

EXPLANATORY STATEMENT

Road Vehicle Standards Rules Amendment (2019 Measures No. 1) Rules 2019

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

Legislative Authority

Road Vehicle Standards Rules Amendment (2019 Measures No. 1) Rules 2019 (the amending Rules) are made under the authority of the *Road Vehicle Standards Act 2018* (RVSA). They amend the Road Vehicle Standards Rules 2018 (the Rules) also made under the RVSA. The RVSA 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 RVSA 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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides, in summary, that the power to amend rules is conferred by the same power to make those rules.

For the purpose of amendments relating to importation and provision of vehicles in accordance with intergovernmental agreements, paragraphs 24(3)(f) and 22(2)(d) of the RVSA provide that rules may set out circumstances where the importation of vehicles without an approval, or provision of vehicles not on the RAV, is permitted.

The authority of the Minister to make and amend rules regarding the name of those rules is part of the general rule-making authority in section 82 of the RVSA.

Purpose and operation of the instrument

Overview of RVSA and Rules

The RVSA provides a regulatory framework for the importation and provision of road vehicles for the first time in Australia, and ensures these road vehicles meet standards for safety, environmental performance and theft protection. The RVSA also gives effect to Australia's obligations regarding the international harmonisation of road vehicle standards.

The Rules support the regulatory framework of the RVSA, including by providing for the grant of a number of approvals relating to the importation and provision of road vehicles. The Rules set out certain exemptions to the basic rules about the requirement to hold an import approval before importation, and for a vehicle to be entered on the Register of Approved Vehicles before provision. Sections 50 and 171(2) of the Rules provide exemptions relating to road vehicles to which intergovernmental agreements apply.

Operation of the amending Rules

The Road Vehicle Standards Rules Amendment (2019 Measures No. 1) Rules:

- repeal and replace, so as to amend, provisions of the Road Vehicle Standards Rules 2018 regarding the importation and provision of road vehicles in accordance with intergovernmental agreements, in sections 50 and 171 of the Rules
- provide for new definitions to support the intergovernmental agreements amendments, in section 5 of the Rules
- amend the name of the Rules in section 1 of the Rules

A section-by-section explanation of the amending Rules is at [Attachment B](#), which provides further details on the operation of the instrument.

Purpose

The purpose of the amendments regarding the name of the Rules was to correct a typographical error in the name of the Rules, to reflect that the Rules were first made in 2019.

The purpose of the amendments regarding intergovernmental agreements is to ensure that these provisions reflect the policy intention of the Rules as originally drafted, but with greater specificity, to ensure these provisions are fully compliant with the *Legislation Act 2003*, in particular regarding the incorporation of documents. The policy intention of the Rules as originally drafted was to reflect the current practice, and the interpretation of ‘intergovernmental agreements’ under similar provisions of the *Motor Vehicle Standards Act 1989* and Motor Vehicle Standards Regulations 1989.

The Senate Standing Committee on Regulations and Ordinances (the Committee), in its Delegated Legislation Monitor 2 of 2019, raised concerns that the Rules incorporate intergovernmental agreements by reference, in possible contravention of the *Legislation Act 2003*, which prescribes what legislative instruments such as the Rules can include, and what information Explanatory Statements must include.

The Hon Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, undertook on 9 August 2019 to amend the Rules to resolve concerns of the Committee.

On 11 September Senator the Hon Concetta Fierravanti-Wells, Committee Chair, placed a protective notice of motion to disallow the Rules, pending their amendment or disallowance by 26 November 2019. Senator Fierravanti-Wells’ letter to the Deputy Prime Minister noted that “the Committee may withdraw the notice once the instrument is amended in accordance with [the Deputy Prime Minister’s] undertaking, provided the amendment satisfies the Committee’s concerns”.

Consultation

In September and October 2019, Infrastructure consulted on drafts of the amending Rules with the Australian Border Force, Department of Defence, Department of Foreign Affairs and Trade, and Attorney General’s Department.

Australian Government Solicitors drafted the amending Rules and provided advice regarding the amendments, including with regards to information to be included in this Explanatory Statement.

Documents incorporated by reference

Paragraph 15J(2)(c) of the *Legislation Act 2003* provides that if any documents are incorporated in an instrument (such as the amending Rules) by reference, the Explanatory Statement to that instrument must contain a description of the incorporated documents and indicate how they may be obtained. The following information is for the purpose of paragraph 15J(2)(c). It sets out each intergovernmental agreement incorporated by the Rules, and known to be referred to by another intergovernmental agreement incorporated by the Rules. It also demonstrates that every person interested in or affected by the law is able to readily access its terms, without cost:

