



SUBMISSION

Submission 56 – RVS Legislation Consultation

Road Vehicle Standards Bill 2017

16 February 2018

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2. About the Motor Trade Association of South Australia

The following submission is provided on behalf of the Motor Trade Association of South Australia, the only employer organisation representing the interests of approximately 1,100 automotive retail, service and repair businesses in the state.

The automotive retail, service and repair sector adds more than \$2.85 billion to the State economy annually and employs almost 29,000, 52 per cent of whom are employed by MTA members. Eighty per cent of these businesses employ less than twenty employees in South Australia.

The MTA Group Training Scheme is a Registered Training Organisation and Group Training Organisation, which delivers post trade and apprentice training

to automotive tradespeople, employing approximately 450 apprentices and placing them in over 250 host businesses. We also train approximately 100 industry employed apprentices.

As a state based representative body, the MTA has twelve divisions representing the full range of trades in South Australia's retail automotive industry, including:

1. Australian Automotive Dealers Association of South Australia
2. Automotive Dismantlers Division
3. Automotive Repair Division
4. Body Repair Specialists Division
5. Commercial Vehicle Industry Association of South Australia
6. Farm & Industrial Machinery Dealers Association of South Australia
7. Licensed Vehicle Dealers Division
8. Motorcycle Industry Association of South Australia
9. Vehicle Rental Division
10. Service Station Division
11. Towing Division
12. Tyre Dealers Division

3. Glossary

ACL	Australian Consumer Law
ADR	Australian Design Rules
CRN	Component Registration Number
CTA	Component Type Approval
MTA	The Motor Trade Association of South Australia
RAV	Register of Approved Vehicles
RVSB	Road Vehicle Standards Bill 2017
SARN	Sub-Assembly Registration Number
SEVS	Specialist and Enthusiast Vehicle Scheme

4. MTA Consultation

In relation to this submission, the MTA has undertaken consultation with its members operating vehicle sales, automotive repair, commercial vehicle sales and repair, low volume manufacturing, importing and modification businesses.

This submission reflects the views of our members.

5. Executive Summary

The *Road Vehicle Standards Bill 2017* replaces the *Motor Vehicle Standards Act 1989* in order to modernise the regulatory framework governing the supply of motor vehicles to the Australian market following the closure of mass vehicle manufacturing, and to increase flexibility to accommodate future innovation in vehicle design.

This is a major reform package that deserves careful scrutiny by the Parliament to ensure that opportunities to resolve long standing issues with the operation of the previous Act are realised.

As this bill deals primarily with the supply of vehicles to the market rather than the sale of vehicles to consumers, the exposure of businesses in the automotive retail, service and repair sector is comparatively limited.

However, the legislation contains several aspects that do, or possibly could, affect automotive retail, service and repair business as well as local low volume manufacturers and modifiers.

The MTA is surprised that the *Road Vehicle Standards Bill 2017* has been introduced to the Parliament prior to the completion of the departmental consultation period.

We consider that this is a presumptive decision given that, as with any legislation of this complexity and consequence, there are a number of areas where further information is required before judgements can be made as to the likely effect of the proposed changes.

The MTA's submission makes eight recommendations and requests clarification on a further eight issues following consultation with our members.

Our recommendations and requests for clarification arise out of four principle concerns expressed to the MTA by our members:

- The legislation may disadvantage local Australian businesses in the custom importing and vehicle supply markets because it places too much power in the hands of overseas OEMs or may remove the ability for existing businesses to continue to operate
- There is a lack of detail as to how the implementation of the legislation will affect businesses involved in the importing of vehicles and components, low volume manufacturing and aftermarket sectors

- There is concern as to the cost of transitioning to new requirements in order to continue operating current business models, and whether the new requirements will add further compliance cost over the longer term
- The risk of unintended consequences and additional complications as a result of the plethora of disjointed compliance regimes that are not harmonised, such as international vehicle standards, state road use regulations, Australian Consumer Law and Australian Design Rules and the negative impact on local businesses

Principle MTA Member Concerns

<p>Disadvantages local businesses</p> <ul style="list-style-type: none"> • Inability to continue current business models • Gives too much power to OEMs 	<p>Implementation clarity</p> <ul style="list-style-type: none"> • How will changes affect businesses • Insufficient communication to industry
<p>Transition costs</p> <ul style="list-style-type: none"> • Additional compliance costs • Development of new business models 	<p>Risk mitigation</p> <ul style="list-style-type: none"> • Disjointed regulatory regimes • Unintended consequences

The MTA continues to be willing to work collaboratively with government to resolve these concerns in order to achieve the overall legislative objectives of streamlining and simplifying our road vehicle regulatory framework.

