

# **EXPOSURE DRAFT**

2016-2017

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

## **ROAD VEHICLE STANDARDS (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2017**

EXPLANATORY MEMORANDUM

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

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## ROAD VEHICLE STANDARDS (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2017

### OUTLINE

The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2017 (“the Bill”) contains transitional and consequential provisions to support the commencement of the Road Vehicle Standards Bill 2017 (Road Vehicle Standards Bill) as it replaces the *Motor Vehicle Standards Act 1989* (Motor Vehicle Standards Act) as the Commonwealth’s primary legislation for regulating road vehicle and certain road vehicle components.

Road vehicles and road vehicle components are currently regulated under the Motor Vehicle Standards Act and related delegated legislation (referred to in this document as the old law). The passage of the Road Vehicle Standards Bill will deliver a modern piece of legislation to increase road vehicle safety, provide greater choice and competition in the Australia vehicle market. This Bill makes provision for a twelve-month transition period starting from the full commencement of the Road Vehicle Standards Bill that will allow industry stakeholders to make the necessary changes to transition to the new regulatory framework.

Whilst the Motor Vehicle Standards Act has enabled the effective management of safety, environmental and anti-theft risks to date, the Road Vehicle Standards Bill provides a much simpler and modern legislative framework that covers the changing road vehicle industry, reduces unnecessary regulation and provides a flexible basis in which the legislation can adapt to new innovative technologies into the future.

This Bill provides for a transitional period of twelve months from the commencement of the Road Vehicle Standards Bill during which aspects of the Motor Vehicle Standards Act and related legislation will continue to have effect to ensure that entities currently operating under the old law have sufficient time to transition the Road Vehicle Standards Bill and supporting instruments (referred to in this document as the new law). Clear guidance will be provided to industry stakeholders and the general public to ensure they are aware of any rights or obligations which will apply.

This Bill also provides incentives to certain approval holders to become early adopters of the new regulatory framework introduced by the Road Vehicle Standards Bill. Certain holders of approvals under the Motor Vehicle Standards Act will be able to use the evidence that was submitted to the regulator for their current approvals to obtain new approvals under the Road Vehicle Standards Bill.

This Bill is being introduced to:

- Repeal the Motor Vehicle Standards Act upon full commencement of the Road Vehicle Standards Bill (Schedule 2);
- Make transitional provisions to provide for the regulation of road vehicles and road vehicle components during the transition from the Motor Vehicle Standards Act to the Road Vehicle Standards Bill (Schedule 3); and
- Make consequential amendments to Commonwealth legislation to reflect the repeal of the Motor Vehicle Standards Act and substitute relevant references to the Road Vehicle Standards Bill (Schedule 4).

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## OVERVIEW

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### Schedule 1 – Transitional national road vehicle standards

**Schedule 1** of the Bill sets that in the first twelve months after Royal Assent of the Road Vehicle Standards Act that the national vehicle standards made under section 7 of the Motor Vehicle Standards Act are taken to be national vehicle standards under clause 12 of the Road Vehicle Standards Bill.

### Schedule 2 – Repeal of the Motor Vehicle Standards Act 1989

**Schedule 2** of the Bill repeals the Motor Vehicle Standards Act. Repeal of the Motor Vehicle Standards Act will allow for the Road Vehicle Standards Bill to become the Commonwealth's primary legislation for the regulation of the importation and provision of road vehicles and certain road vehicle components into Australia.

### Schedule 3– Transitional provisions

**Schedule 3** of the Bill will transition various matters currently provided for under the Motor Vehicle Standards Act to the new regulatory framework to be established by the new law. It will also provide for the regulation of road vehicles during the transitional period, starting from the twelve months after the new law receives Royal Assent. The transitional period will be for a period of twelve months and will offer incentives for certain approval holders to make an early transition to operation under the new law.

The Bill also allows for the continuation of Registered Automotive Workshop approvals under the old law arrangements for a period of twelve months – despite the Motor Vehicle Standards Act being repealed.

**Part 1 of Schedule 3** sets out key definitions that apply to Schedule 3 of the Bill.

**Part 2 of Schedule 3** provides for national vehicle standards, such as the Australian Design Rules made under section 7 of the Motor Vehicle Standards Act, to continue to apply as if they were made under the Road Vehicle Standards Bill. It also provides for the *Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002* made under section 9 of the Motor Vehicle Standards Act to continue to apply for 7 years after commencement of the Bill for the purposes of keeping records.

**Part 3 of Schedule 3** includes two divisions. **Division 1** provides for the operation of approvals under subsections 10A(1) or (2) of the Motor Vehicle Standards Act to continue in force during the transitional period. Subsection 10A(1) approvals under the Motor Vehicle Standards Act are also known as standard full volume type approvals. Subsection 10A(2) approvals under the Motor Vehicle Standards Act are also known as minor and inconsequential non-compliance full volume type approvals. Division 1 also provides for these approval holders to take up early adoption of type approvals under the new law, with provisions that allow for an easier transition to the new law if it is undertaken in the first six month period of the transitional period.

Division 1 also provides for how approvals under subsection 10A(3) (known as the new low volume scheme) of the Motor Vehicle Standards Act will operate during the transitional

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period and allows for identification plates to be placed in accordance with the approval during the transitional period.

Division 1 also allows pending applications at the commencement of the transitional period for subsections 10A(1),(2) and (3) of the Motor Vehicle Standards Act to be approved in the transitional period under the provisions of the old law.

**Division 2** allows existing Registered Automotive Workshops to continue to apply under section 13C of the Motor Vehicle Standards Act for approval to place a used import plate on a used imported vehicle during the transitional period. Further, it makes provisions for the old law to continue to apply in relation to the granting of such an approval.

During the transitional period, it also provides for approvals granted under section 13D of the Motor Vehicle Standards Act to continue to apply, for pending applications made under section 13C of the old law to be decided under the old law, and for the new law not to apply to the provision of used imported vehicles that have had used import plates placed on them in accordance with an approval granted under the old law.

**Part 4 of Schedule 3** includes three Divisions. **Division 1** allows for approvals under section 14A (known as nonstandard type approvals) of the Motor Vehicle Standards Act to continue in force during the transitional period; for pending applications at the commencement of the transitional period to be decided under the old law; and for the new law not to apply to the provision of a vehicle during the transitional period if that vehicle was provided in accordance with an approval in force under the old law.

This Division also allows holders of approvals under section 14A of the Motor Vehicle Standards Act to take up early adoption of type approvals under the new law during the first six months of the transitional period. Doing so will allow holders of such approvals to have a smoother transition to the new system, by allowing them to rely on previous evidence submitted to the regulator that supported them obtaining their old law approval.

**Division 2** allows for certain approvals granted under the *Motor Vehicle Standards Regulations 1989* to continue to apply and allows vehicles covered by such approvals to be imported and provided during the transitional period. During the transitional period, it also provides for pending applications that were made under the old law for such approvals to be decided in accordance with the old law, and for the new law not to apply during the transitional period to the importation of a vehicle or provision of a vehicle imported in accordance with an approval granted under the old law.