- The Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods done at Brussels on 6 December 1961 is incorporated by the Rules.
 - The ATA Convention is in Australian Treaty Series 1967 No. 20 ([1967] ATS 20), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- The Convention on Temporary Admission done at Istanbul on 26 June 1990 is incorporated by the Rules.
 - The Istanbul Convention is in Australian Treaty Series 1993 No. 43 ([1993] ATS 43), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- The Customs Convention on the Temporary Importation of Private Road Vehicles done at New York on 4 June 1954 is incorporated by the Rules.
 - The Private Road Vehicles Convention is in Australian Treaty Series 1967 No. 2 ([1967] ATS 2), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- The Customs Convention on the Temporary Importation of Professional Equipment done at Brussels on 8 June 1961, as in force for Australia from time to time (the Professional Equipment Convention) is directly referred to by the ATA Convention. The ATA Convention is incorporated by the Rules.
 - The Professional Equipment Convention is in Australian Treaty Series 1968 No. 6 ([1968] ATS 6), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- The Customs Convention Concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events done at Brussels on 8 June 1961, as in force for Australia from time to time (the Display Goods Convention) is directly referred to by the ATA Convention. The ATA Convention is incorporated by the Rules.
 - The Display Goods Convention is in Australian Treaty Series 1963 No. 2 ([1963] ATS 2), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
- The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material done at Geneva on 7 November 1952, as in force for Australia from time to time (the Commercial Samples Convention) is known to be indirectly referred to by the ATA Convention. The ATA Convention is incorporated by the Rules.
 - The Commercial Samples Convention is in Australian Treaty Series 1956 No. 4 ([1956] ATS 4) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- The Customs Convention on the Temporary Importation of Scientific Equipment done at Brussels on 11 June 1968, as in force for Australia from time to time (the Scientific Equipment Convention) is known to be indirectly referred to by the ATA Convention. The ATA Convention is incorporated by the Rules.
 - The Scientific Equipment Convention is in Australian Treaty Series 1969 No. 24 ([1969] ATS 24) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

The AustLII website page for each of the Conventions listed above is available to the public at any time, free of charge. These pages each set out what is in force for Australia, and when.

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 the Rules as amended by this instrument. 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 Amendment (2019 Measures No. 1) Rules 2019

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

Overview of RVSA and Rules

The RVSA provides a regulatory framework for the importation and provision of road vehicles for the first time in Australia, and ensures these road vehicles meet standards for safety, environmental performance and theft protection. The RVSA also gives effect to Australia's obligations regarding the international harmonisation of road vehicle standards.

The Rules support the regulatory framework of the RVSA, including by providing for the grant of a number of approvals relating to the importation and provision of road vehicles. The Rules set out certain exemptions to the basic rules about the requirement to hold an import approval before importation, and for a vehicle to be entered on the Register of Approved Vehicles before provision. Sections 50 and 171(2) of the Rules provide exemptions relating to road vehicles to which intergovernmental agreements apply.

Operation of the amending Rules

The Road Vehicle Standards Rules Amendment (2019 Measures No. 1) Rules:

- repeal and replace, so as to amend, provisions of the Road Vehicle Standards Rules 2018 regarding the importation and provision of road vehicles in accordance with intergovernmental agreements, in sections 50 and 171 of the Rules
- provide for new definitions to support the intergovernmental agreements amendments, in section 5 of the Rules
- amend the name of the Rules in section 1 of the Rules

Purpose

The purpose of the amendments regarding the name of the Rules was to correct a typographical error in the name of the Rules, to reflect that the Rules were first made in 2019.

The purpose of the amendments regarding intergovernmental agreements is to ensure that these provisions reflect the policy intention of the Rules as originally drafted, but with greater specificity, to ensure these provisions are fully compliant with the *Legislation Act 2003*, in particular regarding the incorporation of documents. The policy intention of the Rules as originally drafted was to reflect the current practice, and interpretation of 'intergovernmental agreements' under similar provisions of the *Motor Vehicle Standards Act 1989* and *Motor Vehicle Standards Regulations 1989*.

The Senate Standing Committee on Regulations and Ordinances (the Committee), in its Delegated Legislation Monitor 2 of 2019, raised concerns that the Rules incorporate

intergovernmental agreements by reference, in possible contravention of the *Legislation Act 2003*, which prescribes what legislative instruments such as the Rules can include, and what information Explanatory Statements must include.

The Hon Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, undertook on 9 August 2019 to amend the Rules to resolve concerns of the Committee.

On 11 September Senator the Hon Concetta Fierravanti-Wells, Committee Chair, placed a protective notice of motion to disallow the Rules. Disallowance is due on 26 November 2019. Senator Fierravanti-Wells' letter of 12 September 2019 to the Deputy Prime Minister noted that "the Committee may withdraw the notice once the instrument is amended in accordance with [the Deputy Prime Minister's] undertaking, provided the amendment satisfies the Committee's concerns".

Human rights implications

The amending Rules do not engage any human rights as they give effect to, and do not change, the current policy of the Rules.

The amending Rules preserve the current position of the Rules, but set out with more specificity the intended meaning of 'intergovernmental agreements'.

The purpose of the amendments regarding intergovernmental agreements was to ensure that these provisions reflect current policy and practice as intended, and are fully compliant with the *Legislation Act 2003* regarding the incorporation of documents.

To the extent that provisions in these amending Rules may engage human rights relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*, and promote or limit these rights in a reasonable and proportionate way as set out in the Statement of Compatibility with Human Rights for the Road Vehicle Standards Rules 2018, this is maintained by the amending Rules.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Deputy Prime Minister and Minister for Infrastructure, Transport and
Regional Development,**

the Hon Michael McCormack MP

Attachment B – Section-by-section explanation

1 – Name

1. Section 1 provides that the name of this instrument is the Road Vehicle Standards Amendment (2019 Measures No. 1) Rules (the amending Rules).

