

EXPLANATORY STATEMENT

Road Vehicle Standards Amendment (2022 Measures No.1) Rules 2022

Approved by the Hon Barnaby Joyce MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

Legislative authority

The *Road Vehicle Standards Act 2018* (the Road Vehicle Standards Act) and the *Road Vehicle Standards Rules 2019* (the Rules) provide a modern framework for the Commonwealth to regulate, among other matters, the importation and the first provision of road vehicles in Australia.

Section 82 of the Road Vehicle Standards Act empowers the Minister to, by legislative instrument, make rules prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act.

The *Road Vehicle Standards Amendment (2022 Measures No. 1) Rules 2022* (the amending Rules) are made under the authority of the Road Vehicle Standards Act.

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.

Purpose and operation of the instrument

Overview of the Road Vehicle Standards Act and Rules

The primary purpose of the Road Vehicle Standards Act is to regulate the importation and provision of road vehicles. The Rules set out matters that support the regulatory framework of the Road Vehicle Standards Act. Part 2 of the Rules provides for the keeping of a Register of Approved Vehicles (RAV), on which a road vehicle must be entered before it may be provided for the first time in Australia (section 24 of the Act). A vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway (subsection 15(1) of the Act).

Subsection 19(2) of the Road Vehicle Standards Act states that the Rules may provide for or in relation to the grant of approvals to enable road vehicles to satisfy the requirements of the type approval pathway or other entry pathways.

There are currently two pathways available for vehicles to be entered on the RAV (Part 3 of the Rules):

- the type approval pathway, which applies to all vehicles of a particular type that fully or substantially comply with national road vehicle standards set out in the Road Vehicle Standards Act and are approved for volumetrically unrestricted supply to the Australian market (section 15 of the Rules), and
- the concessional RAV entry approval pathway, which applies to an individual vehicle if there is a concessional RAV entry approval in force for that vehicle, any conditions applying to the approval have been met, and (unless the approval otherwise provides) the vehicle is in Australia (section 31 of the Rules).

The Rules set out eligibility requirements for each pathway. The Rules also set out the mechanisms through which road vehicles may satisfy the requirements of RAV entry

pathways. The Rules refer to these mechanisms as ‘tools’ in Part 4—approvals that enable road vehicles to satisfy requirements that enable a road vehicle to be provided for the first time in Australia. The mechanisms relate to registered automotive workshops (RAWs) (Division 2), Model Reports (Division 3), authorised vehicle verifiers (AVVs) (Division 4), testing facilities (Division 5) and the Specialist and Enthusiast Vehicles Register (SEVs Register) (Division 6).

Part 5 of the Rules provides for the grant of approvals to permit the importation of road vehicles into Australia. Part 6 provides for the grant of approvals relating to road vehicle components intended for use in the manufacture or modification of certain road vehicles. Part 7 empowers the Minister and Secretary to vary, suspend or revoke approvals granted under the Rules. Part 8 provides for the recall of road vehicles and approved road vehicle components of particular kinds. Part 9 makes provision for a range of miscellaneous matters and Part 10 provides for the charging of fees.

Operation of the amending Rules

The amending Rules make amendments relating to:

- import approvals during the transitional period (Division 2A of Part 5 of the Rules), and
- the SEVs Register (Division 6 of Part 4 of the Rules).

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 relating to import approvals during the transitional period

Subject to passage and enactment in the Autumn 2022 Parliamentary sittings, the Road Vehicle Standards (Consequential and Transitional Provisions) Amendment Bill 2022 will extend the duration of the transitional period, provided for by the *Road Vehicle Standards (Consequential and Transitional) Provisions Act 2018*, from 12 to 24 months after the full commencement of the Road Vehicle Standards Act on 1 July 2021. The overarching intention of the transitional period is to provide a period of overlap between the *Motor Vehicle Standards Act 1989* (the MVSA), and the Road Vehicle Standards Act, to facilitate a smoother transition for industry.

