

EXPLANATORY STATEMENT

Road Vehicle Standards Amendment (2020 Measures No. 1) Rules 2020

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

Legislative Authority

The Road Vehicle Standards Amendment (2020 Measures No. 1) Rules 2020 (the amending Rules) are made under the authority of the *Road Vehicle Standards Act 2018* (RVSA). They amend the Road Vehicle Standards Rules 2019 (the Rules) also made under the RVSA. The RVSA provides the Commonwealth with powers to regulate, among other matters, 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 the RVSA to be prescribed by the Rules, or necessary or convenient to be prescribed for carrying out or giving effect to the RVSA.

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

For the purpose of amendments relating to the imposition of fees, section 66 of the RVSA provides that the Rules may prescribe fees that may be charged in relation to fee-bearing activities carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under the RVSA. This section also sets out a number of matters that may be prescribed in relation to fees, and that a fee must not amount to taxation.

The authority of the Minister to make the other amendments in these amending Rules – to correct minor errors and to provide for commencement – 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 set out matters that support the regulatory framework of the RVSA. The Rules:

- establish the Register of Approved Vehicles (RAV), on which a road vehicle must generally be entered before a person may provide a vehicle for the first time in Australia
- set out the type approval and concessional RAV entry approval pathways for entry of vehicles on the RAV
- set out a series of 'tools' – approvals that enable road vehicles to satisfy the requirements of the RAV entry pathways, such as approvals relating to Registered

Automotive Workshops (RAWs), Authorised Vehicle Verifiers (AVVs), Model Reports, testing facilities and the Specialist and Enthusiast Vehicles (SEVs) Register

- provide for the grant of approvals for components to be used in the manufacture and modification of road vehicles
- provide for the grant of approvals to permit road vehicles to be imported to Australia
- set out other supporting matters, including regarding the variation, suspension or revocation of approvals, publication requirements, review of decisions and delegation of functions and powers

Operation of the amending Rules

The Road Vehicle Standards Amendment (2020 Measures No. 1) Rules 2020:

- repeal and replace, so as to amend, section 2 of the Road Vehicle Standards Rules 2019 related to the commencement of the Rules
- provide for new sections (sections 237 to 253) that set out cost recovery arrangements for fee bearing activities
- amend section 230 of the Rules to provide for Administrative Appeals Tribunal review of decisions regarding certain fees payable and fee refunds
- amend various provisions of the Road Vehicle Standards Rules 2019 to correct minor errors in drafting and expression of policy intent

The amending Rules are 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](#).

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

Purpose

Amendments regarding commencement

The purpose of the amendments regarding commencement (set out by Item 1 of Schedule 1 of this instrument) is to provide for a phased commencement of the Rules. The *Road Vehicle Standards Legislation Amendment Act 2019* postponed the commencement of the RVSA from 10 December 2019 to a date to be Proclaimed, but no later than 1 July 2021. With this additional time to implement the Road Vehicle Standards legislation, the intention is to have early commencement of certain ‘enabling’ approvals:

- The first to commence will be provisions related to the application for, and grant of, testing facility approvals, from no earlier than 1 March 2020. Holders of testing facility approvals will conduct testing that applicants for a range of other approvals (including road vehicle type approvals, Model Report approvals and road vehicle component type approvals) may use as evidence that vehicles or vehicle components comply with the national road vehicle standards or other standards determined by the Minister under the RVSA.
 - Other supporting provisions will commence at this time, including regarding variation, suspension or revocation of approvals, powers to approve forms, and powers to delegate functions and powers under the Rules.

- The second to commence will be provisions related to the application for, and grant of, road vehicle component type approvals, from no earlier than 1 June 2020. Approved road vehicle components will be relied upon by applicants for road vehicle type approvals and Model Report approvals as evidence of compliance with the national road vehicle standards.
- The third to commence will be provisions related to the entry of vehicles on the SEVs Register and provisions related to the application for, and grant of, AVV approvals:
 - Vehicles entered on the SEVs Register may be eligible for entry on the RAV with a concessional RAV entry approval. Earlier commencement of provisions of the Rules related to the entry of vehicles on the SEVs Register will reduce any delay in the entry of vehicles on the RAV via the concessional RAV entry pathway.
 - Holders of AVV approvals perform an independent verification of vehicles modified or manufactured by a RAW, and inspection of other vehicles. AVVs did not exist under the *Motor Vehicle Standards Act 1989* (MVSA) and will likely take longer than RAWs (which did exist under the MVSA) to become established. It is crucial that AVVs are established by the time that RAWs are able to operate, to ensure that they are able to undertake their crucial assurance function. Earlier commencement will allow for this. It will also allow any inspection of vehicles necessary as a condition of an approval to occur as soon as necessary.
 - Early commencement of provisions related to AVVs and the SEVs Register reduce the risk of delay in entering vehicles on the RAV when the concessional RAV entry pathway commences.
- All other parts of the Rules which have not commenced early will commence at the same time as commencement of section 15 of the RVSA, which will commence on the date to be Proclaimed, but no later than 1 July 2021.
- If the Minister does not set early commencement dates by notifiable instruments, those provisions which could have commenced early will instead commence at the same time as commencement of section 15 of the RVSA.

Amendments regarding minor errors

The purpose of the amendments to correct minor errors in drafting and expression (set out by Items 2 to 20 and Item 22 of Schedule 1 of this instrument) is to ensure that the amended provisions reflect the policy intent as originally drafted, but with greater precision and accuracy. It is also to ensure that the Rules are without any potentially confusing errors, for example in cross-references and grammar.

Amendments regarding fees

The purpose of the amendments regarding fees (set out by Items 21 and 23 of Schedule 1 of this instrument) is to implement cost recovery arrangements in relation to the assessment of applications, as set out in the Cost Recovery Impact Statement (CRIS) for the Rules, available free of charge to the public on the department's website (<https://www.infrastructure.gov.au/vehicles>). The amendments set out different fees payable for different kinds of applications, depending on multiple factors set out in the CRIS.

The fees reflect the efficient costs of assessing applications made under the Rules. This contributes to the recovery of the cost of administering the RVSA.

Under the Rules, provisions relating to how an application is made already set out that a fee must accompany the application. These amendments to the Rules specify the fee amounts.

Consultation

Key industry stakeholders are in strong support of phased commencement.

Consultation on the amendments to the Rules regarding the imposition of application fees was conducted through the CRIS process. The final CRIS is available free of charge to the public on the department's website at (<https://www.infrastructure.gov.au/vehicles>).

In late 2017, the department consulted on a draft of the CRIS with the Department of Finance and the public. The department took into account feedback from stakeholders, in particular key industry stakeholders, to settle a further draft of the CRIS.

From December 2019 to February 2020, the department consulted on the further draft of the CRIS with the public, including key stakeholders. The invitation for comment on the draft CRIS was available on the department's website and emailed to key stakeholders.

In February 2020, the department consulted on a draft of the amending Rules with the Attorney-General's Department in relation to the availability of Administrative Appeals Tribunal review for fee refunds.

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 for 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).

The Rules do not directly incorporate any documents by reference.

The Rules incorporate a definition from section 5 of the RVSA, which in turn incorporates an intergovernmental agreement by reference, the 1958 Agreement. '1958 Agreement' is defined in section 5 of the RVSA to mean the Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions done at Geneva on 20 March 1958, as amended and in force for Australia from time to time. This includes any revisions to the Agreement.

