

Submission 44: RVS Legislation Consultation

DAIMLER

Daimler Truck and Bus Australia Pacific Pty Ltd

A Daimler Company

16 February 2017 By email: MVSAreview@infrastructure.gov.au;

Sharon Nyakuengama

General Manager

Vehicle Safety Standards | Surface Transport Policy

Department of Infrastructure, Regional Development and Cities

GPO Box 594, Canberra ACT 2601

Re: Daimler Truck and Bus Australia Pacific Pty Ltd response to the Road Vehicle Standards Bill 2017 (Draft Legislation)

Dear Ms. Nyakuengama,

Daimler Truck and Bus Australia Pacific Pty Ltd (“DTB”) welcomes the opportunity to put forward a submission to the Department of Infrastructure Regional Development and Cities (“DIRDC”) after assessing the potential impacts of the draft **Road Vehicle Standards Act (“the Act”)** that was released on 13 December 2017.

DTB recognises the landscape of upcoming innovative and technological changes (such as Electrification and Autonomous/Connected vehicles) to the Australian automotive industry that DIRDC are addressing through The Road Vehicle Standards Bill (“RVS – Bill”), and welcome many of the transparency and compliance improvements.

The enclosed response aims to highlight DTB’s areas of concerns that have been highlighted after assessing the RVS - Bill. Although DTB acknowledges the Minister’s timely response to the global movement toward automotive market de-regulation, DTB’s concern for the safety of consumers and road users alike as well as long term economic disadvantage remains.

Certain aspects of the RVS - Bill as it is currently proposed could have detrimental future impacts for both Australian consumers, road users and the commercial vehicle industry. DTB has highlighted these areas for consideration and a potential framework for facilitating a smooth transition to the key changes proposed under the RVS - Bill.

We look forward to a continued dialogue with DIRDC as the bill passes through parliament and during the establishment of the subsequent Act and Rules.

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The Road Vehicle Standards Bill 2017 response from Daimler Truck and Bus Australia Pacific

Daimler Truck and Bus Australia Pacific Pty Ltd
A Daimler Company

Pty Ltd

Executive summary

Daimler Truck and Bus Australia Pacific Pty Ltd (“DTB”) welcomes the opportunity to put forward a submission to the Department of Infrastructure Regional Development and Cities (“DIRDC”). DTB recognises the landscape of upcoming innovative and technological changes (such as Electrification and Autonomous/Connected vehicles) to the Australian automotive industry that DIRDC are addressing through the The Road Vehicle Standards Bill (“RVS – Bill”), and welcomes many of the transparency and compliance improvements. Renewals, rather than lifetime certification, for Type Approvals and testing facilities have many positive compliance and safety implications.

DTB fully supports the strengthened compliance and enforcement powers in the RVS - Bill, as DTB believes it will increase conformance and further protect the consumer. DTB acknowledges and understands the longstanding discussions around parallel imports which have been a continuous issue since the review of the Motor Vehicle Standards Act 1989 (Cth) (“MVSA”) began, especially within a context of manufacturing, technological and cultural change. DTB appreciates the opportunity to be part of the process, and to contribute to the Minister’s contemporary and technologically-aware legislation to simplify and strengthen Australia’s regulatory framework.

This document aims to highlight DTB’s areas of concerns within the RVS - Bill. Although DTB acknowledges the Minister’s timely response to the global movement toward automotive market deregulation, DTB’s concern for the safety of consumers and road users alike as well as long term economic disadvantage remains. Certain aspects of the RVS - Bill as it is currently proposed could have detrimental future impacts for both Australian consumers and the industry. DTB has highlighted areas for consideration, and a potential framework for facilitating a smooth transition to the key changes proposed under the RVS – Bill.

DTB looks forward to being part of the ongoing dialogue with DIRDC, its advisors and ministerial officers to discuss this submission and any related issues to the RVS – Bill, especially whilst the RVS - Bill rules are being formulated and finalised.

