

Submission 79 – RVS Legislation Consultation



**Submission to the Department of Infrastructure, Regional
Development and Cities**

***Exposure Draft of the Road Vehicle Standards package of
legislation***

15 February 2018

Introduction

1. The National Road Transport Association (NatRoad) is pleased to make comments on the package of draft legislation relating to road vehicle standards.
2. The Government has decided to bring in changes to the *Motor Vehicle Standards Act 1989* (the Act). These changes were set down for introduction in late 2017 but were deferred to early 2018.
3. The Government on 13 December 2017 released the exposure drafts of a substantial package of legislation that will change the laws governing road vehicle standards.¹ Amongst other things, the Bills will give the responsible Minister strong powers to mandate the recall of vehicles if serious safety issues arise. The powers will apply to all road vehicles supplied in Australia, whether for private or commercial use, including for heavy vehicles.
4. Stakeholders are asked to provide feedback on the exposure drafts of the Bills and the related documents by 16 February 2018 and this submission provides that feedback. Despite the consultation process, the Bills were introduced to the House of Representatives on 7 February 2018.
5. The Department has recently released a [draft Cost Recovery Implementation Statement \(CRIS\)](#) outlining how the government proposes to recover the costs of administering the proposed Road Vehicle Standards Act and related legislation. Unfortunately, given the short period of time between the release of the CRIS and the deadline date of 16 February 2018 for receipt of submissions on the CRIS, we have not received stakeholder feedback on the CRIS as at today's date.
6. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, express car carriers, as well as tankers and refrigerated freight operators.

Heavy Vehicles

7. NatRoad notes that the Bills introduce major change from the current law. A fundamental reform is the proposed replacement of physical compliance plates to denote a vehicle's suitability for supply in this country. Instead of compliance plates, conforming vehicles will be listed via an online, publicly available database to be known as the Register of Approved Vehicles (RAV).
8. NatRoad, from the outset, notes that heavy vehicles² are its concern and that the RAV applies, amongst other things, to heavy vehicle importation. Trailers will retain the existing physical 'trailer plate' because of the need for visibility of load limits. But trailers will also need to be entered on the RAV, an additional administrative burden for the industry.

¹ https://infrastructure.gov.au/vehicles/mv_standards_act/

² vehicles over 4.5 tonnes gross vehicle mass

9. There appears to be a very firm focus on the regulatory regime being designed for light vehicles, especially cars; for example, the Exposure Draft Explanatory Memorandum for the *Road Vehicle Standards Bill 2017*, in discussing, at page 6, the key principles underpinning the Bill, says:

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).

10. We also refer to the information sheet published about the RAV with the package of legislation, that is Information Sheet 10.³ Attachment A of that document sets out the RAV data requirements. It needs to be upgraded to accommodate the various types of heavy vehicle. The designations "B double" and "road train" are far from adequate descriptors of heavy vehicle types, albeit that these descriptions are now required via *Vehicle Standard (Australian Design Rule 61/02 - Vehicle Marking) 2005*. The way heavy vehicles are categorised should follow the categories in the Heavy Vehicle National Law (HVNL).⁴ At the least, the ADR categories that have been established via the standards relevant to the MVSA⁵ should be revisited and tailored to better reflect the categorisation of heavy vehicle types reflected in the HVNL.
11. The designations B double and road train reflect the current information that is provided on an identification (compliance) plate and vehicle plate. Where a heavy motor vehicle is certified as complying with ADR 64 and is suitable for use as a B-double or road train hauling unit, that information is obviously to be set out in the RAV. However, there must surely be more information than these matters to be included in the RAV about heavy vehicles? That is certainly the case having regard to section 8 but especially section 12 of the Rules. Under section 12 a further subordinate instrument will set out different information to be included on the RAV, or made publicly accessible, for different kinds of vehicles. **That detail should be clarified as soon as possible.**
12. This submission is, as stated earlier, concerned with providing feedback about the way the system will impact on heavy vehicles which are a very important component of Australia's economy. Accordingly, the references to "cars" in a critical EM (as pointed out in paragraph 9 of this submission) or in other material that does not properly indicate that the Bills apply to heavy vehicles should be carefully examined by the Department. For any subsequent explanatory material that the Department creates **NatRoad recommends that there be explanatory material tailored specifically to heavy vehicles.**
13. We reinforce the importance of heavy vehicles being given specific recognition. This recognition is vital given that there remains in place an active truck manufacturing sector in this country.⁶
14. The balance of this submission addresses the terms of the Road Vehicles Standards Bill 2017 and some areas of the proposed Rules and the various subject headings of areas intended to be regulated that follow. Where NatRoad has not commented on a subject area, we are satisfied the Bill's provisions meet its objectives.