Section 5 of the RVSA notes that the 1958 Agreement is in Australian Treaty Series 2000 No. 11 ([2000] ATS 11) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

In 2020, the 1958 Agreement can still be viewed on the AustLII website. The AustLII website page for this Agreement is available to the public at any time, free of charge. This

page sets out what is in force for Australia, and when. This demonstrates 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 the *Motor Vehicle Standards Act 1989* and policy options for its repeal and replacement with what would become the RVSA. This RIS is included in the Explanatory Memorandum for RVSA and the Office of Best Practice Regulation has confirmed it also applies to the Rules as amended by this instrument. The Office of Best Practice Regulation reference number for the RIS is 17240.

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 (2020 Measures No. 1) Rules 2020

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 *Road Vehicle Standards Act 2018* (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 Road Vehicle Standards Rules 2019 (the Rules) set out matters that support the regulatory framework of the RVSA. The Rules:

- establish the Register of Approved Vehicles (RAV), on which a road vehicle must generally be entered before a person may provide a vehicle for the first time in Australia
- set out the type approval and concessional RAV entry approval pathways for entry of vehicles on the RAV
- set out a series of 'tools' – approvals that enable road vehicles to satisfy the requirements of the RAV entry pathways, such as approvals relating to Registered Automotive Workshops (RAWs), Authorised Vehicle Verifiers (AVVs), Model Reports, testing facilities and the Specialist and Enthusiast Vehicles (SEVs) Register
- provide for the grant of approvals for components to be used in the manufacture and modification of road vehicles
- provide for the grant of approvals to permit road vehicles to be imported to Australia
- set out other supporting matters, including regarding the variation, suspension or revocation of approvals, publication requirements, review of decisions and delegation of functions and powers

Operation of the amending Rules

The Road Vehicle Standards Amendment (2020 Measures No. 1) Rules 2020 (the amending Rules):

- repeal and replace, so as to amend, section 2 of the Road Vehicle Standards Rules 2019 related to the commencement of the Rules
- provide for new sections (sections 237 to 253) that set out cost recovery arrangements for fee bearing activities

- amend section 230 of the Rules to provide for Administrative Appeals Tribunal review of decisions regarding certain fees payable and fee refunds
- amend various provisions of the Road Vehicle Standards Rules 2019 to correct minor errors in drafting and expression of policy intent

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

Purpose

Amendments regarding commencement

The purpose of the amendments regarding commencement (set out by Item 1 of Schedule 1 of this instrument) is to provide for a phased commencement of the Rules. The *Road Vehicle Standards Legislation Amendment Act 2019* postponed the commencement of the RVSA from 10 December 2019 to a date to be Proclaimed, but no later than 1 July 2021. With this additional time to implement the Road Vehicle Standards legislation, the intention is to have early commencement of certain ‘enabling’ approvals:

- The first to commence will be provisions related to the application for, and grant of, testing facility approvals, from no earlier than 1 March 2020. Holders of testing facility approvals will conduct testing that applicants for a range of other approvals (including road vehicle type approvals, Model Report approvals and road vehicle component type approvals) may use as evidence that vehicles or vehicle components comply with the national road vehicle standards or other standards determined by the Minister under the RVSA.
 - Other supporting provisions will commence at this time, including regarding variation, suspension or revocation of approvals, powers to approve forms, and powers to delegate functions and powers under the Rules.
- The second to commence will be provisions related to the application for, and grant of, road vehicle component type approvals, from no earlier than 1 June 2020. Approved road vehicle components will be relied upon by applicants for road vehicle type approvals and Model Report approvals as evidence of compliance with the national road vehicle standards.
- The third to commence will be provisions related to the entry of vehicles on the SEVs Register and provisions related to the application for, and grant of, AVV approvals:
 - Vehicles entered on the SEVs Register may be eligible for entry on the RAV with a concessional RAV entry approval. Earlier commencement of provisions of the Rules related to the entry of vehicles on the SEVs Register will reduce any delay in the entry of vehicles on the RAV via the concessional RAV entry pathway.
 - Holders of AVV approvals perform an independent verification of vehicles modified or manufactured by a RAW, and inspection of other vehicles. AVVs did not exist under the *Motor Vehicle Standards Act 1989* (MVSA) and will likely take longer than RAWs (which did exist under the MVSA) to become established. It is crucial that AVVs are established by the time that RAWs are able to operate, to ensure that they are able to undertake their crucial assurance function. Earlier commencement will allow for this. It will also allow any

inspection of vehicles necessary as a condition of an approval to occur as soon as necessary.

- Early commencement of provisions related to AVVs and the SEVs Register reduce the risk of delay in entering vehicles on the RAV when the concessional RAV entry pathway commences.
- All other parts of the Rules which have not commenced early will commence at the same time as commencement of section 15 of the RVSA, which will commence on the date to be Proclaimed, but no later than 1 July 2021.
- If the Minister does not set early commencement dates by notifiable instruments, those provisions which could have commenced early will instead commence at the same time as commencement of section 15 of the RVSA.

Amendments regarding minor errors

The purpose of the amendments to correct minor errors in drafting and expression (set out by Items 2 to 20 and Item 22 of Schedule 1 of this instrument) is to ensure that the amended provisions reflect the policy intent as originally drafted, but with greater precision and accuracy. It is also to ensure that the Rules are without any potentially confusing errors, for example in cross-references and grammar.

Amendments regarding fees

The purpose of the amendments regarding fees (set out by Items 21 and 23 of Schedule 1 of this instrument) is to implement cost recovery arrangements in relation to the assessment of applications, as set out in the Cost Recovery Impact Statement (CRIS) for the Rules, available free of charge to the public on the department's website (<https://www.infrastructure.gov.au/vehicles>). The amendments set out different fees payable for different kinds of applications, depending on multiple factors set out in the CRIS.

The fees reflect the efficient costs of assessing applications made under the Rules. This contributes to the recovery of the cost of administering the RVSA.

Under the Rules, provisions relating to how an application is made already set out that a fee must accompany the application. These amendments to the Rules specify the fee amounts.

Human rights implications

The amending Rules do not engage any human rights, and preserve the current position of the Rules in relation to human rights.

The commencement provisions in Item 1 of Schedule 1 allow for a phased approach to commencement of the Rules. Phased commencement supports the necessary enablers to be in place before full commencement of the Rules so that the advantages of the RVSA, including benefits for human rights as set out in the original Explanatory Statement for the Rules, can be realised with minimal delay after full commencement of the Rules. This does not change the substance of the Rules, but provides better sequencing for commencement. The phased approach to commencement does not itself engage with any human rights.

The cost recovery provisions in Items 21 and 23 of Schedule 1 impose fees on a range of applications that can be made under the Rules. The benefits of charging fees to recover the efficient costs of assessing applications made under the Rules are outlined at 'Purpose' above. There was already a stated intention in the Rules to impose these application fees.

These amendments set out the amounts for the fees and how they are imposed. There are no human rights impacts involved in imposing these fees.

The provisions of the amending Rules in Items 2 to 20 and Item 22 of Schedule 1 correct minor errors in the Rules. These corrections give effect to, and do not change, the current policy of the Rules.

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 2019, 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 (2020 Measures No. 1) Rules 2020 (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 2019 (the Rules) from this day.
3. The substantive provisions of the Rules as amended will commence as set out in the commencement table in Item 1 of Schedule 1.

3 – Authority

4. Section 3 provides that this instrument is made under the *Road Vehicle Standards Act 2018* (the RVSA).
5. This is a legislative instrument subject to disallowance.
6. Section 82 of the RVSA empowers the Minister to, by legislative instrument, make rules prescribing matters that are required or permitted by the RVSA to be prescribed by the Rules, or necessary or convenient to be prescribed for carrying out or giving effect to the RVSA.
7. 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.
8. For the purpose of amendments relating to the imposition of fees, section 66 of the RVSA provides that the Rules may prescribe fees that may be charged in relation to fee-bearing activities carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under the RVSA. This section also sets out a number of matters that may be prescribed in relation to fees, and that a fee must not amount to taxation.
9. The authority of the Minister to make the other amendments in these amending Rules – to correct minor errors and to provide for commencement – is part of the general rule-making authority in section 82 of the RVSA.