**Division 3** allows for section 17 of the Motor Vehicle Standards Act, which provides that the importation of standard road vehicles is subject to specified conditions, to continue to apply during the transitional period. Further, the division also allows for the operation of section 17A of the Motor Vehicle Standards Act, which deals with the issue of an authority to deal with an imported road vehicle under the *Customs Act 1901*, to continue to apply during the transitional period.

This Division also allows for the importation during the transitional period of nonstandard vehicles if, at the commencement of the transitional period, the person had an approval under subsection 19(1) or paragraph 20(1)(b) of the Motor Vehicle Standards Act but had not yet imported the vehicle. Furthermore, it provides for how pending applications for such

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approvals are to be considered if, at the time of the transitional period commencing, a decision had not been made. It also provides for the new law not to apply to actions taken in accordance with approvals granted under subsection 19(1) or paragraph 20(1)(b) of the Motor Vehicle Standards Act.

In addition, this division provides for the continued existence of the old Register of Specialist and Enthusiast Vehicles (SEVs) established under section 21 of the Motor Vehicle Standards Act during the transitional period. It also empowers the Minister to enter a vehicle onto a new register of Specialist and Enthusiast vehicles to be established under the new law if it is considered to benefit the community.

**Part 5 of Schedule 3** provides that if an approval of a Registered Automotive Workshop made under section 21B of the Motor Vehicle Standards Acts was in force prior to the commencement of the transitional period then the approval will continue for the transitional period and be subject to the provisions of the old law. It also outlines how the Minister is to decide pending applications under section 21A and 21C of the Motor Vehicle Standards Act and how those approvals are to be regulated.

**Part 6 of Schedule 3** creates an obligation for approval holders to comply with certain conditions after the end of the transitional period. Part 6 also creates offences provisions if an approval holder does not retain a record or export or destroy a vehicle in accordance with the conditions of their approval.

**Part 7 of Schedule 3** allows for the Administrator and Associate Administrators appointed under section 22 of the Motor Vehicle Standards Act to continue to hold office during the transitional period. This Part also provides that the Administrator and Associate Administrators will continue to have the same functions and powers under the old law during the transitional period. Additionally, this Part provides that any instrument of delegation will continue during the transitional period, as will the fees that are payable under the old law.

Compliance and enforcement powers under the Road Vehicle Standards Bill will begin at the commencement of the transitional period, and will apply for the purposes of ensuring compliance with this Schedule and any provisions of the old law that apply because of this Schedule. This means the monitoring and investigation powers, located in the Regulatory Powers Act and triggered by the Road Vehicle Standards Bill, can be used to monitor and investigate compliance of approvals with this Bill and the old law provisions.

**Part 8 of Schedule 3** replicates provisions in the Motor Vehicle Standards Act in relation to evidentiary certificates and legal proceedings against the Commonwealth.

**Part 9 of Schedule 3** empowers the Minister to approve forms and make rules prescribing matters of a transitional nature relating to the amendment or repeals made by this Bill or the enactment of this Bill or the Road Vehicle Standards Bill.

## Schedule 4 – Consequential amendments

**Schedule 4** of the Bill makes minor consequential amendments to the following Commonwealth legislation:

- *Age Discrimination Act 2004*;
- *A New Tax System (Luxury Car Tax) Act 1999*;

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- *Customs Act 1901;*
- *Fuel Tax Act 2006;*
- *Interstate Road Transport Act 1985;*
- *Interstate Road Transport Charge Act 1985;*
- *National Environment Protection Council Act 1994; and*
- *Trans-Tasman Mutual Recognition Act 1997.*

## **Financial impact statement**

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

## **Statement of Compatibility with Human Rights**

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

### **Road Vehicle Standards (Consequential and Transitional Provisions) 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**

This Bill provides for the transition between the *Motor Vehicle Standards Act 1989* and the new Road Vehicle Standards Bill 2017. The Bill also provides consequential amendments to other Commonwealth legislation to refer to the new Road Vehicle Standards Bill 2017. These amendments maintain the existing regulatory framework. The amendments to other Commonwealth laws are consequential to the enactment of the Road Vehicle Standards Bill.

This Bill has limited impact on human rights and 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*.

For the human rights implications of the new legislation, the explanatory memorandum for the Road Vehicle Standards Bill 2017 should be referred to.

#### **Human Rights Implications**

##### Right of privacy and reputation (monitoring and investigation powers)

Article 17 of the International Covenant on Civil and Political Rights (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-



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arbitrary. The limitations must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

The monitoring and investigation power in this Bill, drawn from the Regulatory Powers Act, provide for powers to enter premises. These powers include the ability to search the premises, inspect documents or things on the premises, ask questions and take extracts or copies of documents. These powers are necessary for the legitimate objective of protecting the right to life and the right to health (core rights protected by the current *Motor Vehicle Standards Act 1989* and the new Road Vehicle Standards Bill 2017) 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 of protection from discrimination (age)

Schedule 4 of this Bill makes consequential amendments to the *Age Discrimination Act 2004*. The *Age Discrimination Act 2004* prohibits discrimination on the basis of age in key areas of public life, including employment. Section 39(1) of the *Age Discrimination Act 2004* does not apply to the *Motor Vehicle Standards Regulations 1989*. The Rules made under the Road Vehicle Standards Bill are expected to continue to apply the eligibility criteria that people must be 18 years of age or older to apply for and hold a Registered Automotive Workshop

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approval. This continues the Government's existing policy on the age of holders of Registered Automotive Workshop approvals. This does not prevent people under the age of 18 from working for or in registered workshops, just limits the age of the approval holder. This is necessary for ensuring that the significant responsibilities of Registered Automotive Workshops are held by appropriately qualified and legally responsible persons, continuing to promote rights to life and rights to health of the community.

## **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**

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## NOTES ON CLAUSES

### Clause 1: Short Title

1. This clause provides for the short title of this Bill to be the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2017*.

### Clause 2: Commencement

2. This clause provides for when the schedules of this Bill will commence. The commencement table gives effect to the transitional period – a period of 12 months that begins 12 months and 1 day after the Royal Assent of the Road Vehicle Standards Bill. 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.

### Clause 3: Schedules

3. Clause 3 provides that any Commonwealth legislation set out in the Schedules to this Bill are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Bill has effect according to its terms.

## SCHEDULE 1 - TRANSITIONAL NATIONAL ROAD VEHICLE STANDARDS

### Item 1- Transitional national road vehicle standards for first 12 months

4. Item 1 states that in the first twelve months after Royal Assent of the Road Vehicle Standards Bill that the national vehicle standards made under section 7 of the Motor Vehicle Standards Act are taken to be national vehicle standards under clause 12 of the Road Vehicle Standards Bill.
5. For example, if a person applies for a component type approval in the first twelve months after Royal Assent of the Road Vehicle Standards Bill, then they will need to provide evidence that they are compliant with the national road vehicle standards. This item makes it clear that the applicant must comply with the same standards as in force under section 7 of the Motor Vehicle Standards Act for this period of time.

