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HOUSE OF REPRESENTATIVES

ROAD VEHICLE STANDARDS BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Urban Infrastructure and Cities
the Hon Paul Fletcher MP)

Contents

ROAD VEHICLE STANDARDS BILL 2018

OUTLINE

The purpose of the Road Vehicle Standards Bill 2018 (the Bill) is to provide a modern regulatory framework for the Australian Government to regulate the importation of road vehicles into Australia, and the first provision of road vehicles in Australia.

The Bill includes measures to manage the risks associated with road vehicles and road vehicle components, and to ensure that road vehicles and certain road vehicle components provided in Australia meet certain safety, anti-theft and environmental standards. It achieves this by regulating road vehicle importation into, and the first provision of road vehicles in, Australia against objective criteria.

The Bill will also give effect to Australia's international obligations under *"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*" (1958 Agreement) and the *"Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles"* (1998 Agreement).

Why is the Bill necessary?

Governments in Australia have had a longstanding role in setting motor vehicle standards to deliver road safety and environmental outcomes. Over the past 40 years, the regulation of safety features has contributed significantly to reducing deaths and serious injuries from road accidents, and vehicle safety standards remain a key component in preventing crashes or reducing the likelihood or extent of injuries and deaths in a vehicle accident. Many of the improvements in vehicle passenger protection, such as crumple zones and airbags, have resulted from the introduction of regulations mandating minimum standards from the late 1990s and early 2000s.

Since 1989 the Australian Government has relied on the *Motor Vehicle Standards Act 1989* (the Motor Vehicle Standards Act) to control the safety, environmental and anti-theft performance of road vehicles entering the Australian market for the first time. However, since the Motor Vehicle Standards Act and its regulations were last reviewed over 17 years ago, there have been significant changes in global and domestic vehicle markets and improvements in vehicle technologies. These significant changes, combined with the rigid nature of the Motor Vehicle Standards Act, its structure based on physical compliance plates, and its relatively weak compliance framework, has resulted in the need for this Bill.

This Bill modernises and strengthens the legislative framework for the future of road vehicles. It replaces physical compliance plates as the marker of a vehicle's suitability for supply in Australia with an online, publicly searchable database – the Register of Approved Vehicles. This Bill strengthens the Government's ability to monitor and enforce compliance with vehicle standards by triggering the *Regulatory Powers (Standards Provisions) Act 2014*, providing a standardised suite of monitoring, investigation, and enforcement powers. This Bill also includes powers to issue recalls for all road vehicles and all non-compliance with National Road Vehicle Standards; streamlines road vehicle approvals by consolidating import

and supply pathways; and provides the legislative framework for revised Specialist and Enthusiast Vehicle and Registered Automotive Workshop arrangements.

Key principles

Flexible and responsive legislation for the future of road vehicles

The automotive landscape has changed dramatically in the last 30 years, with countless innovations in vehicle technology such as airbags, electronic stability control and antilock braking systems. There have been substantial advances in engine emissions control and anti-theft technologies such as on-board diagnostics and immobilisers. Today's vehicles are faster, safer, lighter, cleaner and harder to steal than ever before.

Into the future vehicles are set to become even smarter, more autonomous, and more connected to each other and to infrastructure. This Bill provides a flexible and responsive legislative framework for ensuring that Australia can access and make use of technological advancements while still meeting safety, security, and anti-theft standards expected by the Australia community.

For example, to respond to these rapid changes in the automotive landscape this Bill has been designed to be inherently flexible as a regulatory tool. Much of the technical details of the legislative arrangements will be contained in Road Vehicle Standards Rules, an instrument to be made under this Bill. This helps to achieve a balance between responsiveness to rapid changes and the need for appropriate parliamentary scrutiny.

The Bill also evolves the way Australia regulates the exact point that a car is declared compliant to Australia's national road vehicle standards through the introduction of the Register of Approved Vehicles (the RAV). The RAV will be a publicly searchable electronic database that indicates that a vehicle is suitable to be provided within Australia. The Bill prohibits the provision of a road vehicle in Australia unless that vehicle is on the RAV or a relevant exception applies.

The RAV will be publicly searchable by Vehicle Identification Number (VIN), providing consumers with an easily accessible source of information about a vehicle they are interested in potentially purchasing. Through the VIN, a potential consumer will be able to check whether a vehicle advertised is the vehicle that the VIN belongs to and the pathway through which the vehicle was provided to the Australian market - for example, by the original manufacturer or through a concessional pathway.

Clear legislation for safe, secure, and environmentally friendly vehicles

This Bill modernises and strengthens the existing regulatory framework whilst improving transparency and decision making. The Bill has been drafted to reflect modern legal drafting standards and improve clarity and readability for individuals and industry stakeholders. The Bill is also designed to make Rules ensuring that obligations on approval holders are clear from the point of applying to import and provide vehicles in Australia.

The Bill uses entry on the RAV to clarify for industry and consumers that vehicles are suitable to be sold, leased, or otherwise provided in Australia for use on a public road.

A road vehicle may be entered onto the RAV if it satisfies the requirements of an entry pathway. The Bill refers to two specified entry pathways – the type approval pathway and the concessional entry pathway – and allows for other pathways to be set out in the Rules.

The type approval pathway includes road vehicles that are fully compliant with national vehicle standards or are substantially compliant, where non-compliance is minor or inconsequential, sufficient to make the vehicle suitable for provision in Australia. Type approvals allow unrestricted volumes of vehicles of the approved type to be provided in Australia. Type approvals are currently, and will continue to be, the main pathway for road vehicles being provided to the Australian market.

The Bill further simplifies and clarifies arrangements for the importation and first provision in Australia of concessional vehicles by consolidating the pathways for import and provision into one concessional entry pathway. The concessional entry pathway applies to road vehicles not otherwise available in Australia, or subject to other special circumstances, which do not meet the national vehicle standards. Some of the features of this pathway are outlined below.

More choice of road vehicles for Australians

Australians continue to require some vehicles that are not provided through type approval pathways. These vehicles may have particular features such as being high performance, low emission, or having accessibility features; or they may be designed to perform particular specialised jobs that fully compliant vehicles are not capable of achieving and still fulfilling their intended purpose.

The Bill acknowledges that there are specialist vehicles that the Australian community requires access to and, like the Motor Vehicle Standards Act, establishes a pathway for the concessional supply of these vehicles. Vehicles permitted to be imported and supplied under concessional import arrangements are vehicles that do not or cannot meet the national road vehicle standards, but otherwise offer a benefit to the Australian community. The Bill allows the Rules to set out the eligibility criteria for this concessional pathway and allows conditions to be placed on these approvals.

A specific example of a concessional importation criteria is for specialist and enthusiast vehicles. Like the Motor Vehicle Standards Act, this Bill provides for the creation of a Specialist and Enthusiast Vehicles (SEVs) Register and the making of rules to support the keeping of the SEVs register. The Road Vehicle Standards Rules (the Rules) will implement criteria for entry on the SEVs register that better capture vehicles that are of a genuine specialist and enthusiast nature through needing to meet one of six criteria:

1. Performance – high-performance vehicles with specifications significantly superior to mainstream vehicles in Australia;
2. Environmental – vehicles that offer environmental performance significantly superior to mainstream vehicles in Australia;
3. Mobility – vehicles manufactured with special features to assist people with a disability;
4. Rarity – vehicles of which only small quantities have been produced;
5. Left-hand drive – vehicles originally manufactured as left-hand-drive, of which right-have – drive versions are not available in any other country; and
6. Campervans and motor homes – vehicles that have been originally manufactured as a campervan or motorhome.

Under the Rules, the SEVs Register will allow for a vehicle to be listed three months after release in any country if the model or variant is not already available under a type approval in Australia. In addition, where a particular model or variant is not available under a type approval in Australia, it may be eligible for entry onto the SEV Register if the vehicle specification is sufficiently different to variants that are available in full volume.

Revised Registered Automotive Workshop (RAWs) arrangements will replace the current RAWs and New Low Volume concessional schemes. Both new and used specialist and enthusiast vehicles will be eligible for importation and supply through the RAWS. The revised RAWS will reduce regulatory and compliance costs for workshop operators, and allow commercially viable supply of a wider range of vehicles. Vehicles modified by RAWs will require vehicle by vehicle inspection to ensure consumers are provided with high quality, compliant road vehicles.

The Bill also establishes non-RAV entry import approvals. These approvals are designed to facilitate the importation of road vehicles that are not intended to be used on public roads in Australia. These vehicles can be imported and provided in Australia, but will not be entered onto the RAV. This will allow the importation of vehicles that are in Australia on a temporary or permanent basis, for example, vehicles to be used in race or rally, testing and evaluation, or for public exhibition.

Continued harmonisation with international standards

The Australian Government has a long-standing policy of harmonising Australia's vehicle standards with international best practice vehicle standards. This Bill continues this policy by allowing the Minister to make National Road Vehicle Standards (commonly known as Australian Design Rules).

A number of changes have been incorporated into this power to ensure the harmonisation program not only continues as currently, but anticipates future changes to the automotive landscape. Clause 11 allows the Minister to incorporate a broad range of documents, both as in force at a particular time and as in force from time to time, when making national vehicle standards. This ensures that Australia's legislative framework is well-prepared for future developments in the international road vehicle space – particularly as international regulations begin to capture autonomous technology and intelligent transport systems.

Improved compliance and enforcement powers

A key challenge in the regulation of transport systems is maintaining high levels of community benefit, whilst minimising compliance costs on industry. This is particularly the case in the regulation of road vehicles, where there is a high level of diversity in both the types and risk profiles of different vehicles; and the size, sophistication and risk profiles of businesses that operate in this industry.

This Bill addresses this issue by delivering a modern and flexible regulatory framework, with a graduated toolkit for monitoring and enforcing compliance with the Act. A graduated enforcement toolkit enables any enforcement response to be proportionate to the risk the non-compliance presents.

Inbuilt flexibility – such as broad Rule making powers and condition setting powers – allows a more responsive and risk based approach to the approval of applications. By providing the

ability to place enforceable conditions on approvals the Bill allows the Government to address particular concerns or circumstances in an application, potentially resulting in more responsive decision making with less upfront burden on applicants. However, to back up such an approach to up front regulation requires a strong and effective monitoring, investigation, and compliance toolkit.

As part of this Bill's improved compliance and enforcement powers, the Bill triggers the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act). The Regulatory Powers Act includes a standard set of provisions to deal with monitoring, investigation and the use of civil penalties, infringement notices, enforceable undertakings and injunctions in the enforcement of legal obligations. This allows any contravention of the Bill to be addressed on a spectrum of seriousness, from either a warning or a show cause letter, to criminal prosecution, resulting in better regulatory outcomes for the community, a more level playing field for industry, and fairer outcomes for regulated entities.

The introduction of the RAV will also play a crucial role in supporting the improved compliance and enforcement powers of the Bill. From a compliance perspective, it will increase the efficiency and effectiveness of the Government's compliance monitoring efforts by, for example, providing an accurate source of data that be relied upon as a point of time when a contravention of the Bill may have occurred. The time and source of road vehicle entry onto the RAV will be recorded, which will assist in the deterrence of fraudulent behaviour.

This Bill also gives the Minister responsible for the Bill the ability to issue a recall notice for compulsory recalls of road vehicles and road vehicle components and sets the framework for voluntary recalls.

Currently, recall powers applicable to road vehicles are contained in Schedule 2 of *Competition and Consumer Act 2010* (Australian Consumer Law), however, this only provides for recalls in relation to consumer goods. To address this issue, the Bill includes recall provisions modelled on those in the Australian Consumer Law, but with a broader scope - allowing the Minister responsible for the Act to issue recall notices in relation to road vehicles and road vehicle components, including those that are not consumer goods. The Bill will allow the Minister to issue recall notices in relation to a non-compliance with any national vehicle standard.

Overview of the Bill

This Act regulates the importation and provision of road vehicles. It also regulates the provision of certain road vehicle components. Road vehicles and certain road vehicle components must comply with national road vehicle standards set by the Minister, except in limited circumstances.

An approval is required to import a road vehicle into Australia and, generally, vehicles must be entered on the Register of Approved Vehicles before being provided for the first time in Australia.

If a recall notice is issued to a person in relation to road vehicles or approved road vehicle components, due to concerns about safety or non-compliance with national road vehicle standards, the person must comply with the notice.

To ensure compliance with this Act, the Department has a range of enforcement powers to ensure the most proportionate and effective regulatory response. This Act also provides for the rules to set out matters to support the regulatory framework of this Act.

Part 1 – Introduction

This Part of the Bill defines key terms, sets out the objects of the Bill, and deals with other preliminary matters.

Part 2 – Regulation of road vehicles

This Part of the Bill sets out key aspects of the regulation of the importation of road vehicles and road vehicle components into Australia, and the first provision of road vehicles in Australia.

This Part contains provisions allowing for the creation of the Register of Approved Vehicles (RAV), an online, publically database in which road vehicles being provided for the first time in Australia must be entered (in most circumstances). This Division also sets out prohibited conduct relating to the entry of road vehicles onto the RAV.

Importantly, this Part of the Bill establishes entry on the RAV as the essential precondition to providing a road vehicle for the first time in Australia. Under the Bill, RAV entry means that the road vehicle is not prohibited from being supplied for the first time in Australia, including by way of sale, exchange, lease, gift, loan, hire, hire-purchase agreement, or by providing access to the vehicle. Part 2 of the Bill sets out offence and civil penalty provisions relating to circumstances where a road vehicle is provided for the first time in Australia without a RAV entry.

Under this Part, provisions regulate the modification of a road vehicle after RAV entry and prior to its first provision in Australia to a consumer. Modification of a road vehicle is allowed after RAV entry and prior to provision, provided the modification is consistent with requirements relevant to the applicable RAV entry pathway.

Finally, under this Part a person commits an offence, or is liable for a civil penalty, if they fail to comply with a condition of an approval granted under the rules. Further provisions are made for regulating the information provided to the Department, creating offences and civil penalties in relation to the provision of false or misleading statements or documents. It also establishes the record keeping obligations of approval holders and sets out that executive officers of a body corporate may personally be criminally liable in some circumstances.

Part 3 – Recalls of road vehicles or approved road vehicle components

This Part of the Bill covers the recall of road vehicles and approved road vehicle components. It requires the rules to provide for or in relation to such recalls. The recall provisions within the Bill (and those of the proposed rules) are based on those found in the Australian Consumer Law. However, the Bill enables the rules to provide for recalls for both passenger and commercial road vehicles.

Part 3 contains offence and civil penalty provisions, including for failing to comply with recall notices and notification requirements for voluntary or mandatory recalls. Further, this Part also gives the Minister and senior Departmental officers the power to issue disclosure notices in relation to vehicle safety issues or probable failure to comply with applicable national vehicle standards. A disclosure notice requires a person to provide information or documents, or appear to give evidence or produce documents.

Part 3 is not intended to exclude or limit the operation of any other law of the Commonwealth (such as the *Competition and Consumer Act 2010*), or any law of a State or Territory.

Part 4 – Compliance and enforcement

This Part contains the compliance and enforcement measures. The Bill provides a graduated enforcement toolkit that includes criminal offences, civil penalties, injunctions, enforceable undertakings, and infringement notices.

Part 4 provides for the application of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) in relation to relevant provisions of the Bill. The RPA is an Act that sets out standard provisions for monitoring and investigation powers; and civil penalty, infringement notice, enforceable undertaking, or injunction schemes.

In particular:

- Division 1 – provides a simplified outline of Part 4;
- Division 2 - provides for the appointment of inspectors;
- Division 3 - allows, amongst other things, for monitoring in relation to provisions of the Act (and certain other provisions) to be conducted by inspectors, consistent with powers under Part 2 of the Regulatory Powers Act. It modifies Part 2 of the Regulatory Powers Act by providing additional powers - the power to collect samples in certain circumstances and to take them away and test them. This is consistent with existing powers under the current Motor Vehicle Standards Act;
- Division 4 - allows for investigations to be conducted in relation to relevant offences and civil penalty provisions by inspectors, consistent with powers under Part 3 of the Regulatory Powers Act. It modifies Part 3 of the Regulatory Powers Act by providing additional powers: the power to collect samples in certain circumstances and to take them away and test them. This is consistent with existing powers under the Motor Vehicle Standards Act;
- Division 5 - triggers the civil penalty, infringement notice, enforceable undertaking, and injunction powers under the Regulatory Powers Act in relation to relevant provisions of the Bill; and
- Division 6 – consists of operational clauses relating to the Bill and the Regulatory Powers Act.

Part 5 – Administration

This Part of the Bill deals with administrative matters such as empowering the Minister and Secretary to arrange for the use of computer programs to make decisions, cost recovery provisions, setting out the powers or functions that can be delegated by the Minister and Secretary under the Bill, and allowing certain information to be shared with various entities, to ensure the Bill operates efficiently and effectively.

Part 6 – Miscellaneous

This part includes various miscellaneous provisions including those indicating how the Bill is to interact with other laws, most notably the *Customs Act 1901* and the Australian Consumer Law, and a provision empowering the Minister to make rules.

Rationale for certain Bill provisions

Strict Liability Offences

Strict liability offences are used sparingly in the Bill. The only occasion where they are utilised is in Part 3 of the Bill, which contains offences relating to the recall of road vehicles and approved road vehicle components. These offences have been modelled on the offences contained in the Australian Consumer Law – which are also strict liability.

When strict liability applies to an offence, the prosecution is only required to prove the physical elements of an offence. They are not required to prove fault elements, in order for the defendant to be found guilty. Strict liability is used in circumstances where there is public interest in ensuring that regulatory schemes are observed and it can reasonably be expected that the person was aware of their duties and obligations.

Strict liability is necessary for offences under Part 3 of the Bill for a number of reasons. As noted in the Attorney-General's Department '*Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers'*, strict liability may be necessary to ensure the integrity of a regulatory regime. Removing strict liability from the recalls offences would be a substantial departure from the established framework of the Australian Consumer Law and would weaken the Government's current ability to enforce recalls provisions. Inconsistent recalls legislation would also complicate recall decisions within Government.

Currently compliance with existing Australian Consumer Law recalls provisions is high, with there being only one proposed compulsory recall notice having been issued for road vehicles to date. Applying strict liability in the Bill in the same manner as the Australian Consumer Law will ensure that commercial vehicles are captured by the already effective legal standard established by the Australian Consumer Law. Removing strict liability would risk a lower level of compliance for commercial vehicles with suppliers, knowing they face a prosecution that is substantially easier to defend.

Including recall provisions in the Road Vehicle Standards Bill is designed to:
1. give the Minister responsible for road vehicles the power to issue recalls;
2. ensure adequate coverage for commercial vehicles and vehicles supplied through Registered Automotive Workshops; and
3. clarify that any serious non-compliance with Australian Design Rules can be the basis for a compulsory recall.

Modelling the provisions on the Australian Consumer Law, but extending their scope to commercial vehicles and all ADRs, ensures that the same recall enforcement options are available on all road vehicles to the Minister responsible for road vehicles. This means that consumers are given equivalent protections to those under the Australian Consumer Law, and that this Bill would confer on the Government equivalent enforcement abilities.

There are also legitimate grounds for penalising non-compliance when the person should be, or is, aware of their obligations, especially when consumer safety is put at risk through this non-compliance. Persons who operate in this industry are already aware of the possibility of a compulsory recall notice being issued, strict liability thresholds applying to such offences and the current penalties for non-compliance under the Australian Consumer Law.

To ensure that the strict liability offences in the Bill only target appropriate conduct, the defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the Criminal Code). This means that if a person has considered the relevant facts and is under mistaken, but reasonable, belief about those facts, he or she is not liable for an offence.

Reversing the evidential burden

This Bill contains certain provisions that place an evidential burden on the defendant, rather than the prosecution:

- Clause 16: entry of non-compliant vehicle onto the RAV;
- Clause 24: providing a road vehicle for the first time in Australia that is not on the RAV;
- Clause 32: false or misleading information; and
- Clause 43: Compliance with disclosure notices.

Reversing the evidential burden means that a defendant, rather than the prosecution, is responsible for presenting evidence to a court about a particular fact. It is then up to the prosecution to establish that this evidence is incorrect or does not apply. This can be justified in circumstances where the facts in questions are peculiarly within the knowledge of the defendant and it could be difficult or expensive for the prosecution to provide evidence, but the evidence is readily and cheaply available for the defendant.

Importantly, these provisions do not capture the general public. Clauses 16, 24, and 32 only apply to entities who have voluntarily applied to be regulated by the Bill. Clause 43 only applies to entities involved in the supply of road vehicles in Australia and subject to a disclosure notice that they have not complied with.

The clauses subject to reversal of evidential burden have been carefully selected as containing elements that would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter; or where the matter in question is peculiarly within the knowledge of the defendant. The elements selected are elements where a defendant should be able to easily and inexpensively present evidence suggesting a reasonable possibility of existence or nonexistence of the relevant matters.

For example subclause 16(3) provides a defence for entering a non-compliant vehicle onto the RAV if the person who entered it can provide evidence that it was only non-compliant because of an approved component that they used. This evidence would be easily available to the defendant and it would be relatively inexpensive for them to present this evidence.

Abrogation of the privilege against self-incrimination

The privilege against self-incrimination is an important common law and international law principle that provides an individual with the right not to answer questions or produce materials which may incriminate them of a criminal offence or expose them to a civil penalty.

However, this privilege may be overridden in circumstances where its use can seriously undermine the effectiveness of a regulatory scheme and prevent the collection of evidence.

While in some cases it may be feasible to obtain information by other means (for example, through a warrant), the additional time taken to obtain such information may significantly increase the risk to public safety. If the privilege is not abrogated, the Commonwealth's ability to manage risks through a responsive, evidence-led approach would be significantly reduced.

Clause 42 provides that a person is not excused from providing information, evidence or a document that might tend to incriminate them or expose them to a penalty if that provision is required by a disclosure notice. However, the information, evidence or document will not be admissible in evidence against an individual in civil or criminal proceedings unless the proceedings relate to the following:

- clause 43 of the Bill (compliance with disclosure notices)
- clause 44 of the Bill (false or misleading information in response to a disclosure notice);
- section 137.1 of the Criminal Code (knowingly giving false or misleading information to a Commonwealth entity etc.); or
- section 137.2 of the Criminal Code (knowingly giving a false or misleading document in compliance or purported compliance with a Commonwealth law).

The effect of clause 42 is to ensure that information, evidence or documents compelled under a disclosure notice cannot generally be used in civil or criminal proceedings against an individual. However, paragraph 42(2)(d) ensures that, if a person knowingly provides false information in response to a disclosure notice, it is possible to use the information, evidence or document that they provided in order to prosecute them for doing so. Without the exceptions set out in paragraph 42(2)(d) it would be difficult, if not impossible, to prosecute a person for providing false information in response to a declaration notice. Removing these references would remove the incentive to provide truthful information and would incentivise providing false information – undermining the effectiveness of recall investigations.

Extended Geographical Jurisdiction

In providing for the regulation of road vehicles and road vehicle components, and setting national road vehicle standards, the Bill introduces a number of offences to which section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies. Category D jurisdiction means that an offence will apply whether or not the conduct, or the result of the conduct, occurs in Australia and will extend to conduct by any person outside Australia, even where there is no equivalent offence in the law of the local jurisdiction.

The majority of road vehicles are manufactured outside Australia. To balance the need to ensure Australians are supplied with vehicles that meet the national vehicle standards and the reality of the automotive industry as a global industry, extended jurisdiction is required for many of the offences in this Bill.

The offences to which this category of extended geographical jurisdiction is applied under the Bill are:

- Entry of non-compliant vehicles on RAW – subclauses 16(1) and (2);

- Information entered on RAV dishonestly or improperly - subclauses 17(1) and (2);
- Incorrect information entered on RAV - subclauses 18(1) and (2);
- Misrepresentation that a road vehicle component is an approved road vehicle component - subclause 27(1);
- Breach of condition of approval – general - subclauses 28(1) and (2);
- Breach of obligation to provide records after approval cease to be in force - subclauses 30(1) and (2);
- False or misleading information – subclause 32(1); and
- Personal liability of an executive officer of a body corporate – subclause 33(1)

It is necessary for extended geographical jurisdiction to apply for the following reasons:

- Vehicles can be entered onto the RAV from outside Australia. Without extended jurisdiction, this Bill could only regulate RAV entries that occurred within Australia, which would ultimately undermine the integrity of the RAV.
- Due to the manufacturing of road vehicles predominately occurring outside Australia, extended geographical jurisdiction is necessary to effectively regulate road vehicle components.
- Approval holders may be located outside of Australia and hence, without extended jurisdiction, any conditions would be unenforceable.
- As bodies corporate that operate under this Bill could be located outside of Australia, it is essential to extended geographical jurisdiction to ensure executive officers can be personally liable.

Further reasons why extended geographical jurisdiction is necessary for the abovementioned provisions are set out in the notes for each specific clause of the Bill.

Regulatory Powers (Standard Provisions) Act 2014

The Bill will provide for an enhanced compliance and regulatory framework by triggering all the Parts of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act). This includes monitoring and investigation powers and enforcement provisions such as civil penalties, infringement notices, enforceable undertakings and injunctions. This triggering of the Regulatory Powers Act provides for a framework of standard regulatory powers exercised by agencies across the Commonwealth.

Civil penalties will apply to more contraventions and the amounts of the penalties will, in many instances, increase to be more commensurate with the nature of the contravention. Enforceable undertakings and infringement notices are both new enforcement tools.

Consultation about provisions of the Bill

The Attorney-General's Department has been consulted on all relevant provisions of the Bill.

Financial impact statement

No significant direct or indirect financial impact on the Commonwealth will arise from the introduction of this Bill.

Regulation impact statement

See 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 Bill 2018

This Bill 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 Bill/Legislative Instrument

The *Road Vehicle Standards Bill* (the Bill) 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*.

The purpose of the Bill is to provide the primary legislative means for the Australian Government to ensure that road vehicles imported into Australia, or introduced in transport in Australia for the first time are safe, environmentally sound have appropriate anti-theft and energy conservation features. To achieve this purpose, the Bill sets nationally consistent standards that road vehicles must comply with prior to being used in transport in Australia and prohibits the importation of road vehicles that do not comply with national standards except in limited circumstances.

The Bill is intended to replace the Motor Vehicle Standards Act with a modern regulatory toolkit, with a focus on regulating road vehicle safety, anti-theft and environmental performance. The Bill is designed to update the legislation so that Australia's road vehicle fleet continues to offer world-leading standards in community and environmental safety. The Bill provides an effective and adaptive range of measures to manage the health and safety risk posed by road vehicles. The Bill enables the Government to respond to non-compliance with an enforcement response that is proportionate to the risk presented.

Human rights implications

This Bill engages the following rights:

- Right to life and right to health
- Right to a fair trial and fair hearing rights
- Right to the presumption of innocence
- Right of privacy and reputation
- Right to minimum guarantees in criminal proceedings

Right to life and right to health (vehicle safety and environmental performance)

Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction. The United Nations Committee General Comment 6 (1982) states: '…the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures.'

Article 12 (1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) contains the right to health – that is, the right to the enjoyment of the highest attainable standard of physical and human health. The ICESCR has stated that the right to health extends to the underlying determinants of health such as a healthy environment.

A key objective of the Bill is to promote the right to life and the right to health (and a healthy environment) by ensuring that road vehicles imported into Australia, or introduced for use in transport in Australia for the first time are safe, environmentally sound and have appropriate energy conservation features. Although no road vehicle can be unconditionally safe, the Bill promotes the right to life and the right to health by setting nationally consistent standards that road vehicles must comply with prior to being used in transport in Australia and prohibiting the importation of road vehicles that do not comply with national standards except in limited circumstances.

Right to a fair trial and fair hearing rights (infringement notices)

The Bill engages the right to a fair and public hearing through the creation of an infringement notice scheme. An infringement notice can be issued by an infringement officer for contraventions of a strict liability offence provision or a civil penalty provision that is enforceable under the Bill. The right of a person to a fair and public hearing by a competent, independent and impartial tribunal is preserved by the Bill as it allows a person to elect to have the matter heard by a relevant court rather than pay the amount specified in the infringement notice. This right will be stated on an infringement notice, ensuring that a person issued with an infringement notice is aware of their right to have the matter heard by a relevant court. It should also be noted that payment of the infringement is not an admission or finding of guilt or liability against the person issued with an infringement notice.

Right to a fair trial and fair hearing rights (civil penalties)

The Parliamentary Joint Committee on Human Rights Practice Note 2 provides that civil penalty provisions may engage criminal process rights under Articles 14 and 15 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. When a provision imposes a civil penalty, an assessment is required as to whether it amounts to a 'criminal' penalty for the purposes of ICCPR.

The civil penalty provisions in the Bill should not be considered 'criminal' for the purposes of human rights law. The majority of provisions are aimed at objectives that are regulatory or disciplinary in nature. For instance, most provisions do not apply to the general public, but to a sector or class of people who should reasonably be aware of their obligations under the Bill (e.g. manufacturers of road vehicles for use in transport in Australia), and should be

considered ‘disciplinary’ rather than ‘criminal’. In many cases, the civil penalty provisions in the Bill are provided as disciplinary alternatives to the punitive or deterrent criminal offences.

The severity of the civil penalties should be considered low when compared to criminal penalties; they are all pecuniary penalties (rather than a more severe punishment like imprisonment), there is no sanction of imprisonment for non-payment of penalties and the maximum amount of each civil penalty is the same as the corresponding criminal offence (except where applied to corporations). Additionally there is no possibility of a pecuniary penalty of some magnitude which may impact on other rights such as the right to privacy.

Civil penalties add to the flexibility of regulatory law by allowing for the punishment of non-compliance without the consequences associated with criminal liability. They provide an alternative to the unnecessary extension of the criminal law into regulatory areas. Civil penalties will also enable an effective disciplinary approach to dealing with non-compliance by corporations. Additionally, the normal principles of administrative law apply to the exercise of powers in this Bill, such as reasonableness, proportionality and natural justice. However, where certain civil penalty provisions could limit human rights – such as by reversing the onus of proof – the provisions are reasonable, proportionate and adapted to achieve a legitimate objective.

Right to the presumption of innocence (strict liability offences)

The Bill may limit the right to be presumed innocent through imposing strict liability offences. Article 14(2) of the ICCPR states that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The right to presumption of innocence is also a fundamental common law principle.

Strict liability offences are consistent with the presumption of innocence if the provisions pursue a legitimate objective and are reasonable, necessary and proportionate to achieving that objective. The strict liability offences in the Bill have been used when there is a strong public interest in managing vehicle standards appropriately and preventing serious harm to human life, human health and the environment. The application of strict liability in the Bill and the offences to which it relates have been developed in line with the Senate Standing Committee for the Scrutiny of Bills *Sixth Report of 2002 on Application of Absolute and Strict Liability Offences in Commonwealth Legislation* and the Australian Government *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Right of privacy and reputation (monitoring and investigation powers)

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. The limitations must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

The compliance and enforcement powers in the Bill, drawn from the Regulatory Powers Act, provide for powers to enter premises, which enables a number of monitoring and investigation powers to be exercised on those premises. These powers include the ability to search the premises, inspect documents or things on the premises, ask questions and take extracts or

copies of documents. These powers are necessary for the legitimate objective of protecting the right to life and the right to health by ensuring that relevant information required to assess compliance with the Bill is accessible and available to Vehicle Safety Standards Inspectors when required. Vehicle Safety Standards Inspectors need access to this information in order to properly assess the level of safety risk associated with the vehicles and then to be able to manage any vehicle risks appropriately. Without these powers, Vehicle Safety Standards Inspectors would not have sufficient information to effectively assess or manage vehicle safety risks. However, these clauses may operate to limit the right to privacy as they enable entry to premises, searching of premises and the copying and sampling of information.

A number of protections are in place to ensure that any interference with the right to privacy is lawful and to protect this right including obligations on Vehicle Safety Standards Inspectors. These powers can only be exercised in particular circumstances and the powers reflect the harm that may be caused by non-compliance with vehicle safety standards. Entry to premises is only allowed with consent or a warrant. For entry under consent, this includes a requirement that the consent of the occupier is given voluntarily. A warrant to enter premises may only be granted if there are reasonable grounds for investigating or monitoring. Vehicle Safety Standards Inspectors entering premises under a warrant must provide an announcement before entry, give details of the warrant to the occupier and provide identification to the occupier. These threshold tests are designed to ensure that any interference with the right to privacy is lawful and is only to ensure compliance with the Act for the purpose of managing vehicle safety and environmental risks.

Right of privacy and reputation (increasing protections)

The prohibition on interference with privacy and attacks on reputation prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks. The Bill promotes the right of privacy and reputation by requiring Vehicle Safety Standard Inspectors to either obtain a warrant or consent to take and retain samples of any goods or substance used in the manufacture or testing of a road vehicle or a road vehicle component.

Right to minimum guarantees in criminal proceedings (right to be free from self-incrimination)

Minimum guarantees in criminal proceedings are contained in article 14(3), (5), (6) and (7) of the ICCPR. Minimum guarantees in criminal proceedings include the right to be free from self-incrimination. The privilege against self-incrimination has long been recognised by the common law and it applies unless expressly abrogated by statute. As part of the privilege, an accused may choose not to give evidence at trial, and no adverse inference is to be taken from the accused's refusal. Self-incriminating evidence that is found by the court to have been unfairly obtained, such as a confession made under duress, must be excluded at trial.

It is, however, accepted that there are three main circumstances in which privilege against self-incrimination does not apply:

- Where it is alleged that a person has given false or misleading information;
- Where a person voluntarily provides information or documents; and
- To bodies corporate.

Clause 41 of the Bill establishes the circumstances in which a person is and is not excused from self-incrimination. Within clause 41, individuals are protected from self-incrimination unless the information or evidence given or produced in a document is false or misleading or when a person has not complied with a disclosure notice. In relation to disclosure notices, it is considered appropriate to override the privilege as failure to comply could seriously undermine the effectiveness of the regulatory scheme. It is important to note that this exemption from the privilege is very restricted and only applies in limited circumstances.

The Bill provides powers for authorised officers to ask questions and seek production of documents in certain situations as part of monitoring and investigation. Through the link to the Regulatory Powers Act, these powers make it an offence to fail to answer the questions of an authorised officer. While these powers are expressed to be subject only to very limited defences and exceptions, the Bill relies on the common law presumption against abrogation of core rights to preserve the privilege against self-incrimination and legal professional privilege. Additionally, the Regulatory Powers Act makes certain that the privilege against self-incrimination and legal professional privilege have not been abrogated by this Bill. Essentially, the Bill replaces the implicit provisions in the *Motor Vehicle Standards Act 1989* with the explicit provisions in the Regulatory Powers Act promoting the right to minimum guarantees in criminal proceedings. These protections guarantee the fair trial rights protected in articles 14(3)(d) and (g) of the ICCPR by limiting the operation of the questioning powers provided by the Bill.

Conclusion

The Bill 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.

Minister for Urban Infrastructure and Cities, the Hon Paul Fletcher MP

NOTES ON CLAUSES

Part 1 – Introduction

Division 1 – Preliminary

Clause 1: Short Title

1. Clause 1 provides that the Bill, when enacted, may be cited as the *Road Vehicle Standards Act 2018*.

Clause 2: Commencement

2. This clause provides for the commencement of the Bill. The effect of items within the table in subclause 2(1) is to enable different parts of the Bill to commence at different times. Each provision of the Bill specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 in the table.
3. There are two particular points in time in which clauses of the Bill commence – either the day after the Bill receives Royal Assent or the day after the end of the period of 12 months when the Bill receives Royal Assent. This means that the Bill will operate it its full form 12 months and 1 day from commencement.
4. The commencement table gives effect to the intention to provide 12 months to industry and states and territories before the Bill commences substantively. This period is expected to be used to provide time for business and state and territory registration authorities to become familiar with the Bill and the overall reforms.
5. Some clauses of this Bill need to commence the day after Royal Assent to enable the Government to make necessary arrangements for full commencement. For example, Rulemaking powers are turned on to ensure Rules can be made before full commencement.

Division 2 – Objects of this Act

Clause 3: Objects of this Act

6. Clause 3 sets out the objects of the Bill. These are explained in detail in the outline of this Explanatory Memorandum.

Division 3 – Simplified outline of this Act

Clause 4: Simplified outline of this Act

7. It should be noted that, while simplified outlines are included to assist readers to understand the substantive provisions of legislation, the outlines are not intended to be comprehensive. Readers should rely on the substantive provisions that follow the simplified outlines in each Part of the Bill.
8. Clause 4 provides an overview of the Bill, whilst outlining new concepts that are being introduced under the Bill.

Division 4 – Definitions

Clause 5: Definitions

9. Clause 5 provides definitions for the Bill. Notes are provided on the key definitions under the Bill.
10. **Cost recovery charge** - This definition sets out that cost-recovery charge means either a fee as prescribed by: the Rules; a Charge imposed by either the *Road Vehicle Standards Charges (Imposition— Customs) Act 2018*, the *Road Vehicle Standards Charges (Imposition— Excise) Act 2018* or the *Road Vehicle Standards Charges (Imposition— General) Act 2018*; or, a late payment fee relating to a fee made under the Rules or charge made the charging Bills. This is intended to allow any charging point within this Bill and its Rules to be set as either a fee or a charge, depending on the most suitable cost-recovery arrangement for that activity.
11. **Executive officer** – This is a broad definition, which encompasses persons who are concerned or take part in the management of the company, regardless of their organisational title. A broad definition of this term is necessary as wide range of people manage or control a body corporate have obligations under the Bill.
12. **Import** – this definition should be read in the context of importation of a vehicle.
13. **Manufacture** – this definition includes the modification of a vehicle and/or assembly of a vehicle.
14. **Motor vehicle** – this definition includes a vehicle that uses or designed to use one or more than one power, of volatile spirit, oil, gas, electricity or any other power as a principal means of propulsion, except for human or animal power.
15. **National road vehicle standard** – this term relates to a legislative instrument that determines standards for road vehicles or road vehicle components. National road vehicle standards are commonly known as the 'Australian Design Rules' or "ADRs". This definition is further covered under clause 11 of this Bill.
16. **Premises** – this definition references the definition of premises in the Regulatory Powers Act, which includes a structure, land or building. This broad definition ensures that powers provided in the Bill are able to be exercised in a wide range of locations in order to manage any safety, environmental and anti-theft risks.
17. **Provide** – The term "provide", when used in relation to a road vehicle, is defined very broadly and includes not only the sale, exchange, gift, lease, loan, hire or hire-purchase of the vehicle, but also the provision of access to it. In some circumstances, 'provision' may not involve the physical exchange of a vehicle.
18. **Public Road** – means a road open to the public for the passage of vehicles. For the purposes of this Bill, this excludes a footpath, a bikeway or bicycle path. This is an important definition under the Bill, as it not intended the Bill regulate vehicles that would use a footpath, bikeway or bicycle path. Without limiting this definition, it would unduly expand the scope of vehicles intended to be regulated in accordance with the objects of the Bill.
19. **Register of Approved Vehicles (RAV)** – this is an online, publically accessible database in which information in relation to certain road vehicles will be entered. This definition is further covered under clause 13 of this Bill.