4 – Schedules

10. Section 4 sets out 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.
11. There is one Schedule to the amending Rules. It amends the Road Vehicle Standards Rules 2019. There are three key purposes of these amendments.
12. The purpose of the amendments regarding commencement (set out by Item 1 of Schedule 1 of this instrument) is to provide for a phased commencement of the Rules. The *Road Vehicle Standards Legislation Amendment Act 2019* postponed the commencement of the RVSA from 10 December 2019 to a date to be Proclaimed, but no later than 1 July 2021. With this additional time, the intention is to have early commencement of certain ‘enabling’ provisions:
 - provisions related to the application for, and grant of, testing facility approvals from no earlier than 1 March 2020

- provisions related to the application for, and grant of, road vehicle component type approvals from no earlier than 1 June 2020
 - provisions related to the entry of vehicles on the Specialist and Enthusiast Vehicles (SEVs) Register and the application for, and grant of, Authorised Vehicle Verifier (AVV) approvals from no earlier than 1 December 2020
13. The purpose of the amendments to correct minor errors in drafting and expression (set out by Items 2 to 20 and Item 22 of Schedule 1 of this instrument) is to ensure that the amended provisions reflect the policy intent as originally drafted, but with greater precision and accuracy. It is also to ensure that the Rules are without any potentially confusing errors, for example in cross-references and grammar.
14. The purpose of the amendments regarding fees (set out by Items 21 and 23 of Schedule 1 of this instrument) is to implement cost recovery arrangements in relation to application processes, as set out in the Cost Recovery Impact Statement (CRIS) for the Rules, available free of charge to the public at <https://www.infrastructure.gov.au/vehicles>. The amendments set out different fees payable for different kinds of applications, depending on multiple factors set out in the CRIS. Under the Rules, provisions relating to how an application is made already set out that a fee must accompany the application. These amendments specify the fee amounts.

SCHEDULE 1 – AMENDMENTS – Road Vehicle Standards Rules 2019

Item 1 – Section 2

15. Item 1 amends the commencement provisions in section 2 of the Rules.
16. This amendment is a consequence of the postponed commencement of the substantive provisions of the RVSA, which were originally planned to commence on 10 December 2019, by the *Road Vehicle Standards Legislation Amendment Act 2019*. Some provisions of the RVSA commenced on 11 December 2018 and the remaining provisions will commence by Proclamation, but no later than 1 July 2021.
17. The commencement provisions in Item 1 allow for a phased approach to commencement of the Rules. Phased commencement supports the necessary enablers to be in place before full commencement of the Rules so that the benefits of the RVSA can be realised with minimal delay after full commencement of the Rules. This does not change the substance of the Rules, but provides better sequencing for commencement.
18. The commencement of powers and functions to be exercised under the Rules should be interpreted in line with section 4 of the *Acts Interpretation Act 1901*, regarding the exercise of powers between enactment and commencement. That section provides that powers or functions set out in provisions regarding the making of an appointment or instrument (including making notifiable instruments for commencement, delegations, and determinations under the Rules) can be exercised before these provisions commence to bring the appointment or instrument into effect. Subsection 4(7) of the *Acts Interpretation Act 1901* sets out that section 4 relates to provisions of an Act (i.e. including Rules made under the RVSA) in the same way as they apply in relation to an Act. This means, for example:
- The Secretary or Minister may, by administrative instrument, delegate powers and functions under provisions related to testing facility approvals at any time,

including ahead of the commencement of provisions related to the application for, and grant of, applications for the grant of testing facility approvals and delegation powers (set out by rows 7 and 15 of the amended section 2 of the Rules). Those powers and functions may only be exercised once the delegation provision and the powers or functions being delegated actually commence.

- The Minister may make a determination under section 88 of the Rules in relation to the form a Model Report must take and information to be contained in a Model Report, ahead of the commencement of this determination-making power (set out in row 6 of the amended section 2 of the Rules). This determination only has effect after section 88 commences, or at a later date set by the determination instrument.
 - The Secretary may approve, under section 236, an application form for a testing facility approval before section 236 begins, so that on commencement of section 236 and other provisions for testing facilities, an application can be made on the basis of that approved form. While the decision to approve the form is made earlier, applications are only able to be made in relation to the approved form once section 236 and the testing facilities provisions commence.
19. The Item 1 amendment changes the commencement dates as described below, by row.
 20. **Row 1** of the amendment reflects that sections 1 to 3 of the Rules commenced on 27 February 2019. These sections set out the name of the Rules, commencement provisions and the authority under which the Rules were made.
 21. **Row 2** of the amendment reflects that sections 4 and 5 of the Rules will commence the day after this instrument is registered. These sections set out the simplified outline of the Rules and definitions of key terms.
 22. **Row 3** of the amendment states sections 6 to 52 of the Rules are to commence at the same time as section 15 of the RVSA. Sections 6 to 12 of the Rules set out the requirements for the keeping of the Register of Approved Vehicles (RAV). Sections 13 to 52 set out the requirements for entry on the RAV through either the type approval pathway or the concessional RAV entry approval pathway.
 23. **Row 4** of the amendment states sections 53 and 54 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 March 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
 24. Sections 53 and 54 of the Rules provide a simplified outline and purpose of the tools that support the entry of a vehicle on the RAV. This aligns with the early commencement of provisions related to the application for, and grant of, testing facility approvals (the first tool to commence), from no earlier than 1 March 2020.
 25. **Row 5** of the amendment states sections 55 to 87 of the Rules are to commence at the same time as section 15 of the Act. Sections 55 to 67 of the Rules set out requirements in relation to the application for, and grant of, Registered Automotive Workshop (RAW) approvals. Sections 68 to 87 prescribe requirements for the application for, and grant of, approvals of Model Reports.
 26. **Row 6** of the amendment states sections 88 to 107 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not

- specify a day before 1 December 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
27. Section 88 of the Rules provides the Minister with the authority to determine the information that is to be contained in a Model Report. Section 89 of the Rules provides the Minister with the authority to determine the road vehicle standards that will apply to road vehicles manufactured or modified in accordance with a Model Report. The content of these determinations will impact how the holder of an AVV approval will conduct verifications as required by a Model Report.
 28. Sections 90 to 105 of the Rules contain details about the application for, and grant of, AVV approvals. Section 106 provides the Minister with the power to make a determination relating to the inspection of road vehicles. Section 107 provides the Minister with the power to make a determination relating to damage or corrosion.
 29. Holders of AVV approvals perform an independent verification of vehicles modified or manufactured by holders of RAW approvals, and inspection of other vehicles as a condition of an approval as required. AVVs did not exist under the *Motor Vehicle Standards Act 1989* (MVSA) and will likely take longer than RAWs (which did exist under the MVSA) to become established. It is crucial that they are established by the time that RAWs are able to operate, to ensure that they are able to undertake their crucial assurance function. Earlier commencement will allow for this. It will also allow any inspection of vehicles necessary as a condition of an approval to occur as soon as necessary.
 30. **Row 7** of the amendment sets out that sections 108 to 124 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 March 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
 31. Sections 108 to 124 of the Rules cover the requirements related to testing facility approvals. This includes the application for, and grant of, a testing facility approval, and the conditions that apply to the testing facility approval.
 32. Holders of testing facility approvals will conduct testing that applicants for a range of other approvals (including road vehicle type approvals, Model Report approvals and road vehicle component type approvals) may use as evidence that vehicles or vehicle components comply with the national road vehicle standards or other standards determined by the Minister under the RVSA. It is important that provisions of the Rules related to testing facilities commence before applications for road vehicle component type approvals, Model Reports, and road vehicle type approvals may be made, given the testing conducted by holders of testing facility approvals will be relied on by applicants for these other approvals.
 33. Other supporting provisions will commence at the same time as provisions related to testing facility approvals, including provisions allowing for the variation, suspension or revocation of approvals, powers to approve forms, and powers to delegate functions and powers under the Rules.
 34. **Row 8** of the amendment requires sections 125 to 143 of the Rules to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 December 2020. If any of the provisions do not commence