## SCHEDULE 2 - REPEAL OF THE MOTOR VEHICLE STANDARDS ACT 1989

### Part 1 – Introduction

### Item 1- The whole of the Act

6. This item repeals the Motor Vehicle Standards Act in its entirety. The Motor Vehicle Standards Act will be repealed one day after the Road Vehicle Standards Bill obtains Royal Assent.

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## SCHEDULE 3 - TRANSITIONAL PROVISIONS COMMENCING ON REPEAL OF THE *MOTOR VEHICLE STANDARDS ACT 1989*

### Part 1- Introduction

#### Item 1- Definitions

7. This item defines terms that are used within Schedule 2 of this Bill.
8. **Approved form** means a form approved under item 28 by approved the Secretary.
9. **Commencement** means the day that Schedule 2 of the Bill will commence, which is twelve months after the *Road Vehicle Standards Act 2017* receives Royal Assent.
10. **New law** covers the following:
  - the *Road Vehicle Standards Act 2017*;
  - any Rules made under the *Road Vehicle Standards Act 2017*;
  - the national road vehicle standards determined under the *Road Vehicle Standards Act 2017* (Also known as the Australian Design Rules or ADRs);
  - any instruments made under the above Act or the rules;
  - the *Road Vehicle Standards Charges (Imposition-Customs) Act 2017*;
  - the *Road Vehicle Standards Charges (Imposition-Excise) Act 2017*; and
  - the *Road Vehicle Standards Charges (Imposition – General) Act 2017*.
11. **Old law** covers the following laws, as in force immediately before commencement of this Bill:
  - the *Motor Vehicle Standards Act 1989* (other than sections 25 to 32);
  - the Motor Vehicle Standards Regulations 1989;
  - the national standards determined under the *Motor Vehicle Standards Act 1989* (also known as the Australian Design Rules or ADRs);
  - the Motor Vehicle Standards (Approval to Place Used Import Plates) Guidelines 2006 (No.1);
  - the Motor Vehicle Standards (Placement of Used Import Plates) Determination 2004 (No.1);
  - the Motor Vehicle Standards (Procedure for Inspecting and Testing Used Imported Vehicles) Determination 2002;
  - the Motor Vehicle Standards (Registered Automotive Workshops – Fit and Proper Persons) Determination 2002;
  - the Motor Vehicle Standards (Road Vehicles) Determination 2017; and
  - the Motor Vehicle Standards (Used Imported Vehicle Report) Determination 2006 (No.1).
12. **Transitional period** is defined as meaning the 12 month period that begins on commencement of this Bill. Subitem 2(2) provides that the following terms used in Schedule 2 will have the same meaning as they do in the Road Vehicle Standards Bill:
  - import;
  - provide;
  - road vehicle type approval;
  - Rules;
  - Secretary; and
  - SEVs Register.

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## Part 2 – National Standards

### Item 2 - Vehicle standards (also known as Australian Design Rules)

13. Item 2 provides that a vehicle standard for road vehicles or vehicle components in force under section 7 of the Motor Vehicle Standards Act will be transitioned so that it is taken to have been made under clause 12 of the Road Vehicle Standards Bill. However, a standard will only be transitioned if it is in force under section 7 of the Motor Vehicle Standards Act immediately before commencement of Schedule 2 of this Bill.

### Item 3 - Procedures for testing vehicles

14. Item 3 provides that the *Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002* will remain in force for a period of seven years upon the commencement of Schedule 2 of this Bill for the purposes of retaining the records required by section 8 of the Determination.
15. The intention of item 3 is to ensure Registered Automotive Workshops with approvals granted under the old law retain their records for a period of seven years starting from the commencement of Schedule 2 of this Bill.
16. Subitem 3(2) provides that a person who is required, immediately before the start of the transitional period, to retain records under the Determination must retain them despite the retention period ending after the transitional period. This obligation continues even if the person ceases to be a Registered Automotive Workshop for any reason.
17. Item 3(3) makes it an offence for a person who is required to retain a record in accordance with subitem 3(1) to not retain the record during the seven years from commencement. The maximum penalty for contravening this requirement is 60 penalty units.
18. For example, a Registered Automotive Workshop creates a record after commencement. After two years, the Registered Automotive Workshop discontinues operations and its approval is terminated. The Registered Automotive Workshop must retain the record for a further period of five years. Failure to comply with this provision may result in criminal and/civil proceedings against person holding the approval – which if it is a corporation, may extend to the key management personnel.
19. A record includes but is not limited to electronic documents, databases, emails and physical files.

## Part 3 – Certification and approval

### Division 1 – Identification plates

#### Item 4 - Approval for the placement of identification plates – subsections 10A(1) and (2) of Motor Vehicle Standards Act

20. Subitem 4(1) provides that if an approval was granted under subsections 10A(1) or (2) of the Motor Vehicle Standards Act before the commencement of this Schedule, the approval will continue in force during the transitional period. Further, this item provides that such an approval will be subject to the provisions of the old law.
21. Subitem 4(2) provides direction if a person has applied for an approval under subsections 10A(1) or (2) of the Motor Vehicle Standards Act and the application has not been decided prior to commencement. In such circumstances, the Minister will decide the application in accordance with the old law.

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22. Subitem 4(2) also provides that if the Minister decides to approve the application then the approval will commence on a day specified in the approval. An approval granted under this item will continue in force during the transitional period. The old law provisions will continue to apply to the grant of approval until the end of the transitional period.
23. For example, if a person makes an application for an approval under section 10A(1) of the Motor Vehicle Standards Act prior to the commencement of this Bill, and that application is not decided before the commencement of this Bill, then:
  - the Minister will decide the application in accordance with old law; and
  - if the Minister approves the application, the old law will continue to apply to that approval - hence, any conditions that can be applied under the Motor Vehicle Standards Act can also be placed on approval holders granted an approval during the transitional period.
24. Subitem 4(3) provides that if an approval under subsection 10A(1) or (2) of the Motor Vehicle Standards Act is in force during the transitional period then that approval will be subjected to the old law provisions. Further, the new law will not apply during the transitional period to the importation of vehicles or to the provision of new vehicles that have had identification plates placed on them, provided the placement of plates is in accordance with the approval in force.
25. For example, the clauses of the Road Vehicle Standards Bill which regulates the first provision of road vehicles that are not on the Register of Approved Vehicles, will not apply to subsection 10A(1) and (2) approvals. This includes approvals that were in force prior to commencement or applications that were decided after commencement of this Bill.