Clause 6: Meaning of a Road Vehicle

20. The primary objects of regulation under this Bill are road vehicles. The definition should be read broadly, and includes road motor vehicles such as cars, trucks and buses.

The definition also extends to a road vehicle that is sufficiently formed, but have not been fully completed, or one that is in a kit, which has most of the parts, and can be formed into a single vehicle, but has not yet been assembled.

21. Paragraph 6(1)(a) sets out the test as to whether a road vehicle is designed solely or principally for use on public roads is an objective test. It is not dependant on the designer's subjective intention. Rather, as set out in subclause 6(3), regard is to be had to the physical and operational features that are indicative of a road vehicle. Operational features include the programming of electronic systems in a vehicle or relevant to the operation of the vehicle.
22. Subclause 6(2) provides that if a person holds a road vehicle type approval for a particular type of road vehicle and it is not a road vehicle covered by subclause 6(1), then once the person enters, or authorises the entry of the vehicle of that type on the RAV, then it becomes a road vehicle at the time the vehicle is entered onto the RAV. This is intended to allow for manufacturers of motor vehicles that may not be road vehicles under the definition at subclause 6(1) to be regulated by the Act, if they so choose and are capable of holding a type approval.
23. A road vehicle referred to in paragraph 6(1)(b) includes, but is not limited to, caravans, light and heavy trailers, plant and machinery and vehicles designed to be towed by a road vehicle that also have their own automotive power.
24. Subclause 6(5) allows the Secretary to determine, by legislative instrument whether a class of vehicles is or is not a road vehicle for the purposes of this Bill. This clause allows the Government to be able to limit or expand the definition of road vehicle. This is necessary to ensure that the Act is able to capture future road vehicles that may otherwise fall outside the definition so that the Bill can provide certainty for the future or to carve out certain vehicles that may have accidently been captured by the broadness of the definition of road vehicle. As the automotive industry is continuously changing, this power to make determinations is necessary to provide clarity whether new vehicles should be regulated by this Bill or not. Without such a power, innovations in the automotive industry could result in the Bill not being as effective as in regulating vehicles as it is intended to be, potentially compromising community safety. The Secretary would be expected to exercise this power in a manner consistent with achieving the objects of the Bill.
25. Subclause 6(6) allows the Secretary to, by notifiable instrument, determine that a specific vehicle is or is not a road vehicle. This allows the Secretary to make definitive decisions about individual vehicles in order to flexibly respond to the rapidly changing automotive landscape. The Secretary would be expected to exercise this power in a manner consistent with achieving the objects of the Bill. These determinations are notifiable but not legislative. Making these instruments notifiable gives the public visibility of these administrative decisions, providing transparency in how road vehicles may be determined. Transparency in the case of road vehicle decisions is important, given they are the central item of regulation in this Bill.
26. Subclauses 6(7) and 6(8) allows instruments under subclauses 6(5) and 6(6) to incorporate matters contained in other instruments or writing as in force "from time to time" or at a particular point in time, despite subsection 14(2) of the *Legislation Act 2003*.
27. The ability to adopt a broad range of documents in determinations is vital to the flexibility and adaptability in the way Australia responds to vehicles where it is unclear whether they are road vehicles or not. Issues and inconsistencies relating to road vehicle definitions and distinctions are experienced in many jurisdictions, both at a domestic and international level. This means that there are many high quality standards that can

potentially be drawn on to improve Australia's regulation outcomes, while ensuring a level of harmonisation with international or domestic standards. The ability to adopt documents in force from time to time ensures that, in appropriate circumstances, these determinations can adopt, for example, industry standards. This ensures that determinations will keep step with industry, which often moves to more effective standards before legislative change. These instruments are subject to parliamentary scrutiny through disallowance.

Clause 7: Meaning of road vehicle component

28. This Bill regulates approved road vehicle components that have a road vehicle component type approval.
29. It is not intended that all components that may be used in or on a road vehicle will be regulated by this Bill – regulation of components is on an opt-in basis.
30. Further, this power is not for the purpose of regulating aftermarket spare parts. It is intended only for approval of components that will be used in the original manufacture of a road vehicle. This allows "reuse" of approvals for commonly used componentry across different models or variants of vehicles, such as axle assemblies or braking control systems for heavy trailers.
31. In relation to the meaning of road vehicle component, a component must be used in the manufacture of a road vehicle so as to form part of the vehicle and can include a number of components that have been assembled to form a larger component (such as a bus chassis). It is not intended that a component would be approved if it is intended for general sale directly to consumers.
32. As with subclause 6(4), subclause 7(3) provides that the Secretary may, by legislative instrument determine a class of components are or are not a road vehicle component. Similarly, subclause 7(4) allows the Secretary may, by notifiable instrument determine that a specified component is or is not a road vehicle component. This is to ensure that the Bill does not regulate components that are outside the objects of the Bill.
33. As with subclause 6(7) and 6(8), Subclauses 7(6) and 7(7) provide for the incorporation of other instruments as in force at a particular time or as in force from time to time, despite section 14(2) of the *Legislation Act 2003*. This is to allow the Secretary to incorporate other standards in determinations about road vehicle components or harmonise with international standards consistent with the objects of the Bill.

Division 5 - Miscellaneous

Clause 8: Act to Bind Crown

34. Clause 8 provides that the Bill will bind the Crown in each of its capacities. This means that the Commonwealth and state and territory governments will be bound to comply with the provisions of the Act.

Clause 9: Crown not liable to prosecution

35. Clause 9 provides that the Bill will not make the Crown liable to be prosecuted for an offence.

Clause 10: Extraterritorial application

36. Clause 10 provides that this Bill will extend to acts, omissions, matters and things outside the Australia. This ensures that the Commonwealth can regulate persons under this Bill if they are located outside Australia. For example, where a type approval holder is subject to conditions but is located outside of Australia. This provision ensures that the Bill can regulate any acts, omissions, matters and things that the type approval holder does relevant to the approval.
37. Extraterritorial application is necessary for the operation of this Bill due to the majority of vehicle manufacturing occurring overseas. Furthermore, approval holders under this Bill can be located outside of Australia. Without exterritorial application, the Bill would not be effective in regulating and ensuring the safety, security and environmental standards of Australia's vehicle fleet.

Part 2 – Regulation of road vehicles and road vehicle components

Division 1 – Simplified outline of this Part

Clause 11: Simplified outline of this Part

38. While simplified outlines are included to assist readers understand the substantive provisions, the outlines are not intended to be comprehensive. Readers should rely on the substantive provisions that follow the simplified outlines in each Part of the Bill.
39. This outline provides an overview of Part 2 of the Bill. This Part provides the Minister the power to determine road vehicle standards and establishes the Register of Approved Vehicles and Register of Specialist and Enthusiast Vehicles.
40. This Part also outlines the offences and civil penalty provisions relating to the regulation of the importation, providing of and modification of road vehicles. Further, this Part establishes the offence and civil penalty provisions that regulate approved road vehicle components.
41. This Part also provides for the Minister to make Rules that support the regulatory framework.

Division 2 – National road vehicle standards

Clause 12: Minister may determine national road vehicle standards

42. Subclause 12(1) empowers the Minister to make standards for road vehicles and road vehicle components by legislative instrument. In accordance with the *Legislation Act 2003*, road vehicle standards will be registered on the Federal Register of Legislation and laid before each House of the Parliament within six sitting days of their registration. They will be subject to disallowance by either House.
43. Subclause 12(2) permits road vehicles standards to apply, adopt or incorporate any matter contained in an instrument or other writing. This can be done on both a time to time basis, or on a particular point in time basis.
44. Standards made under this clause are generally implementing international agreements to which Australia is a party. By ensuring that standards made under this clause can incorporate instruments or writing both in force at a particular time and in force from time to time allows Australia to give effect to, and adopt standards generated under,

international agreements in an efficient manner. It facilitates increased harmonisation with international standards, consistent with the objects of the Bill.

45. The purpose of subclause 12(2) is to provide the Minister with the scope to incorporate by reference to the technical standard relevant provisions or matters from other instruments in force from time to time. The benefit of incorporation by reference is that incorporated document (which could be lengthy) is taken to be part of the legislative instrument without having to replicate its terms in the text of the legislative instrument. The appropriateness of incorporating particular provisions or matters by reference is something that the Government would be expected to consult about when preparing the technical standard, in accordance with Part 3 of the *Legislation Act 2003*.
46. Subclause 12(4) of this provision states that subclause 12(2) has effect despite subsection 14(2) of the *Legislation Act 2003*.
47. Allowing the adoption of a variety of documents and standards into Australia's national vehicle standards, as both in force at a particular time and in force from time to time, ensures that Australia can respond to innovations and improvements in the complex global regulatory environment of road vehicles efficiently and effectively, ensuring vehicles imported and supplied in Australia are safe, efficient, and secure.
48. The documents incorporated into these legislative instruments are generally technical standards developed and agreed to by the United Nations that are adopted into Australian law, consistent with Australia's obligations under the 1958 Agreement and 1998 Agreement. UN standards for motor vehicles are publically available and, where appropriate, the text of the standard will be included in the legislative instrument made under clause 11 of the Bill. If standards were being adopted as in force from time to time, this would be consistent with regulation agreed at an international level. It should be noted that UN standards can incorporate, by reference, International Standards Organisation standards or other similar written material. This is the main reason why the drafting is as broad as it is.
49. International Standards Organisation documents and Australian Standards documents are agreed standards that are available to the public, but generally not free to access. These are usually government and industry agreed standards, but cannot be incorporated into Australian law due to intellectual property rights applying to the standard. While not freely available, they are readily accessible to the entities that need to comply with them, and ensure a standardised approach to compliance with motor vehicle standards, meeting the objectives of the Act. This is consistent with the current approach to road vehicle regulation in Australia.
50. Other standards that have been adopted or pointed to in national vehicle standards include the standards of other nations, including the United States of America, Japan, and the European Union. These standards are generally publically available.
51. While the drafting could be narrowed to just these entities, the ability to adopt other public documents outside of these sources is vital to the flexibility and adaptability in the way Australia chooses to adapt to shifts in the automotive landscape and respond to disruptive technologies. This is particularly the case if Australia chooses to take a leading role in the regulation of motor vehicles ahead of these organisations; in situations where UN standards, ISO standards, or Australian Standards Organisation standards do not meet the unique requirements of Australia; where the UN might choose to adopt standards or documents outside ISO standards; or, where documents are incorporated as "stop-gap" measures until international standards are agreed.

Clause 13: Rules

52. This clause requires the Rules to provide for or in relation to the testing and inspecting of road vehicles and road vehicle components for compliance with national road vehicle standards.
53. The Rules will also be able to provide for advisory notices stating that a thing is not a road vehicle. These notices are intended to enable the Minister or Secretary, in the administration of this Bill, to provide advice to an applicant that the vehicle in question is or is not a road vehicle, to assist the applicant to make a decision about whether, for example, to apply for an import approval.

Division 3 – The Register of Approved Vehicles

Clause 14: Register of Approved Vehicles

54. The Bill requires the establishment of the Register of Approved Vehicles (RAV). Road vehicles that are suitable for provision for the first time in Australia are recorded on this register. It is intended that certain information contained in the RAV will be publicly searchable by Vehicle Identification Numbers (VIN). The RAV is also intended to be used by states and territories to assist in registering vehicles for road use.
55. The Secretary must ensure that the RAV is kept. The Secretary can meet this obligation by contracting with another party to provide the RAV (subclause 14(1)). The RAV will be maintained by electronic means (subclause 14(2)) and may be maintained in conjunction with another register or database that relates to motor vehicles (subclause 14(3)). It is intended that the database could be operated in practice by a third party.
56. The Register of Approved Vehicles is a Commonwealth record for the purposes of the *Archives Act 1983*.

Clause 15: Entering vehicles on RAV

57. Subclause 15(1) provides that a vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway. Subclause 15(2) lists the types of entry pathways for vehicles to be entered onto the RAV and also provides for further pathways to be established in the Rules. The Rules will set out requirements for the type approval pathway and the concessional pathway.
58. Subject to limited exceptions, only vehicles that have been entered onto the RAV under one of these pathways will be able to be provided for the first time in Australia.

Clause 16: Entry of non-compliant vehicles on RAV

59. Under subclause 16(1), a person commits an offence and is liable to a civil penalty, if they enter a vehicle on the RAV and it does not satisfy the requirements of an entry pathway. Vehicles cannot be entered onto the RAV unless they satisfy the requirements of one of the entry pathways. This clause sets out a fundamental element of this Bill.
60. Under subclause 16(2), a person commits an offence and is liable to a civil penalty, if a road vehicle type approval holder authorises, in writing, another person to enter vehicles onto the RAV on behalf of the approval holder, the other person purports to enter the vehicle on the RAV, and the vehicle does not fulfil the requirements of an entry pathway. An example of where this clause could apply would in the case where a Type Approval holder authorises a person to enter vehicles onto the RAV on their behalf. If

the person enters the vehicle onto the RAV and it does not satisfy the requirements of Type Approval pathway, then the Type Approval holder has contravened this clause.

61. The Rules will set out the requirements for the different entry pathways for the RAV. It is intended that the following pathways will be RAV entry pathways in the Rules:

62. Type approval pathway – Road vehicles covered by a type approval will be entered onto the RAV by the type approval holder. Road vehicles that are entered onto the RAV through this pathway must be compliant with national vehicle standards, except in certain limited circumstances (where one of the requirements is that there is substantial compliance with the national vehicle standards). A type approval holder can enter unlimited numbers of road vehicles of the type specified in the approval onto the RAV.
    - Concessional RAV entry pathway – this is a pathway for road vehicles that do not necessarily meet the national vehicle standards but are granted concessional approval because they meet one of the eligibility criteria for this pathway. The Rules will provide for the eligibility criteria for this pathway, and will include road vehicles that are older than 25 years old, Specialist and Enthusiast Vehicles and vehicles that, if required to fully meet national standards, could not fulfil their purpose.

63. Subclauses 16(3) states that subclauses 16(1) and 16(2) do not apply if:
    - a person manufactures a vehicle; and
    - uses components in the process of the manufacture that was represented by a supplier of the component to be a component under a type approval; and
    - the component did not comply with the relevant national road vehicle standards at the time the component was acquired by the manufacturer; and
    - there is not any other reason why the road vehicle does not satisfy the requirement of the relevant entry pathway.

64. An example where subclause 16(3) applies would be if a Type Approval holder uses a component (for example, a tow ball) that had been supplied to them on the basis that it is covered by a component type approval under this Bill. If it is later found out that the component did not comply with the relevant national road vehicle standards that were in force at the time the road vehicle component was acquired by the type approval holder – and this component was the only reason that the vehicle did not satisfy the requirements of the entry pathway - then a defence under subclause 16(3) applies to the contravention provisions of subclauses 16(1) and 16(2).

65. The defendant bears an evidential burden in relation the matters set out in clause 16(3), in the context of both criminal and civil proceedings. This is appropriate because, as a matter of practicality, an approval holder would be in a significantly better position than the Commonwealth to be able to present evidence in relation to whether a component was represented to them as being a Type Approval Component. This evidence could come in the form of a contract for supply of the component, an advertisement representing the component as being Type Approved or written document from the supplier, such as an email.

66. An offence against either subclauses 16(1) or 16(2) has a maximum penalty of 120 penalty units. The maximum civil penalty applicable if a person breaches either subclause 16(1) or 16(2) is similarly 120 penalty units.

67. Subclause 16(5) extends geographical jurisdiction of this offence to apply to a person anywhere in the world and regardless of whether such an act that constitutes a contravention of this Bill is lawful elsewhere. This has been extended as it will be possible in some cases for persons to enter a road vehicle onto the RAV from outside Australia and an extension of jurisdiction is necessary to ensure compliance.

68. Entering a vehicle onto the RAV will allow its first provision in Australia and thus has a tangible impact on the Australian vehicle fleet, despite the action potentially occurring outside Australia. Without the extended jurisdiction, this Bill could only regulate RAV entries that occurred within Australia, which would ultimately undermine the integrity of the RAV and compliance of the vehicle fleet with national vehicle standards.

Clause 17: Information entered on RAV dishonestly or improperly

69. Under subclause 17(1), a person commits an offence and is liable to a civil penalty where the person knows that either:
    - They are not authorised under the rules to enter the information on the RAV; or
    - The vehicle does not exist; or
    - The information is incorrect.
70. The RAV is the gateway for the provision of a road vehicle in Australia. It provides a date on which the road vehicle is compliant with the requirements of its entry pathway and forms a core part of compliance monitoring arrangements. Therefore, this offence is fundamental in ensuring that the RAV is a useful and accurate database. Subclause 16(1) covers the three main ways in which information may be dishonestly entered onto the RAV erroneously: being entered without authority, the vehicle not existing, or the information being incorrect.
71. Subclause 17(2) is similar to 17(1) but deals with circumstances where a person may authorise another person to enter information onto the RAV on their behalf. This offence would apply, for example, in circumstances where AA Cars Worldwide is the Type Approval Holder and AA Cars Australia is authorised in writing by AA Cars Worldwide to enter their road vehicles onto the RAV. Under these circumstances, AA Cars Worldwide would have contravened subclause 17(2) if AA Cars Australia entered information about a vehicle onto the RAV, the information entered was either incorrect or the vehicle did not exist, and AA Cars Worldwide knew this.
72. If found guilty of committing an offence under subclauses 17(1) or 17(2), the maximum penalty is 120 penalty units for each occasion information is dishonestly or improperly entered onto the RAV. Therefore, if a person makes fifty incorrect entries onto the RAV, then fifty offences are committed. This could result in a person being charged with fifty counts of committing an offence under subclauses 17(1) or 17(2) of the Bill.
73. Subclause 17(3) extends the geographical jurisdiction of this offence. It is necessary for the extended geographical jurisdiction to be applied to this clause because under some pathways a road vehicle can be entered onto the RAV by persons outside of Australia. Therefore, it is important to prohibit a person or an authorised person outside Australia from entering vehicles when they either do not have authorisation under the rules, incorrectly enter information or enter vehicles that do not exist.
74. Subclauses 17(4) and 17(5) are similar to the offence provisions established in subclauses 17(1) and 17(2) without the element that the information entered is incorrect. However, these provisions establish civil penalty contraventions, which allows the Department to use civil proceedings and other regulatory tools in relation to contraventions of these clauses. In reference to subclause 17(5), the intention is to regulate the approval holder rather than the authorised person.
75. The maximum penalty for contravention of subclause 17(4) or 17(5) is 120 penalty units. Similarly to the offence elements of this provision, if a person makes fifty incorrect entries onto the RAV, it may be found that they have contravened this provision on fifty occasions under civil proceedings.

76. The civil penalty provisions in clauses 17 and 18 are similar. A vehicle not existing and being entered onto the RAV or not being authorised to enter a vehicle onto the RAV - the key conduct differences for the civil penalty provisions – are considered as more egregious acts than, for example, being authorised to enter a vehicle and making a mistake. In this example, action under clause 17 is more appropriate, despite an overlap with clause 18.

Clause 18: Incorrect information entered onto RAV

77. Under Subclauses 18(1), 18(3) and 18(5), a person commits an offence and is liable to a civil penalty, if the person enters information onto the RAV in relation to a vehicle and such information is incorrect.
78. Similarly, under subclauses 18(2), 18(3) and 18(5), a person commits an offence and is liable to a civil penalty, if a holder of a type approval authorises another person to enter information onto the RAV, the other person does so, and the information is incorrect. The intention of this contravention clause is to regulate the type approval holder, rather than the person authorised to enter the information onto the RAV.
79. Unlike subclauses 17(1) and 17(2), subclauses 18(1) and 18(2) apply when incorrect information is entered onto the RAV by the approval holder or authorised person but such an entry is not necessarily of dishonest nature. Clause 17 involves the concept of knowledge that is linked with information being entered onto the RAV whereas clause 18 does not. As a contravention of subclause 18(1) or (2) is of a less serious nature, the maximum penalty is 60 penalty units for each occurrence. As with clause 17, each occasion a person enters a vehicle incorrectly is considered a separate contravention – for example if a person entered 50 vehicles incorrectly, that is 50 contraventions.
80. For the purposes of clauses 17 and 18, incorrect entered information could include a wide range of things such as errors in entering information into the RAV. Due to the importance of the RAV acting as a gateway to road vehicle provision, the Department will expect a high level of care from entities entering information.
81. Extended geographical jurisdiction applies to subclauses 18(1) and 18(2). It is necessary for the extended geographical jurisdiction to apply, as there could be instances where road vehicles are entered onto the RAV outside of Australia. Without extended geographical jurisdiction, this would significantly restrict the Department's ability to ensure that information entered onto the RAV is accurate and correct.

Clause 19: Rules

82. Subclause 19(1) requires the Rules to provide for the keeping of the RAV. This includes the content on the RAV and the persons who may enter information.
83. Subclause 19(1) also requires the Rules to provide for or in relation to the publication of information on the RAV.
84. Subclause 19(2) provides that the Rules may also provide for the following:
85. The grant of approvals to enable vehicles to satisfy the requirements of a type approval pathway, other entry pathways or road vehicle components;
    - Conditions of such approvals;
    - Variation, suspension or revocation of such approvals; and
    - Obligations of former approval holders.
86. The Rules will be vital to the operation of the RAV. The Rules, in relation to the RAV, will cover detail such as, but not limited to:
    - Information to be included on the RAV;

- Who may enter information on the RAV;
- What information on the RAV will be published; and
- Notification and correction of errors on RAV.

Division 4 – Specialist and Enthusiast Vehicles Register

Clause 20: Specialist and Enthusiast Vehicles Register

87. Clauses 20 requires the Secretary to keep a register known as the Register of Specialist and Enthusiast Vehicles. The Register of Specialist and Enthusiast Vehicles will be a register of road vehicle make/models, and make/model/variants that have been assessed as meeting the eligibility criteria in the Rules for classification as genuine specialist and enthusiast vehicles.
88. The Register is to be kept in electronic form and is to be made available on the Department's website.
89. The Register of Specialist and Enthusiast Vehicles is a Commonwealth record for the purposes of the *Archives Act 1983*.

Clause 21: Rules

90. This clause requires the rules to provide for or in relation to the keeping of the Register of Specialist and Enthusiast Vehicles. It also empowers the Minister to make Rules to provide for or in relation to applications to be made for the entry of road vehicles on the SEVs Register.
91. The Rules will be used to give effect the Specialist and Enthusiast criteria and thresholds.

Division 5 – Importation of road vehicles

Clause 22: Importing road vehicles

92. Under Subclauses 22(1) and 22(3), a person commits an offence if the person imports a road vehicle into Australia, unless they are permitted to import the vehicle. Subclauses 22(1) and 22(4) make a person liable to a civil penalty in the same circumstances. This provision is also fundamental to the Bill, as it prohibits road vehicles being imported into Australia if the person importing them does not have a relevant approval of a kind provided for in subclause 22(2).
93. A person is permitted to import a road vehicle in certain circumstances outlined in subclause 22(2). The first (set out in paragraph 22(2)(a)) is where, at the time of importation, they are the holder of a road vehicle type approval that is in force and the road vehicle is of a type to which the road vehicle type approval applies. This requires that the design of the vehicle must be in accordance with the design that is set out in the supporting information for the relevant road vehicle type approval. This prevents a person from importing a road vehicle that is different to one allowed under their type approval.
94. Paragraph 22(2)(b) sets out similar circumstances to paragraph 22(2)(a), as it too relates to road vehicles that are imported under a type approval. However, it differs in that it allows an importation of a road vehicle that is subject to a type approval by a person other than the holder of the approval, provided the person is authorised by the holder to do so. Authorisation by the type approval holder must be in writing. An example would

be where an overseas manufacturer of road vehicles authorises an Australian entity or person to import road vehicles that are under the manufacturer's type approval.

95. Paragraph 22(2)(c) provides that an import approval holder is permitted to import a road vehicle into Australia, provided the import approval is in force and the road vehicle being imported is the vehicle specified in the import approval.
96. Paragraph 22(2)(d) provides that a person may be permitted to import a road vehicle, if at the time of importation, they satisfy a circumstance set out in the Rules.
97. A circumstance that may be set out in the Rules could include permitting the importation of road vehicles where import arrangements are set outside the Road Vehicle Standards legislation. Such circumstances include certain intergovernmental agreements, where the agreement itself specifies the import arrangements for vehicles covered by the agreement. Examples of such intergovernmental arrangements include Carnet arrangements or Status of Forces Agreements.
98. An offence against either subclause 22(1) or 22(2) has a maximum penalty of 120 penalty units. The maximum civil penalty applicable if a person breaches either subclause 22(1) or 22(2) is similarly 120 penalty units.

Clause 23: Rules

99. This clause allows the Minister to make the Rules to provide for or in relation to the grant of approvals in relation to the importation of road vehicles; conditions placed on import approvals; variation, suspension or revocation of import approvals; and obligations of former approval holders.

Division 6 – Provision of road vehicles not on RAV

Clause 24: Providing road vehicle for the first time in Australia – vehicle not on the RAV

100. Under clause 24, a person commits an offence and is liable to a civil penalty, if the person provides a road vehicle for the first time in Australia to another person and the vehicle is not on the RAV. The term "provide" includes but is not limited to selling, loaning, leasing or borrowing the road vehicle to another person.
101. An example would be if a dealership sold a road vehicle to a person and the vehicle was not on the RAV. The dealership could be found to have contravened clause 24.
102. Together, subclause 24(2) and 24(3) provide a list of ways that a vehicle can be provided in Australia that is not considered to be the first time the vehicle is provided in Australia for the purpose of subclause 24(1). Such circumstance include:
    - installation of items to the vehicle;
    - assembling of the road vehicle or part of the road vehicle;
    - making it compliant with a national standard; or
    - conducting work to make a road vehicle consumer ready, which could include detailing of a car or installation of upgrades such as spoilers, provided they are compliant with the approval pathway.
103. It may also include transportation of the road vehicle for the purposes of obtaining State or Territory registration or inspection. Storing or protecting the vehicle may include transportation between the place of import and, for example, a warehouse. Additionally, a road vehicle can be transported to an importer or exporter without it being considered to be provided for the first time in Australia.

104. The following is an example of how to work out which point of provision is the 'first' point for the purpose of subclause 24(1). For example:
    - Company A imports a vehicle into Australia and gives Company B access to the vehicle, to be cleaned and detailed ready for sale (provision point 1).
    - Company A gives access to the vehicle to Company C to store it (provision point 2).
    - After a period of storage, Company A provides (for example, sells) the vehicle to a dealership, Company D (provision point 3) to offer the vehicle for sale to a consumer.
    - Company D sells the vehicle to a consumer (provision point 4).
    - The vehicle was never placed on the RAV.
105. In this example the vehicle is provided for the first time in Australia at 'provision point 3' – when Company A sells the vehicle to the dealership. This is because, despite the vehicle being provided in Australia twice before reaching 'provision point 3', each earlier provision point was for a purpose mentioned at subclause 24(3): having work done on it (provision point 1), and storing it (provision point 2). Company D does not commit an offence at 'provision point 4' because the vehicle has already been provided for the first time in Australia.
106. Subclause 24(4) states that subclause 24(1) does not apply to holders of a non-RAV entry import approval that relates to the vehicle. Subclause 24(1) also does not include road vehicles manufactured in Australia and where a person providing the vehicle makes clear to the recipient that the vehicle is:
    - not being provided for a purpose that involves use on a public road; or
    - being provided for a purpose that involves use on a public road only in exceptional circumstances.
107. Clause 24(5) makes it an offence to contravene subclause 24(1). If a defendant wishes to rely on subclauses 24(3) and 24(4), the defendant bears the evidential burden.
108. In relation to this offence clause, the exceptions set out in subclauses 24(3) and 24(4) will be peculiarly with the knowledge of the defendant. For example, a defendant could show that the road vehicle was provided to have work done on it by producing evidence that supported this claim. Such evidence could include a contract for the work completed or an email confirming the reasons for which the vehicle was provided.
109. A contravention of clause 24(1) also can result in civil proceedings being brought against the contravening party. The maximum civil penalty applicable if a person breaches 24(1) is 120 penalty units.
110. As with the criminal offence provisions, the defendant bears the evidential burden if they wish to rely upon subclauses 24(3) and 24(4) in civil proceedings.

Division 7 – Modifying road vehicles

Clause 25: Rules

111. Clause 25 allows the rules to provide for or in relation to circumstances where a road vehicle may be modified before being provided to a consumer. The Rules are necessary as it is a contravention of the Bill to modify a road vehicle that is on the RAV prior to the vehicle being provided to a consumer, unless the modification is consistent with the requirements of the entry pathway, or the rules allow for the modification. The contravention clause is further outlined in the notes for clause 26.
112. It is important to note that not all modifications prior to the vehicle being provided to a consumer are a contravention of this Bill. For example:

- Registered Automotive Workshops are allowed to complete modifications on a vehicle before it is provided for the first time in Australia to the extent it is required by the entry pathway or allowed by the Rules.
- Dealers for type approved vehicles may be able to modify a vehicle prior to providing a consumer with the vehicle, so long as the modification is consistent with the type approval.
- Second stage manufacturers may be able to modify a vehicle if they hold a type approval for the second stage.

Clause 26: Modification of a road vehicle on RAV

113. Clause 26 prevents the modification of road vehicles that are on the RAV but have not been provided to a consumer. The intention of the clause is to ensure that consumers receive a fully compliant, road vehicle by preventing modifications that do not satisfy the requirements of the entry pathway or the Rules.
114. Under Subclause 26(1), a person commits an offence and is liable to a civil penalty if a road vehicle is on the RAV and has not been provided to a consumer and the person modifies the road vehicle and the modification of the road vehicle means it no longer satisfies the requirements of the entry pathway under which the vehicle originally was entered onto the RAV. This does not prevent all modification of road vehicles prior to RAV entry, just modification that results in non-compliance with the entry pathway for that road vehicle.
115. Subclause 26(2) is similar to subclause 26(1), as a person commits and offence and is liable to a civil penalty if a road vehicle to be modified that does not satisfy the entry pathway. However, subclause 26(2) applies to the circumstances where a person provides the road vehicle to another person for modification prior to first use in transport.
116. The person who hands over the road vehicle for modification is the person who commits an offence and is liable for a civil penalty. The obligation is on approval holders to maintain control over all matters relating to their approval. This clause does this by making the approval holder responsible for any contravention of the approval, regardless of who contravened the approval or whether they were authorised to do so. Therefore, it is the person who hands over the road vehicle to the other person who has responsibility to ensure that the modifications are compliant with the requirements of the entry pathway, rather than the person making the modification.
117. An offence against either subclause 26(1) or 26(2) has a maximum penalty of 120 penalty units.
118. The maximum civil penalty applicable if a person breaches either subclause 26(1) or 26(2) is 120 penalty units.
119. Subclause 25(3) outlines that the definition of "provide" set out in paragraph 26(5)(2)(b) does not apply to paragraph 26(1)(c) and 26(2)(e). Paragraph 26(5)(2)(b) states that a reference in this Bill to a person providing a road vehicle include a reference to a provision of access to a vehicle.

Division 8 – Supply road vehicle components

Clause 27: Misrepresentation that a road vehicle component is an approved road vehicle component

120. Under subclause 27(1), a person commits an offence and liable to a civil penalty if the person supplies a component and in doing so represents that the component is an approved road vehicle component under this Bill and such a representation is false or misleading. The intention of this clause is to stop persons from representing that a component is an approved road vehicle component when supplying it to another person if it is not subject of a road vehicle component type approval. This clause does not intended to regulate all road vehicle components but rather just those that are approved road vehicle components or are misrepresented to be. This clause does not require the Department to establish that the person contravening this provision knew that their representation was false or misleading.
121. An offence against subclause 27(2) has a maximum penalty of 60 penalty units. The maximum civil penalty applicable if a person breaches 27(3) is 60 penalty units.
122. It is necessary for extended geographical jurisdiction to apply to this offence. There could be circumstances where a component manufacturer could be misrepresenting that their components are type approved road vehicle components under this Bill to consumers in Australia. It is necessary to extend geographical jurisdiction to ensure that such misrepresentations can be penalised and to ensure that the Australian public can rely and have confidence that approved components comply with Australian standards.

Division 9 – Miscellaneous

Subdivision A – Breach of condition of approvals

Clause 28: Breach of condition of approval – general

123. Under subclause 28(1), a person commits an offence and is liable to a civil penalty if an approval holder does or omits to perform an act that is in contravention of a condition of their approval. Subclause 28(1) does not apply to a condition of approval that the person export or destroy a road vehicle to which the approval applies (see notes on Clause 32).
124. The Rules can establish conditions to be placed on any approval, which includes Type Approvals, Register of Approved Vehicle entry approvals, Registered Automotive Workshops approvals, Model Report approval, Authorised Vehicle Verifiers Approvals, Testing Facility approvals and non-entry import approvals.
125. Each approval holder under the Bill will be subject to a range of conditions. Conditions on approvals will be a mixture of conditions that are consistent for all approval holders across a category and conditions specific to the circumstances of individual approval holders.
126. The Rules will establish what conditions can be placed on an approval and such conditions will vary depending on the approval. Example of conditions include, but are not limited to, the following:
    - Conditions in relation to compliance with national road vehicle standards;
    - Conditions about ensuring conformity of production;
    - Conditions about providing information to the Minister;
    - Conditions in relation to record keeping; and
    - Conditions regarding a holder's conduct under the approval.

127. Subclause 28(2) creates a contravention identical to subclause 28(1), except for when another person is authorised in writing by the holder of the approval to do an act or omit to perform an act and ultimately the authorised person's action or omission contravene a condition of the approval.
128. It is the approval holder's obligation to maintain control over all matters relating to their approval. The approval holder is responsible for any contravention of the approval, regardless of who contravened the approval or whether they were authorised to do so. Therefore, an approval holder cannot avoid their responsibilities through, for example, deceitful or careless subcontracting or inadequate control over manufacturing staff and facilities. For example, an approval holder might authorise an agent to provide information to the Minister or to keep records. If there is a contravention of a condition due an agent's actions or inaction, it is ultimately the responsibility of the approval holder.
129. An offence again either subclause 28(1) or 28(2) has a maximum penalty of 120 penalty units. The civil penalty applicable if a person breaches either subclause 28(1) or 28(2) is 120 penalty units.
130. As approval holders can be located outside Australia, it is essential for extended geographical jurisdiction to apply to this offence. Without extended geographical jurisdiction, approval holders outside Australia would not be regulated.

Clause 29: Breach of condition of approval – export or destruction of road vehicle

131. Under clause 29, a person commits an offence and is liable to a civil penalty where the person is the holder of an import approval, the approval is subject to a condition to which the person must export or destroy the road vehicle that was imported under the approval and the person has failed to export or destroy the vehicle in the period specified in the approval.
132. This clause is intended to apply to road vehicles that are imported into Australia temporarily and such importation is conditional upon the road vehicle being later exported or destroy within a specific period of time. An example of such an approval would be for a non-RAV entry vehicle, such as a vehicle temporarily imported into Australia for test and evaluation. It is intended that a condition of such an import approval would be that, after a specified time, the vehicle be destroyed or exported.
133. The holder of the import approval may authorise in writing another person to export or destroy the vehicle on their behalf. However, if an approval holder authorises another person to destroy or export a road vehicle in accordance with a condition, the approval holder has the ultimate responsibility to ensure the condition is met.
134. Subclauses 29(4) and 29(5) set out the maximum criminal penalty and civil penalty that applies for each day an offence or contravention of subclauses 29(2) and 29(3) continues. The maximum criminal penalty or civil penalty that applies is per cent of the maximum penalty set out in subclauses 29(2) and 29(3). For example, if a non-RAV approval holder was required to export or destroy their vehicle as a condition of their approval, in addition to the criminal penalty and civil penalty that may be imposed on the approval holder for the offence/contravention (i.e. maximum 120 penalty units for an individual), a further criminal penalty and civil penalty may be imposed in respect of each day the road vehicle remains in Australia beyond the specified period. Therefore, if the approval was subject to a condition that the road vehicle to which it applies must be exported on a specific date, and it did not get exported for 20 days after that date, the contravening person could (if the person were an individual) be penalised up to 240

penalty units (in addition to the criminal penalty and civil penalty of up to 120 penalty units for the overall contravention)."

135. A continuing penalty provision is appropriate for this contravention of the Bill due to the nature of the non-compliance. A failure to export or destroy a vehicle by a set date is a behaviour that imposes a risk on the community for each day that the order is not complied with. A longer period represents a substantial ongoing risk to the community.

Subdivision B – Record-keeping obligations

Clause 30: Breach of obligation to provide records after approval ceases to be in force

136. Under subclause 30(1), a person commits an offence and is liable to a civil penalty if the person was a holder of an approval, the approval had a condition to retain a record and the person does not retain the record. The relevant period in relation to this contravention is the period specified in the approval, or if a period is not specified in an approval, seven years starting the day the record was made. It should be noted that a record includes electronic records, including but not limited to emails, computer generated documents and databases.
137. Under subclause 30(2), a person commits an offence and is liable to a civil penalty if an approval holder is required to provide information or a document to the Minister and they fail to do so. The approval holder may be required to provide the information or document because it was required under the Rules. In relation subclause 30(2), this may include a person not providing some or all of the required information or documents to the Minister.
138. An offence against either subclauses 30(1) or 30(2) has a maximum penalty of 60 penalty units. The maximum civil penalty applicable if a person breaches either subclause 30(1) or 30(2) is similarly 120 penalty units.
139. Extended geographical jurisdiction relates to the offence clauses, as it is likely that approval holders will be internationally based and without such extended jurisdiction, the Bill would not apply to them. Without extended geographical jurisdiction, the regulatory scheme is compromised and therefore, the integrity of Australia's vehicle fleet may also be compromised.

Subdivision C – False or misleading declarations etc.

Clause 31: False or misleading declaration

140. Under subclause 31(1), a person commits an offence if the person signs a declaration that is false or misleading in a material particular or omits a matter or thing that would cause the declaration to be misleading false or and such a declaration is made in an application for an approval.
141. Under subclause 31(2), a person is liable to a civil penalty if the person signs a declaration and the declaration is false, misleading or omits a matter. The declaration must be made in an application for an approval under the Rules.
142. Providing a declaration that the information given as part of the application is true and correct is an integral part of the approval process under the Bill. It is fundamental to a risk based system that applications are taken to be true and correct.
143. An example of a false or misleading statement would be when a person provides information that a road vehicle they wish to import is 25 years or older from the date of manufacture but in reality, the road vehicle is less than 25 years of age.