6. Key Recommendations

Recommendations in response to MTA member concerns:

Concern 1 – Disadvantages local businesses

1. The MTA has been vocal in its opposition to the initial reform package proposed by this review, to allow for the unrestricted direct personal importation of vehicles. The MTA remains firm in its view that such an approach would be harmful to consumers and cause serious detriment to dealerships.

2. The MTA recommends that the RVSB be amended to include provision for the importation of untitled (previously unregistered) NC class heavy vehicles through the SEVS. The MTA does not believe that this should be extended to second hand NC class heavy vehicles.
3. The MTA recommends that a system of cross-jurisdictional compliance recognition be developed to allow for the importation of vehicles and components where they have been certified as such by a recognised authority in selected major trading markets.
4. The MTA recommends that should a dispute arise as a result of undertaking a recall rectification, then the burden of proof should fall on to the OEM to prove that a repairer is at fault should the rectification fail, and not the result of inaccurate guidance from the OEM or a secondary fault arising from the design of the component or vehicle.

Concerns 2 and 3 – Implementation clarity and Transition costs

5. The MTA recommends that suppliers currently utilising Sub-Assembly Registration Numbers and Component Registration Numbers be advised promptly by the department of the requirement to reapply for Component Type Approvals, as we do not believe this has been adequately communicated to industry.

Concern 4 – Risk Mitigation

6. The MTA recommends that a risk management framework be created either through the bill itself or additional regulation that will ensure consistency in the exercise of recall powers.
7. The MTA recommends that components that do not meet product safety standards should be refused entry to the Australian market in order to protect consumers and to ensure a level playing field for retailers who bear the financial and administrative burden of ACL compliance.
8. The MTA recommends that national standards be defined as the single applicable standard for road vehicles, and remove requirement for state based standards.

7. Key Areas for Clarification

Further to MTA member concern 2 – Implementation clarity, the MTA requests further information as to:

1. Whether modifications to imported vehicles have to be identified and approved prior to the importation of the vehicle or simply prior to supply to the Australian market for the first time.
2. Whether the RAV data requirements for each class of vehicle, as the Gross Combination Mass data point appears to only apply to the heavy vehicle category.
3. The government's proposed regulatory framework for the operation of the Model Report market and whether there will be protections for low volume trailer manufacturers from being priced out of the approval pathway.
4. The level of detail required to complete the Model Report. The reports will need to be consistent, accessible and fairly priced in order for them to be transferable between market participants.
5. Whether Design Facility and Production Facility status will need to be re-approved in order to comply with the Type Approval and Component Type Approval pathway requirements.
6. Whether compliance with recall orders would create a scenario whereby a business could expose itself to liability or prosecution in matters outside of the direct scope of the recall notice. If that is the case then it is also unclear as to whether the protection for individuals contained within the exposure draft would apply in that scenario.
7. The triggers or thresholds for the use of recall powers.
8. Whether vehicles fitted with non-compliant components with regards to both ADRs and ACL will be refused entry to the Australian market until the rectification of those components is complete.

8. Vehicle Suppliers

The RVSB creates the Register of Approved Vehicle (RAV) to allow for the supply of vehicles to the Australian market. Vehicles must comply with the approval pathways in order to be entered onto the RAV and therefore be eligible for supply to the Australian market.

The RAV will replace compliance plates and create a publicly accessible database for the verification of vehicle identity information, referenced by the Vehicle Identification Number.

Vehicles supplied through the RAV have two approval pathways:

- **Type Approval**

The first pathway permits the entry of vehicles where evidence of compliance with Australian Design Rules (ADR) is confirmed along the supply chain from the Original Equipment Manufacturer (OEM) through to the point of supply to the Australian market

- **Concessional Approval**

The second pathway allows for the supply of vehicles that do not comply with ADRs but do meet criteria set out by the Specialist and Enthusiast Vehicle Scheme (SEVS), which consists of six acceptable exemptions to the ADRs. A further subset of this pathway allows for the supply on non-road use and temporary use vehicles

The MTA does not oppose the Type Approval pathway in its proposed form. It is our understanding that the responsibility for securing approval through this pathway will fall on OEMs when seeking to supply to their dealership networks.

The MTA also broadly supports the structure for vehicle supply through the SEVS in its current proposed form that provides exemptions on the grounds of:

- Rarity
- Performance
- Environmental
- Left hand drive
- Campervan
- Mobility

The MTA has been vocal in its opposition to the initial reform package proposed by this review, to allow for the unrestricted direct personal importation of vehicles. The MTA remains firm in its view that such an approach would be harmful to consumers and cause serious detriments to dealerships.