2 – Commencement

2. Section 2 provides that this instrument commences on the day after it is registered. This instrument will amend the Road Vehicle Standards Rules 2018 (the Rules) from this day.
3. This instrument does not affect the future date of commencement of sections 5, 50, and 171 of the Rules as amended.
4. Section 1 of the Rules has already commenced, and likewise will be amended from the day after this instrument is registered.

3 – Authority

5. Section 3 specifies that this instrument is made under the *Road Vehicle Standards Act 2018* (the RVSA).
6. This is a legislative instrument subject to disallowance.
7. Section 82 of the RVSA 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.
8. Subsection 33(3) of the *Acts Interpretation Act 1901* provides, in summary, that the power to amend rules is conferred by the same power to make those rules.
9. For the purpose of amendments relating to importation and provision of vehicles in accordance with intergovernmental agreements, paragraphs 24(3)(f) and 22(2)(d) of the RVSA provide that rules may set out circumstances where the importation of vehicles without an approval, or provision of vehicles not on the Register of Approved Vehicles, is permitted.
10. The authority of the Minister to make and amend rules regarding the name of those rules is part of the general rule-making authority in section 82 of the RVSA.

4 – Schedules

11. Section 4 specifies that there are Schedules to these amending Rules. It provides that items in Schedules can amend or repeal instruments as set out by the terms of the relevant items, or have another effect according to the terms of the items.
12. There is one Schedule to the amending Rules. It amends the Road Vehicle Standards Rules 2018. There are two key purposes of these amendments.
13. The first purpose of the amendments to the Rules – given effect by Item 1 – is to correct a typographical error in the name of the Rules, to reflect that the Rules were made in 2019.
14. The second purpose of the amendments to the Rules – given effect by Items 2 to 5 – relates to provisions of the Rules regarding importation and provision of road vehicles in accordance with intergovernmental agreements. The purpose of the amendments is to ensure that these provisions reflect the policy intention of the Rules as originally

drafted, but with greater specificity, to ensure these provisions are fully compliant with the Legislation Act 2003, in particular regarding the incorporation of documents.

15. The policy intention of the Rules as originally drafted was to reflect the current practice, and interpretation of ‘intergovernmental agreements’ under similar provisions of the Motor Vehicle Standards Act 1989 and Motor Vehicle Standards Regulations 1989.

SCHEDULE 1 – AMENDMENTS – Road Vehicle Standards Rules 2018

Item 1 – Section 1

16. Item 1 amends the name of the Rules, as set out by section 1 of the Rules.
17. A typographical error caused the date in the name of the Rules, as set out by section 1 of the Rules, to be 2018. The Rules were made in 2019. Item 1 corrects this error.
18. Section 1 is the only instance in the Rules where this error occurs.

Item 2 – Section 5 (definition of *intergovernmental agreement*)

19. Item 2 repeals the definition of intergovernmental agreement, as set out in section 5 of the Rules.
20. ‘Intergovernmental agreement’ was defined in section 5 to mean: “an agreement between Australia and another country or countries that provides for road vehicles specified in the agreement to be imported to be imported into Australia on a temporary basis without payment of duties of customs.”
21. Items 2 to 5 are intended to remove generic reference to intergovernmental agreements and instead refer to specific provisions – specific intergovernmental agreements, and specific provisions of Customs-related law – that give effect to the intended definition of ‘intergovernmental agreement’.
22. The words ‘intergovernmental agreement’ will no longer appear in the Rules as amended, and no longer require definition.

Item 3 – Section 5

23. Item 2 amends the Rules to include new definitions.
24. Notes are provided below on each definition.
25. **ATA Convention** – The definition provides for the incorporation of other writing in force from time to time, as permitted by subsection 82(6) of the RVSA. Subsection 82(6) of the RVSA provides that despite subsection 14(2) of the Legislation Act 2003, the rules may make provision in relation to matters by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. The limitation placed on incorporation of other writing as in force from time to time was ‘unless the contrary intention appears’. Subsection 82(6) of the RVSA sets out the contrary intention to that limitation.
26. The intention of this definition is as follows:
 - The definition is intended to ensure that reference to this Convention is not merely the text of the document titled ‘the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods’, but it is that Convention as in force for Australia from time to time. For example, the Rules are intended