144. An offence against subclause 31(1) has a maximum penalty of 60 penalty units.
145. The maximum penalty applicable if a person breaches subclause 30(2) is 60 penalty units.
146. Including these clauses in the Bill rather than relying on similar provisions in the *Criminal Code Act 1995* allows a broader suite of enforcement powers to be used for a contravention of this clause: including civil penalty remedies such as infringement notices, injunctions and enforceable undertakings.

Clause 32: False or misleading information

147. Under clause 32, a person commits an offence and is liable to a civil penalty if the person provides false or misleading information or documents to another person under or for the purpose of the Bill.
148. A false statement, for the purposes of this clause, is when it is not true, regardless of whether or not you know that it is false. Similarly for this clause, a misleading statement is when it gives a false impression, is unclear, or deceptive. That is, omitting relevant or helpful information to a situation for the purpose or purportedly given, under or for the purpose of the Bill.
149. Subclause 32(2) will provide for a defence where the statement is not false or misleading in a material particular. In relation to subclause 32(2), the defendant bears an evidential burden of proof. This means that the defendant needs to present, or point to, something that suggests a reasonable possibility that the defence is made out. Once this is done, the prosecution is required to refute this defence beyond a reasonable doubt.
150. Generally, the prosecution should be required to prove all aspects of a criminal offence beyond reasonable doubt. A matter should be included in a defence, thereby placing the onus on the defendant, only where the matter is peculiarly within the knowledge of the defendant and is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. This is the case where the information or document is not false or misleading in a material particular.
151. The veracity of information provided in compliance with this Bill is a matter that is peculiarly within the defendant's knowledge and not available to the prosecution. Accordingly, it is legitimate to cast the matter as a defence. Furthermore, the defence only provides that the defendant bears the standard 'evidential burden'. Accordingly, the defence is only required to adduce or point to evidence that suggests a reasonable possibility that the defence is made out.
152. An offence against subclause 32(1) has a maximum penalty of 60 penalty units.
153. The maximum civil penalty applicable if a person breaches subclause 32(1) is 60 penalty units.

Subdivision D – Liability of executive officers

Clause 33: Personal liability of an executive officer of a body corporate

154. Clause 33 provides that, in certain circumstances, an executive officer of a body corporate commits an offence or contravenes a civil penalty provision if the body corporate commits an offence against the Bill or contravenes a civil penalty provision.
155. An executive officer of a body corporate is a person who is concerned in, or takes part in, the management of the business. The meaning of executive officer is not limited to a director of the company or the title a person holds within a company or organization.

156. Clause 33 is intended to apply to executive officers, such as managing directors or Chief Executive Officers, who are directly involved in or participate in the management of a company, and who should be made accountable for the actions of their company where such officers are in a position to influence their company and are aware of breaches by the company of the Bill or Rule but failed to take reasonable action to prevent the breaches.
157. Under subclauses 33(b) to 32(d), the executive officer of a body corporate commits an offence if the following circumstances are established:
    - The body corporate is found to have committed an offence against:
    - This Part of the Bill (other than clauses 18, 27, 30, 31 or 32); or
    - Section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the Criminal Code, in relation to an offence mentioned in subclause (1)(a)(i); or
    - Section 136.1, 137.1 or 137.2 of the Criminal Code in relation to this Act; and
    - The officer knew that the offence would be committed; and
    - The officer was in a position to influence the conduct of the body in relation to the commission of the offence; and
    - The officer failed to take all reasonable steps to prevent the commission of the offence.
158. The maximum penalty for the offence is the maximum penalty that a court could impose in respect of an individual for the relevant offence committed by a body corporate.
159. The executive officer of a body corporate contravenes a civil penalty provision if the following circumstances are established:
    - The body corporate is found by a court to have contravened a civil penalty provision under this Part (other than clauses 18, 27, 30, 31 or 32) ;
    - The officer knew that the contravention would occur;
    - The officer was in a positon to influence the conduct of the bod in relation to the contravention; and
    - The officer failed to take all reasonable steps to prevent the contravention.
160. The maximum civil penalty for an individual in contravention of subclause 33(4) is the maximum penalty that a court could impose in respect of an individual, rather than the amount that may have been payable by the body corporate itself. For example, if a body corporate is found to have contravened clause 23, the maximum penalty that could be imposed by a court upon the executive officer is 120 penalty units. This is despite the body corporate itself attracting a potential maximum penalty of 600 penalty units due to the effect of the five times corporate multiplier at subsection 82(5) of the *Regulatory Powers (Standards Provisions) Act 2014*.

Clause 34: Reasonable steps to prevent offence or contravention

161. In determining whether an executive officer of a body corporate failed to take reasonable steps to prevent the commission of an offence, or the contravention of a civil penalty provision, a relevant court is required to consider certain matters set out under clause 34:
    - What action (if any) the officer took towards ensuring the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with the Bill or Rules, in so far as those requirements affect the employees, agent or contractors concerned; and

- What action (if any) the officer took when he or she became aware that the body corporate was committing an offence against, or otherwise contravening he requirements under, the Bill and the Rules.

Subdivision E – Pecuniary penalties and bodies corporate

Clause 35: Determining pecuniary penalties for bodies corporate

162. This clause provides, despite section 4B(3) of the *Crimes Act 1914*, that a pecuniary penalty for an offence under Part 2 of the Bill must not be more than:
    - If the person is a body corporate – 5 times the pecuniary penalty specified for the offence; and
    - Otherwise – the pecuniary penalty specified for the offence.

Part 3 – Recalls of road vehicles or approved road vehicle components

Division 1 – Simplified outline of this Part

Clause 36: Simplified outline of this Part

163. This clause provides an outline of what Part 3 of the Bill regulates. Overall, this Part covers the recall of road vehicles and approved road vehicle components and is separated into the following divisions:
    - Division 1 – simplified outline of the Part;
    - Division 2 – establishes what the Rules must and may provide for in relation to this Part;
    - Division 3 - sets out offences for failing to comply with recall notices and the requirements for notifying the Minister when either a voluntary or compulsory recall action is happening;
    - Division 4 – empowers the Minister to issue disclosure notices in relation to recalls. A disclosure notice is issued on a person to provide information in relation to a recall or a possible recall;
    - Division 5 – provides various clauses for the operation of this Part.
164. This part is consistent with the recall provisions contained in the Australian Consumer Law which broadly have been mirrored in this Bill.

Division 2 – Rules

Clause 37: Rules

165. Clause 37(1) requires the Rules to provide for or in relation to recall of road vehicles or approved road vehicle components for safety purposes or non-compliance with national road vehicles standards. Road vehicles that are eligible for recalls under this Part of the Bill include both commercial and consumer road vehicles. This expands on the scope of the Australia Consumer Law under Schedule Two of the *Competition and Consumer Act 2010*, which only regulates recalls for consumer vehicles.
166. It is important to note that components does not mean all road vehicle components – only those that are approved road vehicle components under this Bill. Retail items that are used as components for road vehicles are not regulated by this Bill.
167. This clause also enables the Rules to provide for or in relation to the following:

- Issuing recall notices;
- Compulsory recalls of road vehicles or approved road vehicle components;
- Voluntary recalls of road vehicles or approved road vehicle components; and
- Notification requirements relating to compulsory or voluntary recalls.

Division 3 – Complying with recalls

Clause 38: Compliance with recall notices

168. When a recall notice is issued by the Minister, it will require a person to do one or more things. Under clause 38(1), a person commits an offence and is liable to a civil penalty if the person fails to comply with a notice.
169. A recall notice is considered to be in force once it is issued by the Minister. A recall notice can be issued for both commercial and passenger vehicles.
170. Under subclause 38(2), a person commits an offence and is liable to a civil penalty if the person supplies a road vehicle or component to which a recall notice relates to another person. A person is prohibited from supplying road vehicles or approved road vehicle components if:
    - The road vehicles or road vehicle components are of a kind that contain a defect or dangerous characteristic that has been identified in a recall notice;
    - In any other case, there is a recall notice in force for road vehicles or road vehicle components of that kind.
171. In the context of recall provisions, a supplier includes a type approval holder.
172. The maximum penalty for contravening either subclauses 38(1) or 38(2) is 5,250 penalty units for a body corporate or 1,050 penalty units for a person who is not a body corporate. The penalties under this Bill reflect those found for similar provisions in the Australian Consumer Law. By keeping the penalty units the same as the Australian Consumer Law it sends a strong message of deterrence whilst providing consistency across Commonwealth legislation.
173. Strict liability applies to the entirety of subclauses 38(1) and 38(2). It is necessary to apply strict liability to ensure the integrity of the regulatory regime, particularly when failure to comply with the recall notice could cause significant health or environmental risks to the Australian public. A recall notice may relate to a vast number of road vehicles and therefore, ensuring that compliance with recall notices occurs is a fundamental to ensuring consumer safety. It is also noted that the Australian Consumer Law applies strict liability to similar contravention provisions.
174. Industry stakeholders, especially those that operate under the type approval pathway, should be aware of their obligations in relation to recalls and the legal threshold strict liability offences bring as they have previously encountered this under the Australian Consumer Law.

Clause 39: Notification requirements – compulsory recalls

175. Clause 39 relates to the notification requirements that arise when a compulsory recall notice is issued. This clause creates a contravention of the Bill where a person refuses or fails to provide a copy of a notice as required by the Rules.
176. It is intended that the Rules will require a supplier of road vehicles or road vehicle components that is:
    - subject to a recall notice; and
    - and has been supplied outside Australia,

to notify the person that the vehicle was supplied to outside Australia that the vehicle is subject to a recall (this notification is the 'notice' required by clause 39). The notice should identify the grounds on which the vehicle is being recalled and must be given to the person outside Australia as soon as possible. In addition, a copy of the notice must be provided to the Minister within 10 days. Failure to do so is an offence and is subject to a civil penalty.

177. Due to the serious nature of a failure to provide a notice to the Minister, strict liability applies to the entirety of this offence clause. The failure of a supplier to provide a copy of the notice to the Minister means that the Minister cannot be satisfied that appropriate recall action is being taken for goods supplied outside Australia and could affect a large number of persons internationally, jeopardising both safety and Australia's international reputation.

Clause 40: Notification requirements – voluntary recalls

178. Subclause 40(1) requires a supplier who has voluntarily undertaken to recall road vehicles or approved road vehicle components under the Rules, to provide the recall notice, or a copy of the recall notice, to the Minister.
179. It is intended that the Rules will make it a requirement that the person undertaking the voluntary recall must provide the Minister written notice within two days of taking the action. Furthermore, it is intended that the Rules will require a person who has supplied or supplies a road vehicle or approved road vehicle component of that kind outside Australia to give them a written notice within seven days.
180. It is intended that the Rules will set out what the notice must state, including but not limited to the following:
    - That the road vehicles or approved road vehicle components are subject to recall;
    - If the road vehicles or approved road vehicle components contain a defect or have a dangerous characteristic – set out the nature of that defect or characteristic;
    - If a reasonably foreseeable use or misuse of the road vehicles or approved road vehicle components is dangerous – set out the circumstances of that use or misuse; and
    - If the road vehicles or approved road vehicle components do not, or it is likely that they do not, comply with a standard or the vehicles or vehicle components that is in force – set out the nature of the non-compliance or likely non-compliance.
181. Strict liability applies to subclause 40(1) in its entirety. Although there is a lower risk of non-compliance if a person voluntarily elects to undergo a recall, it is essential that the Minister is aware of all recalls. The Minister may then take further action in relation to the recall or publish the recall so that more members of the Australian public become aware of it. Strict liability is also applied to similar offence provisions under the Australian Consumer Law.
182. An offence against subclause 40(1) has a maximum penalty of 80 penalty units for a body corporate and 16 units for a non-body corporate. The maximum civil penalty applicable if a person breaches subclause 40(1) is 80 penalty units for a body corporate and 16 units for a non-body corporate.

Division 4 – Disclosure Notices

Clause 41: Power to obtain information etc.

183. Under subclause 41(1), the Minister, Secretary or an SES or acting SES employee may give a "disclosure notice" to a person, who, in trade or commerce, supplies road vehicles or approved road vehicle components. The disclosure notice can seek information, documents or evidence relating to those road vehicles or road vehicle components, and request that this information be provided to the Minister. The disclosure notice can also require the subject of the notice to appear before the Minister.
184. It should be noted that the *Competition and Consumer Act 2010* allows for a disclosure notice to be issued by the Minister or an inspector. Due to the significant power of this provision and the scale of economic impacts and with respect to the possibility of injury or death, this Bill requires either the Minister, Secretary or SES employee to issue the notice.
185. Before a disclosure notice is issued, the person issuing the notice must:
    - Have reason to believe that the road vehicle or approved road vehicle components of a particular kind will or may cause injury to any person; or
    - Consider it reasonably foreseeable use (including a misuse) of road vehicles or approved road vehicle components of that kind will or may cause injury to any person; or
    - Consider road vehicles or approved road vehicle components of that kind do not, or it is likely that they do not, comply with the applicable national road vehicle standards; and
    - Believe that the supplier is capable of giving information, producing documents or giving evidence in relation to those vehicles or components.
186. A reasonably foreseeable use of a vehicle or component includes using the road vehicle or components for their primary, normal or intended purpose, using the goods for its unintended purpose, or misusing the goods. However, the misuse of a road vehicle or a road vehicle component misuse has to be reasonably foreseeable.
187. Whilst all road vehicles can be intentionally misused to kill, maim or otherwise injure – a vehicle is not intended to be recalled on those grounds as they are risks inherent to road vehicles as a product category. Subsequently, this clause should not be interpreted as granting a power to seek information about any vehicle at any time, only vehicles that are exhibiting a dangerous characteristic through use or misuse outside the accepted operating parameters of road vehicles.

Clause 42: Self-incrimination

188. Clause 42 provides that a person is not excused from providing information, evidence or a document that might tend to incriminate them or expose them to a penalty if that provision is required by a disclosure notice. However, the information, evidence or document will not be admissible in evidence against an individual in civil or criminal proceedings unless the proceedings relate to the following:
    - clause 43 of the Bill (refusal or failure to comply with a disclosure notice);
    - clause 44 of the Bill (knowingly providing false or misleading information in response to a disclosure notice);
    - section 137.1 of the Criminal Code (knowingly giving false or misleading information to a Commonwealth entity etc.); or

- section 137.2 of the Criminal Code (knowingly giving a false or misleading document in compliance or purported compliance with a Commonwealth law).

189. The effect of clause 42 is to ensure that information, evidence or documents compelled under a disclosure notice cannot generally be used in civil or criminal proceedings against an individual. However, paragraphs (c) and (d) of that provision ensure that, if a person knowingly provides false information in response to a disclosure notice, it is possible to use the information, evidence or document that they provided in order to prosecute them for doing so. Without the exceptions in paragraphs (c) and (d) it would be difficult, if not impossible, to prosecute a person for providing false information in response to a declaration notice.
190. This clause only applies to clauses under Part 3 of this Bill – that is, only to recall related matters.
191. The abrogation of privilege against self-incrimination is necessary in the context of this information gathering power for two reasons:
    - Disclosure notices may be issued where a Minister or inspector believes that road vehicle or approved road vehicle components pose a danger to any person. For this reason timely gathering of information about the extent and nature of any risks is critical. While it may be technically feasible for the Department to obtain information by other means that do not impinge on the right against self-incrimination, these actions may take a longer amount of time. The first priority in recalls of road vehicles or approved components is the rectification or remediation of the safety or non-compliance issue. Prosecution and resulting penalties for those involved in the supply of road vehicles or approved components is generally a secondary consideration.
    - The Department may not always have specific information about the activities of particular suppliers – the Department may receive information about vehicle safety recalls, such as reports of faulty components in overseas markets, which will form the basis of its market surveillance activities. The receipt of such information may place the Department in the position where it needs to seek information from suppliers of similar vehicles or approved components in order to ascertain whether the same problem exists in Australia.

Clause 43: Compliance with disclosure notices

192. Non-compliance with a disclosure notice is a strict liability offence. The strict liability nature of the offence reflects the potential for widespread detriment, both in terms of potential safety risks for consumers and for its effect on automotive industry and consumer confidence more generally, that can be caused by a person that breaches this provision, whether or not they intended to engage in the contravention.
193. A person does not commit an offence if they comply with a notice to the extent that they are capable of complying with it. However, a defendant bears an evidential burden if they claim that they could not comply fully with a disclosure notice. It is essential for the evidential burden to be on the defendant for this exception clause, as this knowledge is only peculiarly to the defendant. This is the especially the case with this exception, as it would be nearly impossible for the prosecution to prove that a person subject to a disclosure notice is capable of complying with it. However, a defendant may more easily provide evidence that illustrates that they are not capable of complying with the disclosure notice.
194. An offence against clause 43 has a maximum penalty of 200 penalty units for a body corporate or 40 penalty units for non-body corporates.

Clause 44: False or misleading information etc.

195. Under clause 44, a person commits an offence and is liable to a civil penalty if the person gives information, evidence or a document and does so knowingly that it is false or misleading in a material particular. This provision applies only in relation to part three of the Bill, and more specifically to information provided in disclosure notice.
196. An offence against clause 44 has a maximum penalty of 300 penalty units for a body corporate and 60 penalty units for non-body corporates or imprisonment for 12 months, or both. The maximum civil penalty applicable if a person breaches clause 44 is 300 penalty units for body corporates and 60 penalty units for non-body corporates.
197. Clause 44 has higher maximum penalties compared to the false and misleading information provision found in clause 31 of the Bill and the possibility of imprisonment is necessary for this clause as it reflects the possible consequences that could arise from providing false or misleading information in response to a disclosure notice. Disclosure notices may be used by the Department where they have suspicion that a recall notice is necessary and to inform any decision of the Minister regarding compulsory recalls. If a person provides false or misleading information in response to the disclosure notice, it could have widespread ramifications for community and environmental safety.

Division 5 – Miscellaneous

Clause 45: References to supply of road vehicles and approved road vehicle components

198. This clause expands the meaning of the term "supply" in Part 3 of the Bill and the rules made for the purposes under clause 37 of the Bill to include a reference to agreeing to supply a road vehicle or road vehicle components.

Clause 46: Compensation for acquisition of property

199. Section 51(xxxi) of the *Constitution* allows the Parliament to make laws for the acquisition of property on just terms from any state or person for any purpose in respect of which the Parliament has power to make laws.
200. Subclause 46(1) provides that if there is an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person. It is important to note that this clause only applies to the operation of Part 3 of the Bill or any other provision of this Act, to the extent to which it relates to Part 3.
201. Subclause 46(2) provides that if the amount of compensation cannot be agreed upon between the Commonwealth and a person, the person may institute proceedings in a relevant Court to recover an amount of compensation that the court determines reasonable.

Clause 47: Operation of other laws

202. This clause outlines that the recalls provisions under Part 3 of the Bill is not intended to exclude or limit the operation of any Commonwealth or State and Territory Legislation.

Part 4 – Compliance and enforcement

Division 1 – Simplified outline of this Part

Clause 48: Simplified outline of this Part

203. This clause summarises Part 4 which contains compliance and enforcement measures. Part 4 provides for the use of infringement notices, civil penalties, injunctions and enforceable undertakings. A key feature of the compliance and enforcement approach is to have a graduated enforcement toolkit which enables the enforcement response to be proportionate to the risk non-compliance presents.
204. Each offence in the Bill is subject to civil penalties. In addition to pecuniary penalties that can be issued by a court, this part allows infringement notices, injunctions, and enforceable undertakings to be used where there is a contravention of a civil penalty provision. It achieves this by triggering the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), which sets out standard provisions for monitoring and investigation powers; and civil penalty, infringement notice, enforceable undertaking, or injunction schemes.
205. This part is summarised as follows:
    - Division 2 - sets out that the Secretary can appoint inspectors;
    - Division 3 - sets out that monitoring can be conducted by inspectors, consistent with powers under Part 2 of the Regulatory Powers Act. It modifies Part 2 of the Regulatory Powers Act by providing additional powers: the power to collect samples and take them away for testing. This is consistent with existing powers under the current *Motor Vehicle Standards Act 1989*;
    - Division 4 - sets out that investigations can be conducted by inspectors, consistent with powers under Part 3 of the Regulatory Powers Act. It modifies Part 3 of the Regulatory Powers Act by providing additional powers: the power to collect samples and take them away for testing. This is consistent with existing powers under the *Motor Vehicle Standards Act 1989;*
    - Division 5 – triggers the civil penalty, infringement notice, enforceable undertaking, and injunction powers under the Regulatory Powers Act; and
    - Division 6 – provides operational clauses as to allow the offences and civil penalty clauses to operate as intended.
206. A key element of the reforms is to ensure road vehicles and approved road vehicle components imported into Australia meet safety, anti-theft and environmental standards. It is envisioned that greater focus will be put on monitoring and enforcement of approvals. For this approach to be effective, the Department needs a wide range of powers to identify and address non-compliance and to align the severity of the penalty to the seriousness of the non-compliance.

Division 2 - Inspectors

Clause 49: Appointment of Inspectors

207. This clause empowers the Secretary of the Department to appoint the following persons to be inspectors:
    - APS employee in the Department; and
    - Employee of a State or Territory or an authority of a State or Territory.

208. The Secretary could only appoint someone as an authorised person where he or she is satisfied that the appointee has the knowledge or experience necessary to operate effectively and appropriately in this role. Relevant factors for the Secretary's consideration would include but not be limited to:
    - educational or training qualifications;
    - whether the person had a strong working knowledge of the Bill and Regulatory Powers Act;
    - previous experience as an inspector;
    - there is a requirement for specific expertise for sampling items or goods;
    - experience in the automotive industry; and
    - any experience exercising monitoring powers.
209. The Secretary can only appoint an employee or an authority of a State or Territory as an inspector if they have the agreement of the State or Territory under subclause 46(4).
210. Clause 48(5) requires an inspector to comply with any directions of the Secretary in exercising their powers.
211. The Secretary would be able to issue directions to authorised persons about how they use the powers. Such a direction would not be a legislative instrument within the meaning of subsection 8(1) of the *Legislation Act 2003* and subclause 46(6) is merely declaratory of this and intended to assist readers.

Division 3 - Monitoring

Clause 50: Monitoring under Part 2 of the Regulatory Powers Act

212. This clause provides authorised persons with monitoring powers by triggering Part 2 of the Regulatory Powers Act.
213. Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the Bill has been complied with, or an offence against the *Crimes Act 1914* and Criminal Code. When there is reference to the "Act", this includes any legislative instruments under the Act.
214. Subclause 50(2) provides that information given in compliance or purported compliance with a provision of the Bill is subject to monitoring under Part 2 of the Regulatory Powers Act.
215. Subclause 50(3) empowers the Department to provide evidence or information in to the relevant body in relation to section 133G of the *Competition and Consumer Act 2010* and a provision of the Australian Consumer Law relating to the safety of consumer goods. Section 133G of the *Competition and Consumer Act 2010* creates an offence provision for false or misleading in purported compliance with a disclosure notice. This allows the Department to provide information to the Australian Competition and Consumer Commission, if in the course of utilizing its monitoring powers there is evidence that illustrates a contravention of section 133G of the *Competition and Consumer Act 2010*.
216. Subclause 50(4) outlines who an authorised applicant for the purposes of Part 2 of the Regulatory Powers Act. In relation to this Bill, an authorised applicant is the Secretary, an SES employee or an acting SES employee of the Department. An authorised applicant under Part 2 of the Regulatory Powers Act can undertake such tasks as applying for monitoring warrants.
217. Subclause 50(5) allows for an authorised person to be assisted by other persons in exercising powers or preforming functions or dues under Part 2 of the Regulatory Powers Act. It should be noted that section 23(1) of the Regulatory Powers Act allows

for an authorised person to be assist by other persons in exercising powers or performing functions or dues under Part 2, if:

- that assistance is necessary and reasonable; or
- another Act empowers the authorised person to be assisted.

218. It is important that authorised persons can be assisted in their duties. For example, there may be circumstances where:
    - no other officers are available to assist;
    - where the person has specialist expertise in the subject matter of the monitoring;
    - where there may be a large amount of material found that needs to be secured quickly;
    - another person is more familiar with specific premises, or
    - where an authorised person needs assistance to move a heavy item that the officer cannot move on their own.

Clause 51: Modifications of Part 2 of the Regulatory Power Act

219. Subclause 51(2) provides for additional monitoring powers beyond those provided for under Part 2 of the Regulatory Powers Act, including:
    - the power to sample any thing on a premises entered under a monitoring warrant or with appropriate consent under Part 2 of the Regulatory Powers Act; and
    - the power to remove and test such samples.
220. Clause 51(1) establishes circumstances where additional monitoring powers can be utilised. This includes monitoring and determining compliance or correctness of information against:
    - A provision of the Bill; and
    - An offence against the *Crimes Act 1914* or the Criminal Code that relates to this Bill.
221. This additional power is required to ensure that the Department has the appropriate powers for the effective monitoring of compliance with this Bill. As the majority of the compliance under this Bill will occur at premises outside the control of the Department, this power to sample, remove and test is necessary to strengthen the regulatory framework of the Bill.
222. Road vehicles are a complex series of parts and components, and as such, it is difficult to anticipate what type of testing will be required. Further, some testing equipment for road vehicle and components is not portable and cannot be taken onto the premises.
223. It should also be noted that this is not an expansion of existing powers of inspectors. Section 27 of the *Motor Vehicle Standards Act 1989* includes the power to take and keep samples of any goods or substances used in the manufacture or testing of a road vehicle or vehicle component. Therefore, the modifications of the Regulatory Powers Act are consistent with that of the existing powers under the *Motor Vehicle Standards Act 1989.*

Division 4 – Investigation

Clause 52: Investigating under Part 3 of the Regulatory Powers Act

224. Clause 52 provides authorised persons with investigating powers by triggering Part 3 of the Regulatory Powers Act, which creates a framework for gathering material that relates to contravention of criminal or civil penalty clauses of this Bill. Part 3 of the

Regulatory Powers Act creates a framework for investigating whether a provision has been contravened and includes powers of entry, search and seizure.

225. Subclause 52(1) provides that a provision is subject to investigation under Part 3 if it is:
    - an offence against the bill; or
    - civil penalty provision of the Bill; or
    - an offence against the *Crimes Act 1914* or the Criminal Code that relates to this Bill.
226. For the purposes of Part 3 of the Regulatory Powers Act, an authorised applicant under the Bill can be the Secretary, an SES employee, or an acting SES employee in the Department. Furthermore, an inspector is an authorised person under this Bill. An authorised person can be assisted in exercising powers or performing functions or duties under Part 4 of the Regulatory Powers Act. However, it should be noted that under section 53(1)(a) of the Regulatory Powers Act, a person exercising investigation powers may only be assisted by another person if it is necessary and reasonable to do so. For example, there may be circumstances where:
    - no other officers are available to assist;
    - where the person has specialist expertise in the subject matter of the investigation;
    - where there may be a large amount of material found that needs to be secured quickly;
    - another person is more familiar with specific premises, or
    - where an officer needs assistance to move a heavy item that the officer cannot move on their own.

Clause 53: Modifications of Part 4 of the Regulatory Powers Act

227. This clause outlines what modifications of Part 3 of Regulatory Powers Act apply to the Bill. Under subclause (2), authorised persons have the power to sample any thing on the premises, remove and test samples, provided the entry was empowered under Part of the Regulatory Powers Act.
228. This additional power is required to ensure that the Department has the appropriate power for investigation. As the majority of the compliance under this Bill will occur at premises outside the control of Department, this power to sample, remove and test is necessary to strengthen the regulatory framework of the Bill.
229. Road Vehicles are a complex series of parts and components, and as such, it is difficult to anticipate what time of testing will be required. Further, some testing equipment for road vehicle and components is not portable and cannot be taken onto the premises.
230. It should also be noted that this is not an expansion of investigation powers. Section 27 of the *Motor Vehicle Standards Act 1989* includes the power to take and keep samples of any goods or substances used in the manufacture or testing of a road vehicle or vehicle component. Therefore, the modifications of the Regulatory Powers Act are consistent with that of the existing powers under the *Motor Vehicle Standards Act 1989.*

Division 5 – Civil penalties, infringement notices, enforceable undertakings and injunctions

Clause 54: Civil Penalties under Part 4 of the Regulatory Powers Act

231. This clause provides that each civil penalty provision of the Bill is enforceable under Part 4 of the Regulatory Powers Act. Overall, this clause ensures the proper operation of this Part of the Regulatory Powers Act in relation civil penalty clauses under the Bill.

232. This clause also provides that the Minister, the Secretary or an SES Employee in the Department are authorised applicants for the purposes of Part 4 of the Regulatory Powers Act.
233. Clause 54(3) exempts 82(5) of the Regulatory Powers Act from applying to a number of clauses within this Bill. Subsection 82(5) of the Regulatory Powers Act establishes the maximum pecuniary penalty that a Court can award if civil proceedings are brought against a person.
234. However, subsection 82(5) of the Regulatory Powers Act does not apply to the following provisions under the Bill:
    - Subsection 37(4) – compliance with recall notices;
    - Subsection 38(3) – notification requirements for compulsory recalls; and
    - Subsection 39(3) – notification requirements for voluntary recalls.
235. The above mentioned exempted clauses are replicated under Australian Consumer Law. Under the Australian Consumer Law, the civil penalties for contravening are higher than for what is allowed under subsection 82(5) of the Regulatory Powers Act. Keeping the Bill's penalties the same as the Australian Consumer Law will ensure consistency across Commonwealth legislation for the same behaviour.
236. Clause 54(4) makes clear that Part 4 of the Regulatory Powers Act as it applies to the civil penalty provisions in the Act does not make the Crown liable to a pecuniary penalty.

Clause 55: Infringement Notices under Part 5 of the Regulatory Powers Act

237. This clause identifies provisions which are subject to an infringement notice under Part 5 of the Regulatory Powers Act. An infringement notice can be issued for a civil penalty provision in Part 2 and Part 3 of the Bill or an offence where strict liability applies to all elements to the offence.
238. It is important to note that payment of an infringement notice is not an admission of guilt or liability. If a person issued with an infringement notice pays the penalty by the time specified then criminal or civil proceedings cannot be initiated in relation to the alleged contravention and the matter is finalised without an admission of guilt or liability. Alternatively, if a person wishes to dispute an infringement notice, then they can decide to not pay the infringement notice amount. However, if they do not pay the infringement notice amount, the criminal (Part 3 offences) or civil penalty proceedings can be brought against them in a relevant court. The content of an infringement notice issued under this Bill will be consistent with the Regulatory Powers Act and the Australian Government Attorney-General's Department '*Guide to framing Commonwealth offences, infringement notices and enforcement powers'*.
239. A person who is given an infringement notice under this Part can choose to pay an amount as an alternative to having court proceedings brought against them for the contravention.
240. For the purposes of Part 5 of the Regulatory Powers Act, an SES employer or acting SES employee is an infringement officer and the relevant chief executive for the purposes of this clause is the Secretary.
241. Under subclause 55(3), a single infringement notice may be given to a person for two or more alleged contraventions of a clause in Part 2 or 3 of this Bill. This will be despite subsection 103(3) of the Regulatory Powers Act. This allows administrative efficiency by ensuring that in cases where, for example multiple contraventions of the same clause, or multiple contraventions of different clauses, have been committed by one person, that there only has to be one notice. Each instance of conduct can only have one amount.

For clarity, this does not mean that, for example, five instances of entering a vehicle on the RAV incorrectly can only have one amount. Each one of those five instances should be considered a separate instance of 'conduct' not the same conduct.

242. Subclause 55(4) indemnifies the Crown from being issued an infringement notice.

Clause 56: Modifications of Part 5 of the Regulatory Powers Act

243. Clause 56(1) sets out provisions within the Bill that are not subject to the amount payable under subsection 104(2) and (3) of the Regulatory Powers Act in relation to infringement notices.
244. The relevant provisions that are exempt are:
    - Subsection 37(3) – compliance with recall notices;
    - Subsection 38(2) – notification requirements – compulsory recalls; and
    - Subsection 39(2) – notification requirements – voluntary recalls.
245. This clause also sets out, for the civil penalty contraventions under clause 56(1), the amount that is payable under an infringement notice for the abovementioned exempted clauses of the Bill. While this is a significant departure from the provisions and limitations imposed by the Regulatory Powers Act, it is consistent with other Commonwealth law and is commensurate with the seriousness of offence.
246. Subclause 56(2) provides that the amount to be stated in an infringement notice for an alleged contravention by a person of a strict liability offence mentioned in subclause 56(1) is the amount in the table at clause 56 if there is a single contravention or, if there is more than one contravention, the sum of each contravention amount.
247. Clause 56 ensure that the penalties in this Bill are consistent with the penalties in the Australian Consumer Law for offences of the same nature, ensuring this Bill is able to operate as intended, that is, providing effective recall power to the Minister responsible for this Bill. The high level of penalty imposed reflects the level of seriousness associated with failing to comply with recalls notices, or otherwise mislead in relation to a recall. Failure to comply with these clauses could result in a recall notice not being complied with or a person not being notified, ultimately resulting in, potentially, widespread serious injury, death or serious environmental damage.

Clause 57: Enforceable undertakings under part 6 of the Regulatory Powers Act

248. This clause provides that the provisions of this Bill are enforceable under Part 6 of the Regulatory Powers Act. Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with civil penalty provisions
249. This clause also provides that the Minister, Secretary or SES Employee is an authorised person for the purposes of under Part 6 of the Regulatory Powers Act. The authorised persons may accept an undertaking in relation to compliance with a provision of this Bill and enforce an undertaking Part 6 of the Regulatory Powers Act.
250. An authorised person must publish that the Department has entered into an undertaking with a regulated person. An authorised person can publish on the Department's website that the Department has entered into an undertaking with a person, which can be either listing the company name or natural person's name. This Clause does not intend to prevent the publication of any additional information – it merely imposes a minimum requirement.

Clause 58: Injunctions under Part 7 of the Regulatory Powers Act

251. This clause provides that the provisions of this Bill are enforceable under Part 7 of the Regulatory Powers Act. Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions. This provides an additional tool with which the Department can enforce compliance of the Bill. Injunctions (including interim injunctions) under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening a provision of this Bill, or to compel compliance with a provision of this Bill.
252. This clause provides that the Minister, Secretary or SES Employee are authorised persons for the purposes of Part 7 of the Regulatory Powers Act.

Division 6 - Miscellaneous

Clause 59: Physical elements of offences

253. This clause applies to all offences in the Bill. It provides that, for the purposes of Chapter 2 of the Criminal Code (which sets out the principles of criminal responsibility in relation to Commonwealth offences), the physical elements of each offence in the Bill are set out in the sub-clause which provides for contravention.

Clause 60: Contravening an offence provision or a civil penalty provision

254. This clause applies to any provision of the Bill where a criminal offence or a civil penalty liable arises by contravening another provision (conduct provision). This clause provides that a reference to a contravention of either an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.
255. For example, a contravention of subclause 17(1) of this Bill gives rise to a criminal offence or civil penalty liability under subclauses 17(3) and (5) respectively

Part 5 – Administration

Division 1 – Simplified outline of this Part

Clause 61: Simplified outline of this part

256. This clause provides an outline of Part 5 of the Bill. Part 5 of the Bill covers administrative matters, such as using computer programs, review of decisions and information sharing and delegations.

Division 2 – Computerised decision-making

Clause 62: Minister may arrange for use of computer programs to make decisions

257. Subclause 62(1) provides that the Minister may arrange for the use of computer programs to make a decision, exercise any power or obligation, or do anything else related to making a decision, power or obligation.
258. Subclause 62(2) deems a decision made, or any power or obligation exercised, by a computer program to be that of the Minister.

259. These clauses are intended to establish a flexible legislative regime that will support future developments in information technology and business processing. This provision does not require the Minister to use computer decision making, but rather provides it as an option. The Minister has the ability to set his or her own policy as to how the computer programs are to be used and for what functions. This clause is intended to establish a flexible legislative regime that will support future developments in information technology and business processing.
260. Computer based decision making can provide applicants for approval with quicker decisions on their applications. By using check box online applications, the computer could make near instant decisions as to whether a person meets the criteria for a particular pathway under the Bill. Alternatively, computer based decisions could be used to make an initial assessment for an application that is subject to the Department's approval.
261. The drafting of this provision is consistent with other legislation that utilises computer programs to make decisions, including the *Migration Act 1958*, *Aged Care Act 1997* and *Veterans Entitlement Act 1986*.

Clause 63: Minister may substitute more favourable decision for certain computer-based decisions

262. Subclause 63(1) provides that the Minister may substitute a more favourable decision for that of the computer program. This power is intended to operate as a "safety mechanism" to enable the Minister to address any injustices caused to applicants as a result computer-related errors.
263. This clause may be used where a decision has been made by the computer program and at the time of the decision, the computer program was not working correctly. This will ensure that the Minister can correct adverse decisions without the need for applicants to seek external review when it is the computer program itself that has made an error. However, nothing in this provision is intended to affect any merits review entitlements that an applicant may have.
264. This power can also be used, for example where a computer program has incorrectly refused an import approval. However, where the computer program incorrectly granted an import approval, import approval powers maybe relied upon to correct the error.
265. Under clause 63(2), the Minister is not obligated to consider whether to exercise the power to substitute a more favourable decision. However, the Minister may exercise this power despite any law of the Commonwealth, or any rule of common law to the contrary effect. This is intended to expressly displace the operation of functus officio principle - that is, as the decision of the computer is deemed to be that of the Minister, the Minister would not normally be able to reconsider the decision.
266. It should be noted that the drafting of this provision is consistent with other legislation that utilises computer programs to make decisions, including the *Migration Act 1958*, *Aged Care Act 1997* and *Veterans Entitlement Act 1986*.

Clause 64: Use of computer programs by Secretary to make decisions, etc.

267. Clause 64 provides that clauses 62 and 63 apply in relation to the Secretary in the same way as those clauses apply to the Minister.

