

EXPOSURE DRAFT

2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ROAD VEHICLE STANDARDS BILL 2017

EXPLANATORY MEMORANDUM

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

EXPOSURE DRAFT

Contents

OUTLINE.....	5
Key principles	6
Overview of the Bill.....	9
Rationale for certain Bill provisions	12
Financial impact statement.....	15
Statement of Compatibility with Human Rights	16
NOTES ON CLAUSES	21
Clause 1: Short Title.....	21
Clause 2: Commencement.....	21
Clause 3: Objects of this Act.....	21
Clause 4: Simplified outline of this Act	21
Clause 5: Definitions	22
Clause 6: Meaning of a Road Vehicle.....	22
Clause 7: Meaning of road vehicle component.....	24
Clause 8: Act to Bind Crown	24
Clause 9: Crown not liable to prosecution	24
Clause 10: Extraterritorial application	25
Clause 11: Simplified outline of this Part	25
Clause 12: Minister may determine national road vehicle standards.....	25
Clause 13: Rules.....	27
Clause 14: Register of Approved Vehicles	27
Clause 15: Entering vehicles on RAV.....	27
Clause 16: Entry of non-compliant vehicles on RAV	27
Clause 17: Information entered on RAV dishonestly or improperly	29
Clause 18: Incorrect information entered onto RAV	30
Clause 19: Rules.....	30
Clause 20: Specialist and Enthusiast Vehicles Register.....	31
Clause 21: Rules.....	31
Clause 22: Importing road vehicles.....	31
Clause 23: Rules.....	32
Clause 24: Providing road vehicle for the first time in Australia – vehicle not on the RAV	32
Clause 25: Rules.....	33
Clause 26: Modification of a road vehicle on RAV.....	34

EXPOSURE DRAFT

Clause 27: Misrepresentation that a road vehicle component is an approved road vehicle component	34
Clause 28: Breach of condition of approval – general	35
Clause 29: Breach of condition of approval – export or destruction of road vehicle	36
Clause 30: Breach of obligation to provide records after approval ceases to be in force	37
Clause 31: False or misleading declaration	37
Clause 32: False or misleading information	38
Clause 33: Personal liability of an executive officer of a body corporate	38
Clause 34: Reasonable steps to prevent offence or contravention	39
Clause 35: Determining pecuniary penalties for bodies corporate	40
Clause 36: Simplified outline of this Part	40
Clause 37: Rules	40
Clause 38: Compliance with recall notices	41
Clause 39: Notification requirements – compulsory recalls	41
Clause 40: Notification requirements – voluntary recalls	42
Clause 41: Power to obtain information etc.	42
Clause 42: Self-incrimination	43
Clause 43: Compliance with disclosure notices	44
Clause 44: False or misleading information etc.	44
Clause 45: References to supply of road vehicles and approved road vehicle components	45
Clause 46: Compensation for acquisition of property	45
Clause 47: Operation of other laws	45
Clause 48: Simplified outline of this Part	45
Clause 49: Appointment of Inspectors	46
Clause 50: Monitoring under Part 2 of the Regulatory Powers Act	47
Clause 51: Modifications of Part 2 of the Regulatory Power Act	48
Clause 52: Investigating under Part 3 of the Regulatory Powers Act	48
Clause 53: Modifications of Part 4 of the Regulatory Powers Act	49
Clause 54: Civil Penalties under Part 4 of the Regulatory Powers Act	49
Clause 55: Infringement Notices under Part 5 of the Regulatory Powers Act	50
Clause 56: Modifications of Part 5 of the Regulatory Powers Act	50
Clause 57: Enforceable undertakings under part 6 of the Regulatory Powers Act	51
Clause 58: Injunctions under Part 7 of the Regulatory Powers Act	51
Clause 59: Physical elements of offences	52
Clause 60: Contravening an offence provision or a civil penalty provision	52
Clause 61: Simplified outline of this part	52
Clause 62: Minister may arrange for use of computer programs to make decisions	52

