 49 is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
275. Paragraph 49(a) allows the Minister or an inspector to request information from the holder of a concessional RAV entry approval, and requires that the holder of that approval provide that information as a condition of their approval. This is subject to the limitation that the Minister may only request information that the Minister reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, these Rules or an instrument made under the Act or these Rules, or information about vehicles to which the approval applies. An example of such evidence could be confirmation that a vehicle was modified by a RAW approval holder for vehicles imported under section 37 of the Rules.
276. Paragraph 49(b) imposes a condition that an approval holder must provide written answers to questions. This condition is limited in that the questions can only relate to the road vehicles covered by the approval.
277. Paragraphs 49(a) and (b) may be used to allow the Minister or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Minister or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraph 49(a) and (b) allows holders of approvals to provide information in a structured manner within a reasonable period of time.
278. Paragraph 49(c) imposes a condition that requires the approval holder to allow or arrange for the Minister or an inspector to inspect premises as set out in the notice to the holder of the approval informing them of the Minister or inspector's request. This condition of inspection is limited in that it must be relation to whether road vehicles entered on the RAV comply with the applicable national road vehicle standards or any applicable standards determined by the Minister under section 89. It is also limited in that the premises must only be where activities are carried out under or in relation to the approval. If the requirements under a concessional RAV entry approval are not met, this could result, for example, in vehicles being provided to the Australian public that do not meet the applicable national road vehicle standards. This puts not only the safety of the occupant of the vehicle at risk, but also the safety of the general community. Therefore, such powers to inspect premises are necessary.
279. Under paragraph 49(c), the holder of a RAW approval may be requested to ensure that Minister or an inspector can inspect premises of third parties where activities are carried out under the approval. The inspection must be within a reasonable time. This section does not directly require third parties to provide access to their premises, nor does it allow the Minister or an inspector to enter premises of third parties without the consent of the holder of the approval and the third party. However if the third party does not allow inspection of their premises for the purpose of an inspection, the approval holder may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*. This gives confidence that the holder of the concessional

RAV entry approval is able to ensure that the necessary steps are being taken to ensure that they will meet all conditions of their approval. Control by the holder of an approval ensures that the appropriate quality controls can be established and monitored in support of the compliance objective.

280. This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.

#### **Division 4 – Miscellaneous**

##### **50 – Circumstances in which a road vehicle may be provided**

281. Section 24(1) of the *Road Vehicle Standards Act 2018* creates an offence and civil penalty provision when a person provides a road vehicle to another person, the vehicle is being provided for the first time in Australia, and the vehicle is not on the RAV. Subsection 24(3) of the Act provides exceptions for subsection 24(1). Paragraph 24(3)(f) of the Act allows for the Rules to set out a circumstance that is an exception to subsection 24(1) of the Act.
282. Section 50 of the Rules outlines that for the purposes of paragraph 24(3)(f), an exception to the subsection 24(1) of the Act is where the road vehicle is subject to an intergovernmental agreement or is being provided in circumstances allowed by an intergovernmental agreement.
283. Vehicles that are imported under intergovernmental agreements include vehicles that fall under a 'status of forces' agreement or vehicles that fall under an agreement which allows for the issue of a 'carnet' document.
284. The Department does not issue carnets or approvals for status of forces vehicles.

##### **51 – Modifications of road vehicles**

285. Section 51 sets out the kinds of modifications that are allowed for the purposes of paragraphs 26(1)(e) and (2)(g) of the Act.
286. Under paragraphs 26(1)(e) and (2)(g) of the Act, it is an offence and a contravention of a civil penalty provision for a person to modify a road vehicle on the RAV, or to hand the vehicle over to another person for modification, if the modification:
- occurs before the vehicle is provided to a consumer for the first time in Australia
  - the modification causes the road vehicle not to satisfy the requirements of the entry pathway that applied at the time the vehicle was entered on the RAV
  - the modification is not otherwise allowed by the Rules
287. Section 51 of the Rules sets out the other modifications to vehicles that are allowed by the Rules.
288. Paragraphs 51(a), (b) and (c) set out arrangements relating to vehicles to be subject to second stage of manufacture. This allows modifications to occur in accordance with either a road vehicle type approval or a Model Report that applies to the vehicle. It also

allows modification of a vehicle entered on the RAV via the type approval pathway to occur for the purpose of seeking a road vehicle type approval or a second stage of manufacture Model Report. 'Seeking' may include, for example, preparing an application for one of these approvals.

289. Paragraph 51(d) allows for modifications to be carried out in accordance with the *National Code of Practice for Heavy Vehicle Modifications* ('the National Code', also known commonly as Vehicle Standards Bulletin 6). The modifications must be in accordance with the National Code that is in force in the state or territory in which the vehicle was modified, at the time the modifications were made. The National Code is available to the public and industry free of charge on the National Heavy Vehicle Regulator's website.

## **52 – Allocation of vehicle identification number**

290. Section 52 is intended to be used in circumstances where a road vehicle that is granted a concessional RAV entry approval does not have a VIN. Although the existence of vehicles without a VIN is rare, there are some international markets that use varying methods of identifying vehicles that do not include VINs. In addition, some older vehicles do not have a VIN.
291. Under section 52, the Secretary may allocate a VIN to a vehicle that has a concessional RAV entry approval and does not have a VIN. In considering whether to issue a VIN, the Secretary may request evidence that supports the requirement of issuing a new VIN to the vehicle.

## **Part 4 – Tools**

### **Division 1 – Introduction**

#### **53 – Simplified outline of this Part**

292. This section provides a simplified outline of Part 4 of the Rules. This Part provides for the grant of a number of approvals to enable road vehicles to satisfy the requirements of entry pathways, and for the creation and maintenance of the SEVs Register. This Part sets out requirements for the grant of, or refusal to grant, these approvals, including the power for the Minister to make determinations which set out further requirements relating to certain approvals. It also sets out the conditions which apply to these approvals, and further conditions which may be specified by the Secretary.

#### **54 – Purpose of this Part**

293. Section 54 sets out the purposes of Part 4 of the Rules. Part 4 sets out a series of 'tools'. The tools include
- Registered Automotive Workshop (RAW) approvals – the holder of a RAW approval can modify vehicles in accordance with Model Reports. In practice, this means they can modify specialist and enthusiast vehicles and used motorcycles to comply with the legislation. They can also complete second stage of manufacture in accordance with a Model Report. This is a tool to enable vehicles to meet the requirements of the concessional RAV entry pathway.

- Model Reports – an approved Model Report is a series of instructions that a RAW or holder of a road vehicle type approval uses to modify or manufacture vehicles to comply with the national road vehicle standards, or certain specified concessions to these standards. Model Reports will include a verification checklist that must be signed off by an Authorised Vehicle Verifier when verifying modifications to a vehicle by the holder of a RAW approval. This is a tool to enable vehicles to meet the requirements of the type approval pathway or concessional RAV entry pathway.
- Authorised Vehicle Verifier (AVV) approvals – holders of AVV approvals are independent third party inspection services. They can enter vehicles on the RAV following successful inspection of the vehicle to ensure compliance with a Model Report (or other specified matters). Specialist and enthusiast vehicles, used motorcycles, and vehicles subject to second stage of manufacture by RAWs must be inspected by an AVV before the vehicle is entered on the RAV. This is a tool to enable vehicles to meet the requirements of the concessional RAV entry pathway.
- Testing facility approvals – approved testing facilities can provide evidence of the compliance of road vehicles or road vehicle components with the applicable national road vehicle standards or standards determined by the Minister under section 89. To provide evidence of compliance, the evidence must be provided by an approved testing facility (there are certain exemptions or equivalents to this requirement, but this is the general principle). This is a tool to enable vehicles to meet the requirements of the type approval pathway or concessional RAV entry pathway.
- The Specialist and Enthusiast Vehicles (SEVs) Register – the SEVs Register identifies vehicle types that are of a specialist and enthusiast nature. For a vehicle to be entered on the SEVs Register it should not be available to Australian consumers via the type approval pathway and must meet the requirements of one of the eligibility criteria. This is a tool to enable some road vehicles to meet the requirements of the concessional RAV entry pathway.

294. The Minister is empowered to make the Rules in Part 4 by subsection 13(1), 19(2) and section 21 of the Act.
295. Subsection 13(1) of the Act sets out that the Rules must provide for or in relation to the testing and inspecting of road vehicles and road vehicle components for compliance with national road vehicle standards. Division 5 of this Part, which relates to testing facilities, sets out these matters.
296. Paragraphs 19(2)(a) and (b) of the Act set out that the Rules may provide for or in relation to matters including the grant of approvals to enable vehicles to satisfy the requirements of pathways for the entry of vehicles on the RAV (including the type approval pathway and other entry pathways), and the conditions of such approvals. Divisions 2 to 5 of this Part set out matters in relation to the grant of approvals relating to the ‘tools’ outlined above, which facilitate the entry of vehicles on the RAV via either the type approval pathway, or the concessional RAV entry pathway, in accordance with paragraph 19(2)(a) of the Rules. It also sets out the conditions on such approvals, in accordance with section 19(2)(b) of the Rules.

297. Section 21 of the Act requires that the Rules must provide for or in relation to the keeping of the SEVs Register. It also allows the rules to provide for or in relation to applications to be made for the entry of road vehicles on the SEVs Register. Division 6 of this Part sets out these matters.

## **Division 2 – RAWs approvals**

### **Subdivision A – Application for, and grant of, RAW approval**

#### **55 – Application**

298. This section sets out that a corporation can apply to the Secretary for the grant of a Registered Automotive Workshop (RAW) approval.
299. A RAW approval allows the holder of an approval to modify specialist and enthusiast vehicles, used motorcycles and some second stage of manufacture vehicles to ensure they comply with an approved Model Report. Modifications by the holder of a RAW approval can occur on both new and used vehicles, although only used motorcycles will satisfy the requirements of the concessional RAV entry pathway via the section 37 eligibility criteria for vehicles to be modified by the holder of a RAW approval. There will be no restrictions on the number of vehicles that can be modified by a single workshop or entered on the RAV using this pathway.
300. Each vehicle modified by the holder of a RAW approval will undergo a third party inspection by a holder of an Authorised Vehicle Verifier (AVV) approval to ensure the vehicle is modified in accordance with an approved Model Report. If verified, the holder of an AVV approval enters the vehicle on the RAV.
301. An application for the grant of a RAW approval must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required by the Secretary to decide the application, improving processing effectiveness and efficiency. As per section 236 of the Rules, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
302. The fee is designed to recover the cost of assessing the application.
303. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
304. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

#### **56 – Further information and inspection of premises**

305. When the Secretary is considering whether to grant a RAW approval to a corporation, this section makes it clear that the Secretary can request further specified information relevant to the application. This section also ensures the Secretary can request for the

Secretary or an inspector to inspect any premises occupied by the corporation and to be used by the corporation in the modification or manufacture of vehicles under the approval.

306. Information that may be requested when deciding whether to grant a RAW approval might include, but not be limited to, documents that illustrate that:
- staff employed, contracted or otherwise arranged by the applicant are appropriately skilled for the tasks they are performing
  - the corporation has appropriate procedures and equipment in place to ensure that vehicles are inspected for damage or corrosion
  - no key management personnel of the corporation are undischarged bankrupts or have personal insolvency agreements under Part X of the *Bankruptcy Act 1966*
307. The suitability of premises is directly related to the applicant's ability to be granted a RAW approval. Premises that may be inspected might include premises occupied by or to be used by the corporation for the manufacture or modification of vehicles under the approval. This extends to premises occupied by third party corporations that may complete work on a vehicle that is outsourced by the holder of a RAW approval.
308. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the RAW approval. The Secretary may wish for premises used by an applicant to be inspected, for example, to ensure:
- that the premises have the appropriate equipment for the holder of a RAW approval to operate, such as hoists and lighting
  - that the equipment is, or there are procedures in place to ensure that the equipment will be, appropriately maintained and serviced
  - that there are appropriate quality management systems in place at the premises
309. The examples outlined above are not intended to be a comprehensive list of things that the Secretary may request. Depending on the individual circumstances of each application for the grant of a RAW approval, each application will require varying amounts of information or inspection of premises. As holders of RAW approvals play a critical role in the modification or manufacture of vehicles to ensure that they are appropriate for provision to the Australian public, it essential that all relevant information be available to the Secretary when considering an application.
310. The applicant may refuse to provide requested information or access to premises, however, section 57 means that the Secretary may refuse to consider the application.
311. Subsection 56(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Secretary. An example where the Secretary might allow for a longer period for the applicant to comply is when the requested information is of a complex nature or where the premises for inspection is overseas or in a regional area.

## **57 – Secretary may refuse to consider application**

312. Paragraph 57(a) sets out that the Secretary may refuse to consider an application for a RAW approval if it does not comply with subsection 55(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
313. Paragraph 57(b) sets out that the Secretary may refuse to consider an application for a RAW approval if the applicant does not comply with a request made under section 56 within 30 days or a longer period if specified by the Secretary, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect premises.
314. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
315. Section 230(g) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a RAW approval.

## **58 – Criteria for deciding application**

316. Section 58 sets the criteria the Secretary may consider when deciding whether to grant a RAW approval.
317. Under paragraph 58(a), the Secretary must be satisfied that the corporation is not in liquidation or under administration. Additionally, under paragraph 58(d), the Secretary must also be satisfied that there is no personal insolvency agreement under Part X of the *Bankruptcy Act 1966* in effect in relation to any member of key management personnel of the corporation. This is a continuation of an existing policy under the Motor Vehicle Standards Regulations 1989.
318. Paragraph 58(b) requires an applicant to have a quality management system that does all of the following:
  - ensures the applicant has the equipment, trained personnel and procedures in place to ensure the modification or manufacture of a road vehicle will be conducted in accordance with the relevant Model Report
  - ensures that the holder of the approval will meet any conditions to which the approval will be subject
  - meets any conditions that relate to the quality management system to which the approval will be subject
319. A quality management system refers to what an organisation does to manage its processes, equipment and activities. Examples of what a quality management system may contain for the holder of a RAW approval are:
  - a procedure for assessing vehicles for structural damage or corrosion;
  - guidance as to what functions or procedures should be performed by certain levels of appropriately skilled staff
  - procedures in place to ensure that equipment is appropriately calibrated and serviced
  - a document management system to ensure the appropriate records are being recorded and maintained

320. A RAW that has an accreditation under *ISO9001 Quality Management System* would likely satisfy the quality management system requirement.
321. Under paragraph 58(c), each member of the key management personnel must be 18 years of age, not be an undischarged bankrupt or be subject to a personal insolvency agreement. The Rules are exempt under Schedule 1 of the *Age Discrimination Act 2004* and is a continuation of the existing exemption that applies to the Motor Vehicle Standards Regulations 1989.
322. Section 230(h) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a RAW approval.

#### **59 – Other considerations**

323. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of a RAW approval.
324. The Secretary can consider whether the corporation, or any key management personnel of the corporation, has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation have or may have contravened this legislation, the Secretary may refuse the application on these grounds. Key management personnel is a defined term in section 5 of the Rules.
325. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 59(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant’s suitability to hold a RAW approval.
326. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary’s consideration of the application.
327. This section also allows the Secretary may take into account any other matter that the Secretary considers relevant in assessing the application. For example, the Secretary may take into account whether the applicant was the holder of a RAW approval under the *Motor Vehicle Standards Act 1989*.
328. The broad ability to take into account other relevant matters is required given the key role RAW approvals play in the provision of certain road vehicles to the Australian market. Holders of RAW approvals are responsible for ensuring that vehicles modified

or manufactured by them meet the requirements of the approved Model Report that applies to the vehicle. Due to the important role holders of RAW approvals play in the provision of certain road vehicles, any factor that is relevant to an applicant fulfilling the requirements of an RAW approval must be taken into consideration. It is important to note that the other matters must be relevant to the applicant's ability to fulfil the requirements of the approval.

#### **60 – Timeframe for deciding application**

329. This section provides that a decision on an application must be made by the Secretary within 30 business days after receiving the application.
330. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.
331. It also provides that the 'clock' measuring 30 business days will stop when the Secretary makes a request for further information or to inspect premises under section 56 and will resume once the request has been complied with by the applicant in full.

#### **61 – Period of approval**

332. This section provides that an RAW approval will remain in force for a period of five years, unless otherwise revoked earlier. An RAW approval will commence on the day specified in the approval, allowing the Secretary to set a start date for the approval.

#### **62 – Notice requirements for grant of RAW approval**

333. This section requires the Secretary to notify an applicant if their application for the grant of a RAW approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:
  - the name and postal address of the holder of the approval
  - the conditions to which the approval is subject
  - when the approval will expire, unless revoked earlier

This section requires the Secretary to specify in a RAW approval any conditions to which the approval is subject. While Subdivision C sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.

#### **63 – Notice requirements for refusal to grant RAW approval**

334. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
335. Because section 63 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the

findings on material questions of fact and refer to the evidence or other material on which those findings were based.

## **Subdivision B – Conditions applying to RAW approvals**

### **64 – Conditions of RAW approvals**

336. Section 64 states that a RAW approval is subject to any conditions specified in the approval and conditions set out in Subdivision B.
337. Section 64 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision B but specified in the approval, are conditions to which the holder of an approval is subject. Under section 28 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
338. Section 230(i) of the Rules provides that the holder of a RAW approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the RAW approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

### **65 – Condition about manufacture and modification requirements**

339. Section 65 sets out conditions that will apply to RAW approvals in relation to manufacture and modification requirements. The section sets out five subsections, capturing different aspects of the manufacture and modification process.
340. Subsection 65(1) goes to the manufacture and modification process, including setting out requirements for equipment and personnel, control of premises, and ensuring the product presented to an AVV has been manufactured or modified in accordance with an approved Model Report.
341. The intention of subparagraph 65(1)(a)(i) is to ensure that a holder of a RAW approval continues to maintain appropriate equipment and personnel to manufacture or modify a vehicle. These are key aspects of modifying or manufacturing compliant vehicles in accordance with an approved Model Report.
342. Subparagraph 65(1)(a)(ii) is to ensure the holder of the approval or a third party that has a legitimate connection with the RAW, undertakes the modification or manufacture. The intention of the subparagraph is to ensure the work being completed on a vehicle is the responsibility of the holder of a RAW approval, irrespective if it conducted by their own staff or through a contracted third party.
343. Paragraph 65(1)(b) requires the holder of a RAW approval to ensure that a vehicle is not presented to an AVV for verification unless the vehicle has been modified or manufactured in accordance with the requirements of a Model Report. The intention of this condition is to ensure that holders of RAW approvals fully complete the manufacture or modification of vehicles in accordance with the applicable Model Reports. In some circumstances an AVV will not verify a vehicle due to an error in the modification or manufacture of a vehicle. The holder of a RAW approval will rectify the error and then again present the vehicle for verification by an AVV. It is not the intention of this section to prevent this situation occurring.
344. Subsection 65(2) sets out requirements about handing over a vehicle to an AVV for inspection.

- This subsection requires a holder of a RAW approval to provide a signed declaration to an AVV that outlines that the vehicle was modified or manufactured in accordance with a Model Report. It also requires the RAW to declare that they were authorised to use the Model Report and provide information that supports this claim. This could, for example, be a receipt of purchase for the Model Report or confirmation of subscription to a Model Report service. In practice, such a document can be an attachment to the signed declaration.
  - The intention of this subsection is to ensure that either the holder of a RAW approval (or the owner of the vehicle) has legitimately obtained the Model Report. It may be the case that Model Report authors will sell each Model Report individually or that they will establish a subscription service for a range of Model Reports. Irrespective of the mode of distribution, the intention is that when a Model Report is being used by a holder of a RAW approval, the holder of the RAW approval should be able to provide information about how they obtained the report.
  - It is a contravention of section 31 of the Act to provide a false or misleading declaration. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
345. Subsection 65(3) requires a road vehicle to be inspected for damage, corrosion and repair of damage or corrosion prior to modification. This inspection can be conducted by the holder of a RAW approval or a contracted third party. The intention of this subsection is to ensure that the vehicles that are to be modified by the holder of the approval are not in a condition that would be unsafe or dangerous, irrespective of the later modification. It is also to ensure that vehicles being imported and modified through this eligibility criteria are suitable for use on a public road in Australia.
346. Subsections 65(4) and (5) relate to the holder of a RAW approval inspecting a vehicle for damage of corrosion. Subsection 65(3) provides that, where a damage or corrosion threshold has been determined under section 107, then the holder of a RAW approval must inspect a road vehicle for damage or corrosion in accordance with the threshold set out in the determination. Subsection (4) provides that, if there is no damage or corrosion threshold determined under section 107, then the test becomes whether the vehicle has had its structural integrity reduced by damage or corrosion.

## **66 – Condition about record keeping**

347. Section 66 outlines that it is a condition of a RAW approval that the holder of the approval keep a record of certain information for a period of seven years.
348. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
349. Paragraph 66(1)(a) requires the holder of a RAW approval to keep a record of information that illustrates that a vehicle manufactured or modified by the holder of the approval and presented to the holder of an AVV approval was completed in accordance with an approved Model Report.

350. Subparagraphs 66(1)(b)(i) and (ii) require the holder of a RAW approval to keep copies of the signed declaration given by the holder of the approval under paragraph 65(2)(a) and the information supporting the declaration. Subsection 65(2) requires the holder of a RAW approval to provide a declaration to the holder of an AVV approval that states the vehicle has been modified or manufactured in accordance with an approved Model Report. The Model Report must have been the latest version that applied at the time of the modification or manufacture. The holder of a RAW approval must also retain the information that supports the declaration. Keeping a copy of this declaration and information, is intended to mean retaining a copy of the declaration itself, and the information that supports that the declaration is true and correct, in paper or electronic format, and not only a record that the declaration was made.
351. Subparagraph 66(1)(b)(iii) requires that a holder of a RAW approval keep a copy of the written notification to the Secretary given under 65(3)(b)(i) that damage or corrosion is found in a vehicle that exceeds a threshold determined under section 107 or that reduces a vehicle's structural integrity. Keeping a copy of this notification is intended to mean retaining a copy of the notification itself, in paper or electronic format, and not only a record that the notification was made.
352. Paragraph 66(1)(c) requires that the results of the inspection carried out under paragraph 65(1)(b) be kept by the holder of a RAW approval. Paragraph 65(3) sets a condition that the holder of a RAW approval must ensure that a vehicle is inspected for damage, corrosion, and repair of damage or corrosion prior to modification or manufacture. From a compliance and enforcement perspective, the condition set under paragraph 66(1)(b) is essential to establishing whether an adequate inspection of the vehicle for damage or corrosion was conducted prior to modification.
353. Paragraph 66(1)(d) requires the holder of a RAW approval to retain such records as required by a Model Reports in accordance with which a vehicles was modified or manufactured by the holder of the RAW approval. This requirement applies for each vehicle modified or manufactured by the holder of the RAW approval in accordance with a Model Report. The Minister may make a determination under section 88 of the Rules that sets out what a Model Report must contain, including that a Model Report may require certain records to be kept.
354. Paragraph 66(2) requires the holder of a RAW approval to retain a record outlined in subsection 66(1) for a period of seven years. A record must be retained for a period of seven years starting on the day the record is made, regardless of whether the RAW approval remains to be in force or not.

#### **67 – Condition about providing information etc. to the Secretary or an inspector**

355. Section 67 requires, as a condition of a RAW approval, that the holder of an approval notifies the Secretary of changes to information relating to the RAW approval. It requires the holder of a RAW approval provides information, documents, and written answers, on request. It also requires, as a condition of the approval, that the holder of the approval allows or arranges for the Secretary or an inspector to inspect premises at any reasonable time.
356. While the condition in section 67 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety,

- environmental and anti-theft standards. The condition in section 67 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of RAW approvals with the conditions of their approvals.
357. A vehicle may be entered on the RAV – and then provided to the Australian market –if it satisfies the requirements of the concessional RAV entry pathway. Certain vehicles must be modified or manufactured by the holder of a RAW approval, in accordance with an approved Model Report for the relevant kind of vehicle, in order to satisfy the requirements of the concessional RAV entry pathway. It is therefore essential that the Department can effectively regulate holders of RAW approvals, to ensure that the vehicles that they modify or manufacture are in accordance with the approved Model Reports for the relevant types of vehicle.
358. Section 67 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises, unless the Secretary or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
359. Information available to the Secretary or an inspector in connection with requests under section 67 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
360. Paragraph 67(b) requires the holder of a RAW approval to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.
361. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
362. A request by the Secretary or an inspector must be in writing. It is a condition of a RAW approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.

363. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of RAW approvals should expect to produce a broad range of information to satisfy the Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules. A request for information under paragraph 67(b) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
364. Paragraph 67(b) may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraph 67(b) allows holders of approvals to provide information in a structured manner within a reasonable period of time.
365. Paragraph 67(c) and (d) sets a clear expectation, applied consistently and transparently to all holders of RAW approvals, that inspection of relevant premises is also an important part of holding an approval. Paragraph 67(c) does this by requiring the holder of the approval to allow or arrange for the Secretary or an inspector, on their request, to inspect premises occupied by them at which road vehicles are manufactured or modified under the approval, and premises occupied by them. Paragraph 67(d) also does this by requiring the holder of the approval to allow or arrange for the Secretary or an inspector, on their request, to inspect premises of third parties which provide goods or services to the holder of the RAW approval. These premises are largely commercial or industrial facilities.
366. Paragraphs 67(c) and (d) have been carefully crafted to limit their application and link it to their objective. The request can only be made to access premises for the purpose of ensuring compliance of the holder of the approval with the Act, Rules, or any instrument made under the Act or Rules.
367. When considering such powers to enter and inspect premises at any reasonable time, it is important to consider the role the holder of a RAW approval plays in providing road vehicles to the Australian market. The holder of a RAW approval is responsible for implementing the necessary modifications or manufacture of a road vehicle in accordance with an approved Model Report. If the holder of a RAW approval is not performing their required function correctly, this could result in road vehicles being provided to the Australian public that do not meet the necessary standards set out Model Report relevant to the vehicle. This puts not only the vehicle occupant’s safety at risk, but also the safety of the general community. Therefore, such powers to inspect premises are necessary.
368. Under section 67(d), the holder of a RAW approval may be requested to ensure that Secretary or an inspector can inspect premises of third parties which provide goods or services to the holder of the approval. The inspection must be in relation to the activities of the holder of the RAW approval. The inspection may also be at any reasonable time. This means that the Secretary or an inspector is not required to give prior notice of an inspection. This section does not directly require third parties to

provide access to their premises, nor does it allow the Secretary or an inspector to enter premises of third parties without the consent of the holder of the approval and the third party. However if the third party does not allow inspection of their premises for the purpose of an inspection, the approval holder may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.

369. Section 67(d) providing that the Secretary or an inspector may inspect the premises of third parties which provide goods and services to the holder of a RAW approval gives confidence that the holder of an approval has sufficient access to and control over their supply chain. Control by the holder of an approval ensures that the appropriate quality controls can be established and monitored in support of the compliance objective.
370. This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.

### **Division 3 – Model Reports**

#### **Subdivision A – Application for, and grant of, approval of Model Report**

##### **68 – Application**

371. This section sets out that a person can apply to the Secretary for the grant of an approval of a Model Report.
372. An approval of a Model Report empowers the holder of an approval to provide a Model Report for use in the modification or second stage of manufacture of a road vehicle in Australia. A Model Report will relate to a model of road vehicle, or one or more variants of a model of road vehicle. It will contain the necessary designs, test evidence and steps for modification or manufacture so that a road vehicle built or modified in accordance with the Model Report will meet the applicable standards. As such, Model Reports play a critical role in assisting holders of RAW approvals when modifying or manufacturing a road vehicle. Furthermore, Model Reports will provide a checklist for holders of AVV approvals to use when verifying a road vehicle's modification or manufacture.
373. Section 68 sets out four different types of Model Reports that can be developed and approved. These relate to:
- specialist and enthusiast vehicles which are entered on the SEVs Register
  - used two-wheeled and used three-wheeled vehicles that are not entered on the SEVs Register
  - trailers with an aggregate trailer mass of more than 4.5 tonnes
  - vehicles to be subject to second stage of manufacture
374. An application for the grant of an approval of a Model Report must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that

they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide whether to grant the approval, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The fee is designed to recover the cost of assessing the application.

375. A signed declaration must also be provided by the person making the application that the Model Report is in such a form, and contains such information as determined by the Minister under section 88 and that the person is capable of complying with conditions in sections 82 to 86.
376. The form may require a further declaration, for example about whether certain matters are true, or the accuracy of the information provided.
377. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
378. Similarly, providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

#### **69 – Further information and inspection of vehicles or premises**

379. This section makes it clear that to assist the Secretary in deciding whether to approve a Model Report, the Secretary can request further specified information relevant to the application. This section also ensures the Secretary can request for the Secretary or an inspector to inspect any road vehicles used to develop the Model Report and premises associated with the production of the Model Report.
380. Information that may be requested from the applicant when the Secretary is assessing an application might include the applicant's qualifications or experience in the vehicle industry. Alternatively, the Secretary may seek information about the testing evidence used to develop the Model Report. Any requests made by the Secretary for further specified information will depend on the individual circumstances of each application.
381. The suitability of premises are directly related to the applicant's ability to be granted an approval of a Model Report. Premises that may be inspected might include premises associated with administration of the approval. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the approval of a Model Report. The applicant may refuse to provide access to premises, however section 70 means that the Secretary may refuse to consider the application.
382. Subsection 69(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Secretary. An example where the Secretary might allow for a longer period for the applicant to comply is where the request is particularly complex or extensive or requires long distance travel to inspect premises.

## **70 – Secretary may refuse to consider application**

383. Paragraph 70(a) sets out that the Secretary may refuse to consider an application for an approval of a Model Report if it does not comply with the requirements of the Rules. The intention is that this includes but is not limited to subsections 68(2) and 87(2) which require, among other things, that the application be in the approved form and be accompanied by the application fee.
384. Paragraph 70(b) sets out that the Secretary may refuse to consider an application for an approval of a Model Report if the applicant does not comply with a request made under section 69 within 30 days or a longer period if specified by the Secretary, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect a vehicle or premises.
385. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
386. Section 230(j) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for an approval of a Model Report.

## **71 – Criteria for deciding application**

387. Section 71 sets out the criteria for deciding an application for the grant of a Model Report approval.
388. Paragraph 71(1)(a) requires the Secretary to be satisfied that the Model Report is in the form and contains such information as determined by the Minister under section 88 of the Rules. This paragraph, in conjunction with section 88 of the Rules, allows the Minister to have the flexibility to determine the form and information to be contained in a Model Report. It may be the case that the Minister will be required to determine that a Model Report contain different information depending on different factors – including the kind of road vehicle, eligibility criterion the vehicle entered on the SEVs Register through and what the aggregate trailer mass of the trailer is, if applicable.
389. Paragraph 71(1)(b) requires the Secretary to be satisfied that the applicant will comply with the conditions to which the approval will be subject.
390. Paragraph 71(1)(c) requires the Secretary to be satisfied that the Model Report satisfies one of the four eligibility criteria set out by sections 72 to 75. Depending on the kind of vehicle being modified or manufactured, the Model Report, when followed, will result in a vehicle fully or substantially complying with standards determined by the Minister under section 89, or the applicable national road vehicle standards.
391. Section 230(k) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to approve a Model Report.