Division 3 – Sharing information

Clause 65: Sharing information

268. This clause enables the Secretary to provide information, a record or document obtained under this Bill to the following entities:
    - A body responsible for maintaining the RAV; or
    - The Australian Competition and Consumer Commission;
    - Department of Immigration and Border Protection;
    - An authority of a State or Territory that has responsibilities for the registration of road vehicles;
    - A national regulatory authority of a foreign country that has national responsibility relating to road vehicle standards;
    - An international body responsible for:
    - Investigation contraventions of international agreements or international decisions; or
    - Administering or ensuring compliance with international agreements or international decisions.
    - Any other body prescribed by the Rules.
269. This clause is necessary so that information can easily be shared between the relevant entities to ensure compliance with national and international laws and regulations.
270. Subclause 65(2) allows for the road vehicle information that is shared to include personal information. This clause is in accordance with Australian Privacy Principles, which allows for the use or disclosure of personal information where it is authorised by Australian law.
271. For example, information needs to be shared with the ACCC to ensure effective interaction between this Bill and the *Competition and Consumer Act 2010*. The Department of Infrastructure, Regional Development and Cities has unique information (including personal information such as names and addressed) about suppliers of road vehicles. This needs to be provided to the ACCC to ensure appropriate operation of consumer protection mechanisms – such as product bans or in the event that they conduct a recall in the road vehicle space.
272. Sharing information with the Department of Immigration and Border Protection is necessary to ensure vehicle imports can be appropriately processed at the border. Personal information (such as name of the importer) needs to be provided in order to ensure the vehicle can be released to the appropriate person.
273. Consistent with current practice, import approvals may be provided to state and territory registration authorities to assist in deciding whether a vehicle is appropriate for use on the road. At times, the import approval holder's personal information is required to facilitate this process and ensure that the appropriate person is linked to the registration of that vehicle.
274. As Australia is a participant in international agreements relating to motor vehicles, information gathered through this Bill may need to inform global investigations of compliance or assist with administering with international agreements.
275. Subclause 65(3) provides that a road vehicle information may not (other than outlined in subclause 65(1) and 65(2)) used or disclosed by a body mentioned in subclause 65(1) for commercial purposes.

Division 4 - Cost Recovery

Subdivision A - Fees

Clause 66: Fees for fee-bearing activities

276. This clause provides that the Rules may prescribe fees for activities ('fee-bearing activities') carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under the Act. It will enable fees to be charged when goods or a service is provided directly to a specific individual or organisation (in line with the Australian Government *Cost Recovery Guidelines*). For example, the Commonwealth will be able to recover the cost of reviewing applications by setting an application fee.
277. This clause sets out some of the matters that the Rules may set out in relation to fees. For example, the Rules may set out a method for working out a fee of a refund of a fee. This is designed to allow a flexible fee structure and level of granularity to fees that helps to directly recover the costs of administering the Act.
278. Fees should only be charged for the purpose of recovering the costs of providing the services or activities only and not amount to taxation.
279. The clause is consistent with the Australian Government *Cost Recovery Guidelines* and compliant with constitutional requirements about taxation legislation by requiring that any fees set out in the Rules do not amount to taxation.

Subdivision B – Payment of cost recovery charges

Clause 67: Paying cost-recovery charges

280. This clause provides for rules relating to the payment of cost-recovery charges to be set out in rules. Cost-recovery charges include fees prescribed in the Rules, charges imposed by related Road Vehicle Standards Charging Bills and late payment fees relating to those fees and charges.
281. This clause also provides that the Rules may prescribe the time when a specified cost-recovery charge is payable, the way it is payable, and prescribe one or more persons who are liable to pay a cost recovery charge.

Subdivision C – Unpaid cost-recovery charges

Clause 68 – Late payment fee

282. This clause allows the Rules to specify a late payment fee that is due and payable if a cost-recovery charge is not paid at or before the time it is due. A late payment fee may relate to each day or part day that the basic charge remains unpaid.
283. The late payment fee will be used as a compliance tool to encourage on time payment of cost-recovery charges and ensure that the Commonwealth can recover costs for services already provided.

Clause 69: Recovery of cost-recovery charges

284. This clause provides the Commonwealth with the ability to recover any cost-recovery charge that is due and payable through action in a relevant court. The recovery of cost-

recovery charges through a relevant court will be used as a compliance tool to ensure that the Commonwealth can recover costs for services already provided.

Clause 70: Suspending or revoking approvals because of unpaid cost-recovery charges

285. This clause allows the Rules to provide for the suspension or revocation of approvals granted under this Bill in circumstances where the holder of an approval is liable to pay a cost-recovery charge that is due, and they have not paid the amount due.

Clause 71: Secretary may direct that activities not carried out

286. This clause allows the Secretary to either not carry out a specified activity, or direct a person not to carry out a specified activity, until a person who is liable to pay a cost-recovery charge pays that charge.
287. For example, the Secretary may not consider an application until the application fee has been received.

Clause 72: Secretary may remit or refund cost-recovery charges

288. This clause allows Secretary to remit or refund all or part of a cost-recovery charge prescribed if the Secretary is satisfied there are circumstances that justify doing so. This will be at the Secretary's discretion. This may be done at the Secretary's initiative or on written application by a person.
289. This power can only be delegated to SES and Acting SES in the Department.

Division 5 – Delegations

Clause 73: Delegation by the Minister

290. Clause 73 enables the Minister to delegate a number of the Minister's functions or powers under the Bill to the Secretary, SES or acting SES employee.
291. A delegate must comply with any directions of the Minister whilst exercising powers under a delegation.
292. This power of delegation does not apply to the Minister's powers under clauses 12 and 82 or the power to issue a recall notice in relation to the compulsory recall of a road vehicle or approved road vehicle component.
293. The Minister will have ultimate responsibility for decisions that set a framework. For example, this would be items such as setting Rules or making Determinations.
294. Subclause 73(5) allows for the Rules to provide for, and in relation to, the delegation of the Minister's functions or powers under the Rules, or any other instruments made under the Rules, to the Secretary or an APS employee. However, the power to issue a recall or power to determine a matter by legislative instrument cannot be delegated by the Rules.
295. The definition of "this Act" does not apply to this clause. The effect of this is that these delegation instruments only pertain to this Act and not any legislative instruments made under this Act.

Clause 74: Delegation by the Secretary.

296. This clause provides for the Secretary to delegate any or all of their functions or powers under the Bill to an SES or acting SES employee.
297. The exception to this clause is the power to determinate whether a vehicle of a particular class is, or is not a road vehicle under clause 6. It has been determined that such a power should remain with the Secretary due to the significance of such a decision.
298. Any functions or powers delegated under the Bill must be in writing and the delegate must comply with any directions of the Secretary.
299. The definition of "this Act" in clause 5 does not apply to this clause. The effect of this is that these delegation instruments only pertain to this Act and not any legislative instruments made under this Act.
300. For both clause 73 and 74 the following core principles should be followed for delegation:
    - For provisions that are a sanctions or taking something away from a person (such as suspend, vary, or cancel provisions) these should be made at a level above the level of the original decision maker and should always be at SES level.
    - If variation is requested by the applicant, then the level that made the original decision is acceptable.
    - APS level officers should be able to at least make decisions on matters with high volumes and relatively clear statutory criteria. They should not make decisions in areas requiring a high degree of discretion.

Part 6 – Miscellaneous

Division 1 – Simplified outline of this Part

Clause 75: Simplified outline of this Part

301. This part of the Bill deals with various matters that are necessary for the interaction with Commonwealth, State and Territory legislation or sub-ordinate legislation and the making of rules by the Minister.

Division 2 – Interactions with other laws

Clause 76: Authority to take delivery of imported vehicles

302. This clause creates the link between the *Customs Act 1901* and the Bill. Under the *Customs Act 1901*, an authority to deal with goods may be expressed to be subject to a condition that a specified permission for the goods to be dealt with (however it is described) be obtained under another law of the Commonwealth.
303. Under clause 76, if an authority to deal under the *Customs Act 1901* is subject to a condition that a specified permission for the vehicle be obtained under the *Customs Act 1901*, then the condition is taken to be satisfied if the person to whom the authority relates is the holder of an import approval or a road vehicle type approval applicable to the vehicle. The practical intention is that having an import approval or type approval should see vehicles satisfy authority to deal conditions that consist of obtaining a permission under this Act.

Clause 77: Application of Australian Consumer Law

304. This clause sets out that national vehicle standards are safety standards for the purpose of sections 106 and 122 of the Australian Consumer Law (with the exception of subsection 106(7)). Section 106 of the Australian Consumer Law relevantly prohibits a person from supplying, in trade or commerce, consumer goods of a particular kind, if a safety standard for consumer goods of that kind is in force, and those goods do not comply with the standard. It also prohibits a person from offering, in trade or commerce, such goods for supply (other than for export, in which case an approval is required), or manufacturing, possessing or having control of such goods, in or for the purposes of trade or commerce.
305. Section 122 of the Australian Consumer Law permits a responsible Minister to issue a recall notice for consumer goods of a particular kind in certain circumstances. These relevantly include where a person supplies, in trade or commerce, consumer goods of that kind, a safety standard for such goods is in force, the goods do not comply with the standard, and it appears to the Minister that one or more suppliers have not taken satisfactory action to prevent those goods causing injury to any person.

Clause 78: Road vehicle need not comply with State or Territory Standards

306. This clause contributes to the first object of the Bill by ensuring that National Road Vehicle Standards applied to new road vehicles are consistent across Australia. It does this by preventing State and Territory laws from imposing more stringent requirements on such vehicles. Specifically, within certain limitations, if a new road vehicle complies with the standards imposed by this Bill for that vehicle's RAV entry, then it can be used in transport on a public road in Australia, even if it does not comply with a State or Territory road vehicle standard. Clause 78 does not preclude State and Territory laws from imposing requirements in relation to how road vehicles are used – for example, requiring that a vehicle used in a particular way (eg, to carry a load of a certain type or weight) must have a certain safety feature. Such requirements are not road vehicle standards for the purpose of the clause.
307. Subclause 78(1) does not affect the operation of State or Territory law in relation to a vehicle if the vehicle has been modified so that it no longer complies with one or more of the standards imposed for its RAV entry, or if its operation becomes defective.

Clause 79: Severability – additional effect of Act

308. This clause provides for the additional operation of the Bill in the event that any part of its operation is otherwise subject to successful constitutional challenge. It sets out various heads of constitutional power that can be relied upon to support the operation of the Bill. This clause is intended to ensure that the Bill is given the widest possible operation consistent with Commonwealth legislative power. The legislative powers referred to in the clause are as follows:
    - Trade and commerce power (section 51(i) of the *Constitution*);
    - Corporations power (section 51(xx) of the *Constitution*);
    - External affairs power (section 51(xxix) of the *Constitution*);
    - Communications power (section 51(v) of the *Constitution*);
    - Commonwealth places power (section 52(i) of the *Constitution*); and
    - Territories power (section 122 of the *Constitution*).

Division 3 – Basis on which approvals granted

Clause 80: Basis on which approvals granted

309. This clause clarifies the basis on which an approval granted under the rules is granted. Specifically, it clarifies that:
    - conditions may be imposed on the approval – For example, an import approval for a road vehicle may impose a condition that the road vehicle be exported or destroyed within a set period of time;
    - conditions imposed on the approval may be varied or removed under the Bill
    - the approval may be suspended or revoked under the rules– For example, an approval may be suspended or revoked pursuant to a provision of the Bill providing for revocation if there is evidence of non-compliance with a condition of the approval; and
    - the approval may be cancelled, revoked, terminated or varied by or under later legislation For example, an approval may be cancelled by operation of a legislative provision that was not in existence at the time the approval was granted.
310. This clause also states that no compensation will be payable if:
    - Conditions are imposed on an approval under the Bill
    - Conditions imposed on the approval are varied or removed under the Bill; or
    - The approval is suspended, cancelled, revoked, terminated or varied.

Division 4 – Miscellaneous

Clause 81: Immunity from suit

311. This clause prevents the bringing of legal proceedings against the Commonwealth, including the Minister or employee of the Department, in respect of any loss incurred or damage suffered due to a reliance on:
    - An entry of a road vehicle on the RAV or SEVs Register; or
    - Any test carried out under this Bill; or
    - Any express statement, or any statement or action implying, that road vehicle or a road vehicle component complied with a national road vehicle standard.

Clause 82: Rules

312. This clause provides that the Minister may, by legislative instrument, make rules providing for matters that are required or permitted by this Bill to be prescribed by the rules or are necessary or convenient to be prescribed in order to carry out or give effect to this Bill.
313. The Rules may, without limiting subclause 82(1):
    - Provide for and in relation to the determination of specified matters by the Minister by legislative instrument;
    - Confer a power to make a decision of an administrative character on the Minister or the Secretary;
    - Provide for review of decisions of an administrative character;
    - Provide for conditions on approvals that require documents or information to be provided

- Provide for limited powers of entry and search of premises where activities are undertaken by an approval holder in relation to an approval;
- Provide for the publication of approvals and details of approvals under this Act, such type approvals, which are currently a matter of public record;
- In relation to matters which are required or permitted by the Bill to be prescribed by the rules – provide for and in relation to ancillary or incidental matters.

314. Subclause 82(3) limits the content that can be contained in the Rules by making it clear that the Rules cannot create an offence or civil penalties; provide arrest, detention, or entry, search, and seizure powers (other than the limited circumstances provided in subparagraph 82(2)(d)(ii)); impose a tax; set out any appropriation of commonwealth funds, or amend the text of the Bill.
315. Subclause 82(6) provides that despite subsection 14(2) of the *Legislation Act 2003*, the Rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing as in force or existing from time to time. It is intended that there will be a number of detailed technical legislative instruments that will sit in the Rules or be made by the Rules. This power is needed, for example, to ensure that the technical instruments can refer to documents that are referred to in the National Road Vehicle Standards (which have a similarly broad power for incorporation, see notes on clause 12).

ATTACHMENT A – Regulation Impact Statement

Contents

Executive summary

Regulatory costs:	- $68.8 million per annum averaged over ten years
Comprising:	- $19.6 million through reform initiatives; and
	- $49.2 million through continued harmonisation of vehicle design requirements with international standards
Have offsets been provided?	☐ Yes ☐ No ☒ Not required

In January 2016 Australia's vehicle fleet stood at 22.2 million vehicles with approximately 1.2 million vehicles entering the Australian market last year. Ninety eight per cent of these vehicles were new – supplied through the vehicle manufacturer distribution network. Two per cent were used - supplied and used in markets outside Australia before being imported. A healthy and competitive used car sale market provides Australian motorists around 4 million vehicles per year.

For more than 50 years Governments have set road vehicle standards to deliver road safety and environmental outcomes. Mandated safety standard improvements have contributed significantly to reduced road accident deaths and serious injuries, estimated to cost the economy $27 billion per year[1]. Occupant protection measures (for example, crumple zones and airbags) and technology such as electronic stability control have contributed to a decrease of 19.2 per cent in deaths on Australian roads in the last decade[2].

The *Motor Vehicle Standards Act 1989* (the Act) and the *Motor Vehicle Standards Regulations 1989* provide the regulatory framework to control the safety, environmental performance and security of new and used vehicles entering the Australian market for the first time, including imported vehicles. The Act has two objects: to apply nationally uniform vehicle standards for new vehicles when they begin to be used in transport; and to regulate the first supply to the market of used imported vehicles.

The Act delivers on public policy objectives for community and consumer protection through setting minimum vehicle performance standards for safety, environmental performance and anti-theft—prescribing these measures through the Australian Design Rules (ADRs).

The Act was last comprehensively reviewed in 2000. Since that time, a changed domestic and global automotive environment, along with different community expectations of regulators have created pressure on the Act's ability to respond flexibly and maintain adherence to its key policy objectives without imposing undue regulatory restrictions.

Public consultations during 2013 and 2014 revealed that stakeholders believed the Act had reduced regulatory burden with its introduction in 1989; nonetheless, there is now further opportunity to reduce the regulatory compliance cost and revisit how standards are applied in the regulation of new and used vehicles being used on roads in Australia for the first time. The

[1] Current estimates of cost to community of road crashes from https://infrastructure.gov.au/roads/safety/
[2] Road trauma Australia 2016 statistical summary, Bureau of Infrastructure, Transport and Regional Economics

case for review was also supported by the final report of the Productivity Commission's 2013-14 inquiry into the Australian automotive industry, recommending the reduction in restrictions on new and used vehicle imports.

The purpose of this Regulation Impact Statement (RIS) is to inform the Australian Government's (the Government) decision to reform the Act, as required by the Terms of Reference (Appendix A), with respect to:

- determining whether the Objects of the Act are being achieved, whether they continue to be appropriate, and whether the current legislative framework is effective in achieving the Objects of the Act;
- reducing the regulatory burden currently imposed by the legislation on industry and consumers; and
- determining whether the regulatory powers and reporting responsibilities in the Act facilitate effective and proportionate compliance by industry and consumers bringing road vehicles to the Australian market for the first time.

The legislative framework currently has a regulatory compliance cost in the order of $249 million per annum for an Industry Added Value to the economy of over $3.7 billion per year[3].

Parts 4 and 5 of this RIS consider and assess three future options for the Act and its Regulations. These are:

- Option 1 – Maintain the status quo;
- Option 2 – Repeal the *Motor Vehicle Standards Act 1989*; and
- Option 3 – Reform the *Motor Vehicle Standards Act 1989*.

Options 1 and 2 (not preferred)

Option 1 maintains the Act in its current form in terms of its scope, policies and regulatory approach. While Option 1 would continue to see the Act largely achieve the objectives of nationally uniform standards for new vehicles and control the first supply of used vehicles, the Act's regulatory effectiveness and efficiency would continue to decline. There is also some doubt on the Act's ability to cope with the continued change occurring in the automotive sector.

Option 2 considers whether the Act is still required, and whether its repeal would achieve compliance cost reductions. Should the legislation be repealed the Australian Government would no longer prescribe nationally uniform standards, leaving the regulation of vehicle standards to individual state and territory governments. In the absence of nationally regulated standards, a situation would be created with unnecessary regulatory costs and inconsistency of standards for manufacturers and suppliers within the one national market. Without national consistency, consumers would pay more for vehicles (due to smaller individual markets) and have less certainty about whether they would be able to register the vehicle in another state or territory. Further, a lack of national standards would leave a significant element of vehicle safety to the choice of individual new vehicle buyers.

The review of the Act sought to address tangible concerns in relation to the effectiveness of the legislation and whether it created artificial barriers to competitive pricing. The evaluation of

[3] Latest available (2014/15) ABS Industry added value figure for motor vehicle manufacturing. Does not include motor vehicle retailing or wholesaling or sale of parts.

Options 1 and 2 has shown that the community costs of not taking action or repealing the legislation altogether would outweigh the limited range of benefits identified. The costs of failing to address these inefficiencies, as described in the qualitative analysis of each of these options, mean that Options 1 and 2 are not preferred.

The recommended option is Option 3 – Reform the *Motor Vehicle Standards Act 1989*.

Option 3 (preferred)

Option 3 provides a balance between reducing regulatory intervention and meeting the public policy objectives of community safety and consumer protection. These objectives are realised when the community's expectations on vehicle safety, environmental performance and anti-theft measures are met without unduly restricting or imposing unwarranted regulatory compliance costs or reducing choice. Option 3 also provides the most effective means to continue the promotion of technologies that will benefit the Australian community.

'Road vehicles' includes a diverse range of passenger vehicles, motorcycles, trucks, buses, recreational vehicles, trailers, mobile plant and commercial vehicles that enter the Australian market in an equally diverse number of ways. Motor vehicles are also complex and relatively expensive assets and due to their size, speed and increasing numbers, the community has an interest in the regulation of motor vehicle safety. Consequently, Option 3, reform of the Act, is focussed on a risk based approach to regulation. To prescriptively regulate each and every entry pathway would be prohibitively expensive and too restrictive.

The Options Discussion Paper released in September 2014 examined the issues and opportunities arising out of the public consultation processes conducted in mid-2013. Stakeholder feedback suggested that the motor vehicle standards regulatory regime directly impacts on the achievement of public policy objectives but does so by imposing a regulatory burden on industry, individuals and taxpayers. The options paper developed these themes and suggested the means by which the Government can:

- streamline regulatory requirements to reduce compliance costs;
- modernise the legislative framework;
- improve the compliance and enforcement provisions; and
- articulate and improve the Act's intersection with other legislation.

In this context, the RIS recommends the following actions in reforming the Act and its regulations:

Introduction of a Register of Approved Vehicles in conjunction with secure vehicle identification marking – to replace the physical identification plates affixed to all vehicles (commonly known as compliance plates). The core purpose of an identification plate is to identify that a vehicle is compliant to the Australian Design Rules at the time of its first supply to the Australian market. It also serves as a de-facto means of identification for state and territory road regulators and policing agencies. The compliance information will be contained on the Register of Approved Vehicles (RAV) – a publicly searchable online database for all road vehicles approved for use on Australian roads. Entry of a vehicle's compliance details onto the new Register of Approved Vehicles will improve the Government's ability to ensure the compliance of road vehicles as it will provide an exact point in time a vehicle supplier declares the vehicle compliant with the

legislative requirements. It will also improve information available to consumers and industry as an accessible database for consumers to check a vehicle's importation and approval pathway.

The identification element will be replaced with a secure identification marking of the Vehicle Identification Number (VIN). This assists police and state and territory road regulators by ensuring that the identities of road vehicles supplied in Australia continue to be protected as well as provide a deterrent to vehicle theft activities for the purposes of vehicle re-birthing and laundering.

This will realise a moderate reduction of the regulatory burden imposed on manufacturers and vehicle importers. Light trailers, including caravans, will also be required to be on the Register of Approved Vehicles (RAV) although they will retain requirements for an information plate to ensure that imported and locally manufactured light trailers have both manufacturer traceability as well as in-use visibility of load limits.

Consolidate the individual concessional schemes into two pathways – to reduce regulatory cost, enhance risk based regulatory effort and improve access for consumers to genuine specialist and enthusiast vehicles – including vehicles providing for disability access. These two pathways are:

- Road use (will be entered onto the RAV), e.g. Specialist and Enthusiast Vehicles (SEVs), vehicles 25 years and older, vehicles owned and used overseas, vehicles to which an intergovernmental agreement applies, used heavy and light trailers, new light trailers in limited volumes and returning vehicles (vehicles approved for use in Australia that have been exported and are subsequently returning to Australia).
- Non-road use (will not be entered onto the RAV) – e.g. exhibition vehicles, test and evaluation vehicles, vehicles in transit and temporary road use.

Access to SEVs will be retained and revised. These vehicles will need to meet one of six objective criteria (instead of the current two of four subjective criteria) to be eligible for entry onto the Register of Specialist and Enthusiast Vehicles (SEV Register) and be processed through a Registered Automotive Workshop (RAW). Other changes to the rules surrounding SEVs are earlier consideration for eligibility (three months after launch overseas and not available in Australia) and 24 month guaranteed listing on the SEV Register (providing business certainty).

Under the reforms, SEVs will be defined as a vehicle that has not been provided to the Australian market under a type approval (mainstream supplied vehicle) and the vehicle type, model or variant meets one of the following characteristics; high performance; superior environmental performance; mobility access provision; rarity; only available in left hand drive; or is a genuine campervan or motorhome.

To provide greater vehicle integrity and compliance assurance for the community and consumers of these vehicles, an independent third party inspection of each vehicle prior to provision or first use is being introduced to verify identity, specified modifications and structural integrity. The cost of this Authorised Vehicle Verification will be offset by the reduced compliance testing requirements that will be set out in Model Reports.

Strengthen and modernise the legislation – to ensure the Act is appropriate into the future including encouraging the uptake of new technology and to reflect good regulatory practice for its efficient and effective administration. Specific actions include redrafting the legislation according to modern drafting practices; an enhanced graduated compliance and enforcement toolkit for the Department; strengthened penalty provisions that appropriately reflect

community risk and the severity of poor outcomes; triggering provisions of the *Regulatory Powers (Standard Provisions) Act 2014* system and clarifying critical definitions.

Accelerate the harmonisation with International Standards and streamline certification arrangements – to remove the additional costs of compliance with Australian Design Rules beyond the requirements for internationally agreed standards, and provide for the implementation of International Whole of Vehicle Type Approval when finalised by the United Nations (UN). This will enable light vehicle models to be certified at a vehicle level rather than by a group of component parts or systems. Continuing to apply UN Regulations through the ADRs provides the highest degree of flexibility to Australian regulators.

Stakeholder views on the preferred option

The majority of stakeholder submissions to the 2014 and subsequent consultation processes have shown support for reform of the Act (Option 3). In February 2016 the Government announced its proposed changes to the regulatory framework which at that time included a personal new vehicle import scheme. This element alone attracted strong opposition from the vehicle manufacturers and their dealership networks. Automotive manufacturers and dealers argued that personally imported new vehicles would be without support, including warranty and servicing, from established brands and that they would not be suited to Australian conditions (heat, fuel quality and road conditions).

Key supporters of the proposal to reduce the barriers to the personal importation of new or used vehicles were those, such as enthusiast vehicle owners and used vehicle importers, who saw the current Act and regulations as restricting their import vehicle choices and inflating the price of vehicles for Australian consumers.

In a media release issued on 16 April 2015, the Government announced that it had ruled out allowing the large scale importation of used vehicles due to potential safety concerns and difficulty in ascertaining the vehicle's provenance.

Consequently, consideration of a large scale used imports scheme is therefore excluded from the analysis in this RIS.

While the majority of stakeholders agreed on the need for reform of the specialist and enthusiast vehicle scheme – the views on what the reforms should entail differed significantly. Registered Automotive Workshops, vehicle enthusiasts and individual vehicle importers called for fewer restrictions while the full volume manufacturers and state and territory registration authorities called for tighter restrictions on the vehicles that could be imported through alternative pathways.

In general, stakeholders supported the remainder of Option 3 reforms, particularly the modernising and strengthening the legislation and harmonising ADRs with UN Regulations. Some submissions highlighted the need to allow for unique Australian standards (e.g. for heavy vehicles), and opposed harmonisation where Australian standards are more stringent (e.g. child restraint anchorages). Some stakeholders highlighted the potential to recognise standards from other countries including Japan and the United States without the need for Australian Design Rules.

The Minister for Urban Infrastructure, the Hon Paul Fletcher MP announced a package of reforms to the Act on 10 February 2016.

Further, on 16 August 2017, the Government announced it had decided not to proceed with the personal importation of new motor vehicles. The Government's more detailed work has been unable to negate the cost and complexity of providing appropriate consumer awareness and protection arrangements. This would include investigation of each vehicle before it was imported to Australia; ensuring consumers were aware that the manufacturer's warranty may not apply in Australia; and establishing systems to deal with a manufacturer's safety recall. It would also have been necessary to ensure that subsequent purchasers of a vehicle, which had been personally imported into Australia as a new vehicle, were aware of this fact—and the consequences of this, such as the manufacturer's warranty not applying. In weighing these issues up against the modest benefits of the personal import arrangements—including price reductions estimated to be less than 2 per cent across the market—the Government concluded that the benefits did not justify the cost and complexity of this particular change. The personal importation of new vehicles is therefore excluded from the analysis in this RIS.

Reduction of regulatory burden as a result of reforming the Act

The current regulatory framework imposes regulatory costs on industry and individuals of around $249 million a year.

The changes to the Act outlined in Option 3 create regulatory burden reduction opportunities in the order of $69 million per annum. Of this, approximately $19.6 million is derived from the reforms such as the introduction of the RAV and consolidation of concessional schemes, while approximately $49.2 million is the result of improving the ability to continue the harmonisation of the ADRs with international standards – to the point of accepting International Whole of Vehicle Type Approvals.

The results of the calculations, based on policy implementation in 2019 with a 12-month transition period through 2020, are summarised below.

Itemised Compliance Costs

Regulatory measure	Costs for businesses ($m)	Costs for individuals ($m)	Total cost ($m)
Strengthening and modernising	**-$0.609**	**-$0.169**	**-$0.779**
Administrative tasks	-$0.238	-$0.013	-$0.251
Education tasks	-$0.075	-$0.052	-$0.128
Complying with financial costs	-$0.296	-$0.104	-$0.400
Harmonise	**-$49.196**	**$0.000**	**-$49.196**
Harmonise	-$49.196	$0.000	-$49.196
Consolidate concessional	**-$4.220**	**-$0.565**	**-$4.786**
Streamline number of schemes	-$0.258	-$0.565	-$0.824
Change SEVS criteria	-$0.004	$0.000	-$0.004
Modification (compliance with ADRs, left to right conversions, tyres and catalytic converters)	-$5.028	$0.000	-$5.028
Inspectorate	$1.405	$0.000	$1.405
Model report	-$0.315	$0.000	-$0.315
Application to become a RAW	-$0.014	$0.000	-$0.014
RAW renewals	-$0.006	$0.000	-$0.006
Identification plates	**-$14.317**	**-$0.185**	**-$14.502**
Online database entry	$0.002	$0.000	$0.002
Physical compliance plate	-$24.216	-$0.185	-$24.401
Secure vehicle identification	$9.897	$0.000	$9.897
Trailers	**$0.244**	**$0.187**	**$0.431**
Registration for access to RVCS	$0.014	$0.075	$0.089
Data entry to online database (RAV)	$0.230	$0.112	$0.342
Total	**-$68.098**	**-$0.732**	**-$68.832**

Glossary

Aggregate Trailer Mass (ATM)	Aggregate Trailer Mass is the total mass of the trailer when carrying the maximum load recommended by the manufacturer. This includes mass imposed onto the towing vehicle when the combination vehicle is resting on a horizontal supporting plane.
Arbitrage	An economic benefit gained by exploiting price differences of identical or similar motor vehicles in different markets.
Australian Design Rules (ADRs)	The Australian Design Rules are national standards for vehicle safety, anti-theft and emissions. The ADRs are generally performance based and cover issues such as occupant protection, structures, lighting, noise, engine exhaust emissions, braking and a range of miscellaneous items. The current standards (the Third Edition ADRs) are administered by the Government under the *Motor Vehicle Standards Act 1989.*
Carnet de Passage en Douane	The Carnet de Passages en Douane is a Customs document that identifies a motor vehicle. The Carnet allows travellers to temporarily import their vehicles to Australia.
Identification Plate	An identification plate (compliance plate) is fitted to a vehicle by the manufacturer to confirm that the vehicle complies with Australian safety and environmental standards.
Full volume (Type Approval)	The Full Volume Scheme is used by vehicle manufacturers and allows the supply of unlimited numbers of vehicles to the Australian market.
International Whole of Vehicle Type Approval (IWVTA)	The procedure whereby a Contracting Party of the International agreement for vehicle standards certifies that a vehicle type satisfies the relevant administrative provisions and technical requirements under the relevant UN Regulations.
Status of Forces Agreement (SOFA)	The Status of Forces Agreement allows for the importation of road vehicles by visiting military personnel.
Registered Automotive Workshop Scheme (RAWS)	The Registered Automotive Workshop Scheme (RAWS) allows for the importation and supply of used specialist or enthusiast vehicles to the market in Australia. A Registered Automotive Workshop (RAW) is a business that has been approved to import used vehicles.
Regulatory cost	Costs incurred in complying with regulations, calculated using the Australian Government Regulatory Burden Measurement Framework.
Vehicle Brand / Make / Marque	Brand / make / marque are terms used to denote a brand of motor vehicle, as distinguished from a car model.
Register of Specialist and Enthusiast Vehicles	A list of vehicle models that are eligible for concessional supply to the Australian market.

List of acronyms

Acronyms	
AADA	Australian Automotive Dealer Association
ABS	Australian Bureau of Statistics
ACL	Australian Consumer Law
ADR	Australian Design Rule
ANCAP	Australasian New Car Assessment Program
ATM	Aggregate Trailer Mass
CBA	Cost Benefit Analysis
CRN	Component Registration Number
EU	European Union
EuroNCAP	European New Car Assessment Programme
FCAI	Federal Chamber of Automotive Industries
ISO	International Organisation for Standardisation
ITS	Intelligent Transport Systems
IWVTA	International Whole of Vehicle Type Approval
LHD	Left Hand Drive
LPG	Liquefied Petroleum Gas
MVSA or the Act	*Motor Vehicle Standards Act 1989*
NPV	Net Present Value
NZ	New Zealand
OBPR	Office of Best Practice Regulation
OEM	Original Equipment Manufacturer
RAV	Register of Approved Vehicles
RAW	Registered Automotive Workshop
RAWS	Registered Automotive Workshop Scheme
RHD	Right Hand Drive
RIS	Regulation Impact Statement
RV	Recreational Vehicle
RVCS	Road Vehicle Certification System
RVMAP	Recreational Vehicle Manufacturing Accreditation Program
SARN	Sub-Assembly Registration Number
SEVs	Specialist and Enthusiast Vehicles
SOFA	Status of Forces Agreement
the Department	The Department of Infrastructure and Regional Development
the Review	The 2014 review of the *Motor Vehicle Standards Act 1989*
the Register	The Register of Specialist and Enthusiast Vehicles
TMR	Queensland Department of Transport and Main Roads
UK	United Kingdom
UN	United Nations
US	United States
VIN	Vehicle Identification Number
VSB	Vehicle Standards Bulletin

1 Introduction

1.1 Background

In January 2016, there were approximately 22.2 million registered road vehicles[4]. Of these, 13.8 million (62 per cent) are passenger vehicles, over 3 million (14 per cent) are light commercial vehicles and 431,000 (2 per cent) are heavy rigid and articulated trucks with the remainder being motorcycles, buses, recreational vehicles, trailers and mobile plant such as cranes and pumping equipment. Overall the fleet is steadily increasing in size by around 2 per cent per annum, with imports gradually replacing domestically produced vehicles. A large number of older vehicles remain on Australian roads. The average age of the Australian registered vehicle fleet is 10.1 years, which has remained constant for four successive years, and is up from around 9.1 years in 1988.

The average age varies between vehicle types, being 9.8 years for passenger vehicles, 10.5 years for light commercial vehicles, 11.6 years for articulated trucks and 15.7 years for heavy rigid trucks (for further details about the Australian motor vehicle fleet and fleet age refer to Appendix C).

In 2016 there were over 3.7 million road trailers registered for use on Australian roads. Of these, approximately 90 per cent are classified as light trailers, having an Aggregate Trailer Mass[5] (ATM) of 4.5 tonnes or less. The remaining ten per cent are classified as heavy trailers with an ATM greater than 4.5 tonnes.

The *Motor Vehicle Standards Act 1989* (the Act) and Regulations were introduced in 1989 to formalise a national system of vehicle design and performance standards relating to safety, environment (including emissions), and anti-theft technologies—the Australian Design Rules (ADRs). Previously, ADRs were being inconsistently applied by states and territories, requiring vehicle manufacturers to negotiate with up to eight separate administrators in order to get clearance to market vehicles across Australia. While the Australian Government prepared the ADRs (in consultation with states and territories), it had no power to enforce their consistent application prior to the introduction of the Act.

The purpose of the Act is twofold and expressed in the objects of the Act: to achieve uniform vehicle standards to apply to new vehicles when they begin to be used in transport in Australia; and to regulate the first supply to the market of used imported vehicles. The Act does not impose tariffs, import duties or taxes but does enable cost recovery.

The Act provides the regulatory framework for the entry of new road vehicles[6] including passenger vehicles, heavy, medium and light commercial vehicles, motorcycles and trailers. It provides a guaranteed path for vehicle manufacturers to supply fully compliant vehicles into the Australian market. The vast majority of vehicles entering the Australian market use this path.

[4] Australian Bureau of Statistics Motor Vehicle Census, 2016, Catalogue Number 9309.0 issued 21/07/2016 (accessed through ABS Table Builder).
[5] *Aggregate Trailer Mass* is the total mass of the trailer when carrying the maximum load recommended by the manufacturer. This includes mass imposed onto the towing vehicle when the combination vehicle is resting on a horizontal supporting plane.
[6] *New road vehicles* means a locally made vehicle, or a new imported vehicle, that has been neither supplied to the market; nor used in transport in Australia by its manufacturer or importer; and includes a locally made vehicle, or a new imported vehicle, that has been supplied to the market but not yet used in transport in Australia.

The Act and the Regulations also provide control over the importation of non-standard vehicles, both new and used. The current regulatory framework establishes procedures to allow non-standard vehicles into Australia, provided that the Minister is satisfied that proper arrangements exist to modify the vehicles to meet the applicable standards. It also explicitly provides for a number of alternative concessional regulatory arrangements intended to deal with:

- innovative or specialist vehicles where they would be unable to perform their core specialist function if they complied to the ADRs;
- individuals importing a vehicle as part of their personal possessions when moving to Australia where demonstrating compliance with the ADRs is not practical;
- the supply of small numbers of new and used specialist or enthusiast vehicles where it is not cost effective for importers to demonstrate full compliance;
- the supply of used imported motorcycles that fully comply with the ADRs; and
- the importation and supply of older enthusiast or collectors' vehicles generally where it is not possible to demonstrate compliance with the ADRs.

In the context of all vehicles entering the Australian market for the first time, these non-standard vehicles are a small proportion of around one per cent of vehicle imports.

Currently the Act is supported in achieving its objects by:

- the Motor Vehicle Standards Regulations 1989;
- the Australian Design Rules;
- the Motor Vehicle Standards Regulatory Guideline;
- several Motor Vehicle Standards Determinations; and
- a number of procedural and guidance documents, including Administrator's Circulars (Circulars) and Vehicle Standards Bulletins.

Regulatory Burden

The Government has placed a high priority on reducing the regulatory burden on businesses, individuals and the community where possible and reducing regulatory duplication and compliance costs. The Department has estimated that ongoing compliance with the Act (that is, regulatory burden imposed on businesses, individuals and the community) costs around $249 million per annum, excluding business as usual costs and fees charged to industry to recover the Department's costs.

In 2015-16, the Department's Vehicle Safety Standards Branch made a total of 21,230 decisions under the Act regarding the entry of road vehicles (including trailers and motorcycles but excluding domestic production) into the Australian fleet. Of these decisions, only 102 (or less than 0.5%) were refusals.

Relevant statistics of the Department's Vehicle Safety Standards Regulator 2016

Type of decisions	**Number of decisions**
New full volume (new and updating decisions in the Road Vehicle Certification System (RVCS) excluding trailers)	1268
New low volume (new and updating decisions in RVCS excluding trailers)	161
Used full volume vehicle imports (returning and compliant letter vehicles in the Import Vehicle Application System (IVAS) and Vehicle Import System (VIS)	598
Used vehicles (Registered Automotive Workshops (RAWs), various in IVAS)	7608
Used vehicles – Personal import in IVAS and VIS	1173
Light trailers imports (various new and used in IVAS and VIS)	2921
Other regulated concessional vehicles (e.g. test vehicles for road use, special purpose, defence force Status of Forces Agreement (SOFA) vehicles in IVAS and VIS)	594
Other (e.g. off-road, scooters/motorised bicycles, race and rally etc. in IVAS and VIS)	2244
Historic (pre-1989 manufactured vehicles in IVAS and VIS)	4561
Refusals in IVAS and VIS	102
Total	**21,230**

Other regulatory approvals (maintained in the Department's information system)	**Number of decisions**
RAWs – Total number of workshops	131 workshops in total
RAWs – Workshop approvals and renewals	69 approvals and renewals in 2016
Register of Specialist and Enthusiast Vehicles (makes/models)	978 rulings in total
Register of Specialist and Enthusiast Vehicles (makes/models)	73 new rulings made in 2016

Although less than two per cent of vehicles entering the Australian market for the first time were imported outside of the mainstream mechanism, a relatively high regulatory burden and associated compliance cost per vehicle is imposed on importers of these vehicles to ensure appropriate community safety and consumer protection outcomes.