EXPOSURE DRAFT

Clause 63: Minister may substitute more favourable decision for certain computer-based decisions	53
Clause 64: Use of computer programs by Secretary to make decisions, etc.....	53
Clause 65: Sharing information.....	53
Clause 66: Fees for fee-bearing activities	54
Clause 67: Paying cost-recovery charges.....	55
Clause 68 – Late payment fee	55
Clause 69: Recovery of cost-recovery charges	55
Clause 70: Suspending or revoking approvals because of unpaid cost-recovery charges	55
Clause 71: Secretary may direct that activities not carried out	55
Clause 72: Secretary may remit or refund cost-recovery charges.....	56
Clause 73: Delegation by the Minister	56
Clause 74: Delegation by the Secretary.	56
Clause 75: Simplified outline of this Part	57
Clause 76: Authority to take delivery of imported vehicles.....	57
Clause 77: Application of Australian Consumer Law	57
Clause 78: Road vehicle need not comply with State or Territory Standards.....	58
Clause 79: Severability – additional effect of Act	58
Clause 80: Basis on which approvals granted.....	58
Clause 81: Immunity from suit.....	59
Clause 82: Rules.....	59

EXPOSURE DRAFT

ROAD VEHICLE STANDARDS BILL 2017

OUTLINE

The purpose of the Road Vehicle Standards Bill 2017 (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

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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-hand-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.

EXPOSURE DRAFT

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

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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:

- give the Minister responsible for road vehicles the power to issue recalls;
- ensure adequate coverage for commercial vehicles and vehicles supplied through Registered Automotive Workshops; and
- 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.

EXPOSURE DRAFT

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 question 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.

EXPOSURE DRAFT

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);

EXPOSURE DRAFT

- 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.

EXPOSURE DRAFT

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Road Vehicle Standards Bill 2017

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

EXPOSURE DRAFT

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

EXPOSURE DRAFT

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

EXPOSURE DRAFT

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:

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

EXPOSURE DRAFT

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, the Hon Paul Fletcher MP

EXPOSURE DRAFT

NOTES ON CLAUSES

Part 1 – Introduction

Division 1 – Preliminary

Clause 1: Short Title

10. Clause 1 provides that the Bill, when enacted, may be cited as the *Road Vehicle Standards Act 2017*.

Clause 2: Commencement

11. 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.
12. 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 period when the Bill receives Royal Assent. The Bill will operate in its full form 12 months and 1 day from commencement.
13. The commencement table gives effect to the intention to provide 12 months to industry and states and territories before the Bill commences substantively. This 12 months 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.
14. 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

15. 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

16. 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.
17. Clause 4 provides an overview of the Bill, whilst outlining new concepts that are being introduced under the Bill.

EXPOSURE DRAFT

Division 4 – Definitions

Clause 5: Definitions

18. Clause 5 provides definitions for the Bill. Notes are provided on the key definitions under the Bill.
19. **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 2017*, the *Road Vehicle Standards Charges (Imposition— Excise) Act 2017* or the *Road Vehicle Standards Charges (Imposition— General) Act*; 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.
20. **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.
21. **Import** – this definition should be read in the context of importation of a vehicle.
22. **Manufacture** – this definition includes the modification of a vehicle and/or assembly of a vehicle.
23. **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.
24. **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.
25. **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.
26. **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.
27. **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.
28. **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

29. 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

EXPOSURE DRAFT

- 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.
30. 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.
 31. 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.
 32. 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.
 33. 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 accidentally 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.
 34. 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.
 35. 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*.
 36. 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

EXPOSURE DRAFT

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

37. This Bill regulates approved road vehicle components that have a road vehicle component type approval.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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

43. 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

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

EXPOSURE DRAFT

Clause 10: Extraterritorial application

45. 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.
46. 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

47. 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.
48. 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.
49. 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.
50. 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

51. 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.
52. 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.
53. 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,

EXPOSURE DRAFT

- international agreements in an efficient manner. It facilitates increased harmonisation with international standards, consistent with the objects of the Bill.
54. 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*.
 55. Subclause 12(4) of this provision states that subclause 12(2) has effect despite subsection 14(2) of the *Legislation Act 2003*.
 56. 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.
 57. 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.
 58. 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.
 59. 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.
 60. 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.

EXPOSURE DRAFT

Clause 13: Rules

61. 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.
62. 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

63. 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.
64. 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.
65. The Register of Approved Vehicles is a Commonwealth record for the purposes of the *Archives Act 1983*.