## Item 5 - Transition of approval for the placement of identification plates to a road vehicle type approval

26. Subitem 5(1) allows for persons with an approval under subsection 10A(1) or (2) approval of the Motor Vehicle Standards Act to make an application to become a type approval holder under the new law during the first six months of the transitional period. This option also applies to an approval given under subitem 4(2) of this Bill, that being applications that were made prior to the transitional period but were approved after commencement.
27. To “opt in” to the new law during the first six months of the transitional period, an applicant must:
  - provide to the Minister written acknowledgment of the conditions applying to road vehicle type approvals and that a breach of any of those conditions is an offence under the new law;
  - provide to the Minister a signed declaration that the person satisfies the conditions applying to road vehicle type approvals, in respect of the vehicle covered by the old approval; and
  - pays any cost-recovery charges, if applicable.
28. Once an applicant provides the above documents to the Minister and pays any applicable fee or charge, a road vehicle type approval is taken to have been granted, and it will continue in force for a period of five years. Once the new type approval commences, the old law approval ceases to apply and the new approval will be subject to the provisions of the Road Vehicle Standards Bill.
29. Subitem 5(2) outlines that the offences and civil penalty provisions for giving false or misleading information or making a false or misleading declaration under the Road

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- Vehicle Standards Bill apply to the making of an acknowledgment and a declaration under this item. Hence, if a person makes a false or misleading declaration or provides false or misleading information in the process of applying under subitem 5(1), then the person has contravened section 34 and/or 35 of the Road Vehicle Standards Bill. A contravention of section 34 or 35 of the Road Vehicle Standards Bill could result in criminal and/or civil proceedings being brought against the alleged contravening person.
30. Subitem 5(3) provides that evidence used by the Minister to grant the old approval will be sufficient to satisfy continued compliance with the relevant criteria for grant of a new approval. However, this does not apply if the evidence is found to be false or misleading, or is found to omit any matter or thing without which the evidence is misleading. Furthermore, this does not apply if a person is seeking a variation of the road vehicle type approval under the rules. To the extent of the variation, the old evidence may not be sufficient. A person applying for a variation will have to provide new evidence that meets the requirements of the new legislation.
  31. Any written conditions of the old law approval will be taken to be conditions specified in the new road vehicle type approval. However, if there is an inconsistency between an old condition and or conditions contained in Rules made under the Road Vehicle Standards Bill, then to the extent of the inconsistency, the latter will prevail.
  32. If a person with an approval under subsection 10A(1) or (2) of the Motor Vehicle Standards Act does not wish to “opt in” to the new law during the first six months of the transitional period, then their approval under the old law will continue in force until the end of the transitional period, unless suspended or cancelled under the old law.
  33. An example of where this item applies is where “ABC Cars” is the holder of an approval granted under subsection 10A(1) of the Motor Vehicle Standards Act. During the first six months of the transitional period, ABC Cars can apply to become a type approval holder under the Road Vehicle Standards Bill. In this application, ABC Cars could use its existing evidence, rather than new evidence, to become a type approval holder. If ABC Cars does not opt into being a part of the Road Vehicle Standards Bill in the first six months, then its approval under the Motor Vehicle Standards Act will continue to apply for the following six months of the transitional period. During this time ABC Cars can apply to become a type approval holder under the Road Vehicle Standards Bill, but will be required to complete the full application process, including submitting new evidence. Its old approval will cease to have effect at the end of the transitional period.
  34. The overall intention of item 5 is to provide subsection 10A(1) or (2) approval holders under the Motor Vehicle Standards Act with incentives to become early adopters of the new law by allowing them to use evidence that assisted them with obtaining an old law approval. It also provides early adopters of road vehicle type approvals an easier transition to the new law.

## Item 6 - Approval for the placement of identification plates - subsection 10A(3)

35. Subitem 6(1) provides that if a person holds an approval under subsection 10A(3) of the Motor Vehicle Standards Act then it will continue in force during the transitional period. The approval will also continue to be subject to the provisions of the old law. At the end of the transitional period the approval will cease.
36. Subitem 6(2) allows for a person who has applied for an approval under subsection 10A(3) of the old law prior to commencement but has not received an outcome from the application, to have it considered during the transitional period. The Minister will be required to decide the application in accordance with the old law.

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37. Subitem 6(3) states that an approval under the old law will be subject to those provisions and that the new law does not apply to the provision of new vehicles that have had identification plates placed on them, provided it was in accordance with the approval.

## Item 7 - Offences in relation to identification plates

38. This item provides that the offence provisions found under section 12 of the Motor Vehicle Standards Act and any other provision of the Motor Vehicle Standards Act (to the extent to which it relates to section 12 of the Motor Vehicle Standards Act) will remain in force during the transitional period.
39. Section 12 of the Motor Vehicle Standards Act creates an offence of knowingly or recklessly placing an identification plate on a non-standard vehicle.
40. As identification plates will be placed on vehicles throughout the transition period, it is essential that this offence provision continues.

## **Division 2 – Used Import Plates**

### Item 8 - Application for approval to place a used import plate

41. Subitem 8(1)(a) provides that a Registered Automotive Workshop under the old law can continue to apply to the Minister for an approval to place a used import plate on a used imported vehicle during the transitional period.
42. Subitem 8(1)(b) provides that the Minister may continue to grant an approval to a Registered Automotive Workshop to place a used import plate on a used imported vehicle under section 13D of the old law during the transitional period.
43. Subitem 8(2) provides that the new law does not apply during the transitional period to the provision of used imported vehicle that have had a used import plate placed on them. However, the placement of the plate must be in accordance with the approval. Further, the approval will remain in force during the transitional period and be subject to provisions of the old law.
44. Subitem 8(3) provides that the limits on the number of used import plates under regulation 6 of the *Motor Vehicle Standards Regulations 1989* apply to approvals granted under this item.
45. Item 8 is required because Registered Automotive Workshops can continue to operate in their current capacity during the transitional period. The item ensures that Registered Automotive Workshops can continue to operate during the transitional period.

### Item 9 - Grant of approval

46. Subitem 9(1) allows for approvals granted under section 13D of the Motor Vehicle Standards Act that are in force prior to commencement to continue throughout the transitional period. Section 13D of the Motor Vehicle Standards Act allows the Minister the ability to grant approvals to Registered Automotive Workshops to place a use import plate on a vehicle. It also clarifies that an approval under section 13D of the Motor Vehicle Standards Act will continue to be regulated by the old law provisions.
47. Subitem 9(2) provides that if a Registered Automotive Workshop has applied under section 13C of the Motor Vehicle Standards Act for approval to place a used import plate on a vehicle and the application has not been decided prior to commencement of the transitional period, then the Minister must decide the application in accordance with



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the old law. If the approval is granted, the approval will state the day in which the approval begins. The approval will continue throughout the transitional period, subject to the provisions of the old law.