- before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
35. Sections 125 to 143 of the Rules set out requirements regarding the SEVs Register.
 36. Vehicles entered on the SEVs Register may be eligible for entry on the RAV with a concessional RAV entry approval. Earlier commencement of the SEVs Register will reduce any delay in the entry of vehicles on the RAV via the concessional RAV entry pathway.
 37. **Row 9** of the amendment states sections 144 to 171 of the Rules are to commence at the same time as section 15 of the Act. These sections set out the requirements in relation to a number of import approvals.
 38. **Row 10** of the amendment states sections 172 to 188 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 June 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
 39. Sections 172 to 188 of the Rules cover the requirements for type approvals for road vehicle components used or provided for use in the manufacture of road vehicles.
 40. Approved road vehicle components will be relied upon by applicants for road vehicle type approvals and Model Report approvals as evidence of compliance with the national road vehicle standards.
 41. **Row 11** of the amendment states sections 189 to 202 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 March 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
 42. Sections 189 to 202 of the Rules cover the requirements for the variation, suspension or revocation of an approval. The commencement of these provisions aligns with the commencement of provisions related to testing facility approvals, the first kind of approval to commence. From the date when testing facility approvals can be granted, it is important that they may also be varied, suspended or revoked if necessary.
 43. **Row 12** of the amendment states sections 203 to 220 of the Rules are to commence at the same time as section 15 of the Act. These sections set out requirements regarding recalls of road vehicles or approved road vehicle components.
 44. **Row 13** of the amendment states sections 221 to 232 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 March 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
 45. Sections 221 to 229 of the Rules cover the publication requirements for road vehicle type approvals, RAW approvals, approved Model Reports, AVV approvals, testing facility approvals, road vehicle component type approvals, and the publication of decisions to vary, suspend or revoke approvals.
 46. Section 230 sets out which decisions may be the subject of an application for review by the Administrative Appeals Tribunal.

47. Section 231 of the Rules requires former holders of a road vehicle type approval, or a road vehicle component type approval, to maintain access to certain information pertaining to the approval for the period of 7 years.
48. Section 232 of the Rules sets out the ongoing obligation of holders of approvals to retain records.
49. The commencement of these provisions aligns with the commencement of provisions related to testing facility approvals, the first kind of approval to commence. From the date when testing facility approvals can be granted, it is important that these supporting requirements are also in place.
50. Section 231 of the Rules is not a supporting requirement for holders of testing facility approvals, but it can commence early along with other recordkeeping requirements as it only comes into force as an obligation after type approvals are granted. There is no disadvantage to this provision commencing early, to align with the commencement of other recordkeeping requirements.
51. **Row 14** of the amendment sets out that section 233 of the Rules is to commence at the same time as section 15 of the Act. This section sets out the requirements for a person applying for an advisory notice that states that a specified thing is not a road vehicle.
52. **Row 15** of the Rules amendment states sections 234 to 253 of the Rules are to commence on a day or days to be fixed by the Minister by notifiable instrument, which must not specify a day before 1 March 2020. If any of the provisions do not commence before the commencement of section 15 of the RVSA, however, they will commence at the same time as that section.
53. Sections 234 and 235 of the Rules set out which provisions of the Rules may be delegated by the Minister and Secretary.
54. Section 236 of the Rules allows the Secretary to approve a form for the purposes of this instrument.
55. Sections 237 to 253 introduce the new cost recovery provisions to the Rules.
56. The commencement of these provisions aligns with the commencement of provisions related to testing facility approvals, the first kind of approval to commence. From the date when testing facility approvals can be granted, it is important that these supporting requirements are also in place.

Item 2 – Section 5 (definition of damage or corrosion threshold)

57. Item 2 repeals the definition of ‘damage or corrosion threshold’ in section 5 of the Rules and replaces it with a new definition of ‘damage or corrosion limit’.
58. The term ‘limit’ is used instead of ‘threshold’.
59. ‘Threshold’ implies that a person may begin something once the threshold is met or exceeded. ‘Limit’ implies that a person must cease something once the limit is met or exceeded. The word ‘limit’ more accurately reflects the intended policy in relation to damage or corrosion.
60. The amended definition maintains the policy intention regarding damage or corrosion threshold, but uses more precise language to describe the limit between what damage or corrosion is acceptable, and what nature or extent of damage or corrosion triggers a set of obligations of the holders of RAW and AVV approvals around ceasing work on vehicles, not verifying vehicles, and reporting this to the department.

Item 3 – Subsection 11(1) (note 2)

61. Item 3 amends note 2 to subsection 11(1) of the Rules to correct a cross reference.
62. Note 2 of subsection 11(1) currently states “An approval that enables a person to enter information on the RAV is subject to a condition that the holder of the approval notify the Secretary if the holder becomes aware of an error in information entered on the RAV (see sections 28 and 106).”
63. Section 106 of the Rules provides that the Minister may make a determination relating to the inspection of road vehicles. This is not relevant in the context and should not be cross-referenced in note 2.
64. The correct section to be referenced is section 105 of the Rules — ‘Condition about notifying the Secretary of errors in RAV entries’.

Item 4 – Subparagraph 29(e)(iii)

65. Item 4 replaces the word ‘components’ with ‘componentry’ at subparagraph 29(e)(iii) of the Rules.
66. Subparagraph 29(e)(iii) sets out a condition related to the inspection of ‘things associated with the design or manufacturing process, including documents, vehicles and components’.
67. This condition is meant to relate to inspection of any component of the vehicle, if requested. Use of the word ‘components’ could imply a limitation of the power of inspection to road vehicle components covered by a determination made under section 7 of the RVSA. Section 7 provides that the Secretary may make a determination setting out classes of components that are, or are not, road vehicle components. The intention is to include any components in a vehicle, not only road vehicle components covered by a determination made under section 7 of the Rules.
68. The word ‘components’ should be replaced with ‘componentry’, to remove any doubt that the condition in subparagraph 29(e)(iii) covers inspection of premises where any componentry of the vehicle is designed, or manufactured, not limited to premises associated with road vehicle components covered by a determination made under section 7 of the Rules.

Item 5 – Paragraph 32(1)(c)

69. Item 5 amends the reference to a kind of vehicle that may be subject to an application for a concessional RAV entry approval in paragraph 32(1)(c). This paragraph currently refers to ‘a road vehicle that satisfies the special purpose vehicle criterion’. Item 5 amends this to refer to ‘a road vehicle that is a special purpose vehicle’.
70. This provides consistency of paragraph 32(1)(c) with the rest of section 32, which do not refer to satisfying eligibility criteria.

Item 6 - Section 35

71. Item 6 amends section 35 of the Rules to give clarity to how the application and grant of a concessional RAV entry approval is intended to operate.
72. The Rules as currently drafted state “If a person applies for a concessional RAV entry approval in respect of a road vehicle on the basis of an eligibility criterion set out in section 36, 37, 38, 39, 40 or 41, the Minister may grant the approval if the relevant eligibility criterion is satisfied in respect of the vehicle.”