1.0 Introduction

Daimler Truck and Bus Australia Pacific Pty Ltd (“DTB”) is part of the Daimler group of companies. Daimler’s original founders, Gottlieb Daimler and Carl Benz, made history with the invention of the automobile in the year 1886. As a pioneer of automotive engineering, Daimler’s motivation and commitment to safety and sustainability have helped shape the future of mobility. The Daimler Group’s focus is on innovative and green technologies as well as on safe and superior automobiles that appeal and fascinate. Daimler consequently invests in the development of efficient drive trains with the long-term goal of local emission-free driving: from high-tech combustion engines to electric drive trains powered by battery or fuel cell. Daimler sells its vehicles and services in nearly all the countries of the world and has production facilities in Europe, North and South America, Asia, and Africa. In Australia, Daimler Truck and Bus (formerly operating as part of Mercedes-Benz Australia Pacific Pty Ltd) has enjoyed a very long and proud history that has included manufacturing trucks at its Mulgrave site. DTB has a current brand portfolio that includes:

- ❖ Mercedes-Benz Trucks and Bus;
- ❖ Freightliner Trucks;
- ❖ Fuso Truck and Bus;
- ❖ SelecTrucks; and ❖ Alliance Parts.

DTB would like to applaud the efforts of DIRDC for its co-ordinated efforts to modernise an ageing piece of legislation and in engaging stakeholders throughout the process. DTB endorses the intentions of the RVS - Bill that:

- streamlines the supply of mainstream “Type Approved” new vehicles;
- provides legislation to foster innovative transport solutions;
- will further enhance and strengthen compliance and enforcement;
- will further harmonise the Australian Design Rules with recognised international regulations;
- will legislate the “recall” responsibilities for all vehicle suppliers and future providers; □ provide clear legislation for safe, secure and environmentally friendly vehicles; and □ potentially provides more choice of road vehicle for motor vehicle enthusiasts.

These intentions and some of the proposed changes are long overdue as the current MVSA has operated in a similar manner since its inception. One notable fact is that the MVSA has been the authority on automotive regulation for the last three decades, providing uniform new vehicle standards and regulatory boundaries for industry operations.

The review has also highlighted multiple concerns of several Australian automotive stakeholders. The flurry of submissions and discussion has fed further debate on the long term impacts of potential parallel imports to both Australian jobs, economic welfare and safety of the Australian consumer and road user.

DTB also views the proposed RVS - Bill as the framework for Australian driving cybersecurity and autonomous driving regulation. Potentially, this type of legislation could be the first of its kind regionally, and responds to global hyper urbanisation, mobility, security and connectivity issues

currently impelling Australian automotive interests. DTB is pleased to be part of the consultations around such a pivotal policy not just in Australia, but potentially for the entire Australia Pacific region. With the preceding context in mind and in the wake of a rapidly changing Australian automotive industry and landscape, DTB has identified several key areas of concern that could be detrimental to the end consumer, road users and the commercial vehicle (“CV”) industry alike. These concerns include:

- the definition of a “variant” – as it relates to a CV;
- “Specialist and Enthusiast Vehicle (SEV)” criteria – that create uncapped and unintentional parallel import pathways ;
- Regulatory and enforcement risks for “Registered Automotive Workshops (RAW)” and “Authorised Vehicle Verifiers’ (AVV)” operating outside of Australia;
- the management and enforcement of recalls for international businesses that utilise the concessional pathways;
- non-compliant plant equipment; and
- the options available in the Cost Recovery Implementation Statement (“CRIS”).

2.0 Areas of Concern

Based on the noted intentions of the RVS - Bill and the information presented both by DIRDC in print and during the consultation sessions, it is apparent that there are still key areas of the RVS - Bill that in DTB’s view, fail to adequately address the potential “parallel importation” pathways that could be inadvertently exploited within the CV industry. This is of significant concern for CV’s within the 3.5 to 12 tonne gross vehicle mass (“GVM”) range.

CV’s should always be considered in separate context to Passenger cars as they are used in a different manner. The primary purpose of a CV is based on the need to complete a task, “a tool” to facilitate a job rather than a lifestyle choice. In certain instances the wrong “tool” could be dangerous or fatal as it is being used for a job it wasn’t designed or configured to be used for.