48. Subitem 9(3) provides that the new law will not apply to the provision of used imported vehicles that have had import plates placed on them in accordance with an approval under the old law.
49. Subitem 9(4) limits on the number of used import plates under regulation 6 of the *Motor Vehicle Standards Regulations 1989* apply to approvals continued in force or granted under this item.
50. The intention of item 9 is operational, in that it ensures that Registered Automotive Workshops can continue to place a plate on a used imported vehicle. It also allows for existing approvals to continue throughout the transitional period whilst also allowing pending applications under 13D of the Motor Vehicle Standards Act to be decided under the old law. However, the number limits for used import plates for individual Registered Automotive Workshops under the Motor Vehicle Standards Act will continue to apply throughout the transitional period.

## Item 10 - Offence in relation to the placement of used import plates

51. This item provides that section 13G and any other provision of the Motor Vehicle Standards Act (to the extent to which it relates to that section) will continue to have effect during the transitional period.
52. Section 13G of the Motor Vehicle Standards Act establishes an offence for a person to:
  - manufacture or supply a device purporting to be a used import plate and the person has not been authorised under an agreement between the Commonwealth and the person to manufacture and supply used import plates;
  - place a device purporting to be a used import plate on a road vehicle; or
  - place a used import plate on a road vehicle in relation to which no approval for the placement of that plate on the vehicle is in force.
53. As used import approvals will continue throughout the transitional period, it is essential that the offence provision under section 13G of the Motor Vehicle Standards Act continues to be in force. Without this provision continuing during the transitional period vehicles could be plated without there being an approval for a placement of a plate.

## **Part 4 – Supply and importation of vehicles**

### **Division 1 – Supply of new vehicles etc.**

#### Item 11 - Supply of nonstandard vehicles

54. Subitem 11(1) allows an approval to supply nonstandard vehicles given under section 14A of the Motor Vehicle Standards Act that was in effect prior to commencement to continue throughout the transitional period. An example of a vehicle that may be imported under section 14A of the Motor Vehicle Standards Act may be a crane, where the width and length of the vehicle may exceed the national vehicle standards. However, it is necessary for the vehicle to exceed the national vehicle standards so it can operate in a capacity it is designed to do.
55. Subitem 11(1) also allows for an approval under regulation 20 of the *Motor Vehicle Standards Regulations 1989* that is in force prior to commencement to continue throughout the transitional period.

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56. Subitem 11(2) provides that if prior to commencement, a person has made an application for an approval under section 14A of the Motor Vehicle Standards Act or regulation 20 of the Motor Vehicle Standards Regulations 1989 and the Minister has not decided the application, then the Minister must decide the application in accordance with the old law. Further, subitem 11(2) requires the Minister, if approving the application, to specify the day the approval commences, and provides that it will continue in force during the transitional period while being subject to the provisions of the old law.
57. Subitem 11(3) provides that, during the transitional period, the new law will not apply to an approval continued in force by this item.

## Item 12 - Transition of approval to supply nonstandard vehicles to a road vehicle type approval

58. Subitem 12(1) allows for persons with an approval under section 14A of the Motor Vehicle Standards Act or regulation 20 of the Motor Vehicle Standards Regulations 1989 to make an application to become a type approval holder under the new law during the first six months of the transitional period. This option also includes an approval given under sub item 11(2) of this Bill, that being applications that were made prior to the transitional period but were approved after commencement.
59. To “opt in” to the new law during the first six months of the transitional period, an applicant must:
  - provide to the Minister written acknowledgment of the conditions applying to road vehicle type approvals and that a breach of any of those conditions is an offence under the new law;
  - provide to the Minister a signed declaration that the person satisfies the conditions applying to road vehicle type approvals, in respect of the vehicle covered by the old approval; and
  - any charges, if applicable.
60. If a road vehicle type approval is granted, then it will continue for a period of five years, beginning on the day specified on the road vehicle type approval. Once the new law approval commences, the old law approval will cease.
61. Subitem 12(2) outlines that the offences and civil penalty provisions for giving false or misleading information or making a false or misleading declaration under the Road Vehicle Standards Bill will apply to the making of an acknowledgment and a declaration for the purposes of obtaining a road vehicle type approval under item 12. Hence, if a person has made a false or misleading declaration or provided false or misleading information in the process of applying under subitem 12(1), then a contravention of clause 35 and/or 36 of the Road Vehicle Standards Act has occurred. A contravention of clause 35 or 36 of the Road Vehicle Standards Bill could result in criminal and/or civil proceedings (including infringement notices) being brought against the alleged contravening person.
62. Subitem 12(3) provides that evidence used by the Minister to grant the old approval will be sufficient to satisfy continued compliance with the relevant criteria for granting a new approval. However, this does apply if the evidence is found to be false or misleading, or is found to omit any matter or thing without which the evidence is misleading. Furthermore, this does not apply if a person is seeking a variation of the road vehicle type approval under the rules. To the extent of the variation, the old evidence will not be sufficient. A person applying for a variation will have to provide new evidence that meets the requirements of the new legislation to support their

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application. An example of a variation to a type approval would be if an approval holder under the old law was using “AA” seat belts. If, in the process of applying for a type approval under the new law, they start using “BB” seat belts, the approval holder would have to submit new evidence. However, this new evidence would only have to be in relation to seat belts, rather than the entire type approval.

63. Any written conditions of the old law approval will be taken to be conditions specified in the road vehicle type approval. However, if there is an inconsistency between an old condition and a new one, then to the extent of the inconsistency, the rules made under the Road Vehicle Standards Bill will prevail.
64. If a person with a section 14A approval under Motor Vehicle Standards Act does not wish to “opt in” to the new law during the first six months of the transitional period, then their approval under the old law will continue until the end of the transitional period.
65. The overall intention of item 12 is to provide section 14A approval holders under the Motor Vehicle Standards Act with incentives to become early adopters of the new law by allowing them to use evidence that assisted them with obtaining an old law approval. It also provides early adopters of road vehicle type approvals an easier transition to the new law.

## **Division 2 – Supply of used imported vehicles**

### Item 13 - Supply of used imported vehicles

66. Subitem 13(1) provides that if an approval granted under regulations 11, 12, 13 or 17 of the Motor Vehicles Standards Regulations 1989 was in force at the time of commencement of this Bill, the approval will continue throughout the transitional period. The approval will continue to be subject to the provisions of the old law.
67. Subitem 13(2) provides that if a person applies for an approval under regulations 11, 12, 13 or 17 of the Motor Vehicle Standards Regulations 1989 and the Minister has not decided prior to commencement of this Bill then:
  - the application will be decided in accordance with the old law;
  - if the application is successful, then the approval will state the day it commences;
  - the approval will continue throughout the transitional period; and
  - the approval will be subject to the old law provisions.
68. Subitem 13(3) provides that the new law will not apply during the transitional period to the following actions carried out in accordance with an approval continued in force under this item:
  - the importation of a vehicle in accordance with the approval; and
  - the provision of a vehicle imported in accordance with the approval.
69. This allows vehicles subject to such approvals to be imported and supplied to the market during the transitional period.