Clause 15: Entering vehicles on RAV

66. 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.
67. 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

68. 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.
69. 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 be in the case where a Type Approval holder authorises a person to enter vehicles onto the RAV on their behalf. If

EXPOSURE DRAFT

- 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.
70. 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:
- 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.
71. 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.
72. 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).
73. 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.
74. 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.
75. 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.

EXPOSURE DRAFT

76. 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

77. 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.
78. 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.
79. 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.
80. 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.
81. 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.
82. 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.
83. 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.

EXPOSURE DRAFT

84. 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

85. 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.
86. 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.
87. 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.
88. 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.
89. 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

90. 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.
91. Subclause 19(1) also requires the Rules to provide for or in relation to the publication of information on the RAV.
92. Subclause 19(2) provides that the Rules may also provide for the following:
- 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.
93. 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:
1. Information to be included on the RAV;

EXPOSURE DRAFT

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

Division 4 – Specialist and Enthusiast Vehicles Register

Clause 20: Specialist and Enthusiast Vehicles Register

94. Clause 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.
95. The Register is to be kept in electronic form and is to be made available on the Department's website.
96. The Register of Specialist and Enthusiast Vehicles is a Commonwealth record for the purposes of the *Archives Act 1983*.

Clause 21: Rules

97. 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.
98. 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

99. 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).
100. 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.
101. 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

EXPOSURE DRAFT

- 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.
102. 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.
 103. 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.
 104. 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.
 105. 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

106. 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

107. 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.
108. 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.
109. 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.
110. 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.

EXPOSURE DRAFT

111. 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.
112. 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.
113. 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.
114. 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.
115. 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.
116. 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.
117. 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

118. 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.
119. 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:

EXPOSURE DRAFT

- 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

120. 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.
121. 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.
122. Subclause 26(2) is similar to subclause 26(1), as a person commits an 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.
123. 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.
124. An offence against either subclause 26(1) or 26(2) has a maximum penalty of 120 penalty units.
125. The maximum civil penalty applicable if a person breaches either subclause 26(1) or 26(2) is 120 penalty units.
126. 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

EXPOSURE DRAFT

127. 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.
128. 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.
129. 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

130. 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).
131. 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.
132. 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.
133. 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.
134. 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.

EXPOSURE DRAFT

135. 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.
136. An offence against 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.
137. 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

138. 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.
139. 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 destroyed 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.
140. 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.
141. 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)."
142. 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

EXPOSURE DRAFT

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

143. 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.
144. 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.
145. 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.
146. 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

147. 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.
148. 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.
149. 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.
150. 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.
151. An offence against subclause 31(1) has a maximum penalty of 60 penalty units.
152. The maximum penalty applicable if a person breaches subclause 30(2) is 60 penalty units.

EXPOSURE DRAFT

153. 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

154. 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.
155. 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.
156. 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.
157. 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.
158. 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.
159. An offence against subclause 32(1) has a maximum penalty of 60 penalty units.
160. 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

161. 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.
162. 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.
163. 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

EXPOSURE DRAFT

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.

164. 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.
165. 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.
166. 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 position to influence the conduct of the body in relation to the contravention; and
 - The officer failed to take all reasonable steps to prevent the contravention.
167. 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

168. 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 the requirements under, the Bill and the Rules.

EXPOSURE DRAFT

Subdivision E – Pecuniary penalties and bodies corporate

Clause 35: Determining pecuniary penalties for bodies corporate

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

169. 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.

170. 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

171. 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.

172. 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.

173. 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

EXPOSURE DRAFT

- Notification requirements relating to compulsory or voluntary recalls.

Division 3 – Complying with recalls

Clause 38: Compliance with recall notices

174. 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.
175. 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.
176. 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.
177. In the context of recall provisions, a supplier includes a type approval holder.
178. 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.
179. 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.
180. 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

181. 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.
182. 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

EXPOSURE DRAFT

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.

183. 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

184. 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.
185. 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.
186. 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.
187. 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.
188. 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.

189. 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

EXPOSURE DRAFT

- 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.
190. 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.
191. 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.
192. 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.
193. 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

194. 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).
195. 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

EXPOSURE DRAFT

be difficult, if not impossible, to prosecute a person for providing false information in response to a declaration notice.

