

# **Vehicle Standard (Australian Design Rule) Amendment Instrument 2023 (No. 1)**

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

## **Explanatory Statement**

Issued by the authority of the Assistant Minister for Infrastructure and Transport

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## 1. LEGISLATIVE CONTEXT

### 1.1. National Road Vehicle Standards

Vehicle Standard (Australian Design Rule) Amendment Instrument 2023 (No. 1) is made under section 12 of the *Road Vehicle Standards Act 2018* (the Act). The Act allows the Minister to determine national road vehicle standards.

Under the Act, 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 (RVS legislation). Vehicles approved under these regulatory pathways can be provided to the market in Australia for use in transport.

### 1.2. Overview of the Regulatory Framework

The Act 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 *Motor Vehicle Standards Act 1989* (MVSA) and the ADRs were determined as national standards. The MVS was replaced in 2018 with the *Road Vehicle Standards Act 2018*.

### 1.3. Exemption from Sunsetting

#### *Source of the Exemption*

A standard made under section 12 of the Act 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 MVSA (item 40, section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*). This exemption is important to ensure that ADR 35/06, ADR 35/07, ADR 42/04, ADR 42/05 and ADR 97/00 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 framework 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

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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 Act 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 regulatory 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 (UN) 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 OF THE AMENDMENT INSTRUMENT**

### **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 Motor Vehicle Standards Act 1989 (the MVSA) and the Australian Design Rules were determined as national

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standards. The RVSA commenced in full and replaced the MVSA on 1 July 2021. A two-year transition period was provided between 1 July 2021 and 30 June 2023.

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.

This Amendment Instrument applies to the following ADRs:

- Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 (ADR 42/04)
- Vehicle Standard (Australian Design Rule 42/05 – General Safety Requirements) 2018 (ADR 42/05)

ADR 42/04 was originally determined in 2005 and has been amended seven times. ADR 42/05 was originally determined in 2018 and has never been amended.

This Amendment Instrument will not affect the original intent or operation of the ADRs under current certification arrangements. Refer to the sections 3 and 4 below for further information on the effect of the amendments.

### **3. CONTENT OF THE ADRS AND EFFECT OF THE AMENDMENTS**

#### **3.1. Overview of the ADRs**

ADR 42/04 and ADR 42/05 specify general design and construction requirements to ensure safe operation of vehicles.

#### **3.2. Effect of the Amendments**

This Amendment Instrument is made to allow for the recognition of reversing alarms approved to or compliant with UN Regulation No. 165 – UNIFORM PROVISIONS CONCERNING THE APPROVAL OF AUDIBLE REVERSE WARNING DEVICES AND OF MOTOR VEHICLES WITH REGARD TO THEIR AUDIBLE REVERSE WARNING SIGNALS (UN R165) as meeting the provisions for reversing alarms in ADRs 42/04 and 42/05.

It has been a longstanding Australian Government policy to harmonise the ADRs with international standards where possible, through the adoption of international regulations developed by the UN World Forum for Harmonization of Vehicle Regulations (WP.29), the peak international body for vehicle standards. This policy is also important to fulfil Australia's World Trade Organisation Technical Barriers to Trade Agreement<sup>1</sup>.

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<sup>1</sup> The WTO Agreement on Technical Barriers to Trade establishes rules and procedures regarding the development, adoption, and application of voluntary product standards, mandatory technical regulations, and the procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. The aim of the Agreement is to prevent the use of technical requirements as unnecessary barriers to trade.

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Not amending the ADRs would have a negative regulatory impact, as manufacturers will incur costs for additional testing. This is important as the relatively small size of the Australian market limits the number of vehicles to which manufacturers can amortise any additional costs to meet Australian specific requirements, especially within a small segment of the Australian market itself. Additionally, these amendments make provision for Australia to meet its obligations under the Agreement concerning the Adoption of Harmonized Technical United Nations Regulations 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 United Nations Regulations (the 1958 agreement)

### 3.2.1. Effect of amending ADR 42/04 and ADR 42/05 to recognise UN R165 for the fitment of audible reverse warning devices

The Australian Government applied UN R165 on 19 January 2023, in accordance with Article 1 of the 1958 Agreement<sup>2</sup>.

Amending ADR 42/04 and ADR 42/05 to recognise UN R165 clarifies that manufacturers are able to use an approval to the technical requirements of UN R165 to demonstrate compliance with the clauses concerning audible reverse warning devices, such as reversing alarms in ADR 42/04 and ADR 42/05.

This will not affect the stringency of ADR 42/04 and ADR 42/05 and is in line with the Australian Government's obligations as a Contracting Party to the 1958 Agreement. There will be negligible change in regulatory burden.

## 4. REGULATORY IMPACT

### 4.1. Benefits and Costs

The amendments provide greater flexibility to manufacturers and allow more choice for Australian consumers.

There is no expected increase in costs to manufacturers as the amendments are minor and will not impact on current vehicle certification schemes.

### 4.2. 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.

Editorial changes and changes to correct errors are processed by the Department administering the RVS legislation. This approach is only used where the amendments do not vary the intent of the vehicle standard.

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<sup>2</sup> Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the basis of these Prescriptions of March 1958

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Proposals that are regarded as significant need to be supported by an Impact Analysis meeting the requirements of the Office of Impact Analysis (OIA) 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*.

#### 4.3. Specific Consultation Arrangements for this Amendment Instrument

In the case of this Amendment Instrument, the Department consulted on the proposed amendments through the Technical Liaison Group and the Strategic Vehicle Safety and Environment Group. These groups consist of technical representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and representative organisations of consumers and road users (particularly through the Australian Automobile Association) in early 2023, the proposed amendments were endorsed without change.

#### 4.4. Impact Analysis

The OIA has advised the Department that these amendments are exempt from the requirement for an Impact Analysis (reference no: OIA23-04721) as the proposal is unlikely to have a more than minor regulatory impact.

### 5. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

#### 5.1. Overview of the Legislative Instrument

This amendment implements amendments to ADR 42/04 and ADR 42/05. It does not affect the original intent or operation of the standard.

#### 5.2. Human Rights Implications

This amendment 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*.

#### 5.3. Conclusion

The amendments to ADR 42/04 and ADR 42/05 are compatible with human rights as they do not raise any human rights issues.