The purpose of these amendments is to extend the timeframe for applications for the grant of import approvals during the transitional period – that is, transitional import approvals (available temporarily for certain vehicles following the repeal of the MVSA). The amendments also have the purpose of extending the period beyond which applications for a transitional import approval must not be decided.

To align with the extended duration of the transitional period, the amending Rules allow applications for transitional import approvals to be made up to 22 months (previously 10 months), after the start of the transitional period. The amending Rules also provide that an application for a transitional import approval must not be decided more than 23 months (previously 11 months) after the start of the transitional period.

Amendments relating to the SEVs Register

In order to support transitional arrangements, the Rules makes provision for road vehicles on the SEVs List to be entered on the SEVs Register. The purpose of the amendments relating to the SEVs Register is to extend the timeframe for applications for entry on the SEVs Register that relate to vehicles on the SEVs List.

To align with the extended duration of the transitional period, the amending Rules provide that a variant of a model, or a make and model, of a road vehicle on the SEVs List is eligible for entry on the SEVs Register if the Secretary is satisfied, relevantly, that the application for entry on the SEVs Register is made no later than 24 months (previously 12 months), after the commencement of the transitional period.

Consultation

The amendments to the Rules were made following a significant number of representations from the affected road vehicle industry sectors, outlining the impacts COVID and global supply chain issues have had on their ability to transition to the RVS framework and seeking an extension of the transitional period.

In developing the amendments to the Rules, consultation was undertaken with the following road vehicle industry sectors, with all consulted participants expressing strong support for an extension to the transitional arrangements:

- left to right hand vehicle conversion specialists
- the crane industry
- the Australian Imported Motor Vehicle Industry Association
- vehicle conversion engineers
- trailer industry representatives
- The Victorian Automotive Chamber of Commerce.

The Caravan Industry Association of Australia, which has been supportive of the strengthened RVS regulatory framework for caravans and campervans, disagreed with the extension.

Documents incorporated by reference

The amending Rules do not incorporate any documents by reference.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared in relation to the MVSA and policy options for its repeal and replacement with what would become the Road Vehicle Standards Act. The RIS is included in the Explanatory Memorandum to the Road Vehicle Standards Bill 2018. The Office of Best Practice Regulation (OBPR) reference number for the RIS is 17240. OBPR has advised that no further RIS is required.

Statement of Compatibility with Human Rights

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

Road Vehicle Standards Amendment (2022 Measures No.1) Rules 2022

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 Regulations

The *Road Vehicle Standards Amendment (2022 Measures No.1) Rules 2022* (the amending Rules) are made under section 82 of the *Road Vehicle Standards Act 2018* (the Road Vehicle Standards Act).

The amending Rules make amendments to the *Road Vehicles Standards Rules 2019* (the Rules) relating to:

- import approvals during the transitional period (Division 2A of Part 5 of the Rules), and
- the SEVs Register (Division 6 of Part 4 of the Rules).

Amendments relating to import approvals during the transitional period

Subject to passage and enactment in the Autumn 2022 Parliamentary sittings, the Road Vehicle Standards (Consequential and Transitional Provisions) Amendment Bill 2022 will extend the duration of the transitional period, provided for by the *Road Vehicle Standards (Consequential and Transitional) Provisions Act 2018*, from 12 to 24 months after the full commencement of the Road Vehicle Standards Act on 1 July 2021. The overarching intention of the transitional period is to provide a period of overlap between the *Motor Vehicle Standards Act 1989* (the MVSA), and the Road Vehicle Standards Act, to facilitate a smoother transition for industry.

The purpose of these amendments is to extend the timeframe for applications for the grant of import approvals during the transitional period – that is, transitional import approvals (available temporarily for certain vehicles following the repeal of the MVSA). The amendments also have the purpose of extending the period beyond which an application for a transitional import approval must not be decided.

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Amendments relating to the SEVs Register

In order to support transitional arrangements, the Rules makes provision for road vehicles on the SEVs List to be entered on the SEVs Register. The purpose of the amendments relating

to the SEVs Register is to extend the timeframe for applications for entry on the SEVs Register that relate to vehicles on the SEVs List.