73. This could be interpreted as implying that there needs to be a threshold assessment of a person's eligibility to apply, on the basis of the eligibility criteria, before a decision whether to grant an approval on the basis of an eligibility criterion being satisfied can be made. This was not the policy intention.
74. Item 6 amends the words of section 35 to ensure that the eligibility criteria are linked to the grant of an approval, and not to eligibility to apply for an approval.
75. The amendments to section 35 are not intended to affect section 32, which provides that a person may apply to the Minister for the grant of a concessional RAV entry approval in respect of, for example, a road vehicle that is an older vehicle, or a road vehicle that is to be modified by the holder of a RAW approval.
 - Section 32 is not intended to imply that if a road vehicle does not meet the eligibility criteria listed in sections 39 to 41, it cannot be the subject of an application for a concessional RAV entry approval. It is intended as a guide for what vehicles may be granted a concessional RAV entry approval, if they are the subject of such an application.

Item 7 – Subparagraph 37(a)(iii)

76. Item 7 amends subparagraph 37(a)(iii), which relates to the concessional RAV eligibility criterion for a vehicle to be modified by the holder of a RAW approval.
77. Subparagraph 37(a)(iii) currently contains a requirement that, to meet the eligibility criterion, “the vehicle is a road vehicle that is entered on the RAV via the type approval pathway and has not been provided for the first time in Australia, and has been, is currently undergoing or will be subject to second stage manufacture before being provided to a consumer for the first time in Australia.”
78. ‘Provide’ is defined in subsection 5(2) of RVSA: “A reference in this Act to a person providing a road vehicle includes a reference to the provision of the vehicle due to a sale, exchange, gift, lease, loan, hire or hire-purchase; or the provision of access to the vehicle.”
79. The first occurring reference to a vehicle being provided in subparagraph 37(a)(iii) of the Rules could be interpreted broadly in line with the definition in subsection 5(2) of the Rules. This broad interpretation could inadvertently exclude vehicles that are subject to second stage of manufacture. Second stage manufacture involves a vehicle being passed from the holder of a type approval to the holder of a RAW approval, which undertakes the second stage of manufacture, and then to the holder of an AVV approval for independent verification of the second stage manufacture. This could be interpreted as ‘provision’.
80. Subparagraph 37(a)(iii) benefits from amendment of the first occurring reference to ‘provided for the first time’ to make it clear the ‘provision’ must be to a consumer, therefore excluding the possible kind of ‘provision’ between the holders of type approvals, RAW approvals and AVV approvals.

Item 8 – Subparagraph 65(2)(a)(ii)

81. Item 8 is an amendment to provide consistency throughout the Rules where a Model Report is mentioned. The item amends the words ‘model report’ to ‘Model Report’.

Item 9 – Subsections 65(4) and (5)

82. Item 9 repeals subsections 65(4) and (5) to change the references of the term ‘threshold’ to ‘limit’. These amendments are a consequence of the amendment as described earlier at Item 2.

Item 10 – Paragraph 68(2)(b)

83. Item 10 amends paragraph 68(2)(b), which requires an application for, and grant of, approval of a Model Report, to be in the approved form. There is no requirement in section 68 as a whole for the Secretary to request any documents to support the application.
84. This makes paragraph 68(2)(b) inconsistent with other application provisions contained in the Rules. For example, an application to vary a Model Report must be accompanied by such other documents as required by the application form.
85. The Item 10 amendment will provide the Secretary with the flexibility to request information at the time of application deemed necessary to make an informed decision about an application.

Item 11 – Subparagraphs 100(1)(b)(ii) and (iii)

86. Item 11 repeals subparagraphs 100(1)(b)(ii) and (iii) to change the references to the term ‘threshold’ to ‘limit’. These amendments are a consequence of the amendment as described earlier at Item 2.

Item 12 – Section 107

87. Item 12 repeals section 107 to change the references to the term ‘threshold’ to ‘limit’. These amendments are a consequence of the amendment as described earlier at Item 2.

Item 13 – Subparagraph 133(c)(v)

88. Item 13 is an amendment to correct incorrect punctuation at the end of the list at subparagraph 133(c)(v). The semi-colon that is currently in place is incorrect and is to be replaced by a full stop.

Item 14 – Section 144

89. Item 14 amends the simplified outline of Part 5 of the Rules, relating to import approvals.
90. The simplified outline of Part 5 of the Rules currently provides, in part, that Division 5 of Part 5 “permits the importation of vehicles imported in accordance with the requirements of an intergovernmental agreement”.
91. This reference to “an intergovernmental agreement” requires updating after previous amendments to the Rules by the Road Vehicle Standards Amendment (2019 Measures No. 1) Rules 2019 set out the relevant intergovernmental agreements with more specificity. To reflect that a number of intergovernmental agreements are identified in Division 5 of Part 5, the simplified outline should read that it “permits the importation of vehicles imported in accordance with the requirements of certain intergovernmental agreements”.

Item 15 – Paragraph 155(2)(b)

92. Item 15 amends paragraph 155(2)(b) of the Rules to clarify the notice requirements for grant of a non-RAV entry import vehicle pertains to a single vehicle.
93. Paragraph 155(2)(b) as currently written requires the ‘details of each road vehicle...’, which suggests an application for, or the grant of, a non-RAV entry import approval may cover more than one vehicle. This is not what was intended when the Rules were drafted, although the Rules were inadvertently drafted ambiguously on this matter.
94. It is intended that an application for, and grant of a non-RAV entry import approval covers only one vehicle. This policy is reflected elsewhere in the Rules. Subsection 147(1) of the Rules states in part, “A person may apply to the Minister for the grant of a non-RAV entry import approval in respect of a road vehicle if the vehicle...”. Section 150 states in part “The Minister may grant a non-RAV entry import approval to a person in respect of a road vehicle if...”. The use of the singular ‘a’ in subsection 147(1) and section 150 reflects the policy intent.
95. The amendment omits ‘each road vehicle’ and substitutes ‘the road vehicle’ in paragraph 155(2)(b), for consistency and clarity. This reflects the policy elsewhere in the Rules that only a single vehicle may be covered by an application for, or grant of, a non-RAV entry import approval.

Item 16 – Subparagraph 158(a)(ii)

96. Item 16 amends subparagraph 158(a)(ii) to clarify conditions applying to a non-RAV entry import vehicle pertain to a single vehicle.
97. Subparagraph 158(a)(ii) as currently written requires a request from the Minister for the holder of a non-RAV entry import approval to supply information or documents specified ‘about details of each road vehicle...’. This suggests an approval may cover more than one vehicle. This is not consistent with the intended policy, as noted for Item 15.
98. The amendment omits ‘vehicles’ and substitutes ‘the road vehicle’.

Item 17 – Paragraph 158(b)

99. Item 17 amends paragraph 158(b) to clarify conditions applying to a non-RAV entry import vehicle pertain to a single vehicle.
100. Paragraph 158(b) as currently written requires a request from the Minister for the holder of a non-RAV entry import approval to supply information or documents specified ‘about road vehicles...’. This suggests an approval may cover more than one vehicle. This is not consistent with the intended policy, as noted for Item 15.
101. The amendment omits ‘road vehicles covered by the approval’ and substitutes ‘the road vehicle to which the approval applies.’

Item 18 – Paragraph 176(b)

102. Item 18 corrects a grammatical error.
103. Paragraph 176(b) relates to circumstances under which the Secretary may refuse to consider an application for a component type approval. It currently reads “the applicant does not comply with a request is made under subsection 175(1) within the period mentioned in paragraph 175(2)(b)”. The word ‘is’ is not required and should be deleted.