Specifically, DTB’s areas of concern are:

2.1 The definition of a “variant”

The definition of “variant” could potentially have the most adverse effect on the consumer and the CV industry alike. Whilst the current MVSA and impending RVS - Bill have to deal with the full spectrum of the automotive industry, an inadvertent consequence arises when utilising a common definition to deal with a several distinct vehicle types.

In a number of instances, the definitions used to distinguish passenger cars are too often used in the CV space which leads to further issues relating to “fit for purpose” requirements and to the suitability of a particular CV in a certain application. By simply applying the proposed passenger car focussed definition of a variant to CV’s essentially means that there would be an infinite number of variants of a CV. The fact that CVs can have multiple

wheelbases, engines, transmissions and drive-line options that are developed to cater for a wide range of applications and/or environment within which the vehicle could operate. This fact makes the definition of ‘variant’ as currently worded for a CV critical, as it has the potential to permit a parallel importation situation. Serious consideration and further clarification on how it relates to vehicles above 3.5 Tonnes GVM is required to ensure that the scheme is not abused and a potential “parallel pathway” is not created. Without further clarification/specification of this definition as it relates to a CV, DTB is concerned about the potential of certain combinations of specification of wheelbases, engines, transmissions and driveline options that are available overseas being potentially imported into Australia. This may result in situation where the CV is not suitable for the intended use (e.g. gradeability – the ability to ascend up hill and startability – the ability to drive off whilst on a hill) and could be potentially dangerous for both the driver and road user.

DTB cannot stress the point enough that DIRDC needs to be aware that some combinations of these variables are not suitable for the Australian market, especially in terms of drivelines and transmissions, as certain combinations will could potentially create a hazard for the driver and other road users alike and have severe economic impacts as well.

2.2 SEV criteria

The concerns centred on the definition of a “variant” are further compounded by the current definitions surrounding the SEV criteria. By reducing the existing 18-month global rule (the existing rule effectively disallowed a vehicle from being entered onto the SEVS register until 18-months after initial release globally) down to a 3 month period, means several high value and innovative vehicles (e.g. hybrid/electric/fuel cell) that a manufacturer’s local distributor may be looking to potentially introduce into the Australian market may be bought to market by a third party, who can then provide an un-supported product for at least two years. By allowing third parties to operate in an emerging space could be detrimental to the intention of the rule that fosters innovation and the heavy price will ultimately be paid by the consumer and road user at large. The competitiveness in a de-regulated regime would depend upon the ability of the firm to bring about technological paradigm shifts in a time frame that is not feasible.

DTB does not support and strongly argues against this change because as emerging technologies take effect, continual customer support is required; especially during the initial phases of introduction. We strongly urge DIRDC to re-consider its position and maintain the current 18-month rule to protect consumers from opportunistic third parties who may potentially supply an unsupported vehicle to the market with new and emerging technologies that will require immense Original Equipment Manufacturer (“OEM”) support that may simply not be available yet at that point in time. Generally, new technologies may experience potential “teething” problems upon their first introduction to a market place. These problems or issues may require the use of sophisticated and specialised proprietary software or tools (to diagnose or repair the issue) to which a 3rd party importer will not have access to. This could then potentially lead to a situation where a vehicle may be either unsafe or unusable and the consumer would ultimately carry the burden.

Several other SEV criteria, (especially the environmental criteria, which has not been adequately defined in relation to a CV) may also allow for the parallel importation of variants of models (both ‘new’ and ‘used’) that the manufacturer/distributor had deemed was potentially unsuited to the market or un-economical to bring in at that particular point in time. Accordingly this means these products will not be supported by the manufacturer or its local distributor in the market. Consumers would likely assume and expect they will receive after sales support, parts and service, and accordingly, any such disappointment is likely to be damaging to affected brands and potentially result in vehicles that are inadequately serviced and maintained being driven on Australian roads causing risk to other road users and potentially having a significant economic impact.

Also, as part of the “Type Approval” process electric / hybrid vehicles must go through the process of certification with the Authorities Australian Communications and Media Authority (ACMA) and Electrical Regulatory Authorities Council (ERAC). For the concessional pathway, DTB queries whether electric / hybrid CV’s that are eligible under the environmental criteria will have to acquire the same certification to Australian-specific Authorities ACMA and ERAC prior to their introduction to the market in the same manner a Type Approved vehicle would have to?