However, MTA members have identified that under the proposed structure for SEVS, importation of left hand drive NC class heavy vehicles will cease entirely by 2020.

The MTA has previously written to the Minister for Urban Infrastructure and Cities to bring to the Government's attention that this appears to be an unintended consequence of the proposed changes to the SEVS.

The legislation appears to be completely silent on NC class heavy vehicles.

The effect of this will be to eliminate the ability of custom heavy vehicle importers of this type of heavy vehicle to access previously unregistered or untitled NC category vehicles for the purpose of modification.

The MTA is aware that one low volume business, Australia's only importer of effectively new NC class heavy vehicles, has imported untitled NC class heavy vehicles from North America to meet specialist and enthusiast demand from local and international customers. These vehicles are custom modified and would otherwise meet SEVS criteria for rarity, environmental (utilising the Euro 6 standard for vehicle emissions) and left hand drive.

Over the last seven years, this business has had five models approved for left hand drive conversion for supply to the Australian market without issue and is now expanding to supply to international clients. However under the proposed changes, this business will be forced to close.

To provide context as to how the proposed changes will affect the business, the following must be considered:

- All the trucks imported by this business are built brand new in Texas to specification
- The vehicle emissions meet the Euro 6 standards whereas Australia currently only requires the Euro 5 Standard
- The braking systems used by the vehicles are more advanced than the current ADR as the US has mandatory stopping targets
- Axles and steering components are specified to those currently available from high volume heavy vehicle manufacturers and distributors in Australia
- Cabin conversions from left to right hand drive retain the integrity of the cabins as the original frame and panel work has not been modified. In fact a false fire wall is fitted over the top of the original firewall and each cabin has European Crash Regulation (ECE) Crash Worthiness Certification

- There has never been any safety issue identified by government in 50 truck builds completed by this business
- Engineers have signed off on the Administrative Circulation 0-4-5 Certificate document to ensure compliance with the ADR

Many in the heavy vehicle industry purchase these trucks as enthusiast vehicles, where they are considered to be a premium vehicle, comparable to Rolls Royce motor vehicles.

The MTA recommends that the RVSB be amended to include provision for the importation of untitled (previously unregistered) NC class heavy vehicles through the SEVS. The MTA does not believe that this should be extended to second hand NC class heavy vehicles.

Vehicle Modifiers

In addition to the MTA's comments regarding the importation of vehicles through both approval pathways, we further believe there is a need for greater clarity as to whether modifications to imported vehicles have to be identified by OEMs and/or suppliers and/or modifiers, and approved prior to the importation of the vehicle or simply prior to supply to the Australian market, that is, consumers for the first time.

9. Vehicle Trailers

The MTA does not oppose the introduction of type approval for light vehicle trailers.

MTA Members have identified that the use of the term 'RAV' may cause confusion in the heavy vehicle industry as this acronym is widely used in the industry for Restricted Access Vehicles

The MTA seeks further information as to the RAV data requirements for each class of vehicle as the Gross Combination Mass data point appears to only apply to the heavy vehicle category.

However, this information is equally relevant to light vehicles that are towing trailers or caravans which can have significant combination masses and therefore should be included on the RAV.

Members have also requested further information on the level of detail required for Model Reports and whether they effectively will become a de facto currency, given the legislation allows for them to be transferable.

The legislation aims to streamline the approval process for the same design for multiple manufacturers. However, if a design has already been approved, low volume manufacturers are concerned that they will be in the position of having to effectively subcontract the design approval to a high volume competitor.

If the government does not adequately regulate the operation of this market, there will be perverse incentives to price out low volume manufacturers from the approval pathway and create barriers to entry through the gaming of the secondary market in Model Reports.

The level of detail required to complete the Model Report. The reports will need to be consistent, accessible and fairly priced in order for them to be transferable between market participants.

This would place high volume manufacturers in an advantageous position and potentially incentivises anti-competitive conduct.

Low volume manufacturers have also questioned if Design Facility and Production Facility status will need to be re-approved in order to comply with the Type Approval and Component Type Approval pathway requirements.

Members are also highly concerned with the costs of transitioning to the new system and the associated costs of ensuring compliance with both federal government and state government regulations governing the operation on such facilities.

The MTA recommends that suppliers currently utilising Sub-Assembly Registration Numbers and Component Registration Numbers be advised promptly by the department of the requirement to reapply for Component Type Approvals as we do not believe this has been adequately communicated to industry.