Along with the compliance costs experienced by industry and individuals wishing to introduce vehicles to the Australian market, there is a substantial administrative cost incurred by the Department's regulator of vehicle safety standards – which is recovered through fees and charges. Consistent with the Government's regulatory methodology, these fees are not included in the regulatory costs, however may also be passed on to the end consumer through vehicle pricing costs.

In reviewing the Act, the community cost in terms of safety and environment of deregulation in vehicle standards needs to be balanced against the consumer financial benefit from the same deregulation.

Consultation and development of this RIS

It has been over 17 years since the Act and its regulations were last reviewed, and in that time there have been significant changes in global and domestic automobile markets, vehicle technologies and consumer purchasing mediums. Amendments to individual elements of the legislation during that time has also contributed to the Act's complexity, impairing its effectiveness and efficiency.

The current review of the Act started in 2013. The review has involved significant and ongoing consultation with industry and the community including:

- Phase 1 in 2013 to seek feedback from interested parties on the need for a review and on the currency and operation of the legislation.
- Phase 2, which began on 16 January 2014 with an announcement by the Government, that it would examine the potential to reduce regulatory costs to business and individuals and improve the safety and environmental performance of road motor vehicles. This part of the consultation process also included the release of an Options Discussion Paper on 4 September 2014 which called for submissions from all interested parties. Public workshops were used to facilitate the consultations on possible future options for the Act.
- Phase 3 began in mid-2015 with commencement of the design of the new legislation. This phase examined specific issues raised in Phase 2 by stakeholders that required clarification, such as reforms to the Specialist and Enthusiast Vehicle (SEV) Register, and included substantial ongoing stakeholder engagement.

The consultation process is described more fully in Section 6 and Appendix E.

The Terms of Reference released in January 2014 (Appendix A) included consideration of the recommendations of the Productivity Commission final report on Australia's Automotive Manufacturing Industry (Appendix B). The Options Discussion Paper released in September 2014 was designed to stimulate industry and community discussion on the need for:

a) reform and options for reducing the regulatory burden imposed by the Act;

b) increasing Australian consumer access to a wider range of vehicles; and

c) improving the overall vehicle fleet safety and environmental performance.

The Options Discussion Paper formed the basis of a public consultation process, with 220 submissions received from interested parties.

In a media release issued on 16 April 2015, the former Assistant Minister for Infrastructure and Regional Development, the Hon Jamie Briggs MP, announced that Cabinet had agreed to consider possible options to reduce restrictions on the personal importation of new vehicles and that a scheme allowing the large scale import of used vehicles similar to that operating in New Zealand had been removed from consideration. A large scale used imports scheme has therefore been excluded from the analysis in this RIS.

The Minister for Urban Infrastructure, the Hon Paul Fletcher MP announced a package of reforms to the Act on 10 February 2016 - which included a proposal to allow for the personal importation of new vehicles. On 16 August 2017, following further consultation on implementation arrangements, the Government announced it had decided not to proceed with the personal importation of new motor vehicles noting that the Government's more detailed work has been unable to negate the cost and complexity of providing appropriate consumer awareness and protection arrangements. This would include investigation of each vehicle before it was imported to Australia; ensuring consumers were aware that the manufacturer's warranty may not apply in Australia; and establishing systems to deal with a manufacturer's safety recall. It would also have been necessary to ensure that subsequent purchasers of a vehicle, which had been personally imported into Australia as a new vehicle, were aware of this fact—and the consequences of this, such as the manufacturer's warranty not applying. In weighing these issues up against the modest benefits of the personal import arrangements—including price reductions estimated to be less than 2 per cent across the market—the Government concluded that the benefits did not justify the cost and complexity of this particular change. Therefore the personal importation of new vehicles has been excluded from the analysis in this RIS.

2 What is the problem being solved?

Government has had a longstanding role in setting motor vehicle standards to deliver road safety and environmental outcomes. Over the past 40 years, the regulation of safety features has contributed significantly to reducing deaths and serious injuries from road accidents, and vehicle safety standards remain a key component in preventing crashes or reducing the likelihood or extent of injuries and deaths in a vehicle accident. Many of the improvements in vehicle passenger protection, such as crumple zones and airbags, have resulted from the introduction of regulations mandating minimum standards from the late 1990s and early 2000s.

The feedback received by the Department from stakeholders as part of the public consultation processes has highlighted how the changing nature of the Australian automotive market, including new vehicle technologies are creating pressure on the Department's ability to respond flexibly and maintain adherence to the Government's key policy objectives. The Department, and stakeholders across the regulated sectors, recognise the two key challenges for the regulatory framework into the future are: the declining effectiveness of the Act; and the increasing inefficiencies in regulating the standards of the first supply of vehicles to the Australian market with old legislation that doesn't support modern regulatory tools.

Declining regulatory effectiveness of the Act in its current form

The foremost impact on regulatory effectiveness, hampering administration of the Act, is a lack of strength and flexibility in the legislation's compliance and enforcement provisions. A key limitation on effective enforcement is the Act's outdated offence provisions. The offences are both numerous, complex, difficult to apply and do not reflect best practice drafting. Further, the maximum level of fines is inadequate in reflecting:

a) the risk that an offence, such as a non-complaint vehicle, places on the community;

b) the nature of the offence; and

c) the size of the offence.

The penalty levels are also inadequate to effectively act as a deterrent for non-compliant behaviour or to offset potential financial gains. It is quite possible for a single non-compliant vehicle to generate a profit exceeding the maximum available penalty under the Act.

The enforcement options available under the current Act are limited. Enforcement relies substantially on prosecution (civil or criminal), or amending or withdrawing approvals. The limited number of enforcement tools inhibits the Department in preventing non-compliant vehicles being supplied to the Australian market.

Non-compliant vehicles increase the risk of death and injury to the wider community. Australia's road trauma is currently estimated at costing the community around $27 billion each year[7].

Industry feedback during public consultations supported the need for compliance and enforcement measures to be reassessed, noting that improved compliance and enforcement processes will also underpin a fair and competitive business environment.

[7] Current estimates of cost to community of road crashes from https://infrastructure.gov.au/roads/safety/

Some examples of significant areas of concern in the limited ability for effective regulation of vehicle standards at first supply to the market follow.

Some stakeholder comments highlighted particular concerns about the alleged higher degree of non-compliance of Registered Automotive Workshops (RAWs), including that many vehicles have either not been modified in accordance with requirements or that vehicles as supplied are not of the same specification as approved. This is despite the relatively higher cost of compliance and enforcement for RAWs than other vehicle industry sectors.

Despite this higher cost, the regulatory system for RAWs depends in large part on the honesty and integrity of the authorised businesses and individuals. Once a sample vehicle has been approved by the Department, only a small number of imported used vehicles are inspected. In many cases, as RAWs increasingly have approval to carry out other forms of vehicle inspection, there are no other regulatory agencies which physically inspect the vehicle before its first sale or use in Australia.

While these vehicles represent less than one per cent of vehicles supplied to the market each year, safety-related non-compliances with these vehicles put drivers and passengers of these vehicles, as well as other users of roads and road-related areas including motorists, cyclists and pedestrians, at risk.

In addition, trailers of an Aggregate Trailer Mass (ATM) up to 4.5 tonnes are not subject to the same certification process as other road vehicles. Instead, they may meet the design and construction standards of the National Code of Practice for Building Small Trailers, also known as Vehicle Standards Bulletin 1 (VSB 1). Road trailers that meet the standards of VSB 1 do not need to be certified by the Australian Government. Rather, manufacturers and importers merely need to seek road registration from the relevant State or Territory registering authority. It is the responsibility of the manufacturer or importer to ensure that the trailer meets the standards as set out in VSB 1 under a self-certification arrangement.

A number of submissions to the 2014 review expressed concern about the level of safety and compliance of caravans and trailers less than 4.5 tonnes ATM. Safety concerns raised relate to access doors, safety chains, prescribed lamps and reflectors, gas and electrical appliances, maximum width, rear over-hang and ground clearance. Approximately 130,000 light trailers are supplied to the Australian market annually and, as with other vehicle types, safety non-compliances represent a risk to not only to the vehicle user but to the wider community.

There is also a need to strengthen the provisions of the Act that minimise the advent of local (i.e. state and territory) standards – inconsistent local standards can place Australia in breach of its obligations under UN treaties[8]. Inconsistent local standards undermine the regulatory effectiveness and productivity benefits that accrue from nationally and internationally consistent vehicle standards. It also causes greater costs for the vehicle industry –potentially having to supply vehicles conforming to different standards from jurisdiction to jurisdiction – as was the case when an individual jurisdiction mandated the use of Electronic Stability control in advance of the national standards.

[8] Australia is a signatory to two UN agreements regarding vehicle standards: 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 (the 1958 Agreement) and Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles (the 1998 Agreement).

Increasing regulatory inefficiency

In addition to reducing the effectiveness of the current regulatory framework, the age of the legislation is making it increasingly inefficient to administer. Since its original drafting, the use of technology in administering regulations has changed the way regulated entities interact with the regulator and the community's expectations in the reach and efficiency has evolved. Simple examples such as on-line payments, automated decision making and desktop auditing are commonplace in the twenty first century – but are difficult or not allowed for under the current legislation.

A key example of regulatory inefficiency in the age of computer databases and electronic data transactions is the requirement for vehicle manufacturers / suppliers to fit a physical identification plate – around which the current Act is structured. These plates provide details of the vehicle as well as assurance that the vehicle complies with the Act's provisions. When a vehicle type is certified by the manufacturer / supplier as compliant with all relevant requirements, the manufacturer / supplier is issued with an Identification Plate Approval. This permits the manufacturer to fit vehicles of that type with identification plates and to supply them to the Australian market.

Not only are these plates a unique Australian requirement that add cost and complexity to the vehicle supply process (~$24 million per annum), they also represent an outmoded method of providing assurance of compliance to vehicle users and registration authorities. In particular, the actual point in time at which the identification plate is fitted is not transparent. This means there is uncertainty around the point in time at which the vehicle has been declared as compliant – after which there may have been modifications rendering the vehicle non-compliant before supply to the Australian market. The lack of certainty in time has previously made it very difficult for proving who has supplied non-compliant vehicles for the purposes of prosecution.

A secondary problem with regulatory efficiency is that the current framework imposes substantial regulatory costs on industry and individuals, estimated at around $249.43 million per year as shown in the following table. In part these costs are a result of the administering old legislation and it barriers.

Activity*	**Average cost per vehicle ($)**	**Total annual cost for all businesses ($million)**
New Full Volume (cost of complying with ADRs)	$229.00	$230.04
Registered Automotive Workshop Scheme	$2,001.88	$17.66
Other concessional imports	$105.12	$1.73
Total		$249.43^

* New Low Volume vehicles are not included in this table.

^This figure is lower than the estimate used in the Options Discussion Paper (September 2014) mainly due to the harmonisation of vehicle standards that has occurred between 2015 and 2017. The figure also takes into account updated labour rates from 2015.

In addition to the changing environment in which the Act operates however, minor incremental amendments made to the legislation and regulations since the last review of the Act have added unnecessary complexity across the legislative framework. There is significant opportunity with modern legislation, designed to operate in a modern environment to reduce these regulatory costs.

A further issue raised by a number of stakeholders during the public consultation process regarded definitions in the current Act being either no longer suitable, unclear or absent in the extreme. The lack of clarity around the definition of 'supply to market' is one such example. The scope of vehicles covered and the compliance and enforcement program are other areas where improved definitions will improve both administration of the Act and reduce confusion for people seeking to provide vehicle to the Australian market.

3 Rationale for Government intervention

The rationale for Government intervention in the vehicle market is twofold: The first is an ongoing requirement for the Australian Government to regulate the first supply of motor vehicles to the Australian market to addresses public policy objectives of community protection and consumer protection. The second rationale is to accommodate changes in the Australian automotive market since 1989 – in particular the market's almost complete reliance on imported vehicles.

Submissions to the Department's 2013 and 2014 public consultation processes indicated that the legislative framework still supports the objectives of the Act and that they are still relevant. There is strong support from all stakeholders to continue the regulation of motor vehicle standards and their application to vehicles entering the Australian market for the first time. However, there is also general agreement that in a changing Australian and global automotive context, the effectiveness and efficiency of the Act has declined.

The Options Discussion Paper, released by the Government in September 2014, highlighted a number of issues with the current legislative framework, including definitional clarity, insufficient regulatory strength and complexity due to frequent amendments and outdated legislative text and form. Further, in the changed automotive market environment since the Act was last reformed, the Act was struggling to cope with changed consumer habits (internet purchasing), changing product ranges (e.g. electrically powered and other alternative vehicles) and higher levels of imported vehicles (>90 per cent compared to 25% in 1989).

Finally, the Act in its current form imposes around $249 million per annum in regulatory compliance costs. The review identified a number of opportunities where this regulatory burden could be reduced without compromising the public policy objectives. Overall the review has concluded there are good reasons for the Government to reform the legislation now in order to provide for the future evolution of the Australian automotive market.

Australian Government regulation of vehicle standards

The Act supports policy objectives for community and consumer protection through the ADRs for road vehicles which set performance standards for safety, environmental performance and vehicle security. The technical complexity of a road vehicle precludes most consumers from making an informed assessment of its safety or environment performance, requiring some form of mandated minimum standards to protect other road users and members of the community from unsafe or otherwise harmful vehicles. The complexity and cost of a road vehicle create a strong consumer expectation that vehicles on Australian roads have a high degree of safety both to the occupants and others.

Vehicle safety standards remain a key component in preventing crashes or reducing the likelihood or extent of injuries and deaths in a vehicle accident which costs the community around $27 billion each year[9]. Mandated safety standard improvements have contributed a significant proportion of the decrease in deaths on Australian roads from 1,603 in 2007 to 1,295 in 2016[10].

[9] Current estimates of cost to community of road crashes from https://infrastructure.gov.au/roads/safety/
[10] Road trauma Australia 2016 statistical summary, Bureau of Infrastructure, Transport and Regional Economics

In the absence of an Australian Government regulatory mechanism to maintain nationally consistent standards for vehicles supplied to the Australian market, the regulation of vehicle safety would be left to State and Territory Governments. The likely consequence would be the application of different standards across jurisdictions, as was the case before the Act commenced. A lack of overarching Australian Government legislation would impose significant costs on vehicle manufacturers to produce vehicles compliant with a number of very small State based marketplaces – costs that would be passed on to the consumer.

Compliance and enforcement issues

Strengthening the Act through an enhanced compliance and enforcement system will provide greater confidence in the Act's regulatory systems and processes and more certainty in the standards of a vehicle being first supplied to the market. This reform is both an opportunity to address concerns raised in the existing systems and to apply best practice improvements to compliance and enforcement systems.

Industry feedback during the 2014 review public consultation process supported a higher level of compliance and enforcement. Industry considers it to be essential to the effectiveness of the Act and recognise that an effective compliance and enforcement regime underpins a fair but competitive business environment. Generally, stakeholders supported broad deregulation and streamlining where possible.

Changes in the Australian Automotive market since 1989

In 2000 around one third of Australia's road vehicles were manufactured locally. In that year Australia had four manufacturers of passenger vehicles, Mitsubishi, Ford, Toyota and Holden. By the end of 2016 however, 92 per cent of passenger vehicles were imported (90 per cent new imports and two per cent used imports). By the end of 2017 there will be no light road vehicle manufacturers still building vehicles in Australia (although trailers and heavy vehicles will continue to be manufactured and assembled in Australia after this date). Change is also expected in the vehicle parts manufacturing sector, both in size and target markets, in response to the loss of Australian light vehicle manufacturing.

Since the Act was last reviewed in 1999, and substantially amended in the early 2000s, new automotive technologies, international vehicle regulatory regimes, consumer expectations for vehicle features, safety systems and emissions performance have driven significant changes in the Australian vehicle market. In addition, new technologies such as electric and hydrogen fuelled vehicles and autonomous vehicles will potentially become more available to the Australian market. Reforms to the Act will ensure that new technologies that offer environmental and safety benefits are not prevented from being available to Australian consumers.

4 Policy options to solve the problem

The Options Discussion Paper released by the Government in 2014 outlined three policy options: making no changes to the Act; reforming the Act; or repealing the Act. The consultation process sought feedback and input from stakeholders on each proposed policy option and individual reform elements. The consultation also provided stakeholders the opportunity to suggest other relevant reforms.

During the consultation period, stakeholders provided suggestions and alternatives on the proposed reform elements. No additional reforms were identified by stakeholders.

A number of stakeholders sought the removal of the Luxury Car Tax citing the potential to lower the price of prestige vehicles in Australia compared with overseas vehicle prices for the same models by removing the tax. The Luxury Car Tax is not administered under the *Motor Vehicle Standards Act 1989* and removal of the tax is therefore excluded from consideration for these reforms under the Terms of Reference.

4.1 Option 1 — Status quo

The status quo option maintains the Act in its current form in terms of its scope, policies and regulatory approach. This option was supported by a small number of stakeholders during the public consultation process who generally considered the Act was meeting its key objectives and were not overly critical of the Act in its present form and scope.

The Act continues to largely achieve the objectives of nationally uniform standards for new vehicles and control the first supply of used vehicles, for the reasons outlined in part 2, however the regulatory effectiveness and efficiency of the Act has declined with the changing automotive market environment.

Option 1 option is therefore not recommended.

4.2 Option 2 — Repeal the *Motor Vehicle Standards Act 1989*

This option considers whether the Act is still required, and whether its repeal would achieve compliance cost reductions. Should the legislation be repealed, however, the Australian Government would no longer prescribe uniform standards.

In the absence of any national regulatory control, vehicle safety and consequently a significant element of road safety would be left to individual new vehicle buyer's choice. This choice could be influenced by non-regulatory measures such as websites, however the technical complexity of a road motor vehicle would necessarily require alternate forms of regulation for the provision of comparable, simplified and accurate information by manufacturers to populate these information sources. For example, the current Green Vehicle Guide information website is supported by emission and fuel consumption testing standards and regulations for the display of fuel consumption labels on vehicles.

Registration of vehicles by each of the States and Territories provides a potential alternative point of regulatory control for the minimum level of safety, environmental and anti-theft performance of a vehicle. As noted in the previous section, it is likely that there will be a divergent application of standards between States and Territories – even with a nationally

agreed set of design rules. This would substantially increase the regulatory cost for vehicle manufacturers forced to comply with a range of vehicle standards to access the markets in different jurisdictions. A national approach to standards is required to avoid inconsistencies between Australian Government and State/Territory legislative arrangements.

For these reasons, it is necessary to continue national regulatory oversight to maintain a uniform set of safety, environmental and anti-theft performance standards for the protection of the entire Australian community in the most effective and efficient manner. During the public consultations there was uniform recognition of the continuing need for the Government's regulatory control on the first supply to market of motor vehicles. Option 2, a full repeal of the *Motor Vehicle Standards Act 1989* is therefore not recommended.

4.3 Option 3 — Reform the *Motor Vehicle Standards Act 1989*

During the 2013 public consultation process, stakeholders highlighted the complexity of interactions of the Act with other pieces of State, Territory and Australian Government legislation. Changes in the vehicle industry and community expectations since the introduction of the original Act in 1989 have created some contradictions and gaps in the administration of the legislation. The complexity of the legislation in its current form creates a burden for business and enhances the difficulties for stakeholders to understand their legal rights and obligations.

Reform of the Act will allow for its' simplification in line with the Attorney General's "Principles for Clearer Laws"[11]. As an example, the Act currently requires passenger vehicle manufacturers to physically affix vehicle compliance information via identification plates, however the compliance role of these plates can now be filled by new technologies, allowing this requirement to be simplified.

The public policy objectives that governs the current Act, community safety, consumer protection and competitive markets, should continue to apply but will need to be contemporised in the proposed reforms. While the first two objectives are implemented through the Objects of the Act, the third objective, competitive markets, requires that any unjustifiable legislative barriers to competition should be removed or reduced. The reforms must balance any reduction of regulatory intervention with the community's expectations on vehicle safety, environmental performance and anti-theft measures.

The proposed reforms of the Act can be considered under separate but intertwined elements including:

1. Replacing identification plates with the inclusion of vehicle data in an online Register of Approved Vehicles, in conjunction with vehicle identification marking requirements;
2. Reducing and consolidating arrangements for concessional vehicle supply, including formalising the treatment of light trailers; and
3. Strengthening and modernising the Act.

The proposed reforms will also continue to facilitate the increasing harmonisation of Australian vehicle standards with international standards and streamline new vehicle certification processes.

Each of these elements are described separately in the sections below.

[11] https://www.ag.gov.au/LegalSystem/ReducingTheComplexityOfLegislation/Pages/default.aspx

4.3.1 Replacement of vehicle identification plates with entry of the compliance data onto the Register of Approved Vehicles and a secure vehicle identification marking requirement

The current Act is written around the concept that all vehicles supplied for general road use to the market in Australia, full volume and concessional imports, are required to be fitted with an identification plate. The plate contains vehicle-specific information, which typically includes the Vehicle Identification Number (VIN), approval number, make, model, and either an approval date or a date of manufacture. The identification is fitted when the vehicle is certified as meeting the requirements of the Act [12].

Identification plates were mandated when bringing together the state and territory requirements to ensure vehicles had identification for registrations across borders. The plate indicates to the state or territory registering authority and to future owners of the vehicle that the vehicle met the required ADRs when it was supplied to the Australian market. Identification plates also identify the method in which the vehicle came into Australia, with different coloured plates for personally imported vehicles, letter of compliance vehicles, low volume vehicles and used import vehicles. For vehicles imported through a RAW, the identification plate specifies the name of the workshop that was responsible for ensuring the vehicle complied with the ADRs, potentially providing an avenue for consumer recourse. Identification plates also serve as a de-facto secondary means of vehicle identification for the state and territory road regulators and policing agencies.

For full volume vehicles, the manufacturer typically produces their own plates and fit them on the production line or at the point of importation. For vehicles imported through RAWS and other applicable concessional schemes, the applicant must arrange with the approved plate contractor for the supply of the plate, including payment of the relevant fee. Purchasing a RAWS identification plate from the plate contractor for a light passenger vehicle has a total supply charge of $81.40 per plate.

The proposed approach is to replace the compliance element of physical identification plates with an online database, the Register of Approved Vehicles (RAV). The online database will contain the compliance information that is currently on the physical identification plates. The identification element will be replaced with a secure vehicle marking requirement of the VIN. This will assist policing agencies and state and territory road regulators by ensuring that the identities of road vehicles supplied in Australia continue to be protected as well as provide a deterrent to vehicle theft activities for the purposes of vehicle theft and re-birthing. This would moderately reduce the regulatory burden of the Act for manufacturers and vehicle importers, while still allowing state and territory registration authorities and consumers to access the required information.

Through being publicly searchable, the RAV will enable consumers to access information about the approval type and approval date for vehicles that they are planning to purchase without requiring access to the vehicle to inspect the physical identification plate. The online database will support vehicle consumers in their purchasing decision by identifying the method by which the vehicle came into Australia. This will provide second and subsequent vehicle owners with a

[12] In the case of vehicles imported under the current personal imports scheme and non-standard vehicles, the identification plate is "affixed with the approval of the administrator of vehicle standards."

way of determining whether the vehicles they are planning to purchase were personally imported.

4.3.2 Consolidate the number of concessional arrangements

The large majority of vehicles entering the Australian market for the first time are new and fully compliant with the ADRs (~ 1.2 million). There are, however, a small but notable number (~ 20,000 units) of vehicles approved for importation through a variety of individual concessional pathways as described below. The number of individual schemes creates a significant regulatory burden to individuals, small businesses and Government, particularly in relation to application processes and interaction with the Department. There is also a lack of clarity in regards to the policy argument for some of the criteria and a high level of subjectivity.

The concerns associated to a number of identified issues with the current approach are summarised as follows.

Issue	Concern
Eligibility criteria	Some criteria are complex, prone to misinterpretation and difficult to regulate, making these schemes prone to abuse through provision of fraudulent information or manipulation by applicants.
The definition of 'manufacture'	This definition is inconsistent between the Act and Regulations, and interpretation difficult if 'date of manufacture' is being considered (e.g. pre-1989 vehicles that have been modified).
Lack of clarity for Pre '89 Scheme	Heavily modified or replica vehicles, claim to be manufactured prior to 1989. Some 'hot-rod' vehicles based on 1930s, 40s and 50s designs are modified so that the vehicle is no longer an older vehicle, but a custom built specialty vehicle.

4.3.2.1 Specialist and Enthusiast Vehicles

The current arrangements for SEVs allow for the limited supply of new and used vehicles through RAWs (used vehicles); and new low volume manufacturers (new vehicles). Eligible vehicles are placed on the SEV Register. A typical passenger type vehicle is required to meet two out of four subjective criteria:

1. Appearance;
2. Performance;
3. Unusual design features; and
4. Featured in specialist publications.

While RAWS and the SEVS criteria have been successful in providing access to a range of vehicles, there are a number of areas of significant concern in the operations of the schemes – these areas are listed below.

Issue	Concern
Non-compliance with vehicle modification	The current legislation is not supporting effective enforcement, leading to: non-compliance with modification requirements; lack of compliance with permitted number limits on vehicles they can

Issue	Concern
requirements	supply, and commercial advantage for non-complying businesses. For example, local suppliers of motorcycles have expressed concern that compliance of used imported motorcycles is poor.
Restrictive criteria	Some vehicles for which there is a specialist or enthusiast demand are ineligible because the criteria are too restrictive, and compliance and testing costs make many eligible models not commercially viable. Several models supplied in (relatively) large volumes do not meet the intent of eligibility restrictions, e.g. models entered on the SEV Register for supply as campervans, but instead are sold as regular passenger vans (people movers). The current requirements for left to right-hand-drive conversions do not take into account modern vehicle design and construction methods.
Duplication of arrangements	A separate low volume arrangement operates for eligible new vehicles that is notionally very similar to the arrangements for RAWS vehicles. This is inefficient as the Department must administer two schemes with very similar concessions, often involving the same participants and the same vehicle types.
Rectification of safety defects	Post approval responsibility for recall and rectification of safety defects in vehicles is unclear, leaving no recourse for owners and safety defects potentially unresolved.

Refinement of the current SEVS criteria provides greater choice for consumers, particularly in used vehicles. These measures aim to maintain the safety standards of the vehicle fleet while reducing the regulatory burden where possible.

The proposed changes to the register entry criteria will improve administration through transparent and objective criteria; remove models that are not genuine specialist and enthusiast vehicles; and provide an improved range of vehicles, including new specialist and enthusiast vehicles, through the RAW Scheme.

The reforms propose the introduction of a third party Approved Vehicle Verifier to oversee a vehicle by vehicle inspection regime of all vehicles supplied through RAWs to verify vehicle specifications, compliance with the applicable vehicle standards, integrity of modifications, vehicle identity checks and offer assurance that there is no structural damage to the vehicle. The costs to industry of a third party inspection will be offset by a reduction in a number of current high cost compliance and testing requirements such as replacement of catalytic converters and tyres that are still in a serviceable condition; and removal or reduction of emission testing for vehicles from Japan. In addition, the introduction of model reports and the continued requirement for workshops to have an accredited quality management system will improve efficiency and transparency in examination of documentation and ensure control of processes and documentation.

4.3.2.2 Light Trailers

Trailers (including caravans) that are less than 4.5 tonnes Aggregate Trailer Mass (ATM) are considered “light trailers” under the Act.

The current administrative arrangements provide manufacturers and importers of light trailers with the option of a self-certification path to the accepted standards – set out in a National Code of Practice for Building Small Trailers, also known as Vehicle Standards Bulletin 1 (VSB 1).

Under the current arrangements, the responsibility for light trailer compliance rests with the manufacturer, with inspections carried out by some state and territory authorities at point of first registration. This leads to two major issues, that of ensuring compliance of trailers and an inability to enforce rectification of issues. The high volume of both locally manufactured and imported light trailers can create difficulties in addressing light trailer compliance issues with the compliance burden placed on state and territory registration authorities. There are some concerns that a small number of manufacturers and importers are currently supplying light trailers that are not compliant with the requirements in VSB 1. These concerns include issues with safety chains, prescribed lamps and reflectors, gas and electrical appliances, maximum width, rear over-hang, ground clearance and impeded access doors in caravans. When non-compliance is detected, the current Act lacks the appropriate enforcement alternatives.

Under the reforms, light trailers will need to demonstrate they meet the relevant national standards through a statement of compliance provided by the manufacturer or importer. The compliance information will also require entry on the RAV. These reforms will provide a single point of declaration of compliance for light trailers and, through their listing on the RAV, allow for the tracking of non-compliance back to the manufacturer or importer with the potential to stop supply. In addition, manufacturers and importers of light trailers supplying four or more trailers to the market will need to be registered on the Road Vehicle Certification System (RVCS).

4.3.2.3 Heavy Trailers

For trailers with an ATM of 4.5 tonnes or more (heavy trailers), certification is similar to that for passenger cars or trucks. Manufacturers and importers of heavy trailers must demonstrate that the vehicle complies with all relevant ADRs and the manufacturer or importer must be registered on the Australian Government's RVCS. It is proposed that the arrangements for suppliers of heavy trailers will remain relatively unchanged under the reforms.

4.3.3 Strengthen and modernise the legislation

Industry feedback, including from some Registered Automotive Workshops (RAW), has supported a higher level of compliance and enforcement, considering it to be essential to the equity and effectiveness of the Act. Strengthening the Act through an enhanced compliance and enforcement system will provide greater confidence to stakeholders and businesses in the Act's regulatory systems and their ability to be applied effectively. Non-compliance by a RAW will be specifically targeted through tighter regulatory requirements for registration of workshops, clearer regulatory processes, new offence provisions, and use of third party vehicle inspections.

It is proposed that the Act's offences are strengthened and made unambiguous to ensure they are effective in both deterring and penalising non-compliance. With the addition of enforceable undertakings, compliance agreements and a system of civil offences and fines, the Department will have a more complete range of tools to respond appropriately based on the culpability of offenders and the risk posed by the non-compliance. Sanctions will be more easily applied and will be appropriate.

Vehicle Safety Standards Inspectors (Inspectors) will be given broader powers to access and inspect vehicle manufacturing and supply facilities and to collect information, enabling a higher

degree of assurance of vehicle safety. To help facilitate this, a number of approvals that are issued administratively under the current regime will be issued as statutory approvals under the new legislation - such as for test facilities and the manufacture of vehicle components.

The triggering of standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014* will provide regulatory savings by clarifying and streamlining a number of offences and enable best practice provisions to be adopted. This will include natural justice defences not currently available in the Act.

Where there is a serious risk of safety, the Minister will have powers to act on non-compliant vehicles that have been supplied to the market through powers to trigger a mandatory recall.

Modernisation of the legislation is required as the current version of the Act lacks clarity around key definitions which have led to interpretation and application difficulties. The Act also contains a considerable level of duplication, especially around the application of the concessional schemes. In addition, since the last revision of the Act, relevant UN agreements have been updated or created and various new technologies and standards have been introduced relating to safety, the environment and anti-theft measures. The reforms will create improved linkages with other key pieces of legislation required for administering the Act, particularly the *Competition and Consumer Act 2010*, *Customs Act 1901*, crimes and evidence Acts and provide for the application of provisions in the *Regulatory Powers (Standard Provisions) Act 2014.* These changes would allow for more effective information sharing arrangements, particularly with the Australian Competition and Consumer Commission, the Department of Immigration and Border Protection, and state and territory vehicle registration authorities.

A list of the current concerns and inadequacies of the Act in these areas, raised by the Department's vehicle safety standards regulator, is included below.

Issue	Concern
Inconsistencies in legislation	There are inconsistencies in the legislation that provide loopholes for non-complying entities.
Intent of the Act not being met	With regard to the Specialist and Enthusiast Vehicle Scheme (SEVS), for example, a range of stakeholders indicated that the intent of the scheme is not being met (as identified in submissions to the Review). One of the four criteria, Specialist Publications, is both subjective and open to manipulation – with articles being placed in particular magazines or online articles simply to support an eligibility ruling.
Entity history	Other than for Registered Automotive Workshops (RAWs), the Act does not limit entities that can supply vehicles as there are no provisions to take into account past actions of a business, or its key personnel, in deciding whether to issue an approval.
Circumvention of administrative measures	In granting an approval, there are no grounds for a decision maker to consider the past conduct of a business. Administrative measures can then be ineffective, as a business can circumvent cancellation of an approval with a new application or by applying with a different company identity.
Provisions for electronic records	The Act and other legislation do not currently deal adequately with electronic records, particularly in relation to submission, seizure and retention provisions.

Issue	Concern
Inadequacy of sanctions	The current regulatory sanctions and offence provisions for some businesses are generally too severe for typical non-complying circumstances, with penalties likely to close a business or prosecution options that require a criminal burden of proof. There are no alternate sanctions in the Act.
Recall and safety provisions	The recall and safety provisions of the *Competition and Consumer Act 2010* have limited application as they apply to consumer goods only. Trucks, heavy trailers and buses are not covered. In the event of a serious safety or compliance problem, the Australian Government may not be able to force rectification unless the supplier does so voluntarily.
Age of the current Act	The current Act provides confusion and loopholes through lack of clarity and duplication, and creates difficulties in applying UN agreements and Standards. In addition various new technologies have emerged since the last review of the Act. Modernisation would also allow for a more sophisticated integration with other legislation and more effective information sharing arrangements with other agencies and relevant authorities.

4.3.4 Continue to harmonise Australian vehicle standards with international standards and streamline new vehicle certification process

Vehicles built to new standards and entering the market through mainstream full volume channels present a lower risk to the community and to consumers. This low risk segment of the market is accorded the most efficient (lightest) regulatory burden per vehicle through the use of type approval certification. The increased acceptance of international vehicle standards as represented by UN Regulations[13] through their application in the ADRs is referred to as "harmonisation".

The 2014 Productivity Commission report on the automotive sector[14] recommended accelerating the harmonisation of Australian standards (as specified through ADRs) with UN vehicle standards. Since the last review of the Act, aligning ADRs with the UN Regulations where possible has been a policy of successive Governments. Increased international harmonisation was also supported by submissions to the 2013 and 2014 public consultation processes. The ADR harmonisation process is widely supported by industry participants.

A number of challenges and concerns with the current approach have been raised by stakeholders including industry and government bodies as detailed below.

Issue	Concern
Adoption of UN Regulations	The excessive time taken to adopt new versions of UN Regulations (already partially addressed by a specific 'Harmonisation' ADR, and by accelerating the acceptance of product manufactured to the latest version of UN Regulations).
Disconnect between type approval holders	If type approvals are issued to suppliers with no connection to the vehicle manufacturing process, the approval holder is unlikely to be aware of production changes that may affect compliance – meaning Departmental audits

[13] *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*, as amended to 16 October 1995 (Rev2.)
[14] *Australia's Automotive Manufacturing Industry, Inquiry Report No. 70*, Productivity Commission, 31 March 2014

Issue	Concern
and production process	cannot access significant stages of production, making it difficult to ensure that all vehicles produced will meet the ADR requirements and demonstrate conformity of production.
Manufacturers' lack of awareness of obligations and compliance status	There is a large volume of certification information generated for heavy trailers, however much of the detail is generic, and, by relying on certification agents, manufacturers tend to be unaware of the compliance status of individual vehicles, or of its obligations in manufacturing vehicles.
Test facility compliance	Test facilities that perform ADR testing on behalf of manufacturers are not legislatively 'approved' and so there is again no clear obligation placed on the holder of a facility with respect to compliance.
Component Registration Number (CRN) and Sub-Assembly Registration Number (SARN) status	CRNs and SARNs are not 'approvals' under the Act, and there is no clear obligation placed on the holder of the registration with respect to compliance.

Despite these concerns, industry has benefitted from the ongoing efforts to increase harmonisation of light vehicle standards over the past decade, with only three unique Australian light vehicle standards remaining.

5 Analysis of policy options

5.1 Assumptions

The costs and benefits of the repeal (2) and reform (3) options reported in this section use a variety of assumptions to undertake the analysis. The majority of the assumptions involve time savings due to streamlining the Act's regulatory requirements and the associated savings in hourly costs to businesses and individuals. The specific assumptions are detailed in Appendix D.

5.2 Option 1 — Status quo

The "base case" or retaining the Act in its current form requires no change to the *Motor Vehicle Standards Act 1989*, and no action would be taken in response to the Review of the Act. Maintaining the status quo loses the opportunity to reduce regulatory costs. Costs and benefits of this option are summarised in the table below.

Description	Affected Party	Impacts
Maintain the Act in its current form in terms of its scope, policies and regulatory approach	Industry	
	Costs	• Medium to long term costs of complying with the provisions of outdated legislation. • Regulatory cost arising from inefficient or ineffective regulatory approval processes.
	Benefits	• No additional costs on some stakeholders which may have resulted from the implementation of new measures introduced by changing the Act.
	Government	
	Costs	• Missed opportunity to reduce regulatory compliance costs, and keep the regulatory environment up to date, especially given the looming changes to the automotive industry landscape in Australia. • Costs associated with maintaining an outdated and inflexible Act.
	Benefits	• Nil.
	Consumers	
	Costs	• Medium to long term costs of complying with the provisions of outdated legislation.
	Benefits	• Some consider that the current system is working well for consumers and society as a whole, and the status quo option would maintain the current system.
	Community	
	Costs	• No positive change in fleet average age.
	Benefits	• Maintenance of consistent vehicle safety and environmental standards.

The other options, repeal (option 2), or reform (option 3) will be compared to option 1 (status quo) to allow a full understanding of the impacts of these options over the base case. As such the costs and benefits listed above are considered to be the "zero point" against which other options are analysed.

5.3 Option 2— Repeal the *Motor Vehicle Standards Act 1989*

This option involves the complete removal of the *Motor Vehicle Standards Act 1989*. As discussed in Section 4, repealing the Act is expected to increase costs for business and the community as manufacturers may have to comply with independent State and Territory regulations and the unregulated importation and supply of used vehicles would potentially allow unsafe vehicles to be provided to the Australian market. There is wide community and industry recognition of the need for enforceable vehicle standards to continue to reduce the costs and social impact of road trauma.

Costs and benefits of repealing the Act are summarised in the table below.