## **72 – Eligibility criterion – Model Report for vehicle covered by entry on SEVs Register**

392. This eligibility criterion relates only to Model Reports for a model or one or more variants of road vehicle entered on the SEVs Register.
393. If the Minister is satisfied that either of the following two requirements are met, then the paragraph 71(1)(c) criteria for granting an approval of a Model Report is also satisfied.

394. One requirement is where, if modified or manufactured in accordance with the Model Report, a vehicle of the relevant model or variant of road vehicle entered on the SEVs Register would comply with the applicable standards determined by the Minister under section 89. The determination that applies is the determination in force at the time the Model Report is approved by the Secretary.
395. An alternative to satisfying the first requirement is set out in subsection 76(1). This is where, if modified or manufactured in accordance with the Model Report, a vehicle of the relevant model or variant of road vehicle entered on the SEVs Register would substantially comply with the applicable standards determined by the Minister under section 89 in force at the time the Model Report is approved. Additionally, either that vehicle's non-compliance with the determined standards must be only in minor and inconsequential respects, or the vehicle must comply with the determined standards to an extent that makes the vehicle suitable for use on public roads in Australia.
396. For the purposes of determining whether a vehicle complies with applicable standards determined by the Minister under section 89 to an extent that makes it suitable for use on a public road, the Secretary should consider whether the vehicle would not pose an unacceptable risk to public safety and would be appropriate for such use. The Secretary may wish to consult with state and territory registration authorities when considering the suitability for use on public roads.

### **73 – Eligibility criterion—Model Report for used two-wheeled or three-wheeled vehicle**

397. This eligibility criterion relates only to Model Reports for used two-wheeled vehicles and Model Reports for used three-wheeled vehicles.
398. If the Secretary is satisfied that both of the following two requirements are met, then the paragraph 71(1)(c) criteria for granting an approval of a Model Report is also satisfied.
399. The first requirement that must be met is where, if modified or manufactured in accordance with the Model Report, used two- or three-wheeled vehicles would comply with standards determined by the Minister under section 89. These vehicles only have to comply to the extent that those determined standards apply to the vehicle. The determination that applies is the determination in force at the time the Model Report is approved by the Secretary.
400. An alternative to satisfying the first requirement is set out in subsection 76(1). This is where, if modified or manufactured in accordance with the Model Report, used two- or three-wheeled vehicles would substantially comply with the applicable standards determined under section 89 in force at the time the Model Report is approved. Additionally, either that vehicle's non-compliance with the determined standards must be only in minor and inconsequential respects, or the vehicle must comply with the determined standards to an extent that makes the vehicle suitable for use on public roads in Australia.
401. The second requirement which must also be met in order to satisfy this eligibility criterion is where two- or three-wheeled vehicles modified or manufactured in accordance with the Model Report would comply with the applicable national road vehicle standards, as in force at the time the Model Report is approved. The two-or three-wheeled vehicle is only required to comply with the applicable national vehicle

standards as a default where there are no standards determined by the Minister under section 89, or where those determined standards are not applicable.

402. An alternative to meeting the second requirement is set out in subsection 76(2). This is where, if modified or manufactured in accordance with the Model Report, two- or three-wheeled vehicles would substantially comply with the applicable national road vehicle standards. The applicable national road vehicle standards are those in force at the time the Model Report is approved. Additionally, either the vehicle's non-compliance with the applicable national road vehicle standards must be only in minor and inconsequential respects, or the vehicle must comply with the applicable national road vehicle standards to an extent that makes it suitable for use on public roads in Australia.
403. For the purposes of determining whether a vehicle complies with the applicable national road vehicle standards to an extent that makes it suitable for use on a public road, the Secretary should consider whether the vehicle would not pose an unacceptable risk to public safety and would be appropriate for such use. The Secretary may wish to consult with state and territory registration authorities when considering the suitability for use on public roads.

**74 – Eligibility criterion—Model Report for trailer with aggregate trailer mass of more than 4.5 tonnes**

404. This eligibility criterion relates only to Model Reports for trailers with an aggregate trailer mass of 4.5 tonnes or more.
405. If the Secretary is satisfied that either of the following two circumstances apply, then the paragraph 71(1)(c) criteria for granting an approval of a Model Report is also satisfied.
406. One circumstance is where, if modified or manufactured in accordance with the Model Report, trailers with an aggregate trailer mass of 4.5 tonnes or more would comply with the applicable national road vehicle standards in force at the time the Model Report is approved by the Secretary.
407. The alternative circumstance is set out in subsection 76(2). This is where, if modified or manufactured in accordance with the Model Report, a trailer with an aggregate trailer mass of 4.5 tonnes or more would substantially comply with the applicable national road vehicle standards. The applicable national road vehicle standards are those in force at the time the Model Report is approved. Additionally, either that trailer's non-compliance with the applicable national road vehicle standards must be only in minor and inconsequential respects, or the trailer must comply with the applicable national road vehicle standards to an extent that makes the trailer suitable for use on public roads in Australia.
408. For the purposes of determining whether a trailer complies with the applicable national road vehicle standards to an extent that makes it suitable for use on a public road, the Secretary should consider whether the trailer would not pose an unacceptable risk to public safety and would be appropriate for such use. The Secretary may wish to consult with state and territory registration authorities when considering the suitability for use on public roads.

## **75 – Eligibility criterion—Model Report for certain vehicles subject to second stage of manufacture**

409. This eligibility criterion relates only to Model Reports for road vehicles entered on the RAV via the type approval pathway that will be subject to second stage of manufacture.
410. If the Secretary is satisfied that both of the following two requirements are met, then the paragraph 71(1)(c) criteria for granting an approval of a Model Report is also satisfied.
411. The first requirement that must be met is where, if subject to second stage of manufacture in accordance with the Model Report, a road vehicle entered on the RAV via the type approval pathway would comply with standards determined by the Minister under section 89. The vehicle only has to comply to the extent that those determined standards apply to the vehicle. The determination that applies is the determination in force at the time the Model Report is approved by the Secretary.
412. An alternative to satisfying the first requirement is set out in subsection 76(1). This is where, if subject to second stage of manufacture in accordance with the Model Report, a road vehicle entered on the RAV via the type approval pathway would substantially comply with the applicable standards determined under section 89 in force at the time the Model Report is approved. Additionally, either that vehicle's non-compliance with the determined standards must be only in minor and inconsequential respects, or the vehicle must comply with the determined standards to an extent that makes the vehicle suitable for use on public roads in Australia.
413. The second requirement which must also be met in order to satisfy this eligibility criterion is where, if subject to second stage of manufacture in accordance with the Model Report, a road vehicle entered on the RAV via the type approval pathway would comply with the applicable national road vehicle standards, as in force at the time the Model Report is approved. The vehicle is only required to comply with the applicable national vehicle standards as a default where there are no standards determined by the Minister under section 89, or where those determined standards are not applicable.
414. An alternative to meeting the second requirement is set out in subsection 76(2). This is where, if subject to second stage of manufacture in accordance with the Model Report, a road vehicle entered on the RAV via the type approval pathway would substantially comply with the applicable national road vehicle standards. The applicable national road vehicle standards are those in force at the time the Model Report is approved. Additionally, either the vehicle's non-compliance with the applicable national road vehicle standards must be only in minor and inconsequential respects, or the vehicle must comply with the applicable national road vehicle standards to an extent that makes it suitable for use on public roads in Australia.
415. For the purposes of determining whether a vehicle complies with the applicable national road vehicle standards to an extent that makes it suitable for use on a public road, the Secretary should consider whether the vehicle would not pose an unacceptable risk to public safety and would be appropriate for such use. The Secretary may wish to consult with state and territory registration authorities when considering the suitability for use on public roads.

## **76 – Circumstances in which substantial compliance permitted**

416. This section sets out more detailed requirements in relation to substantial compliance with certain standards, to which each of the four eligibility criterion for the granting of an approval of a Model Report (in sections 72 to 75) refer. This section does not set out any independent grounds for the granting of an approval of a Model Report.
417. The requirements of the following subsections are met where the Secretary is satisfied that they are met.
418. Subsection 76(1) is satisfied where both of the following requirements are met. The first requirement is that a vehicle substantially complies with the applicable standards determined under section 89 in force at the time the Model Report is approved. The second requirement is that vehicle's non-compliance with the determined standards is only in minor and inconsequential respects, or the vehicle complies with the determined standards to an extent that makes the vehicle suitable for use on public roads in Australia.
419. Subsection 76(2) is satisfied where both of the following requirements are met. The first requirement is that the vehicle substantially complies with the applicable national road vehicle standards in force at the time the Model Report is approved. The second requirement is that either the vehicle's non-compliance with the applicable national road vehicle standards is only in minor and inconsequential respects, or the vehicle complies with the applicable national road vehicle standards to an extent that makes it suitable for use on a public road in Australia.
420. Subsection 76(3) sets out that for the purposes of determining whether a vehicle complies with the applicable national road vehicle standards, or applicable standards determined by the Minister under section 89, to an extent that makes it suitable for use on a public road, the Secretary should consider whether the vehicle would not pose an unacceptable risk to public safety and would be appropriate for such use. The Secretary may wish to consult with state and territory registration authorities when considering the suitability for use on public roads.

## **77 – Other considerations**

421. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of an approval of a Model Report.
422. The Secretary can consider whether the person has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules.
423. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 77(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their

obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant's suitability to hold an approval of a Model Report.

424. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary's consideration of the application.
425. This section also allows Secretary may take into account any other matter that the Secretary considers relevant in assessing the application. An example of a matter that the Secretary may consider is whether the applicant has previously authored or developed an 'evidence pack', which was a similar concept to a Model Report that was used administratively under the *Motor Vehicle Standards Act 1989*.
426. The broad ability to take into account other relevant matters is required given the crucial role Model Reports play in a number of different areas of the legislation. In particular, Model Reports will ensure that road vehicles such as trailers with an aggregate trailer mass of more than 4.5 tonnes and specialist and enthusiast vehicles are modified or manufactured to meet applicable national road vehicle standards. Model Reports will be used by both RAW and holders of AVV approvals in ensuring that modifications or manufactures conducted are suitable and safe. Hence, it is important that the Secretary is able to take into consideration all other relevant matters necessary. In is important to note that the other matters must be relevant to the applicant's ability to fulfil the requirements of the approval.

#### **78 – Timeframe for deciding application**

427. This section provides that a decision on an application must be made by the Secretary within 60 business days after receiving the application.
428. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants. The level of scrutiny of Model Report approval applications is proportionate to the reliance on Model Reports by holders of RAW and AVV approvals to ensure that a vehicle meets the requirements of the concessional RAV entry pathway, and the reliance on Model Reports by certain type approval holders in the manufacture of trailers with an aggregate trailer mass over 4.5 tonnes.
429. It also provides that the 'clock' measuring 60 business days will stop when the Secretary makes a request for further information or to inspect premises under section 69 and will resume once the request has been complied with by the applicant in full.

#### **79 – Notice requirements for approval of Model Report**

430. This section requires the Secretary to notify an applicant if their application for the grant of an approval of a Model Report is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following, in writing:
- the name of the holder of the approval
  - the day the approval comes into force
  - the conditions to which the approval is subject

- any respects in which, or the extent to which, it is acceptable for vehicles modified or manufactured in accordance with the Model Report not to comply with the applicable national road vehicle standards or the standards determined by the Minister under section 89
431. This section requires the Secretary to specify in an approval of a Model Report any conditions to which the approval is subject. While Subdivision B sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.
432. Section 225 sets out that the Secretary must publish the scope of the Model Report (i.e. the model, variant or variants of vehicle to which the Model Report applies) and the contact details of the holder of the approval of the Model Report on the Department's website. This is designed to facilitate transparency and ensure that members of the public are able to see whether a Model Report has been developed for a vehicle that they are interested in purchasing and provide a point of contact to seek out the use of the Model Report. This may result in the publication of personal information where the holder of an approval of a Model Report is an individual. Subsection 225(2) allows the holder of an approval of a Model Report to opt out of having contact details published. In practice, this should form part of the application process, allowing the applicant to opt out before any publication occurs.

## **80 – Notice requirements for refusal to approve Model Report**

433. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
434. Because section 80 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

## **Subdivision B – Conditions applying to approval of Model Report**

### **81 – Conditions of approval**

435. Section 81 states that an approval of a Model Report is subject to any conditions specified in the approval and conditions set out in Subdivision B.
436. Section 87(4)(b) also sets out a further condition of the approval of a varied Model Report.
437. Section 81 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision B but specified in the approval, are conditions to which the holder of an approval is subject. Under section 28 of the *Road*

*Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.

438. Section 230(l) of the Rules provides that the holder of an approval of a Model Report may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

## **82 – Condition about keeping the Model Report accurate and up-to-date**

439. This section requires, as a condition of an approval for a Model Report, that the holder of the approval ensures that the Model Report is accurate and kept up to date. It then sets out what ‘up-to-date’ means for each of the four kinds of Model Reports.
440. There are key requirements regarding keeping a Model Report up to date. The first requirement is that the Model Report should not contain any errors. Errors may be, for example, incorrectly including a variant in the scope of the Model Report to which the Model Report does not apply.
441. The second requirement is that the Model Report must be in the form, and contain any information, determined under section 88. Section 88 allows the Minister to set out the format of Model Reports, including any steps that must be taken, records to be kept, or the format of the verification checklist. The Model Report must be in accordance with this determination. For example, if the determination required a certain modification step be included in the verification checklist, but the Model Report checklist omitted this, the Model Report would not contain such information as required by the determination, and the Model Report would not be considered up to date.
442. The third requirement goes to the core substance of the Model Report, and varies depending on the kind of Model Report. Broadly, however, this requirement can be understood as ensuring that vehicles, modified or manufactured in accordance with the Model Report, will comply with the applicable standards fully (or substantially in the respects, or to the extent, specified in the Model Report). The applicable standards may be the applicable national road vehicle standards or standards determined under section 89, depending on the model or one or more variants of the model of vehicle which the Model Report covers. Vehicles manufactured or modified in accordance with the Model Report must comply with the applicable standards as in force at the time the manufacture or modification takes place, unless the approval of the Model Report specifies that those vehicles are required to comply with the applicable standards as in force at the time the Model Report is approved.
443. This section also sets out the action that must be taken in the event of a Model Report not being up to date. The holder of an approval must notify the Secretary of the issue with the Model Report, and then apply to vary the Model Report, or request that the Model Report be suspended or revoked. If the holder of an approval of a Model Report becomes aware or should have been aware that the Model Report is not accurate or up to date, and does not take this action, they may be in breach of this condition of their approval. Under section 28 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.

### **83 – Condition about keeping records relating to distribution of Model Report**

444. This section requires, as a condition of an approval for a Model Report, that the holder of the approval retains records of the people whom that have authorised to use or access the Model Report. This includes their name, contact details and the version of the Model Report that they were authorised to use or access.
445. The intention of this rule is to ensure that the holder of an approval of a Model Report can contact people whom they have authorised to use or access in the event of the change to the Model Report. Given the requirement that, when using a Model Report, the latest version of the Model Report is used, there are several circumstances where a holder of an approval of a Model Report or the Department may need to contact persons they have authorised to use the Model Reports. Examples include:
- where there is a more recent version of the Model Report available
  - to notify people that there has been an error in the Model Report to which they have access

### **84 – Condition about allowing the Department to use the Model Report**

446. This section requires, as a condition of an approval for a Model Report, that the holder of the approval allows the Department to use their Model Report for a number of limited purposes.
447. The circumstances where the Department may use the Model Report includes when assessing:
- whether a road vehicle has been modified or manufactured in accordance with the Model Report
  - whether the holder of a RAW approval is complying with the Act, the Rules or an instrument made under the Act or Rules
  - whether the holder of an AVV approval is complying with the Act, the Rules or an instrument made under the Act or Rules
448. Paragraph 84(b) sets out that the holder of an approval of a Model Report is required to, as a condition of the approval, allow the Department to provide the verification checklist to the holder of an AVV approval for the purposes of verifying a road vehicle under the approval.

### **85 – Condition about keeping records of certain testing results**

449. This section requires, as a condition of an approval for a Model Report, that the holder of the approval keeps records whilst the approval is in force and for seven years after the approval is revoked. A Model Report does not expire.
450. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
451. Where an applicant has provided evidence from a testing facility to satisfy the Secretary that the Model Report met the one of the eligibility criterion in sections 72 to 75 (either where the testing was conducted by a person who holds a testing facility approval, or by a person who holds a testing facility approval but did not hold a testing

facility approval at the time that the testing was conducted) that evidence should be retained for a period of seven years after the Model Report expires or is revoked.

#### **86 – Condition about providing information etc. to the Secretary or an inspector**

452. Section 86 requires, as a condition of an approval of a Model Report, that the holder of the approval provides information and written answers, on request.
453. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
454. A request by the Secretary or an inspector must be in writing. It is a condition of an approval of a Model Report that the holder of the approval comply with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
455. A vehicle may be entered on the RAV – and then provided to the Australian market – if it satisfies the requirements of the concessional RAV entry pathway. Certain vehicles must be modified or manufactured, or their compliance with applicable national road vehicle standards verified, in accordance with approved Model Reports in order to satisfy the requirements of the concessional RAV entry pathway. It is therefore essential that the Department can effectively regulate holders of approved Model Reports, to ensure the vehicles that are modified, manufactured or verified in accordance with approved Model Reports comply with the applicable national road vehicle standards and, where applicable, certain standards determined by the Minister under section 89.
456. Section 86 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises or things associated with the design or manufacturing process, unless the Secretary or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
457. Information available to the Secretary or an inspector in connection with requests under section 86 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil

- penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
458. The powers under section 86 may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Department and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under section 86 allow holders of approvals to provide information in a structured manner within a reasonable period of time.
459. Paragraph 86(a) requires the holder of an approval of a Model Report to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.
460. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of road vehicle type approvals have the ability to provide unrestricted volumes of certain types of vehicles to the Australian market, without the oversight of an independent vehicle inspection for each vehicle. Consequently, holders of approvals of Model Reports should expect to produce a broad range of information to satisfy the Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules.
461. Section 86(b) requires the holder of an approval of a Model Report to provide written answers to questions, specified in a request by the Secretary or an inspector. This is subject to the limitation that the holder of the approval only needs to provide written answers to questions relating to the Model Report. To provide a written answer to a question, the holder of an approval may be required to provide specific information, or undertake new analysis or research. This may be necessary, for example, where information or documents provided to the Secretary or inspector are difficult to understand without further analysis, research or other work being undertaken. This is not intended to limit the meaning of ‘information’ in paragraph 86(a). For example, a request for information paragraphs 86(a) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.

### **Subdivision C – Variation of approved Model Report**

#### **87 – Variation of approved Model Report**

462. Variation of an approved Model Reports is a vital responsibility for holders of approvals of Model Reports. The section sets out how a holder of a Model Report approval should apply to vary a Model Report.
463. Section 87 allows the holder of an approval to apply to the Secretary to vary a Model Report itself (as distinct from variation of the Model Report approval). This section is to be used in circumstances where there is an approved Model Report and the holder of the approval wants to, or is required to, update or vary the Model Report. This section is different to section 191 of the Rules, which empowers the Secretary to vary the Model Report approval (as distinct from the actual Model Report).

464. Subsection 87(3) provides that sections 69 to 80 apply to an application for variation of an approved Model Report as if it were an application for approval of a new Model Report. The intention of subsection 87(3) is to ensure the Secretary considers the variation against the same standards as apply for a new Model Report approval. This also means that the varied Model Report will be subject to the standard conditions of a Model Report set out in Subdivision B of this Division and the additional conditions as specified in the approval as varied.
465. Further, subsection 87(3) means that section 70 applies. Paragraph 70(a) provides that the Secretary may refuse to consider an application for an approval of a Model Report (including the variation of an approved Model Report) if it does not comply with the requirements of the Rules. The intention is that this includes but is not limited to paragraphs 87(2)(a) to (c) which require the application to be in the approved form, be accompanied with a copy of the Model Report that incorporates and clearly indicates the variation sought and any other relevant documents as required by the form, and a fee be paid with the application. Paragraph 70(b) sets out that the Secretary may refuse to consider an application for an approval of a Model Report (and therefore also the variation of an approved Model Report) if the applicant does not comply with a request made under section 69 within 30 days or a longer period if specified by the Secretary, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect a vehicle or premises.
466. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
467. Section 230(m) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for variation of an approved Model Report.
468. Paragraph 87(4)(a) notes that the approval for a varied Model Report replaces any previous approval. That means that all older versions of the Model Report are no longer valid Model Reports and can no longer be used.
469. Given that the new version of the Model Report replaces old versions, paragraph (4) requires the holder of an approval of a Model Report to notify persons who they have previously authorised to use or access their Model Reports that the variation has been approved and the Model Report provided has been superseded. This paragraph requires the holder of an approval to take 'reasonable steps'. This may include attempting to contact people authorised to use or access the Model Report by mail, telephone or email.
470. The intention of this paragraph is to require a holder of an approval of a Model Report to contact people authorised to use or access their Model Reports if there is a newer version of the Model Report. If a holder of an approval of a Model Report does not fulfil this condition, this could result in people using Model Reports that are not the most current, and vehicles being modified or manufactured in accordance with the Model Report not complying with relevant standards.
471. Paragraph 87(4)(c) empowers the Department to provide a copy of the verification checklist in the varied Model Report to any holder of an AVV approval to which the Department previously provided a copy of the verification checklist.

472. Section 230(n) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to approve a variation of a Model Report.

#### **Subdivision D – Ministerial determinations**

##### **88 – Determination – information to be contained in Model Report**

473. Subsection 88(1) enables the Minister to determine, by legislative instrument, the form that a Model Report must take.
474. Subsection 88(2) empowers the Minister to make a legislative instrument that determines that Model Reports must set out, but is not limited to:
- the steps that the holder of a RAW approval must take when modifying a vehicle to which the report applies
  - the steps the holder of a road vehicle type approval must take when manufacturing a vehicle to which the report applies (this is only the case for model reports for trailers with an aggregate trailer mass of more than 4.5 tonnes)
  - the records that must be kept by the holder of the RAW approval or holder of a road vehicle type approval in relation to the manufacture of or modifications to the vehicle
  - the verification checklist that the holder of the AVV must complete when verifying the vehicle
475. Subsection 88(3) allows for a determination to set out different forms of Model Report for different kinds of vehicles.
476. This determination is intended to function primarily as a template setting determination to ensure consistency in the look and feel of a Model Report. This will ensure user-friendliness of Model Reports and improve efficiency for holders of AVV and RAW approvals by having a consistent structure for every Model Report.
477. The amount of detail in this template will be consequential for the steps that the holder of a RAW approval must take in the modification or manufacture of a road vehicle, and the steps that the holder of an AVV approval needs to take to verify a road vehicle.
478. These requirements are appropriate to be contained within a determination made by the Minister as they will likely be detailed and technical in nature. A determination allows for flexibility and responsiveness to rapidly advancing vehicle technologies, ensuring all appropriate matters are covered by Model Reports in respect of these technologies. A determination also allows for the Minister to change the format and required content of Model Reports without delay in response to any identified issues in the establishment of Model Reports and AVVs may arise, to ensure that the regulatory objectives related to Model Reports are achieved without unnecessary burden on regulated entities.

##### **89 – Determination – compliance with standards**

479. The determination making power at section 89 is distinctly different from the power at section 88. Where section 88 is more used for formatting and structure, section 89 goes to the substance of the Model Report.

480. Paragraph 89(1)(a) allows the Minister to determine the standards that apply to road vehicles modified or manufactured in accordance with a Model Report (other than vehicles with an aggregate trailer mass of more than 4.5 tonnes). This encompasses both applicable national road vehicle standards but also international standards that may be comparable.
481. Paragraph 89(1)(b) empowers the Minister to determine the circumstances in which the Secretary must be satisfied that a vehicle modified or manufactured in accordance with the Model Report complies or substantially complies with either an applicable standard determined in paragraph 89(1)(a) or an applicable national road vehicle standard on the basis of certain specified evidence.
482. Paragraph 89(1)(c) allows the Minister to determine the types of evidence the Secretary must have regard to when determining whether a road vehicle will comply, or substantially comply, with those standards if modified or manufactured in accordance with a Model Report.
483. Paragraph 89(2)(a) allows for the Minister to determine that Secretary must be satisfied that a vehicle complies, or substantially complies, with an applicable national road vehicle standards on the basis of certain evidence. Subparagraphs 89(2)(a)(i) and (ii) provide that this evidence may be testing conducted under a testing facility approval or testing that was conducted by holder of a testing facility approval but did not hold the approval at the time the testing was completed.
484. Paragraph 89(2)(b) allows for the Minister to determine that evidence must be given to the Secretary from an approved testing facility for the purpose of the Secretary becoming satisfied of a matter in the section 89 determination.
485. Paragraph 89(3) allows for a determination made under this section to set out different requirements for different kinds of vehicles. A declaration may specify multiple different kinds of vehicles to which it applies.
486. The need for a broad determination making power under section 89 is necessary due to the range of vehicles that Model Reports will be used on. Model reports will apply to SEVs Register vehicles, used two and three wheel motorcycles, and some vehicles subjected to second stage of manufacture. Model Reports will also apply to trailers with an aggregate trailer mass of more than 4.5 tonnes, although the determination-making power in this section does not apply to these trailers, as Model Reports relating to trailers with an aggregate trailer mass of more than 4.5 tonnes may only be used to facilitate applicants to be granted road vehicle type approval, where the expectation is that the trailer fully or substantially complies with national road vehicle standards, and not standards determined by the Minister under section 89.
487. Considering the diversity of vehicles to which Model Reports may apply, it is necessary for the Rules to provide a flexible way for the Minister to set requirements for what each of these Model Reports, including the standards that must apply to the varying kinds of vehicles that may be covered by Model Reports.
488. These standards are appropriate to be contained within a determination made by the Minister as they will be detailed and technical in nature. The national road vehicle standards will also be made by the Minister as determinations under section 12 of the *Road Vehicle Standards Act 2018* A determination allows for flexibility and responsiveness, for example regarding rapidly advancing vehicle technologies, ensuring all appropriate matters are covered by the standards in respect of these

technologies. A determination also allows for the Minister to amend the standards or related technical information contained within the determination without delay, to ensure that the regulatory objectives related to Model Reports are achieved without unnecessary burden on regulated entities.

## **Division 4 – AVV approvals**

### **Subdivision A – Application for, and grant of, AVV approval**

#### **90 – Application**

489. This section sets out that a corporation can apply to the Secretary for the grant of an AVV approval.
490. An AVV approval allows the holder of an approval to provide an independent vehicle inspection and verification service that is intended to provide vehicle owners and the public more broadly, greater assurance of vehicle integrity and compliance for road vehicles that have been modified by a RAW, as well as in other circumstances that may be required by conditions on approvals. The holder of an AVV approval must inspect vehicles within Australia.
491. Some aspects of a road vehicle that AVVs will be required to check include:
- any vehicle modifications undertaken by the holder of a RAW approval are in accordance with the relevant approved Model Report that applies to the vehicle;
  - that damage or corrosion does not exceed a threshold determined by the Minister under section 107 of the Rules, or does not reduce the vehicle's structural integrity; and
  - the vehicle's odometer is accurate
492. After completing an inspection to verify that a vehicle has been modified in accordance with an approved Model Report, the holder of an AVV approval will be able to add that vehicle to the RAV.
493. An application for the grant of an AVV approval must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide whether to grant the approval, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
494. The fee is designed to recover the cost of assessing the application.
495. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
496. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for

example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

### **91 – Further information**

497. When the Secretary is considering an application for the grant of an AVV approval this section makes it clear that the Secretary can request further specified information relevant to the application. This section also ensures the Secretary can request for the Secretary or an inspector to inspect any premises where road vehicles would be inspected or technology and equipment that would be used to inspect road vehicles under the approval.
498. Information that may be requested when assessing an application might include documentation regarding their record keeping systems or their procedures for maintaining their equipment and technology used for vehicle inspections.
499. The suitability of premises are directly related to the applicant's ability to be granted an AVV approval. Premises that may be inspected might include where road vehicles would be inspected under the approval. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the AVV approval. The applicant may refuse to provide access to premises, however section 92 means that the Secretary may refuse to consider the application.
500. Subsection 91(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Secretary. An example of where the Secretary might allow for a longer period for the applicant to comply is where the application is complex or where inspections must occur in regional areas.

### **92 – Secretary may refuse to consider application**

501. Paragraph 92(a) sets out that the Secretary may refuse to consider an application for an AVV approval if it does not comply with subsection 90(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
502. Paragraph 92(b) sets out that the Secretary may refuse to consider an application for an AVV approval if the applicant does not comply with a request made under section 83 within 30 days or a longer period if specified by the Secretary, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect premises, technology or equipment.
503. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
504. Section 230(o) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for an AVV approval.

### **93 – Criteria for deciding application**

505. Section 93 sets the criteria the Secretary must be satisfied of when considering whether to grant an AVV approval.

506. Paragraph 93(a) requires the Secretary to be satisfied that the corporation has, or has access to, the appropriate staff, technology, equipment and procedures to inspect road vehicles. These requirements are performance based and it will be up to the applicant to provide information demonstrating they have ‘appropriate’ staff, technology, equipment and procedures. The Secretary may provide guidance material to help applicants understand the kinds of matters that they would consider appropriate.
507. By not specifying prescriptive qualifications for AVV staff, this section gives flexibility to the decision maker to recognise equivalent skills and experience. This also provides flexibility to applicants who may have a number of staff to perform distinctly different tasks. For example, a qualified engineer may conduct inspections, an apprentice may assist, and a different staff member may handle record keeping.
508. Appropriate staff, technology, equipment, and procedures may be influenced by a determination made under section 106. This determination can, among other things, set out inspection requirements and the kinds of procedures that must be followed. Therefore, in assessing whether an applicant for AVV approval can satisfy this requirement consideration should be given to the requirements imposed by any determination under section 106 of the Rules.
509. When considering whether an applicant “has access” to technology, equipment, and appropriately skilled staff, the applicant is responsible for providing evidence that satisfies the Secretary. This may be, for example, a contract in place for certain services, a procedure that sets out how hoists will be accessed if the applicant does not have a physical premises, or the procedures the applicant might use to ensure they only inspect vehicles that they are able to inspect. “Has access” would not generally be able to be satisfied by the technology merely existing in an accessible form. For example, an applicant does not have access to a decibel reader just because a shop that they can access sells a decibel reader.
510. Paragraph 93(b) requires the Secretary to be satisfied that certain controls on conflicts of interest are in place. The Secretary must be satisfied that:
- The applicant and key management personnel do not hold a RAW approval.
  - The applicant, and any of the key management personnel of the corporation apply do not have any financial interest in a RAW, including shares.
  - The applicant for an AVV approval has appropriate arrangements and policies in place to prevent and manage conflicts of interest arising in the verification of vehicles. This section is intended to recognise that a conflict of interest may arise and appropriate steps should be taken to avoid this wherever possible, and, where it is not possible to avoid it, that the AVV manages the conflict of interest appropriately. For example, procedures or controls may covers steps to be taken to identify whether staff responsible for verification have any personal interest in a vehicle to be inspected.
511. Due to the role that the holder of an AVV approval plays in the entry of certain vehicles on the RAV and therefore the provision of vehicles to the Australian market, it is essential that the integrity of the corporation holding the approval is not compromised. When the integrity of the corporation holding an AVV approval is compromised, it may result in vehicles that do not comply being entered on the RAV.