10. Recalls

The RSVB provides the Minister with sweeping powers in relation to the issuance of Recall Notices.

However, the practical extent of these powers is only vaguely explored through the exposure draft of the legislation. This presents several areas which require clarification.

First, the apparent application of these powers includes the ability to compel the production of evidence and documents along the entire supply chain even if compliance with such an order would self-incriminate.

The exposure draft is unclear as to whether compliance with such an order would create a scenario whereby a business could expose itself to liability or prosecution in matters outside of the direct scope of the recall notice. If that is the case then it is also unclear as to whether the protection for individuals contained within the exposure draft would apply in that scenario.

Second, the MTA is willing to accept the exposure draft's commentary that while recall powers could theoretically be applied to every vehicle at any time, it is not the intention nor is it feasible to do so.

However, the exposure draft does not contain sufficient guidance on the triggers for the use of these powers. The MTA recommends that a risk management framework be created either through this bill or through additional regulation that will ensure consistency in the exercise of the recall powers.

Third, the MTA considers that repairers and dealerships undertaking repair work on recalled vehicles and components should not be held legally or financially liable for undertaking rectification of faults when those repairs are performed according to manufacturer specifications.

Should a dispute arise as a result of undertaking this rectification, the MTA recommends that the burden of proof should fall on to the OEM to prove that a repairer is at fault should the rectification fail, and not the result of inaccurate guidance from the OEM or a secondary fault arising from the design of the component or vehicle.

11. Harmonisation with the Australian Consumer Law

The MTA believes that the proposed legislation, while forming a component of the Australian Consumer Law with respect to recall powers, creates gaps in

harmonisation with ACL product safety standards, particularly for components such as tyres and rims.

These gaps would allow for the importation of low quality components from overseas that technically meet ADRs but do not meet ACL product safety standards.

The MTA recommends that components that do not meet product safety standards should be refused entry to the Australian market in order to protect consumers and to ensure a level playing field for retailers who bear the financial and administrative burden of ACL compliance.

The MTA also seeks assurance that vehicles fitted with non-compliant components with regards to both ADRs and ACL will be refused entry to the Australian market until the rectification of those components is complete.

12. Harmonisation with International and State/Territory Standards

The proposed legislation creates additional compliance complexity with the treatment of international and state/territory vehicle standards.

The MTA has previously written to the Minister for Home Affairs to highlight its concerns with the standards associated with the importation of vintage vehicles from the United States of America.

Although both Australia and the US require zero levels of asbestos in vintage components such as brakes, the US standard allows for a miniscule tolerance of asbestos, whereas the Australian standards require absolute zero.

This has resulted in custom vehicle importers having vehicles severely damaged during border inspections at Customs checkpoints, sometimes costing many thousands of dollars in rectification, causing the vehicle to be written off. These intrusive inspections occur even when the vehicles have been laboratory certified in the US as containing no asbestos.

The MTA recommends that a system of cross-jurisdictional compliance recognition be developed to allow for the importation of these vehicles and components where they have been certified as such by a recognised authority in selected major trading markets.

Additionally, the MTA is concerned that the RSVB does not resolve the issue of, and in fact may exacerbate, the level of complexity between National and State based standards.

The proposed legislation states that the requirements of the RSVB supersede the requirements of state based legislation, in order to create national consistency.

However, during the consultation discussion held in Adelaide, advice from departmental officials indicated that this was not as definitive as described in the exposure draft, and that a state standard could take precedence over the national from time to time.

The MTA is also concerned as to how government will determine whether a state standards is more or less stringent than a national one.

There are instances whereby standards are different and thereby create a contradiction, but do not necessarily create a binary 'better or worse' measurement.

One such example is the tyre size standards for goods carrying vehicles with a gross vehicle mass not exceeding 4.5 tonne. While the national standards address both four and two wheel drive vehicles, South Australian regulations do not address this standard for two wheel drive variants.

This creates a competitive disadvantage for South Australia when consumers are advised that to meet national standards all tyres require replacement rather than simply one and places consumers at risk when they decide that the retailer is trying to take advantage of the customer's tyre failure.

The MTA recommends that national standards be defined as the single applicable standard for road vehicles, and remove requirements for state based standards.

13. Next Steps

The MTA is available to provide further information in relation to this submission and to clarify any aspect of it.

This includes meeting with agency representatives and facilitating further consultation with industry on proposed changes.

14. Submission Contact

For further information relating to this submission please contact:

Nathan Robinson
Industry Policy Specialist
nrobinson@mta-sa.asn.au 08
8291 2000 or 0418 829 918