- to incorporate future amendments to that Convention, as may be in force at that future time.
- The definition is intended to give the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods done at Brussels on 6 December 1961, an appropriate shorthand, for brevity and clarity, in the rest of the Rules.
27. Paragraph 15J(2)(c) of the Legislation Act 2003 provides that if any documents are incorporated in an instrument (such as the Rules as amended) by reference, the Explanatory Statement to that instrument must contain a description of the incorporated documents and indicate how they may be obtained. The following information is for the purpose of paragraph 15J(2)(c). It also demonstrates that every person interested in or affected by the law is able to readily access its terms, without cost.
- The ATA Convention is in Australian Treaty Series 1967 No. 20 ([1967] ATS 20), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 - The AustLII website page for the ATA Convention is available to the public at any time, free of charge. This page sets out what is in force for Australia, and when.
28. **CPD carnet** – This definition sets out that ‘CPD carnet’ means a document mentioned in Article 7(1) of the Private Road Vehicles Convention, issued in accordance with that Convention. Article 7(1) of the Private Road Vehicles Convention describes the temporary importation papers under this Convention, known as “carnets de passages en douane” and provides that it must be in a specified standard form, set out in Annex 1 to the Convention. More details on this Convention are below at paragraphs 33 to 35 of this Explanatory Statement
29. **Istanbul Convention** – This definition has the same two intentions as explained for the ATA Convention: to ensure reference to this Convention as in force for Australia from time to time, and to give the Convention on Temporary Admission done at Istanbul on 26 June 1990 an appropriate shorthand.
30. The incorporation of this Convention as in force for Australia from time to time is permitted by subsection 86(2) of the RVSA in the same way as explained for the ATA Convention in paragraphs 25 to 27 of this Explanatory Statement.
31. Reference to the Istanbul Convention is also intended to include reference to Annexes of that Convention in force for Australia from time to time. This is also the case for any other Convention. This matter is to be specifically identified in a Note under the definition for the Istanbul Convention in section 5 of the Rules as amended, because this matter is particularly important with regard to the Istanbul Convention. The substantive provisions of the Istanbul Convention providing for importation of goods are in Annexes to this Convention.
32. For the purpose of paragraph 15J(2)(c), and to demonstrate that every person interested in or affected by the law is able to readily access its terms, without cost:
- The Istanbul Convention is in Australian Treaty Series 1993 No. 43 ([1993] ATS 43), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- The AustLII website page for the Istanbul Convention is available to the public at any time, free of charge. This page sets out what is in force for Australia, and when.
33. **Private Road Vehicles Convention** – This definition has the same two intentions as explained for the ATA Convention: to ensure reference to this Convention as in force for Australia from time to time, and to give the Customs Convention on the Temporary Importation of Private Road Vehicles done at New York on 4 June 1954 an appropriate shorthand.
 34. The incorporation of this Convention as in force for Australia from time to time is permitted by subsection 86(2) of the RVSA in the same way as explained for the ATA Convention in paragraphs 25 to 27 of this Explanatory Statement.
 35. For the purpose of paragraph 15J(2)(c), and to demonstrate that every person interested in or affected by the law is able to readily access its terms, without cost:
 - The Private Road Vehicles Convention is in Australian Treaty Series 1967 No. 2 ([1967] ATS 2), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 - The AustLII website page for the Private Road Vehicles Convention is available to the public at any time, free of charge. This page sets out what is in force for Australia, and when.
 36. The Note to the Private Road Vehicles Convention includes reference to the AustLII page for this Convention showing amendments to the Convention. All AustLII pages do this, as they show what is in force for Australia, and when. This is identified specifically for the Private Road Vehicles Convention as, in 2019, an amendment agreed by other countries had not yet been accepted by Australia and was not yet in force. The Australian Treaty Series is the standard source for this information.
 37. **Tariff Act** – This definition is intended to give the *Customs Tariff Act 1995* an appropriate shorthand, for brevity and clarity, in the rest of the Rules.
 38. Matters regarding the application, adoption or incorporation of the Tariff Act or instruments made under the Tariff Act, for the purpose of section 14 of the *Legislation Act 2003*, are set out below in relation to sections 50 and 171 as amended.

Item 4 – Section 50

39. Item 4 repeals section 50 and replaces it with a new section 50, which gives effect to the intention of the repealed section, but with more specificity regarding intergovernmental agreements.
40. **The new subsection 50(1) of the Rules as set out in Item 4** provides that the overall effect of section 50 is to set out circumstances where vehicles may be provided for the first time in Australia without being entered on the Register of Approved Vehicles. These circumstances are intended to be where intergovernmental agreements – as specifically identified in section 50 by reference to provisions of Customs-related law or to a Convention – apply to a road vehicle, and the vehicle is being provided in circumstances allowed by those intergovernmental agreements.
41. Subsections 24(1), (5) and (6) of the RVSA set out that it is an offence and a contravention of a civil penalty provision to provide a road vehicle to another person for the first time in Australia, where that vehicle is not on the Register of Approved Vehicles. Subsections 24(2) to (4) of the RVSA set out exceptions to this. Paragraph

24(3)(f) of the Act provides that the offence/civil penalty provision does not apply if the vehicle is provided to another person in a circumstance set out in the Rules, as the Rules set out in section 50.

