

Submission to: Department of Infrastructure and Regional Development

Title: 2014 Review of the *Motor Vehicle Standards Act 1989* -
Options Discussion Paper

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Contents

1. Introduction	3
2. Australian Trucking Association	3
3. Recommendations.....	3
4. ATA Position	4
5. Responses to Options Paper Discussion Questions	4

1. Introduction

The *Motor Vehicle Standards Act 1989* (MVSA) sets a minimum standard for safety (and for related matters such as vehicle emissions) so that a new or used motor vehicle may enter the Australian market.

The Act prevents the importation of used vehicles unless they meet standards of safety equivalent to the Australian Design Rules (ADR). The Act provides the regulatory framework to control supply and importation of heavy vehicles into Australia. The law also covers both domestic and international vehicle manufacturing and vehicle providers, thus in this instance regulation can achieve strict compliance with appropriate administration.

The MVSA establishes national uniformity for ADR applications and prevents inconsistent state legislation. This is a vast improvement on the past of myriad rules; inspections, approvals and certification regimes in each jurisdiction.

In June 2013, the ATA submission in the first consultation round for this review noted that since its introduction in 1989, the Act appears to have been effective in ensuring vehicles that are inferior in design or build quality do not enter the market for later use on public roads.

However, in its submission, the ATA also recommended:

Recommendation 4

A technical refinement exercise be undertaken on the MVSA in conjunction with industry stakeholders.

At present, the MVSA features a preponderance of advice for the light vehicle sector (especially cars) but not for the commercial vehicle sector (especially not for transport businesses).

This submission presents some technical refinements, principles and recommendations in response to the Discussion Paper questions rather than proposing any fundamental changes to the MVSA under the review.

2. Australian Trucking Association

The Australian Trucking Association (ATA) is the peak body that represents the trucking industry. Its members include state and sector-based trucking associations, some of the nation's largest transport companies, and businesses with leading expertise in truck technology.

3. Recommendations

Recommendation 1

That Australia should retain its existing ADR system for heavy vehicles.

Recommendation 2

That the Government retain and/or strengthen the risk-based approach to heavy vehicle standards reflected in the Motor Vehicle Standards Act 1989.

Recommendation 3

That Australia should retain a central regulatory facilitator of vehicle safety standards to ensure current standards encourage broader acceptance of international standards and to achieve greater transparency of process.

Recommendation 4

That, in addition to consideration of suitable UN regulations, Australia should remain open to possible adoption of other appropriate vehicle standards wherever they may emerge around the world.

Recommendation 5

That changes to the MVSA and/or the ADR do not seek to constrain in-service modifications and that modifications warranting ongoing compliance assurance are undertaken by a suitable engineering signatory.

Recommendation 6

That, absent any compelling and immediate safety concern, any change to the regulatory framework should permit a grace period for industry adoption not less than twelve months for new models, and not less than six months for existing models, from the date new amendments enter into force.

4. ATA position

The ATA supports national legislation that delivers transparent vehicle standards, regulatory consistency and procedural fairness for all Australians under the law.

The ATA supports the current Act’s objectives to improve the safety, environmental performance and security of road vehicles, including trucks, and suggests that it is¹ a vital policy instrument for achieving those ends.

The ATA also supports the MVSA’s achievements since 1989 in delivering safety improvements in new and second-hand vehicles. For example, the introduction of front underrun suspensions systems and the presence of anti-lock braking systems are now widespread or standard features in the market.

In the future, the industry anticipates electronic braking safety technology to become standard for all dangerous goods vehicles and then lead to its widespread use in other vehicles. The ATA is campaigning for this.

Australia has unique operating conditions for heavy vehicles and allows innovative and safe vehicle combinations such as B-doubles, B-triples and road trains.

Australian truck operating practices also differ in important respects to those overseas.

As a result, Australia must retain its existing ADR system for heavy vehicles. It can be useful and productive to align those ADR with UN regulations, but in some cases it will not be appropriate. For example, in the case of ADR 38/04 which assumes vehicle parking practices by drivers that cannot be assumed for Australia.

Recommendation 1

That Australia should retain its existing ADR system for heavy vehicles.

5. Responses to Options Paper Discussion Questions

At present, the largest hurdle (in heavy vehicle compliance terms) is the timeliness of technical reviews. As federal law controls the legislative framework at present, the Australian Government is the appropriate jurisdiction to alter the administrative process and/or amend the law.

The broad principles and objectives of the MVSA 1989 still appear sound and do not seem to need substantial revision. A set of suggested refinements and recommendations are provided below in response to relevant Options Discussion Paper questions:

5. Is there a problem?

The trucking industry has few concerns with the MVSA overall, other than if the risk-based policy approach reflected in the current MVSA is ultimately abandoned or weakened through this review [see also [Q. 7-1](#)].

¹ Although thanks to effective anti-theft devices, one of the Act’s objects -vehicle security is less critical than when it was introduced in 1989.

Any argument for the repeal of the MVSA is weak as it will prove highly counter-productive to truck safety and compliance efforts and costs. Australia, as a taker of global technology can little afford the prospect of different motor vehicle standards applied in contiguous jurisdictions. Such a situation would involve a long set of requirements applied *ad hoc* across the nation.

The law's safety objectives must also not be curtailed for consumer benefit alone. The MVSA is about minimum safety standards. This does not include the treatment of in-service vehicle modifications, which are the domain of the national regulator and states and territories. Although options for alternative entry paths may be desirable for vehicle enthusiasts, similar standards to those required from the mainstream fleet must be kept, and importing parties should meet full cost recovery for administrative services received.