Item 19 – Subsection 195(4)

104. Item 19 corrects an unintended inconsistency within section 195.
105. Subsection 195(1) provides the holder of an approval granted under the Rules by either the Minister or the Secretary, may apply for a variation of the approval.
106. Subsection 195(4) currently reads “The Secretary may refuse to consider an application if it does not comply with subsection (3).” It was intended that either the Minister or the Secretary may consider variation applications, consistent with them both having the power to grant an approval.
107. This amendment corrects subsection 195(4) by omitting ‘Secretary’ and substituting ‘Minister or Secretary.’

Item 20 – At the end of paragraph 230(zk)

108. Item 20 amends paragraph 230(zk) of the Rules to improve the clarity of drafting.
109. Paragraph 230(zk) of the Rules currently provides that “an application may be made to the Administrative Appeals Tribunal for review of ... a decision to refuse to consider an application for an advisory notice.” This was intended to refer to section 233, which relates to (and subsection 233(4) under which the Secretary may refuse to consider an application for) an advisory notice that a specified thing is not a road vehicle. Paragraph 230(zl) reflects a similar intent, referring to a decision to refuse to issue an advisory notice that a specified thing is not a road vehicle.
110. The words “that a specified thing is not a road vehicle” were omitted by error in paragraph 230(zk). Item 20 adds these words to provide clarity that the advisory notice being referred to is an advisory notice that a specified thing is not a road vehicle.

Item 21 – Paragraph 230(zl)

111. Item 21 amends section 230 of the Rules, to provide two new grounds of review by the Administrative Appeals Tribunal.
112. Item 21 repeals paragraph 230(zl), replaces that paragraph in identical terms, and adds the new paragraphs 230(zm) and 230(zn) to provide for the new grounds of review.
113. The new paragraph 230(zm) provides that a person may apply for Administrative Appeals Tribunal review for a decision to refuse to refund an application fee which has been overpaid, under subsection 253(1) of the Rules.
114. The new paragraph 230(zn) provides that a person may apply for Administrative Appeals Tribunal review for a decision made under the table in section 241 of the Rules. The decision in section 241 relates to the fee payable for an application for a concessional RAV entry approval.

Item 22 – Paragraph 234(3)(f)

115. Item 22 replaces the references of the term ‘threshold’ to ‘limit’. These amendments are a consequence of the amendment as described earlier at Item 2.

Item 23 – At the end of the instrument

116. Item 23 provides for the addition of 16 new sections (sections 237 to 253) that set out cost recovery arrangements for fee-bearing activities. These fee-bearing activities are set out in the CRIS as ‘application-based activities’. The fees imposed by Item 23

recover the costs of these activities. These activities are the assessment of, and decision on, applications for:

- the grant of approvals
 - entry on the SEVs Register
 - issue of an advisory notice
 - variation of approvals
 - variation of an approved Model Report
117. An application-based activity involves a range of regulatory functions associated with administrative decision making, including, as set out in the CRIS:
- ensuring that vehicles comply with the relevant standards, and meet other requirements set out in the eligibility criteria for the grant of the relevant approval (for example, ensuring that vehicles subject to an application for a road vehicle type approval comply with the national road vehicle standards)
 - ensuring that applicants meet the requirements set out in the eligibility criteria for the grant of the relevant approval (for example, the applicant for an AVV approval meets the requirements to be a corporation and to have access to the necessary technology, equipment, procedures, and appropriately skilled staff, as well as other requirements set out in the Rules)
 - requesting further information to support a decision on an application, as necessary
 - recommendation of a decision to a delegate
 - decision by the relevant delegate
 - providing advice on the decision made on an application to the applicant, including conditions on any approval
118. The calculation of the costs of these application-based activities, and the amounts to be recovered is set out in the CRIS, and consulted on publicly and with the Department of Finance as part of the settlement of the CRIS.
119. Different applications attract different application fees, on the basis of the costs associated with the application-based activities. Some applications are further broken down into multiple kinds, to reflect that different subjects of applications (e.g. different kinds of vehicle, or different kinds of evidence) may be more or less resource-intensive to assess, and therefore the costs to be recovered are different.
- This is not intended to imply that there is a different application made, but merely that applications for a particular kind of approval or decision may have different subject matter, and may therefore attract a different fee on the basis that this subject matter is more or less resource intensive to assess.
120. Each of these kinds of application are listed in the tables in section 240 to 252.
121. Only one fee is payable per application. An application will only fall under one kind (set out in Column 1 of each of the tables). An application cannot fall under two kinds and therefore attract the payment of two fees per application. However, if a person submits an application and later resubmit this application (for example if the first application is incomplete and refused) it is intended that they must pay another application fee. Other details around the requirement to pay a fee are set out in the original Explanatory Statement for the Rules.

122. **The new section 237** sets out a simplified outcome for the new Part 10, relating to cost recovery. It sets out that Part 10 provides for the charging of fees in respect of fee-bearing activities.
123. **The new section 238** sets out the purpose of Part 10, relating to cost recovery. It sets out that “For the purposes of Division 4 of Part 5 of the Act, this Part provides for and in relation to the fees that may be charged in relation to fee-bearing activities.”
124. Division 4 of Part 5 of the RVSA relates to cost recovery. It sets out matters including what the Rules may prescribe in relation to fees for fee-bearing activities, payment of cost recovery charges, and unpaid cost recovery charges.
125. **The new section 239** provides for definitions of terms associated with different kinds of applications. These defined terms provide a shorthand for the kinds of application (set out in Column 1 of the tables in section 240 to 252) to which different fees apply (set out in Column 2 of these tables). The defined terms are as follows:
126. ‘IWVTA’ is defined to mean an International Whole Vehicle Type Approval granted under the framework of the 1958 Agreement.
- ‘1958 Agreement’ is defined in section 5 of the RVSA to mean the Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions done at Geneva on 20 March 1958, as amended and in force for Australia from time to time.
 - Section 5 of the RVSA notes that the 1958 Agreement is in Australian Treaty Series 2000 No. 11 ([2000] ATS 11) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).
 - In 2020, the Agreement can still be viewed on the AustLII website. The AustLII website page for this Agreement is available to the public at any time, free of charge. This page sets out what is in force for Australia, and when. This demonstrates that every person interested in or affected by the law is able to readily access its terms, without cost.
 - The reference to the 1958 Agreement by these amending Rules is intended to adopt the definition of the 1958 Agreement in section 5 of the RVSA as in force from time to time, including any revisions of the Agreement.
127. ‘Road vehicle type approval—IWVTA based’ is defined to mean a road vehicle type approval that applies to a type of vehicle that meets the requirement in subparagraph 19(1)(a)(i) or paragraph 19(3)(a) on the basis of an IWVTA. The IWVTA must demonstrate that the type of vehicle complies with all applicable national road vehicle standards to the extent possible. This means the IWVTA must demonstrate that the vehicle either complies with all standards, or all standards with which it is capable of demonstrating compliance, in order for the lower application fee rate to apply.
- A note in the new definition of ‘road vehicle type approval—IWVTA based’ gives some context for what the requirements in subparagraph 19(1)(a)(i) or paragraph 19(3)(a) of the Rules are. It states “Paragraph 19(2)(b) permits the Secretary to have regard to certain approvals and other documents issued by the governments or competent authorities of contracting parties to the 1958 Agreement in determining whether a type of vehicle meets the requirements of