## **Division 3 – Import of new and used vehicles**

### Item 14 - Importation of road vehicles subject to conditions

70. Item 14 provides that despite the repeal of the Motor Vehicle Standards Act, section 17 of that Act will continue in force during the transitional period. Section 17 of the Motor Vehicle Standards Act imposes conditions on the importation of standard vehicles that have been fitted with identification plates.

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71. The intention of this item is to ensure that persons who imported standard vehicles under the old law (primarily manufacturers with type approvals) are required, during the transitional period, to comply with the conditions imposed by section 17 under the Motor Vehicle Standards Act in respect of those vehicles.
72. Non-compliance with conditions stated on import approvals can result in criminal proceedings being brought against the contravening person. The intention of this item is to ensure approval holders continue to comply with their conditions of importation during the transitional period.

## Item 15 - Authority to take delivery of imported vehicles

73. This item provides for, despite the repeal of 17A of the Motor Vehicle Standards Act, the following:
  - A vehicle imported (with an import approval under the Motor Vehicle Standards Act) into Australia under the old law is required to have an approval under section 17A of the Motor Vehicle Standards Act before the Department of Immigration and Border Protection can issue an authority to deal under the *Customs Act 1901* in respect of the vehicle. This item continues this requirement in force during the transitional period.
  - Further, provisions in this Schedule provide for certain vehicles to be imported into Australia during the transitional period, and applies provisions of the old law to the importation. One of the provisions of the old law that is applied is section 17A of the Motor Vehicle Standards Act.
  - Item 17 allows the Minister to grant section 17A approvals under the Motor Vehicle Standards Act during the transitional period, and for approvals given before commencement to continue in force during the transitional period.
74. This item also allows the Minister to authorise an officer of the Department to give such approvals during the transitional period.

## Item 16 - Importation of vehicles requiring modification

75. Subitem 16(1) applies in circumstances that a person with a written approval under subsection 19(1) of the Motor Vehicle Standards Act has not, at commencement of the transitional period, imported the vehicle to which the approval relates. In such a situation, the approval would remain in force for the duration of the transitional period and the old law provision would apply to the imported vehicle during that period. The import approval will cease to be in force at the end of the transitional period, and the vehicle will not be able to be imported under the approval after that point. This means that after the end of the transitional period, only import approvals issued in accordance with the new law will be acceptable to import a road vehicle.
76. Subitem 16(2) applies to circumstances where, prior to commencement, an application for an approval under section 19 of the Motor Vehicle Standards Act is made to the Minister. The Minister must decide the application in accordance with the old law. If the Minister does grant the approval, the person may import the vehicle in accordance with the approval given under the old law. However, the importation of the vehicle must be before the end of the transitional period. This item also provides that the old law will apply to the imported vehicle during the transitional period.
77. Subitem 16(3) provides that if an approval was given under subsection 19(1) of the Motor Vehicle Standards Act then the approval will be subject to the provisions of the

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old law during the transitional period. The new law will not apply during the transitional period to actions taken that are in accordance with the approval.

## Item 17 - Approval to import certain nonstandard vehicles

78. Item 17 provides that if, prior to the commencement of the transitional period, the Minister gave written approval to a person under paragraph 20(1)(b) of the Motor Vehicle Standards Act and that the person had not imported the road vehicle or vehicle component to which the approval relates, then:
- The approval will remain in force during the transitional period;
  - The old law will apply to the imported vehicle or component during the transitional period; and
  - The person may import the road vehicle or vehicle component prior to the end of the transitional period.
79. For example, a person may have received a written approval to import a vehicle under a regulation made for the purposes of paragraph 20(1)(b) of the Motor Vehicle Standards Act prior to the commencement of the transitional period but has not actually imported the vehicle at the time of commencement. In such circumstances, the approval will remain in force during the transitional period and the old law will apply. However, the person must import the road vehicle prior to the end of the transitional period.
80. If a person has applied under paragraph 20(1)(b) of the Motor Vehicle Standards Act and the application has yet to be decided prior to commencement of the transitional period, then Minister can decide the application once the transitional period has commenced in accordance with the old law.
81. If an approval is given under subitem 17(2), then the person must import the road vehicle or vehicle component before the end of the transitional period. The import must be in accordance with the approval given and the old law will continue to apply to the approval during the transitional period.
82. A person with an approval under either 10A(3) or 14A of the Motor Vehicle Standards Act and is in force during the transitional period, may apply for an approval in accordance with regulation 14 of the *Motor Vehicle Standards Regulations 1989*.
83. If an approval given under a regulation made for the purposes of paragraph 20(1)(b) of the Motor Vehicle Standards Act 1989 is in force or is granted during the transitional period then the law does not apply during the transitional period to actions taken in accordance with the approval.
84. This item does not apply to regulations 11, 12, 13 or 17 of the *Motor Vehicles Standards Regulations 1989*. Provision for these approvals is made at item 13.

## Item 18 - Register of Specialist and Enthusiast Vehicles

85. Item 18 will continue the old Register of Specialist and Enthusiast Vehicles during the transitional period. During the transitional period, the existing Register will continue alongside the new SEVs Register established under the Road Vehicle Standards Bill. The existing Register will be maintained by the Minister during the transitional period in accordance with the old law. No additional vehicles will be added to the old register during the transitional period.
86. Subitem 18(2) provides that if before the transitional period begins, a vehicle was entered onto the existing Register and the Minister considers it is to the benefit of the Australian community to include the vehicle on the SEVs Register, then it can be

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entered onto the new SEVs Register. The SEVs Register will operate under the Road Vehicle Standards Bill.

87. This provision is not intended to be used to transfer all vehicles from the old register to the new SEVs Register. This is so that the new SEVs register reflects genuine specialist and enthusiast vehicles, as per the new definitions. Not all old register entries will be eligible for the new register.

## **Part 5 – Registered automotive workshops**

### Item 19 - Approval as a registered automotive workshop

88. Subitem 19(1) provides that approvals granted under section 21B or renewed under section 21 of the Motor Vehicle Standards Act will continue in force during the transitional period. Such approvals will be subject to the provisions of the old law. The intention of subitem 19(1) is to extend RAW approvals that are in force at the beginning of the transitional period for the entire twelve months of the transitional period.
89. Subitem 19(2) provides that if there is a pending decision to be made under subsection 21C(6) of the Motor Vehicle Standards Act, then the existing approval under the old law will continue during the transitional period until a decision has been made by the Minister.
90. If a corporation has applied for an approval under section 21A or 21C of the Motor Vehicle Standards Act and the application, at commencement of the transitional period, has not been decided then:
- the Minister must decide the application in accordance with the old law;
  - if an approval is granted then it will specify what day the approval comes into force; and
  - the approval will continue in force during the transitional period.
91. To avoid any doubt, any approvals in force under 21B and 21C under the Motor Vehicle Standards Act will cease to be in force at the end of the transitional period.