This would likely result in a reduction in the compliance of the vehicle fleet with safety, environmental, and anti-theft standards.

512. Section 230(p) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant an AVV approval.

#### **94 – Other considerations**

513. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of an AVV approval.
514. The Secretary can consider whether corporation, or any key management personnel of the corporation, has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant, or a member of the key management personnel of the corporation have or may have contravened this legislation, the Secretary may refuse the application on these grounds. Key management personnel is a defined term in section 5 of the Rules.
515. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 94(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant’s suitability to hold an AVV approval.
516. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary’s consideration of the application.
517. This section also allows the Secretary may take into account any other matter that the Secretary considers relevant in assessing the application. For example, the Secretary may take into account whether the applicant was previously approved as a Vehicle Inspection Certificate (VIC) Signatory under the *Motor Vehicle Standards Act 1989*.
518. The broad ability to take into account other relevant matters is required given the important role holders of AVV approvals will perform. Holders of AVV approvals will be responsible for ensuring that vehicles that are modified have been done so correctly and in accordance with a Model Report. The holder of an AVV approval will then be responsible for adding the road vehicle on the RAV if it has been verified successfully. In considering the important nature that the holder of an AVV approval plays in verifying and adding vehicles to the RAV, it is important that all relevant information be available to the Secretary when deciding an application.

519. It is important to note that the other matters must be relevant to the applicant's ability to fulfil the requirements of the approval.

#### **95 – Timeframe for deciding application**

520. This section provides that a decision on an application for an AVV approval must be made by the Secretary within 30 business days after receiving the application.

521. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.

522. It also provides that the 'clock' measuring 30 business days will stop when the Secretary makes a request for further information or to inspect premises under section 91 and will resume once the request has been complied with by the applicant in full.

#### **96 – Period of AVV approval**

523. This section provides that an AVV approval will remain in force for a period of five years, unless otherwise revoked earlier. An AVV approval will commence on the day specified in the approval, allowing the Secretary to set a start date for the approval.

#### **97 – Notice requirements for grant of AVV approval**

524. This section requires the Secretary to notify an applicant if their application for the grant of an AVV approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:

- the name of the corporation that holds the approval;
- the categories of road vehicle that may be verified under the approval;
- the date the approval commences;
- that the approval will expire at the end of the period of five years, unless it is revoked earlier; and
- the conditions to which the approval is subject.

525. This section requires the Secretary to specify in an AVV approval any conditions to which the approval is subject. While Subdivision B sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.

526. For example, the approval might set a condition allowing the holder of an approval to only inspect motorcycles, because they have a high level of expertise in motorcycles and therefore only wish to inspect these kinds of vehicles. Allowing this flexibility ensures that diverse entities can be granted AVV approvals, improving the competitiveness of the sector and providing better service to those who require verification of a vehicle by the AVV.

527. AVV business names and contact details will be published on the Department's website. AVVs must be corporations so this will not involve the publication of personal information.

## **98 – Notice requirements for refusal to grant AVV approval**

528. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
529. Because section 98 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

## **Subdivision B – Conditions applying to AVV approvals**

### **99 – Conditions of AVV approvals**

530. Section 99 states that an AVV approval granted under Subdivision A will be subject to any conditions specified in the approval and conditions set out in Subdivision B.
531. Section 99 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision B but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
532. Section 230(q) of the Rules provides that the holder of an AVV approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

### **100 – Condition about conduct of verifications**

533. This section sets out the key requirements for the conduct of verifications.
534. When assessing a road vehicle that has been modified by a RAW approval holder, the holder of an AVV approval, can only verify vehicles if they:
- have received a signed declaration from the RAW that the vehicle was manufactured in accordance with the latest version of a Model Report for that vehicle and that the RAW was authorised to use that Model Report (as required in subsection 65(2)), and
  - are satisfied the declaration is true and correct
535. For all modifications in accordance with a Model Report (including those that may not be done by a RAW approval holder) paragraph 100(b) requires the holder of an AVV approval to inspect the vehicle. There are three components to an inspection:
- The AVV approval holder must inspect the vehicle against the verification checklist in the Model Report.
  - The AVV must inspect for damage or corrosion. Where there is a damage or corrosion threshold determined under 107, then that threshold should be used. If there is not a determination, then the AVV should be satisfied that the damage or corrosion has not impacted on the vehicle’s structural integrity.

- The AVV must be satisfied that the vehicle’s odometer is accurate, for example that the vehicle accurately records the distance the vehicle travels.
536. Subsections 100(2) and (3) outline what should happen when the AVV inspects vehicles that have not been subject to modification or manufacture via a Model Report. For example, the legislation allows conditions to require the holder of an approval to seek AVV inspection before the vehicle can be entered on the RAV.
537. In this situation the inspection requirements are different – the AVV should inspect the vehicle in accordance with the content of the condition. For example, if the condition was “this vehicle must be inspected by an AVV for damage or corrosion, and the AVV must be satisfied that any damage or corrosion have not impacted on the structural integrity of the vehicle” then the AVV should inspect the vehicle for damage or corrosion. Despite the different scope of the inspection, this does not change the requirement to prepare a verification report for that vehicle, as set out by subsection 100(4).
538. Subsection 100(4) requires the holder of an AVV approval to complete a verification report for the vehicle that states whether or not the vehicle, or any modifications of the vehicle, are verified. In circumstances where the vehicle, or any modifications of vehicle are not verified, they must provide a copy of the verification report to the Department. This verification report must be provided to the Department within one business day after the inspection is completed. This is designed to flag the vehicle as having issues that needed to be rectified. Having a short period to notify the Secretary ensures that the Secretary can monitor the vehicle and make sure that the person seeking verification does not just approach another AVV approval holder immediately afterwards without having conducted any rectification work.
539. Subsection 100(5) requires that the verification report be in the approved form and include the verification checklist from the approved Model Report. A verification checklist does not apply to vehicles being inspected under subsection 100(3).

### **101 – Condition about quality assurance and location of inspections**

540. Section 101 sets three conditions relating to quality assurance and the location of inspections.
541. Paragraph 101(1)(a) sets a condition for the holder of an AVV approval that they maintain the technology, equipment and procedures used to inspect road vehicles. The maintenance must be in accordance with any requirements set out in a determination made by the Minister under section 106 of the Rules. Where the equipment or technology is outsourced, this condition should be read as maintaining the procedures in place to ensure the equipment or technology being outsourced is still in an appropriate condition.
542. Paragraph 101(1)(a) sets a condition that the holder of an AVV approval must ensure that appropriately skilled staff carry out such inspections. This may include the use of contracting arrangements or other standing outsourcing arrangements to access appropriately skilled staff. It is not sufficient for the holder of an AVV approval to demonstrate that they have these arrangements in place. The obligation is for the holder of the AVV approval to ensure that appropriately skilled staff do carry out the inspections, and that the holder of the approval has the appropriate controls in place to ensure this.

543. Paragraph 101(1)(c) sets a condition that the holder of an AVV approval must ensure all inspections are carried out in Australia. The holder of an AVV approval has a significant role in verifying that certain vehicles comply with applicable national road vehicle standards or standards determined by the Minister under section 89, and entering these vehicles on the RAV. The holder of an AVV approval being based overseas could lead to a reduction in the ability of the Department to ensure that the holder of the AVV approval is meeting its obligations and has the appropriate controls in place to ensure that verifications are conducted correctly.

### **102 – Conditions about conflicts of interest**

544. Section 102 sets out conditions about conflict of interest and specific situations that an AVV must avoid.
545. For example, an AVV is not allowed to apply to become the holder of a RAW approval, nor can the corporation, or any key management personnel, hold shares or other financial interests in a corporation that holds a RAW approval. This is because all vehicles modified by the holder of a RAW approval must be inspected by an AVV before they can be placed on the RAV. If an AVV were to also become the holder of a RAW approval, or have a financial interest in a RAW approval, this would undermine the intention of AVVs as a third party independent inspection service.
546. In addition to the prohibition of the holder of an AVV approval from applying to become the holder of a RAW approval and holding shares or other financial interests in a RAW approval, this condition also places an obligation on holders of AVV approvals to develop and maintain procedures for managing conflicts of interest. This accepts that certain conflicts may arise in the course of conducting an AVV inspection, and there should be robust procedures in place to address this. This might include training staff to identify where a conflict of interest may lie and steps that should be taken to mitigate this.
547. The establishment of a network of AVV approval holders will play a vital role in ensuring that road vehicles modified by the holder of a RAW approval meet the necessary standards. Due to the key role holders of AVV approvals play, it is essential to ensure that holders of approvals are not influenced by external pressures to verify vehicles that do not meet the verification checklist set out in an approved Model Report that applies to the vehicle. This is especially important as holders of AVV approvals will be responsible for entering verified vehicles to the RAV. Any conflict of interest on the holder of an AVV approval compromises the integrity of the RAV –on which the public and state and territory registration authorities are likely to rely as a source of information regarding whether a vehicle meets safety, emissions and anti-theft standards.
548. This section also prevents holders of AVV approvals from verifying a vehicle in which they have a financial interest. A financial interest might include ownership or part ownership of the vehicle. It might also include other forms of interest that would be profitable, such as bribes or kickbacks for a positive verification.

### **103 – Condition about record keeping**

549. Section 103 sets a number of conditions that apply to the holder of an AVV approval regarding record keeping.

550. Paragraph 103(1)(a) requires the holder of an AVV approval to retain, for a period of seven years, reports or records including:
- the verification report completed for the vehicle
  - the verification checklist completed for the vehicle
  - a record of any information that the applicable Model Report, in accordance with which the vehicle was modified or manufactured, requires the holder of the approval to review
551. Subsection 100(1) requires the verification report or record be retained for seven years, starting on the day the report or record is made. This condition requires the holder of an approval to retain the record for seven years after it is created, regardless if their approval ceases to exist.
552. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
553. Paragraph 103(1)(b) requires the holder of an AVV approval, if requested by the Secretary or an inspector, to provide a copy of verification report or record. The intention of this paragraph is allow for the Department to conduct compliance activities, such as documentary assessments. Documentary assessments, as distinct to physical audits of premises, offer benefits to both the Government and the holder of the approval. A traditional physical audit imposes significant burdens on holders of approvals. During a physical audit, holders of approvals may have to ensure that inspectors are accompanied whilst on premises, and provide translators, and work-spaces for inspectors. They also have a limited time period to provide the requested information. The ability to conduct documentary assessments is designed to allow holders of approvals to provide information in a structured manner within a reasonable period of time.

#### **104 – Condition about providing information etc. to the Secretary or an inspector**

554. Section 104 requires, as a condition of an AVV approval, that the holder of the AVV approval provides information, documents, and written answers, on request. It also requires, as a condition of the approval, that the holder of the approval allows or arranges for the Secretary or an inspector to inspect premises, technology and equipment or things (including documents) related to the inspection of vehicles by the holder of the AVV approval.
555. While the condition in section 104 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety, environmental and anti-theft standards. The condition in section 104 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of AVV approvals with the conditions of their approvals.
556. A vehicle may be entered on the RAV – and then provided to the Australian market –if it satisfies the requirements of the concessional RAV entry pathway. Certain vehicles must be modified or manufactured by the holder of a RAW approval, and then inspected and verified by the holder of an AVV approval (in accordance with an

approved Model Report for the relevant kind of vehicle), in order to satisfy the requirements of the concessional RAV entry pathway. After verifying the vehicle, an AVV will enter a vehicle on the RAV, a precondition to the vehicle being provided for use on a public road in Australia. It is therefore essential that the Department can effectively regulate holders of AVV approvals, to ensure it has appropriate measures in place to ensure that each vehicle it verifies will be in accordance with the relevant Model Report for that vehicle, and therefore meet relevant standards before it is entered on the RAV.

557. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
558. A request by the Secretary or an inspector must be in writing. It is a condition of a AVV approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
559. Section 104 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises, technology, equipment or things related to the inspection of vehicles by the holder of the approval, unless the Secretary or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
560. Information available to the Secretary or an inspector in connection with requests under section 104 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
561. Paragraph 104(a) requires the holder of an AVV approval to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.
562. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of AVV approvals should expect to produce a broad range of information to satisfy the

- Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules. A request for information under paragraph 104(a) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
563. Paragraph 104(a) may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraph 104(a) allows holders of approvals to provide information in a structured manner within a reasonable period of time.
564. Section 104(b) requires the holder of the approval to provide written answers to questions, specified in a request by the Secretary or an inspector. This is subject to the limitation that the holder of the approval only needs to provide written answers to questions about road vehicles inspected under the approval. To provide a written answer to a question, the holder of an approval may be required to provide specific information, or undertake new analysis or research. This may be necessary, for example, where information or documents provided to the Secretary or inspector are difficult to understand without further analysis, research or other work being undertaken. This is not intended to limit the meaning of ‘information’ or ‘documents’ in paragraphs 104(a) or (c). For example, a request for information or documents under paragraphs 104(a) or (c) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
565. The Secretary or inspector may request a written answer where, for example, they have reason to believe that vehicles of a type covered by a road vehicle type approval are being provided for the first time in Australia without the vehicle being entered on the RAV. In such a case, the Secretary or an inspector may question the holder of a road vehicle type approval about their processes for importing such vehicles under the road vehicle type approval. The Secretary or an inspector may also, for example, request the holder of a road vehicle type approval provide written answers to questions about certain vehicles that have been entered on the RAV and whether they have been fitted with a component, such as an airbag, that may be subject to a recall.
566. Paragraph 104(c) sets a clear expectation, applied consistently and transparently to all holders of AVV approvals, that inspection of relevant premises is also an important part of holding an approval. It requires the holder of the approval to allow or arrange for the Secretary or an inspector, on their request, to inspect premises, technology and equipment or things (including documents) related to the inspection process by the holder of the AVV approval.
567. Paragraph 104(c) has been carefully crafted to limit its application and link it to its objective. The request can only be made to access premises for the purpose of ensuring that road vehicles entered on the RAV by the holder of the AVV approval comply with the national road vehicle standards or standards determined by the Minister under section 89.

568. When considering such obligations of the holder of the AVV approval to allow or arrange for access of the Secretary or an inspector to the premises where road vehicles are inspected under the approval, it is important to consider the role the holder of an AVV approval plays in providing road vehicles to the Australian market. The holder of an AVV approval is responsible for verifying that the necessary modifications or manufacture of a road vehicle in accordance with an approved Model Report has been completed, and is responsible for entering the vehicle on the RAV. If the holder of an AVV approval is not performing their required function correctly, this could result in road vehicles that do not meet the necessary standards set out Model Report relevant to the vehicle being entered on the RAV and provided to the Australian public. This may put not only the vehicle occupant's safety at risk, but also the general community. Therefore, such powers to inspect premises are necessary.
569. This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.

#### **105 – Condition about notifying the Secretary of errors in RAV entries**

570. This section requires the holder of an AVV approval, as a condition of their approval, to notify the Secretary of any error in information entered on the RAV under the approval of which they become aware. An accurate and up to date RAV will provide accurate information for the public about how a vehicle (searchable by VIN) entered the Australian market, including whether the vehicle may have some concessions against applicable national road vehicle standards. It will also support the improved compliance and enforcement powers under the Act. The holder of an approval must notify the Secretary as soon as practicable after becoming aware of the error. The notification of an error to the Secretary must be in writing. Errors may include anything from data entry mistakes to fraudulent entries.
571. This condition will assist in assuring that the information kept on the RAV is current and accurate.
572. The intention of this section is to put an obligation on holders of AVV approvals to correct any errors on the RAV, due to their entry of the vehicle on the RAV, of which they become aware.

#### **Subdivision C – Ministerial determinations**

##### **106 – Determination relating to inspection of road vehicles**

573. Subsection 106(1) allows the Minister to, by legislative instrument, determine any matter relating to the inspection of a road vehicle by an approved AVV.
574. Due to the highly technical nature of the information that must be provided for, or in relation to, maintenance of such technology, equipment and procedures, it is appropriate for these technical matters to be contained within a determination.
575. Additionally, due to AVV approvals being a new concept, it also provides the Minister and Secretary with flexibility to incorporate new matters into the determination as

issues arise in the establishment of this network. It also allows flexibility for the Minister to make determinations to assist holders of AVV approvals as vehicle technology advances in the future.

576. Matters that might be outlined in the determination could include, for example, the requirements for an odometer inspection, the standard steps that have to be taken to verify a vehicle, and the skills or expertise needed to perform each step.

### **107 – Determination relating to damage or corrosion**

577. Section 107 empowers the Minister to make a determination that specifies the extent or types of damage or corrosion, which do not prevent the holder of an AVV approval from verifying the road vehicle or modifications to the road vehicle.

578. This is designed to help reduce some of the subjectivity regarding damage or corrosion – one person’s interpretation of damage or corrosion could be different to another person’s interpretation. A determination made under this section is intended to provide a more objective threshold of damage or corrosion, and any vehicle that exceeds that threshold:

- must not be declared by the holder of a RAW approval to have been modified in accordance with an approved Model Report,
- must not be verified by the holder of an AVV approval, and a verification report stating that the vehicle has not been verified by provided to the Department within one business day after the report is completed.

579. Due to the highly technical nature of the information that must be provided for, or in relation to, what constitutes damage and corrosion, and how the threshold is defined, it is appropriate for these technical matters to be contained within a determination.

580. Additionally, due to AVV approvals being a new concept, it also provides the Minister and Secretary with flexibility to incorporate new matters into the determination as issues arise in the establishment of this network. It also allows flexibility for the Minister to make determinations to assist holders of AVV approvals as vehicle technology advances in the future.

581. Matters that might be outlined in the determination could include, but are not limited to:

- qualitative information, such as the kinds of damage and corrosion that do or do not meet the threshold
- quantitative information, such as measurements, to assist the holder of an AVV approval to identify the extent of the damage and corrosion and identify whether it does or does not meet the threshold
- the steps or equipment that may be required to inspect for that damage and corrosion.

## **Division 5 – Testing facility approvals**

### **Subdivision A – Application for, and grant of, testing facility approval**

#### **108 – Application**

582. Subsection 13(1) of the Act requires that the Rules must provide for or in relation to the testing and inspecting of road vehicles and road vehicle components for compliance with national road vehicle standards. Division 5 provides for and in relation to these matters, in satisfaction of subsection 13(1).
583. Paragraphs 19(2)(a) and (b) of the Act set out that the Rules may provide for or in relation to matters including the grant of approvals to enable vehicles to satisfy the requirements of pathways for the entry of vehicles on the RAV (including the type approval pathway and other entry pathways), and the conditions of such approvals. Division 5 sets out matters in relation to the grant of approvals relating to testing facility approvals, which are one of a suite of tools in this Part to enable vehicles to meet the requirements of the type approval pathway or concessional RAV entry pathway, in accordance with paragraph 19(2)(a) of the Rules. It also sets out the conditions on such approvals, in accordance with section 19(2)(b) of the Rules.
584. Section 108 sets out that a person can apply to the Secretary for the grant of a testing facility approval.
585. A testing facility approval allows the holder of an approval to conduct testing on road vehicles or road vehicle components (or both) against the national road vehicle standards or standards determined under section 89(2) of the Rules. The holder of the testing facility approval may conduct this testing at one or more testing facilities. This testing is generally to prepare evidence to support applications for approvals under the Act.
586. An application for the grant of a testing facility approval must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide whether to grant the approval, improving assessment effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
587. The fee is designed to recover the cost of assessing the application.
588. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
589. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

## **109 – Further information and inspection of premises**

590. This section makes it clear that the Secretary can request further specified information relevant to an application for the grant of a testing facility approval to assist the Secretary in deciding whether to grant the approval. This section also ensures the Secretary can request for the Secretary or an inspector to inspect any premises where testing will be carried out under the approval. This includes where the holder of the approval uses third party premises to conduct testing.
591. The Secretary may request further information about whether the applicant would have or would have access to technology and equipment to adequately test road vehicles and road vehicle components under the testing facility approval, for example what the applicant's procedures are for calibration of equipment related to testing. Other information that may be requested when assessing an application might include documentation that illustrates that staff are appropriately skilled to undertake the testing conducted under the approval. Alternatively, the Secretary may ask for further information about the other considerations set out in section 112, including any other matter that the Secretary considers relevant.
592. The suitability of premises is directly related to the applicant's ability to be granted a testing facility approval. Premises that may be inspected may include third party premises where testing under the approval may occur. In such circumstances where testing is conducted at premises occupied by third parties, the applicant must arrange for the Secretary or inspector to inspect this premise. This is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises, unless the Secretary's request is allowed by the holder of the approval (and, if relevant, the third party occupier of premises). It is designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and other considerations, including that the applicant will comply with conditions of the testing facility approval. The applicant may refuse to provide information or allow or arrange for access to premises, however section 110 means that the Secretary may refuse to consider the application.
593. Subsection 109(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Secretary. An example where the Secretary or an might allow for a longer period for the applicant to comply is where the request for information is complex or detailed or where premises are located overseas.

## **110 – Secretary may refuse to consider application**

594. Paragraph 110(a) sets out that the Secretary may refuse to consider an application for a testing facility approval if it does not comply with subsection 108(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
595. Paragraph 110(b) sets out that the Secretary may refuse to consider an application for a testing facility approval if the applicant does not comply with a request made under section 109 within 30 days or a longer period if specified by the Secretary, for example

a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect premises.

596. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
597. Section 230(r) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a testing facility approval.

### **111 – Criteria for deciding application**

598. Section 111 sets the criteria of which the Secretary must be satisfied when considering whether to grant a testing facility approval:
- that the applicant would have or have access to, technology and equipment to adequately test road vehicles and components under the approval
  - that the applicant would have or have access to appropriately skilled personnel to carry out any testing under the approval, including employees or contractors
599. “Having access” to technology, equipment and personnel is intended to capture arrangements such as contracting and outsourcing. An applicant is not intended to be able to satisfy the Secretary that they had “access” to technology and equipment by arguing that the equipment and technology exist in the market, and the testing facility is capable of accessing that equipment and technology. The Secretary should be looking for positive steps taken to actively access equipment and technology by the holder of the approval.
600. Section 230(s) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a testing facility approval.
601. Having or having access to personnel is also intended to include both employees and contracting staff.

### **112 – Other considerations**

602. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of a testing facility approval.
603. The Secretary can consider whether the person, or any key management personnel of the applicant, has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation have or may have contravened this legislation, the Secretary may refuse the application on these grounds. Key management personnel is a defined term in section 5 of the Rules.
604. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 112(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling

of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant's suitability to hold a testing facility approval.

605. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary's consideration of the application.
606. This section also provides the Secretary may take into account any other matter that the Secretary considers relevant in assessing the application. This might include, for example:
- The applicant was a registered testing facility under the *Motor Vehicle Standards Act 1989*.
  - The applicant has an accreditation or membership of a testing accreditation body. This could include organisations such as International Laboratory Accreditation Cooperation (ILAC) or the National Association of Testing Authorities (NATA).
607. The broad ability to take into account other relevant matters is required given the important role testing facility approvals will have under the Rules. Holders of testing facility approvals will improve the integrity, efficiency and effectiveness of vehicle certification. It is intended to provide an increased level of confidence that testing facilities have the appropriate staff, testing procedures, records management and calibration procedures meeting the requirements of the testing being performed. Ultimately, regulating testing facilities through approvals, ensures confidence in the testing of vehicles and vehicle components against the appropriate standards and underpins the assurance of vehicle's compliance with safety, environmental and anti-theft vehicle standards.
608. This section also empowers the Secretary to consider whether the applicant for the grant of an approval will comply with conditions to which the approval will be subject. The Secretary may also take into account, from a practical perspective, whether the applicant can comply with the conditions of the approval. For example, the Secretary may have concerns that the holder does not have access to the appropriate technology and equipment to carry out testing under the approval.

### **113 – Timeframe for deciding application**

609. This section provides that a decision on an application must be made by the Secretary within 30 business days after receiving the application.
610. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.
611. It also provides that the 'clock' measuring 30 business days will stop when the Secretary makes a request under section 109 for further information or to inspect

premises and will resume once the request has been complied with by the applicant in full.

#### **114 – Period of testing facility approval**

612. This section provides that a testing facility approval will remain in force for a period of five years, unless otherwise revoked earlier. A testing facility approval will commence on the day specified in the approval, allowing the Secretary to set a start date for the approval.

#### **115 – Notice requirements for grant of testing facility approval**

613. This section requires the Secretary to notify an applicant if their application for the grant of a testing facility approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:

- the name and business address of the person to whom the approval is granted
- the vehicle standards against which road vehicles (or road vehicle components, or both, as relevant to the approval) are to be tested by the holder of the testing facility approval
- the conditions to which the approval is subject
- when the approval will commence
- that the approval expires 5 years after it commences, unless the approval is revoked earlier

614. This section requires the Secretary to specify in a testing facility approval any conditions to which the approval is subject. While Subdivision B sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology. For example, the conditions might specify the kind of testing that is approved for the facility, such testing for emissions standards, but not testing for child restraint anchorages.

615. Section 227 of the Rules also provides that the business name and contact details of holders of testing facility approvals will be published on the Department's website. However, the holder of the approval can request that this information not be published, or if it has been published, that it be removed. The holder of a testing facility approval is not required to give a reason for the request, and the Secretary must not publish information, or must remove information, as requested.

#### **116 – Notice requirements for refusal to grant testing facility approval**

616. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.

617. Because section 116 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

### **Subdivision B – Conditions applying to testing facility approval**

#### **117 – Conditions of testing facility approval**

618. Section 117 states that a testing facility approval is subject to any conditions specified in the approval and conditions set out in Subdivision B.
619. Section 117 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision B but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
620. Section 230(t) of the Rules provides that the holder of testing facility approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **118 – Condition about testing**

621. This section creates a condition for a testing facility approval that any test carried out by the holder of the approval is appropriate for assessing the extent to which a road vehicle or approved component complies with the national road vehicle standards, standards determined by the Minister under section 89, or both. This is a broad performance based condition, which is appropriate given the vast array of different testing that may be conducted by a testing facility.
622. Key considerations about compliance with this condition may go to matters such as the use of scientific methods, quality control of testing conditions, reporting of findings, and suitability of testing arrangements by the holders of testing facility approvals.

#### **119 – Conditions relating to equipment used to carry out testing**

623. Section 119 creates a number of conditions that relate to equipment being used, or intended to be used, to carry out testing by the holder of an approval.
624. Paragraph 119(1)(a) requires the holder to have, or have access to technology and equipment to carry out testing under the approval. This condition allows some flexibility, in that the holder of the approval does not have to own all the equipment and technology to carry out testing. However, it does require the holder of the approval to have access to such equipment and technology. A holder of an approval that does not own all the necessary equipment and technology may have a contract with a provider that does and will engage with that provider when necessary. To illustrate that the holder of the approval has access to such equipment and technology, the Secretary may request evidence such as a contract for service or confirmation from the provider in writing.
625. It is not just enough for the testing facility to have testing equipment. The technology and equipment must be adequate and appropriate for each test. The equipment must

also be calibrated appropriately to ensure ongoing effectiveness. Records should be kept of this maintenance in order for its effectiveness to be verified by the Secretary as required.

### **120 – Condition about appropriately skilled personnel**

626. Section 120 creates a condition that the approval must ensure that the appropriately skilled personnel carry out the testing conducted under the approval. This condition extends to skills of employees and contractors used by holders of approvals for testing.
627. It is essential for the proper and effective operation of any testing facility that it has competent and experienced staff. It would be expected that:
- The person in charge of the testing facility approval and all officers having technical supervisory responsibilities in the conduct of the facility are appropriately skilled and experienced to conduct testing on road vehicle and road vehicle components.
  - The other members of the testing facility staff are suitably qualified for the work they perform and the proportion of partially trained members would not reduce the reliability or accuracy of the results produced under the approval.
  - The skill sets of the staff in a testing facility strike a balance between academic qualifications and practical experience. The range, precision and intricacy of work should be considered.
628. Where a testing facility is expected to test to a wide range of vehicle standards it is expected that the officer-in-charge will have appropriate academic qualifications and reasonably lengthy experience in the types of testing involved. On the other hand, a testing facility engaged in a limited range of simple tests may operate successfully under the control of less highly qualified but reasonably experienced staff. Intermediate situations require corresponding balances of qualifications, experience and work demand.

### **121 – Condition about testing reports**

629. Subsection 121(1) requires a holder of an approval to complete a report on the results of the testing of a road vehicle or component after the testing is completed.
630. Subsection 121(2) requires the holder to ensure the report be sufficiently detailed such that the test could be repeated based on the information contained in the report. This should outline matters such as the method for testing, the equipment used, the calibration of equipment, and the conditions under which the test was performed.
631. This report should be retained for a period of seven years and provided to the Secretary or an inspector if requested in writing. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.

### **122 – Condition about notifying recipients of errors in testing reports**

632. Section 122 creates a condition that if an error is found in a report by the holder of a testing facility approval, or the holder of a testing facility approval otherwise becomes aware of an error in a report, they must notify any person to whom the holder of the

testing facility approval gave the report. The notification from the holder of the approval must occur as soon as practicable after the holder of the approval becomes aware of the error. The report referred to is the report on the results of the testing required under subsection 121(1).

633. Due to the importance of testing facilities and the reports they complete, it is essential that they notify any person who has received a report with an error in it. The notification of an error in a report must occur as soon as practicable after the holder of the approval becomes aware of it. To illustrate compliance with this condition, the Secretary may request information about when the error became known to the holder of the approval, what steps were subsequently taken and when affected parties were notified of the error.
634. Error is intended to have a broad meaning. An error may include a failure to comply with the accuracy or sufficient detail requirements in 121(2), but is not limited to this.

### **123 – Condition about record keeping**

635. This section provides that it is a condition of a testing facility approval for the holder of the approval to retain records of any testing conducted under the approval. This section includes both testing for road vehicle and road vehicle components.
636. Any records made must also be retained for a period of seven years and be provided to the Secretary, if requested.
637. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
638. Each holder of a testing facility approval should have a records system designed to suit its particular requirements. Although records systems vary, certain basic principles should be adhered to for testing conducted at testing facilities:
- All components or vehicles are to be identified in detail so that confusion does not arise as to the identity of the components or vehicles to which the records refer.
  - Worksheets or data sheets should carry a complete identification of the component or vehicle being tested, together with details of the method used and of the particular item of test equipment together with their calibration status.
  - The records should contain sufficient information to enable a repeat test to be carried out satisfactorily.
  - Where calculations are carried out, the method and results are to be recorded.
  - All worksheets or workbooks are to be retained as ‘original data’ to allow future checking.

### **124 – Condition about providing information etc. to the Secretary or inspector**

639. Section 124 requires, as a condition of a testing facility approval, that the holder of an approval provides information or documents on request. It also requires, as a condition of a testing facility approval, that the holder of an approval allows or arranges for the Secretary or an inspector to inspect premises, things or documents associated with testing or preparation of reports.

640. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
641. A request by the Secretary or an inspector must be in writing. It is a condition of a testing facility approval that the holder of the approval comply with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
642. While the condition in section 124 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety, environmental and anti-theft standards. The condition in section 124 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of approvals with the conditions of their approvals. This condition also supports the collection of information which may support the broader objectives of the Act, and to support the monitoring of compliance by holders of approvals with their broader obligations under the Act, the Rules, or instruments made under the Act or Rules.
643. A vehicle may be entered on the RAV – and then provided to the Australian market – if it satisfies the requirements of a RAV entry pathway. The holder of a testing facility approval may test road vehicles or road vehicle components (or both) for compliance with certain standards. Evidence of such testing is relevant to the grant of various approvals under the Rules, and for vehicles to meet the requirements of the concessional RAV entry approval and type approval pathways. It is therefore essential that the Department can effectively regulate holders of testing facility approvals, to ensure the accuracy and integrity of testing evidence.
644. Section 124 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises or things associated with testing or the preparation of reports, unless the Secretary or inspector’s request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
645. Information available to the Secretary or an inspector in connection with requests under section 124 may be used to support an enforcement response against the holder

- of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
646. The powers under paragraph 124(a) may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraphs 124(a) allow holders of approvals to provide information in a structured manner within a reasonable period of time.
647. Paragraph 124(a)(i) requires the holder of a testing facility approval to provide information or documents, specified in a request by the Secretary or an inspector. This is subject to the limitation that the information or documents specified in the request must be about testing carried out under the approval. The Secretary or an inspector is not limited to requesting information for the purpose of assessing whether the holder of an approval is complying with the Act, Rules or instruments made under the Act or Rules. A request for information under section 124(a)(i) may be to achieve a different purpose consistent with the objects of the Act, for example, to broadly support the Department's administration of recalls of road vehicles or approved road vehicle components under Part 3 of the Act.
648. It is intended that the phrase "reasonably requires" be interpreted broadly. Holders of testing facility approvals should expect to produce a broad range of information to satisfy the Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules.
649. Paragraph 124(a)(ii) requires the holder of a testing facility approval to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.
650. Paragraph 124(b) sets a clear expectation, applied consistently and transparently to all holders of testing facility approvals, that inspection of relevant premises is also an important part of holding an approval. It does this by requiring the holder of the approval to allow the Secretary or an inspector, on their request, to inspect premises where road vehicles or road vehicle components are tested. Components include those covered by road vehicle component type approvals, as well as other components of road vehicles being tested. This paragraph also allows for the inspection of premises where reports relating to testing under the approval are prepared, and of things, including documents, associated with the testing process. These premises are largely commercial or industrial facilities.
651. Paragraph 124(b) has been carefully crafted to limit its application and link it to its objective. It can only be used to access premises and things for the purpose of assessing whether testing conducted under the approval is adequate to test road vehicles, or road vehicle components, for compliance with applicable national road

vehicle standards, or standards determined by the Minister under section 89 of the Rules, or both, as applicable.

652. This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.
653. Under section 124(b), an approval holder may be requested to arrange for the Secretary or an inspector to inspect premises of third parties associated with the testing covered by the approval or preparation of testing reports. This section does not directly require third parties to provide access to premises or things, nor does it allow the Secretary or an inspector to enter premises of third parties without the consent of the holder of the approval or the third party. However if the third party does not allow inspection of their premises for the purpose of an inspection, the approval holder may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.

#### **Division 6 – Specialist and Enthusiast Vehicles Register**

654. Section 21 of the Act requires that the Rules must provide for or in relation to the keeping of the SEVs Register. It also allows the rules to provide for or in relation to applications to be made for the entry of road vehicles on the SEVs Register. This Division sets out these matters.

#### **Subdivision A – Application for entry of road vehicle on SEVs Register**

##### **125 – Application for entry on SEVs Register**

655. This section sets out that a person can apply to the Secretary for a variant (or, in some cases, a make and model) of vehicle to be entered on the SEVs Register.
656. The SEVs Register is an online, publicly available database. Road vehicles that are assessed as meeting the criteria for classification as a specialist and enthusiast vehicle are entered on the SEVs Register. A vehicle that is covered by an entry on the SEVs Register may be the subject of an application under section 37 of the Rules for a concessional RAV entry approval – allowing importation (where relevant) and, after entry on the RAV, provision of these vehicles.
657. An application for the entry of a variant of a road vehicle, or make and model of a road vehicle on the SEVs Register must be made in the approved form, be accompanied by such documents required by the form and the application fee.
658. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide whether to enter the vehicle on the SEVs Register, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
659. The fee is designed to recover the cost of assessing the application.

660. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
661. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

#### **126 – Further information**

662. When the Secretary is considering an application for the entry of a variant, or make and model, of a road vehicle on the SEVs Register this section makes it clear that the Secretary can request further specified information relevant to the application.
663. Information that may be requested when assessing an application will depend on the kind of vehicle and the eligibility criteria in relation to which the application was made. For example, if the application is made under the rarity criteria the Secretary may request further information to be satisfied that the vehicle meets the criteria. Under the rarity criteria, the request could be for further information that illustrates that less than 3,000 vehicles of the make and vehicle category of the road vehicle are produced per year. If the application was made under the environmental criteria, the Secretary could request further information about whether the vehicle meets or exceeds national road vehicle standards relating to emissions.
664. The power for the Secretary to request further specified information is only designed to ensure the Secretary can be satisfied that vehicle is suitable for entry on the SEVs Register. The applicant may refuse the request; however, section 127 means that the Secretary may refuse to consider the application.
665. Subsection 126(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the period of 30 days starting on the day the request is made, or a longer period if specified by the Secretary. An example where the Secretary might allow for a longer period for the applicant to comply is where the request for information is complex or detailed.
666. The overall intention of this section is that all relevant and necessary information is available to the Secretary for deciding an application. This ability to request further information is particularly necessary for considering applications for entry of a vehicle on the SEVs Register. Applications to enter vehicles on the SEVs Register include vehicles that are rare or different to vehicles generally available to the Australian market.

#### **127 – Secretary may refuse to consider application in certain circumstances**

667. Paragraph 127(a) sets out that the Secretary may refuse to consider an application for SEVs Register entry if it does not comply with subsection 125(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
668. Paragraph 127(b) sets out that the Secretary may refuse to consider an application for SEVs Register entry if the applicant does not comply with a request made under

section 126 within 30 days or a longer period if specified by the Secretary or an inspector, for example a request for further specified information.

669. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
670. Section 230(u) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for entry of a variant of model, or make and model, of a road vehicle on the SEVs Register.

## **128 – Variant of a model of a road vehicle**

671. This section sets out the meaning of variant in the context of a SEVs Register application. The Rules are intended to provide Australian consumers with access to vehicles, including variants, that are not or were not genuinely available to Australian consumers and that meet one of the eligibility criteria for entry onto the SEVs Register. To be considered a variant, the vehicle must have “significantly different” design characteristics from other models of that road vehicle. The purpose of assessing vehicles at the variant level, rather than the model level, is to focus applicants on applying for variants of a model that are likely to meet the eligibility criteria and ensure that applicants provide focussed and relevant information to support the application. Vehicles will also, generally, be entered onto the SEV register as individual variants, so assessing variants will ensure efficiency in administration for both applicants and the Government. Applicants will be able to apply for more than one variant of the same model, so long as the same eligibility criterion applies to all variants.
672. The core test for whether road vehicles of a particular kind constitute a variant for the purposes of the SEVs Register is whether the design characteristics of those vehicles are “significantly different”. The difference must be significant between the variant and other models of that road vehicle. By implication, minor differences cannot be considered a variant.
673. This section provides clarity about how “significant” should be interpreted, by setting out matters that are definitely considered significant, while also setting out matters that are not, on their own, considered significant differences. Design characteristics that are significant and not significant will depend on whether the vehicle that is the subject of the application has a gross vehicle mass of less than or more than 12 tonnes. Vehicles with a gross vehicle mass of more than 12 tonnes tend to have a high level of customisation. For each customer and purpose for which the vehicle will be used, the vehicle will typically be customised, including changes to design characteristics that would not be typical for vehicles of a lower gross vehicle mass. This level of customisation could cause each vehicle to be its own variant, which would broaden the scope of vehicles listed on the SEVs Register significantly beyond what was intended. Therefore there is a higher threshold of what is considered to be ‘significantly different’ for vehicles with a gross vehicle mass of more than 12 tonnes, reflecting the differences in the design and production of these vehicles from other vehicles.
674. The Secretary retains discretion for assessing whether vehicles of a gross vehicle mass of less than 12 tonnes are also routinely customised to an extent that the design characteristics to be considered ‘significantly different’ should be limited similarly to

vehicles with a gross vehicle mass of more than 12 tonnes. Routine customisation is one example of many factors that a Secretary may consider in deciding whether the design characteristics of a vehicle are significantly different from other vehicles of that model of road vehicle, such that it should be considered a variant.

675. Where a design characteristic is not listed in either of the relevant subsections below (that they are, or are not, significant), the Secretary may exercise his or her own discretion, as to whether the design characteristics, are significantly different from other vehicles of that model of road vehicle. In exercising this discretion, the Secretary may have regard to matters including the objects of the Act, and the design characteristics of the vehicle as a whole, for example the cumulative effect of differences in design characteristics.
676. Subsection 128(2) provides if there are no variants within a model of road vehicle, then the model itself is taken to be the variant. This ensures that vehicles will not be excluded from entry on the SEVs Register merely by reason that the vehicles within a model of road vehicle do not have any significantly different design characteristics from each other.
677. Subsection 128(3) provides that differences in the following characteristics are significant for the purpose of the Secretary deciding that design characteristics of a vehicle with a gross vehicle mass of 12 tonnes or less are significantly different from those of other vehicles of that model of road vehicle:
- The capacity, configuration or induction of an internal combustion engine. This is intended to capture differences such as the turbocharging, supercharging, additional displacement and additional cylinders. It is also intended to capture difference in cylinder configuration, such as an in-line six versus a V6.
  - The type of motive power driving the engine or motor. The design characteristics of the variant will be significantly different if, for example, it is a plug-in hybrid vehicle where other vehicles of the relevant model are hybrids. However, the type of motive power will not be significantly different where one vehicle operates on unleaded petrol and other relevant vehicles operate on premium unleaded petrol.
  - The transmission. The design characteristics of the variant will be significantly different if, for example, it has a different number of gears. This is also intended to capture differences in transmission type, such as automatic, manual, continuously variable transmission and dual clutch transmission.
  - The drivetrain system. The design characteristics of the variant will be significantly different if, for example, the variant is front-wheel drive where other relevant vehicles are rear-wheel drive or four-wheel drive.
  - The body shape. The design characteristics of the variant will be significantly different if, for example, it has a different number of doors, or has a sedan body shape where other relevant vehicles have a hatchback body shape. This is not intended to capture differences in style, such as body kits.
  - The vehicle category. This is intended to capture vehicles that are in different vehicle category, as defined in section 5.

- Features designed to assist people with a disability, for example wheelchair access, where the application is made on the basis of the mobility criteria in section 132.
  - Differences of a kind set out in a determination made by the Minister under section 136 relating to criteria for entry of a vehicle on the SEVs Register.
678. Subsection 128(4) is relevant to the Secretary deciding whether design characteristics of a vehicle with a gross vehicle mass of 12 tonnes or less are significantly different from those of other vehicles of that model of road vehicle. Differences in only one of the following characteristics are not significant for the purpose of deciding whether design characteristics of this kind of vehicle are significantly different. However if there are differences in more than one of the following characteristics, the vehicle may be significantly different.
- Colour, upholstery, trim, or other cosmetic features. This is intended to exclude variants being considered significantly different where the only difference is a feature such as leather seats, exclusive paint colours, heated seats and sunroofs.
  - Engine tuning and software. This is intended to exclude differences such as higher outputs that are only the result of software changes or tuning.
  - Marketing name. This is intended to exclude differences where the difference is in how the vehicle is marketed and badged. This is intended to prevent ‘badge engineering’ (where the same model or variant of the vehicle is branded as a different make, model, or variant in different markets) resulting in different variants.
  - Any other matters set out in a determination under section 136. Section 136 allows the Minister to make determinations about when a vehicle may be considered a variant.
679. For example, a vehicle with sports seats, minor modifications to the body of the vehicle that are cosmetic in nature, and a factory software tune resulting in higher kilowatt outputs, may be significantly different, whereas a vehicle with only sports seats would not be significantly different.
680. Subsection 128(5) provides that differences in the following characteristics are significant for the purpose of the Secretary deciding whether design characteristics of a vehicle with a gross vehicle mass of more than 12 tonnes are significantly different from those of other vehicles of that model of road vehicle:
- The type of motive power driving the engine or motor. The design characteristics of the variant will be significantly different if, for example, it is a plug-in hybrid vehicle where other vehicles of the relevant model are hybrids. However, the type of motive power will not be significantly different where one vehicle operates on unleaded petrol and other relevant vehicles operate on premium unleaded petrol.
  - Features designed to assist people with a disability, where the application is made on the basis of the mobility criteria in section 132.
  - Differences of a kind set out in a determination made by the Minister under section 136 relating to criteria for entry of a vehicle on the SEVs Register.

681. Section 128(6) is relevant to the Secretary deciding whether design characteristics of a vehicle with a gross vehicle mass of 12 tonnes or less are significantly different from those of other vehicles of that model of road vehicle. Differences in only one of the following characteristics are not significant for the purpose of deciding whether design characteristics of this kind of vehicle are significantly different. However if there are differences in more than one of the following characteristics, the vehicle may be significantly different:

- Colour, upholstery, trim, or other cosmetic features. This is intended to exclude variants being considered significantly different where the only difference is a feature such as leather seats, exclusive paint colours, heated seats and sunroofs.
- Engine tuning and software. This is intended to exclude differences such as higher outputs that are only the result of software changes or tuning.
- Marketing name. This is intended to exclude differences where the difference is in how the vehicle is marketed and badged. This is intended to prevent ‘badge engineering’ (where the same model or variant of the vehicle is branded as a different make, model, or variant in different markets) resulting in different variants.
- Any other matters set out in a determination under section 136. Section 136 allows the Minister to make determinations about when a vehicle may be considered a variant.

### **129 – Eligibility for entry on SEVs Register**

682. Section 129 sets out the eligibility for a variant of a model, or make and model, of road vehicle to be entered on the SEVs Register.

683. Eligibility for entry on the SEVs Register is based on two requirements. Firstly, that the vehicle is not available to consumers in Australia through a road vehicle type approval or the equivalent to a road vehicle type approval under the *Motor Vehicle Standards Act 1989*. Secondly, that the vehicle meets one of the SEVs criteria (set out in sections 130 to 135). Subsections 129(1) and (2) set out these core requirements.

684. These paragraphs also clarify that three months have to have passed since the vehicle was first made available to consumers in any market. The intention of this requirement is to strike a balance that provides manufacturers a sufficient amount of time to make a decision regarding whether they will provide a vehicle variant to the Australian market against the interests of vehicle enthusiasts.

685. Subsections (3), (4) and (5) set out relevant scenarios where a vehicle may still be eligible for entry on the SEVs Register, despite being previously available to consumers in Australia under a road vehicle type approval or equivalent.

686. Subsections (3) and (5) allow previous holders of road vehicle type approvals or equivalent, or persons they authorise, to apply for entry of vehicles on the SEVs Register. This is intended to facilitate supply of specialist vehicles that the holder of a road vehicle type approval is happy to see supplied in parallel.

687. Subsection (4) is designed to facilitate entry of vehicles for periods of time when the vehicle was available overseas, but not genuinely available to consumers in Australia

(despite there being a period where the vehicle was available to Australian consumers). There are two scenarios captured in subsection 129(4):

- The vehicle is no longer being supplied to consumers in Australia, but the vehicle continues to be available to consumers outside Australia:

Model year	2012	2013	2014	2015	2016
<b>Overseas availability</b>	Available in an overseas market				
<b>Australian availability</b>	Available to consumers in Australia under a road vehicle type approval or equivalent			Not genuinely available to Australia consumers	
<b>SEVs eligibility</b>	Vehicles manufactured in this period are not eligible for SEVs Register entry			<b>Eligible for SEVs Register entry</b>	

- The vehicle was available to consumers outside Australia, but there was a delay in supplying the vehicle to Australian consumers:

Model year	2012	2013	2014	2015	2016
<b>Overseas availability</b>	Available in an overseas market				
<b>Australian availability</b>	Not genuinely available to Australia consumers			Available to consumers in Australia under a road vehicle type approval or equivalent	
<b>SEV eligibility</b>	<b>Eligible for SEVs Register entry</b>			Vehicles manufactured in this period are not eligible for SEVs Register entry	

688. For the period of time that the vehicle was available overseas but not available to Australian consumers, then vehicles that were produced in those periods of time (and that meet one of the SEVs criteria) will be eligible for entry on the SEVs Register. Despite the above examples using “model years” this should not prevent months from being considered. For example, if evidence was provided that availability of the performance variant in Australia stopped in August 2018, then vehicles with a build date of September 2018 would be eligible for SEVs Register entry.
689. Subsection (4) uses the concept of vehicles being “genuinely available to Australian consumers”. The Secretary would need to be satisfied that consumers were genuinely able to access the vehicle in Australia under a road vehicle type approval or equivalent.
690. The intention of this concept is to ensure that the fact that a type approval for a vehicle is in force does not, in and of itself, make a vehicle ineligible for SEV entry. The vehicles that the type approval relate to must also be genuinely available to Australian consumers. For example, a type approval holder could not merely provide a single vehicle under the type approval to prevent that vehicle from being entered on the SEVs Register.
691. Genuine availability of variants depends on the specific circumstances of that variant. For example:
- A holder of a road vehicle type approval may only supply 20 limited edition supercars to Australia. In the context of 500 of this variant being produced

worldwide, then the supply of 20 vehicles could be considered as genuinely making vehicles available to customers.

- If thousands of vehicles were produced worldwide, such as a popular ‘hot hatch’, and the holder of a road vehicle type approval limited supply to 20 vehicles in Australia, this would not be considered as genuinely making vehicles available to customers.

692. There are further situations where waiting times for vehicles might be relevant, but again, this is dependent on context, for example:

- The holder of a road vehicle type approval may be selling a popular performance vehicle in Australia where demand has surpassed supply. If the holder of a road vehicle type approval is fulfilling orders and delivering on these orders, then a vehicle may be considered genuinely available to Australian consumers.
- The holder of a road vehicle type approval that advertises that a performance vehicle is available to consumers, but the waiting list extends to over 12 months – and there does not appear to be demand constraints – then this might be considered as not making the vehicle genuinely available to Australian consumers.

693. In assessing genuinely availability to Australian consumers, then, the Secretary should have regard to the broad context of that variant’s specific circumstances and make a decision that considers this context.

694. The second step in the process is for the Secretary to be satisfied that the vehicle variant has been, at the time of application, available to a consumer in any market in the world for at least three months before the application is made.

695. Subsection 129(6) clarifies that a reference to an approval held under subsection 10A(1) or (2) of the *Motor Vehicle Standards Act 1989* includes:

- an approval held under those subsections that continues, or is taken to continue, in force under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*
- an approval held under those subsections which has ceased to be in force.

696. Section 230(v) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to enter a variant of model, or make and model, of a road vehicle on the SEVs Register.

### **130 – Performance criterion**

697. Section 130 outlines the requirements of the performance criterion for SEVs Register entry.

698. Subsection 130(1) provides that a variant of a road vehicle will satisfy the performance criterion if the power to weight threshold is above what is required in subsection 130(2). The intention for the performance criterion is that the vehicle must have a power to weight ratio above the requirement set out in subsection 130(2) at the time it was originally manufactured. To clarify, vehicles that have been modified to produce a greater power to weight threshold than originally manufactured are not eligible for entry on the SEVs Register under the performance criterion.

699. Subsection 130(2) sets the power to weight threshold. The power to weight threshold is dependent on the year the vehicle was manufactured. Paragraph 130(2)(a) requires vehicles originally manufactured before 1 January 2020 to meet a threshold of 110 kilowatts per tonne. Paragraph 130(2)(b) requires vehicles originally manufactured on or after 1 January 2020 to meet a power to weight threshold of 130 kilowatts per tonne.

### **131 – Environmental criterion**

700. This section sets out the environmental criterion for entry on the SEVs Register. To be eligible under this criterion, the variant will be required to satisfy an objective vehicle technology based threshold with two key requirements.

701. Under paragraph 131(a), the first requirement is for the variant of a model of road vehicle to satisfy one of the following:

- meet or exceed the applicable national road vehicle standards for emissions that are applicable to the variant at the time the application is made; or
- meet or exceed emission standards that are determined under section 136 to be comparable standards to those provided under the applicable national road vehicle standards – this is intended to allow recognition of similar international standards that may not directly align with Australian standards.

702. Under paragraph 131(b), the second requirement involves the variant of model of road vehicle satisfying one of two requirements:

- The variant must have been originally designed and manufactured to use an alternative means of propulsion to internal combustion engine of petrol or diesel either exclusively, or in addition to an internal combustion engine. This is intended to capture, for example, electric, hybrid, plug-in hybrid and hydrogen fuel celled variants of vehicles.
- The variant must be in a micro-car subcategory for low power vehicles. Such vehicles must have a maximum engine capacity of 660cc, maximum engine output of 47 kilowatts and must not be more than 3.4 metres in length and 1.48 metres in width. This is designed to capture vehicles commonly referred to as “Kei” cars – a specific kind of small, low powered vehicle.

### **132 – Mobility criterion**

703. This section sets out the mobility criterion for entry on the SEVs Register.

704. To satisfy this criterion, a variant of a model of road vehicle must be either of the following:

- originally manufactured with features specifically designed to assist people with a disability
- modified, before it was first provided in any market in the world, to become a variant of a model of road vehicle, and include features specifically designed to assist people with a disability and such modifications were sponsored or supported by the original manufacturer.

705. If the vehicle was modified to include features specifically designed to assist people with disabilities, the vehicle may become a variant as a result of that modification. It did not have to have been originally manufactured as a separate variant.

706. An example of such features could include, but not be limited to:
- built in ramps for wheelchair access
  - seating specifically designed to lift a person from an accessible position outside the vehicle into a standard seating position ('lift up and out' seat(s))
  - one or more portable wheelchair car seats
  - hand controls with a wired-in component
707. Disability has the same meaning as in the *Disability Discrimination Act 1992*.

### **133 – Left-hand drive criterion**

708. This section sets out the left-hand drive criterion for entry on the SEVs Register. To satisfy this criterion, the variant of model of road vehicle must satisfy three requirements.
709. The first requirement is that the vehicle must have been originally manufactured in left-hand drive configuration. The intention of this requirement is to capture vehicles that are genuinely left-hand drive, rather than vehicles that have been modified from right to left-hand drive.
710. The second requirement is that the variant of the model of road vehicle:
- must not be available as a right-hand drive vehicle in any market in the world, or
  - if the vehicle is available as a right-hand drive vehicle in a market – the vehicle was not originally manufactured as a right-hand drive vehicle for that market – this ensures that, where other markets have similar conversion arrangements to Australia, the originally manufactured vehicle is not ruled out from entry on the SEVs Register
711. The third requirement is that the variant of the model of road vehicle must fall under one of the vehicle categories listed in subparagraphs 133(c)(i) to (v).

### **134 – Campervans and motorhomes criterion**

712. This section sets out the criterion for campervans and motorhomes to be entered on the SEVs Register.
713. To satisfy this criterion, a variant of a road vehicle must satisfy one of the two requirements outlined in paragraphs 134(a) and (b).
714. To satisfy paragraph 134(a), the variant must have been originally manufactured as a campervan or motorhome.
715. To satisfy paragraph 134(b), the variant must be considered suitable for modifications as would be necessary to convert into a campervan or motorhome. It must also be suitable for such modifications as would be necessary to ensure that, once converted, it would comply with the applicable standards determined by the Minister under section 89.

### **135 – Rarity criterion**

716. Section 135 sets out the eligibility criterion for a variant of a model, or a make and model, of a road vehicle to satisfy the rarity criterion and to be entered on the SEVs Register.

717. To meet this criterion, the variant will be required to satisfy one of the following volume thresholds:
- total worldwide production of the variant’s ‘make’, in the variant’s vehicle category is less than **3000 units per year** (averaged over the number of years that the make of road vehicle is, or was, available as a new vehicle in any market in the world)
  - total worldwide production of the variant’s ‘model’ is less than **1000 units per year** (averaged over the number of years that the model of road vehicle is, or was, available as a new vehicle in any market in the world)
  - total worldwide production of the variant is less than **100 vehicles per year** worldwide (averaged over the number of years that the variant of road vehicle is, or was, available as a new vehicle in any market in the world).
718. New vehicle is a defined term in section 5 of the Rules.
719. It is also intended that left-hand drive vehicles imported under the rarity criterion will not require conversion to right-hand drive. However, such vehicles will still be subject to state and territory road registration requirements. Rare vehicles may also be subject to other requirements.

### **136 – Determinations relating to criteria for entry on SEVs Register**

720. This section allows the Minister to determine matters relating to the SEVs Register criteria or vehicles to be entered on the SEVs Register. For the Minister to exercise this power to make a determination, it must be by legislative instrument.
721. Subsection 136(2) outlines matters that may be determined by the Minister under this section. It is not an all-inclusive list of what may be determined but rather sets out examples of likely uses of this power.
722. By allowing the Minister to determine by legislative instrument specific matters relating to specialist and enthusiast vehicles, it allows the Department to be flexible to the new innovations, technologies, and unforeseen variations and situations that that arise when assessing road vehicle variants against specific criteria.
723. A core issue that arises when regulating road vehicles, especially vehicles in respect of which applications are being made for entry on the SEVs Register, is the variety and complexity of vehicles. Given the breadth and complexity of vehicles that may be entered on the SEVs Register, the intention of this determination making power includes to assist when vehicles fall into a ‘grey area’ – where a vehicle may have some features that allow it to satisfy one of the six criteria and some features which do not. This will be especially required in the context of the rapidly changing vehicle industry, particularly as vehicles that are considered ‘environmental’ or ‘low emissions’ become more prevalent.

### **137 – Timeframe for considering application**

724. This section provides that a decision must be made on an application by the Secretary within 30 business days after receiving the application.
725. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.

726. It also provides that the ‘clock’ measuring 30 business days will stop when the Secretary makes a request for further information under section 126 and will resume once the request has been complied with by the applicant in full.

### **138 – When Secretary may make or refuse to make entry on SEVs Register**

727. This section outlines when the Secretary may make, or refuse to make, an entry on the SEVs Register.

728. This section sets out that the Secretary may enter a variant of a model, or a make and model, on the SEVs Register if section 129 is satisfied and the variant of the model, (or for the rarity criterion, the make and model), of the road vehicle is

- not on the SEVs Register, or
- on the SEVs Register but not in relation to the criterion on which the application is based, or
- on the SEVs Register in relation to the criterion on which the application is based, but the entry is due to expire under section 143 of the Rules during the 30 business day period mentioned in paragraph 137(1)

729. This ensures that a vehicle is not entered twice on the SEVs Register. For example when two applications are made close to each other, then the entry only needs to occur once. In addition, this section makes it clear that a vehicle can be entered on the SEVs Register twice if the eligibility is under two different criteria. For example a rare high performance vehicle could be eligible under two different criteria. Different criteria may attract different standards that need to be met to enter that vehicle on the RAV. A rare vehicle, for example, might be exempt from certain standards that performance vehicles might not, given the relatively low volume of rare vehicles being entered on the SEVs Register and the RAV.

730. The Secretary may also have regard to any other matter the Secretary considers relevant in deciding whether a variant of a model, or a make and model of a vehicle is eligible for entry on the SEVs Register under section 129. This may help to inform the Secretary for the purpose of paragraphs 138(1)(a) or s138(3).

731. The Secretary must refuse to enter a vehicle on the SEVs Register if it does not meet the one of the eligibility criteria at section 129.

### **139 – Notice requirements for entry on SEVs Register**

732. This section requires the Secretary to notify the applicant of the entry of the road vehicle on the SEVs Register.

733. This section also requires the Secretary to notify the applicant in writing if the variant of a model, or the make and model of a road vehicle, is already entered on the SEVs Register.

734. However, if the application for SEVs Register entry is made in the 30 day period that the entry on the SEVs Register is due to expire then the Secretary does not need to notify the applicant.

### **140 – Notice requirements for refusal to make entry on SEVs Register**

735. This section provides that, if the Secretary decides to refuse to enter a variant of a model, or a make and model, of a road vehicle on the SEVs Register, then the

Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.

736. Because section 140 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

## **Subdivision B – Maintaining SEVs Register**

### **141 – Information to be included on the SEVs Register**

737. Paragraph 141 provides for the information that must be included on the SEVs Register.
738. Paragraph 141(1) requires the following information to be included on the SEVs Register if an variant of a model, or a make and model, of a road vehicle is entered. This is basic information to assist in the accurate identification of a variant of a model, or a make and model of a road vehicle entered on the SEVs Register:
- the vehicle category
  - the vehicle make
  - the vehicle model
  - the build date range for the vehicles

739. Paragraph 141(2) empowers the Secretary to enter any other information on the SEVs Register that he or she considers appropriate to enter, other than personal information. The intention of this is not to enter any personal information of the applicant on the SEVs Register. Rather, the intention of this paragraph is to enter information that is relevant to the SEVs Register entry. The type of information will be dependent on the kind of road vehicle entered and the eligibility criteria it entered the SEVs Register through.

### **142 – Correction of errors on SEVs Register**

740. This section empowers the Secretary to vary or remove an entry from the SEVs Register, if they are satisfied that an error exists in the entry. An error includes but is broader than a typo, for example, an error may exist because the original information provided may be inaccurate, or new information becomes available about a vehicle on the SEVs Register.

### **143 – Expiry of entries on the SEVs Register**

741. This section provides for a SEVs Register entry to remain valid for a period of three years, starting on the day the entry is made. After this period, a new application may be made under section 125 of the Rules for re-entry on the SEVs Register. Three years allows a reasonable time for the development of a Model Report and subsequent import and provision of vehicles.

## **Part 5 – Import approvals**

### **Division 1 – Introduction**

#### **144 – Simplified outline of this Part**

742. This section sets out the simplified outline for Part 5, which covers import approvals.

#### **145 – Purpose of this Part**

743. Section 145 outlines the purposes of this Part of the Rules, including the granting of approvals in relation to the importation of road vehicles and conditions of such approvals.

744. Paragraphs 23(a) and (b) of the Act set out that the Rules may provide for or in relation to matters including the grant of approvals in relation to the importation of vehicles, and the conditions of such approvals. This Part set out matters in relation to the grant of import approvals and conditions of these approvals, in accordance with paragraphs 23(a) and (b) of the Act.

745. This Part does not provide for the first importation of vehicles covered by a road vehicle type approval. Those matters are provided for in Part 3, Division 2 of the Rules.

### **Division 2 – RAV entry import approvals**

#### **146 – RAV entry import approval**

746. This section sets out that, if a person holds a concessional RAV entry approval that is in force, the person is automatically taken to hold an approval to import that vehicle. a RAV entry import approval).

### **Division 3 – Non-RAV entry import approvals**

#### **Subdivision A – Application for, and grant of, non-RAV entry import approval**

##### **147 – Application for approval**

747. This section sets out that a person can apply to the Minister for the grant of a non-RAV entry import approval.

748. A non-RAV entry import approval allows the holder of an approval to import a vehicle that is not generally to be used on a public road. This includes vehicles that may be, in exceptional circumstances, used on a public road, and either are intended to be used for purposes other than road use, such as featuring in a race, rally, exhibition, film production, or for market testing and evaluation, or will remain in Australia temporarily.

749. Vehicles that are granted such import approvals will not be entered on the RAV and their use on public roads will be at the discretion of state and territory registration authorities.