³ https://infrastructure.gov.au/vehicles/mv_standards_act/files/Info_Sheet_10_RAV.pdf

⁴ <https://www.nhvr.gov.au/files/201708-0672-classes-of-heavy-vehicles-in-hvnl.pdf>

⁵ Vehicle Standard (Australian Design Rule - Definitions and Vehicle Categories) 2005

⁶ *Truckmaking Poised to Lead Local Vehicle Manufacturing* Australian Transport News 10 January 2018

https://www.fullyloaded.com.au/product-news/1801/truckmaking-poised-to-lead-local-vehicle-manufacturing?utm_source=atn_newsletter&utm_medium=email&utm_content=article7_title&utm_campaign=10-01-2018&utm_term=list_fullyloaded_newsletter

Road Vehicle Standards Bill - General

15. The statute would regulate the importation of vehicles. It would also regulate their provision domestically. Approvals for importation would be required. Vehicles must be on the RAV before being provided for the first time in Australia, a phrase that does not reflect the reality of the process of making heavy vehicles ready for market, as indicated below.
16. Recall notices can be issued about road vehicles and approved vehicle components: we have no concerns with those provisions of the Bill. This new power in the current context is supported. NatRoad has safety as a priority concern.
17. There are monitoring and enforcement powers, some implemented by triggering the operation of another statute the *Regulatory Powers (Standard Provisions) Act 2014* (RPSP Act). NatRoad understands that utilising the provisions of the RPSP Act stands as a regulatory simplification proposal.

Definition of a Road Vehicle

18. Proposed section 6 of the Bill contains the pivotal definition of what is being regulated: road vehicles. The Exposure Draft Explanatory Memorandum for the Bill (EM)⁷ says that “the definition should be read broadly, and includes road motor vehicles such as cars, trucks and buses.”⁸ This reinforces the points made earlier about a greater focus on heavy vehicles and guidance being prepared on a sectoral basis.
19. A road vehicle is one which is “designed solely or principally for use in transport on public roads.” The EM indicates that this will be an objective test, reinforced by the terms of clause 6(3) of the Bill which states that “in determining whether a motor vehicle is designed solely or principally for use in transport on public roads, regard is to be had only to the physical and operational features of the motor vehicle.”
20. Clause 6(1)(b) indicates that a road vehicle also covers “a trailer or other vehicle (including equipment or machinery equipped with wheels) designed to be towed on a public road by a motor vehicle.” This extension of the definition encompasses a very broad category of equipment. As is noted in the EM:

*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.*⁹
21. The broad sweep of the legislation is further reinforced by the powers conferred on the Secretary by subclauses 6(5),6(6),6(7) and 6(8). These provisions give the Secretary respectively power to determine whether a class of vehicles is a road vehicle, whether a specific vehicle is a road vehicle and in respect of the latter 2 subclauses, to permit a range of documents to be adopted in the relevant determinations.
22. The increase in technology represented by such items as autonomous delivery robots¹⁰ or autonomous vehicles generally should be capable of being appropriately regulated and **NatRoad therefore supports these increased regulatory powers.**

⁷ https://infrastructure.gov.au/vehicles/mv_standards_act/files/RVS_Bill_EM_Exposure_Draft.pdf

⁸ Id at p22

⁹ Id para 32 at p 23

¹⁰ See for example the pizza delivery robot <https://www.dominos.com.au/inside-dominos/technology/dru>

Regulation of Road Vehicle Components

23. Proposed section 7 deals with the regulation of some road vehicle components. The extent of regulation is confusing. The provision is very complex. The EM, for example, says in a somewhat circular manner:

*This Bill regulates approved road vehicle components that have a road vehicle component type approval.*¹¹

24. It seems that the utilisation of a road vehicle component is intended to mirror the current system of approved components that are issued with a Component Registration Number (CRN).
25. The Bill should, however, be clearer and should better indicate the intention expressed in the EM¹² that the regulation of components is on an opt-in basis and that it is not intended that a component would be approved if it is for general sale directly to consumers.¹³ The Bill needs to better reflect the policy intent that in the context of heavy vehicles the legislation is only to apply to components used in the manufacture of a heavy vehicle.