Description	Affected Party	Impacts
Repeal the Act to achieve compliance cost reductions	Industry	
	Costs	• In absence of Australian Government legislation, increased cost of complying with different regulations across state/territory jurisdictions. • Cost of interacting with different state and territory regulatory bodies. • Costs associated in supporting a wider range of vehicles meeting divergent specifications and vehicles from any country. • Uncertainty of the regulatory environment affecting the Australian industry's investment in innovative technologies.
	Benefits	• Reduced direct costs for importers of vehicles. • Reduced market entry barriers.
	Government	
	Costs	• Regulatory cost shifting to states and territories who may fill the vacuum with divergent regulatory responses. • Loss of the Act's current role in the facilitation of reciprocal recognition of approvals with other countries. • Increased health-related budgetary costs as an increase in unsafe vehicles would lead to higher rates of road trauma.
	Benefits	• Nil. There would be no budgetary saving for the Australian Government, compared to current resources required to administer the Act, as these activities are cost-recovered.
	Consumers	

Description	Affected Party	Impacts
	Costs	• Increased cost of moving interstate, as vehicles may not be easily registered in a different jurisdiction. • Manufacturers may limit the supply of vehicles in Australia if there are differences in jurisdictional requirements. • Loss of assurance of minimum vehicle quality, resulting in less safe vehicles on the road. • Requirement for consumers to make a technical judgement on vehicle safety and environmental impacts.
	Benefits	• Assuming imports are unfettered, access to cheaper vehicles resulting in greater mobility, and access to services and jobs. • Access to a wider range of vehicles.
	Community	
	Costs	• Exposure to a higher level of risk in safety, environmental impact, theft and consumer protection. • Reduced workforce mobility as vehicles may only be able to be registered or used in one jurisdiction.
	Benefits	• Nil

Completely repealing the Act could save the full $249.43 million in compliance costs, assuming that the states and territories do not then impose these evidence requirements. However, in the absence of federal regulation it is almost certain that state and territory jurisdictions would implement their own regulatory frameworks and it is highly likely these would differ state to state, leading to increased costs of compliance for manufacturers and importers; this is the situation that existed prior to the initial introduction of the Act in 1989. The regulatory costs identified in the table below reflect the average cost borne by businesses, the Australian Government and individuals per year, averaged over a ten year period.

Repealing the Act would also impose significant costs on the community through increased road trauma, environmental impacts, and loss of consumer protections. These costs are not possible to estimate due to the number of factors involved, including: the numbers, types, quality and age of vehicles potentially imported without restriction; the environmental damage likely; the response of the jurisdictional authorities to these vehicles at presentation for registration; impacts on fleet age (as a proxy for vehicle safety); and community costs of imported stolen vehicles. The costs to community are likely to result in a net cost to society, despite any regulatory savings of repealing the Act.

Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Agency	-$248.24	$0	-$1.19	-$249.43
Total by Sector	-$248.24	$0	-$1.19	-$249.43
Are all new costs offset?	☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	

5.4 Option 3— Reform the *Motor Vehicle Standards Act 1989*

The proposed reforms to the legislation provide a balance between ensuring appropriate safety, environment and anti-theft safeguards for the community and consumers whilst reducing the overall regulatory compliance cost of these safeguards. The regulatory impact from the design and implementation of each of these measures is costed in the sections below.

Implementation of the reforms is through the preparation of a new package of legislation, agreed by the Government. To legislatively put in place the reforms, five primary Bills have been prepared being: Road Vehicle Standards Bill 2018; Road Vehicles Standards (Consequential and Transitional Provisions) Bill 2018; Road Vehicle Standards Charges (Imposition – General) Bill 2018: Road Vehicle Standards Charges (Imposition – Customs) Bill 2018; and the Road Vehicle Standards Charges (Imposition – Excise) Bill 2018.

The Road Vehicle Standards Bill 2018 replaces the *Motor Vehicle Standards Act 1989* and provides the Rule making powers for the Road Vehicle Standards Rules 2018 - which will contain the legislative detail of the reform. The Consequential and Transitional Provisions Bill provides a 12 month transition period for regulated entities to move from the current to the future regulatory regime, while the three charging Bills enable flexibility in meeting the Government's policy intent for full cost recovery of the legislation's administration.

This RIS (and Explanatory Memorandum) accompany the Road Vehicle Standards Bill. While the Bill provides for the following reforms in the broadest sense, much of the detail - such as the structure of the new specialist and enthusiast vehicle eligibility criteria – is contained in the Rules which are not finalised and cannot be 'made' until after passage of the Bills.

5.4.1 Remove the requirement to fit vehicle identification plates

The concept of the new Register of Approved Vehicles is core to the new legislation and is the single biggest regulatory saving of the reform as well as being the platform for many of the other reform benefits. The table below shows the itemised costs for replacing identification plates with the Register of Approved Vehicles (the RAV) database and secure vehicle identification marking. Having the compliance information contained in an online database will affect several elements of the vehicle market in Australia. These include:

1. full volume passenger vehicles, light and medium commercial vehicles, light buses and motorcycles;
2. full volume heavy vehicles; and

3. specialist and enthusiast vehicles through RAWs, personal imports[15] and vehicles imported through the letter of compliance option[16].

The large majority of other countries do not require do not require an identification plate, or equivalent physical declaration of compliance – this being largely unique to Australia and therefore a regulatory cost unique to Australia. On the other hand, many of the significant markets in the world, such as the United States and Europe, require an additional secure vehicle identification - usually some form of label. The regulatory costs identified in the table below reflect the average cost borne by businesses and individuals per year, averaged over a ten year period. The quantified savings for individuals refer only to savings in fees to third parties for concessional imports; it is likely that the RAV will also generate savings for prospective vehicle purchasers and other interested individuals who will be able to research vehicle compliance information easily and instantly online, as opposed to travelling to a vehicle's physical location.

[15] The personal imports option allows individuals to bring their personal road vehicle with them to Australia, where the vehicle has been owned and used overseas for a period of 12 months or longer.
[16] A Letter of Compliance is a statement issued by a type approval holder stating that a vehicle complied with ADRs (other than the requirement to fit an identification plate) at the time the vehicle was first delivered.

Change in costs ($million)		Business	Community organisations	Individuals	Total change in cost
Full volume passenger vehicles, light buses, light commercial vehicles and motorcycles	Plate removal	-$22.374	$0.000	$0.000	-$22.374
	Online database	$0.001	$0.000	$0.000	$0.001
	Secure identification	$9.630	$0.000	$0.000	$9.630
Full volume heavy vehicles	Plate removal	-$0.653	$0.000	$0.000	-$0.653
	Online database	$0.001	$0.000	$0.000	$0.001
	Secure identification	$0.266	$0.000	$0.000	$0.266
RAWS, personal imports scheme and letter of compliance	Plate removal	-$1.190	$0.000	-$0.185	-$1.375
	Online database	$0.000	$0.000	$0.000	$0.000
Cost offset		Not Applicable	Not Applicable	Not Applicable	$0.00
Total by Sector		-$14.317	$0	-$0.185	-$14.502
Are all new costs offset?		☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	

5.4.2 Consolidate Concessional Schemes

The proposed two pathways, reduced from 12, will cater for:

- *Road use (imports requiring entry to the RAV)* including vehicles such as those older than 25 years, vehicles owned and used overseas, vehicles to which an intergovernmental agreement applies, RAWs vehicles (SEVs), heavy and light trailers and reimported road vehicles that were Australian-delivered but then exported (so long as the subject vehicle still represents its original approval).
- *Non-road use (imports not requiring entry to RAV)* including temporarily imported vehicles that will be only used in a race or rally, or as a support vehicle for a race or rally, or for public exhibition or test and evaluation purposes.

Consolidation of the concessional schemes into road use and non-road use will produce regulatory savings whilst accommodating specific needs.

The proposed reforms retain and revise the SEVs criteria and establishes a common approach for both new and used SEVs to be processed through a RAW. This includes replacing the current four subjective eligibility criteria with six objective criteria for eligibility of entry to the SEV Register. Reducing and consolidating the number of schemes will yield regulatory cost savings through better risk based regulatory effort.

Feedback provided during the public consultation process[17] indicated that consolidating the concessional schemes creates the opportunity to reduce consumer costs, increase administrative efficiency, and to ensure that there is a risk based approach to the regulation of vehicles entering through the concessional schemes. However, some submissions argued that there would be potential safety risks from minimising interaction with the Department[18].

The broader costs and benefits of consolidating the concessional schemes are summarised in the table below, however elements such as refining the Specialist and Enthusiast Vehicle (SEV) and Registered Automotive Workshop (RAW) schemes are discussed and summarised separately later.

Description	Affected Party	Impacts
Consolidate concessional schemes	Industry	
	Costs	• Costs of implementing changes in the Act. • Industry adjustment costs to RAWS and New Low Volume importers depending on their current specialisation and business models.
	Benefits	• Increased clarity for import decisions as regulatory processes are simple, streamlined and clear. • Streamlined regulatory processes leading to reduced regulatory costs.
	Government	
	Costs	• Potential for increased burden on State and Territory vehicle regulators. • Costs of implementing the changes to consolidate the concessional schemes.
	Benefits	• Streamlined internal processes resulting in more efficient administration of the regulation.
	Consumers	
	Costs	• Billable vehicle verification costs directly passed on to consumers while regulatory savings are not.
	Benefits	• Increased clarity for import decisions as regulatory processes are simple, streamlined and clear. • Increased range and availability of specialist vehicles.
	Community	
	Costs	• Nil
	Benefits	• Increased encouragement for the uptake of lower

[17] See, for example, the National Heavy Vehicle Regulator Submission to the MVSA Review (Submission number 220) and the Federal Chamber of Automotive Industries Submission to the MVSA Review (Submission number 207)
[18] See the Transport for NSW Submission to the MVSA Review (Submission number 219)

Description	Affected Party	Impacts
		emission vehicles

The table below shows the itemised costs for consolidating all the concessional schemes. The regulatory costs identified in the below table reflect the average cost borne by businesses and individuals per year, averaged over a ten year period.

Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Streamline number of schemes	-$0.258	$0.000	-$0.565	-$0.824
Change SEVs criteria	-$0.004	$0.000	$0.000	-$0.004
Modification (compliance with ADRs, left to right conversions, tyres and catalytic converters)	-$5.028	$0.000	$0.000	-$5.028
Approved Vehicle Verifier	$1.405	$0.000	$0.000	$1.405
Model report	-$0.315	$0.000	$0.000	-$0.315
Application to become a RAW	-$0.014	$0.000	$0.000	-$0.014
RAWS renewal	-$0.006	$0.000	$0.000	-$0.006
Cost Offsets	Not applicable	Not applicable	Not applicable	$0.000
Total by Sector	-$4.220	$0.000	-$0.565	-$4.786
Are all new costs offset?	☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	

5.4.2.1 SEV Criteria

The 2014 options paper outlines the stakeholder feedback during the 2013 public consultation process which suggested that the complexity of the Specialist and Enthusiast Vehicle (SEV) Scheme created difficulties for individuals to import vehicles under this category. As described in Part 4, the current Act requires the applicant to satisfy the Department that the vehicle meets two out of four *subjective* criteria to have a vehicle listed on the SEV Register. The proposed reforms create six *objective* criteria for applicants, of which only one needs to be met. These

objective criteria are expected to reduce the time taken for a vehicle model to be approved and entered onto the SEV Register.

To be eligible for concessional supply as a SEV, the vehicle type (make, model or variant) must not be available in Australia under a (full volume) type approval. If the vehicle type passes this initial filter, it will subsequently be eligible for assessment against one of the following SEV criteria to gain entry to the SEV Register:

1. *High performance vehicles* – determined by power to weight ratio.
2. *Environmental performance* – use of an alternate means of propulsion to internal combustion either exclusively, or in addition to, an internal combustion engine.
3. *Mobility vehicles* – offering disability access not available in standard vehicles.
4. *Rare vehicles* – vehicles of which only small quantities have been produced globally.
5. *Left hand drive vehicles* – passenger and light and medium goods vehicles originally manufactured as left-hand-drive, of which right-hand-drive versions are not available in any other country.
6. *Genuine, originally manufactured campervans or motorhomes*

The reforms propose that vehicles can be eligible for assessment against the SEV Register criteria three months after a manufacturer has launched the vehicle in a comparable market but not introduced that vehicle model to the Australian market. A SEV Register entry would sunset after 24 months – allowing reassessment of its eligibility. The sun setting allows for example situations where the vehicle has begun to be produced in higher volumes (i.e. is no longer rare) or has been provided to the Australian market under a type approval.

Setting a period of three months to launch a vehicle model, instead of the current 18 months, will encourage the early launch of models into Australian markets by manufacturers. Manufacturers would no longer be able to prevent vehicles being included on the register in situations where they do not have a genuine intention to supply the model to the Australian market.

5.4.2.1.1 High performance vehicles

The performance thresholds proposed for the consultation ending in October 2016 consisted of a baseline performance threshold of 120 kilowatts per tonne (kW/t) for a vehicle manufactured in 1992. This threshold would then increase by 1 kW/t for every year thereafter.

After industry consultation, the Government has agreed to revise the starting year (1992) threshold down to 110 kW/t, but retain the annual 1 kW/t increment. Estimates suggest that this will add approximately ten vehicle make/models (122 units in 2016), plus an unknown number of previously ineligible variants, to the list of future eligible vehicles from the current SEV register. A plot of selected vehicle models mapped against the different power-to-weight thresholds is included at Appendix G.

5.4.2.1.2 Environmental performance

A technology based approach has been proposed and is designed to provide simple clear objective thresholds for assessment of eligibility under this criteria and contribute to broader Government policies related to encouraging the uptake of lower emission vehicles. The technology based threshold is designed for vehicles that use an alternate means of propulsion to

internal combustion of gas or oil - such as hybrid, plug in hybrid, battery electric and hydrogen fuel cell.

This criteria will also be extended to include a micro-car subcategory for low power (low emissions) vehicles under the environmental vehicle criterion. This will generally allow for vehicles that have a maximum engine capacity of 660cc, maximum engine output of 47kW and are not more than 3.4 metres in length and 1.48 metres in width.

In 2016, 57 micro-car subcategory vehicles were imported through RAWs, using the subjective unusual profile and featured in industry publications eligibility criteria. These vehicles are being purchased by local government (Gold Coast City Council) and private companies (Hamilton Island) amongst others. The environmental benefit from the addition of this eligibility criterion is unknown in advance as it is not possible to reliably estimate the consumer demand for these vehicles given the uncertainty in price, make/model/variant availability overseas and the average fuel / emissions savings per vehicle. It can be assumed that as a subset of the relatively small numbers of vehicles that enter Australia through the RAWs scheme the benefits will be positive, but marginal. The justification for the inclusion of this avenue is policy consistency with the Government's broader strategies for the reduction of vehicle emissions.

5.4.2.1.3 Mobility vehicles

Australian consumers with disabilities have a requirement for transport that is suited to their specific needs but appropriate vehicles are not always available in the local market – and in some cases a custom new vehicle is outside of the purchase capacity of the consumer. In markets around the world manufacturers design and build vehicle variants with substantive specialist mobility features such as ramps for wheelchair access, seating designed to lift a person from an accessible position outside the vehicle into a standard seating position, and portable wheelchair car seats.

Manufacturers do not always produce mobility access vehicles on the production line however. Such vehicles are instead often modified after production, by either a subsidiary company or specialist organisation, but before it enters the market through a franchised or licensed retailer. The manufacturer takes responsibility for the finished product of these vehicles. Including these in the scope of the criteria will increase the range of mobility access vehicles that the Government can have confidence in the quality of modification – therefore increasing the choice for consumers with a disability. Evidence that the vehicle contained the mobility features at the first point of sale to the original market, such as first registration documents, EU Compliance certificate or Japanese export certificate would be required for eligibility acceptance.

With respect to wheelchair restraints, Australia requires a higher wheelchair total mass than is contained in the Japanese standards. The reforms will require that the Australian Standards (with higher mass restraint limits) be used as a compliance requirement – which can be done by a Registered Automotive Workshop using a Model Report.

The inclusion of this eligibility criteria is specifically designed to cost effectively improve access to a range of these types of mobility vehicles. It is not possible to forecast the demand (numbers of) and specific vehicle sought (varying mobility needs) to sensibly estimate a net economic benefit from this reform.

5.4.2.1.4 Rare vehicles

The consultation process that concluded in October 2016 proposed thresholds on total worldwide production for rare vehicles of 1500 per year for make, 500 per year for model and 50 per year for variant. The Government has agreed with feedback received during the consultation process, proposing a doubling of these numbers. While increasing the thresholds will increase the number of makes, models and variants eligible, the rarity of these vehicles will continue to place constraints on the number of vehicles able to be imported. The reform package sets the following volume thresholds to be satisfied under this criteria:

- Total worldwide production of the vehicle 'Make', and total production by the 'Manufacturer' of the vehicle is less than 3000 units per year (averaged over the production period for the subject model); or
- Total worldwide production of the vehicle 'Model' is less than 1000 units per year (averaged over the production period for the model); or
- Total worldwide production of the vehicle 'Variant' is less than 1000 vehicles per year worldwide (averaged over the production period for the variant).

The Government has also agreed that Left Hand Drive vehicles imported under this criteria are not required to be converted to Right Hand Drive. It would be a matter for the states and territories as to whether the vehicle is registered for general road use. There is a risk for consumers that the vehicle is refused registration in a state or territory, however for rare vehicles in this category such a conversion is likely to devalue the vehicle and many collectors will be looking to import the vehicle for occasional use or investment rather than to use routinely on a public road.

5.4.2.1.5 Left hand drive vehicles

In respect of left hand drive vehicles, the reform package proposes that vehicle types for this criteria:

- Must have been originally manufactured in left-hand drive configuration and not be available in right hand drive configuration (excluding conversion of left-hand drive vehicles) in another world market.
- Are restricted to MA and MC (passenger vehicles) and NA and NB (light and medium commercial) categories; and
- Must be converted to right-hand drive before being added to the Register of Approved Vehicles under the Registered Automotive Workshop Scheme.

During consultation in 2016, some stakeholders suggested that heavy commercial vehicles should be included under this category, however only 44 heavy vehicles have ever been converted under this category. Given the higher risk heavy vehicles pose to the community, the downward pressure the government wishes to exert on the average heavy vehicle age and the minimal impact on the current RAWs sector, it is difficult to reconcile commercial heavy vehicle use with the policy intent of the specialist and enthusiast category. The reforms will therefore not include heavy commercial vehicles under this pathway.

5.4.2.1.6 Genuine, originally manufactured campervans or motorhomes

A unique pathway under the current SEV eligibility criteria allows for the importation of vehicles for the purpose of conversion to campervans and motorhomes. This has led to the annual importation of thousands of Toyota Estimas and Nissan Elgrands without subsequent conversion, which are then sold as people movers – a highly profitable business model due to the significant arbitrage available on these vehicles at 8 – 12 years old, and the minimal compliance work undertaken.

There is a small but genuine interest in improving market access to campervans and motorhomes for their designed purpose – especially amongst the grey-nomad community. To remove the loophole, yet still allow the importation of genuine campervans and motor homes, the reforms propose to allow the importation of vehicles that are specially built as campervans or motorhomes. Under this pathway, vehicles will require substantive accommodation related features such as plumbing and gas fittings and compliance verified by an Approved Vehicle Verification organisation (as with any vehicle imported through the RAWs). Eligible vehicles under this category would need to be inside the heavy vehicle dimension limits – some very large recreational vehicles are built on heavy vehicle platforms.

The Government proposes a separate transitional grandfathering arrangement that expires two years from the date the reforms come into force. This measure would allow for the continued importation of Toyota Estimas and Nissan Elgrands under their current capped allowances to enable industry to adjust business practices. Existing limits of 130 vehicles per vehicle category per 12 month period for each workshop will be maintained. The Government recognises that some RAWs businesses have built their entire business model on the importation of these two specific vehicles and in those cases transition to an alternative business model could take longer. The number of Estimas and Elgrands available in the source markets is already declining and the RAWs industry has warned that these vehicles will ultimately become unviable.

The purpose of refocusing this criterion to originally manufactured campervans and motorhomes is to achieve the policy objective of catering for genuine specialist and enthusiast vehicles. The impact of the grandfathering provision will be minor, but sufficient to enable affected workshops to maintain vehicle volumes while transitioning to the new arrangements. Although a small number of workshops have developed business models that rely almost exclusively on these two vehicle models, the steadily declining supply availability of these vehicles due to aging has already begun to necessitate that they expand their scope to additional models. The grandfathering proposal will have the positive impact of being more consistent with the natural decline of business viability of these vehicles rather than cutting off access to these vehicles prematurely. The declining introduction of these aging second hand vehicles will have a net community safety benefit – especially as they a typically used for the purposes of larger family transport. There will be almost no impact on consumers who wish to purchase people movers as these vehicles are increasingly available in the marketplace through the full volume manufacturers such as Kia, Hyundai, Honda and others. Further, online research of car sales suggests that Estimas and Elgrands are being sold for the first time in Australia at equivalent prices to comparable vehicles of the same age that have been provided under type approval – rather than providing a cheaper option. It is highly unlikely the disappearance of these two competitors will impact prices.

5.4.2.2 Registered Automotive Workshops (RAWs)

The proposed changes to the current Registered Automotive Workshops scheme include the introduction of a third party inspectorate and the use of model reports that will reduce costs to RAWs by removing the requirement for individual evidence packs for individual vehicles. It is also proposed to reduce the 2 stage RAWs application process which currently consists of 13 steps into a process with 2 steps. In addition, proposed changes to streamline and simplify RAWs renewal requirements will reduce time spent undertaking administrative compliance.

Under the current Act, New Low Volume Manufacturers (including New Low Volume Second Stage Manufacturers) are able to supply up to 25 or 100 new vehicles per vehicle category per year, depending on the vehicle category. Under the reforms, low volume manufacturers will be able to supply vehicles that comply with the SEV criteria under the RAW scheme, with the benefit of model reports, or under type approvals in unlimited numbers.

The supply and demand of all vehicles, but especially specialist and enthusiast vehicles, is subject to changing consumer demands, changing supply markets, exchange rates, source country economics and future vehicle products. The Department estimates that the reforms to the SEV eligibility criteria and RAWs compliance requirements will enable the RAWs industry to continue at similar volumes as currently processed.

5.4.3 Formalising the treatment of trailers under the Act

In January 2016 there were approximately 3.7 million road trailers registered for use on Australian roads[19]. Of these, around 90 per cent are classified as light trailers, having an Aggregate Trailer Mass[20] (ATM) of up to and including 4.5 tonnes whilst the remaining 10 per cent are classified as heavy trailers with an ATM greater than 4.5 tonnes.

Generally light trailer types consist of box trailers, caravans, boat trailers and horse floats. The majority of heavy trailer types consist of semi (articulated) trailers and rigid trailers, and include a range of special purpose heavy trailers such as “A” trailers and converter dolly trailers which are used in the formation of high productivity combinations such as “B doubles” and road trains.

Heavy trailers must be fitted with an Australian Government identification plate which requires type approval certification to the ADRs under the Act. In contrast, light trailers are required to meet all applicable ADRs under self-certification arrangements with the state and territory registering authorities. There is no current enforceable obligation for trailer manufacturers to be visible to the vehicle safety standards regulator. Neither locally manufactured nor imported light trailers are required to undergo Australian Government type certification. As a result, around 90 per cent of existing road trailers have been supplied to the Australian market outside of the Act.

Australian Design Rules and Vehicle Standards Bulletin 1

The Department published the National Code of Practice for Building Small Trailers, also known as Vehicle Standards Bulletin 1 (VSB 1). VSB 1 applies to road trailers, including new trailers or used imported trailers, with an ATM of 4.5 tonnes or less. VSB 1 provides a summary of small trailer construction requirements to assist manufacturers, importers and suppliers to comply

[19] Australian Bureau of Statistics Motor Vehicle Census, 2016, Catalogue Number 9309.0 issued 21/07/2016 (accessed through ABS Table Builder).
[20] Aggregate Trailer Mass is the total mass of the trailer when carrying the maximum load recommended by the manufacturer. This includes mass imposed onto the towing vehicle when the combination vehicle is resting on a horizontal supporting plane.

with the appropriate ADRs for light trailers. These ADRs cover topics such as mechanical connections, lamps, reflex reflectors, tyres, brakes, trailer dimensions, and trailer markings[21]. It is the responsibility of the manufacturer or importer to ensure that the trailer meets the standards as set out in VSB 1. Industry bodies, such as the Caravan Industry Association of Australia (CIAA)[22] support further harmonisation of VSB 1 with UN standards, provided there is allowance for unique Australian conditions.

Whilst not described in the 2014 options paper, the Australian Government will continue the requirement for trailers to meet the appropriate design standards as listed in VSB 1, however the manufacture will be required to provide a declaration to the Australian Government of the trailers compliance with those standards. The safety standards regulator will have visibility of who the manufacturer of a non-compliant trailer is and the compliance and enforcement tools to take appropriate action. This will ensure that state and territory registration agencies have a level of confidence in registering trailers, especially imported trailers, for road use. Under the process, all light trailers, including caravans, will be entered in the Register of Approved Vehicles (RAV). The reforms will also require individuals and businesses building more than four trailers in a 12 month period to hold a type approval (self-declared conformance to the required standards and conformity of production).

These reforms will bring light trailer manufacturers into the purview of the regulatory framework in a light touch regulatory manner. There will be minimal regulatory impact for trailer manufacturers as the process will be as simple as the completion of an on-line declaration form – for each trailer for manufactures of four or less trailers and once only for type approved trailers. Type approved manufacturers will be able to enter each trailers details (VIN etc) onto the Register of Approved Vehicles, reducing their need to interact with the state and territory registration authorities for vehicle registration. The requirements for heavy trailers will not change.

During consultations, the local caravan manufacturing industry sought these reforms to provide a level playing field for locally manufactured and imported trailers. Non-compliance of caravans is often found through state and territory regulatory authorities conducting roadside checks or by the national safety standards regulator conducting audits at industry product shows. Often it is difficult to ascertain who the manufacturer is and the regulator is unable to sanction the provision of unsafe vehicles to the Australian market.

The table below shows the itemised costs for formalising regulatory requirements for trailers. The regulatory costs identified in the table below reflect the average cost borne by businesses and individuals per year, averaged over a ten year period.

[21] Depending on the type of trailer, the ADRs that are covered by VSB1 include ADR 1, 6, 13, 23, 38, 42, 43, 44, 45, 47, 48, 49, 51, 61, 62, 63, and 74.
[22] CIAA Submission to the MVSA Review, Submission number 146

Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Registration for access to RVCS	$0.014	$0.000	$0.075	$0.089
Access to online database /RAV	$0.230	$0.000	$0.112	$0.342
Cost Offset	Not Required	Not Required	Not Required	$0.000
Total by Sector	$0.244	$0.000	$0.187	$0.431
Are all new costs offset?	☒ Yes, costs are offset	☐ No, costs are not offset	☐ Deregulatory, no offsets required	

5.4.4 Strengthen and modernise the legislation

The process of strengthening and modernising the Act aims to improve definitional clarity, linkages with other relevant legislation, remove duplication in information collection and in particular provide the regulator with an appropriate regulatory toolkit to enforce compliance with the national standards. This element of the reform is both an opportunity to address stakeholder concerns raised with the existing systems and to apply best practice improvements to compliance and enforcement systems.

A modern, flexible and stronger compliance and enforcement approach in the new legislation underpins how the new regulatory framework will improve community safety, environmental protection and reduce vehicle theft.

The key compliance and enforcement reforms are to:

- strengthen offence provisions to reduce non-compliance and community risk and improve deterrence;
- trigger standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014* to increase the regulatory toolkit for rectifying non-compliance with the addition of a system of civil offences, infringement notices and enforceable undertakings;
- provide inspectors with broader powers to access and inspect vehicle manufacturing and supply facilities and to collect information – thereby increasing detection of non-compliance;
- introduce a new Authorised Vehicle Verification process for vehicles entering the market through the RAW scheme; and
- provide the Minister directly responsible for vehicle standards with the power to trigger a mandatory recall for non-compliant vehicles supplied to the market where there is a breach of safety or the national vehicle standards.

A greater range of tools to respond appropriately, based on the culpability of offenders, will enable sanctions to be more easily applied or obtained from courts. The key changes required to modernise the Act are:

- clarifying key definitions (such as 'new vehicle', 'used vehicle', 'supply to the market' and 'used in transport') which currently lead to interpretation and application difficulties;
- streamlining regulatory processes and legislative instruments to eliminate duplication and contradictions;
- updating the Act's Objects to accurately reflect the intent and scope of the Act;
- improve linkages with other key pieces of legislation required for administering the Act, particularly the *Competition and Consumer Act 2010*, *Customs Act 1901*, crimes and evidence Acts and provide for the application of provisions in the *Regulatory Powers (Standard Provisions) Act 2014*;
- formalise information sharing arrangements, particularly with the Australian Competition and Consumer Commission, the Department of Immigration and Border Protection, and State and Territory vehicle registration authorities[23]; and
- update referencing to the relevant UN agreements.

Costs and benefits of this reform element, identified in feedback from stakeholders, are summarised in the table below.

Description	Affected Party	Impacts
Strengthen and modernise the legislation	Industry	
	Costs	• Costs of implementing changes to comply with modernised legislation. • Amended penalties and new infringement notices for some non-compliance. • Potentially higher regulatory costs for some industry sectors from increased auditing provisions and individual vehicle inspections.
	Benefits	• Higher productivity through minimisation of inconsistent standards. • Higher regulatory effectiveness from national consistency and specified legislation. • Fairer operating environment for businesses with consistency in application of the Act creating a level playing field. • Reduced unnecessary regulatory burden of the Act Increased clarity for import and investment decisions as a result of improved regulatory processes.
	Government	
	Costs	• Implementation costs from administering the updated Act. • Potential for increased enforcement costs.
	Benefits	• Regulatory effectiveness from national consistency.

[23] Not contained in the legislation – this will be undertaken through MoU's and the like between the vehicle safety standards regulator and the relevant agencies.

		• Improved regulatory decision making and enforcement. • Potential for reduced enforcement costs. • Administration benefits to states and territories from improved enforcement of the Act. • Increased consistency with other Australian Government legislation and reduced time interacting with regulated parties, leading to more efficient administration of the Act. • More effective administration of the Act from improved clarity in decision making.
	Consumers	
	Costs	• Cost of implementing changes in the Act.
	Benefits	• Prevention of inconsistent local standards. • Strengthened recall provisions. • Increased certainty about the quality of vehicles. • Reduced regulatory burden of the Act resulting in productivity gains. • Increased clarity for import decisions as a result of improved regulatory processes.
	Community	
	Costs	• Nil.
	Benefits	• Increased certainty about the quality of vehicles. • Improved safety.

The regulatory costs identified in the table below reflect the average cost borne by businesses, community organisations and individuals per year, averaged over a ten year period of strengthening and modernising the legislation. The Authorised Vehicle Verification costs are included in a later table on concessional import scheme consolidation.

Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Administrative tasks	-$0.238	$0	-$0.013	-$0.251
Education tasks	-$0.075	$0	-$0.052	-$0.128
Complying with financial costs	-$0.296	$0	-$0.104	-$0.400
Costs Offsets	Not applicable	Not applicable	Not applicable	$0.00
Total by Sector	-$0.609	$0	-$0.169	-$0.779
Are all new costs offset?	☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	

5.4.5 Continue to harmonise Australian vehicle standards with international standards and streamline new vehicle certification process

Harmonisation provides light vehicle manufacturers with regulatory compliance cost savings by allowing international standards compliance testing to satisfy Australian requirements. Harmonisation with internationally accepted light vehicle standards is both deregulatory in nature and provides the greatest confidence of the quality of the vehicles entering via the proposed personal new vehicle imports process.

Costs to vehicle manufacturers to provide evidence for an Australian vehicle type approval that is different or additional to UN standards can be significant. The three alternative approaches to increased harmonisation of standards for light vehicles and motorcycles[24] were considered in the 2014 Options Discussion Paper:

1. replace the ADRs with the UN Regulations;
2. adopt the UN Regulations as the primary standards with capacity to permit variations for Australian conditions; and
3. apply the UN Regulations through the ADRs.

Both Options 1 and 2 have the potential to create confusion and increased regulatory burden in adopting the full range of 140 UN Regulations. For example, some UN Regulations are not appropriate for the Australian climate (such as cold start requirements) and some provide for vehicles that are out of scope of the Act such as non-road vehicles.

Option 3 provides the highest degree of flexibility to Australian regulators, retaining sovereign control in relation to vehicle standards; particularly accommodating unique ADRs where adoption of an equivalent UN Regulation (or giving up an existing ADR) would be seen as a decrease in proven vehicle safety.

[24] Work on the harmonisation of the ADRs with UN standards for light vehicles and motorcycles is well advanced. However, work remains to be done on the harmonisation of standards for heavy vehicles, caravans and trailers.

In terms of regulatory impact on industry - option one would, on face value, have the greater savings as by definition there would be no unique Australian vehicle standards like ADR 34 – child restraint anchorages. However, as noted above there are number of UN regulations that are not useful in the Australian context and conformance to these standards would add to the costs of manufacture c.f the current requirements for no consumer benefit. On the understanding that option two variations include non-application of UN regulations that were irrelevant to the Australian context, then options two and three represent no real change to the regulatory costs on industry of the current harmonisation approach. In all three cases, the future ability to adopt the International Whole of Vehicle Type Approval, specifically provided for in the new legislation, represents the significant harmonisation regulatory cost savings.

Submissions from industry participants and state and territory regulators in response to the 2014 Options Discussion Paper supported Option 3. In accordance with this feedback and the benefits outlined above, the preferred policy approach is to continue to use the ADRs as the primary national vehicle standards and to harmonise standards where the gap between UN standards and ADRs has been substantially reduced over time.

Requirements such as those for child restraint anchorages, contained in ADR 34, are unlikely to be met by equivalent UN Regulations in the foreseeable future however and harmonising ADR 34 could potentially come with an increased cost to the community. As currently the case, where future harmonisation imposes potential costs by increasing the stringency of vehicle standards, harmonisation would only be pursued if it was demonstrated that the benefits of such harmonisation outweighed the costs (consistent with the Australian Government's approach to international harmonisation).

Unique ADRs would become harmonised as international standards become robust enough to replace them without any loss of safety. In the longer term, harmonisation through the International Whole of Vehicle Type Approval (IWVTA) system will be the most efficient way to manage the community and consumer risk. This is described below.

Costs and benefits of harmonisation are summarised in the table below.

Description	Affected Party	Impacts
Increase the international harmonisation of Australian motor vehicle standards	Industry	
	Costs	• Potential impact on the high productivity of the heavy vehicle fleet (which is able to carry larger and heavier loads in longer vehicle combinations than most other countries). • Potential costs if harmonisation increases the stringency of vehicle standards.
	Benefits	• Reduced costs of supplying evidence and associated compliance costs resulting from the harmonisation of ADRs with UN regulations. • Positive impact on trade through increased opportunities.
	Government	
	Costs	• Cost of implementing harmonisation of the ADRs with UN Regulations.

Description	Affected Party	Impacts
	Benefits	• Potential for Australia to influence the development of UN Regulations that meet Australian requirements.
	Consumers	
	Costs	• Potential risk of lowering vehicle safety or constraining productivity (particularly in relation to the supply of light commercial and heavy vehicles) where Australian requirements are currently more stringent than UN Regulations.
	Benefits	• Positive impact on vehicle consumer confidence as vehicles will comply with international standards. • Access to a greater range of vehicles. • Consumers will benefit where savings are passed on by manufacturers. •
	Community	
	Costs	• Potential safety risks where Australian requirements are more stringent than UN Regulations.
	Benefits	• Long term benefits from confidence the vehicle fleet meets international standards with lower regulatory requirements.

The regulatory costs identified in the table below reflect the average cost borne by businesses, community organisations and individuals per year, averaged over a ten year period of harmonising the legislation.

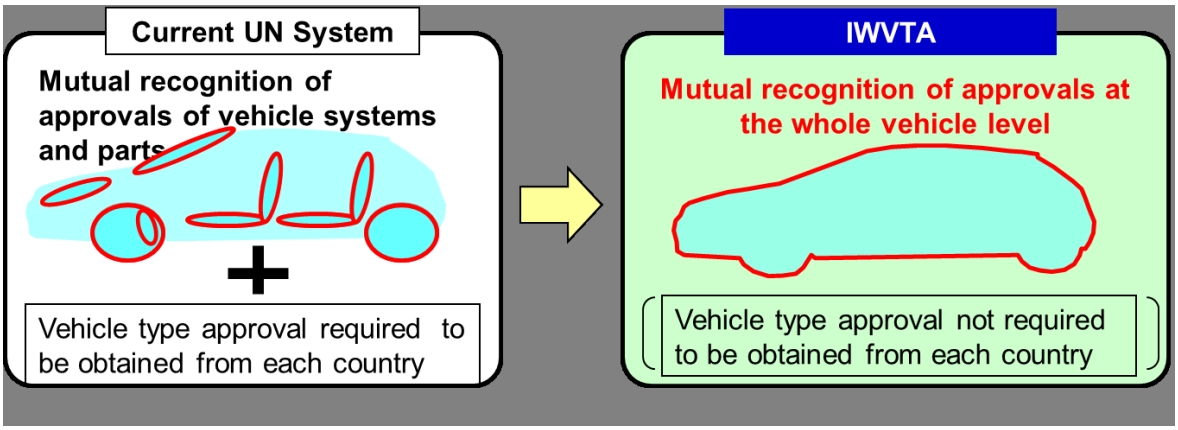
Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Harmonisation	-$49.196	$0	$0	-$49.196
Cost offset	Not applicable	Not applicable	Not applicable	$0
Total by Sector	-$49.196	$0	$0	-$49.196
Are all new costs offset?	☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	

5.4.5.1 Description of International Whole of Vehicle Type Approval (IWVTA)

Currently a vehicle manufacturer must submit test reports, or UN approval certificates, to the Australian Government in order to be approved to supply a new vehicle model to the market. Test reports cover individual systems and components within the car such as crash protection, noise and emissions control, braking capabilities, as well as components such as seatbelts,

glazing, lamps, mirrors, tyres and anti-theft devices. The approval process can require around 60 test reports or UN approval certificates, plus other supporting documentation before a light passenger vehicle is approved for use in Australia.

An IWVTA will provide manufacturers with the more streamlined option of developing a single UN approval for a vehicle covering a range of individual requirements as illustrated in the figure below.



An IWVTA approval will reduce the cost to manufacturers and governments in not having to repeat the certification of a vehicle model for each country. Beyond this, it will also diminish the need to audit a manufacturer's production facilities. Early recognition of some of the initial component regulations that will form the IWVTA will save Australian business around $10m per year in certification and audit costs however the calculation of regulatory savings from streamlining new vehicle certification processes does not include the savings from IWVTA. Once adopted, an IWVTA will create even more regulatory savings for businesses to pass onto consumers.