750. The non-RAV entry import approval is not intended to be used by persons to import vehicles into Australia that have structural damage, are “write offs” overseas or for the vehicles to be used as spare parts. The non-RAV entry import approval pathway allows for the importation of different types of vehicles for different purposes from the RAV entry approval pathway. The non-RAV entry import approval pathway is not intended to allow for vehicles to merely meet a concessional standard in order to be imported, as

an alternative to the RAV entry import approval pathway. An approval given under this Part of the Rules must be consistent with the objectives of the Act and the policy intent of the specific sections of the Rules that apply.

751. An application for the grant of a non-RAV entry import approval must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to make a decision on the application, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.
752. The fee is designed to recover the cost of assessing the application.
753. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
754. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

#### **148 – Further information**

755. When the Minister is considering an application for the grant of a non-RAV entry import approval this section makes it clear that the Minister can request further specified information relevant to the application.
756. Information that may be requested will depend on the eligibility criteria that is relevant to the road vehicle and the individual circumstances of each application.
757. For example, if an application is made for a non-RAV entry import approval on the basis that the vehicle will be used for testing or market evaluation, the Minister may seek further information about the types of tests that might be conducted using the vehicle whilst in Australia. If an application is made on the basis that the vehicle will remain in Australia temporarily, the Minister may seek further information about how long the vehicle will be in Australia and whether the applicant has made arrangements for the destruction or export of the vehicle after a specified period.
758. Subsection 148(2) sets out that a request under this section must be in writing and state that the Minister may refuse to consider the person's application if the person does not comply with the request within the stated period.
759. The request must be complied with within 30 days, although the Minister may specify a longer period. The Minister may, for example, allow for additional time if the requested further information is difficult to obtain or complex.

#### **149 – Minister may refuse to consider application in certain circumstances**

760. Paragraph 149(a) sets out that the Minister may refuse to consider an application for a non-RAV entry import approval if it does not comply with subsection 147(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.

761. Paragraph 149(b) sets out that the Minister may refuse to consider an application for a non-RAV entry import approval if the applicant does not comply with a request made under section 148 within 30 days or a longer period if specified by the Minister, for example a request for further specified information.
762. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
763. Section 230(w) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a non-RAV entry import approval.

#### **150 – Criteria for deciding application**

764. This section outlines that the Minister may grant a non-RAV entry import approval if an eligibility criterion set in section 151 or 152 is met, and that the Minister is satisfied that the person is capable of complying with conditions set out in the approval. Other matters that the Minister may consider in making a decision are set out in section 153.
765. Section 230(x) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a non-RAV entry import approval.

#### **151 – Eligibility criterion – non-road use**

766. The eligibility criteria for a non-RAV entry import approval contains two key requirements.
767. As provided for in subparagraphs 151(a)(i) and (ii), the first requirement is for the Minister to be satisfied that the purpose of importing the vehicle is for it not to be used on a public road or for any use of the vehicle on public roads to only occur in exceptional circumstances. This means that a vehicle imported through this pathway would not be for everyday use. For example, the purpose of the importation of the vehicle must not involve driving to the local shops or work. A vehicle imported through this pathway would only ever be used on a public road in exceptional circumstances, and those circumstances would connect with the purpose of the vehicle under the eligibility criteria, for example, a vehicle travelling a short distance on a public road to get to the non-public road venue for a race, rally or film production.
768. Exceptional circumstances may include situations where road use occurs on a regular basis, but the use on the road is controlled or limited by registration authorities. To interpret exceptional in this way, the Minister should be satisfied that the vehicle's road use relates to its eligibility under paragraph (b) – for example an autonomous vehicle being tested on public roads may be considered as use in exceptional circumstances if there are conditions imposed on the vehicle's road use, such that its use remains 'exceptional'.
769. The second requirement is that one of the following to apply to the vehicle being imported:
- the vehicle is for exhibition and is generally not available in Australia
  - the vehicle is a race and rally vehicle, or providing support to a vehicle used in a race or rally
  - the vehicle is a test and evaluation vehicle

- the vehicle is for the production of a film, video, television program or advertisement
  - the vehicle is significantly modified, for example a ‘hot rod’
  - the vehicle is suitable to be granted a non-RAV entry import approval, and granting the approval would not be inconsistent with the objects of the Act
770. Subparagraph 151(b)(i) provides for vehicles that are to be used in a race or rally, or in providing support to a vehicle used in race or rally. In applying for the grant of a non-RAV import approval under this subparagraph, a person would need to supply evidence that supports their application – such as their race history or evidence to illustrate the vehicles being imported are modified with racing vehicle features. This subparagraph is intended for vehicles that will be genuinely used in a race or rally – not in circumstances where the vehicle will be used in one race and then use for other purposes.
771. Subparagraph 151(b)(ii) provides for vehicles that will be used only in public exhibition. Public exhibition could include, but not be limited to, museums, shows and collections. It is important that the vehicle must be available for public exhibition, which could include free or paid events where the vehicle is being showed. This subparagraph is not intended to be used for the importation of vehicles for private collections or use. As part of the application process, the Minister may request information or evidence that illustrates where and when the vehicle will be publicly exhibited.
772. Subparagraph 151(b)(iii) provides for vehicles that will be used only in the production of a film, video, television program or advertisement. This subparagraph should be used where there is a genuine or special need for the vehicle being imported to be used in the production. When considering an application under this subparagraph, the Minister may request documentation from the applicant to illustrate that the vehicle be used for such purposes, such as a contract between the applicant and production company.
773. Subparagraph 151(b)(iv) allows for a vehicle that will be used for testing or market evaluation. This might be, for example, a sample vehicle that is being tested for compliance with the applicable national road vehicle standards, or a vehicle that is being evaluated for sale in Australia by the manufacturer.
774. Subparagraph 151(b)(v) allows for a vehicle that is significantly modified. This includes custom vehicles or hot rods.
775. Subparagraph 151(b)(vi) allows for vehicles that do not involve use on a public road, or use only in exceptional circumstances, so long as the Minister is satisfied that the vehicle is suitable to be granted a non-RAV entry import approval, and granting the approval would not be inconsistent with the objects of the Act. For example, the Minister might need to be satisfied that the vehicle does not pose a risk to public safety, that importation would offer some sort of public benefit consistent with the objects of the Act, and that the importation would not set a precedent that would undermine the benefits of requiring vehicles to meet consistent safety, environmental and anti-theft standards.

### **152 – Eligibility criterion – temporary**

776. Section 152 allows for the Minister to grant a non-RAV entry import approval if the vehicle in relation to which the application was made will remain in Australia temporarily and the vehicle will either not be used on public roads, or only be used on public roads in exceptional circumstances.
777. It is likely that the Minister would consider, in deciding such an application under this section, the period of time requested for the road vehicle to be in Australia and how the vehicle will be used. Applicants who apply for longer periods of temporary importation will likely be required to provide more extensive evidence to support their claims.
778. It is also likely that an approval granted under this section would have a condition placed on the approval that requires the vehicle to either be destroyed or exported by a specified date.
779. Consistent with the other eligibility criteria for non-RAV entry import approval, this eligibility criterion is not intended to be an open pathway for all vehicles that may be temporarily in Australia.
780. For the Minister to be satisfied that the period of time is temporary, the Minister could have regard to the expected use of the vehicle while in Australia and the aspects of that use that make it temporary. The Minister might also consider the expected life of a vehicle, whether a similar vehicle already is available for use in Australia, and the ability for the holder of the approval to have the vehicle exported or destroyed. An applicant that is unable to provide evidence as to why the vehicle is going to be in Australia temporarily would be unlikely to satisfy the Minister that the vehicle meets the requirement in section 152(a).
781. Where the Minister is satisfied that the vehicle will be in Australia temporarily, but the applicant has requested a period of time for the vehicle to be in Australia that is excessive for the purpose of the importation, the Minister may place a condition on the approval that is for a shorter period of time.

### **153 – Other considerations**

782. This section allows the Minister to take into account a number of other factors when deciding an application for the grant of a non-RAV entry import approval.
783. The Minister can consider whether the applicant has, or may have, contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel have or may have contravened this legislation, the Minister may refuse the application on these grounds.
784. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 153(a) and (b) allows the Minister to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Minister may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying,

suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Minister will have evidence of a contravention and this evidence will be relevant in considering an applicant's suitability to hold a non-RAV entry import approval.

785. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Minister's consideration of the application.
786. This section also allows the Minister to take into account any other matter that the Minister considers relevant in assessing the application. For example, this may include things such as the kind of vehicle, the purpose for which the vehicle is being imported, and the amount of time the vehicle is required in Australia. Another consideration may be whether the vehicle is already readily available in Australia. It could be the case that if a person is seeking a non-RAV entry import approval for a vehicle to be used in a production of a film and the make and model is already available in Australia, then the Minister may consider it not appropriate to grant the approval. In the context of this Division, relevant matters will generally be limited to matters principally involving the condition or intended use of the vehicle; matters principally to do with the applicant's state of mind (like sentimental or emotional attachment to the vehicle) will not generally be relevant. The applicant's conduct, for example previous racing history to support that the vehicle will be used in a race, or previous contraventions of road vehicle legislation, demonstrating that it may not be appropriate to grant the approval, may be considered relevant.

#### **154 – Timeframe for deciding application**

787. This section provides that a decision on an application must be made by the Minister within 30 business days after receiving the application.
788. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.
789. It also provides that the 'clock' measuring 30 business days will stop when the Minister makes a request for further information or to inspect premises and will resume once the applicant has complied with the request.

#### **155 – Notice requirements for grant of non-RAV entry import approval**

790. This section requires the Minister to notify an applicant if their application for the grant of a non-RAV entry import approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:

- the name of the holder of the approval
- details of each road vehicle to which the approval applies, which includes the make, model and VIN of the vehicle
- the day that the approval commences
- if the approval is for a specified period – the day that the approval expires
- any condition to which the approval is subject

791. This section requires the Minister to specify in a non-RAV entry import approval any conditions to which the approval is subject. While Subdivision B sets out a series of standard conditions that must be specified, additional conditions may also be imposed by the Minister. This is designed to provide flexibility for the decision maker to address situations such as unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Minister to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.
792. For example, a road vehicle may be imported for use in a race and rally. The Minister may specify a condition that the vehicle can only be used for a specific race.
793. If the approval is for a specified period, the vehicle will need to be imported before the end of that period. The conditions relating to the importation will also need to be met, for example, a condition that the vehicle be inspected by the holder of an Authorised Vehicle Verifier approval after the vehicle has entered Australia.

#### **156 – Notice requirements for refusal to grant non-RAV entry import approval**

794. This section provides that, if the Minister refuses to grant an approval, then the Minister must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Minister considered that led them to the view that those requirements were not satisfied.
795. Because section 156 requires the Minister to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Minister to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

#### **Subdivision B – Conditions applying to non-RAV entry import approvals**

##### **157 – Conditions of approval**

796. Section 157 states that a non-RAV entry import approval granted under Subdivision A will be subject to any conditions specified in the approval, a condition that allows the Minister or an inspector to inspect the vehicle, and conditions set out in Subdivision B.
797. Section 157 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision B but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
798. This section also provides for some of the conditions that could be specified in the approval. This is not, however, an all-inclusive list of conditions that may be placed on such approval and should not be read as limiting the Minister's ability to set conditions.
799. Paragraphs 157(2)(a) and (b) make clear that the Minister can set conditions requiring the export or destruction of a vehicle by a specified time. The holder of the approval will likely be expected to retain evidence that export or destruction has occurred. Due to the nature of non-RAV entry import approvals, particularly (but not limited to) vehicles to be temporarily imported under section 152, it is expected that many approvals given under this pathway will have a condition that the vehicle must be exported or destroyed after a specified period of time. The intention of such non-RAV

entry import approval pathways is that the vehicles be imported and used in Australia for a specified purpose.

800. Paragraph 157(2)(c) allows for a condition to be placed on an approval requiring a vehicle to be modified by the holder of the approval. Such modifications could include steps to make the vehicle roadworthy or to prevent the use of the vehicle on a public road.
801. Paragraph 157(2)(d) allows for a condition to be placed on an approval that requires verification of the vehicle, or modifications to the vehicle, by the holder of an AVV approval.
802. Paragraph 157(2)(e) allows for a condition to be placed on an approval that prohibits the approval holder giving another person access to the vehicle. The intention of this condition is to ensure that the vehicle being imported is being used for its intended purposes. For example, this condition may prohibit any person from using a race or rally vehicle unless they are the driver of the vehicle for the race or rally or part of the racing team.
803. Paragraph 157(2)(f) allows for a condition to be placed on an approval as to how a vehicle may be used. For example, a condition could be placed on an approval that a vehicle can only be used on the set of a specified movie set or for a specified race and rally purposes.
804. Paragraph 157(2)(g) allows for a condition to be placed on an approval that requires specified records to be retained for a period of time. Similarly, paragraph 157(2)(h) requires the holder of the approval to provide specified records to the Minister or an inspector upon the Minister or inspector's written request.
805. Section 230(y) of the Rules provides that the holder of a non-RAV entry import approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore 'imposed' by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **158 – Condition about providing information etc. on request**

806. Section 158 requires, as a condition of a non-RAV entry import approval, that the holder of an approval provides information, documents, and written answers, on request.
807. While the condition in section 158 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety, environmental and anti-theft standards. The condition in section 158 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of non-RAV entry import approvals with the conditions of their approvals.
808. Vehicles covered by non-RAV entry import approvals may be imported into Australia without individual inspection of the vehicle, and without entry on the RAV. It is essential that the Department can effectively regulate holders of non-RAV entry import approvals, to ensure that they meet their obligations, including fulfilling any controls (in the form of conditions or other requirements set out in the approval) placed on them. For example, where the holder of a non-RAV entry import approval was granted the approval under the non-road use criterion, and the approval specifies that it is only

- to be used in exceptional circumstances and otherwise for the purpose of the production of a film on private roads, it is crucial that the vehicle is used within these requirements and not for other purposes which may pose a greater safety risk to the Australian community, and that the Minister or an inspector is able to monitor this.
809. Section 158 is not intended to be a power to enter premises or seize documents without consent, meaning that the Minister or an inspector cannot obtain information or documents from the holder of the approval, unless the Minister or inspector's request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
810. Information available to the Minister or an inspector in connection with requests under section 158 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
811. The Minister or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
812. A request by the Secretary or an inspector must be in writing. It is a condition of a non-RAV entry import approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of 'reasonable time' is to allow the Minister or inspector to take account of the specific circumstances relating to the approval or request. The Minister or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
813. It is intended that the phrase "reasonably requires" be interpreted broadly. Holders of non-RAV entry import approvals should expect to produce a broad range of information to satisfy the Minister or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules. A request for information under section 158 is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
814. Paragraph 158(a) allows the Minister or an inspector to request information from the holder of a non-RAV entry import approval, and requires that the holder of that approval provide that information as a condition of their approval. This is subject to the limitation that the Minister may only request information that the Minister reasonably requires for the purposes of assessing whether the holder of the approval is

complying with the Act, these Rules or an instrument made under the Act or these Rules, or information about vehicles to which the approval applies.

815. Paragraph 158(b) imposes a condition that an approval holder must provide written answers to questions. This condition is limited in that the questions can only relate to the road vehicles covered by the approval.
816. Paragraphs 158(a) and (b) may be used to allow the Minister or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Minister or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraph 158(a) and (b) allows holders of approvals to provide information in a structured manner within a reasonable period of time.

#### **Division 4 – Reimportation import approval**

##### **Subdivision A – Application for, and grant of, reimportation import approval**

###### **159 – Application**

817. This section sets out that a person can apply to the Secretary for the grant of a reimportation import approval.
818. A reimportation import approval allows the holder of an approval to import a vehicle, if it has previously been entered on the RAV, or fitted with an identification plate or used import plate under the *Motor Vehicle Standards Act 1989*.
819. Importantly, however, the applicant must satisfy the Secretary that the vehicle, in relevant respects, remains consistent with the information entered either:
- on the RAV in relation to the vehicle, or
  - on the identification plate or used import plate in relation to the vehicle
820. The intention of this section is to facilitate the re-entry of vehicles that have been provided to the Australian market and have subsequently been exported from Australia. However, these vehicles must not have undergone modification or suffered damage overseas to the extent that has resulted in the vehicle no longer being consistent with the information that is recorded about that vehicle on either the RAV or the identification plate placed on the vehicle under the *Motor Vehicle Standards Act 1989*.
821. For example, if the vehicle was exported from Australia and had additional seating positions installed or has changed vehicle category then the modifications would mean the vehicle would not be eligible for a reimportation approval.
822. An application for the grant of a reimportation import approval must be made in the approved form, be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the

Secretary to decide whether to grant the approval, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The form may require a declaration, for example about whether certain matters are true, or the accuracy of the information provided.

823. The fee is designed to recover the cost of assessing the application.
824. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
825. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

### **160 – Further information and inspection of road vehicle**

826. When the Secretary is considering an application for the grant of a reimportation import approval this section makes it clear that the Secretary or an inspector can request further specified information relevant to the application.
827. Information that may be requested when assessing an application might include:
- if the vehicle has been modified whilst overseas, information about the type of modifications that occurred; or
  - information regarding the condition of the vehicle when it was exported overseas.
828. The Secretary or an inspector may also request that the person making the application allow for the vehicle to be inspected. One of the purposes of the inspection could be to ensure that the vehicle in relation to which the application was made remains the same vehicle that is on the RAV or listed on the identification plate for the vehicle. If the vehicle in relation to which the application was made was modified overseas, the Secretary or an inspector may request to inspect the vehicle. One of the purposes of the inspection in such circumstances would be to ensure that the modifications of the vehicle do not make it inconsistent with the vehicle's RAV entry.
829. This is not designed to be a coercive power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions that may be imposed on the approval, if granted. The applicant may refuse to allow the vehicle to be inspected; however, section 161 means that the Secretary may refuse to consider the application in these circumstances.
830. Subsection 160(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the stated period.
831. The request must be complied with within 30 days, although the Secretary may specify a longer period. For example, where the information being requested is complex or to allow the applicant to arrange for inspection of the vehicle whilst it is overseas.

## **161 – Secretary may refuse to consider application in certain circumstances**

832. Paragraph 161(a) sets out that the Secretary may refuse to consider an application for a reimportation import approval if it does not comply with subsection 159(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.
833. Paragraph 161(b) sets out that the Secretary may refuse to consider an application for a reimportation import approval if the applicant does not comply with a request made under section 160 within 30 days or a longer period if specified by the Secretary or an inspector, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect the vehicle.
834. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision maker.
835. Section 230(z) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a reimportation import approval.

## **162 – Criteria for deciding application**

836. Section 162 provides for the criteria which must be met for the Secretary to grant a reimportation import approval.
837. The Secretary must be satisfied that the eligibility criterion set out in section 163 of the Rules is satisfied and the applicant will comply with conditions to which the approval will be subject.
838. Section 230(za) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a reimportation import approval.

## **163 – Eligibility criterion**

839. Section 163 sets the eligibility criterion that must be met in order to be granted a reimportation import approval.
840. Paragraph 163(a) requires the applicant to own the road vehicle when the application is made. It is likely that evidence will be requested by the Secretary to support the applicant's assertion that they own the road vehicle. An example of the type of evidence the Secretary might accept is a contract of sale or a certificate of registration from an overseas registration authority in the applicant's name.
841. Paragraph 163(b) requires the vehicle to be outside Australia at the time of application.
842. Paragraph 163(c) requires the vehicle to either:
- be on the RAV, or
  - have an identification plate or used import plate placed on the vehicle. The placement of the identification plate or used import plate has to have been placed on the vehicle in accordance with the *Motor Vehicle Standards Act 1989*.
843. Paragraphs 163(d) and (e) require the vehicle to be consistent with the information entered on the RAV or details on the identification plate in relation to that vehicle. This may include the vehicle having the same VIN, being in the same vehicle category and

having the same passenger capacity at the time of the application for importation as originally entered on the RAV or included on the vehicle's identification plate.

#### **164 – Other considerations**

844. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of a reimportation import approval.
845. The Secretary can consider whether the person, or if a body corporate - any key management personnel of a corporation, has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989*, the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation applying have or may have contravened this legislation, the Secretary may refuse the application on these grounds. Key management personnel is a defined term in section 5 of the Rules.
846. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 164(a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant's suitability to hold a reimportation import approval.
847. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary's consideration of the application.
848. This section also allows the Secretary to take into account any other matter that the Secretary considers relevant in assessing the application. For example, the Secretary may take into account:
- the condition of the vehicle
  - what modifications (if any) have occurred to the vehicle whilst overseas
  - whether the vehicle is remains suitable for RAV entry, taking into consideration the objects of the Act
849. The broad ability to take into account other relevant matters is required given the nature of these types of approvals. Although a vehicle may have been considered appropriate for RAV entry or fitting of an identification or import plate, a number of factors about the vehicle may be changed. For example, the vehicle may have been modified in a way that makes it no longer suitable for importation. Alternatively, the vehicle may not be suitable for importation due to damage or corrosion to the vehicle.

In is important to note that the other matters may be relevant to the applicant's ability to fulfil the requirements of the approval.

#### **165 – Timeframe for deciding application**

- 850. This section provides that a decision on an application must be made by the Secretary within 30 business days after receiving the application.
- 851. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants.
- 852. It also provides that the 'clock' measuring 30 business days will stop when the Secretary makes a request for further information or to inspect the vehicle under section 160 and will resume once the request has been complied with by the applicant in full.

#### **166 – Notice requirements for grant of reimportation import approval**

- 853. This section requires the Secretary to notify an applicant if their application for the grant of a reimportation import approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the conditions to which it is subject.

#### **167 – Notice requirements for refusal to grant reimportation import approval**

- 854. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
- 855. Because section 167 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

#### **Subdivision C – Conditions applying to reimportation import approvals**

##### **168 – Conditions of reimportation import approval**

- 856. Section 168 states that a reimportation import approval granted under Subdivision B will be subject to any conditions specified in the approval, a condition that allows the Minister or an inspector to inspect the vehicle, and conditions set out in Subdivision C.
- 857. Section 168 makes it clear that any condition specified in the approval, including additional conditions not specified in Subdivision C but specified in the approval, are conditions to which the holder of an approval is subject. Under sections 28 and 29 of the *Road Vehicle Standards Act 2018*, a breach of a condition of an approval is an offence and a contravention of a civil penalty provision.
- 858. This section also provides for some of the conditions that could be specified in the approval. This is not, however, an exhaustive list of conditions that may be placed on such approvals.
- 859. This section requires the Secretary to specify in a reimportation import approval any conditions to which the approval is subject. While Subdivision C sets out a series of

standard conditions that must be specified, additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.

860. For example, the vehicle subject to the application for the grant of an approval may have a component in it that has been recalled in Australia since it was exported. In such a circumstance, a condition could be set that requires the holder of the approval to ensure that the recalled component is replaced.
861. Paragraph 168(2)(a) of the Rules allows for a condition to be set on an approval for a vehicle to be exported or destroyed within a specified period. Similarly, paragraph 168(2)(b) allows for a condition to be set that requires the holder of the approval to provide evidence to the Secretary that a vehicle has been exported or destroyed.
862. The conditions in paragraphs 168(2)(a) and (b) may be used, for example, where a vehicle is the subject of a reimportation import approval and the Secretary considers there is a risk that the vehicle no longer reflects the original vehicle entry on the RAV or plate. The Secretary may grant the approval, subject to the conditions that that the vehicle be inspected by an AVV once the vehicle has been imported, and if upon inspection the vehicle does not reflect the original vehicle entry on the RAV or plate, then the vehicle be exported or destroyed after a certain date.
863. Paragraph 168(c) allows a condition to be set on an approval that requires the vehicle, or any modifications to the vehicle, to be verified by the holder of an AVV approval.
864. Paragraph 168(d) allows a condition to be set on an approval that requires the holder of the approval to keep specified records. The condition would also provide for a specified period for which the records must be kept. Paragraph 168(e) follows on from this, requiring the holder of the approval to provide specified records when requested to do by the Secretary or an inspector. These conditions may be specified in the approval, for example, where a vehicle has been modified when the vehicle is outside Australia. In such circumstances, the approval may be subject to the condition that a the holder of the approval keeps all documentation regarding the modification for a specified period. The approval may also be subject to the condition that requires the holder of the approval to provide such documentation to the Secretary or an inspector if requested.
865. Section 230(zb) of the Rules provides that the holder of a reimportation import approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **169 – Condition about providing information etc. on Secretary’s request**

866. Section 169 requires, as a condition of a reimportation import approval, that the holder of an approval provides information, documents, and written answers, on request.
867. While the condition in section 169 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety,

- environmental and anti-theft standards. The condition in section 169 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of reimportation import approvals with the conditions of their approvals.
868. Vehicles covered by reimportation import approvals may be imported into Australia after having been outside of the country and not subject to Australian controls. It is essential that the Department can effectively regulate holders of reimportation import approvals, to ensure that they meet their obligations, including fulfilling any controls (in the form of conditions or other requirements set out in the approval) placed on them. For example, where the holder of a reimportation import approval was granted the approval on the basis that the vehicle would be inspected when it entered Australia to ensure it still reflects the information for that vehicle on its identification plate or its entry on the RAV and is exported or destroyed if it does not match these details, it is crucial that the vehicle is inspected. Otherwise, a vehicle which has been modified so that it no longer reflects the vehicle's entry on the RAV or identification plate (and therefore no longer is the vehicle that was originally approved for supply to the Australian market, may re-enter Australia and pose a potential risk to the public. The powers set out in this section ensure that the Minister or an inspector are able to monitor that conditions of the approval and other obligations of the holder of the approval are met.
869. Section 169 is not intended to be a power to enter premises or seize documents without consent, meaning that the Minister or an inspector cannot obtain information or documents from the holder of the approval, unless the Minister or inspector's request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the *Road Vehicle Standards Act 2018*.
870. Information available to the Minister or an inspector in connection with requests under section 169 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the *Road Vehicle Standards Act 2018* such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
871. The Minister or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
872. A request by the Secretary or an inspector must be in writing. It is a condition of a reimportation import approval that the holder of the approval complies with the request within a reasonable time specified in the request. The intention of using the language of 'reasonable time' is to allow the Minister or inspector to take account of the specific circumstances relating to the approval or request. The Minister or inspector may, for

example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.

873. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of reimportation import approvals should expect to produce a broad range of information to satisfy the Minister or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules. A request for information under section 169 is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
874. Paragraph 169(a) allows the Minister or an inspector to request information from the holder of a reimportation import approval, and requires that the holder of that approval provide that information as a condition of their approval. This is subject to the limitation that the Minister may only request information that the Minister reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, these Rules or an instrument made under the Act or these Rules, or information about vehicles to which the approval applies.
875. Paragraph 169(b) imposes a condition that an approval holder must provide written answers to questions. This condition is limited in that the questions can only relate to the road vehicles covered by the approval.
876. Paragraphs 169(a) and (b) may be used to allow the Minister or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Minister or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraph 169(a) and (b) allows holders of approvals to provide information in a structured manner within a reasonable period of time.

## **Division 5 – Miscellaneous**

### **170 – Allocation of vehicle identification number**

877. This section empowers the Secretary to allocate a vehicle identification number to a vehicle in situations where a vehicle is the subject of a RAV entry import approval (i.e. where section 146 of the Rules provides that this approval is taken to be in force as a concessional RAV entry approval has been granted) or non-RAV entry import approval but does not already have a vehicle identification number.

### **171 – Circumstances in which a person is permitted to import a road vehicle**

878. Section 171 of the Rules provides for circumstances in which a person is permitted to import a road vehicle. Section 22(1) of the Act makes it an offence for a person to import a road vehicle into Australia if, at the time of importation, the person is not permitted to import the vehicle.

879. Paragraph 22(2)(d) of the Act provides that a person is permitted to import a road vehicle if, at the time of importation, a circumstance set out in the Rules applies.
880. Subsection 171(2)(a) provides that one of the circumstances is where a road vehicle is a vehicle to which an intergovernmental agreement applies. An example of such an intergovernmental agreement is the Customs Convention on the Temporary Importation of Private Road Vehicles [1967] ATS 2 under which a Carnet de Passages en Douane (commonly known as a 'CPD carnet') may be issued, which allows the temporary importation of a vehicle for up to 12 months by visitors to Australia.
881. A CPD carnet is generally obtained from a motoring organisation in the applicant's country of residence. A CPD carnet is similar to a personal passport and contains all the relevant information about the vehicle—make, model, colour, engine capacity, seating capacity, registration number, owner and value. Carnets can be obtained for motor vehicles, motorcycles, campervans, four wheel drive vehicles, caravans and trailers.
882. Subsection 171(2) applies if a vehicle is subject to a Status of Forces agreement. Vehicles imported under a Status of Forces agreement are generally those owned by foreign military and their personnel.
883. Subsection 171(3) applies if a vehicle is owned by the Commonwealth and operated by the Australian Defence Force. The vehicles must have previously been exported from Australia in connection with an activity of the Australian Defence Force outside Australia and are being imported into Australia after use in such an activity.
884. Vehicles that are imported through international agreements or Status of Forces agreements are not issued approvals by the Department. Therefore, it is important to provide an exception to the offence and civil penalty provision under section 22 of the Act so that a contravention does not occur.

## **Part 6 – Type approvals for road vehicle components used or supplied for use in the manufacture of road vehicles**

### **Division 1 – Introduction**

#### **172 – Simplified outline of this Part**

885. Section 172 provides a simplified outline of Part 6, relating to road vehicle component type approvals.

#### **173 – Purpose of this Part**

886. Section 173 outlines the purpose of this Part of the Rules. This Part sets out the arrangements for the granting of type approvals for road vehicle components. These Rules are made in accordance with subsection 19(2) of the Act which allows the Rules to provide for the granting of approvals relating to road vehicle components and the conditions that will apply to such approvals.
887. Road vehicle components are defined in section 7 of the Act.

### **Division 2 – Application for, and grant of, a road vehicle component type approval**

#### **174 – Application**

888. This section sets out that a person can apply to the Secretary for the grant of a road vehicle component type approval.

889. A road vehicle component type approval intended to be a shorthand for holders of and applicants for Model Report approvals and road vehicle type approvals to assist them to demonstrate that vehicles fitted with the component covered by the component type approval comply with applicable national road vehicle standards. It is not intended that all components that may be used in or on a road vehicle will be regulated by the Act or the Rules – regulation of components is on an opt-in basis. This allows “reuse” of approvals for commonly used componentry across different models or variants of vehicles, such as axle assemblies or braking control systems for heavy trailers.
890. A road vehicle component type approval is not for the purpose of regulating aftermarket spare parts. It is intended only for approval of components that will be used in the original manufacture of a road vehicle.
891. An application for the grant of a road vehicle component type approval must be made in the approved form, and be accompanied by such documents required by the form and the application fee. An approved form helps the applicant understand exactly what it is that they need to include in an application. It also ensures that every application is consistent and contains all the basic information and documentation required for the Secretary to decide whether to grant the approval, improving processing effectiveness and efficiency. As per section 236, the form is approved by the Secretary. The fee is designed to recover the cost of assessing the application.
892. A road vehicle component type approval application also requires the applicant to provide a signed declaration. The declaration must state that:
- at the time the application is made, the person is able to provide the supporting information for the road vehicle component type approval
  - while the approval is in force, and for a period of seven years after the approval expires, the person will be able to provide the original and any subsequent versions of the supporting information
  - while the approval is in force, the person will ensure that the supporting information is kept-up-to-date
893. The form may require a declaration about further matters, for example about whether certain matters are true, or the accuracy of the information provided.
894. Providing a false or misleading declaration is a contravention of section 31 of the *Road Vehicle Standards Act 2018*. A contravention of section 31 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.
895. Providing false or misleading information is a contravention of section 32 of the Act. A contravention of section 32 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

### **175 – Further information and inspection of premises**

896. When the Secretary is deciding whether to grant a road vehicle component type approval to a person, this section makes it clear that the Secretary can request further specified information to assist in the Secretary’s decision. This section also ensures the Secretary or an inspector can inspect any premises where components of that type or

their sub-components are designed or manufactured. It also empowers the Secretary or an inspector to inspect components of that type or their sub-components.

