

Vehicle Standard (Australian Design Rule 35/06 – Commercial Vehicle Brake Systems) 2018 Amendment 1

Made under section 12 of the *Road Vehicle Standards Act 2018*

Replacement Explanatory Statement

Approved by Senator the Hon Carol Brown,
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1. LEGISLATIVE AUTHORITY

1.1. National Road Vehicle Standards

Vehicle Standard (Australian Design Rule 35/06 – Commercial Vehicle Brake Systems) 2018 Amendment 1 (ADR 35/06 Amendment 1) is made under section 12 of the *Road Vehicle Standards Act 2018* (the RVSA). Section 12 of the RVSA allows the Minister to determine National Road Vehicle Standards.

1.2. Exemption from Sunsetting

ADR 35/06 Amendment 1 is exempt from the sunsetting provisions of the *Legislation Act 2003*. It is appropriate that standards made under section 12 of the RVSA, also known as the Australian Design Rules (ADRs), remain enduring and effective to regulate ongoing road worthiness of vehicles throughout their useful life and reduce regulatory burden on vehicle manufacturers.

Source of the Exemption

A standard made under section 12 of the RVSA is not subject to the sunsetting provisions of section 50 of the *Legislation (Exemptions and Other Matters) Act 2003* through section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (table item 56C). A similar exemption was previously granted in respect of national road vehicle standards made under section 7 of the *Motor Vehicle Standards Act 1989* (MVSA) (item 40, section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). This exemption is important to ensure that ADR 35/06 Amendment 1 continues to remain in force, and available to regulators and industry.

Intergovernmental Dependencies

The exemption concerns ADRs which facilitate the establishment and operation of the intergovernmental vehicle standard regime that Commonwealth, State and Territory governments rely on to regulate the safety of vehicles on public roads.

The Commonwealth uses the ADRs as the basis on which approvals to supply types of road vehicles to the market are granted under the *Road Vehicle Standards Rules 2019*. States and territories use the ADRs as the primary criteria on which vehicles are assessed for road worthiness. This ‘in-service’ aspect is dependent on the date of manufacture, which determines the applicable version of the ADRs against which the vehicle can be assessed. The ability to rely on national standards is particularly relevant given the long service life of vehicles – the average age of vehicles in Australia is 12.1 years.

While the ADRs are regularly updated to reflect changes in technology, it is not possible to apply these new standards retrospectively to vehicles that are already in use. With former ADRs kept on the Federal Register of Legislation, State and Territory governments can use them to ensure vehicles continue to comply with the ADRs that were in force when they were first supplied to the market.

In the event that the Commonwealth could not justify the maintenance of the ADRs, State and Territory governments would be compelled to create their own vehicle standards. Whilst this could mean adopting the substance of the lapsed ADRs as an interim measure, the differing needs and agendas of each State and Territory government may result in variations to in-service regulations. Having different vehicle standards across the states and territories would make the scheme operate contrary to the underlying policy intent of the RVSA which is to set nationally consistent performance based standards.

Commercial Dependencies

The effect on vehicle manufacturers to redesign existing models to comply with new ADRs would present a burden and be a costly and onerous exercise. Manufacturers should not be expected to continually go back to redesign existing vehicles. Furthermore, ongoing product recalls to comply with new ADRs would undermine consumer confidence with significant financial impact to manufacturers. This exemption allows vehicle manufacturers to focus their efforts to ensure new models supplied to the market continue to comply.

Effect on Parliamentary Oversight

Despite exemption from sunseting ADRs are subject to regular reviews, as resources permit, and when developments in vehicle technology necessitates updates to requirements. Comprehensive parliamentary scrutiny is available through these reviews.

Reviews of the ADRs ensure the ongoing effectiveness of a nationally consistent system of technical regulations for vehicle design, which are closely aligned, wherever appropriate with leading international standards such as United Nations Regulations. Aligning with such standards facilitates the rapid introduction of the latest safety devices and technological advances into the Australian market, while also contributing to the industry's cost competitiveness in the domestic market.

2. PURPOSE AND OPERATION

2.1. Overview of the regulatory framework

The RVSA establishes a regulatory framework to regulate the importation and first supply of road vehicles to the market in Australia. The core principle of this framework is that vehicles which comply with appropriate standards are suitable for provision to the market in Australia. The ADRs have set out those standards since the early 1970s. At that time, they were applied cooperatively by the Australian Motor Vehicle Certification Board representing the Commonwealth and state and territory governments. In 1989, this arrangement was replaced by the MVSA and the Australian Design Rules were determined as national standards.

Under the RVSA, the ADRs are National Road Vehicle Standards intended to make vehicles safe to use, control the emission of gas, particles or noise, secure vehicles against theft, provide for the security marking of vehicles and promote the saving of energy. The ADRs are applied to vehicles as criteria for approval under various regulatory pathways set out in the Road Vehicle Standards legislation. Vehicles approved under these regulatory pathways can be provided to the market in Australia for use in transport. ADRs apply equally to imported and locally manufactured vehicles.

2.2. Overview of the ADR

The function of this vehicle standard is to ensure safe braking for commercial vehicles and large passenger vehicles under normal and emergency conditions. The standard also contains provisions for some light passenger and light goods vehicles.

2.3. Effect of the Amendment

This amendment implements transition arrangements from this vehicle standard (ADR 35/06) to a later vehicle standard (ADR 35/07). Under these arrangements, vehicles certified as complying to the new standard ADR 35/07 are not required to comply with ADR 35/06.

This change does not affect the original intent of ADR 35/06, but is essential to allow its correct operation in conjunction with ADR 35/07.

3. MATTERS INCORPORATED BY REFERENCE

3.1. Legislative Instruments

Clause 3.10 includes a reference to the Australian Design Rule 35/07 – Commercial Vehicle Brake Systems (ADR 35/07). ADR 35/07 prescribes braking requirements on ADR category LEG, MB, MC, NA, NB, and NC vehicles, to ensure safe braking under normal and emergency conditions.

The ADRs may be freely accessed online through the Federal Register of Legislation. The website is www.legislation.gov.au.

In accordance with subsection 12(2) of the RVSA, this ADR 35/07 is incorporated as in force or existing from time to time.

3.2. Other Documents

This amendment does not incorporate any other documents by reference.

4. CONSULTATION

4.1. General Consultation Arrangements

It has been longstanding practice to consult widely on proposed new or amended vehicle standards. For many years, there has been active collaboration between the Commonwealth and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the new or amended standard is expected to have on industry or road users.

Proposals that are regarded as significant need to be supported by a Regulation Impact Statement (RIS) meeting the requirements of the Office of Best Practice Regulation (OBPR) as published in the *Australian Government Guide to Regulatory Impact Analysis* or the *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*.

4.2. Specific Consultation Arrangements

This amendment is related to the introduction of ADR 35/07. As it is minor in nature, and does not affect the requirements of the ADR, further consultation was not considered necessary and so not carried out.

5. REGULATORY IMPACT

5.1. Regulation Impact Statement

As the amendment is purely administrative in nature and does not increase the stringency of the ADR, a RIS is not required.

5.2. Benefits and Costs

As this amendment does not affect the requirements of the ADR, there are no expected changes in the benefits or costs for society.

6. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

6.1. Overview

This amendment allows for a transition between ADR 35/06 and the later version ADR 35/07. It does not affect the original intent or operation of the standard.

6.2. Human Rights Implications

This amendment to ADR 35/06 does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

6.3. Conclusion

This amendment to ADR 35/06 is compatible with human rights, as it does not raise any human rights issues.