42. **The new subsection 50(2) of the Rules as set out in Item 4** sets out a circumstance where a vehicle can be provided for the first time in Australia without being entered on the Register of Approved Vehicles. The circumstance is, in summary:
- where a road vehicle is covered by a CPD carnet, and
 - that road vehicle is imported with a CPD carnet for the purpose of the Private Road Vehicles Convention (i.e. under Article 2(1)), and
 - any conditions on provision as set out in the Private Road Vehicles Convention are met
43. This provision incorporates the Private Road Vehicles Convention. Further information regarding the incorporation of this Convention is contained above in the explanation of Item 3 of Schedule 1 to these amending Rules, regarding new definitions in the Rules.
44. 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. CPD carnets can be obtained for motor vehicles, motorcycles, campervans, four wheel drive vehicles, caravans and trailers for use in transport.
45. There is an example for the new subsection 50(2), set out in Item 4: “The Private Road Vehicles Convention, as in force for Australia from time to time, might state that a vehicle covered by this subsection must not be used for transport for payment, reward or other consideration within Australia. If that was a requirement of the Convention at the relevant time, then this subsection would not permit the person to provide the vehicle for use as a taxi in circumstances covered by subsection 24(1) of the Act.” Reference here to ‘the Act’ is the RVSA. This example reflects one instance of the intended operation of subsection 50(2), based on requirements set out in the Private Road Vehicles Convention at the time that the amending Rules were made.
46. Reference to Article 2(1) of the Private Road Vehicles Convention excludes importation under a guarantee, or under other security, in accordance with Article 2(2) (i.e. without a CPD carnet document). In accordance with the intended meaning of section 50 of the Rules at the time they were originally made, and policy and practice under similar provisions of paragraph 20(1)(b) of the *Motor Vehicle Standards Act 1989*, and section 21A of the *Motor Vehicle Standards Regulations 1989*, a person may not import or provide a vehicle in circumstances noted by Article 2(2) and without a CPD carnet unless they obtain an approval under the RVSA for this importation.
47. **The new subsection 50(3) of the Rules as set out in Item 4** sets out a circumstance where a vehicle can be provided for the first time in Australia without being entered on the Register of Approved Vehicles. This relates to vehicles covered by an ATA carnet and the Istanbul Convention. This circumstance is, in summary:
- where a road vehicle is covered by an ATA carnet (within the meaning set out in the Istanbul Convention and issued in accordance with that Convention), and
 - where the road vehicle covered by the ATA carnet was imported in circumstances allowed by that Convention for goods with ATA carnets;

- where that road vehicle is provided in circumstances allowed by conditions of that Convention.
48. An ATA carnet is defined in Article 1(b) of Annex A of the Istanbul Convention as the temporary admission papers used for the temporary admission of goods, excluding means of transport. ‘Means of transport’ is intended to refer to the way in which the vehicle will be used, rather than the purpose for which the vehicle was designed. For example, if a vehicle was transported on the back of a truck or trailer to showrooms or motor shows for the purpose of display, it may not be considered ‘means of transport’, and may be capable of obtaining an ATA carnet.
49. **The new subsection 50(4) of the Rules as set out in Item 4** sets out a circumstance where a vehicle can be provided for the first time in Australia without being entered on the Register of Approved Vehicles. This relates to vehicles covered by an A.T.A carnet and the ATA Convention. This circumstance is, in summary:
- where a road vehicle is covered by an A.T.A. carnet (within the meaning set out in the ATA Convention, issued in accordance with that Convention), and
 - that road vehicle is imported under a Convention mentioned in Article 3 of the ATA Convention (that Convention mentioned in Article 3 must be as in force for Australia from time to time) – i.e. the Convention mentioned in Article 3 allows for the issue of the A.T.A carnet under the ATA Convention, and the road vehicle is imported in accordance with the requirements of the Convention mentioned in Article 3, and also as required by the ATA Convention itself – and
 - the provision would not be in contravention of the Convention under which the importation took place (as mentioned in Article 3 of the ATA Convention) or in contravention of the ATA Convention itself.
50. This provision incorporates the ATA Convention. Further information regarding the incorporation of this Convention is contained above in the explanation of Item 3 of Schedule 1 to these amending Rules, regarding new definitions in the Rules.
51. Where a Convention for the purpose of the new paragraph 50(4)(b) is silent on conditions of provision (for example it does not explicitly set out any circumstances where provision is allowed or not allowed, or requirements relating to this), it is intended that the circumstance is not met, and the road vehicle cannot be provided.
52. There is an example for the new subsection 50(4), set out in Item 4: “A Convention mentioned paragraph (4)(b) may provide that a vehicle imported under its provisions cannot be used for hire or reward. If that was a requirement of the applicable Convention at the relevant time, then, subject to any exceptions in the Convention, this subsection would not permit the person to provide the vehicle for hire or reward in circumstances covered by subsection 24(1) of the Act.” This example reflects one instance of the intended operation of subsection 50(4), based on requirements set out in the ATA Convention at the time that the amending Rules were made.
53. Use of periods for A.T.A carnets referred to in subsection 50(4) (i.e. A.T.A. carnet) is intentional to reflect that these are different documents, issued under different Conventions. They have similar effect in practice.
54. Intergovernmental agreements referred to by Article 3 of the ATA Convention include the following. This is a non-exhaustive list, but represents the Conventions known to