## **Part 6 – Continuation of certain conditions**

### Item 20 - Obligation to comply with certain conditions after the end of the transitional period

92. Subitem 20(1) applies to certain conditions after the conclusion of the transitional period. Subitem 20(1) states that if a condition specified in an approval is that the holder of the approval retain a record, then they must do so during the “retention period”. The holder must retain the record for the duration of the retention period even if the retention period ends after the conclusion of the transitional period or the approval ceases to be in force.
93. The intention of subitem 20(1) is to ensure that approval holders retain their records for the period required by their approval. Hence, if an approval is in force at any time during the transitional period, then the holder of the approval must retain relevant records for the period specified in the condition, even after the transitional period has ended.
94. Subitem 20(2) creates an obligation that an approval that is in force and has a condition that the holder of the approval must export or destroy a vehicle within a period (the disposal period), then the holder must export or destroy the vehicle during the disposal period. This applies even if the disposal period ends after the transitional period or the approval ceases to be in force.

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95. For example, if a person was granted a temporary import approval under the old law, and the approval the holder to export or the vehicle after the end of the transitional period then, despite the repeal of the old law, the holder of the approval is still required to export or destroy that vehicle by the time specified.
96. The intention of this subitem 20(2) is to ensure that approval holders comply with conditions to export or destroy vehicles imposed on their law approvals, irrespective of the repeal of the Motor Vehicle Standards Act and the ending of the transitional period. Without subitem 20(2), an approval holder under the Motor Vehicle Standards Act or this Bill would not have to export or destroy the vehicle after the transitional period.

## Item 21 - Offences – breach of continued conditions

97. Subitem 21(1) creates an offence in the situation that:
  - a person was the holder of an approval that either continued during the transitional period or was granted during the transitional period;
  - a condition of the approval was that the approval holder was to retain a record;
  - the condition requires the approval holder to retain the record for a period that ends after the transitional period; and
  - the approval holder does not retain the record for the entire period that they are required to do so, regardless of the transitional period ceasing.
98. The maximum penalty under this offence provision is 60 penalty units.
99. Subitem 21(2) creates an offence in the situation that:
  - a person was the holder of an approval that either continued during the transitional period or was granted during the transitional period;
  - a condition of the approval was that the approval holder was to export or destroy a vehicle to which the vehicle applies;
  - the condition requires the approval holder to export or destroy the vehicle within a period after the end of the transitional period; and
  - the approval holder does not export or destroy the vehicle within the time period required.
100. The maximum penalty under this offence provision is 60 penalty units

## **Part 7 - Administration**

### Item 22 - Appointment of Administrator and Associate Administrator

101. Item 22 provides that if appointed prior to the commencement of the transitional period:
  - a person appointed as an Administrator under section 22 of the Motor Vehicle Standards Act will continue to hold office during the transitional period; and
  - a person appointed as an Associate Administrator under section 22 of the Motor Vehicle Standards Act will continue to hold office during the transitional period; and
  - the Administrator and each Associate Administrator will continue to have the same functions and powers under the old law during the transitional period.

### Item 23 - Delegation by Minister

102. Item 23 provides that any instrument of delegation in force under section 23 of the Motor Vehicle Standards Act will continue in force during the transitional period, provided it was in force prior to commencement.

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103. Item 23 also allows:

- for any instrument of delegation under 62 of the Motor Vehicle Standards Regulation 1989 that is in force prior to commencement of this Bill to continue to be in force during the transitional period; and
- allows the Minister, by signed instrument, to delegate to the Administrator or an Associate Administrator during the transitional period:
  - functions or powers allowed by section 23 of the Motor Vehicle Standards Act; or
  - all or any of the Minister functions or powers under the Motor Vehicle Standards Regulations 1989; or
  - all or any of the Minister's functions or powers under this Schedule, other than item 29.

## Item 24 - Fees

104. Item 24 provides that, despite the repeal of the Motor Vehicle Standards Act, section 24 of the Motor Vehicle Standards Act and Part 6 and Schedule 2 of the Motor Vehicle Standards Regulations 1989 will continue in force during the transitional period. This means that the fees that are payable in relation to applications or decisions made under the old law continue to apply during the transitional period.

## Item 25 - Compliance and enforcement

105. Item 25 provides that Divisions 2 to 4 and 6 of Part 4 of the Road Vehicle Standards Bill will apply to the old law during the transitional period. Divisions 2 to 4 of the Road Vehicle Standards Bill provide for the appointment of inspectors, and for the application of monitoring powers under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* and investigating powers under Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* to provisions of the former Act. This item has the effect that the monitoring and investigating powers that may be exercised under the Road Vehicle Standards Bill may also be exercised in relation to compliance with the old law and this Schedule.

## **Part 8 – Court Proceedings**

### Item 26 - Evidentiary certificates

106. Item 26 provides that section 34 of the Motor Vehicle Standards Act continues to apply during the transitional period, despite the repeal of the Motor Vehicle Standards Act.
107. Section 34 of the Motor Vehicle Standards Act facilitates the prosecution of offences found under sections 14, 15, 16 or 19. If prosecution is instituted for these offences, then the Minister or an authorised person may give a certificate as to any conditions imposed by the Minister in originally giving permission. The certificate is to be prima facie evidence of the facts stated in it.

### Item 27 - Legal proceedings not to lie

108. Items 27 provides that section 37 of the Motor Vehicle Standards Act will continue in force during the transitional period. The effect of this provision is that no action or other



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proceeding will lie against the Commonwealth in respect of any loss incurred, or any damage suffered, because of:

- an identification plate or a used import plate; or
- any test carried out under the Motor Vehicle Standards Act, or the regulations or determinations under that Act; or
- any express statement, or any statement or action implying, that a road vehicle or a vehicle component complied with a national standard.

## **Part 9 – Miscellaneous**

### Item 28 - Approved forms

109. Item 28 empowers the Secretary to approve, in writing, a form for the purposes of an item of Schedule 2 of this Bill.

### Item 29 - Transitional rules

110. Subitem 29(1) empowers the Minister to make rules prescribing matters of a transitional nature relating to:

- The amendments or repeals made by this Bill; or
- The enactment of this Bill or the Road Vehicles Standards Bill 2017.

111. The rules cannot provide for any of the following:

- create an offence or civil penalty;
- provide powers of arrest or detention; or entry search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund; or
- directly amend the text of this Bill.

112. The intention of this item is to enable the Minister to utilise the power to make Rules to address unforeseen issues that may arise during the transitional period.

## **SCHEDULE 4 - CONSEQUENTIAL AMENDMENTS**

### **Part 1 – Amendments commencing day after Royal Assent**

#### ***Age Discrimination Act 2004***

##### Item 1 - Schedule 1 (after table item 41)

113. This amendment to the *Age Discrimination Act 2004* is required because one of the eligibility criteria for people applying to become a Registered Automotive Workshop is the requirement to be over 18 years of age. The table in Schedule 1 of the *Age Discrimination Act 2004* lists laws for which an exemption is provided by subsection 39(1) of that Act.