2.3 RAWs and AVVs

DTB is concerned that the revised operational parameters include provisions that potentially create an un-intended secondary pathway that could supply un-restricted numbers of commercial vehicles that are unsuited to the Australian marketplace for various application specific reasons, to vulnerable end-users. The simple fact that a RAW will be able to provide an un-restricted volume rings “alarm bells” as the potential for an uncapped concessional pathway is created, moving forward with the technological advancements in the areas of Electric/Hybrid/Fuel Cell for example. Couple this with the ability for a RAW and an AVV to operate outside of Australia and the result could prove to be potentially disastrous for both industry and consumers due to the simple fact that if any issues or faults occur, the use of sophisticated and specialised proprietary software or tools will be required, which a 3rd party “provider” simply does not have access to. The result would then potentially lead to a situation where a vehicle that is either unsafe or unusable and the consumer would ultimately carry the burden. Also, the potential prevailing of the scenario where a vehicle would move from the ship and straight to registration is unfathomable as potential issues with quality of workmanship of a RAW, and the final inspections conducted by an AVV will only be identified post entry into service by the end-user; the consumer. As an established manufacturer/distributor DTB is heavily invested in the marketplace and its Australian distribution/service network and we continuously strive to ensure strict adherence to the regulatory framework the MVSA/RVS - Bill and Australian Consumer Law creates. We proudly take our obligations to service and repair the vehicles we supply/provide very seriously and will always abide by any potential rulings made. If any such rulings are made against an overseas entity, how will they be enforced?

For the reasons outlined above DTB strongly opposes this change.

2.3.1 Operating Outside Of Australia (Regulation And Enforcement Risks)

Enforcement of Regulations by DIRDC under the current MVSA 1989 legislation has proven to be quite difficult due to DIRDC's budgetary constraints and human resources. Therefore it must be clarified to the industry, how the proposed enforcement powers will operate for a RAW or an AVV operating outside of Australia, especially in the case of a recall and its subsequent administration. The impacts that DTB envisage as a result of the proposed amendments are as follows:

- Economic impacts: As the vehicle recalls and/or service measures will not necessarily be supported or managed by local distributors/manufacturers, international parts orders may be required, and have the potential to leave vehicles off the road for weeks or months and subject owner/operators to significant downtime costs, resulting potentially in loss of income and business.
- Safety risks: The safety risk is two-fold. First the RAW or AVV operating outside Australia may not notify all owners of a recall or service measure. Add to this, even if recalls or service measures are notified, if there is a difficulty with parts availability due to them not being available locally, consumers may choose to continue driving vehicles despite safety concerns existing. CVs given the nature of their size and weight can cause significant and potentially catastrophic damage to other road users if they are involved in an accident (either due to poor maintenance, service or recalls not being carried out),

The potential outcomes would contradict the existing consumer protection regime which exists in the Competition and Consumer Act 2010 (Cth) and in particular, the statutory guarantees in the Australian Consumer Law within that legislation.

2.4 Recall management and enforcement for international businesses

A personal import by a consumer from an overseas supplier or via a faceless internet transaction may initially seem attractive in terms of pricing, but carries the following risks:

- a lack of detailed vehicle background;
- concessional Australian Design Rule (ADR) compliance – potential ADR noncompliance that the legislated recall provisions will be addressing;
- no local manufacturer's warranty;
- potentially no notification of safety recalls or service measures;
- a lack of vehicle suitability for the Australian environment and operating conditions (for example, engine calibration, cooling package – sizing and suitability, air conditioning, suspension and axle ratings etc.). This in turn may mean vehicles spend

- a lot of time off the road being repaired (provided that the parts and special tools are available to perform these repairs) which may result in economic loss to consumers;
- a lack of spare parts and specialised servicing and repair facilities;
- a limited recourse against supplier and protection under Australian Consumer Law; and
- potential issues with obtaining insurance and future tradability of the vehicle to secondary owners for example.

By allowing international RAWs and AVVs to operate in this environment, DTB has major concerns particular in relation to the safety and ongoing quality of these vehicles. The risks involved by allowing these vehicles to be imported by overseas suppliers are:

- an overseas RAW and AVV are not compelled to fully comply with their ISO 9000 accreditation and the associated costs of compliance that Australian suppliers are subjected to is much lower.