- be referred to by Article 3 of the ATA Convention at the time the amending Rules were made:
55. The Customs Convention on the Temporary Importation of Professional Equipment done at Brussels on 8 June 1961, as in force for Australia from time to time (the Professional Equipment Convention).
 - The Professional Equipment Convention is in Australian Treaty Series 1968 No. 6 ([1968] ATS 6), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 56. The Customs Convention Concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events done at Brussels on 8 June 1961, as in force for Australia from time to time (the Display Goods Convention).
 - The Display Goods Convention is in Australian Treaty Series 1963 No. 2 ([1963] ATS 2), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 57. The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material done at Geneva on 7 November 1952, as in force for Australia from time to time (the Commercial Samples Convention)
 - The Commercial Samples Convention is in Australian Treaty Series 1956 No. 4 ([1956] ATS 4) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 58. The Customs Convention on the Temporary Importation of Scientific Equipment done at Brussels on 11 June 1968, as in force for Australia from time to time (the Scientific Equipment Convention)
 - The Scientific Equipment Convention is in Australian Treaty Series 1969 No. 24 ([1969] ATS 24) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 59. For the purpose of paragraph 15J(2)(c), and to demonstrate that every person interested in or affected by the law is able to readily access its terms, without cost:
 - The AustLII website page for each of the Conventions listed above is available to the public at any time, free of charge. These pages each set out what is in force for Australia, and when.
 60. **The new subsection 50(5) of the Rules as set out in Item 4** sets out a circumstance where a road vehicle can be provided for the first time in Australia without being entered on the Register of Approved Vehicles. This relates to vehicles covered by provisions of Customs-related law. This circumstance is, in summary, where one of the following apply:
 - the road vehicle is covered by a by-law made under Item 10 of Schedule 4 to the Tariff Act, made for the purpose of implementing a Status of Forces Agreement or Status of Visiting Forces Agreement to which Australia is a party, or
 - the road vehicle is covered by a by-law made under Item 11 of Schedule 4 to the Tariff Act, or
 - the road vehicle is covered by a by-law made under Item 15(d) of Schedule 4 to the Tariff Act for the purposes of Item 15(d)
 61. If a road vehicle is covered by a by-law of an Item, it means that Item applies to that vehicle.

62. Items and by-laws are incorporated by the Rules ‘as in force from time to time’. By-laws, to be amended, must be repealed and replaced. The intended meaning of reference to by-laws ‘as in force from time to time’, includes any future by-laws made under the Item.
63. The incorporation of Items of Schedule 4 to the Customs Tariff Act as in force from time to time is authorised by paragraph 14(1)(a) of the *Legislation Act 2003* as they are provisions of an Act: the *Customs Tariff Act 1995*.
64. The incorporation of by-laws made under the Customs Tariff Act 1995 (with reference to section 271 of the *Customs Act 1901*) as in force from time to time is authorised by subsection 82(6) of the RVSA, as these by-laws are non-disallowable instruments. Subsection 82(6) of the RVSA provides that despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to matters by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. The limitation placed in subsection 14(2) of the *Legislation Act 2003* on incorporation of other writing as in force from time to time was ‘unless the contrary intention appears’. Subsection 82(6) of the RVSA sets out the contrary intention to that limitation.
65. Words in reference to the content Items or by-laws (for example ‘Status of Forces Agreement or Status of Visiting Forces Agreement’ in the new paragraph 171(5)(b)) take their meaning from Customs-related law, and so are not defined in the amending Rules.
66. Item 10 of Schedule 4 to the Tariff Act relates to goods of foreign governments. The intended meaning of reference to Item 10 by-laws ‘as in force from time to time’, includes any future by-laws made under Item 10 which are made for the described purpose. This will likely only be specific by-laws under Item 10.
67. Item 11 of Schedule 4 to the Tariff Act relates to goods for foreign forces. Any by-law made under Item 11 is included by the Rules.
68. Item 15(d) of Schedule 4 to the Tariff Act relates to goods imported by members of the forces of Canada, New Zealand, or the United Kingdom. This Item, and by-laws of this item, are incorporated from time to time. The intended meaning of this includes that, if in future, other countries were to settle agreements with Australia to allow for the importation of personal vehicles of members of forces, Item 15 of Schedule 4 to the Tariff Act was amended to reflect this, and by-laws were made under this Item to give effect to the agreements, this would be included in the Rules.
69. The Note to the new subsection 50(5) sets out “Each item of the Tariff Act mentioned in subsection 50(5) applies to goods prescribed by by-law for the purposes of the item. A by-law made for those purposes may set out conditions subject to which the item applies to goods of the kind, or included in the class, specified in that item (see paragraph 272(b) of the *Customs Act 1901*). If those conditions are not met at the relevant time, the item will not apply to the vehicle. As such, subsection (5) will only capture a vehicle if, at the time the person provides the vehicle, the provision is consistent with the conditions set out in the by-law.”
- This Note reflects the intended meaning of subsection 50(5) and, importantly, explains how the conditions of by-laws apply.

- As with other subsections of the new section 50 of the Rules, provision of road vehicles imported under subsection 50(5) is limited by the instrument that allowed for its importation.
70. The example to the new subsection 50(5) sets out “A by-law might require that the vehicle remain in the ownership of the person who imported it for a certain period after the date of importation. If that was a requirement of the by-law at the relevant time, then, subject to any exceptions in the by-law, this subsection would not permit the person to provide the vehicle in circumstances covered by subsection 24(1) of the Act by selling it before the end of that period.”
- The ‘Act’ referred to here is the RVSA.
 - This example reflects one instance of the intended operation of subsection 50(5), based on requirements set out in provisions of Customs-related law at the time that the amending Rules were made.