- subparagraph 19(1)(a)(i) or paragraph 19(3)(a) (which relate to compliance with the national road vehicle standards).”
- The essential requirement is that if an applicant for a road vehicle type approval intends the Secretary only to refer to an IWVTA for a vehicle (to the extent possible) to consider whether a vehicle complies with the national road vehicle standards, a particular fee is payable for that application. This is a different fee amount to applications for ‘non-IWVTA based’ type approvals.
 - For ‘non-IWVTA based’ type approvals, the applicant may provide a mix of evidence for the Secretary to consider whether the vehicle complies with the national road vehicle standards, including an IWVTA, but also including other evidence of compliance with standards that an IWVTA could have covered.
128. ‘Road vehicle type approval—non-IWVTA based: 2 or 3 wheeled vehicle’ is defined to mean “a road vehicle type approval (other than a road vehicle type approval—IWVTA based) that applies to a type of 2-wheeled vehicle or 3-wheeled vehicle.”
129. ‘Road vehicle type approval—non-IWVTA based: bus’ is defined to mean “a road vehicle type approval (other than a road vehicle type approval—IWVTA based) that applies to a type of light omnibus (MD) or heavy omnibus (ME).”
- The reference to MD and ME category vehicles (light omnibuses and heavy omnibuses, respectively) is intended to apply the meaning of those categories set out in *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005* as in force from time to time. *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005* is a disallowable legislative instrument made under section 7 of the *Motor Vehicle Standards Act 1989* which will be taken to be a national road vehicle standard on commencement of the RVSA (on a date to be Proclaimed but no later than 1 July 2021), according to the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*.
 - Item 2 of Schedule 3 to the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* provides that a vehicle standard in force under section 7 of the *Motor Vehicle Standards Act 1989* immediately before commencement continues in force as if it were a national road vehicle standard determined under section 12 of the RVSA.
 - The application of the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005* as in force from time to time is authorised 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 in subsection 14(2) of the *Legislation Act 2003* on application of a disallowable legislative instrument in force from time to time is ‘unless the contrary intention appears’. Subsection 82(6) of the RVSA sets out the contrary intention to that limitation.
130. ‘Road vehicle type approval—non-IWVTA based: goods vehicle’ is defined to mean road vehicle type approval (other than a road vehicle type approval—IWVTA based)

that applies to a type of Light Goods Vehicle (NA category), Medium Goods Vehicle (NB category), or Heavy Goods Vehicle (NC category).

- This definition applies the meaning of vehicle categories set out in *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*. Paragraph 129 of this Explanatory Statement sets out how this instrument applies.
131. ‘Road vehicle type approval—non-IWVTA based: heavy trailer (with Model Report)’ is defined to mean a road vehicle type approval that applies to a type of trailer that has an aggregate trailer mass (ATM) of more than 4.5 tonnes and meets the requirement in subparagraph 19(1)(a)(i) or paragraph 19(3)(a) wholly on the basis of an approved Model Report mentioned in paragraph 19(2)(e).
- Paragraph 19(2)(e) permits the Secretary to have regard to any approved Model Reports that apply to the relevant type of vehicle in determining whether a type of vehicle meets the requirements of subparagraph 19(1)(a)(i) or paragraph 19(3)(a) (which relate to compliance with the national road vehicle standards).”
 - The essential requirement is that if an applicant for a road vehicle type approval intends the Secretary only to refer to Model Report for a vehicle, to consider whether a vehicle complies (fully or substantially) with the national road vehicle standards, a particular fee is payable for that application. This is a different fee amount to applications for the grant of road vehicle type approvals where the applicant provides a mix of evidence for the Secretary to consider whether the vehicle complies (fully or substantially) with the national road vehicle standards, where that mix does or does not include a Model Report.
 - This definition does not refer to vehicle categories for heavy trailers for consistency with the existing provisions of the Rules, which distinguish the two types of trailers based on the ATM of the trailer.
132. ‘Road vehicle type approval—non-IWVTA based: heavy trailer (without Model Report)’ is defined to mean a road vehicle type approval that applies to a type of trailer with an ATM of more than 4.5 tonnes, other than a road vehicle type approval—IWVTA based or a road vehicle type approval—non-IWVTA based: heavy trailer (with Model Report) as also defined in the new section 239 of the Rules.
- This kind of application (described as ‘without Model Report’) covers applications that include Model Reports in the mix of information that supports that the vehicle complies (fully or substantially) with the national road vehicle standards, but where other information is also provided in relation to this compliance.
 - This definition does not refer to vehicle categories for heavy trailers for consistency with the existing provisions of the Rules, which distinguish the two types of trailers based on the ATM of the trailer.
133. ‘Road vehicle type approval—non-IWVTA based: light trailer’ means a road vehicle type approval (other than a road vehicle type approval—IWVTA based) that applies to a type of trailer with an ATM of 4.5 tonnes or less.
134. ‘Road vehicle type approval—non-IWVTA based: passenger vehicle’ means a road vehicle type approval (other than a road vehicle type approval—IWVTA based) that

applies to a type of Passenger Car (MA category), Forward-control Passenger Vehicle (MB category), or Off-road Passenger Vehicle (MC category).

- This definition applies the meaning of vehicle categories set out in *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*. Paragraph 129 of this Explanatory Statement sets out how this instrument applies.

135. **The new section 240** sets out the fees payable in relation to applications under section 16 of the Rules for the grant of road vehicle type approvals. The kinds of application for a road vehicle type approval (set out in Column 1) relate to what the vehicle is (with reference to the definitions in the new section 239), and whether the vehicle does or does not have an IWVTA. Different fees are payable depending on what kind of application for a road vehicle type approval is made.
136. Reference to the criteria for the grant of road vehicle type approvals in section 239 is not intended to imply that if an approval is not granted on the basis that the criteria were not satisfied, then the fee is not payable or should be refunded. An application fee will be payable, whether or not an approval is granted in relation to that application. For example, the fee table in section 240 refers to “A person who applies for a road vehicle type approval—IWVTA based”. This means the fee is payable by the person who is applying for an approval of this kind, whether or not that approval is granted.
137. **The new section 241** sets out the fees payable in relation to applications under section 32 of the Rules for the grant of concessional RAV entry approvals. For the purpose of prescribing the application fee payable, a different fee is payable for each of the kinds of vehicle in respect of which an application for a concessional RAV entry approval may be made (as set out in section 32), listed in Column 1 of the table in subsection 241(2).
138. The eligibility criterion in section 41, read in connection with section 35 of the Rules, sets out that a concessional RAV entry approval may be granted in respect of a road vehicle if the Minister is satisfied that the vehicle is suitable for entry on the RAV. This creates a more complicated case for the charging of application fees in respect of this kind of application.
139. The cost recovery arrangements for the Rules are intended to ensure that an application fee reflects the efficient costs of assessing the application. The amount to be payable for applications where the approval is granted on the basis of the eligibility criterion in section 41, is to be linked to the amount payable for the kind of application for a concessional RAV entry approval that has the most similar consideration required. This ‘similarity’ is intended to ensure that the fee payable is as proportionate as possible to the costs associated with the assessment of the application, while still giving applicants reasonable certainty as to what fee will be applied. The department will publish guidance material to further clarify for applicants what fee will be payable.
140. The decision by the Minister as to what application fee is payable will be computerised, based on what fields are completed in the approved form. The Minister will set the formula for this computerised decision making on the basis of the method for working out a fee set out in section 241 of the Rules.
- Paragraph 66(2)(b) of the RVSA provides that the Rules may prescribe a method for working out a fee – in this case, the method involves the decision of the Minister. The decision contains very limited discretion. There are only 5

fees which could be applicable. Each of the 5 different kinds of application for a concessional RAV entry fee are significantly different from each other, which means that it would be a rare case where the application fee to be imposed would be unclear.