897. Information that may be requested when assessing an application might include:

- further information about a type of component's supporting information
- full test report for evidence of compliance with applicable national road vehicle standards, rather than a summary of testing evidence
- further information regarding their conformity of production system

898. The suitability of premises are directly related to the applicant's ability to be granted a road vehicle component type approval. Premises that may be inspected might include where the component is designed or manufactured. Additionally, the Secretary or inspector can request to inspect components used in the design and manufacture of the component, irrespective of whether or not they are approved components under the Rules. This is not designed to be a coercive entry power for the purpose of monitoring compliance. It is only designed to ensure the Secretary can be satisfied that the applicant meets the eligibility criteria and is capable of complying with conditions of the road vehicle component type approval. The applicant may refuse to provide access to premises, however section 176 means that the Secretary may refuse to consider the application.

899. Subsection 175(2) sets out that a request under this section must be in writing and state that the Secretary may refuse to consider the person's application if the person does not comply with the request within the stated period.

900. The request must be complied with within 30 days, although the Secretary may specify a longer period, for example if the request is particularly complex or extensive or requires overseas travel.

#### **176 – Secretary may refuse to consider application in certain circumstances**

901. Paragraph 176(a) sets out that the Secretary may refuse to consider an application for the grant of a road vehicle component type approval if it does not comply with subsection 174(2) which requires, among other things, that the application be in the approved form and be accompanied by the application fee.

902. Paragraph 176(b) sets out that the Secretary may refuse to consider an application for a road vehicle component type approval if the applicant does not comply with a request made under section 175 within 30 days or a longer period if specified by the Secretary or an inspector, for example a request for further specified information or to allow or arrange for the Secretary or an inspector to inspect components or premises.

903. This ensures efficiency when considering applications by requiring all relevant information to be provided before consideration is given by the decision-maker.

904. Section 230(zc) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to consider an application for a road vehicle component type approval.

#### **177 – Criteria for deciding application**

905. Section 177 sets out the criteria that the Secretary may consider when deciding an application for the grant of a road vehicle component type approval. This section has four subsections:

- Subsection 177(1) prescribes the core requirements of which the Secretary must be satisfied when deciding a road vehicle component type approval application.
- Subsection 177(2) outlines the kind of information or matters that the Secretary may take into account when considering whether a component meets the applicable national road vehicle standards.
- For components that do not comply with some or all applicable national road vehicle standards, subsection 177(3) provides for the circumstances where non-compliance is appropriate.
- Subsection 177(4) provides further information that is applicable in some circumstances where a road vehicle component type approval application is made for a vehicle that does not meet all of the applicable national road vehicle standards.

906. To understand the necessity of the requirements set out in subsection 177(1) it is important to understand the overarching concept of a road vehicle component type approval. A road vehicle component type approval allows the holder of an approval to provide components to be used in the manufacture or modification of certain road vehicles, making evidence provision for road vehicle type approvals and Model Reports more streamlined. For a road vehicle component type approval to be granted, at least one component must have been physically tested for compliance with applicable national road vehicle standards. The holder of a road vehicle component type approval then has to be able to satisfy the Secretary that they can make not just one of that ‘type’ of component, but rather they have sufficient control over the manufacture of that type of component, such that every component of that type that is produced will perform the same way or better in relevant tests as the tested component. This extrapolation of evidence from an individual test component to many components is the central premise of road vehicle component type approvals. The ability to meet this extrapolation test is captured by the kinds of matters that the Secretary must take into account when considering whether to grant a road vehicle component type approval.
907. Paragraph 177(1)(a) sets out that, in the first instance, the Secretary must be satisfied that the type of components (in relation to which the road vehicle component type approval will be granted) comply with all applicable national road vehicle standards in force at the time the Secretary decides the application. There are limited circumstances in which types of components that do not comply with applicable national road vehicle standards can be granted a road vehicle component type approval. These circumstances are set out in subsections 177(3) and (4).
908. Paragraph 177(1)(b) sets out a requirement that the applicant has control over all stage of the design, componentry, and manufacturing process for the type of component. This control over the design and manufacturing process is vital for satisfying the Secretary that the applicant is capable of producing components in accordance with a conformity of production process, and has control over any changes in the component’s design. This is fundamentally important to the extrapolation of test evidence to every component that will be produced by the holder of a road vehicle component type approval.

909. Paragraph 177(1)(b) also recognises that there are diverse business models in the road vehicle component type approval space. Entities may not directly control, say, a certain production facility for a certain sub-component. The Secretary is able to recognise this and instead be satisfied that the holder of a road vehicle component type approval can, at the very least, access information about the design, componentry and manufacturing process for that sub-component that may affect the relevant component's compliance with the applicable national road vehicle standards. This must include, for example, information about any changes to these aspects of design.
910. Paragraph 177(1)(c) requires that, in addition to exerting control over, or having access to information about design, componentry and manufacturing process, the applicant is able to ensure the design, componentry and manufacturing process is consistent. This is about making sure that the right sub-components are used in the right order to make sure each component of that type that is produced will perform in the same way in relevant tests as the component that was tested to the applicable national road vehicle standards. Again, this might not involve the holder of a road vehicle component type approval carrying out the entire manufacturing process: the Secretary may be satisfied that there is a contractual arrangement in place between the applicant and a sub-component manufacturer under which the manufacturer is required to meet conformity of production standards.
911. Paragraph 20(1)(d) requires the applicant to be able to arrange for access to manufacturing premises, or components used or to be used in the manufacturing process, for the purpose of determining whether the component complies with the applicable national road vehicle standards, and other matters related to compliance with the Act, Rules or instruments under the Act or Rules. A road vehicle component type approval cannot be granted to an entity that is unable to arrange for access to manufacturing facilities for the component. Being able to provide access to all design and manufacturing facilities is a vital responsibility for holders of road vehicle component type approvals. The breadth of facilities to which they must be able to arrange access goes to the complexity of the modern road vehicle supply chain, where networks of subcontractors may be producing vital safety components for holders of road vehicle component type approvals. The Secretary must be satisfied that the applicant can arrange this sort of access to be satisfied that the applicant has sufficient control and access over their supply chain. This access is only for the purpose of assessing compliance with national road vehicle standards and this legislation. Holders of road vehicle component type approvals do not, for example, have to satisfy the Secretary about access arrangements for other purposes.
912. Paragraphs 177(1)(a), (b), (c) and (d) might be satisfied in situations where the applicant is not the direct manufacturer. For example, a bus chassis manufacturer might produce chassis for a number of different distributors. A company in Australia might wish to supply that component to the Australian market with the assurance that the component meets the applicable national road vehicle standards. That company would seek a road vehicle component type approval for it, even though they do not own or operate the design and manufacturing facilities for that component. The Secretary may be able to grant a road vehicle component type approval, but the applicant would need to satisfy the Secretary that they had adequate arrangements in place with the designer and manufacturer of the bus chassis to satisfy the granting

criteria. That relationship would need to be such that the holder of a road vehicle component type approval knows about all design changes to the component and that they have an arrangement in place to ensure conformity of production. In addition, the arrangement should be close enough that, if the Secretary or an inspector needed to inspect any premises associated with the manufacturing of the chassis that the holder of a road vehicle component type approval would be able to arrange for this inspection to take place.

913. Paragraphs 177(1)(e) and (f) set out that Secretary needs to be satisfied that the person is able to maintain and supply all versions of supporting information to the Secretary. This goes to the applicant's record management capabilities, as well as their ability to generate appropriate records.
914. Paragraph 177(1)(g) requires the Secretary to be satisfied of the applicant's ability to satisfy conditions, such as the conformity of production condition and ongoing compliance with the national road vehicle standards.
915. Subsection 177(2) sets out the type of evidence that the Secretary can consider when determining whether a component complies with the applicable national road vehicle standards. This, in essence, sets out the standard of acceptable evidence. This includes testing that is done by approved testing facilities, testing conducted in accordance with UN agreements, other approved road vehicle components and declarations made by the applicant. In addition the Secretary can consider information that goes to the accuracy of test evidence, component approvals, and declarations. The Secretary cannot take into account other matters when it comes to consideration of subsection 177(2), despite section 178.
916. Subsection 177(3) sets out the circumstance in which the Secretary can grant a road vehicle component type approval to a person in respect of a type of road vehicle component, where the road vehicle component does not comply with the applicable national road vehicle standards. This is where the type of road vehicle component subject to the application substantially complies with applicable national standards and the road vehicle component's non-compliance is only in minor or inconsequential respects, or to a minor and inconsequential extent.
917. In considering whether to grant an approval under subsection 177(3), the Secretary can, by way of section 178, take into account any other matter that the Secretary considers relevant. For example, the Secretary could consult with state and territory registration authorities as to whether a component is suitable for use in a vehicle on a public road. If state and territory registration authorities considered the component unsuitable, the Secretary could refuse the application.
918. Section 230(zd) of the Rules provides that the applicant may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to grant a road vehicle component type approval.

### **178 – Other considerations**

919. This section allows the Secretary to take into account a number of other factors when deciding an application for the grant of a road vehicle component type approval.
920. The Secretary can consider whether the person – or any key management personnel of the corporation – has or may have contravened road vehicle legislation. Road vehicle legislation is a defined term under section 5 of the Rules and includes legislation such

as the *Road Vehicle Standards Act 2018*, *Motor Vehicle Standards Act 1989* and the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*, Parts VI and XI of the *Competition and Consumer Act 2010*, provisions of the Australian Consumer Law relating to the safety of consumer goods, and instruments made under those Acts or these Rules. Where an applicant or member of the key management personnel of the corporation has, or may have, contravened this legislation, the Secretary may take this into account in deciding whether to grant or refuse the relevant application. Key management personnel is a defined term in section 5 of the Rules.

921. The use of “may have contravened” (in addition to “has contravened”) in paragraphs 178 (a) and (b) allows the Secretary to take into account evidence that indicates a contravention of road vehicle legislation, even if a court has not issued a formal ruling of contravention. The Secretary may possess evidence indicating a contravention, but respond through taking action that does not involve court proceedings, such as varying, suspending or revoking an approval, giving an infringement notice, or notifying the person of the contravention and educating them about how to comply with their obligations. In these situations, the Secretary will have evidence of a contravention and this evidence will be relevant in considering an applicant’s suitability to hold a road vehicle component type approval.
922. To be clear, the payment of an infringement notice is not relevant evidence that a person may have contravened road vehicle legislation. However, the evidence that led to the giving of that infringement notice may be relevant to the Secretary’s consideration of the application.
923. This section also allows the Secretary to take into account any other matter that the Secretary considers relevant in assessing the application. For example, the Secretary may take into account whether the applicant has previously been assigned a Component Registration Number or a Sub-Assembly Registration Number under the *Motor Vehicle Standards Act 1989*. Alternatively, the Secretary may take into account whether the components in relation to which the application was made have previously been recalled, either in Australia or internationally.
924. The broad ability to take into account other relevant matters is required given the diversity of different components in relation to which applications for road vehicle component type approval may be received. It also allows the Secretary to respond to the rapidly changing automotive technology landscape. It is important to note that the other matters must be relevant to the applicant’s ability to fulfil the requirements of the approval.
925. Despite section 178 allowing other relevant matters to be taken into account, there is a specific limitation to this. When assessing a type of component’s compliance with the national road vehicle standards the Secretary can only take into account the matters listed at subsection 177(2).

### **179 – Timeframe for deciding application**

926. This section provides that a decision on an application must be made by the Secretary within 60 business days after receiving the application.
927. The time allowed for the decision on an application reflects the likely complexity of information in these applications and allows for appropriate scrutiny of applications while supporting the business requirements of applicants. The level of scrutiny of road

vehicle component type approval applications is proportionate to the reliance on the holders of Model Report approvals, users of Model Reports (for example, RAWs and AVVs) and holders of road vehicle type approvals rely on the component complying with national road vehicle standards to ensure that vehicles fitted with that component will also comply.

928. It also provides that the ‘clock’ measuring 60 business days will stop when the Secretary makes a request for further information or to inspect premises under subsection 175(1) and will resume once the request has been complied with by the applicant in full.

### **180 – Period of road vehicle component type approval**

929. This section provides that a road vehicle component type approval will remain in force for a period of seven years, unless otherwise revoked earlier. A road vehicle component type approval will commence on the day specified in the approval, allowing the Secretary to set a start date for the approval.

### **181 – Notice requirements for grant of road vehicle component type approval**

930. This section requires the Secretary to notify an applicant if their application for the grant of a road vehicle component type approval is successful, and provide them with a copy of the approval, as soon as it is practicable to do so. The approval must specify the following:

- the approval number
- the name of the holder of the approval
- the type of road vehicle component to which the approval applies
- the national road vehicle standards applicable to the type of road vehicle component and the documents that demonstrate the road vehicle components of that type comply with those standards
- if the component substantially complies with applicable national road vehicle standards – the respects in which, or the extent to which, the components of that type are not required to comply with the applicable national road vehicle standards as in force at the time the Secretary decides the application
- the conditions to which the approval is subject
- the day the approval comes into force
- that the approval expires at the end of the period of 5 years after it comes into force, unless it is revoked earlier

931. Paragraph 181(2)(e) clarifies that if a new national road vehicle standard were issued, the holder of the road vehicle component type approval would need to apply for a variation of their approval if they wanted the type of component to be permitted to only substantially comply with that new standard.

932. This section requires the Secretary to specify in a road vehicle component type approval any conditions to which the approval is subject. While Division 3 sets out a series of standard conditions that must be specified by default (and in relation to which the Secretary does not exercise discretion), additional conditions may also be imposed by the Secretary. This is designed to provide flexibility for the decision maker to address situations such as the unique characteristics of a vehicle or unique

circumstances of an applicant, and allows the Secretary to respond to risks related to the application or matters related to the application, or to advancements in vehicle technology.

933. For example, as more autonomous vehicles emerge in the future an approval may be given for a component that is a vehicle's computer system. An additional condition may then be applied to that approval, for example, that the vehicle's computer system meets a certain standard. This ability to place additional conditions on approvals allows the Department to be flexible and responsive to technological changes in vehicles.
934. As per section 228, a road vehicle component type approval is a matter of public record and is published on the Department's website. This will involve the publication of the name and contact details of the holder of the road vehicle component type approval on the Department's website. Holders of road vehicle component type approvals can be individuals or corporations, however it is expected the vast majority of holders of road vehicle component type approvals will be corporations. Individuals who apply for the grant of a road vehicle component type approval will be made aware that, if successful, their name and contact details will be publicly available on the Department's website.
935. The publication of the name of the holder of the approval is an important part of the accountability for the holders of road vehicle component type approvals. Holders of component type approvals have significant privileges granted to provide components that comply with safety, environmental, and anti-theft standards. Holders of approvals and others using the components must have the ability to know who is accountable for the components. Therefore, the publication of the name of the holder of the approval, in the rare circumstances that this is personal information, is a reasonable and proportionate way to ensure accountability for the provision of safe and compliant vehicles.

### **182 – Notice requirements for refusal to grant road vehicle component type approval**

936. This section provides that, if the Secretary refuses to grant an approval, then the Secretary must notify the unsuccessful applicant in writing and provide the reasons for the decision. The reasons for the decision will outline which requirements imposed by the Rules the application did not satisfy and the information that the Secretary considered that led them to the view that those requirements were not satisfied.
937. Because section 182 requires the Secretary to give written reasons for a decision, section 25D of the *Acts Interpretation Act 1901* operates to require the Secretary to set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

### **Division 3 – Conditions applying to road vehicle component type approvals**

#### **183 – Conditions of road vehicle component type approval**

938. Section 183 states that a road vehicle component type approval is subject to any conditions specified in the approval and conditions set out in Division 3.
939. Section 183 makes it clear that any condition specified in the approval, including additional conditions not specified in Division 3 but specified in the approval, are conditions to which the holder of an approval is subject. Under section 28 of the *Road*

*Vehicle Standards Act 2018*, breach of a condition of an approval is an offence and a contravention of a civil penalty provision.

940. Section 230(ze) of the Rules provides that the holder of a road vehicle component type approval may apply to the Administrative Appeals Tribunal for a review of a decision to impose a condition on the approval. Reviewable conditions are those additional conditions specified in the approval (and therefore ‘imposed’ by the Secretary), not the standard conditions set out in these Rules which automatically apply to the approval.

#### **184 – Condition about compliance with national road vehicle standards**

941. Paragraph 184(1)(a) sets a condition on road vehicle component type approvals that the holder of an approval must ensure that components covered by the approval comply with the applicable national road vehicle standards in force at the at the time they are provided for use or installation in a road vehicle.
942. ‘Provide’ includes the provision of the road vehicle component due to a sale, exchange, gift, lease, loan, hire or hire-purchase. This definition of ‘provide’ is consistent with the definition under section 6 of the Act. Holders of approvals who continue to provide components that are not fully compliant with new or updated applicable national road vehicle standards, on or after the implementation date of the standard, would be in breach of this condition and section 28 of the Act.
943. Paragraph 184(1)(b) sets a condition on approvals for road vehicle component type approvals that the holder of the approval must be able to produce evidence that demonstrates that the components covered by the approval comply with the applicable national road vehicle standards at the time the components are provided for use or installation in a road vehicle. Additionally, the holder of an approval must be able to produce evidence that the Secretary could take into account for the purposes of subsection 177(2) of the Rules.
944. In effect, the expectation placed on holders of road vehicle component type approvals by this paragraph 184(1)(b) is that for every road vehicle component covered by a road vehicle component type approval that the holder of the approval supplies, they have supporting documentation applicable to that component that demonstrates that the component is compliant with the applicable national road vehicle standards. The point in time at which components must comply is when they are provided (including by sale, exchange, gift, lease, loan, hire or hire-purchase) for use or installation in a road vehicle. For example, if they have a component that is a ‘type X’, they would need to have evidence that demonstrates that the individual components are manufactured in accordance with their instructions for building a ‘type X’ component. Section 177 sets out a list of evidence that is acceptable for demonstrating compliance with the applicable national road vehicle standards under this condition.
945. Subsections 184(2) and (3) replicate the condition in subsection 184(1) for components where the approval states that road vehicle components of that type are not required to comply with national road vehicle standards in certain respects or to a certain extent. This condition requires that the holder of the approval has supporting documentation that demonstrates that the vehicle complies with the applicable national road vehicle standards to the extent specified in the approval, rather than that the vehicle complies with all applicable national road vehicle standards.

## **185 – Condition about a conformity of production system**

946. Section 185 states that a condition of a road vehicle component type approval is that the holder of the approval implement a conformity of production system. This system must govern the manufacturing process detailed in the supporting information for the road vehicle component type approval and must ensure that the component satisfies the requirements of the road vehicle component type approval in the respects, or to the extent, that the component is required to comply with those standards. The point in time at which components must comply is when they are provided (including by sale, exchange, gift, lease, loan, hire or hire-purchase) for use or installation in a road vehicle. This does not mean that there is no requirement for a conformity of productions system for road vehicle component type approvals that are not required to comply in certain respects or to a certain extent. That non-compliance is still subject to conformity of production – that is, every vehicle produced under the road vehicle component type approval has to have the same non-compliance.
947. Conformity of production involves control over all stages of an approved component’s design and manufacturing processes to ensure that components supplied meet the applicable national road vehicle standards. The intention of this condition is to ensure that the holder of a road vehicle component type approval has a system in place that means each component is being produced in a consistent manner to that provided in the supporting information. This means that each component being manufactured would perform the same or better in relevant tests as the tested component, and each component would be in accordance with the supporting information, irrespective if it was the first or last component being made. The core concept is that components manufactured under a road vehicle component type approval will be manufactured to a consistent design (with only controlled and tested changes) and in a consistent manner as the component used to test compliance with the national road vehicle standards so that the components being manufactured also meet the national road vehicle standards.
948. When undertaking compliance operations in relation to conformity of production systems, the Department may take a multifaceted approach. For example, the Department may focus an audit on the structure of the components being produced, specifically on the materials used within the component. In such circumstances, the Department may:
- inspect the design centre and information relevant to the design of road vehicle components by the holder of a road vehicle component type approval, then
  - inspect the accounts section of the holder of the approval, to ensure the steel purchased is the same that is outlined in the supporting information, then
  - inspect the instruction documentation used by manufacturing workers in the construction of the vehicle, and then
  - inspect the steel being used on the manufacturing floor and determine whether the persons constructing the vehicle are following the instruction documentation
949. Holders of road vehicle type approvals, and holders of approvals of Model Reports rely on component type approvals to provide vehicles that comply with the national road vehicle standards. It is important that they are provided with a component that performs the same or better against the applicable national road vehicle standards as

the component subject to testing. This condition assists to ensure that approved components being supplied to the Australian market are manufactured in a manner that results in consistent compliance with safety, environmental, and anti-theft standards.

#### **186 – Condition about providing information etc. to the Secretary or an inspector**

950. Section 186 requires, as a condition of a road vehicle component type approval, that the holder of an approval provides information, documents, and written answers, on request. It also requires, as a condition of a road vehicle component type approval, that the holder of an approval allows or arranges for the Secretary or an inspector to inspect premises or things associated with the design or manufacturing process, on request.
951. The Secretary or an inspector can make a request under this section. Section 49 of the Act provides for the appointment of inspectors. An inspector may be an employee of the APS or a state or territory government or authority and must be appointed in writing by the Secretary. The instrument appointing the inspector must specify the conditions and restrictions on the functions and powers of the inspector, in line with the knowledge or experience of the person. The Secretary must not appoint a person as an inspector unless the Secretary is satisfied the person has the knowledge or experience necessary to properly perform the functions or exercise the powers for which that person is to be authorised.
952. A request by the Secretary or an inspector must be in writing. It is a condition of a road vehicle component type approval that the holder of the approval comply with the request within a reasonable time specified in the request. The intention of using the language of ‘reasonable time’ is to allow the Secretary or inspector to take account of the specific circumstances relating to the approval or request. The Secretary or inspector may, for example, work with the holder of an approval to determine the time it might take to fulfil the request and may have regard to the amount of information requested, the urgency of the request, the complexity of the request and whether fulfilling the request requires a degree of consideration, research, collaboration, liaison or testing.
953. While the condition in section 186 does impose a burden on holders of approvals, it pursues a legitimate objective. Approvals are the main instrument that the legislation uses to achieve its overarching objective of ensuring that road vehicles meet safety, environmental and anti-theft standards. The condition in section 186 is central to achieving this legitimate objective as it supports the monitoring of compliance by holders of approval with the conditions of their approvals. This condition also supports the collection of information which may support the broader objectives of the Act, and to support the monitoring of compliance by holders of approvals with their broader obligations under the Act, the Rules, or instruments made under the Act or Rules.
954. A vehicle may be entered on the RAV – and then provided to the Australian market – if it satisfies the requirements of a RAV entry pathway. The holder of a road vehicle component type approval may provide a component of the type covered by the approval for use or installation in a road vehicle in order to help satisfy the requirements of a RAV entry pathway. The road vehicle component type approval may be used as evidence, for example in a Model Report or road vehicle component type approval, that the road vehicle in which it is used or installed complies with the applicable national road vehicle standards as relevant, without additional scrutiny. It is

therefore essential that the Department can effectively regulate holders of road vehicle component type approvals, to ensure that components of that type, and road vehicles that contain these components, comply with the applicable national road vehicle standards.

955. Section 186 is not intended to be a power to enter premises or seize documents without consent, meaning that the Secretary or an inspector cannot obtain information or documents from the holder of the approval, or inspect premises or things associated with the design or manufacturing process, unless the Secretary or inspector's request is allowed by the holder of the approval. However, if the holder of the approval refuses the request, they may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the Road Vehicle Standards Act 2018.
956. Information available to the Secretary or an inspector in connection with requests under section 186 may be used to support an enforcement response against the holder of the approval. This includes enforcement responses set out in Part 4 of the Road Vehicle Standards Act 2018 such as the giving of infringement notices, application for a civil penalty order or referral of the matter for criminal prosecution. It may also support a decision under Part 7 of the Rules to vary, suspend or revoke an approval.
957. The powers under paragraphs 186(a) to 186(d) may be used to allow the Secretary or an inspector to inspect a range of documents and other information without entering premises of the holder of an approval. This, as distinct from inspection of documents when the Secretary or an inspector has entered premises and is exercising monitoring powers, offers benefits to both the Government and the holder of the approval. Inspection of documents on premises may impose a higher burden on the holder of an approval, as an inspector may need to be accompanied whilst on premises, or require interpreters or work-spaces. They may also have a more limited time period to provide the requested information. Requests made under paragraphs 186(a) to 186(d) allow holders of approvals to provide information in a structured manner within a reasonable period of time.
958. Paragraph 186(a) requires the holder of a road vehicle component type approval to provide or arrange access to the original and any subsequent versions of supporting information for the approval, if requested by the Secretary or an inspector. Supporting information sets out in detail how a vehicle complies with applicable national vehicle standards, and is critical to the Secretary's decision whether to grant a road vehicle component type approval. The ongoing reference to supporting information by the holder of the approval is critical to their ability to ensure that components are designed and manufactured in a way that complies with the approval for components of that type. It is essential that the Secretary or an inspector can request access to this information for a broad range of purposes. For example, the purpose of such a request may be to ensure that the holder of an approval has access to all supporting information necessary to support a conformity of production system.
959. Paragraph 186(b) requires the holder of a road vehicle component type approval to provide any information that the Secretary or inspector reasonably requires for the purposes of assessing whether the holder of the approval is complying with the Act, Rules, or an instrument made under the Act or Rules.

960. It is intended that the phrase “reasonably requires” be interpreted broadly. Holders of road vehicle component type approvals should expect to produce a broad range of information to satisfy the Secretary or an inspector that they are complying with the Act, Rules or any instruments made under the Act or Rules.
961. Section 186(c) requires the holder of an approval to provide any other information or documents, specified in a request by the Secretary or an inspector. This is subject to the limitation that the information or documents specified in the request must be about road vehicle components to which the approval applies. The Secretary or an inspector is not limited to requesting information for the purpose of assessing whether the holder of an approval is complying with the Act, Rules or instruments made under the Act or Rules or ensuring the vehicles to which the approval applies comply with applicable national road vehicle standards. A request for information under section 186(c) may be to achieve a different purpose consistent with the objects of the Act, for example, to broadly support the Department’s administration of recalls of road vehicles or approved road vehicle components under Part 3 of the Act.
962. Section 186(d) requires the holder of the approval to provide written answers to questions, specified in a request by the Secretary or an inspector. This is subject to the limitation that the holder of the approval only needs to provide written answers to questions about vehicles entered on the RAV under the approval. To provide a written answer to a question, the holder of an approval may be required to provide specific information, or undertake new analysis or research. This may be necessary, for example, where information or documents provided to the Secretary or inspector are difficult to understand without further analysis, research or other work being undertaken. This is not intended to limit the meaning of ‘information’ or ‘documents’ in paragraphs 186(b) or 186(c). For example, a request for information or documents under paragraphs 186(b) or 186(c) is not limited to records (including physical or electronic, and documentary or audio-visual) that already exist.
963. The Secretary or inspector may request a written answer about, for example, whether components of that type may have a fault similar to other recalled components not covered by the road vehicle component type approval. The Secretary or inspector may also request a written answer explaining an aspect of a conformity of production process, how it works, and why it is adequate to meet the conformity of production condition of the approval.
964. Paragraph 186(e) sets a clear expectation, applied consistently and transparently to all holders of road vehicle component type approvals, that inspection of relevant premises is also an important part of holding an approval. It does this by requiring the holder of the approval to allow the Secretary or an inspector, on their request, to inspect premises where components covered by a road vehicle component type approval, or sub-components of those components, are designed or manufactured. It also allows for the inspection of things associated with the design or manufacturing process of such components, including documents. These premises are largely commercial or industrial facilities.
965. Paragraph 186(e) has been carefully crafted to limit its application and link it to its objective. It can only be used to access premises and things for the purpose of assessing whether road vehicle components, or road vehicles containing components to

which the approval applies, would comply with the applicable road vehicle standards to the extent that those standards relate to that component.

966. This approach is generally consistent with the Attorney-General's 'Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers', which sets out situations where entry to premises may occur. One such case is where a person who obtains a licence for non-residential premises can be taken to accept entry to those premises by an inspector for the purposes of ensuring compliance with licence or registration conditions. The Guide also notes that any legislation that creates such an imposition should impose it as a condition of all licences or approvals.
967. Under section 186(e), an approval holder may be requested to arrange for the Secretary or an inspector to inspect premises of third parties associated with the design or manufacture of components. This section does not directly require third parties to provide access to documents, vehicles, components or premises, nor does it allow the Secretary or an inspector to enter premises of third parties without the consent of the holder of the approval or the third party. However if the third party does not allow inspection of their premises for the purpose of an inspection, the approval holder may be in breach of this condition of their approval, which is an offence and contravention of a civil penalty provision under section 28 of the Road Vehicle Standards Act 2018.
968. Section 186(e) pursues the objective of upholding compliance of road vehicles complying with applicable national safety standards, including safety, anti-theft and environmental standards. Providing that the Secretary or an inspector may inspect the premises of third parties gives confidence that the holder of an approval has sufficient access to and control over their supply chain. The breadth of design and manufacturing facilities to which holders of approvals must be able to arrange access goes to the complexity of the supply chain, where sub-components may be manufactured in different facilities by different parties. Control by the holder of an approval across the supply chain and contractors ensures that the appropriate quality controls can be established and monitored in support of the compliance objective.

### **187 – Condition about keeping up-to-date records of supporting information**

969. Section 187 sets a condition on the holder of a road vehicle component type approval that they must:
- keep a record of the original and any subsequent versions of supporting information for the approval for a period of seven years after the approval expires or is revoked; and
  - ensure that the supporting information for the approval is kept up-to-date while the approval is in force.
970. This condition does not require the holder of a road vehicle component type approval to constantly be providing all their original or subsequent versions of supporting information to the Secretary or an inspector. The intention of this condition is to ensure that, if the Secretary or an inspector requests all of the supporting information, or a certain aspect of it, that it is readily available and up-to-date.
971. For example, the Secretary or an inspector may want access to supporting information that relates to the type of glass used in a component. In relation to this condition, the holder of a road vehicle component type approval is required to have all supporting

information in relation to the type of glass used in the manufacturing of a component up-to-date and available, including the original and subsequent versions.

972. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.