To align with the extended duration of the transitional period, the amending Rules provide that a variant of a model, or a make and model, of a road vehicle on the SEVS List is eligible for entry on the SEVs Register if the Secretary is satisfied, relevantly, that the application for entry on the SEVs Register is made no later than 24 months (previously 12 months) after the commencement of the transitional period.

Human rights implications

The instrument supports the regulatory framework of the Road Vehicle Standards Act and the Rules to ensure that vehicles on public roads meet safety and environmental standards to support the human right to life and health. The instrument does not engage any human rights beyond those addressed in the Explanatory Memorandum to the Road Vehicle Standards Bill 2018 and the Explanatory Statement for the Rules.

Conclusion

The instrument is compatible with human rights because it promotes the protection of human rights and, to the extent that it may limit human rights, those limitations are considered to be reasonable, necessary and proportionate.

The Hon Barnaby Joyce MP
Deputy Prime Minister and Minister for Infrastructure, Transport,
Regional Development and Communications

Section-by-section explanation

Section 1: Name

1. Section 1 provides that the name of the instrument is the *Road Vehicle Standards Amendment (2022 Measures No. 1) Rules 2022* (the amending Rules).

Section 2: Commencement

2. Subsection 2(1) provides that each provision of the instrument specified in column 1 of the table commences in accordance with column 2 of the table. The whole of the instrument commences immediately after the commencement of the *Road Vehicle Standards (Consequential and Transitional Provisions) Amendment Act 2022*.
3. The note following the table provides that the table relates only to the provisions of this instrument as originally made, and will not be amended to deal with any later amendments of the instrument.
4. Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument.

Section 3: Authority

5. Section 3 provides that the instrument is made under the *Road Vehicle Standards Act 2018* (the Act).
6. Section 82 of the Act empowers the Minister to, by legislative instrument, make rules prescribing matters that are required or permitted by the Act to be prescribed by rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.
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. The amending Rules amend the *Road Vehicle Standards Rules 2019* (the Rules).

Section 4: Schedules

8. Section 4 provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items of the Schedule. Any other item in a Schedule has effect according to its terms.

Schedule 1—Amendments

Item 1—Paragraph 129(4)(b)

9. This item amends paragraph 129(4)(b) of the Rules. Section 129 of the Rules relates to eligibility for entry on the SEVs Register. In order to support transitional arrangements, subsection 129(4) of the Rules makes provision for vehicles on the SEVs List to be entered on the SEVs Register. Subsection 129(4) provides that a variant of a model, or a make and model, is eligible for entry on the SEVs Register if the Secretary is satisfied that the variant, or make and model, was entered on the SEVs List before the commencement of section 15 of the Act, and is not otherwise eligible for entry on the SEVs Register, and the application for entry on the SEVs Register is made during the transitional period, being no later than 12 months after the commencement of section 15 of the Act.

10. Item 1 amends paragraph 129(4)(b) of the Rules so that a variant of a model, or a make and model, is eligible for entry on the SEVs Register if the Secretary is satisfied, relevantly, that the application for entry on the SEVs Register is made no later than 24 months after the commencement of section 15 of the Act.

Item 2—Subsection 146B(2)

11. This item amends subsection 146B(2) of the Rules. Section 146B of the Rules deals with an application the grant of a transitional import approval. Subsection 146B(2) of the Rules provides that an application for a transitional import approval cannot be made more than 10 months after the commencement of section 15 of the Act.
12. Item 2 amends subsection 146B(2) of the Rules so that an application for a transitional import approval cannot be made more than 22 months after the commencement of section 15 of the Act.

Item 3—Subsection 146J(3)

13. This item amends subsection 146J(3) of the Rules. Subsection 146J(3) of the Rules provides that the Minister must not decide an application for a transitional import approval more than 11 months after the commencement of section 15 of the Act.
14. Item 3 amends subsection 146J(3) of the Rules so that the Minister must not decide an application for a transitional import approval more than 23 months after the commencement of section 15 of the Act.