Item 5 – Section 171

71. Item 5 repeals section 171 and replaces it with a new section 171, which gives effect to the intention of the repealed section, but with more specificity regarding intergovernmental agreements.
72. **The new subsection 171(1) of the Rules as set out in Item 5** provides that the overall effect of section 171 is to set out circumstances where a person is permitted to import a road vehicle. These circumstances are intended to be where intergovernmental agreements – as specifically identified in section 171 by reference to provisions of Customs-related law or to a Convention – apply to a road vehicle, and the vehicle is imported in circumstances allowed by those intergovernmental agreements.
73. Subsection 22(1) of the RVSA provides that it is an offence and a contravention of a civil penalty provision 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. 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, as the Rules set out in section 171.
74. Subsections 171(2) to (5) set out circumstances relating to intergovernmental agreements, specific identified. Subsection 171(6) sets out circumstances relating to the re-importation of Australian Defence Force vehicles, in identical terms to the provisions of the Rules as originally drafted. It was not the intention of the Rules to make any changes to the circumstances relating to the re-importation of Australian Defence Force Vehicles.
75. **The new subsection 171(2) of the Rules as set out in Item 5** sets out a circumstance where a person is permitted to import a road vehicle. The circumstance is, in summary:
- where a road vehicle is covered by a CPD carnet, and
 - that road vehicle is imported with a CPD carnet for the purpose of the Private Road Vehicles Convention (i.e. under Article 2(1))
76. This provision incorporates the Private Road Vehicles Convention. Further information regarding the incorporation of this Convention is contained above in the explanation of Item 3 of Schedule 1 to these amending Rules, regarding new definitions in the Rules.
77. 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. CPD carnets can be obtained for motor vehicles, motorcycles, campervans, four wheel drive vehicles, caravans and trailers for use in transport.

78. Reference to Article 2(1) of the Private Road Vehicles Convention excludes importation under a guarantee, or under other security, in accordance with Article 2(2) (i.e. without a CPD carnet). In accordance with the intended meaning of section 171 of the Rules at the time they were originally made, and policy and practice under similar provisions of paragraph 20(1)(b) of the *Motor Vehicle Standards Act 1989*, and section 21A of the Motor Vehicle Standards Regulations 1989, a person wishing to import a vehicle in circumstances noted by Article 2(2) and without a CPD carnet must obtain an approval under the RVSA for this importation.
79. **The new subsection 171(3) of the Rules as set out in Item 4** sets out a circumstance where a person can import a road vehicle. This relates to vehicles covered by an ATA carnet and the Istanbul Convention. This circumstance is, in summary:
- where a road vehicle is covered by an ATA carnet (within the meaning set out in the Istanbul Convention and issued in accordance with that Convention), and
 - where the road vehicle covered by the ATA carnet is imported in circumstances allowed by that Convention for goods with ATA carnets;
80. An ATA carnet is defined in Article 1(b) of Annex A of the Istanbul Convention as the temporary admission papers used for the temporary admission of goods, excluding means of transport. ‘Means of transport’ is intended to refer to the way in which the vehicle will be used, rather than the purpose for which the vehicle was designed. For example, if a vehicle was transported on the back of a truck or trailer to showrooms or motor shows for the purpose of display, it would not be considered ‘means of transport’, and would be capable of obtaining an ATA carnet.
81. **The new subsection 171(4) of the Rules as set out in Item 4** sets out a circumstance where a person can import a road vehicle. This relates to vehicles covered by an A.T.A carnet and the ATA Convention. This circumstance is, in summary:
- where a road vehicle is covered by an A.T.A. carnet (within the meaning set out in the ATA Convention, issued in accordance with that Convention), and
 - that road vehicle is imported under a Convention mentioned in Article 3 of the ATA Convention (that Convention mentioned in Article 3 must be as in force for Australia from time to time) – i.e. the Convention mentioned in Article 3 allows for the issue of the A.T.A carnet under the ATA Convention, and the road vehicle is imported in accordance with the requirements of the Convention mentioned in Article 3, and also as required by the ATA Convention itself.
82. This provision incorporates the ATA Convention. Further information regarding the incorporation of this Convention is contained above in the explanation of Item 3 of Schedule 1 to these amending Rules, regarding new definitions in the Rules.
83. Use of periods for A.T.A carnets referred to in subsection 171(4) (i.e. A.T.A. carnet) is intentional to reflect that these are different documents, issued under different Conventions. They have similar effect in practice.