### **188 – Condition about providing instructions for use or installation of component**

973. Paragraph 188(a) sets a condition that holders of road vehicle component type approvals must issue instructions for the use or installation of the component, that if followed correctly, will ensure that the road vehicle will comply with the applicable national road vehicle standards. The national road vehicle standards that will apply in this situation will be the ones that are in force at the time the component is provided. The component is also only required to comply with the applicable standards to the extent that those standards relate to the component.
974. Paragraph 188(b) sets a condition that the holder of the approval, at the time the component is provided for use or installation in a road vehicle, must ensure that the latest version of the instructions be available to the persons using or installing the component.
975. The overall intention of section 188 is to ensure that these instructions exist, are kept up to date and can be accessed by people using the components. Keeping instructions up to date mean that the instructions always have to, if followed, ensure that the road vehicle will comply with the most current version of the national road vehicle standards applicable to the component. Additionally, these updated instructions need to be made available to people that are using the components.
976. It is expected that holders of road vehicle component type approvals will have instructions for the installation or use of the component that, if followed, will ensure that the when component is installed or used in a road vehicle, that the road vehicle will comply with the road vehicle standards that are related to the use of that component. For example, a bus chassis manufacturer would be expected to provide information about how that chassis can be used. This could include a datasheet that is attached to bus chassis approval that specifies maximum load that can be carried by the completed bus and individual axle loads that covers the weight distribution. It is intention of section 188 to ensure that instructions, if followed, will ensure the national road vehicle standards that are associated with the component – for example, braking or emissions requirements – will be met for the road vehicle.`
977. Different components will have different national road vehicle standards that they may have an impact on, or would be applicable to the component. For example, a tail-light assembly for a light trailer may only have one national road vehicle standard that is applicable to it. When installed correctly, then the vehicle that the component is installed to should meet the one national road vehicle standard that is applicable to the vehicle.
978. The instructions must be available to anyone who is using the component. This could be satisfied in a number ways, such as:
- instructions could be written and provided in the packaging of the component
  - instructions could be provided to the user of the component in a digital file

- instructions could be uploaded on the component manufacturer’s website

## **Part 7 – Variation, suspension or revocation of approval**

### **Division 1 – Introduction**

#### **189 – Simplified outline of this Part**

979. Section 189 provides a simplified outline of Part 7, relating to variation, suspension or revocation of approvals.

#### **190 – Purpose of this Part**

980. Section 190 sets out the purpose of this Part of the Rules. Part 7 provides for and in relation to the variation, suspension or revocation of approvals granted under the Rules.

981. This Part is made in accordance with sections 19 and 23 of the Act.

982. Section 19 of the Act sets out that the Rules may provide for the variation, suspension or revocation of approvals to enable road vehicles to satisfy the requirements of the type approval pathways and other entry pathways. The exercise of powers in this Part to vary, suspend or revoke road vehicle type approvals and concessional RAV entry approvals granted under Part 3 of the Rules, and approvals granted under Part 4 of the Rules (which sets out ‘tools’ which enable vehicles and road vehicles to satisfy the requirements of both entry pathways) is in accordance with section 19 of the Act.

983. Section 19 of the Act also sets out that the Rules may provide for the variation, suspension or revocation of approvals relating to road vehicle components. The exercise of the powers in this Part to vary, suspend or revoke road vehicle component type approvals granted under Part 6 of the Rules, is in accordance with section 19 of the Act.

984. Section 23 of the Act sets out that the Rules may provide for the variation, suspension or revocation of approvals in relation to the importation of road vehicles. The exercise of the powers in this Part to vary, suspend or revoke import approvals granted under Part 5 of the Rules, is in accordance with section 23 of the Act.

### **Division 2 – Action on Minister or Secretary’s own initiative**

#### **191 – Minister or Secretary may vary, suspend or revoke approval**

985. This section empowers the Minister or Secretary to vary, suspend, or revoke an approval on their own initiative (section 195 allows the holder of the approval to apply for the variation of their own approval).

986. Subsections 191(1) to 191(4) empowers the Minister or Secretary to vary an approval on his or her own motion. Variation can include changing, removing or adding conditions to which an approval is subject. Variation can also include changing, removing or adding other information specified in an approval. Subsection 191(3) also provides that the variation of an approval may include varying a condition attached to an approval given under the Rules.

987. The intention of subsections 191(1) to 191(4) is to provide the Minister and Secretary the ability to be responsive, adaptive and flexible to changes in the automotive industry. The automotive industry is complex, it includes a vast range of stakeholders and a large volume of vehicles that differ in many aspects. Additionally, changes to the

industry are often urgent or responsive to a safety issue. The intention of this subsection is to ensure that the Minister or Secretary can respond in a manner that protects the community and is timely. Any variation should be consistent with the objects of the Act and relevant to the basis on which the approval was given.

988. One of the ways in which this power could be used as an enforcement response, to ensure measures are taken by the holder of the approval to enable compliance with their regulatory obligations. For example, after monitoring the holder of a Registered Automotive Workshop approval and finding an issue with their quality management system the Secretary may, instead of suspending the approval, add a specific condition to manage that particular step in the quality management system in a particular way. This allows the holder of the RAW approval to continue to operate, but ensures that a standard of quality assurance is met and clearly sets out that standard for the approval holder.
989. Subsection 191(3) could also be used to respond to advancements in automotive technology in the future. For example, as autonomous vehicles become more prevalent a condition could be applied to all holders of road vehicle type approvals that provide such vehicles that require holders of road vehicle type approvals to provide updates to their autonomous systems.
990. Subsections 191(5) and (6) empower the Minister or Secretary to suspend or revoke an approval on their own initiative. The suspension must be either for a specified period or until a specified event occurs.
991. An example of where subsections 191(5) or 191(6) could be relevant is where an inspection of the premises of the holder of the approval returns several major non-compliance issues. The Minister or Secretary could suspend the approval for a set period of time while the holder of the approval rectifies the issues or, if there are court proceedings for a contravention, until the proceedings have finalised.
992. Revocation of an approval may occur in instances of serious or repeated non-compliance with the conditions of the approval, or contravention of the Act.
993. Section 230(zf) of the Rules provides that the holder of a varied or suspended approval, or former holder of an approval that has been revoked, may apply to the Administrative Appeals Tribunal for a review of a decision of the Secretary or Minister to vary, suspend or revoke the approval on his or her own initiative.

## **192 – Considerations in deciding whether to vary, suspend or revoke approval**

994. This section sets out what the Minister or Secretary must take into account when deciding whether to vary, suspend or revoke an approval.
995. Paragraph 192(1)(a) outlines that the Minister or Secretary must take into account whether the holder of the approval has engaged in conduct that contravenes or may have contravened road vehicle legislation. The Minister or Secretary may take into account the following things when considering whether road vehicle legislation may have been contravened:
- whether the holder of the approval has been notified by the department of a potential contravention of road vehicle legislation, and the circumstances that led to this notification; and
  - whether there has been any audits conducted, the results of the audit and if there was non-compliance illustrated in the audits – the seriousness of the non-

compliance and the willingness to rectify the non-compliance and the effectiveness of rectification measures.

996. The Minister or Secretary may have information to suggest that the holder of an approval has contravened road vehicle legislation. The matters outlined above provide some examples of what the Minister or Secretary may take into account. However, it is not intended to limit what the Minister or Secretary may take into account when considering whether the holder of an approval may have contravened road vehicle legislation. The factors that may be taken into account will depend on the circumstances of each specific matter.
997. Paragraph 192(1)(b) requires the Minister or Secretary to consider the likelihood of the holder of the approval failing to comply with a condition of their approval, any other approval granted to the holder under the Rules or an approval that continues, or is taken to continue under the *Motor Vehicle Standards Act 1989* or the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*.
998. An example of where the Minister or Secretary could consider the likelihood of a vehicle failing to comply with a condition might be, for example, in a situation where the Secretary has discovered that the use of a commonly used component causes a vehicle to not comply with the applicable national road vehicle standards. That particular component may be used by several different holders of road vehicle type approvals. The Secretary may consider it highly likely that the non-compliance with the applicable national road vehicle standards will present itself in each one of the vehicles being produced by each holder of a road vehicle type approval. On that basis the Secretary may choose to suspend those approvals until such time they are satisfied that the use of the component is compatible with the vehicle complying with the applicable standards.
999. Another example could be where an audit of a road vehicle type approval holder results in the Department finding that there is a major non-compliance with their quality management system condition. The Secretary could also consider whether other approvals held by the entity are also likely not to comply.
1000. Paragraph 192(1)(c) requires the Minister or Secretary must consider whether the use of a type of vehicle to which an approval applies on a public road would cause an unacceptable risk to public safety. This paragraph only applies to road vehicle type approvals.
1001. The Minister or Secretary may, when considering whether a type of vehicle would cause an unacceptable risk to public safety, take into matters such as:
- whether there is a recall notice in place and the circumstances that led to a recall notice being issued;
  - whether vehicles that are similar have been subject to a recall notice overseas and the circumstances that led to the recall notice being issued; and
  - whether there have been circumstances that have caused death and injury to a person that can be contributed, either fully or partially, due to the vehicle's non-compliance with a particular standard or a safety defect.
1002. The Minister or Secretary may consider other matters that are relevant. Relevant matters would generally be matters that relate to the approval in question, the ability of the holder of an approval to meet the requirements of the approval, the ability of the

holder of an approval to provide compliant vehicles, and compliance with road vehicle legislation.

1003. Subsection 192(2) provides that the Minister or Secretary may only vary an approval if they would have approved an application that was made in the terms of the varied approval.
1004. Subsection 192(3) empowers the Minister or Secretary to suspend or revoke an approval under this Division if he or she ceases to be satisfied of the matters based on which the approval was granted. An example of where this power may be exercised is where an approval was granted and it is later determined that the information supplied in the application for the approval was false or misleading information. In such circumstances, the Minister or Secretary may decide to suspend or revoke the approval.
1005. Subsection 192(4) makes it clear that the Secretary can consider information from an audit of a testing facility that is undertaken by the government, or by a body or organisation outside of Australia when deciding whether to vary, suspend or revoke the approval under this Division.
1006. An example of where the Secretary could use subsection 192(4) is where the holder of a road vehicle type approval used an E-mark granted by another country as evidence to support compliance with national road vehicle standards. The country that grants the E-mark later conducts an audit and the Department becomes aware that the road vehicle subject to the approval did not in fact comply with the relevant UN Regulation for which the E-mark was granted. As a result of this information, the Secretary may suspend the approval until the holder of the approval can provide new evidence demonstrating compliance with applicable national road vehicle standards.

### **193 – Notifying holder of approval of decision to vary, suspend or revoke approval**

1007. Section 193 sets out the notification requirements if a decision is made by the Minister or Secretary to vary, suspend or revoke an approval.
1008. Subsection 193(1) requires the Minister or Secretary to notify the holder of an approval of a variation under this Division as soon as practicable. The decision must be in writing and the decision takes effect 30 days after the date of the notice. Paragraph 193(2)(b) allows for a variation to take effect either earlier or later than provided for in paragraph 193(2)(a). The intention of paragraph 193(2)(b) is to provide an alternative to the 30 days required by paragraph 193(2)(a) in case there are circumstances where an variation must occur on an urgent basis.
1009. Subsection 193(3) requires the Minister or Secretary to notify the holder of an approval of a suspension or revocation of an approval under this Division as soon as practicable. The decision must be in writing and the decision takes effect on the day on which the decision is made or on a later day specified on the notice.
1010. A variation to an approval can include varying, adding or removing a condition of an approval. This section has been drafted to ensure consistency with the guidance in the *Guide to Framing Commonwealth Offences* in situations where conditions of a licence, authorisation, or permit can be varied – particularly when contravention of a varied condition can be a criminal offence.
1011. When conditions of an approval are changed this section ensures that the holder of the approval be notified of that change. They are given an opportunity to comply through the default requirement that the variation take effect 30 days after it is placed. This

ensures consistency with the principle that it is generally not fair to subject people to criminal punishment where they are operating under a mistaken belief as to the requirements that apply to their conduct.

1012. While the 30 day period is the default time before the variation takes effect, this section does allow the Minister or Secretary to set an earlier or later date. This ensures that the Secretary or Minister can respond quickly and effectively to changes in the road vehicle industry. Setting a later date can be used where the condition may require substantial changes to usual practice. Setting an earlier date may be appropriate where the condition goes to compliance with the national road vehicle standards, which may require immediate compliance to ensure public safety and the protection of the environment. In addition, an earlier date may be preferable in a situation where the variation is beneficial to the holder of the approval.
1013. Further procedural fairness is provided through the ability to review a decision to vary an approval.

#### **194 – Effect of suspension**

1014. This section provides that an approval is not in force during any period in which it is suspended under this Division. Part 3 (Recalls) and Part 4 (Compliance and Enforcement) of the Act, however, still apply despite an approval being suspended.
1015. Despite an approval being suspended under this Division, it is essential that the provisions of the Act that relate to recalls and compliance and enforcement continue to apply to the approval holder. It is in the public's interest for these provisions to apply, particularly in relation to recalls. A suspension of an approval should not discharge the approval holder of their obligations to comply with the recalls provisions under the Act or the Rules.
1016. This section also allows the Department to continue any compliance and enforcement activities that are necessary. There may be circumstances where there is an urgent safety non-compliance issue with road vehicles being provided under a road vehicle type approval. In dealing with such a situation, the Department may elect to suspend the approval to deal with the immediate issues of these vehicles being provided to the public. The Department would likely continue to undertake their compliance activities to verify compliance of the holder of the approval with their regulatory obligations and may respond to non-compliance with an appropriate enforcement response.

### **Division 3 – Action on request by holder of approval**

#### **195 – Holder of approval may apply for variation of approval**

1017. Section 195 allows for a holder of approval to apply to the Minister or Secretary for a variation of an approval. This application to vary could include, for example an application to add, change or remove conditions which apply to the approval. The application to vary will be made to the person who issued the approval. For example, if the approval was issued by the Minister, then any application to vary the approval would also be made to the Minister.
1018. The application for variation of an approval must be in the approved form and be accompanied by such documents as required by the form.
1019. An example of where an applicant may apply to vary their approval is if a road vehicle type approval was given by the Secretary for a make and model of vehicle. The holder

of a road vehicle type approval may intend to introduce a variant model of the vehicle, the sports package which includes a larger engine capacity and cosmetic features. In such a circumstance, the holder of the approval could apply to vary the road vehicle type approval to include the sports package variant.

#### **196 – Minister or Secretary may seek further information**

- 1020. Subsection 196(1) allows for the Minister or Secretary, in considering an application, to request further information about the application.
- 1021. Subsection 196(2) allows the Minister or Secretary to refuse to consider an application until the information requested under subsection 196(1) by the Minister or Secretary is provided.
- 1022. Section 230(zg) of the Rules provides that the holder of an approval may apply to the Administrative Appeals Tribunal for a review of a decision to refuse consider an application to vary an approval.

#### **197 – Minister or Secretary may vary approval**

- 1023. Subsection 197(1) empowers the Minister to vary an approval given under the Rules on application by the holder of the approval. Similarly, subsection 197(2) empowers the Secretary to vary an approval given under the Rules on application by the holder of the approval.
- 1024. Subsection 197(3) limits the Minister or Secretary's power to vary an approval under this Division in that they must be satisfied that, if the approval as varied were the subject of an application made under the Rules, the Minister or Secretary would grant the approval.
- 1025. Subsection 197(4) empowers the Minister or Secretary to vary an approval in terms other those requested by the holder of the approval.
- 1026. Section 230(zh) of the Rules provides that the holder of an approval may apply to the Administrative Appeals Tribunal for a review of a decision to refuse to vary an approval in response to an application by the holder of the approval.
- 1027. Section 230(zi) of the Rules provides that the holder of an approval may apply to the Administrative Appeals Tribunal for review of a decision to vary an approval in terms other than those requested by the holder of the approval.

#### **198 – Holder may apply to suspend or revoke approval**

- 1028. Subsection 198(1) allows the holder of an approval to request that the Minister suspend or revoke their approval. Similarly, if an approval was given by the Secretary then the holder of an approval may apply to the Secretary to have their approval suspended or revoked under subsection 198(2).
- 1029. Subsection 198(3) requires the Minister or Secretary to suspend or revoke an approval if requested by the holder of the approval as soon as practicable after receiving the request. The Minister or Secretary does have the discretion to suspend the approval for a specified period or until a specified event occurs. The Minister or Secretary is not required to suspend the approval for the period or until the occurrence of a specified event requested by the holder of the approval.
- 1030. Section 230(zj) of the Rules provides that the holder of an approval may apply to the Administrative Appeals Tribunal for review of a decision to suspend an approval for a

period, or until the occurrence of a specified event, other than requested by the holder of the approval.

### **199 – Notifying holder of approval of decision to vary, suspend or revoke approval**

1031. Subsection 199(1) requires the Minister or Secretary to notify the holder of the approval in writing of their decision to either vary, suspend or revoke an approval. The notification must occur as soon as practicable and the notification will be given by the person varying, suspending or revoking the approval.
1032. Subsection 199(2) outlines what is required in the notice to vary, suspend or revoke an approval. This includes the date on which the decision takes effect, the period in which the suspension will remain in effect or if the suspension is until an event occurs, it must expressly state what is required by the holder of the approval.

### **200 – Effect of suspension**

1033. This section provides that an approval is not in force during any period in which it is suspended under this Division, except for the purposes of Part 3 (Recalls) and Part 4 (Compliance and Enforcement) of the Act.

### **201 – Interaction with Division 2**

1034. This section provides that Part 7, Division 3 of the Rules (which provides for variation, suspension and variation of approvals on request by the holder of an approval), does not limit the power of the Minister or Secretary to vary, suspend or revoke an approval under Part 7, Division 2 of the Rules (which provides for variation, suspension and revocation of approvals on the Minister or Secretary's own initiative)

## **Division 4 – Automatic suspension of approval: compliance with new or amended national road vehicle standards**

### **202 – Automatic suspension: compliance with new or amended road vehicle standards**

1035. Section 202 automatically suspends road vehicle type approvals and road vehicle component type approvals if a new or amended national road vehicle standard comes into force, the new or amended standard applies to road vehicles or road vehicle components covered by the approval, and the Secretary, on application by the holder of the approval, has not approved a variation to the approval or decided that a variation is not necessary.
1036. Holders of type approvals can only enter vehicles on the RAV that are covered by an approval and comply with the national road vehicle standards as in force from time to time. When a new road vehicle standard commences, holders of type approvals will need to vary their approvals to reflect the new standards that apply, and update their supporting information that demonstrates that vehicles covered by the type approval will comply with these standards. This automatic suspension occurs if the holder of a type approval fails to provide this new information (by applying for a variation of their approval); and the Secretary has not considered that application for variation that relates to the particular road vehicle standard.
1037. Without an automatic suspension section, thousands of road vehicles could be provided to the Australian market that do not comply with the applicable national road vehicle standards. The onus is on holders of road vehicle type approvals and road vehicle

component type approvals to ensure that evidence of compliance with national road vehicle standards is kept up-to-date. Holders of these approvals should provide sufficient time for the Secretary to consider their application for variation – at least 30 business days before the suspension would come into effect.

1038. Subsection 202(2) provides that the suspension of an approval will begin from the date of the new standard coming into force for road vehicles or road vehicle components covered by that approval until the Secretary approves a variation to the approval relating to the vehicle or component's compliance with the new standard, or decides that a variation is not necessary.
1039. Subsection 202(3) provides that the Secretary must notify the holder of the approval in writing of the automatic suspension
1040. As this suspension is automatic, it is not a decision of the Secretary and is not reviewable by the Administrative Appeals Tribunal.

## **Part 8 – Recalls of road vehicles or approved road vehicle components**

### **Division 1 – Introduction**

#### **203 – Simplified outline of this Part**

1041. Section 203 provides a simplified outline of Part 8 of the Rules. Part 8 of the Rules is divided into five Divisions, summarised below:
- Division 1 – sets out the simplified outline and purpose of Part 8 of the Rules, and definitions in relation to this Part.
  - Division 2 – empowers the Minister to initiate a compulsory recall of road vehicles and approved road vehicle components if certain requirements are met. It also sets out requirements in relation to the contents of a recall notice, and the obligations of road vehicle and approved road vehicle component suppliers where a recall notice is issued.
  - Division 3 – sets out requirements relating to voluntary recalls initiated for road vehicles or approved road vehicle components.
  - Division 4 – sets out requirements for the initiation of a compulsory recall, including to issue a proposed recall notice and conduct a conference with suppliers or proposed suppliers of the kind of road vehicle or road vehicle component covered by the proposed recall notice in certain circumstances. It also sets out circumstances where a recall notice may be issued without delay, and what that involves.
  - Division 5 – sets out miscellaneous matters relating to recalls.

#### **204 – Purpose of this Part**

1042. This section sets out that this Part of the Rules provides for and in relation to the recall of road vehicles or approved road vehicle components, for the purposes of section 37 of the Act.
1043. Section 37 of the Act requires the Rules to provide for, or in relation to, the recall of road vehicles or approved road vehicle components for safety purposes or non-compliance with national road vehicle standards.
1044. Section 37 of the Act allows the Rules to also provide for, or in relation to, the following:

- issuing recall notices;
- compulsory recalls of road vehicles or approved road vehicle components;
- voluntary recalls of road vehicles or approved road vehicle components; and
- notification requirements relating to compulsory or voluntary recalls.

## **205 – Definitions**

1045. This section sets out a specific meaning for ‘national road vehicle standards’ to be applied to Part 8 of the Rules only. In this Part, ‘national road vehicle standards’ only refers to standards made under the *Road Vehicle Standards Act 2018* and not standards made under section 7 the *Motor Vehicle Standards Act 1989* (which provides that the Minister may determine vehicle standards for road vehicles or vehicle components). The purpose of this definition is to ensure that there is no uncertainty caused by calling standards made under both Acts ‘national road vehicle standards’, and removes the standards made under the *Motor Vehicle Standards Act 1989* from the general definition of national road vehicle standards so that these standards can be referred to separately. For example, section 206 of the Rules provides separately for the compulsory recall of vehicles for the reason that they do not meet national road vehicle standards under the *Road Vehicle Standards Act 2018*, and for the reason that they do not meet similar standards previously made under section 7 of the *Motor Vehicle Standards Act 1989*. This definition helps to distinguish standards made under each Act.

## **Division 2 – Compulsory recall of road vehicles or approved road vehicle components**

### **206 – Compulsory recall of road vehicles or approved road vehicle components**

1046. Section 206 empowers the Minister, by legislative instrument, to issue a recall notice for road vehicles or approved road vehicle components if certain requirements are met.
1047. A person supplying road vehicles or approved road vehicle components, the supplier, should be interpreted broadly. Many different entities may be considered to be suppliers of road vehicles and approved road vehicle components, including but not limited to an individual dealership and the original manufacturer of the vehicle. A recall notice will identify the suppliers to which it applies, in general terms or specifically. In most situations, the supplier to which the recall notice applies would be the national distributor for the road vehicle in question.
1048. A recall notice can only be issued under this section if it appears to the Minister that satisfactory action to rectify this issue has not been taken. The interpretation of satisfactory is dependent on the individual circumstances of each potential recall. However, satisfactory action would likely not be considered to have been taken if there is an ongoing likelihood that the vehicles subject to a potential compulsory recall will cause injury to any person or the non-compliance with a standard has not been corrected by the supplier.
1049. Subsection 206(1) empowers the Minister to issue a recall notice for road vehicles or approved road vehicle components. There are three requirements under subsection 206(1) that must be met before a recall notice is issued:
- a person, in trade or commerce, supplies road vehicles or components of that kind (required by paragraph 206(1)(a));

- specific circumstances relating to the road vehicle or approved road vehicle component apply, broadly speaking either that the vehicle or component will or may cause injury, or the vehicle or component does not comply with standards set out by this section (required by paragraphs 206(1)(b) and (c)); and
- one or more suppliers of such vehicles or components has not taken satisfactory action to either (as required by paragraph 206(1)(d)):
  - prevent those vehicles or components causing injury to any person; or
  - in the case of vehicles which do not comply with certain standards (where subsections 206(4), (6) or (7) apply), the non-compliance has not been rectified by the supplier.

1050. Subsection 206(2) provides that the Minister does not need to know the identity of any of the suppliers that supply road vehicles or approved road vehicle components when considering whether action has been taken to a satisfactory threshold to prevent vehicles or components causing injuries or to rectify non-compliance.

1051. There are four specific circumstances which may apply to meet the requirements set out by paragraphs 206(1)(b) and (c).

1052. The first circumstance is set out in subsection 206(3). This circumstance applies where it appears to the Minister that a road vehicle or approved road vehicle component of a particular kind will or may cause injury to any person. This circumstance applies similarly where it appears to the Minister that the reasonably foreseeable use (including a reasonably foreseeable misuse) of such a vehicle or component will or may cause injury to any person.

- An example of a reasonably foreseeable use that will or may cause injury may be where there is evidence that the steering of a particular make and model of vehicle can lock, or has locked, when that make and model of vehicle is being driven. Varied conditions of driving, including in snow or unsealed roads, would all be likely to be encountered in reasonably foreseeable use. As steering is a key feature for the safe operation of the vehicle, it may appear to the Minister that a reasonably foreseeable use of that kind of vehicle will or may cause injury to a person.
- An example of reasonably foreseeable misuse that will or may cause injury may be where there is evidence of a particular make and model of road vehicle that has a motor that catches on fire if driven over 150km per hour. The road vehicle may be unlikely to reach that speed in its ordinary use, and driving at that speed – dependent on the circumstances – may be considered a misuse. The Minister may be satisfied that this misuse of the road vehicle will or may cause injury to any person.
- The Minister may take into account a broader range of considerations in deciding whether a road vehicle or approved road vehicle component (or their use or misuse) will or may cause injury. These examples are not intended to limit the considerations that the Minister may take into account.

1053. The second circumstance is set out in subsections 206(4) and (5). Subsection 206(4) applies if it appears to the Minister that a road vehicle or approved road vehicle component of a particular kind does not, or it is likely that it does not, comply with the

applicable national road vehicle standards. When considering whether to issue a compulsory recall for road vehicles or approved road vehicle components on the basis of the vehicles or components of that kind not complying with an applicable national vehicle standard, the Minister should consider whether the non-compliance is substantive in nature. For example, the non-compliance would be expected to have an impact on the vehicle or component meeting the substantive aim of the standard in question.

1054. Subsection 206(5) gives examples of where the second circumstance, set out in paragraph 206(4), may apply. It does not limit 206(4).
1055. The third circumstance is set out by subsection 206(6) and relates to modified vehicles that do not comply with certain standards. For this circumstance to apply, the road vehicle must be entered on the RAV via the concessional RAV entry approval pathway on the basis that the vehicle was manufactured or modified in accordance with an approved Model Report. The Model Report must have been approved on the basis that vehicle manufactured or modified in accordance with the Model Report would comply with the applicable national road vehicle standards or standards made under section 89 of the Rules. If the Minister believes that the vehicle does not or is unlikely comply with the applicable standards then a recall notice may be issued. The relevant applicable standards are those in force at the time the vehicle was manufactured or modified in accordance with the Model Report.
1056. The intention of subsection 206(6) is to provide for:
- Where the holder of a RAW approval used a Model Report in the modification or manufacture of a road vehicle, but that modification or manufacture was completed incorrectly and not fully in accordance with the Model Report.
  - Where a road vehicle was modified or manufactured in accordance with a Model Report and it is later found out the Model Report contained an error that caused non-compliance with an applicable standard.
1057. The fourth circumstance is set out by subsection 206(7) and relates to vehicles supplied under the *Motor Vehicle Standards Act 1989*. This circumstance applies where:
- The supply of the road vehicle was permitted on the basis it complied to a particular extent with standards made under section 7 of the *Motor Vehicle Standards Act 1989*; and
  - It appears to the Minister that the vehicle does not, or it is likely that it does not, comply to that extent with the applicable standard.
1058. Applicable standards in this subsection are those that were in force at the time an identification plate or used imported plate was placed on the vehicle under the *Motor Vehicle Standards Act 1989*. If the vehicle does not have an identification or used import plate, then the applicable standards are those that were in force at the time the vehicle was manufactured.
1059. To be clear, this provision allows the Minister to issue a recall notice for vehicles that were meant to comply with a standard under the *Motor Vehicle Standards Act 1989*, but did not do this. The Minister may issue a recall notice under the *Road Vehicle Standards Act 2018* for those vehicles, even where they were supplied under the *Motor Vehicle Standards Act 1989*. This ensures consistency in the application of recall powers provided to the Minister responsible for the *Road Vehicle Standards Act 2018*

and the powers available to the Minister responsible for the Australian Consumer Law, at Schedule 2 to the *Competition and Consumer Act 2010*.

1060. When interpreting this section, it is important to consider section 209 of the Rules, which states that a person is taken to be a supplier of a road vehicle or approved road vehicle component, if they are the holder of the road vehicle type approval for that type of vehicle or if they are the holder of the road vehicle component type approval for that type of road vehicle component. This is not intended to limit who else may be considered a supplier.

## **207 – Contents of a recall notice**

1061. Section 207 provides for what information may be contained in a recall notice issued under section 206 of the Rules. This section applies to recall notices for both road vehicles and approved road vehicle components.

1062. A recall notice may require one or more suppliers of road vehicles or approved road vehicle components to take one or more of the following actions:

- To recall the vehicles or components
- To disclose to the public or a class of people (for example, vehicle owners) the nature of the defect or dangerous characteristic and circumstances in which it may present itself, as well as procedures for disposal of the vehicles or components;
- To inform the public or a class of people that the supplier undertakes to take one of the following actions that the supplier thinks is appropriate to rectify the defect or the dangerous characteristic: repair or replacement of the vehicle or component, or a refund of the price of the vehicle or component to the person to whom the vehicle or component was supplied. The recall notice will not specify which of these actions the supplier must take.

1063. The recall notice may also specify the manner in which the action required by the notice must be taken. The manner in which action must be taken is intended to be interpreted broadly, although it should leave enough to the discretion of the supplier that they are able to choose to undertake repair, replacement or refund as appropriate.

1064. When interpreting this section, it is important to consider section 209 of the Rules, which states that a person is taken to be a supplier of a road vehicle or approved road vehicle component if they are the holder of the road vehicle type approval for that type of vehicle or if they are the holder of the road vehicle component type approval for that type of component. This does not limit who else may be considered a supplier.

## **208 – Obligations of a supplier in relation to a recall notice**

1065. This section sets out the obligations that suppliers have in relation to a recall notice.

1066. Where a supplier undertakes to repair recalled road vehicles or approved road vehicle components, they must be repaired so that any identified defect is remedied or any non-compliance with an applicable standard is rectified.

1067. To be clear, paragraph 207(1)(c) requires that a recall notice provides the supplier with the option to either repair, replace or refund road vehicles or approved road vehicle components that are subject to recall. It is the supplier who decides what option is most

appropriate given the circumstances of the recall. In doing so, the supplier should have regard to what is required under subsections 208(2), (3) and (4) when electing to either repair or replace a vehicle or component, or provide a refund for the vehicle or component. Suppliers should also note that failure to comply with a recall notice is a contravention of section 38 of the *Road Vehicle Standards Act 2018*. A contravention of section 38 of the Act could result in an enforcement response, for example, an infringement notice, application to a court for a civil penalty order, or referral for criminal prosecution.

1068. Where a supplier undertakes to replace recalled road vehicles or approved road vehicle components, they must be replaced with similar vehicles or components which do not contain the defect or dangerous characteristic that has been identified in the recall notice. The vehicle or component that is given as a replacement must comply with the applicable standards in force for the original vehicle or component being replaced.