The Department expects that the adoption of IWVTA for light passenger vehicles may begin at around the same time as the reforms to the Act are enabled. Light passenger vehicles approved under IWVTA may also be required to meet additional requirements (e.g. braking, ESC, safety belt anchorages) for specific counties. The progressive nature of the transition to IWVTA mean that costing the savings of the IWVTA process are difficult to predict and as such the expected savings have not been included for costing in this RIS.

5.5 Summary of Regulatory Costs

The review the *Motor Vehicle Standards Act 1989* arose to address tangible concern in relation to the effectiveness of the legislation and what could be defined as an instance of market failure (e.g. artificial barriers to competitive pricing) in the local market. The current regulatory framework imposes regulatory costs on industry and individuals of around $249.43 million a year. The evaluation of the costs and benefits of Options 1 and 2 has shown that the costs of not taking action or repealing the legislation altogether would outweigh the limited range of benefits identified. Failing to address the inefficiencies in the current Act or repealing it altogether, as described in the qualitative analysis of each of these options, would also have a lasting impact on consumer welfare and the level of price competition in the market. For these reasons, Options 1 and 2 are not preferred.

Option 3, reform of the *Motor Vehicle Standards Act 1989* is the preferred option. The analysis of Option 3 shows that the implementation of the proposed changes to the legislation would

potentially lead to a significant range of benefits for the community and industry, including higher regulatory effectiveness of the legislation, reduced regulatory burden on industry and consumers, improved regulatory decision making and enforcement, increased opportunities for industry to support a wider range of vehicle models, and an ability to support the introduction of new automotive technologies into the future.

Preliminary estimates for Option 3 are a $68.832 million per annum reduction in regulatory burden, based on a policy implementation in 2019 with a 12-month transition phase through 2020. The regulatory costs and savings of Option 3 identified in the below table reflect the average cost borne by businesses, community organisations and individuals per year, averaged over a ten year period. The table shows that the decision to continue the harmonisation of the ADRs with relevant international standards will yield a $49.196 million per annum reduction in regulatory costs, while the remaining reform measures will lead to regulatory savings of $19.636 million.

Average annual regulatory costs (from business as usual)

Change in costs ($million)	Business	Community organisations	Individuals	Total change in cost
Strengthening and modernising	-$0.609	$0.000	-$0.170	-$0.779
Harmonise	-$49.196	$0.000	$0.000	-$49.196
Consolidate concessional	-$4.220	$0.000	-$0.565	-$4.786
Identification plates	-$14.317	$0.000	-$0.185	-$14.502
Trailers	$0.244	$0.000	$0.187	$0.431
Cost offsets	Not applicable	Not applicable	Not applicable	$0.000
Total by Sector	-$68.098	$0.00	-$0.732	-$68.832
Are all new costs offset?	☐ Yes, costs are offset	☐ No, costs are not offset	☒ Deregulatory, no offsets required	
Total (i.e. change in costs less cost offsets, in $ million)			-$68.832 million	

6 Consultation

The reforms to the Act have been developed through detailed stakeholder consultations in three distinct phases. The first phase in 2013 examined general issues and the need to seek a review of the Act. The second phase of consultation in 2014 invited comment from stakeholders on an Options Paper that examined specific reforms to the Act based on feedback from Phase 1. Phase 3, from mid-2015 to August 2017, examined specific issues raised in Phase 2 by stakeholders that required clarification such as reforms to the Specialist and Enthusiast Vehicle (SEV) category. A full description of the consultation processes is listed in Appendix E.

6.1 Phase 1 – 2013 public consultation process

From May to July 2013, the Department undertook a public consultation process on the review of the Act and its regulations to consider its currency and whether it remains effective and efficient. A consultation paper was prepared to provide background to the Act and some guiding questions to facilitate consideration of the Act by stakeholders. The paper provided background on the legislation and on the consultation process, and posed a series of questions to assist stakeholders to formulate views on the Act and the Regulations.

Submissions were invited from interested organisations or individuals. Respondents were asked to provide general comment on the objectives, relevancy, effectiveness and impacts of the Act or frame their response in terms of any or all of the questions contained in the consultation paper. Almost 200 submissions were received from a range of stakeholders whose views are summarised in Appendix E.

Around 100 stakeholders attended a series of workshops held in Sydney, Melbourne, Perth and Brisbane to support the consultation process. The final 2013 public consultation report provides a synthesis of the key issues raised by stakeholders in the workshops and the submissions. Further details on the 2013 public consultation and copies of submissions are available at: www.infrastructure.gov.au/vehicles/mv_standards_act/2013_public_consultation_process.aspx

6.2 Phase 2 – 2014 review of the Act

The key overarching theme across the consultation process was that safety, environmental and consumer protection objectives are still current. However, stakeholders indicated that aspects of the Act are outdated and require updating to reflect the changes in the global and Australian automotive industry and to ensure it continues to strike the right balance between appropriate safety standards, in line with international best practice, and consumer choice. A number of stakeholders indicated that while the Australian vehicle market is competitive for new vehicles in the mid and low price range, there is a cost difference between vehicles sold in Australia versus comparable vehicles sold in overseas market in the high -end luxury or speciality segments of the market.

6.2.1 Options Discussion paper

The 2014 review of the Act formally commenced on 16 January 2014 when the then Assistant Minister for Infrastructure and Regional Development, the Hon Jamie Briggs MP, announced the review's Terms of Reference with a view to reducing regulatory costs to business and individuals and improving the safety and environmental performance of road motor vehicles.

On 4 September 2014 the then Assistant Minister released an Options Discussion Paper for the review of the Act and called for submissions from all interested parties. The Options Paper contained the three options discussed in section 4.3 above.

In total, 220 written submissions were received from a wide range of stakeholders in business, industry and other organisations, vehicle owners and enthusiasts, academia and state regulators. The 2014 Options Discussion Paper and the submissions are available at: www.infrastructure.gov.au/vehicles/mv_standards_act/index.aspx

6.2.2 Workshops

The Department conducted a series of public workshops in Sydney, Brisbane, Melbourne, Adelaide and Perth in September and October 2014 to seek feedback and respond to queries on the Options Discussion Paper. Approximately 300 stakeholders attended the workshops. The workshops provided the stakeholders and the Department the opportunity to interactively engage on the key issues and assist stakeholders in focussing their contributions to the review.

6.2.3 Roundtables

On 3 November 2014, the then Assistant Minister also met with a wide range of stakeholders in two industry and peak association roundtable consultation meetings to directly hear their views on the review. A list of participants is included in Appendix E.

The roundtable discussions gave participants the opportunity to express their views directly to the Assistant Minister on options contained within the Options Discussion Paper, particularly in relation to the proposal to reduce restrictions on the personal importation of new vehicles.

6.2.4 Government consultations

Development of the reforms to the Act have included ongoing consultation with a range of Australian Government agencies as listed in Appendix E.

6.2.5 Personal New Imports and used vehicle imports

On 16 April 2015, the then Assistant Minister for Infrastructure and Regional Development announced that the Government was considering possible options for the personal importation of new vehicles but was not inclined to take the same approach for used vehicles (thus this option has been excluded from the analysis in this RIS). The announcement provided further detail on the options being considered, including a reduction on restrictions to the personal importation of new vehicles.

At the close of submissions 163 comments were received; details are provided at Appendix E.

The views expressed in this additional consultation process are consistent with the views expressed in the stakeholder consultation following the release of the Options Discussion Paper in 2014. Twenty of the additional comments were from stakeholders who had previously provided a submission to the review.

Stakeholders who supported reducing the restrictions on the personal importation of new vehicles stressed the potential for these actions to increase consumer choice and competition and to reduce vehicle prices. These stakeholders generally supported restricting this to vehicles from markets with comparable standards, and including limitations on vehicle age or odometer

readings. These stakeholders also generally support harmonisation of Australian Design Rules with international vehicle standards.

Stakeholders who supported reducing the restrictions on the personal importation of used vehicles were typically interested in the import of specialist and enthusiast vehicles – older collectable cars, and left hand drive vehicles. However, some of these stakeholders supported wholesale deregulation of the importation of new and used vehicles.

Stakeholders who opposed reducing the restrictions on the personal importation of new and used vehicles typically highlighted safety concerns. These stakeholders raised concerns about recalls, repairs and consumer protection – particularly for second and subsequent vehicle owners – and potential impact of the proposed changes on employment. Some of these stakeholders also commented that the Australian vehicle market is already competitive.

6.3 Phase 3 – Additional formal consultations

6.3.1 Announcement of the reforms

The Minister for Urban Infrastructure, the Hon. Paul Fletcher MP, announced a package of reforms to the *Motor Vehicle Standards Act 1989* on 10 February 2016 based on the extensive consultation process undertaken as part of the 2014 review. These reforms included changes to the processes for determining eligibility for concessional importation of specialist and enthusiast vehicles, with the intent to more closely align eligible vehicles with genuine specialist and enthusiast demand.

Immediately after Minister Fletcher announced the proposed reforms, the Department held a series of workshops to further outline the reforms and answer any questions. The participants at the workshops are listed in Appendix E. Feedback received during the workshops was considered in the subsequent development of the legislation.

6.3.2 Summary of views on changes to Specialist and Enthusiast Vehicle criteria

On 7 October 2016, the Government commenced consultations on the detailed thresholds in which a vehicle type would be assessed against each of the proposed SEV eligibility criteria (Performance Vehicles, Environmental Performance Vehicles, Mobility Vehicles, Rare Vehicles and Left Hand Drive Vehicles).

By December 2016, the Department had received 35 submissions from a range of stakeholders including;

- the specialist and enthusiast sector –AIMVIA and the RAWs Association, plus several individual workshops, vehicle importers and engineering firms;
- regulatory agencies – the National Heavy Vehicle Regulator and the South Australian Department of Planning, Transport and Infrastructure;
- vehicle manufacturers – the FCAI and the Truck Industry Council; and
- the general public.

Associations, businesses and individuals associated with specialist and enthusiast vehicles were of the view the proposed thresholds were too restrictive and would put many RAWs out of business due to a lack of profitable vehicles to import. On the other hand, manufacturers and

regulators sought tighter thresholds – emphasising the policy intent to ensure the scheme catered only for genuine specialist and enthusiast vehicles. The most contested eligibility threshold was for the 'performance' criteria and a number of submissions directly sought an open used vehicle import scheme similar to New Zealand. Submissions from industry associations, regulators and some individual RAWs provided recommendations on alternative thresholds and the specialist and enthusiast scheme design more broadly.

As a result of these consultations, on 16 August 2017 the Minister announced the final package of reforms, including details of the SEV eligibility criteria as described in s7ection 5.4.2.1 of this RIS. Further detail on this consultation is included at Appendix E.

6.3.3 Regulatory costings consultation

In January 2017, the Department conducted formal consultations with the three groups of main stakeholders impacted by changes in regulatory costs – full volume manufacturers, registered automotive workshops and the caravan / trailer industry. The Federal Chamber of Automotive Industries coordinated the consultation and response by the full volume manufacturers, the Australian Imported Motor Vehicle Industry Association and the Registered Automotive Workshops Association coordinated the response for the second group and the Caravan Industry Association of Australia responded on behalf of the trailer industry.

Only the trailer industry provided alternative costings to those proposed by the Department (sample costing consultation paper contained at Attachment H). The costs provided by the caravan industry were not significantly different from those estimated by the Department, and were accepted for use in this RIS. The FCAI, AIMVIA and RAWS Association did not dispute the estimated regulatory costings provided by the Department.

6.4 Ongoing consultation

Since the February 2016 announcement by the Government of the proposed package of reforms, the Minister, Minister's office and the Department have regularly met with key stakeholders in refining the legislative details of the reforms. These stakeholders include:

- the Federal Chamber of Automotive Industries (FCAI);
- the Australian Imported Motor Vehicle Industry Association (AIMVIA);
- the Registered Automotive Workshops (RAWs) Association;
- the Caravan Industry Association of Australia (CIAA);
- the National Motor Vehicle Theft Reduction Council (NMVTRC);
- the Australian Automotive Dealer Association (AADA); and
- state and territory vehicle regulatory authorities.

7 Conclusion and recommended option

The comprehensive review and consultation process conducted from 2013 to the latter part of 2017 produced a substantial amount of feedback from stakeholders and the community supporting the case for reform of the *Motor Vehicle Standards Act 1989*. Stakeholders' suggestions and comments, together with the Government's intention to reduce the regulatory burden for individuals, business and the community, provided the basis for the development of the policy options that have been assessed in this Regulation Impact Statement. They have continued to contribute to the refinement of the final legislation package.

The Australian Government continues to be the best placed to provide for nationally consistent minimum standards for safety, environment and anti-theft performance and to continue to control the importation of used vehicles. In the absence of nationally mandated vehicle standards, regulatory control for vehicle standards would fall to States and Territories and most likely lead to divergent application of standards across jurisdictions. This jurisdictional disparity was the situation prior to introduction of the Act – increasing the regulatory costs for vehicle manufactures having to build vehicles to meet the differing standards of each individual market.

The regulatory effectiveness and efficiency of the legislation however has declined in-line with changing automotive market conditions, the age of the Act and changes in consumer behaviour and purchasing preferences. The high regulatory burden and the need for modern and more flexible regulatory tools and legislative practices also led to a reassessment of the justification for the barriers to competition. This suggests that minor amendments to the Act and its regulations alone will not provide an effective solution to these issues.

The proposed reforms will make the *Motor Vehicle Standards Act 1989* more consistent with the key policy objectives of community safety and consumer protection while reducing the regulatory compliance costs and competition barriers imposed on industry, individuals and the community. The majority of submissions to the Options Paper highlighted that a balance needs to be struck between reducing regulatory intervention and meeting the community's expectations on vehicle safety, environmental performance and anti-theft measures. Views on where the balance lay, however, were highly polarised between the established manufacturers and their distribution networks, and the motor vehicle enthusiast sector.

Parts 4 and 5 of this Regulation Impact Statement assessed three options for the review outcomes: status quo; fully repeal the Act; and reform the Act. There was almost no support during the public consultation for either of the first two options, and the analysis contained in part 5 demonstrated that the costs to the community outweighed the regulatory savings of repealing the Act while maintaining the status quo would over time continue to increase the cost to the community of the legislation. Significant regulatory savings can be made, and competition improved, through substantial reform of the Act.

The following actions are recommended to address the problems with the current legislation and achieve the right balance between increasing consumer choice, maintaining or increasing community protection and reducing regulatory intervention.

Register of Approved Vehicles – to replace the physical identification plates affixed to vehicles with an online database that is publicly accessible, bringing Australia into line with international practice and reducing regulatory burden imposed on manufacturers and vehicle importers.

Consolidate the individual concessional schemes – to reduce the regulatory cost through better risk based regulatory effort and improve access for consumers to genuine specialist and enthusiast vehicles – including those providing for disability access. Reforming the specialist and enthusiast vehicle eligibility criteria to be more objective and refocusing the Registered Automotive Workshop compliance and enforcement regime will improve community safety outcomes and consumer confidence whilst reducing the overall regulatory burden on the small businesses that occupy this sector of the automotive market.

Strengthen and modernise the legislation – to ensure the Act is appropriate into the future and reflects regulatory good practice for its efficient and effective administration. Actions include redrafting according to modern drafting practices, an enhanced graduated compliance and enforcement toolkit for the Department through triggering provisions of the *Regulatory Powers (Standard Provisions) Act 2014* system and clarifying crucial definitions.

Continue to harmonise with international standards and streamline certification – to:

d) remove the additional costs of compliance with light vehicle and motor cycle Australian Design Rules above the requirements for international agreed standards, and

e) provide for the implementation of International Whole of Vehicle Type Approval when finalised by the UN.

This will enable light vehicle models to be certified at a vehicle level rather than by component parts or systems. Applying UN regulation through the ADRs reform option provides the highest degree of flexibility to Australian Regulators.

8 Implementation and review

8.1 Implementation

The Government first announced the reforms to the regulation of motor vehicle standards on 10 February 2016[25]. Further detail was provided in a subsequent announcement on 16 August 2017[26].

The recommended option will be implemented through replacement of the *Motor Vehicle Standards Act 1989* and subordinate instruments with a new Road Vehicle Standards Act and Rules. The legislative reform will be supported with the commensurate revision of administrative systems to meet the policy objectives.

In its entirety, the legislative reform involves the following package:

- Road Vehicle Standards Bill 2018 – A Bill for an Act to provide a modern regulatory framework for the Australian Government to regulate the importation of road vehicles into Australia, and the first provision of road vehicles in Australia. (replacing the *Motor Vehicle Standards Act 1989*)
    - Road Vehicle Standards Rules 2018 – (replacing the Motor Vehicle Standards Regulations 1989)
- Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 – this Bill will repeal the Motor Vehicle Standards Act upon full commencement of the Road Vehicle Standards Act, make transitional provisions to provide for the regulation of road vehicles and road vehicle components during the transition from the Motor Vehicle Standards Act to the Road Vehicle Standards Act, and make consequential amendments to Commonwealth legislation to reflect the repeal of the Motor Vehicle Standards Act and substitute relevant references to the Road Vehicle Standards Act.
    - Road Vehicle Standards (Consequential and Transitional Provisions) Regulations 2018 – carrying over and amending relevant Regulations to be in place for up to two years.
- Three Road Vehicle Standards Charging Bills – to allow the Commonwealth to impose charges in relation the administration of the Road Vehicle Standards Act. This ensures that, among other matters, the Government is able to develop the National Road Vehicle Standards; maintain appropriate compliance and enforcement arrangements; and provide support to consumers utilising the Road Vehicle Standards Act.
    - Related fee and levy regulations.

Other key implementation actions include the preparation of a compliant Cost Recovery Implementation Statement, development of a number of other legislative instruments (Determinations) to support the Act and Rules and drafting of approved application forms. The latter is an important element as the new legislation will require applicants for any of the

[25] Minister Fletcher media release available at: http://minister.infrastructure.gov.au/pf/releases/2016/February/pf017_2016.aspx
[26] Minister Fletcher media release available at: http://minister.infrastructure.gov.au/pf/releases/2017/August/pf037_2017.aspx

approvals to apply in the 'prescribed' form and failure to do so may mean the application will not be considered.

The following diagrams illustrate the legislative structure and implementation.

Figure 1 – Legislative Structure

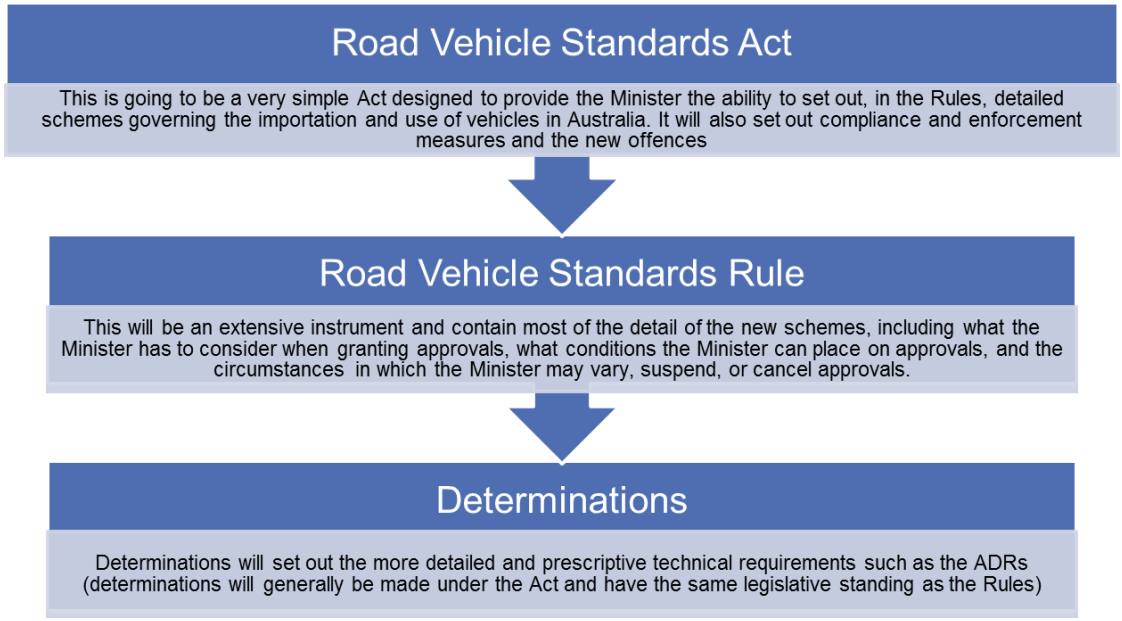
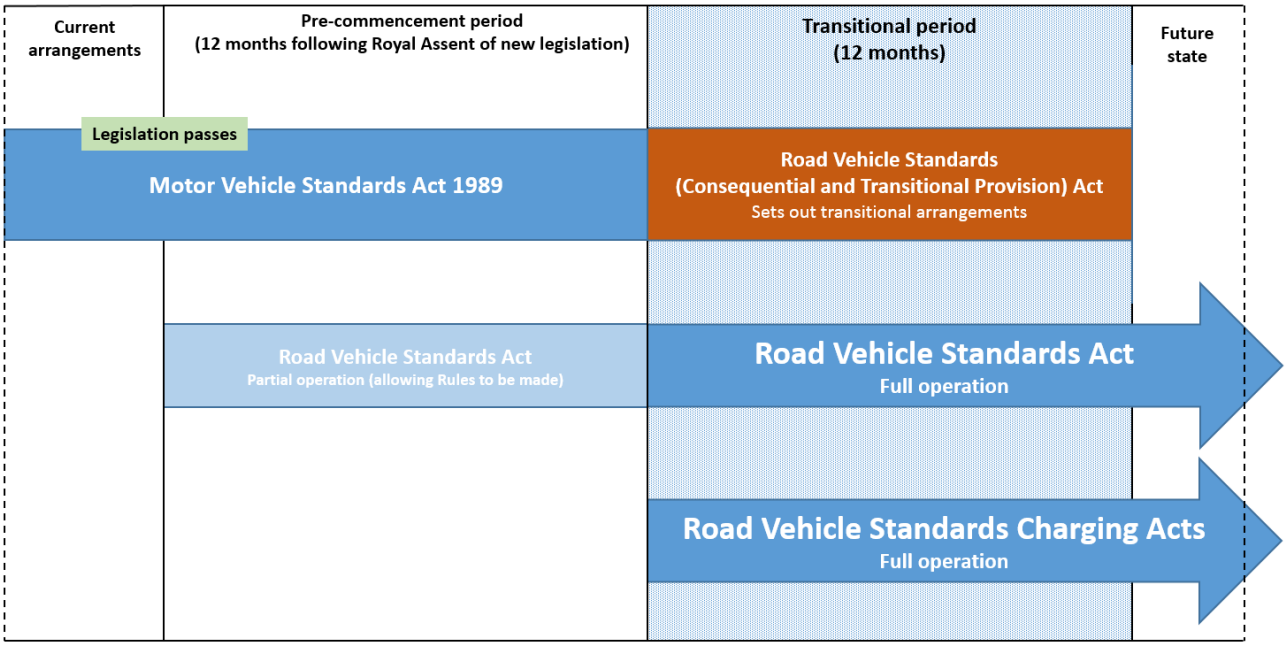


Figure 2 – Implementation – legislation phase-in.



The commencement of the new Road Vehicle Standards Act will occur 12 months after the passage and royal assent of the legislation – to give the automotive industry sufficient time and legislative certainty to adapt to the detail of the new Act. Some provisions of the Act will require early enactment (at Royal Assent) to enable the Approval of Authorised Vehicle Inspection services in advance of the Act's commencement for example. Additionally, the transitional grandfathering arrangement for people movers under the Specialist and Enthusiast Vehicle

scheme (detailed in section 5.4.3.1.6) will begin on commencement of the new Act and will expire after two years.

The reform also requires the completion of a number of supporting activities including:

- establishment of contracted third party inspection services;
- development of business and IT systems (including the Register of Approved Vehicles);
- ongoing consultation and communication with State and Territory vehicle regulators; and
- communication of the final regulatory detail of the reforms to the vehicle industry and the broader public.

The Government has announced that it will introduce the Bills into Parliament along with the public release of an exposure draft of the Rules – subsequently allowing for a period of public review of the legislation package before it is further considered in the Parliament.

A Project Management Committee (PMC) that reports to a senior executive Program Board is overseeing the above implementation activities, including revision of the administrative processes and change management within the Department. The PMC is chaired by the Vehicle Safety Standards Administrator and comprises the management team of the Vehicle Safety Standards regulator and Motor Vehicle Standards Review Taskforce. A dedicated program manager manages the project planning and reporting, coordinates the various streams of work to meet the project plan timelines and provides the key link between the PMC and the Program Board.

8.2 Review

A risk management plan is being developed - identifying the risks affecting the implementation process and appropriate strategies for mitigation. Finalisation of this plan is dependent on the final detail of the Rules being made under the Bills once they are introduced. The effectiveness of changes to the Act and associated administration will be subject to internal review two years after full commencement of the new legislation, with an external review five years after commencement of the new legislation.

Following the Government's agreement, the Department will also commence consultation with heavy vehicle industry stakeholders including State and Territory Governments, the National Heavy Vehicle Regulator and industry peak associations on future harmonisation of heavy vehicle Design Rules with international standards.

Appendices

Appendix A – Review of the *Motor Vehicle Standards Act 1989* – Terms of Reference

On 16 January 2014 the then Assistant Minister for Infrastructure and Regional Development, the Hon Jamie Briggs MP, issued Terms of Reference for a review of the *Motor Vehicle Standards Act 1989* (the Act). The announcement of the review was preceded by a public consultation process conducted in mid-2013 in which stakeholders generally agreed that the Objects of the Act and the policy objectives they seek to achieve were still relevant and that the Act had decreased the regulatory burden on business. The entire text of the Terms of Reference for the 2014 Review are reproduced below:

The review is to make recommendations on the most important changes needed for the *Motor Vehicle Standards Act 1989* and its regulations based on consideration of;

- Whether the objects of the Act are being achieved, whether they continue to be appropriate and whether the current legislative framework is effective to achieve the objects of the Act.
- Whether there are opportunities to reduce the regulatory burden on business and enhance productivity without compromising achievement of the Act's objectives with respect to safety, environmental and security outcomes.
- Whether the regulatory powers and reporting responsibilities in the Act facilitate effective and proportionate compliance by industry and consumers bringing new and used road vehicles to the Australian market for the first time.

In considering the above questions, the review shall have regard to the stakeholder views expressed in the Public Consultation Report *Motor Vehicle Standards Act 1989* (August 2013), identified administrative issues and best practice regulatory principles and outcomes from the Productivity Commission's inquiry into support for the Australian Automotive Manufacturing Industry.

Specific matters to be taken into consideration include, but are not limited to;

a) the current and future likely structure and operations of the motor vehicle industry;

b) the needs and requirements of consumers and road users;

c) the interaction with the State and Territory regulatory requirements in relation to vehicles;

d) the impacts of the aftermarket on the integrity of the Australian Design Rules (ADRs);

e) Australia's international obligations in implementing standards relating to vehicle safety, emissions and other standards;

f) appropriate risk management arrangements in relation to the development and enforcement of the ADRs;

g) the trends relating to the current concessional schemes and emerging pressures; and

h) efficiency of administration of the legislation.

Appendix B –Productivity Commission's inquiry on Australia's automotive manufacturing industry

On 30 October 2013, the Government commissioned the Productivity Commission to undertake an inquiry into public support for Australia's automotive manufacturing industry. The Commission provided its inquiry final Report to the Government on the 31 March 2014[27] which was publicly released on 26 August 2014, along with the Government's response.

The Productivity Commission made two recommendations that are relevant to a review of the Act.

Recommendation 5.4 of the report refers to the second-hand vehicle import arrangements under the Act:

The Australian Government should progressively relax the restrictions on the importation of second-hand passenger and light commercial vehicles. The new regulatory arrangements for imported second-hand vehicles should be developed in accordance with the outcomes of the Australian Government's current review of the Motor Vehicle Standards Act 1989 and should:

1. *Not commence before 2018, and ensure that reasonable advance notice is given to affected individuals and businesses, such as vehicles leasing companies;*
2. *Be preceded by a regulatory compliance framework that includes measures to provide appropriate levels of community safety, environmental performance and consumer protection;*
3. *Initially be limited to vehicles manufactured no earlier than five years prior to the date of application for importation; and*
4. *Be limited to second-hand vehicles imported from countries that have vehicle design standards consistent with those recognised by Australia.*

The Australian Government should remove the $12,000 specific duty on imported second-hand vehicles from the Customs Tariff as soon as practicable.

Government Response – Note

Importation of second hand vehicles will be thoroughly considered in the 2014 Review of the *Motor Vehicle Standards Act 1989*. Changes to current arrangements for importation of second hand vehicles will involve careful consideration of an appropriate regulatory framework and standards, with emphasis on safety, environmental performance and consumer protection.

Recommendation 5.5 of the report refers to the international harmonisation of ADRs:

The Australian Government should accelerate the harmonisation of ADRs with the United Nations Economic Commission for Europe (UNECE) Regulations[28] and the mutual recognition of other appropriate vehicle standards.

The Australian Government and all state and territory governments should justify any existing and future jurisdictional deviations from UN Regulations through comprehensive and independent cost benefit analyses.

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[27] For more information on the Productivity Commission enquiry into Australia's Automotive Manufacturing Industry, including the final report, see the webpage: http://www.pc.gov.au/projects/inquiry/automotive

[28] Note that this report refers to the UN Regulations, rather than the former name of UNECE.

Government Response – SUPPORT –

The program for harmonising Australian Design Rules with United Nations Regulations has been accelerated.

Australia will apply more UN Regulations where warranted and is taking an active role in the development of International Whole Vehicle Type Approval (IWVTA)

IWVTA will also lead to greater harmonisation and vehicle models being approved for entry into Australian and comparable markets at a whole of vehicle level rather than at a component level, with savings to manufacturers and consumers.

Australian specific content in the Australian Design Rules will be removed where it cannot be justified.

Appendix C – Motor vehicle fleet and fleet age

Around 98 per cent of vehicles entering the Australian fleet for the first time are new vehicles. Of the total of 1.26 million motor vehicles that entered the fleet in 2016[29](excluding trailers): new imported vehicles accounted for 1,143,276 units, domestically produced new vehicles, 87,096 units and used vehicles, 13,664 units. The rate of fleet renewal is currently at approximately 6.5 per cent of the total fleet, around the same rate as a decade ago. This rate of renewal is lower than other comparable countries.

Australian consumers have access to a highly competitive market with 67 makes and 350 models of vehicle available. The Federal Chamber of Automotive Industries (FCAI) drew comparisons between Australia and the United Kingdom, Canada, and the United States to highlight this domestic competition as part of its submission to the 2014 Review consultation process in the table below.

Competitiveness of Global Markets (Source FCAI 2013)

	Australia	**Canada**	**UK**	**USA**
No. brands in market	67	49	53	51
Sales (2013)	1,112,032	1,620,221	2,249,483	13,040,632
Market size per brand	16,597	33,066	42,443	255,699

Recreational Vehicles

Details from the Caravan Industry Australia's submission to the 2014 Review revealed that in 2013 the Recreational Vehicle (RV) industry in Australia manufactured approximately 21,000 units into a total fleet of 528,869 RVs. Figures from the industry reveal that at the time, there were over 100 caravan manufacturers, 160 camper or slide-on manufacturers and 15 motorhome or campervan manufacturers in Australia[30]. The 160 manufacturers of camper or slide-on recreational vehicles directly accounted for the employment of 6,000 people[31]. The supply and service chain for recreational vehicles further employs approximately 25,000 employees. In 2014 there was over 680 companies who are manufacturers, dealers, importers and repairers of motorhomes, campervans, caravans, camper trailers, tent trailers, fifth wheelers, specialised vehicles, vehicle components, camping equipment and accessories and their service industries[32].

There are over 919 companies operating in Australia with trailer designs that are registered with the Road Vehicle Certification System (RVCS)[33]. There are 3 manufacturers of trucks (rigid

[29] Federal Chamber of Automotive Industries (FCAI) VFACTS National Report, December 2016;
FCAI Motorcycle Group National Sales Report 2016;
Issuing of Vehicle Import Approvals database, Department of Transport and Regional Development
[30] Caravan Industry Australia, Victorian Trades Division, the Australian RV Industry, available at:
http://www.ciavic.com.au/page.asp?parentid=20&parent2id=15
[31] CIAA submission to the MVSA Review, submission number 146
[32] CCIA NSW submission to the MVSA Review, submission number 153 and CVIAQ submission to the MVSA Review, submission number 177
[33] Not including individual manufacturers that manufacture a small number of trailers each year, data from
http://www.artsa.com.au/store/trailer-directory

and prime movers)[34] and approximately 274 manufacturers of heavy vehicle trailers in Australia[35]. Additionally, 15 bus manufacturers operate in Australia[36].

Fleet age

The Australian vehicle fleet age and its rate of renewal are a good proxy for the rate of adoption of new standards. Vehicle safety standards are tightened over time to reflect the availability of new or more cost effective technologies, so a lower average age of the vehicle fleet indicates a higher penetration of contemporary safety technology. It is generally accepted that measures to reduce the age of the fleet, through increased fleet turnover, would improve vehicle safety and environmental outcomes.

There is a large number of older vehicles registered for use on Australian roads. The average age of Australian registered vehicles is 10.1 years[37], which has remained relatively constant for six successive years and is up from around 9.1 years in 1988. Vehicles generally remain in the fleet until they have had serious damage, have ended their economically serviceable life, or have been abandoned or scrapped.

The average age varies between vehicle types, being 9.8 years for passenger vehicles, 11.3 years for light commercial vehicles and between 11.5 and 15.5 years for various classes of heavy vehicles. The Australian passenger vehicle fleet is older than comparable countries such as Great Britain where the average age is 7.3 years[38] and Japan where it is 7.5 years[39]. In practical terms, this means that the average Australian vehicle is one model older than these other countries. For the United States, Canada and European Community the average fleet ages are respectively 11.2, 9.0 and 8.6 years[40].

Vehicles entering the fleet through the concessional used imports schemes over the last ten years have had a negligible impact on the average age of the fleet. As well as being a very small proportion of the total fleet, they have an average age less than the age of the total fleet at around 8.9 years at the time of importation. Used vehicles imported under the concessional arrangements for vehicles manufactured prior to 1989 have a high average age of almost 32 years, but have a low and declining impact on the age of the vehicle fleet. At their peak numbers, these vehicles contributed around two per cent of all vehicle imports in 2004–05 but had declined to one per cent of all vehicle imports by 2015–16. Typically these vehicles are used more for specialist and enthusiast and recreational purposes rather than for mainstream transport purposes.

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[34] Productivity Commission op cit.
[35] http://www.ibisworld.com.au/industry/freight-trailer-manufacturing.html
[36] OzeBus, 2013 in Productivity Commission Preliminary Report Automotive Industry (December 2013) (p27) and Bus Industry Confederation, Bus Industry Vital Statistics, available at: http://bic.asn.au/information-for-moving-people/bus-industry-vital-statistics
[37] The Australian Bureau of Statistics Motor Vehicle Census, 2016, catalogue number 9309.0
[38] : European Automobile Manufacturers Association, 2013, ANFAC: Vehicles in Use Report. Available at: <http://www.acea.be/statistics/article/anfac-vehicles-in-use-report>
[39] Kitano, T., 2012 Disguised Protectionism? Environmental policy in the Japanese Car Market. National Graduate Institute for Policy Studies. Available at: <www.iss.u-tokyo.ac.jp/~matsumur/automobile.pdf>
[40] Polk., 2013, Polk Finds Average Age of Light Vehicles Continues to Rise. Available at: <https://www.polk.com/company/news/polk_finds_average_age_of_light_vehicles_continues_to_rise
Ministry of Transport., 2014, The New Zealand Vehicle Fleet - Annual Fleet Statistics 2013. Available at <http://www.transport.govt.nz/assets/Uploads/Research/Documents/2013-Fleet-report-final.pdf
European Automobile Manufacturers Association, Automobile industry pocket guide 2014-15: Average vehicle age. Available at: <http://www.acea.be/statistics/tag/category/average-vehicle-age>

Appendix D – Assumptions in the calculation of regulatory costs

The calculations in section 5 of this RIS rely on a number of assumptions. The motor vehicle industry was consulted on the assumptions used in the RIS in February 2017 and, to a large extent, has not disputed the assumptions. Regulatory costs identified reflect the costs borne by businesses and individuals per year, averaged over a ten year period.

1. Labour costs

Labour costs used in the RIS are listed below. Individual and work-related labour rates are based on Office of Best Practice Regulation (OBPR) labour rates. The engineering labour rate was calculated from salary figures published by Engineers Australia[41]. Labour costs include non-wage labour costs, such as superannuation contribution, workers' compensation, payroll tax and Fringe Benefit Tax (FBT).

- Individual labour rate $31.00/hr
- Work-related labour rate $68.79/hr
- Engineering labour rate $126.71/hr

2. Strengthen and modernise

The calculation of regulatory savings assumes that:

- Strengthening and modernising the legislation will reduce the time taken by 15% for administrative compliance costs (e.g. responding to requests for further information), education costs and fee payments for vehicles being imported through concessional schemes and RAWS. This equates to reducing the time taken for the quality management system operation annual inspection by 6 hours, record keeping by 0.3 hours and the time taken to submit application forms and pay application fees by 0.1 hours.
- The introduction of model reports and the continued requirement for workshops to have an accredited quality management system (ISO 9000) will improve efficiency and transparency in examination of documentation and ensure control of processes and documentation. These time savings reduce the costs to a RAW by about $420/yr.
- Learning about the new requirements takes around 2 hours for each RAW. This allows for the one-off education costs for RAWS to learn about the new requirements.
- Understanding the requirements of the revised Act will save around 9 minutes for RAWS and their customers.
- Introducing model reports for heavy trailers will reduce the current education time by half to around 1 hour.

3. Consolidate concessional schemes

The calculation of regulatory savings assumes that:

- Streamlining the 12 schemes into 2 is a 50% saving in requests for further information, education time and application time

[41] Engineers Australia, *The Engineering Profession: A Statistical Overview*, Thirteenth Edition, February 2017

- It is assumed there will initially be no change in vehicle numbers from the 2014 pre-89 imports (as vehicles imported through the pre-89 scheme in 2014 were vehicles over 25 years old).

4. Specialist and Enthusiast Vehicles

The calculation of regulatory savings assumes that:

- Revising the eligibility criteria reduces the time taken to complete an application for entry onto the SEV Register by 20 minutes. This relates to the saving from demonstrating eligibility to one objective measure instead of two subjective measures.
- Renewing a listing on the SEV Register will require 20 minutes every two years.