National Road Vehicle Standards

26. Clause 12 gives the Minister power to make standards for road vehicles and road vehicle components by legislative instruments directed to the following aims:

- (a) make road vehicles safe to use;
- (b) control the emission of gas, particles or noise from road vehicles;
- (c) secure road vehicles against theft;
- (d) provide for security marking of road vehicles;
- (e) promote the saving of energy.

27. Clause 12(2) permits the Minister to incorporate by reference in the technical standard other documents. Those documents would not need to have their substance set out. The drafting is very broad allowing incorporation of a variety of documents and standards, as acknowledged in the EM.¹⁴

28. **There should be a duty on the Minister or the Secretary to have all documents so incorporated readily accessible to the public on a publicly available register displayed, say, on the Departmental web site or linked electronically within the instrument created.**

29. The industry is already burdened with the requirement from time to time to access expensive Australian Standards and ISO documents. The cost of accessing other documents should not become a regulatory burden and hence NatRoad's contention about accessibility. The preferred position is for instruments to be self-contained to the extent possible, accessible and in plain language.

30. The Act currently reflects that those using heavy vehicles must at times use non-compliant road vehicles for specific tasks. These often operate with oversize or over mass specifications. They are currently utilised under strict operating conditions set by the National Heavy Vehicle Regulator and road managers. The processes associated with the

¹¹ Above note 5 at para 37

¹² Id para 38

¹³ Id at para 40

¹⁴ Esp as discussed at paras 54-60

setting of national standards under the new regime should not affect these processes. The mechanism to ensure that this outcome is reached is unclear.

31. It seems that the ability to use non-standard vehicles for specialist application as mentioned in the prior paragraph is maintained by Rule 16(d)(ii) of the proposed Rules. However, there are no explanatory notes published with the Rules and the position of heavy vehicles in this context should be made clearer.

Register of Approved Vehicles (RAV)

32. We refer to paragraphs 6-10 above which provide comment on the RAV.

33. One member has commented that the acronym is confusing, stating:

Given that the acronym RAV has been used for many years in most jurisdictions for 'Restricted Access Vehicle' why would the Federal Government choose the identical Acronym for 'Register of Approved Vehicles'?

34. Based on that comment we suggest another title for the register and the associated acronym is used.

35. Clause 14 vests responsibility in the Secretary for keeping the RAV. The EM says that the Secretary can meet this obligation by contracting with another party to provide the RAV and cites subclause 14(1) as the source of this power.¹⁵

36. NatRoad would not want the RAV to reflect a revenue raising arm of Government to be vested in third parties. We note that subsequent provisions of the Bill prevent fees amounting to taxation being applied and that they should reflect cost recovery: Clause 66 and Clause 67. As noted above the CRIS has been issued but, at this point, NatRoad has not been able to obtain stakeholder feedback on its terms.

37. NatRoad notes the importance of critical registers to be in the hands of Government as for example with the Personal Property Securities Register¹⁶ administered by the Australian Financial Security Authority. **Registers of such a critical nature should be maintained by Governments on the basis of cost recovery only and not contracted to third parties.**

38. We are also concerned about the imposition of civil penalties for incorrect information entered on the RAV. Whilst we are aware of the importance of the RAV as a "gateway to road vehicle provision"¹⁷ the fact that there might be one mistake in respect of 50 vehicles that are replicated on the register resulting in 50 contraventions per clause 18 seems too harsh. With the current value of a penalty unit at \$210.00 (from 1 July 2017)¹⁸ and the maximum fine of 60 penalty units the incorrect information being inadvertently recorded has a potential fine in those circumstances of \$630,000 (60 x \$210 x 50).