1069. Subsection 208(4) provides that if a supplier undertakes to repair or replace road vehicles or approved road vehicle components, then the cost will be paid by the supplier. This includes the costs to transport, for the purpose of repair or replacement, the goods associated with the repair or replacement. For example:

- If a vehicle is being replaced, it is not enough for the supplier to say to a vehicle owner that they have replaced their vehicle and the vehicle is in Sydney, when the vehicle owner lives in Brisbane. The supplier should transport the replacement vehicle to Brisbane. This does not imply that the supplier must necessarily deliver the vehicle to the vehicle owner's home. The vehicle may be delivered to a place of repair or replacement, for example a dealership, closest to the vehicle owner.
- When a vehicle is being repaired, generally the vehicle owner would pay the cost of delivering the vehicle to the place of repair or replacement, but the cost of transporting components required for the repair should be paid by the supplier.
  - If the vehicle cannot be safely delivered to a place for repair, then the supplier may need to pay the cost of transporting the vehicle.
- If the vehicle is in a remote location from the nearest place to repair the vehicle then the supplier must pay transportation costs for getting the vehicle to and from a place for repair.

1070. When interpreting this section, it is important to consider section 209 of the Rules, which states that a person is taken to be a supplier of a road vehicle or approved road vehicle component if they are the holder of the road vehicle type approval for that type of vehicle or if they are the holder of the road vehicle component type approval for that type of component. This does not limit who else may be considered a supplier.

1071. This section is not intended to exclude any other obligations that a supplier may have, for example under the *Competition and Consumer Act 2010* or the *Road Vehicle Standards Act 2018*.

## **209 – Holder of a type approval taken to be a supplier**

1072. Section 209 provides that if a person holds a type approval for a road vehicle or approved road vehicle component, they are considered to be a supplier for the purposes of sections 206 to 208.
1073. This is intended to make it clear that the holder of a road vehicle type approval or road vehicle component type approval can always be taken to be a supplier of a road vehicle or road vehicle component – even where their distribution model may not look like a traditional “supply” model. This ensures the holders of these approvals always have responsibilities to provide safe and compliant vehicles and cannot use complex supply arrangements to avoid their responsibilities. This section should not be taken to preclude entities other than the holder of a type approval from being considered suppliers. For example, a global car manufacturer that holds a road vehicle type approval may use an Australian distributor for the road vehicle. In such a situation, the holder of the road vehicle type approval would be considered the supplier for the purposes of sections 206 to 208. It may also be the case the Australian distributor is also considered a supplier, depending on the individual circumstances of the recall.
1074. This section is not intended to limit who else may be considered a supplier.

## **210 – Notification by persons who supply road vehicles or approved road vehicle components outside Australia if there is compulsory recall**

1075. This section provides that where road vehicles or approved road vehicle components of a particular kind are recalled as required by a recall notice, a person who has supplied, or supplies, those vehicles or components to a person outside Australia must give that person a written notice that complies with all of the following requirements:
- The notice must state that the vehicles or components are subject to recall.
  - If the vehicles or components contain a defect or have a dangerous characteristic, the notice must set out the nature of that defect or characteristic.
  - If a reasonably foreseeable use or misuse of the vehicles or components is dangerous, the notice must set out the circumstances of that use or misuse.
  - If the vehicle or component does not comply with certain standards set out by subsections 206(4), (6) or (7), the written notice must identify these standards and set out the nature of the non-compliance, or likely non-compliance, with those standards.
1076. This is intended to ensure suppliers not only notify people to whom they have supplied road vehicles or approved road vehicle components in the domestic market, and rectify these vehicles and components, but also notify people to whom they have supplied these vehicles or components in international markets.
1077. Subsection 210(3) requires this written notice to be given as soon as practicable after the supply of the road vehicles or approved road vehicle components to the person outside Australia. For example, if a supplier supplies a vehicle and then becomes aware that the vehicle is subject to a recall notice, the supplier must notify the person who acquired the vehicle as soon as practicable.
1078. The words ‘as soon as practicable’ are intended to reflect the urgency of giving a notice, but with some limited flexibility, reflecting that there are practical steps involved in giving a written notice which may mean that the notice cannot be given

immediately. It is intended that, when considering what is ‘as soon as practicable’, suppliers consider a range of factors including, for example:

- the possible consequences of any non-compliance with standards, or a defect or dangerous characteristic, including the risk of injury or death
- the likelihood or magnitude of those consequences
- the minimum time it may take to urgently gather information, such as contact information, that supports the giving of a written notice

1079. Subsection 210(4) requires the person giving the notice under subsection 210(1) to provide the Minister with a copy of the notice within 10 days of it being given.

### **Division 3 – Voluntary recall of road vehicles or approved road vehicle components**

#### **211 – Circumstances of voluntary recall of road vehicles or approved road vehicle components**

1080. Section 211 sets out the four circumstances in which Part 8, Division 3, of the Rules (relating to voluntary recalls) applies. Where a circumstance set out in this section applies, then the requirements in this Division also apply.

1081. The first circumstance relates to road vehicles or approved road vehicle components that will or may cause injury. This circumstance applies where a person voluntarily takes action to recall road vehicles or approved road vehicle components of a particular kind on the basis that such vehicles or components (or a reasonably foreseeable use or misuse of such vehicles or components) will or may cause injury to any person.

1082. The second, third and fourth circumstances relate to road vehicles or approved road vehicle components that do not, or likely do not, comply with certain standards.

1083. The second circumstance applies where a person voluntarily takes action to recall road vehicles or approved road vehicle components of a particular kind on the basis that the vehicles or components do not, or it is likely that they do not, comply with the national road vehicle standards.

1084. The third circumstance applies where a person voluntarily takes action to recall road vehicles of a particular kind on the basis that the vehicles do not, or it is likely that they do not, comply with standards determined by the Minister under section 89 of the Rules.

1085. The fourth circumstance applies where a person voluntarily takes action to recall road vehicles of a particular kind on the basis that the vehicles do not, or it is likely that they do not, comply with standards made under section 7 of the *Motor Vehicle Standards Act 1989*.

#### **212 – Notification requirements for a voluntary recall of road vehicles or approved road vehicle components**

1086. Section 212 sets out requirements relating to the notification of the Minister and others about a voluntary recall.

1087. Subsection 212(2) provides that a person must, within 2 days after voluntarily taking action to recall road vehicles or approved road vehicle components of a particular kind, give the Minister a written notice that complies with certain requirements set out in subsection 212(7).

1088. Subsection 212(3) allows the Minister to publish a copy of the notice on the internet.

1089. Subsection 212(4) requires a person to provide written notice where they supply or have supplied a road vehicle or approved road vehicle component of the kind that has been recalled to another person outside Australia. The written notice must be given as soon as practicable after the supply of road vehicles or approved road vehicle components to a person outside Australia. The written notice must also comply with the requirements of subsection 212(7).
1090. “Takes action to recall road vehicles” is to be interpreted broadly, including to capture a range of actions that may not necessarily be called “recalls” by the supplier.
1091. Taking action to recall may include a broad range of actions – for example notifying customers that their vehicle will have a safety or substantive non-compliance issue fixed during their next scheduled service would be considered taking recall action, even though there may not be a sense of urgency in the action.
1092. However, the Minister may not need to be notified for action to rectify quality issues in the manufacture of a vehicle that will or may cause injury or does not comply with relevant standards (i.e. the circumstances set out in section 211 apply). For example, action taken to rectify purely cosmetic issues in a particular kind of vehicle (where the cosmetic issue will not cause injury to any person as set out in 211(2), and does not affect the compliance of the vehicle with standards set out in 211(3)) will not be subject to the requirements of this Division. Consequently, the person who takes this action will not be required to notify the Minister or persons outside Australia about the action for the purpose of section 212.
1093. Subsection 212(7) sets out the requirements for what a written notice to the Minister or other person outside Australia must include. The requirements are:
- The notice must state that road vehicles or approved road vehicle components of a particular kind are subject to recall.
  - If the vehicles or components contain a defect or have a dangerous characteristic, the notice must set out the nature of that defect or characteristic.
  - If a reasonably foreseeable use or misuse of the vehicles or components is dangerous, the notice must set out the circumstances of that use or misuse.
  - If the vehicle or component is subject to voluntary recall action of the kind mentioned in 211(2) (that it will or may cause injury) or 211(3) or (4) (that it does not comply with certain standards), the written notice must identify those standards and set out the nature of the non-compliance or likely non-compliance with those standards.
1094. Sections 212(8) and (9) provide that a notification under the Australian Consumer Law for the purpose of 128(2) or 128(4) of the Australian Consumer Law is taken to be a notification under the Rules to the Minister (for the purpose of section 212(2)) or a person to whom vehicles or components were supplied outside Australia (for the purpose of section 212(4)), respectively. The intention of these subsections is to avoid suppliers having to provide a notice under both the Rules and the Australian Consumer Law if the notice relates to vehicles or approved road vehicle components of the same kind.

#### **Division 4 – Conferences for proposed recall notices**

##### **Subdivision A – Conference requirements before compulsory recall**

### **213 – Minister must issue a proposed recall notice**

1095. Compulsory recalls can be an expensive process for road vehicle and component suppliers. Division 4 provides for procedural fairness in relation to the powers regarding compulsory recall notices.
1096. Section 213 requires that the Minister, before issuing a compulsory recall notice, issues a proposed recall notice (unless the Minister has published a notice under section 218 of the Rules certifying that a recall notice should be issued without delay).
1097. The proposed recall notice must be in writing and published on the internet so as to be publicly available. It should include the draft compulsory recall notice that the Minister proposes to issue (including all contents of the recall notice required by section 207), and provide a summary of reasons for the proposed issue of the recall notice in those terms. Importantly, it must invite suppliers to notify the Secretary in writing if they wish to meet with the Secretary in relation to the proposed recall notice.
1098. This is intended to provide an opportunity for suppliers of road vehicles or components to present their case in relation to the proposed recall.
1099. Suppliers have, as a default, 10 days to view the proposed recall notice and ask for a conference to be held. The 10 days include business days, weekends and public holidays. Suppliers must not be given less than 10 days, but it is intended that the Minister may specify, if he or she considers appropriate, that suppliers have more than 10 days to ask for a conference to be held.

### **214 – Minister to be notified if no person wishes a conference to be held**

1100. If no supplier or proposed supplier notifies the Secretary, in accordance with a proposed recall notice, that they wish the Secretary to hold a conference, then section 214 requires the Secretary to notify the Minister, in writing, that no conference has been requested. For example, the Secretary is not required to notify the Minister of a notification if the notification is given to the Secretary after the time for notifying the Secretary expires, or by a person who is not a supplier or proposed supplier of vehicles or components of the kind specified in the proposed recall notice.

### **215 – Notification of conference**

1101. This section requires the Secretary to hold a conference if a person has notified the Secretary that they wish the Secretary to hold a conference in relation to the proposed recall notice.
1102. Subsection 215(1) requires that the Secretary must notify each person who requested a conference, and the Minister, of the day, time and place of the conference. This notification must be in writing.
1103. Subsection 215(2) sets out that the conference must be held in the period between 5 and 14 days after the end of the period specified in accordance with section 213 that the person had to notify the Secretary that they wish for a conference to be held.

### **216 – Recommendation after conclusion of conference**

1104. This section requires the Secretary to, as soon as practicable after the conclusion of the conference, provide a written recommendation to the Minister about whether to issue the recall notice, modify the recall notice and then issue it, or not issue the recall notice.

1105. The Secretary must also ensure that each person who attended the conference be presented with a copy of the notice as given to the Minister.
1106. Subsection 216(2) requires the Minister to have regard to the recommendations made under paragraph 216(1)(a). In the event that the Minister decides to proceed with an act other than in accordance with the recommendation, then the Minister must publish the reasons for such a decision.

### **Subdivision B – Conduct of conferences**

#### **217 – Conduct of conferences**

1107. Section 217 outlines that a person who requested a conference, in accordance with the requirements of the proposed recall notice, is entitled to attend or be represented at a conference. The Minister and Secretary can also attend or nominate a person to attend on their behalf.
1108. The Secretary must keep a record of the proceedings and give all those entitled to be present, or those representing a person entitled to be present, an opportunity to present their case and make any submissions about the proposed recall notice and any documents that the Secretary proposes to consider.
1109. Subsection 217(3) provides that attendees at the conference will be given an opportunity by the Secretary to inspect any documents that may be used by the Secretary in making a decision and make submission in relation to those documents. There are some exceptions to the ability to view certain documents, for example documents that contain particulars of a formula or process that is commercial in confidence. Other documents may also be exempted, as a result of other legal requirements, for example under legal professional privilege.

### **Subdivision C – Miscellaneous**

#### **218 – Recall notice without delay in case of danger to the public**

1110. Section 218 empowers the Minister to issue a recall notice without delay if a road vehicle or approved road vehicle component creates an imminent risk of death, serious illness or serious injury.
1111. The Minister must give written notice on the internet, certifying that a recall notice for road vehicles or approved road vehicle components of a particular kind should be issued without delay. If this notice is published after action has been taken under Subdivision A of this Division (for example notice of a conference has been given, or a conference has been held) but before any recommendation after the conclusion of the conference is made by the Secretary to the Minister, then the Minister may issue the recall notice without having regard to the conference.

#### **219 – Copy of notices under this Division to be given to suppliers**

1112. Subsection 219(1) requires the Minister to cause a copy of a proposed recall notice or recall notice issued without delay under section 218, to be given to persons who supply road vehicles or approved road vehicle components to which the notice relates. This requirement extends only to persons whom the Minister has knowledge of supplying road vehicles and approved road vehicle components to which the notice relates. The requirement is that the Minister causes a copy of a proposed recall notice to be given,

which is intended to encompass a range of actions, including the giving of notices by the Department or third parties.

1113. Subsection 219(2) requires that a copy of the notice must be provided within two days after the publication or issue of the notice. In the event it is not practicable to give the notice in the period of two days, then the notice or publication must occur as soon as practicable.
1114. Subsection 219(3) provides that failure to comply with subsection 219(1) does not invalidate the notice. It is the responsibility of suppliers of road vehicles and approved road vehicle components to regularly check and ensure that a recall notice does not apply to their products.

## **Division 5 – Miscellaneous**

### **220 – Liability under a contract of insurance**

1115. Section 220 relates to contracts of insurance between an insurer and a person in relation to providing information regarding recalls.
1116. In interpreting this section, the definitions of ‘authority’, ‘authority of the Commonwealth’ provided under subsection 220(2) must be noted.
1117. It must also be noted that a ‘person’ includes the holder of a road vehicle type approval and road vehicle component type approval, as section 220(2) provides. This is not intend to limit the definition of ‘person’, meaning that a person may also be someone other than the holder of a road vehicle type approval or road vehicle component type approval.
1118. Paragraph 220(1)(a) provides that the liability of an insurer under a contract of insurance between the insurer and a person is not affected because the person has provided information relating to road vehicles or component it has supplied, or intends to supply. However, this section only has effect if the contract of insurance between an insurer and a person is:
- in relation to the recall of road vehicles or approved road vehicle components, supplied by the person or intended to be supplied by the person; or
  - the liability of a person with respect to possible defects in such road vehicles or approved road vehicle components.
1119. Paragraph 220(1)(b) specifies to whom a person can provide information without affecting their liability under contract:
- the Minister; or
  - a person appointed or engaged under the *Public Service Act 1999*, or a corresponding law of a state or territory; or
  - an officer of an authority of the Commonwealth or of a state or territory.
1120. Recalls form part of the core objectives of the Act – to ensure that vehicles provided in Australia are safe and meet the relevant standards. If a person who supplies road vehicles or approved road vehicle components does not provide all relevant and necessary information to the Minister, an authority or an authority of the Commonwealth in relation to a recall or possible recall, it could have serious ramifications for the community. This provision provides certain protections to persons

in such circumstances where they provide information, irrespective of whether the information is provided voluntarily or not.

## **Part 9 – Miscellaneous**

### **Division 1 – Introduction**

#### **221 – Simplified outline of this Part**

1121. This section provides a simplified outline of the Part.

#### **222 – Purpose of this Part**

1122. This section sets out the purpose of this Part of the Rules.

1123. The authority to make the provisions under this Part of the Rules is provided under subsection 13(2) and section 82 of the Act.

1124. Subsection 13(2) of the Act s Rules to provide for, or in relation to, the issuing of advisory notices advising that specified thing is not a road vehicle.

1125. Section 82 of the Act empowers the Minister to make Rules prescribing matters that are required or permitted by the Act to be prescribed by the Rules or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **Division 2 – Publication requirements**

1126. Section 82(2)(e) of the Act sets out that the Rules may provide for and in relation to the publication of approvals and details relating to approvals granted under this Act. This Division sets out these matters.

#### **223 – Road vehicle type approvals**

1127. This section requires the Secretary to publish on the Department’s website:

- the name and contact details of the holder of the road vehicle type approval;
- a copy of the current approval;
- if there are previous versions of the approval – a copy of each version of the approval; and
- the road vehicle descriptor for the type of vehicle covered by the approval.

1128. This is a continuation of an existing policy under the *Motor Vehicle Standards Act 1989* to have road vehicle type approval information published on the internet.

1129. The publication of the details of a road vehicle type approval is appropriate for ensuring accountability of holders of road vehicle type approvals, particularly given the significant responsibilities they have to produce unrestricted volumes of vehicles that comply with safety, environmental and anti-theft standards.

1130. This section may result in the publication of personal details (name and contact details), particularly if the holder of the approval is an individual. However, it is expected that the vast majority of holders of road vehicle type approvals will be corporations, given the complexity required to hold a road vehicle type approval. As above, publication of such details is appropriate given the obligations and responsibilities of the holder of a road vehicle type approval.

## **224 – RAW Approvals**

1131. This section requires the Secretary to publish the business name and contact details for the holder of a RAW approval. The manner of publication will be via the Department's website.
1132. This section does not require the publication of personal information because only a corporation can apply to become a RAW approval holder.

## **225 – Approved Model Reports**

1133. This section requires the scope of every approval of a Model Report to be published on the Department's website. It also requires contact details to be published.
1134. Subsection 225(2), however, allows for the holder of the approval to, by request, to have contact details, including personal information, not be added to the Department's website, or if already published, be removed.
1135. This enables individuals who do not want personal information published to opt out.
1136. It is appropriate that publication is opt out, rather than opt in. The default position of the legislation is that publication of the details of holders of approvals of Model Reports benefits participants in the regulation of road vehicles by providing information about existing Model Reports and how to purchase or otherwise access these Model Reports.

## **226 – AVV approvals**

1137. This section requires the Secretary to publish the business name and contact details for the holder of an AVV approval. The manner of publication will be via the Department's website. It is vital that the Department publish details about AVV approval holders so that any persons requiring their vehicle to be inspected by the holder of an AVV approval have access to a definitive list of AVV approval holders.
1138. This section does not require the publication of personal information because only a corporation can apply to become an AVV approval holder.

## **227 – Testing facility approvals**

1139. Subsection 227(1) requires the Secretary to publish the name and contact details of the holder of a testing facility approval. The information is to be published on the Department's website.
1140. Subsection 227(2), however, allows for the holder of the approval to, by request, have the information not be published to the Department's website, or if already published, be removed.
1141. This enables individuals who do not want personal information published to opt out. It also ensures that corporations or individuals that want to protect their status as a testing facility for, among other things, commercial-in-confidence reasons, can opt out of having their name and contact information being published.
1142. It is appropriate that publication is opt out, rather than opt in. The default position of the legislation is that publication of the details of testing facilities benefits participants in the regulation of road vehicles by providing information about who they can approach to conduct testing.

## **228 – Road vehicle component type approvals**

1143. This section requires the Secretary, in relation to a road vehicle component type approval, to publish the name and contact details of the holder of the approval, a copy of the current approval and any previous versions of the approval. The publication of this information is to occur via the Department's website.
1144. The publication of the details of a road vehicle component type approval is required for the effective operation of road vehicle component type approvals. This is because components are designed to be used by other people when they develop a Model Report or vehicle for which a road vehicle type approval will later be applied for. These approvals will not be able to operate for their intended purpose without the ability for the third party using the component to check the approval, examine its scope, and potentially even contact the holder of the approval with installation questions. Publication of these details is also appropriate for ensuring accountability of holders of road vehicle component type approvals, particularly given the significant responsibilities they have to produce components that comply with the applicable national road vehicle standards.
1145. This section may result in the publication of personal details (name and contact details), particularly if the holder of the approval is an individual. However, it is expected that the vast majority of holders of road vehicle component type approvals will be corporations, given the sophistication required to hold a road vehicle component type approval. As above, publication of such details is appropriate given the obligations and responsibilities of the holder of a road vehicle component type approval.

## **229 – Publication of decision to vary, suspend or revoke approval**

1146. The section allows the Minister or Secretary to publish a notice of a decision to vary, suspend, or revoke an approval. 'As applicable' in this section means that the Minister may publish a notice of the Minister's decision, and the Secretary may publish a notice of the Secretary's decision.
1147. This is intended to be used to notify the public that an approval that may have previously been a matter of public record has been changed for whatever reason.
1148. In using this section, the Minister or Secretary may give consideration to whether there is a public benefit to publishing the information – for example, the public will benefit from knowing that the Secretary has made a decision to suspend a particular road vehicle type approval or road vehicle component type approval as this may impact a person's purchasing decision. The public would also benefit from knowing whether a RAW approval has been revoked, as the public relies on using holders of RAW approvals to modify or manufacture vehicles for provision in Australia.

## **Division 3 – Miscellaneous**

### **230 – AAT review of decisions**

1149. Section 82(2)(c) of the Act sets out that the Rules may provide for and in relation to the review of a decision made under the Act, Rules or any instrument made under the Rules. Section 230 of the Rules sets out matters relating to the review by the Administrative Appeals Tribunal of a range of decisions made by the Minister or Secretary under the Rules.

1150. Reviewable decisions include decisions to refuse to grant an approval, suspend, vary, or revoke approvals, decisions to refuse to consider applications, and decisions to impose new conditions on approvals.
1151. This section should not impose a substantial additional burden to the Administrative Appeals Tribunal, given that most of the decisions under the *Road Vehicle Standards Act 2018* were similarly reviewable under the *Motor Vehicle Standards Act 1989*. In addition, volumes of appeals are expected to remain around the same, given the greater clarity the new legislation provides about how decisions are made and the criteria that must be met.

### **231 – Former holders of type approvals – ongoing obligation to provide supporting information**

1152. This section creates an ongoing obligation for holders of road vehicle type approvals and road vehicle component type approvals, for a period of seven years after the approval is revoked or expires to:
- be able to access the original and any subsequent version of the supporting information for type approval
  - provide those versions to the Minister upon written request
1153. The obligation on former holders of approvals to provide supporting information for a period of seven years after the approval expires or is revoked applies to both road vehicle type approvals and road vehicle component type approvals. Safety or other compliance issues may emerge in vehicles provided under a type approval after the approval expires. Records relating to the approval need to be kept in order to, for example, recall unsafe road vehicles or approved road vehicle components, or investigate non-compliance of road vehicles or approved road vehicle components that are already in the market.
1154. As noted in the Rules, the holder of an approval could commit an offence or contravene a civil penalty provision under section 30 of the Act if they fail to meet this obligation.
1155. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
1156. Section 19(2)(d) of the Act sets out that the Rules may provide for or in relation to the obligations of former approval holders in relation to approvals to enable vehicles to satisfy the requirements of an entry pathway (including the type approval pathway) or relating to road vehicle components. The obligations imposed on former holders of road vehicle type approvals or road vehicle component type approvals by section 231 of the Rules, are in accordance with section 19(2)(d) of the Act.

### **232 – Holder of approvals – ongoing obligation to retain records**

1157. Subsection 232(1) creates an ongoing obligation for holders of approvals that are granted an approval under Part 3, 4 or 5 of the Rules. This obligation is that the holder of the approval must retain the record for at least seven years after the day the record is made.

1158. Subsection 232(2) provides that if an approval ceases to be in force during the seven year period, the person who held the approval must continue to retain each record made while the approval was in force for the balance of the seven year period. Safety or other compliance issues may emerge in vehicles related to these approvals, even after the approval expires. Records relating to the approval need to be kept in order to, for example, recall unsafe vehicles or investigate non-compliance of vehicles that are already in the market.
1159. The period of seven years for which holders of approvals are required to keep records is consistent with certain other recordkeeping requirements across Commonwealth regulation, in particular recordkeeping requirements for companies under the *Corporations Act 2001*.
1160. Section 19(2)(d) of the Act sets out that the Rules may provide for or in relation to the obligations of former approval holders in relation to approvals to enable vehicles to satisfy the requirements of an entry pathway. The obligations imposed on former approval holders in relation to approvals granted under Part 3 of the Rules (road vehicle type approvals and concessional RAV entry approvals) and Part 4 of the Rules (tools to enable vehicles to satisfy the requirements of the type approval and concessional RAV entry pathways), by section 232 of the Rules, are in accordance with section 19(2)(d) of the Act.
1161. Section 23(d) of the Act sets out that the Rules may provide for or in relation to the obligations of former approval holders in relation to the importation of road vehicles. The obligations imposed on former approval holders in relation to import approvals granted under Part 5 of the Rules, by section 232 of the Rules, are in accordance with section 23 of the Act.

### **233 – Advisory notice that thing is not a road vehicle**

1162. Section 13(2) of the Act states that the Rules may provide for or in relation to the issuing of advisory notices advising that a specified thing is not a road vehicle. This section of the Rules provides for these matters.
1163. Subsection 233(1) allows a person to apply for an advisory notice that states that a specified thing is not a road vehicle.
1164. Subsection 233(2) requires an application made under section 233 to be in the approved form, be accompanied by such documents are required by the form and the application fee.
1165. Subsection 233(3) empowers the Secretary to, if they are satisfied that a thing is not a road vehicle, to issue an advisory notice to that effect. Section 230(zl) of the Rules provides that a person may apply to the Administrative Appeals Tribunal for review of a decision to refuse to issue an advisory notice that a specified thing is not a road vehicle.
1166. Subsection 222(4) allows the Secretary to refuse to consider an application if it is not in the approved form, accompanied by such documents as required by the form and the application fee. Section 230(zk) of the Rules provides that a person may apply to the Administrative Appeals Tribunal for review of a decision to refuse to consider an application for an advisory notice.
1167. This advisory notice is intended to assist people importing or providing vehicles where they may be some uncertainty about whether the vehicle is or is not a road vehicle.

This may assist people to understand whether their vehicle is or is not a road vehicle, and thus whether it needs an import approval. It may also facilitate clearance at the border for vehicles that look like they may need an import approval, but in reality do not.

### **234 – Delegation by the Minister**

1168. Subsections 73(5) and (6) of the Act set out that the Rules may provide for or in relation to the delegation of functions or powers of the Minister to an APS employee, other than the power to issue a recall notice or to determine specified matters by legislative instrument. Section 234 of the Rules sets out matters relating to delegation of the Minister's functions and powers.
1169. Subsection 234(1) empowers the Minister to delegate any of his or her functions or powers under the Rules to an APS employee, subject to subsection 234(2) and 234(3), which set out certain powers and functions that cannot be delegated. For example relating to suspension, variation or revocation of approvals, can only be delegated to SES employees. High volume applications may be delegated to non-SES employees as appropriate. The ability to make determinations and issue compulsory recall notices cannot be delegated at all. The delegation of the Minister's powers and functions must be made in writing.
1170. The Rules require the Minister to consider most applications from industry within 30 to 60 days. The types of applications that can be made under the Rules vary considerably and the volume of decisions that either the Minister or Secretary has to make is expected to be in the order of 200,000 decisions per year. The applications can also vary greatly in complexity and there is significant administrative efficiency to be gained by allowing less complex or sensitive applications to be dealt with by a broader range of appropriately trained staff. As part of the extensive consultation process, industry has provided feedback that more timely processing of regulatory applications would bring greater operational flexibility and efficiency.
1171. Allowing the Rules to provide for the delegation of the Minister's powers to APS employees will not automatically grant non-SES employees the authority to make decisions and nor would the Rules actually permit such delegations. As in other Commonwealth agencies, the delegation of powers is managed through a Delegation Instrument. The Minister would determine on a risk management basis the classes of persons who are to be delegated these powers. Accordingly, significant, complex or sensitive regulatory decisions - such as decisions to vary, suspend or revoke approvals - will remain with SES employees. Less complex regulatory decisions, for example to approve a reimportation import approval, may be delegated to a small number of appropriately trained, non-SES employees within the Department.
1172. Administrative processes are also in place to ensure staff exercise delegations appropriately. The regulatory management system used by staff within the Department has existing controls in place to ensure that only duly authorised persons can exercise a function or power. Delegates who exercise powers and functions under this Rules will receive appropriate training and support to make effective and lawful decisions, including internal training specifically covering the exercise of delegations.
1173. The measures currently in place appropriately manage the proper exercise of power under a delegation.

### **235 – Delegation by the Secretary**

1174. Subsection 74(5) of the Act sets out that the Rules may provide for or in relation to the delegation of functions or powers of the Secretary to an APS employee. Section 235 of the Rules sets out matters relating to delegation of the Secretary's functions and powers.
1175. Subsection 235(1) empowers the Secretary to delegate any of his or her functions or powers under the Rules to an APS employee, subject to subsection 235(2). The delegation of the Secretary's powers and functions must be made in writing. Significant decisions relating to suspension, variation or revocation of approvals, as well as matters relating to recalls, can only be delegated to SES employees. High volume applications may be delegated to non-SES employees as appropriate.
1176. There are exceptions to ability of the Secretary to delegate his or her powers or functions under the Rules. Subsection 235(2) limits certain powers or functions of the Secretary being delegated to non-SES employees of the Department.
1177. The Rules require the Secretary to consider most applications from industry within 30 to 60 days. The types of applications that can be made under the Rules vary considerably and the volume of decisions that the Minister of Secretary has to make is expected to be in the order of 200,000 decisions per year. The applications vary greatly in complexity and there is significant administrative efficiency to be gained by allowing less complex or sensitive applications to be dealt with by a broader range of appropriately trained staff. As part of the extensive consultation process, industry has provided feedback that more timely processing of regulatory applications would bring greater operational flexibility and efficiency.
1178. Allowing the Rules to provide for the delegation of the Secretary's powers to APS employees will not automatically grant non-SES employees the authority to make decisions and nor would the rules actually permit such delegations. As in other Commonwealth agencies, the delegation of powers is managed through a Delegation Instrument. The Secretary will determine on a risk management basis the classes of persons who are to be delegated these powers. Accordingly, significant, complex or sensitive regulatory decisions – such as some decisions to vary, suspend or revoke approvals – will remain with SES employees. Less complex regulatory decisions, for example to approve a reimportation import approval, may be delegated to a small number of appropriately trained, non-SES employees within the Department.
1179. Administrative processes are also in place to ensure staff exercise delegations appropriately. The regulatory management system used by staff within the Department has existing controls in place to ensure that only duly authorised persons can exercise a function or power. Delegates who exercise powers and functions under this Rules will receive appropriate training and support to make effective and lawful decisions, including internal training specifically covering the exercise of delegations.
1180. The measures currently in place appropriately manage the proper exercise of power under a delegation.

### **236 – Approved forms**

1181. Section 236 allows the Secretary to approve a form for the purposes of a section of the Rules. All applications in the Rules must be made in an approved form, as well as certain declarations, such as the declaration that the holder of a RAW approval makes

to the holder of an AVV approval about a vehicle they have modified. The approval by the Secretary must be in writing.