5. RAWS

Vehicles entering Australia through the RAW Scheme are currently required to have an identification plate fitted once the compliance work is completed. Regulatory compliance costs apply to purchasing the plate from the plate contractor and fitting the plate to the vehicle. The reforms will replace this requirement with an online Register of Approved Vehicles. The calculation of regulatory savings assumes that:

- Plate fees, including the cost of the plate, supply charge per plate order, and service charges are:
    - $94.60 for a personal import plate for a motor vehicle and motor cycle
    - $77 for a letter of compliance plate for a motor vehicle and motor cycle
    - $81.40 for a RAWS used import plate
- Fitting an identification plate takes approximately 10 minutes. The time taken to fit a plate will depend on the processes used by the individual RAW. This includes the time to find a suitable surface, clean the surface, fit the plate onto the vehicle, and provide the required information to the plate contractor.
- Paying the fee for an identification plate takes around 10 minutes. This includes the time taken to pay the fee to both the Department and the plate contractor.
- The reforms reduce the time taken to apply to become a RAW from 4 hours to 1 hour and reduces the time taken to renew an approval to be a RAW by half an hour.
- Inspecting a vehicle takes around 4 hours for a vehicle that has been converted from left-hand drive to right-hand drive and 1 hour for a right-hand drive vehicle or motorcycle. This cost is based on the inspection service charging the RAW for 4 hours of engineering labour for left hand drive vehicles and 1 hour of engineering labour for right hand drive vehicles and motorcycles.
- On average 7% of vehicles (excluding motorcycles) will be Left Hand Drive models.
- Pre-approval of documentation, referred to as model reports, which removes the requirement for evidence packs. Model reports will reduce the costs of current evidence packs by $1,950 on average. This figure assumes the current cost of developing an evidence pack is $6,500. It is assumed that on average, the reduction of requirements for emissions testing and lighting testing combined with the introduction of model reports will reduce these costs by 30%.

- High-cost compliance and testing requirements for individual vehicles, such as the requirement to replace serviceable catalytic converters and tyres, will be removed. In addition, the requirement for emissions testing will be reduced. Removing these requirements reduces costs by $800 per vehicle.

6. Trailers

The calculation of regulatory savings for trailers assumes that:

- Submission of data to RAV will take around 1 business day per year in total for each business. This is costed at the work-related labour rate listed above.
- The calculations assume collecting data for the RAV will not change significantly from current data gathering and reporting requirements.
- Plating costs are not included. There is no change in the costs of fitting an identification plate before and after the reforms – i.e. there are no changes in the information on the plates and no changes in types of trailers fitted with plates.
- Each business will certify 1 trailer type per year.
- All manufactured or imported trailers are already approved to VSB 1 standards.
- 20 minutes of Engineering labour is required to lodge a trailer type certification on RVCS.
- Registration for access to RAV/RVCS involves filling out a form which takes 20 minutes and that it takes 10 minutes to pay the associated fee – this is a one off payment; and
- Keeping the necessary records, learning about the regulatory requirements and ensuring trailers are compliant with the regulatory requirements involves no additional cost compared to the requirements of the current Act and VSB 1.
- There are approximately 130,000 light trailers registered in Australia, but this will increase at roughly 2% in line with the overall fleet;
- About 450 businesses manufacture or import light trailers each year; and
- On average, each business manufactures or imports approximately 290 light trailers per year.

Appendix E – Consultations

Phase 1 – 2013 public consultation process

The public consultation process conducted from May to July 2013 received almost 200 submissions from stakeholders such as:

Dealerships and manufacturers: supported modernising and strengthening the Act and harmonisation with UN Regulations. They opposed reducing the restrictions on personally importing vehicles, citing issues of warranty, recalls, provenance, safety, and the impact of personal imports on employment.

Heavy vehicles: highlighted the unique operating conditions in Australia. They opposed reducing the restrictions on the personal importation of new and used vehicles, citing concerns about potential commercial impacts for heavy vehicle operators.

Recreational vehicles and caravans: supported strengthening compliance and enforcement for trailers less than 4.5 tonnes.

Registered Automotive Workshops: Some RAWs supported reducing restrictions on personal new and used vehicle imports. Some RAWs proposed alternative quotas or vehicle age group treatments to manage risk and fleet aging issues.

Motor trades and parts: indicated that consumer law may not be sufficient to support recalls. They expressed varying views on reducing the restrictions on personal new and used vehicle imports. Some submissions indicated that the industry would respond with parts to support imported vehicles.

State and Territory Government agencies: supported nationally consistent regulation of vehicle standards. They generally supported modernising and strengthening the Act.

Consumer groups: supported strengthening the Act to provide nationally consistent regulation. They generally supported harmonisation with international standards, and reducing the restrictions on new and used personally imported vehicles. They indicated that additional consumer information would be beneficial in protecting consumers.

Vehicle insurance industry: expressed concerns about the potential for an insufficient network of information on overseas vehicles to give critical mass for organised crime. They highlighted difficulties for insurers to assess the risks from personally imported vehicles.

Safety groups: supported harmonisation with international standards while acknowledging unique Australian conditions and the need to manage rapidly increasing safety technologies. They typically supported personal imports of new vehicles and opposed personal importation of used vehicles due to safety concerns.

Importers: supported aligning Australian vehicle standards with Japanese, EU and US standards. They highlighted a need for greater consumer focus in the Act and supported reducing the restrictions on the personal importation of new and used vehicles.

Motoring enthusiasts: generally supported consistent national standards for aftermarket modifications. They supported reducing the restrictions on personally importing new and used vehicles.

Leasing and salary packaging: opposed removing barriers to new and used personal imports, highlighting consumer and community risk and indicating that it would have significant short term economic impacts for lessors and for asset values of consumers.

The consultation paper was supported by a short series of open workshops in Sydney (24 May 2013), Melbourne (3 June 2013), Perth (4 June 2013) and Brisbane (12 June 2013) to further discuss views from interested parties. These workshops were led by consultant Mr Stephen Payne, who brought wide-ranging knowledge of the motor vehicle industry and experience in conducting major Government reviews. The workshops were attended by around 100 stakeholders from business, industry and other organisations, vehicle owners and enthusiasts, academia and state regulators.

Phase 2 – 2014 review of the Act

Options Discussion paper

The Options Paper released on 4 September 2014 contained three options:

Option 1: Status Quo: 31 submissions commented on the proposal to maintain the status quo. Of these, only 3 submissions supported this option. The submissions opposing this option indicated that maintaining the status quo would miss a valuable opportunity to improve and modernise the current framework.

Option 2: Repeal the Act: 33 submissions commented on the proposal to repeal the Act. Of these, only 1 submission supported repealing the Act. The submissions opposing this option highlighted the potential for decreased safety, environmental, health and consumer protection outcomes and the risks from inconsistent applications of regulations across states and territories.

Option 3: Reform the Act: 31 submissions commented on the proposal to modernise the legislation. Of these, only 1 submission opposed modernisation. Submissions supporting modernisation discussed changes to improve the clarity of definitions and to remove administrative complications.

In total, 220 written submissions were received from a wide range of stakeholders in business, industry and other organisations, vehicle owners and enthusiasts, academia and state regulators. Submissions included:

- 84 stakeholders opposed the proposal to allow personal new imports of vehicles suggesting that overseas vehicles may not be fit for purpose, covered under consumer protection or meet Australian Standards for safety. Other concerns included biosecurity, customs valuation fraud, odometer accuracy and environmental impact. In contrast the 41 supporters of personal new imports suggested the proposals would partially offset vehicle price differentials between Australian and overseas markets, give consumers access to the global market and increase completion and consumer choice.
- 89 submissions that provided comment on the proposal to strengthen the legislation. Of these 3 submissions opposed strengthening the Act while 30 supported strengthening the Act.
- 56 supported strengthening compliance and enforcement specifically for light trailers of less than 4.5 tonnes including improving linkages with other legislation.

- 58 submissions covered harmonisation of ADRs with UN standards. Whilst the majority supported the proposals, stakeholders noted the unique Australian conditions for heavy vehicles and Australian standards that are more stringent than overseas standards (e.g. Australian requirements for child restraints). A small number of submissions suggested recognition of standards from other countries including Japan and the US.
- 17 submissions supported proposals to streamline certification with 1 submission opposed. Those supporting the changes suggested alignment with the International Whole Vehicle Type Approval (IWVTA).

The 2014 Options Discussion Paper and the submissions per are available at: www.infrastructure.gov.au/vehicles/mv_standards_act/index.aspx

Workshops

The Department conducted a series of public workshops in Sydney (23 September 2014), Brisbane (24 September 2014), Melbourne (26 September 2014), Adelaide (1 October 2014), and Perth (2 October 2014) that were attended by approximately 300 stakeholders.

Roundtables

Participants of the two industry and peak association roundtable consultation meetings included:

- Insurance Council of Australia
- Registered Automotive Workshops Association
- Imported Motor Vehicle Industry Association
- Australian Fleet Lessors Association
- Australian Fleet Managers Association
- Australian Automobile Association
- Australian Automotive Aftermarket Association
- Confederation of Australian Motor Sports
- Vehicle Inspection New Zealand
- Finance Brokers Association of Australia
- Dealer Group Against Used Car Imports
- Federal Chamber of Automotive Industries
- Australian Automotive Dealer Association
- Truck Industry Council
- Australian Motor Industry Federation
- Caravan Industry Association of Australia
- Bus Industry Confederation
- Australasian New Car Assessment Program

- Monash University Accident Research Centre, and
- Commercial Vehicle Industry Association of Australia.

Government consultations

Development of the reforms to the Act have included ongoing consultation with Australian Government agencies including:

- Australian Competition and Consumer Commission
- Australian Customs and Border Protection Service
- Australian Communications and Media Authority
- Department of Environment
- Department of Finance
- Department of Foreign Affairs and Trade
- Department of Industry and Science
- Department of the Treasury
- Office of Best Practice Regulation
- Prime Minister and Cabinet, and
- Safe Work Australia.

Phase 3 – 2014 Additional Consultation

On 16 April 2015, the then Assistant Minister for Infrastructure and Regional Development announced that the Government was considering possible options for the personal importation of new vehicles but was not inclined to take the same approach for used vehicles (thus this option has been excluded from the analysis in this RIS). The announcement provided further detail on the options being considered, including a reduction on restrictions to the personal importation of new vehicles.

A total of 163 additional comments were received, of which 55 supported reducing the restrictions on the personal importation of new and/or used vehicles. In total, 93 of the additional comments opposed reducing the restrictions on the personal importation of vehicles, including 76 comments from motor vehicle dealerships.

Material provided during the 2014 consultation process and additional comments in this additional consultation contributed to the development of the RIS and the Government's consideration of the final proposals.

Summary of views on changes to Specialist and Enthusiast Vehicle criteria

On 7 October 2016, the Government commenced consultations on the detailed thresholds in which a vehicle type would be assessed against under each of the proposed SEV eligibility criteria (Performance Vehicles, Environmental Performance Vehicles, Mobility Vehicles, Rare vehicles and Left hand drive vehicles).

Submissions were received from 35 stakeholders in response to the proposed Specialist and Enthusiast Vehicles (SEV) category thresholds, circulated by the Department for consultation closing 15 December 2016.

Stakeholders included:

- Specialist and enthusiast sector – Australian Imported Motor Vehicle Industry Association and the Registered Automotive Workshops (RAWs) Association, plus several individual workshops, vehicle importers and engineering firms;
- Two Regulatory agencies – the National Heavy Vehicle Regulator and the South Australian Department of Planning, Transport and Infrastructure;
- Two Vehicle manufacturers – Federal Chamber of Automotive Industries and the Truck Industry Council; and
- the general public.

Submissions from individuals, the Registered Automotive Workshops and vehicle importers argued the thresholds were too restrictive and jeopardised the industry viability. Conversely, vehicle manufacturers and regulators argued the thresholds needed to be higher. The majority of submissions from individuals and registered automotive workshops did not address the proposed threshold criteria specifically, choosing to argue more broadly for:

- an expanded used car importation scheme similar to New Zealand – to allow car enthusiasts access to less expensive rare or specialist vehicles.
    - Around 6% of respondents opposed such an option;
- full volume new model parallel importation (~ 30% of submissions) – to create competition in the new car market. These respondents generally sought a New Zealand style used car import scheme also; and
- continuation of eligibility for the importation of people movers (~ 12% of submissions) – usually claiming that they would not have business otherwise.

1. Performance category

- The AIMVIA and RAWs Association opposed the 120 kW/t (kilowatt per tonne) starting value for the power to weight ratio arguing for retention of the current nominal 105 kW/t for pre 2018 vehicles with a post 2018 threshold of 120 kW/t (with no ongoing increase). They argued that the *top ten selling mainstream vehicles* in the total Australian vehicle market had declined 11.5% in power to weight ratios between 2010 and 2015. Consequently, a threshold of 120kW/T would be a 45% increase over average mainstream vehicles in 2015 which these stakeholders felt was too high.
- The FCAI and SA Department of Planning, Transport and Infrastructure argued that the proposed initial threshold was either too low (suggesting 200kW/t) or that the initial threshold was adequate but the annual increment be increased to take into account significant performance increases with technology. This argument is based on their analysis of a *selection of top performing type approved vehicles* (e.g. Nissan GTR, Audi RS6, Mercedes C63, Porsche 928 GTS etc.).

- A few individual stakeholders sought to extend the performance criteria to include modified vehicles, not just manufactured specifications.

2. Environmental category

- The AIMVIA, RAWs Association and several importing / RAWs stakeholders suggested the category allow for the importation of fuel efficient very light vehicles with limited engine capacity micro-cars (such as the Japanese Kei class cars with maximum 660cc engines and 47kW of power) and all alternate fuel vehicles from before 2018.
- The Truck Industry Council and FCAI argued that the category should also have minimum pollutant standards at least as stringent as the current Australian Design Rules (ADRs).
- The SA Department of Planning, Transport and Infrastructure suggested amending the category name to 'Low Emission Vehicles' to decouple the concepts of environmental and performance.

3. Mobility category

- There was broad support from stakeholders with respect to the mobility criteria, however stakeholders differed in their view on what should be included as to when the access features were incorporated into the vehicle.
    - AIMVIA, RAWs and several other individual stakeholders sought inclusion of vehicles modified after manufacture and vehicles that are imported with the express purpose for conversion into mobility vehicles.
    - In large part these inclusions would allow for a greater number of vehicles through this pathway and overcome any issues of determining between whether the original manufacturer caused the fitment of the access features or they were added aftermarket.
- The FCAI sought limitation of this category to passenger vehicles however also suggested the inclusion of wheelchair restraint systems as an eligible feature.
- Individual RAWs already involved with mobility access vehicles and the RAWs Association were divided about the standards that should be applied to mobility features. Mobility Engineering argued for vehicles to be modified by the RAWs to meet met the appropriate Australian Standards while the RAWs Association argued for acceptance of Japan / EU standards.

4. Rarity category

- The RAWs Association and the AIMVIA sought a doubling in the available vehicle numbers that defined the rarity category. Specifically, to increase the worldwide vehicle make production from 1500 to 3000 units, worldwide vehicle model production from 500 to 1000 units and worldwide variant production from 50 to 100 units.
    - AIMVIA further suggested LHD vehicles imported under this criterion not be required to convert to RHD.
- FCAI supported the proposed thresholds, noting a need for clarity on the definitions of manufacturer and manufactured year.

- A range of other views were put forward by individuals (both RAWs and non-RAWs) including rarity being defined in relation to availability in Australia only and combining the rarity and LHD only production criterion.

5. Left hand drive (LHD) category

- The AIMVIA and RAWs Association sought extension of this category to include heavy commercial vehicles as opposed to being restricted to passenger and light and medium commercial vehicles – arguing the proposed category will severely affect the Australian heavy vehicle LHD conversion (a substantial manufacturing process) industry currently converting around 45 trucks per annum. Note: Departmental records indicate only 44 trucks have ever been imported for the purposes of left to right hand drive conversion.
- The Truck Industry Council argues for the category to be restricted to vehicles less than eight tonnes gross vehicle mass – which would exclude medium commercial vehicles – on the basis these vehicles are not specialist or enthusiast in nature and are imported for purposes of commercial use / hire / reward.
- The National Heavy Vehicle Regulator sought consolidation of the three current Vehicle Standards Bulletins (VSB 4 general, VSB 14 for light vehicles and VSB 6 for heavy vehicles) that apply to left to right hand conversions for light and heavy vehicles – to improve clarity for the in-service standards.

6. Other

Campervans and Motorhomes category

- RAWs and the AIMVIA proposed an additional SEV category to allow for the importation of vehicles that were either manufactured with substantive campervan or motorhome features or imported with the express purpose of fitment of these features. Stakeholders acknowledged that the category should include tighter rules.
- A few individual RAWs argued for allowing the current importation of used people movers to continue as their business depended on that trade.

Timeframes for SEVs eligibility

- Although not included in the consultation paper, vehicle manufacturers took the opportunity to argue against the SEVs initial eligibility timeframes announced in February 2016.

	Proposed	**Manufacturers position**
Eligible for consideration under SEV criteria after vehicle available overseas	3 months	18 months (current)
Sunsetting of SEV Register entry	2 years	2 years (no change)
Removal from SEV Register if vehicle if imported under full volume approval	Remains on register until 2 years has elapsed.	6 months after full volume approval issued

Definition clarity

- Many stakeholders noted the need for clarity around the definitions of make, model and variant, with the manufacturers arguing for tighter definitions and the AIMVIA / RAWs Association seeking broader definitions.
- The National Heavy Vehicle Regulator requested that all the criteria identify their applicability or otherwise to heavy vehicles (currently only the LHD category is specific).
- Platinum Vehicle Sales (a RAW) argued for mandatory offshore checks of a vehicles odometer, rust, vehicle damage and repair – with subsequent verification by Australian registry inspection stations to remove the need for Authorised Vehicle Verifiers.

Appendix F – Summary of key stakeholder positions in response to the 2014 Options Discussion Paper

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Automotive Dealerships	Australian Automotive Dealers Association	**Supports** modernisation to improve its clarity, links with other related legislation and provide the best practice administration of the regulatory framework. Need for increased flexibility.	**Supports** the retention of the current practice for harmonising the Australian Design Rules.	**Opposes** personal importation of new vehicles. Cites concerns about parts, warranty, safety recalls, provenance, safety and environmental standard of aging fleet, suitability for Australian conditions, information asymmetry and scope for organised crime. Australian fuel quality is not suitable for overseas vehicles.	**Supports** changes to strengthen the management, compliance and enforcement of Registered Automotive Workshop Scheme and the Register of Specialist and Enthusiast Vehicles.

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
	Dealer Group Against Used Car Imports	**Supports** initiatives to update the Act to remove administrative complications, improve definitional clarity, improve linkages with other relevant legislation and remove any duplication in information collection.	**Supports** the gradual aligning of Australian Design Rules with UN automotive standards regulations where appropriate and acceptable to Australian standards of safety.	**Opposes** any change to existing guidelines on imported vehicles. Cites concerns about the impact on the dealership network, safety and consumer protection.	**Supports** consideration being given to the reduction in the number of individual schemes through which a second-hand vehicle can be imported provided the objects of the Act are maintained.
	Australian Holden Dealer Council	**Supports** modernising and strengthening the legislation.	N/A	**Opposes** personal imports. Cites concerns about vehicle fit for purpose, and consumer protection.	N/A

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Automotive Manufacturers	Federated Chamber of Automotive Industries	**Supports** modernising and strengthening the legislation.	**Supports** harmonisation with UN standards, **supports** streamlining of certification to accept UN type approvals.	**Opposes** personal importation, key concerns include consumer protection, community protection (safety and environmental standard of vehicles) as well as vehicle fit for purpose.	**Supports** imposing a more intensive certification, compliance and auditing regime for higher-risk concession scheme arrangements.
Heavy Vehicles	Truck Industry Council	**Supports** legislative fixes to the Act to prevent individual state regulations and to improve recognition of other Government legislative instruments.	**Supports** maintaining current Australian Design Rule practice. Full harmonisation with UN regulations is not possible for Australian heavy vehicles.	**Opposes** reducing the barriers to personal importation of vehicles. Key concerns include consumer protection, community protection and commercial (time off road for hard to service vehicles).	**Supports** the proposal to group all compliance/certification schemes by risk category.

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
	Australian Trucking Association	**Supports** preventing individual state vehicle regulation. However, the foundations of the Act appear sound and thus do not appear to demand substantial revision.	**Neutral.** Consider possible adoption of other appropriate vehicle standards in the world.	**Neutral.** It seems reasonable to reduce barriers to importation of new and or second hand vehicles but there must continue to be 'obligations' on importers.	N/A
	National Heavy Vehicle Regulator	**Supports** improving the clarification of a number of areas and strengthening the operation of the Act.	**Supports** adopting the UN regulations as standard and maintain the capacity to allow for variations for unique operating conditions either through continued use of Australian Design Rules or by increasing powers within Heavy Vehicle National Law.	**Opposes** personal importation of vehicles as heavy vehicle differences between US, Japan and the EU (e.g. width) make this difficult without wider change to standards (Australian Design Rules and infrastructure limits).	**Supports** improvements in relation to the importation of special vehicles.

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Recreational Vehicle / Caravan	Caravan Industry Association of Australia	**Supports** increased powers of the Minister to implement a new regime of increased penalties for non-compliance.	**Neutral.** Should be more inclusion of the recreational vehicle industry in this process and its impacts.	N/A	**Supports** increased certification requirements for trailers less than 4.5 tonnes for vehicles both manufactured locally and imported. **Supports** replacing the current self-certification provisions for trailers between 750kg and 4.5 tonnes with an inspection based verification scheme. **Supports** the introduction of a risk-based approach.
Registered Automotive Workshops / Importers	Registered Automotive Workshop Association	**Supports** mandatory use of national standards through all states and territories.	**Supports** continuance of the current practice for harmonising Australian Design Rules.	**Supports** personal importation of new and used vehicles to increase competition in vehicle prices will put younger drivers in safer cars.	**Supports** deregulation and reduction of compliance costs and current legislation lags vehicle technology.

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
	Auto Services Group/Registered Automotive Workshop Association/ Australian Imported Motor Vehicle Industry Association /Ikonik Campers	N/A	N/A	N/A	**Supports** reducing number limits on vehicles imported through Registered Automotive Workshops, and revising eligibility criteria for the Register of Specialist and Enthusiast Vehicles. **Supports** reducing individual vehicle testing requirements and reducing the time given to manufacturers to release new models onto the Australian market. **Supports** an independent inspection body to check all vehicle prior to first sale.
	Australian Imported Motor Vehicle Industry Association	**Supports** greater harmonisation with Consumer law in definitions, there is a need for greater consumer focus in Act.	**Supports** harmonisation including with Japanese, EU and US standards and periodic review of need for any local standards.	**Supports** in full, the market will respond to issues of parts and servicing, should use an accredited importer / inspection network for consumer protection.	N/A

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Motor Trades and Parts	Australian Motor Industry Federation and Motor Trades Association of Australia	**Supports** initiatives to reduce regulatory compliance costs provided these do not increase community risk.	**Supports** harmonisation of Australian Design Rules with international standards.	**Opposes** personal importation of new and used vehicles.	**Supports** changes to enhance the Register of Specialist and Enthusiast Vehicles and Registered Automotive Workshops and streamline compliance.
	Australian Automotive Aftermarket Association	**Supports** changes to reduce administrative complexities, improve definitional clarity, improve the linkages with relevant legislation and remove any duplication in information collection.	**Supports** harmonisation with international standards.	**Supports** personal importation of new and used vehicles. The market for repair, service and spare parts will respond.	**Supports** the consolidation of concession scheme arrangements.

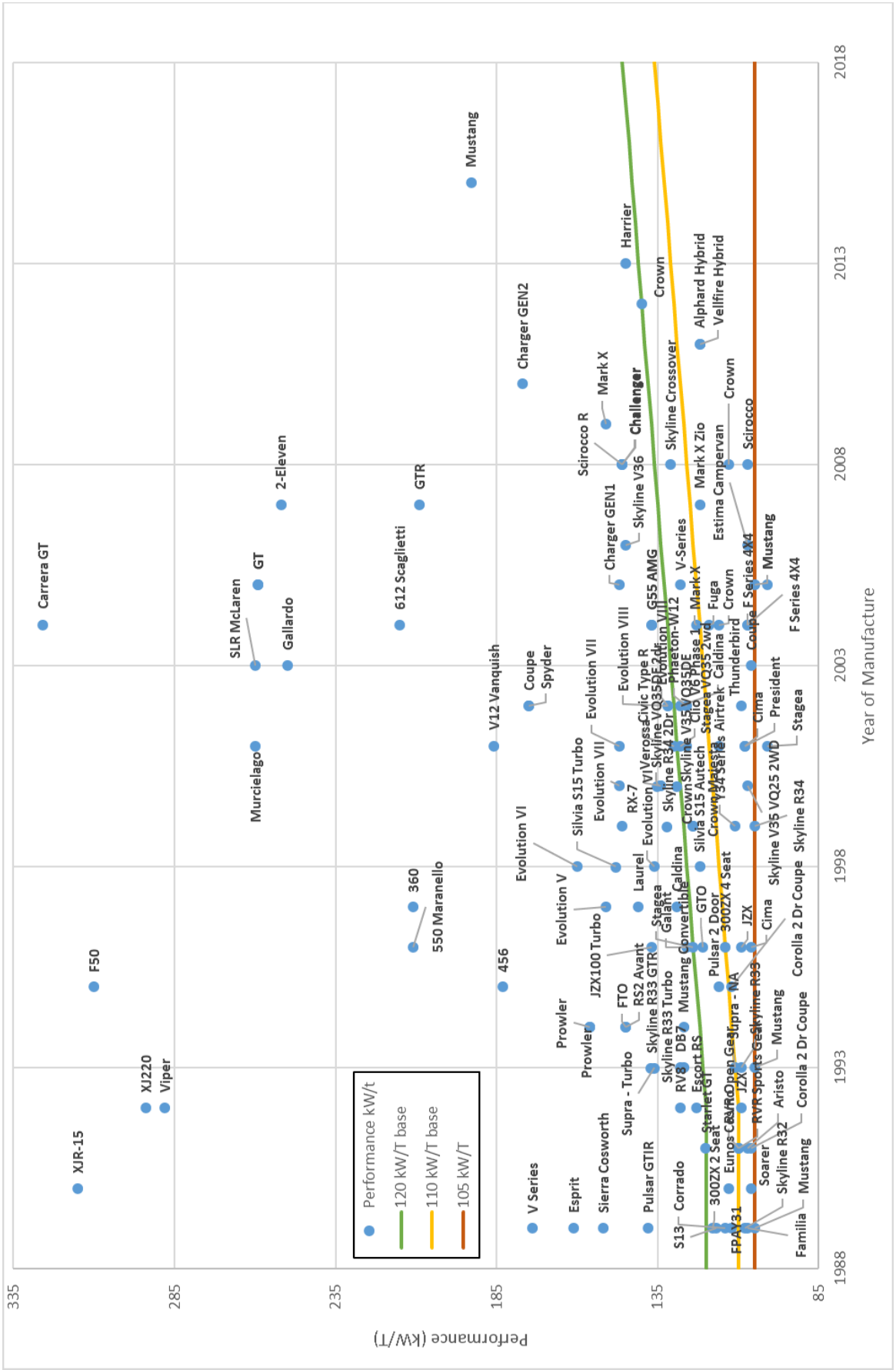
Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Consumers	Australian Automobile Association	N/A	**Supports** the alignment of Australia's national vehicle standards for light vehicles with those of the United Nations.	**Supports** reducing the restrictions on the personal importation of new vehicles to increase competition and affordability provided these vehicles comply with standards that have been deemed comparable to Australian standards. **Supports** restrictions on the number of vehicles imported per individual and vehicle mileage.	**Supports** updating the evidence requirements for the Specialist and Enthusiast Vehicles. **Supports** the eligibility requirements proposed for the Register of Specialist and Enthusiast Vehicles relating to high performance, environmental performance, mobility and rarity.
	Choice	N/A	N/A	**Supports** personal importation of new and quality used imports.	N/A

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Insurance	Insurance Council of Australia	N/A	N/A	**Neutral.** Personal importation may have a considerable impact on the insurance industry.	N/A
	Insurance Australia Group	N/A	N/A	**Supports** new personal importation provided there are appropriate safeguards in place for consumer protection.	N/A
	National Motor Vehicle Theft Reduction Council	N/A	N/A	**Opposes** personal importation as insufficient network of information on overseas vehicles will give critical mass for organised crime.	N/A

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
	Shannons	N/A	N/A	**Supports** the proposed introduction of a personally imported new vehicle scheme in 2018 and would facilitate the insurance of personally imported vehicles.	**Supports** a review of the importation of enthusiast or collector vehicles. **Supports** changes to a rolling 25 year rule and strongly recommends introducing this change as soon as possible.
Vehicle Safety Advocacy	ANCAP	N/A	**Supports** aligning of Australian Design Rules but acknowledge different needs in different regions/nation states.	**Opposes** personal importation due to the potential for less safe vehicles to enter the Australian market.	N/A

Stakeholder	Organisation	Modernisation and strengthening	Harmonisation	Personally imported new vehicles	Specialist and enthusiast vehicles, concessional schemes
Fleet, financing, Leasing and Salary Packaging	Australian Fleet Lessors Association	N/A	N/A	**Opposes** personal importation due to the potential devaluation of the existing vehicle fleet and concerns about consumer protection and vehicle fit for purpose.	N/A
	National Automotive Leasing and Salary Packaging Association	N/A	N/A	**Opposes** in removing existing barriers to personal imports (new and used) as the consumer risks outweigh the benefits.	N/A
	Australian Fleet Management Association	**Supports** modernising and strengthening the Act, Australian Consumer Law is not sufficient and the reforms should strengthen lemon laws.	**Support** Unique additions imposed by the Australian Design Rules are problematic.	**Supports** personal importation of new vehicles provided they are built to UN or equivalent specifications.	N/A

Appendix G – Vehicle performance thresholds



Appendix H – Sample Regulatory Costings Consultation sheet

Discussion paper – reform of the *Motor Vehicle Standards Act 1989*

Type approved light and heavy vehicles

Regulatory costings for consultation

On 10 February 2016, the Australian Government announced reforms to give more choice to car buyers and save the automotive industry over $70 million a year in lower regulatory compliance costs. This followed a review of the Commonwealth law which governs this area, the *Motor Vehicle Standards Act 1989* (the Act). The review began in early 2014 and has included extensive consultation with the automotive industry and stakeholders.

The original Act is now over 25 years old and the Australian Government Department of Infrastructure and Regional Development (the Department) has estimated that ongoing compliance with the Act cost businesses, individuals and the community around $281 million each year. The proposed reforms will strengthen and modernise the legislative package to reflect modern legal drafting standards and improve clarity and readability for the vehicle industry and individuals. The revisions will also improve transparency and clarity for businesses seeking to import vehicles. Importers and manufacturers of type approved light and heavy vehicles will benefit from reduced regulatory and compliance costs. The key reforms include:

- removing current requirements to fit 'identification plates' to road motor vehicles;
- establishing a 'Register of Approved Vehicles' as an online source of the information currently contained on the identification plate;
- accelerating harmonisation of the ADRs with United Nations (UN) regulations;
- adopting the internationally based Whole of Vehicle Type Approval (IWVTA) regulation enabling certification of light passenger vehicles at the vehicle level rather than component level when finalised, with the approach to be applied to other vehicle types over time; and
- revising business systems to streamline certification of models carrying an IWVTA.

Modelling regulatory impact

Any proposed changes to legislation require the development of a Regulatory Impact Statement (RIS). The purpose of a RIS is to:

- encourage rigour, innovation and better policy outcomes from the beginning of a regulatory (reform) process;
- determine changes in the regulatory burden currently imposed by the legislation reforms on industry and consumers; and
- determine whether the regulatory powers and reporting responsibilities in the Act facilitate effective and proportionate compliance by industry and consumers bringing road vehicles to the Australian market for the first time.

Understanding the regulatory burden requires modelling the regulatory compliance costs imposed by the Legislation. Compliance costs are the direct additional costs of trying to meet government regulation. A RIS will examine costs such as extra costs of labour to comply with proposed changes and capital costs. Fees imposed by regulations are considered a normal part of doing business and are not included in the calculation of regulatory cost.

The development of a RIS relies on accurate inputs from stakeholders on both current and expected compliance costs resulting from changes to legislation. Table 1 (costs and savings for light vehicles) and Table 2 (costs and savings for heavy vehicles) below, shows the total regulatory cost savings expressed for a type approved vehicle. In some cases, regulatory costs that would apply to the whole business are expressed as the impact on each vehicle processed. Calculation of the costs in tables 1 and

2 are based on the assumptions that follow. The Department seeks assistance from industry stakeholders to validate these assumptions for the finalisation of the RIS.

Please provide written comments to MVSAreview@infrastructure.gov.au

Australian Privacy Principle 5 (APP5) Notice
Your feedback, including any personal information supplied, is being collected by the Department of Infrastructure and Regional Development for the purpose of validating estimates of the regulatory Impact of reforms to the Motor Vehicle Standards Act 1989, in accordance with the Privacy Act 1988 (the Privacy Act).

Your personal information and data you supply will be stored securely by the Department and in accordance with the Privacy Act. Any information used by the Department in the development of the final product will be de-identified. Personal information may be used by the Department to contact you further about the consultation process. Your personal information will not be disclosed to third parties.

The Department's on-line privacy policy contains information regarding complaint handling processes and how to access and/or seek correction of personal information held by the Department. The Privacy Officer can be contacted on (02) 6274 6495.

Note: The purpose of this document is not to initiate further discussion on policy direction. Further detail on the reforms is contained on the Department's website at https://infrastructure.gov.au/vehicles/mv_standards_act/index.aspx.

Light vehicles

Expected savings

Table 1. Expected regulatory cost changes to business per light vehicle (average).

Regulatory measure	Savings per light vehicle ($AU)
Replace identification plates for passenger vehicles, motorcycles and light commercial vehicles with entry onto the Register of Approved Vehicles	-$13.9
Accelerate harmonisation of the Australian Design Rules with international standards	-$45.8
Total	**-$59.7**

Note that negative numbers indicate regulatory savings and positive numbers indicate regulatory costs.

Costs of labour

Labour costs used in the RIS are based on the Office of Best Practice Regulation (OBPR) labour rates and are listed below. Labour costs include non-wage labour costs, such as superannuation contribution, workers' compensation, payroll tax and Fringe Benefit Tax (FBT).

- Individual labour $29.00/hr
- OBPR business labour $65.45/hr
- Engineering labour $126.18/hr

Replace identification plates for passenger vehicles, motorcycles and light commercial vehicles

Type approved vehicles entering Australia are currently required to have an identification plate fitted. The reforms will replace this requirement with an online Register of Approved Vehicles (RAV). The calculation of regulatory savings assumes that:

- **Providing information for the RAV will not materially increase regulatory compliance costs.** The RAV will contain the same information as the information currently required on the identification plate and the information provided to other sources such as the National Exchange of Vehicle and Driver Information System (NEVDIS). While there is a very small number of additional data fields, duplication of the information for plates and NEVDIS will be removed.
- **Fitting an identification plate takes around 10 minutes.** This includes the time taken to manufacture and fit the identification plate as well as the time to find a suitable surface, clean the surface, put the plate onto the vehicle, and add the required information to the plate.
- **Completing a form to gain access to the RAV takes 10 minutes.** In order to gain access to the RAV, the manufacturer may need to fill out a short form. It is envisaged that this form will be similar to the form currently used to gain access to the Road Vehicle Certification System (RVCS). This is a one-off cost for the business.
- **Manufacturing a plate for a type approved motorcycle and light commercial vehicle costs the same as manufacturing a plate for a type approved passenger vehicle.** The Federal Chamber of Automotive Industries' (FCAI) 2014 Submission to the review indicated that the cost of manufacturing a type approved plate for a light passenger vehicle is $6.50 per vehicle.

Accelerate harmonisation of the Australian Design Rules with international standards

Changes to the legislation and administrative processes in certifying type approved vehicles will accelerate harmonisation of Australian Design Rules (ADRs) with United Nations (UN) regulations –

ultimately moving towards acceptance of International Whole of Vehicle Type Approvals. The ADRs will remain the mechanism for implementing these standards in Australia.

The current regulatory cost of compliance to the ADRs for light passenger vehicles, motorcycles and light commercial vehicles is approximately $147 million. Full harmonisation to the extent possible with the UN regulations will only include the costs of demonstrating compliance of the UN Regulations to the Vehicle Safety Standards Regulator. It is expected that the process of harmonising the ADRs with international standards will occur over a number of years, and that once completed this process will provide total regulatory savings of approximately $51 million.

While the acceptance of International Whole of Vehicle Type Approvals will provide further regulatory savings, these savings are not able to be quantified at this stage and have not been included in this calculation.

Heavy vehicles

Expected savings

Table 2. Expected regulatory cost changes to business on a per vehicle basis for heavy vehicles.

Regulatory measure	**Savings per heavy vehicle ($AU)**
Replace identification plates for type approved heavy vehicles and buses	-$14.9
Total	**-$14.9**

Note that negative numbers indicate regulatory savings and positive numbers indicate regulatory costs.
Costs of labour

Labour costs used in the RIS are based on the Office of Best Practice Regulation (OBPR) labour rates and are listed below. Labour costs include non-wage labour costs, such as superannuation contribution, workers' compensation, payroll tax and Fringe Benefit Tax (FBT).

- Individual labour $29.00/hr
- OBPR business labour $65.45/hr
- Engineering labour $126.18/hr

Replace identification plates for type approved heavy vehicles and buses

For type approved heavy vehicles (not including trailers) the calculation of regulatory savings uses the following assumptions:

- **Manufacturers are currently required to provide a range of information about the vehicles that they supply.** Most of the information that the manufacturers currently provide to NEVDIS and RVCS should be able to be provided to the Department for use in the Register of Approved vehicles with no additional regulatory compliance cost to the Manufacturer.
- **The plates are the sticker/adhesive plates and that it takes around 10 minutes to find a suitable surface, clean the surface and put the plate onto the vehicle.** This time will depend on the processes used by the individual manufacturer.
- **The cost of manufacturing a heavy vehicle identification plate is $7.50.** This assumption uses the $6.50 cost of a type approved plate for a light passenger vehicle (FCAI submission) and adds 15% to cover the additional information required and manufacturing costs over a smaller volume of vehicles.

Feedback

The Australian Government welcomes any feedback from industry on the assumptions and inclusions listed above and any other potential compliance costs not described in this document.

Please direct your feedback to MVSAreview@infrastructure.gov.au by **COB, 1 March 2017**.