114. Without Rules made under the Road Vehicle Standards Bill being added to the table in Schedule 1, it would be unlawful under the Age Discrimination Act to place a restriction on the persons who wish to apply for an approval to become a Registered Automotive Workshop being 18 years or older.

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## Part 2 – Amendments commencing at beginning of transitional period

### *A New Tax System (Luxury Car Tax) Act 1999*

#### Item 2 - Subsection 25-1(4)

115. This amendment is Subsection 25-1(4) of *A New Tax System (Luxury Car Tax) Act 1999*, which removes “vehicle standards in force under section 7 of the *Motor Vehicle Standards Act 1989*” and replaces it with “road vehicle standards in force under section 11 of the *Road Vehicle Standards Act 2017*”. This ensures that subsection 25-1(4) of the *A New Tax System (Luxury Car Tax) Act 1999* continues to operate by referring to the appropriate vehicle standards following the repeal of the *Motor Vehicle Standards Act*.

### *Customs Act 1901*

#### Item 3 - At the end of subsection 229(1A)

116. This amendment adds the words “or the *Road Vehicle Standards Act 2017*” to subsection 229(1A) of the *Customs Act 1901*. Subsection 229(1A) states that goods are not forfeited to the Crown due to them being imported or exported in contravention of the *Motor Vehicle Standards Act 1989*, and to be added, the *Road Vehicle Standards Bill 2017*. The amendment is required for the continued operation of subsection 229(1A) of the *Customs Act 1901*.

### *Fuel Tax Act 2006*

#### Item 4 - Section 110-5 (definition of Transport Minister)

117. This item amends the *Fuel Tax Act 2006* by removing a reference to the *Motor Vehicle Standards Act* following the repeal of this Act and adding a reference to the *Road Vehicle Standards Act*. This ensures that a reference to the Transport Minister in the *Fuel Tax Act 2006* continues to apply to allow the Minister to exercise their powers under that Act.

### *Interstate Road Transport Act 1985*

#### Item 5 - Subsection 3(1) (at the end of the definition of compliance plate)

118. This amendment to the *Interstate Road Transport Act 1985* adds a reference to this Bill to the definition of “compliance plate”. A reference to this Bill under the definition of compliance plate is necessary to ensure that there is no ambiguities during the transitional period.

#### Item 6 - Subsection 3(1) (paragraph (a) of the definition of MRC)

119. This provision makes an amendment to the definition of Mass Rating for Charging (MRC). This amendment is required so that calculation of the MRC can be conducted for road vehicles that have a compliance plate under the *Motor Vehicle Standards Act* and for road vehicles without a compliance plate.

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## Item 7 - Subsection 3(1) (after paragraph (a) of the definition of MRC)

120. This is amendment to the definition of MRC to include a reference to the Register of Approved Vehicles. More specifically, this amendment outlines how the MRC under the Road Vehicle Standards Bill is the maximum mass of the vehicle as recorded on the Register of Approved Vehicles, including any load.

## Item 8 - Subsection 3(1) (paragraph (b) of the definition of MRC)

121. This amendment omits “in relation to a vehicle for which there is no compliance plate” and substitutes “if the vehicle has no compliance plate and is not entered on the RAV”. This ensures that in a situation where neither a compliance plate nor an entry on the Register of Approved Vehicles that the vehicle’s operating mass can be used to determine Mass Rating for Charging, consistent with the current operation of the *Interstate Road Transport Act 1985*.

## Item 9 - Subsection 3(1)

122. This amendment inserts into the *Interstate Road Transport Act 1985* that any reference to the Register of Approved Vehicles (RAV) as having the same meaning in the Road Vehicle Standards Bill. The inclusion of this amendment is to ensure consistency across the two Acts when the Register of Approved Vehicles is referenced.

## ***Interstate Road Transport Charge Act 1985***

### Item 10 - Section 3A (at the end of the definition of compliance plate)

123. This item amends the *Interstate Road Transport Charge Act 1985* to include a reference to this Bill. This reference ensures that compliance plates issued or used during transition are taken to be compliance plates for the purpose of the *Interstate Road Transport Charge Act 1985*.

### Item 11-13 - Section 3A (paragraph (a) of the definition of MRC)

124. Items 11 to 13 are similar to items 6-8 outlined above to the *Interstate Road Transport Act 1985* in relation to MRC definition.
125. Item 11 makes amendments to the definition of MRC if the vehicle has a compliance plate.
126. Item 12 sets out that if a vehicle is entered onto the RAV, the MRC is the maximum mass of the vehicle, including any load, as recorded on the RAV.
127. Item 13 makes amendment to the current definition in relation to vehicle which has no compliance plate to also include likely circumstances where such a vehicle will not be entered onto the RAV.
128. Overall, the intention of items 11 to 13 is to that the MRC definition covers all of the possible circumstances where MRC needs to be calculated, as in:
- A road vehicle has a compliance plate – requirement under the Motor Vehicle Standards Act and this Bill;
  - A road vehicle is entered onto the RAV – requirement for road vehicles imported into Australia under a RAV entry import approval under the Road Vehicle Standards Act 2017; and
  - A road vehicle has no compliance plate and is not on the RAV.

# EXPOSURE DRAFT

## ***National Environment Protection Council Act 1994***

### **Item 14 - Paragraph 14(2)(b)**

129. Section 14(2)(b) of the *National Environment Protection Council Act 1994* specifically mentions the *Motor Vehicle Standards Act 1989*. To ensure the continued operation of this section, item 14 of this Bill inserts “*Road Vehicle Standards Act 2017*” and removes mention of the “*Motor Vehicle Standards Act 1989*”.

## ***Trans-Tasman Mutual Recognition Act 1997***

### **Item 15 - Clause 3 of Part 2 of Schedule 2 (at the end of the table dealing with road vehicles)**

130. This item adds “*Road Vehicle Standards Act 2017*” to the list of laws that are exempt from the operation of the *Trans-Tasman Mutual Recognition Act 1997*. This continues the Government’s existing policy – the *Motor Vehicle Standards Act* is currently included in this Act. It is not intended that this addition will expand the scope of the existing exemption.

## **Part 3 – Amendments commencing at end of transitional period**

## ***Age Discrimination Act 2004***

### **Item 16 - Schedule 1 (table item 31)**

131. At the conclusion of the transitional period, Schedule 1, table item 31 that refers to the *Motor Vehicle Standards Regulations 1989* will be repealed.

## ***Customs Act 1901***

### **Item 17 - Subsection 229(1A)**

132. At the conclusion of the transitional period, Subsection 229(1A) will omit reference to “*Motor Vehicle Standards Act 1989* or the”.

## ***Trans-Tasman Mutual Recognition Act 1997***

### **Item 18 - Clause 3 of Part 2 of Schedule 2 (table item dealing with road vehicles)**

133. At the end of the transitional period, reference to the *Motor Vehicle Standards Act 1989* will be omitted from Clause 3, Part 2 of Schedule 2 of the *Trans-Tasman Mutual Recognition Act 1997*.