

## EXPLANATORY STATEMENT

Approved by the Secretary of the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

*Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023*

### Legislative context

The *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023* (the amending Determination) is made under the authority of the *Road Vehicle Standards Act 2018* (the RVSA). The RVSA provides a modern framework for the Commonwealth to regulate, among other matters, the importation of road vehicles into Australia, and the first provision of road vehicles in Australia. The *Road Vehicle Standards Rules 2019* (the Rules) complement the RVSA by prescribing matters relating to the regulation of road vehicles and road vehicle components.

### Legislative authority

Section 6 of the RVSA provides the meaning of **road vehicle** and paragraph 6(5)(a) provides that the Secretary may, by legislative instrument, determine classes of vehicles that are road vehicles.

The amending Determination is made under paragraph 6(5)(a) and amends the *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Determination 2021* (the primary Determination). Subsection 33(3) of the *Acts Interpretation Act 1901* provides, in part, that the power to amend an instrument is conferred by the same power to make that instrument.

### Purpose and operation of the instrument

The primary Determination identifies a range of vehicle classes that are determined to be road vehicles. The vehicle classes all have a purpose other than use on public roads but spend a significant amount of time on public roads. As a result, consumers expect these vehicles to comply with appropriate standards. These vehicle classes are: airport service vehicles, campervans or motorhomes, mobile cranes, concrete pumpers, food or catering vans, and dual-purpose motorcycles.

The primary purpose of the amending Determination is to amend the definition of **mobile crane** so as to exclude ‘rough terrain cranes’. These are a type of mobile crane that are designed for use on off-road surfaces, are not designed nor permitted to drive on public roads, and accordingly should not be defined as road vehicles.

The amending Determination gives a definition of **rough terrain crane** and excludes these vehicles from the **mobile crane** definition, such that mobile cranes will continue to be determined as road vehicles but rough terrain cranes will not. In doing so it provides clarity to the mobile crane industry that rough terrain cranes are not road vehicles for the purposes of the RVSA and so can continue to be provided to the Australian market outside its regulatory framework.

The amending Determination also corrects minor errors in the definitions of **concrete pumper** and **mobile crane** relating to those vehicle’s connection with their tyres.

A Statement of Compatibility with Human Rights for the amending Determination is at Attachment A.

A section-by-section explanation of the amending Determination is at [Attachment B](#).

### **Prescribing matters by reference to other instruments or documents**

Subparagraph 14(1)(a)(ii) and subsection 14(3) of the *Legislation Act 2003* provide that the amending Determination may incorporate the provisions of a disallowable legislative instrument as in force at a particular time, or as in force from time to time, unless a contrary intention appears in the Act.

The amending Determination does not prescribe matters by reference to other instruments or documents.

### **Consultation**

The inclusion of rough terrain cranes in the mobile crane definition was initially raised through representations by the Crane Industry Council of Australia (CICA). Following examination of the issue, it was determined rough terrain cranes should be removed from the instrument. The department then worked with CICA, as the industry body representing mobile crane manufacturers and importers, to develop a suitable definition of rough terrain crane that could be used in the amending Determination.

The department subsequently consulted with state and territory registration authorities, as well as the National Heavy Vehicle Regulator (NHVR), about the proposal to exclude rough terrain cranes from the primary Determination. This is because while the Commonwealth regulates road vehicles up to the point of first provision to the market, states, territories and the NHVR are responsible for in-service regulation of road vehicles and access to public roads.

The state and territory registration authorities and the NHVR had no objections to the proposal.

### **Impact Analysis**

The amending Determination prevents the undesired capture of rough terrain cranes in the road vehicle regulatory framework.

The Office of Impact Analysis has advised that the preparation of an Impact Analysis is not required—reference number OIA23-05216.

## **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 (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

The *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023* (the amending Determination) amends the *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Determination 2021* to exclude rough terrain cranes from the road vehicle regulatory framework.

### **Human rights implications**

The amending Determination supports the regulatory framework of the *Road Vehicle Standards Act 2018*, and the *Road Vehicle Standards Rules 2019*, 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 *Road Vehicle Standards Rules 2019*.

### **Conclusion**

This disallowable 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 reasonable, necessary and proportionate.

**Secretary of the Department Infrastructure, Transport, Regional  
Development, Communications and the Arts**

**Mr Jim Betts**

## **ATTACHMENT B**

### **Section-by-section explanation of the *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023***

#### **Section 1—Name**

1. Section 1 provides that the name of this instrument is the *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Amendment Determination 2023* (the amending Determination).

#### **Section 2—Commencement**

2. Section 2 provides that the amending Determination is to commence the day after it is registered.

#### **Section 3—Authority**

3. Section 3 provides that the amending Determination is made under paragraph 6(5)(a) of the *Road Vehicle Standards Act 2018*.

#### **Section 4—Schedules**

4. 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—Subsection 5(1) (paragraph (b) of the definition of *concrete pumper*)**

5. This item replaces ‘is mounted on a rubber-tyred motor vehicle’ with ‘is designed to travel on rubber tyres’ in paragraph (b) of the definition of ***concrete pumper*** in subsection 5(1) of the *Road Vehicle Standards (Classes of Vehicles that are Road Vehicles) Determination 2021* (the primary Determination). The new terminology is designed to maintain a level of consistency with the structure of definitions in the *Road Vehicle Standards (Classes of Vehicles that are not Road Vehicles) Determination 2021* (the Classes of Vehicles that are not Road Vehicles Determination).

##### **Item 2—Subsection 5(1) (definition of *mobile crane*)**

6. This item repeals the definition of ***mobile crane*** in subsection 5(1) of the primary Determination and substitutes a new definition. The new definition provides that a mobile crane is a particular motor vehicle other than, relevantly, a ***rough terrain crane***. (A definition of ***rough terrain crane*** is inserted into the primary Determination by item 3 of this Schedule.) The terminology used in paragraph (b) of the new definition of ***mobile crane***—‘is designed to travel on rubber tyres’—is designed to maintain a level of consistency with the structure of definitions in the Classes of Vehicles that are not Road Vehicles Determination.

##### **Item 3—Subsection 5(1)**

7. This item inserts a definition of ‘rough terrain crane’ into subsection 5(1) of the primary Determination. This definition is relevant to the new definition of ‘mobile crane’, inserted into the primary Determination by item 2 of this Schedule. The definition of ‘rough terrain crane’ captures particular motor vehicles that have a purpose other than use on public roads, and which cannot be registered for use on public roads.