196. This clause only applies to clauses under Part 3 of this Bill – that is, only to recall related matters.
197. 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

198. 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.
199. 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.
200. 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.

201. 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.

EXPOSURE DRAFT

202. 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.
203. 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

204. 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

205. 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.
206. 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.
207. 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

208. 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

209. 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

EXPOSURE DRAFT

- to have a graduated enforcement toolkit which enables the enforcement response to be proportionate to the risk non-compliance presents.
210. 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.
211. 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.
212. 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

213. 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.
214. 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;

EXPOSURE DRAFT

- experience in the automotive industry; and
- any experience exercising monitoring powers.

215. 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).
216. Clause 48(5) requires an inspector to comply with any directions of the Secretary in exercising their powers.
217. 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

218. This clause provides authorised persons with monitoring powers by triggering Part 2 of the Regulatory Powers Act.
219. 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.
220. 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.
221. 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*.
222. 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.
223. Subclause 50(5) allows for an authorised person to be assisted by other persons in exercising powers or performing functions or duties 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 duties under Part 2, if:
- that assistance is necessary and reasonable; or
 - another Act empowers the authorised person to be assisted.
224. 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;

EXPOSURE DRAFT

- 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

225. 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.
226. 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.
227. 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.
228. 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.
229. 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

230. 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.
231. 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.

EXPOSURE DRAFT

232. 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

233. 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.
234. 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.
235. 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.
236. 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

237. 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.
238. 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.
239. 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.

EXPOSURE DRAFT

240. 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.
241. 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.
242. 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

243. 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.
244. 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*'.
245. 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.
246. 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.
247. 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.
248. Subclause 55(4) indemnifies the Crown from being issued an infringement notice.

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

EXPOSURE DRAFT

249. 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.
250. 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.
251. 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.
252. 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.
253. 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

254. 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
255. 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.
256. 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

257. 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

EXPOSURE DRAFT

from contravening a provision of this Bill, or to compel compliance with a provision of this Bill.

258. 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

259. 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

260. 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.

261. 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

262. 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

263. 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.

264. Subclause 62(2) deems a decision made, or any power or obligation exercised, by a computer program to be that of the Minister.

265. 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.

EXPOSURE DRAFT

266. 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.
267. 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

268. 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.
269. 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.
270. 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.
271. 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.
272. 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.

273. 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

274. 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;

EXPOSURE DRAFT

- 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.
275. 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.
276. 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.
277. 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 and Regional Development has unique information (including personal information such as names and addresses) 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.
278. 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.
279. 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.
280. 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.
281. 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

282. 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.

EXPOSURE DRAFT

283. 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.
284. Fees should only be charged for the purpose of recovering the costs of providing the services or activities only and not amount to taxation.
285. 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

286. 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.
287. 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

288. 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.
289. 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

290. 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

291. 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

EXPOSURE DRAFT

292. 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.
293. 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

294. 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.
295. This power can only be delegated to SES and Acting SES in the Department.

Division 5 – Delegations

Clause 73: Delegation by the Minister

296. 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.
297. A delegate must comply with any directions of the Minister whilst exercising powers under a delegation.
298. 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.
299. 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.
300. 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.
301. 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.

302. 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.
303. 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.
304. Any functions or powers delegated under the Bill must be in writing and the delegate must comply with any directions of the Secretary.
305. 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.

EXPOSURE DRAFT

306. 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

307. 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

308. 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.
309. 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

310. 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.
311. 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

EXPOSURE DRAFT

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

312. This clause ensures that National Road Vehicle Standards are applied consistently to new road vehicles across Australia, 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 standard.
313. However, subclause 78(1) does not permit the use in transport of a new road vehicle on a public road if it has been modified so that it no longer complies with one or more of the standards imposed for RAV entry by the RVS Act, or if its operation becomes defective.

Clause 79: Severability – additional effect of Act

314. 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

315. 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

EXPOSURE DRAFT

legislative provision that was not in existence at the time the approval was granted.

316. 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

317. 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

318. 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.
319. 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.
320. 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.
321. 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

EXPOSURE DRAFT

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).