The issues are further compounded by the fact that a RAW and AVV can operate outside of Australia – but no measures have been determined for ensuring ISO 9000 accreditation has been legally gained for the overseas entity in question (and not just the holding company) or costs for auditing international RAW and AVVs. The impact to both Australian SMEs who are seeking to provide RAW and AVV services, and also consumers who are unwittingly victim to a potential non-compliant international RAW and AVVs are undeniable

Small businesses and dealerships will be the most impacted by international RAW, AVVs and distributors, as they will use online platforms to sell products at lower costs than retail stores. The Australian Automotive Dealer Association (AADA) estimates to facilitate the servicing of the brands they sell, dealers have invested around \$17 billion in facilities. Declining profit – due to competing small, international distributors – raises concern for the livelihood of such dealerships.

The measures, controls and documentation needed to maintain and enforce compliance on global RAW's, AVV's and small distributors need to be fully defined and addressed. Additionally, the cost of DIRDC enforcing such compliance is also a major concern for us at DTB.

2.5 Non-Compliant Plant Equipment

While the impact of the newly expanded SEVs criteria is limited to vehicles up to 12 tonnes GVM, the greater impact for CVs lies within the newly expanded 'Non-Compliant Plant Equipment' category, under which vehicles such as drilling rigs, cranes, and city utility vehicles (i.e. fire tenders, garbage trucks and street sweepers), can be considered for entry onto the RAV. This means that while 'prime-movers' may have been excluded from being allowed to be imported under this category, a rigid vehicle with a 'special' body fitted may

potentially be allowed entry onto the RAV in un-restricted numbers utilising this concessional pathway.

For the reasons outlined above, DTB strongly urges DIRDC to reconsider and clarify the changes to the definition. It needs to be said that whilst a pathway has been created for “real” vehicles of this type, the reality of the matter is that most of the examples referred to in the exposure drafts do not meet the definition used, as they are simply a cab-chassis vehicle with a body fitted (which in all cases is removable without detriment to the base cab-chassis vehicle).

DTB welcomes the opportunity to further discuss this matter with DIRDC, as the primary concern is associated with the potential for exploitation of the said rule whereby an importer can bring in “Non-Compliant Plant Equipment”, subsequently remove the “Plant Equipment” and the result would be a heavy commercial vehicle in cab/chassis form that can then potentially be used in transport. This scenario could prove to be disastrous, as mentioned before, as vehicles of this type are application specific and are configured in such a way that they are “fit for purpose”. Therefore, as noted previously changing the “purpose” may render the vehicle unsuitable or unsafe as it could be potentially be used in application that it was not configured for.

2.6 The CRIS

The proposed RVS – Bill is heavily geared and focused on cost recovery activities and enforcement protocols that have in some legislated areas, severe punitive measures associated with each non-compliance.

DTB applauds compliance initiatives however it seems the bulk of cost recovery effort lies with the “type approval” holders, which for all intents and purposes will require less of DIRDC’s time as opposed to the concessional pathway which in DTB’s view is where the greatest risk of non-compliance with the RAV lies. Further discussions on this matter are greatly welcomed by DTB.

Unfortunately, due to the volume of vehicles involved, the CV industry could be severely impacted by this cost regime, especially if the Option 2 costing model is utilised.

It is DTB’s preference to allow licensees to choose from a range of options that best suits their business model and;

- be part of further discussions in relation to application of payments at the various stages of an application; and
- further discuss (confidentially) the financial impacts of the options chosen.

3.0 Conclusion

DTB has highlighted its areas of concern for the CV industry and the potential impact on consumers and road users alike through the potential use of international RAWs and AVVs, potentially expanding the definitions in the SEVs register and definition of a variant.

It is our expectation that a balanced approach to the RVS – Bill would preserve Australian SMEs and dealerships through encouraging new jobs in innovative automotive areas, whilst providing enough regulatory framework to retain competitiveness whilst reducing the risk of unsupported vehicle products and parts, unsupported vehicle recalls/service measures and unsupported services measures that may ultimately impact the safety of the consumer and road users at large.