39. **We recommend that the legislation consider the possibility of errors being compounded in the manner illustrated in the prior paragraph and that the provision be amended so that one error repeated many times inadvertently does not attract potentially large financial penalties.**

40. In the context of the imposition of costs on the industry we note that the three Bills¹⁹ concerned with mechanisms for establishing the framework for recovery costs do not

¹⁵ Id at para 64

¹⁶ <https://www.ppsr.gov.au/>

¹⁷ EM note 5 above para 88

¹⁸ *Crimes Amendment (Penalty Unit) Act, 2017 (Cth)*

¹⁹ *Road Vehicle Standards Charges (Imposition-General) Bill 2017*
Road Vehicle Standards Charges (Imposition – Customs) Bill 2017
Road Vehicle Standards Charges (Imposition – Excise) Bill 2017

specify the amount of the relevant charges which are considered in the CRIS. These Bills provide a framework for recovery costs associated with the administration of the Road Vehicle Standards Bill.

Modifications

41. Clause 26 prevents the modification of road vehicles that are on the RAV but have not been provided to a consumer. However, Clause 25 permits the rules made under the Bill to provide for where a road vehicle may be modified. The EM, for example, indicates that Registered Automotive Workshops are permitted to complete modifications before it is provided for the first time in Australia.²⁰ This appears to be covered by section 37 of the exposure draft of the *Road Vehicle Standard Rules 2017*.²¹
42. **However, there does not appear to be present in the package a suitable provision relating to heavy vehicles that is sufficiently clear.**
43. Rule 49 of the Rules says:

For the purposes of section 26 of the Act, if a road vehicle on the RAV is to be modified before being provided for the first time in Australia, the only modifications of the vehicle allowed are those carried out during second stage manufacture.
44. It seems at first reading that no modification could be undertaken unless done at the second stage. In this market almost all heavy vehicles undergo a modification certified under a system administered by a relevant heavy vehicle regulator before, in a literal sense, being first provided in Australia. A common example is initial fitment of a tow coupling/fifth wheel.
45. The proposed definition of “being provided for the first time in Australia” does not preclude making the vehicle compliant with a national standard per section 24 and so the issue of whether “second stage manufacture” has been undertaken may not arise; so long as the heavy vehicle is being made compliant with those standards arguably it has not yet been “provided for the first time in Australia.”
46. It seems that the intention is for the current process to be maintained, as expressed at least one of the Departmental consultation forums held on the Bills. For example, a partially completed ADR approved truck (typically a cab-chassis) will be provided to the market at the point in time when the vehicle details are uploaded to the RAV (equal to the current practice of fitting an Identification/compliance plate) after which the vehicle would be subject to VSB6 requirements for body or fifth wheel fitment and not require a second stage manufacture process as defined in the Bill. The completed truck would then be eligible for on-road (State) registration, as occurs currently.
47. This issue should be made clearer in that the process just outlined appears to represent the potential commission of an offence, despite the intention expressed in the prior paragraph. Material should be produced about pathways for heavy vehicles to the Australian market that make the intended, lawful process clearer. **The potential incongruence of the second stage manufacturing process with obtaining compliance with VSB6 should be addressed before the Bill is advanced further.**
48. We have concerns about the change to the scheme for overseeing the work of Registered Automotive Workshops (RAWS). The new Authorised Vehicle Verifier (AVV) inspection

²⁰ Above note 5 at para 110

²¹ https://infrastructure.gov.au/vehicles/mv_standards_act/files/RVS_Rules_2017.pdf

service will level the playing field for RAWs so far as the regulation of cars is concerned. Third party inspections will be required for all vehicles modified by a RAW.

49. The system is likely to add costs, especially for heavy vehicles. The potential uncertainty in relation to heavy vehicle modifications and this additional cost burden of having an AVV inspection service that could be unnecessarily imposed on the heavy vehicle sector need to be re-examined or further clarified before the legislation is advanced in the Parliament. What cost modelling has been undertaken in this context?

Conclusion

50. **Before the laws are implemented, they need to be reassessed through the prism of regulation of the heavy vehicle industry.**
51. **NatRoad members are not convinced that the package of legislation will reduce red tape. The opposite view has been expressed by members who have been confronted with the current legislative package.**