84. Intergovernmental agreements referred to by Article 3 of the ATA Convention include the following. This is a non-exhaustive list, but represents the Conventions known to be referred to by Article 3 of the ATA Convention at the time the amending Rules were made:
85. The Customs Convention on the Temporary Importation of Professional Equipment done at Brussels on 8 June 1961, as in force for Australia from time to time (the Professional Equipment Convention).
- The Professional Equipment Convention is in Australian Treaty Series 1968 No. 6 ([1968] ATS 6), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
86. The Customs Convention Concerning Facilities for the Importation of Goods for Display or Use at Exhibitions, Fairs, Meetings or Similar Events done at Brussels on 8 June 1961, as in force for Australia from time to time (the Display Goods Convention).
- The Display Goods Convention is in Australian Treaty Series 1963 No. 2 ([1963] ATS 2), and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
87. The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material done at Geneva on 7 November 1952, as in force for Australia from time to time (the Commercial Samples Convention).
- The Commercial Samples Convention is in Australian Treaty Series 1956 No. 4 ([1956] ATS 4) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
88. The Customs Convention on the Temporary Importation of Scientific Equipment done at Brussels on 11 June 1968, as in force for Australia from time to time (the Scientific Equipment Convention).
- The Scientific Equipment Convention is in Australian Treaty Series 1969 No. 24 ([1969] ATS 24) and could, in 2019, be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
89. For the purpose of paragraph 15J(2)(c), and to demonstrate that every person interested in or affected by the law is able to readily access its terms, without cost:
- The AustLII website page for each of the Conventions listed above is available to the public at any time, free of charge. These pages each set out what is in force for Australia, and when.
90. **The new subsection 171(5) of the Rules as set out in Item 4** sets out a circumstance where a person can import a road vehicle. This relates to vehicles covered by provisions of Customs-related law. This circumstance is, in summary, where one of the following apply:
- the road vehicle is covered by a by-law made under Item 10 of Schedule 4 to the Tariff Act, made for the purpose of implementing a Status of Forces Agreement or Status of Visiting Forces Agreement to which Australia is a party, or
 - the road vehicle is covered by a by-law made under Item 11 of Schedule 4 to the Tariff Act, or
 - the road vehicle is covered by a by-law made under Item 15(d) of Schedule 4 to the Tariff Act for the purposes of Item 15(d)

91. If a road vehicle is covered by a by-law of an Item, it means that Item applies to that vehicle.
92. Items and by-laws are incorporated by the Rules ‘as in force from time to time’. By-laws, to be amended, must be repealed and replaced. The intended meaning of reference to by-laws ‘as in force from time to time’, includes any future by-laws made under the Item.
93. The incorporation of Items of Schedule 4 to the Tariff Act as in force from time to time is authorised by paragraph 14(1)(a) of the *Legislation Act 2003* as they are provisions of an Act: the *Customs Tariff Act 1995*.
94. The incorporation of by-laws made under the *Customs Tariff Act 1995* (with reference to section 271 of the *Customs Act 1901*) as in force from time to time is authorised by subsection 82(6) of the RVSA, as these by-laws are non-disallowable instruments. Subsection 82(6) of the RVSA provides that despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to matters by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time. The limitation placed in subsection 14(2) of the *Legislation Act 2003* on incorporation of other writing as in force from time to time was ‘unless the contrary intention appears’. Subsection 82(6) of the RVSA sets out the contrary intention to that limitation.
95. Words in reference to the content Items or by-laws (for example ‘Status of Forces Agreement or Status of Visiting Forces Agreement’ in the new paragraph 171(5)(b)) take their meaning from Customs-related law, and so are not defined in the amending Rules.
96. Item 10 of Schedule 4 to the Tariff Act relates to goods of foreign governments. The intended meaning of reference to Item 10 by-laws ‘as in force from time to time’, includes any future by-laws made under Item 10 which are made for the described purpose. This will likely only be specific by-laws under Item 10.
97. Item 11 of Schedule 4 to the Tariff Act relates to goods for foreign forces. Any by-law made under Item 11 is included by the Rules.
98. Item 15(d) of Schedule 4 to the Tariff Act relates to goods imported by members of the forces of Canada, New Zealand, or the United Kingdom. This Item, and by-laws of this item, are incorporated from time to time. The intended meaning of this includes that, if in future, other countries were to settle agreements with Australia to allow for the importation of personal vehicles of members of forces, Item 15 of Schedule 4 to the Tariff Act was amended to reflect this, and by-laws were made under this Item to give effect to the agreements, this would be included in the Rules.
99. The Note to the new subsection 171(5) sets out “Each item of the Tariff Act mentioned in subsection 171(5) applies to goods prescribed by by-law for the purposes of the item. A by-law made for those purposes may set out conditions subject to which the item applies to goods of the kind, or included in the class, specified in that item (see paragraph 272(b) of the *Customs Act 1901*). If those conditions are not met at the relevant time, the item will not apply to the vehicle. As such, subsection (5) will only capture a vehicle if, at the time the person imports the vehicle, the importation is consistent with the conditions set out in the by-law.”
 - This Note reflects the intended meaning of subsection 171(5) and, importantly, explains how the conditions of by-laws to importation apply.

100. The example to the new subsection 171(5) sets out “A by-law might require that the vehicle have been owned and used by a person at least 6 months before the person departs for Australia. If that was a requirement of the by-law at the relevant time, then, subject to any exceptions in the by-law, this subsection would not permit a person to import the vehicle in circumstances covered by subsection 22(1) of the Act where the person had only owned the vehicle for 2 months before departing for Australia.”
- The ‘Act’ referred to here is the RVSA.
 - This example reflects one instance of the intended operation of subsection 171(5), based on requirements set out in provisions of Customs-related law at the time that the amending Rules were made.
101. **Subsection 171(6) of the Rules as set out in Item 4** sets out circumstances relating to the re-importation of Australian Defence Force vehicles, in identical terms to the provisions of the Rules as originally drafted. It was not the intention of the Rules to make any changes to the circumstances relating to the re-importation of Australian Defence Force Vehicles. The Explanatory Statement to the Road Vehicle Standards Rules 2018, for the former subsection 171(3), gives further details on the intended operation of this provision.