- Paragraph 82(2)(b) of the RVSA provides that the Rules may confer a power to make a decision of an administrative character on the Minister or Secretary. The decision in relation to the amount of the application fee payable in limited cases is a decision of an administrative character.
 - Section 62 of the RVSA provides that the Minister may use, under the Minister's control, computer programs for the purpose of matters including making a decision. If the computerised decision making reached the incorrect decision on the imposition of a fee amount, section 63 of the RVSA provides that the Minister may decide to substitute a more favourable decision as to the fee payable by the applicant.
 - The Secretary retains the discretion in section 72 to remit or refund a cost recovery charge if the Secretary is satisfied there are circumstances that justify doing so. Nothing in the Rules intends to exclude this discretion, which operates in the favour of applicants.
141. An example of how this is intended to operate is where an application for the grant of a concessional RAV entry approval is made in respect of a road vehicle that is suitable for entry on the RAV, and the information provided in the approved form to support the application sets out detailed information on how the vehicle is a passenger vehicle and complies with the national road vehicle standards.
- The consideration required for the application is more similar to the consideration in relation to applications in respect of special purpose vehicles than other kinds of application for a concessional RAV entry approval.
 - An application for the grant of a concessional RAV entry approval in respect of a trailer with an aggregate trailer mass of more than 4.5 tonnes also requires consideration of compliance with the national road vehicle standards, but the number and nature of the national road vehicle standards that need to be considered are likely to be more limited than necessary for most special purpose vehicles and passenger vehicles.
 - The fields completed in the application form would therefore prompt the application and payments system to charge a \$450 fee for the application, as a computerised decision of the Minister.
142. Reference to the criteria for the grant of concessional RAV entry approvals is not intended to imply that if an approval is not granted on the basis that the criteria were not satisfied, then the fee is not payable or should be refunded. An application fee will be payable, whether or not an approval is granted in relation to that application.
143. **The new section 242** sets out the fees payable in relation to applications under section 55 of the Rules for the grant of RAW approvals. For the purpose of prescribing the application fee payable, there is only one kind of application for the grant of a RAW approval.
144. **The new section 243** sets out the fees payable in relation to applications under section 68 of the Rules for the approval of Model Reports. The kinds of application for

an approval of a Model Report (set out in Column 1 of the table) relate to the kinds of vehicle to which the Model Report may apply.

145. **The new section 244** sets out the fees payable in relation to applications under section 87 of the Rules for the variation of approved Model Reports.
146. The new subsection 244(1) provides that the applicable fee set out in the table in subsection 244(2) applies unless an exception in subsection 244(3) applies.
147. The kinds of application for the variation of an approved Model Report (set out in Column 1 of the table in subsection 244(2)) relate to the kinds of vehicle to which the Model Report may apply.
148. Subsection 244(3) provides that a fee is not payable in a number of circumstances:
 - The first circumstance is where the variation would reduce the number of variants to which the Model Report applies. It should be the prerogative of the holder of an approval to decide to no longer hold an approval, or hold an approval with a narrowed scope. The intention is to not place any barrier to the holder of an approval seeking this, and therefore to not impose a fee on a person applying for this variation.
 - The second circumstance is where the holder of the Model Report approval seeks the variation in order to comply with section 82 of the Rules. Section 82 imposes a condition on all holders of Model Report approvals that they must keep the Model Report accurate and up-to-date. There should be no barrier or disincentive to keeping the Model Report accurate and up-to-date. There are a number of specific requirements set out in section 82 that explain what keeping the Model Report accurate and up-to-date means, for example, seeking a variation to a Model Report:
 - where the holder of the Model Report becomes aware (or should have been aware) that there is an error in the Model Report
 - where the holder of the Model Report becomes aware (or should have been aware) that the Model Report is not in the form or does not contain the information, required by a determination under section 88
 - to ensure that vehicles modified or manufactured in accordance with the Model Report would comply with the applicable standards
 - The third circumstance is where the variation is required in relation to a recall undertaken under the RVSA or in the market for which the vehicle was originally manufactured. This may relate to information required to be in a Model Report by any determination made under section 88 of the Rules. A determination under section 88 could contain requirements for information in relation to recalls. This third circumstance is to ensure that it is explicit on the face of the Rules that a fee will not be payable for an application to vary a Model Report in relation to a recall. As recalls are undertaken (at least under the RVSA) in response to safety issues or non-compliance with applicable standards, it is particularly important that there is no barrier or disincentive to seeking the variation of the Model Report in relation to a recall if this is necessary.
149. **The new section 245** sets out the fees payable in relation to applications under section 90 of the Rules for the grant of AVV approvals. For the purpose of prescribing

- the application fee payable, there is only one kind of application for the grant of an AVV approval.
150. **The new section 246** sets out the fees payable in relation to applications under section 108 of the Rules for the grant of testing facility approvals. For the purpose of prescribing the application fee payable, there is only one kind of application for the grant of a testing facility approval.
 151. **The new section 247** sets out the fees payable in relation to applications under section 125 of the Rules for the entry of vehicles on the SEVs Register. For the purpose of prescribing the application fee payable, there is only one kind of application for the entry of a vehicle on the SEVs Register.
 152. **The new section 248** sets out the fees payable in relation to applications under section 147 of the Rules for the grant of non-RAV entry import approvals. For the purpose of prescribing the application fee payable, there is only one kind of application for the grant of a non-RAV entry import approval.
 153. **The new section 249** sets out the fees payable in relation to applications under section 159 of the Rules for the grant of reimportation import approvals. For the purpose of prescribing the application fee payable, there is only one kind of application for the grant of a reimportation import approval.
 154. **The new section 250** sets out the fees payable in relation to applications under section 174 of the Rules for the grant of road vehicle component type approvals. For the purpose of prescribing the application fee payable, there is only one kind of application for the grant of a road vehicle component type approval.
 155. **The new section 251** sets out the fees payable in relation to applications under section 233 of the Rules for the issue of an advisory notice that a thing is not a road vehicle. For the purpose of prescribing the application fee payable, there is only one kind of application for the issue of an advisory notice that a thing is not a road vehicle.
 156. **The new section 252** sets out the fees payable in relation to applications under section 195 of the Rules for the variation of an approval. There are multiple kinds of variations to approvals that a person may apply for, listed in Column 1 of the table in the new subsection 252(2).
 157. Examples of applications for variations for which no fee would be payable include:
 - an application to vary a type approval, to reduce the number of variants covered by the type approval
 - an application to vary a testing facility approval, to reduce the number of national road vehicle standards in relation to which the holder of the approval may undertake testing
 - an application to vary an AVV approval, to update the contact details for the holder of the AVV approval
 158. Row 12 in the table in the new subsection 252(2) sets out that there is no fee payable in relation to an application for the variation of an approval of a Model Report, which may be made under section 195 of the Rules. This is different to an application for the variation of an approved Model Report, under section 87 of the Rules, for which a fee is payable, in accordance with the new section 244 of the Rules.
 159. **The new section 253** sets out matters regarding the refund of fees. It provides that where a person has overpaid a fee prescribed under this Part, the Secretary is to refund the amount by which the fee was overpaid. Overpayment is intended to mean a

payment of an application fee of an amount greater than the application fee that was due and payable, or payment of multiple application fees for a single application. Such overpayments might occur as a result of an error in an online payment system.

160. Although the refund decision is not discretionary, a refusal to give a refund (e.g. where the Secretary decides that there was no overpaid amount) is a decision of a kind that is susceptible to merits review. The amended section 230 of the Rules provides for Administrative Appeals Tribunal review for such a decision.
161. Section 72 of the RVSA sets out a discretionary power of the Secretary to remit or refund the whole of a cost-recovery charge that is payable or paid to the Commonwealth if the Secretary is satisfied that there are circumstances that justify doing so. The new section 253 does not seek to limit the Secretary's discretion to provide refunds as a result of circumstances other than overpayment. For example, the Secretary retains the discretion to refund an application fee in a circumstance where an application is withdrawn and the Secretary considers that a refund is appropriate for compassionate reasons.