The MVSA addresses non-compliant road vehicles operated for special oversize and over-mass tasks under permit and notices from the National Heavy Vehicle Regulator (NHVR) on advice from state and territory road agencies. The MVSA should not be expected to authorise alternative vehicles that do not meet safety standards for road vehicles. Such vehicles should be addressed in combination of customs law, state road transport law and trade practices law.

The MVSA is not about adopting another jurisdiction's technical or regulatory solution. Australia already has proven policy capacity to lead the world (e.g. with seatbelt standards in the sixties) and in 2014, it leads global developments in pole side impact testing and standards². Australia also leads globally in operational practices through its use of highly productive, multi-combination freight vehicles and the Act recognises this already.

Recommendation 2

That the Government retain and/or strengthen the risk-based approach to heavy vehicle standards reflected in the Motor Vehicle Standards Act.

Q. 5.1 Have the problems with the current situation been reflected accurately and are there other problems that should be addressed?

The loss of light vehicle manufacturing in Australia will increase pressure on lawmakers to avoid devising unique vehicle regulatory standards for Australia. This is a good policy outcome.

However, if current pressures on local manufacturers continue, Australia is also at risk of losing heavy motor vehicle manufacturing capacity. The MVSA review doesn't adequately address heavy vehicle issues (either prime mover/truck or prime movers) because to some degree the market will continue to include local manufacturing.

Operator feedback also suggests that compliance enforcement on heavy trailers usually fails to address safety critical items that are key to being considered roadworthy, while placing too much emphasis on trivial aspects. For example, the ATA is yet to see formal accident reports attributing heavy vehicle crashes to a 'faded' light or a poorly positioned mandatory lamp.

7. What policy options could be considered?

Off-road vehicles may require safety regulations in future but these should be addressed in other laws so that the Act's safety objectives, as well as mainstream traffic flows in Australia, are not compromised.

Q. 7-1 What are the benefits or costs of refining the risk based approach to the regulation of vehicles entering the Australia market?

In line with the comment above, one issue raised by the ATA in its 2013 MVSA submission is treatment of imported off-road motorbikes and all terrain vehicles (ATV) aka quad bikes.

² To mitigate a crash outcome thought to account for at least 10 per cent of deaths and an even higher percentage of serious permanent injury.

If made ADR-compliant, such vehicles would be 'suitable' for on-road use - a very undesirable policy outcome. It may be better to use other rules that set minimum safety standards but also clearly disallow on-road use. This would give some comfort to the trucking industry as it already shares the road with vulnerable vehicles such as scooters and motorcycles. Where such regulations would ultimately rest, e.g. in consumer law, in MVSA or another legislative framework would need consideration.

Q. 7-2 What arguments support little or no change to the legislation?

The foundations of the Act appear sound and thus do not appear to demand substantial revision. The MVSA advances safety while respecting the interests of both automotive importers and the local automotive industry but giving preference to neither.

Australia is broadly an importer of automotive technologies, hence it has a practical need to cater for and adopt into domestic policy broader international standards. Such standards³ need to be grouped as alternative standards to UN regulations incorporating any exceptions (e.g. specifications for the colour of indicators).

Section 3a of the MVSA achieves uniform standards for new vehicles. It reduces the regulatory burden for the automotive industry associated with complying with ADRs whereas vehicle standards were previously handled differently in each state. The Act also provides a national mechanism to meet international treaty obligations.

Part 2 provides legislative authority for a system of vehicle design standards (ADR). The Act allows implementation of the UN regulations to provide alternative standards. Specific ADRs have been applied under the UN 1958 agreement. Further harmonisation with international design rules (if not in conflict with ADRs) will promote further improvements in manufacturing efficiency and give consumers confidence that the vehicles they have purchased meet a certain level of safety and emissions.

Since the vast bulk of ADR already align with UN regulations, there are also clear benefits for Australia in complying with international criteria. Where Australia has needed to retain unique local requirements such as 'modularity' these departures from the international norm have been carefully justified, usually reflecting our unique operating landscape (e.g. ensuring vehicle components are adequately rated for multi-combination use as appropriate).

Q. 7-3 Does a case still exist for Australian Government intervention in vehicle standards?

Yes. Australia should retain a single regulatory facilitator of vehicle safety standards to ensure the standards facilitate broader acceptance of international standards⁴ along with greater transparency of process.

Reductions in deaths and serious injuries from Australian road crashes since the eighties despite an increasing freight task are not merely the consequences of (MVSA) regulation. Improvements in road infrastructure quality, vehicle design and other technologies⁵ have all played major roles in decades of continuous improvements to heavy vehicle safety.

The legislation also caters for the fact that occasionally the industry must use non-compliant road vehicles for sensitive freight tasks involving oversize and/or over-mass or other special loads under strict operating conditions set by road authorities. Accordingly, such heavy vehicles must also be allowed to enter the Australian market, based on the formal advice of the national regulator operational permits will be issued.

Dealing with requests for access to the road network for alternative vehicles⁶ where safety may be sub-standard and below minimum requirements in the MVSA ADR system lies outside the scope of the MVSA since these are fringe vehicles that should not gain easy entry to the Australian market for on-road use.

³ Including but not only [FMVSS SAE JIS](#).

⁴ Including [FMVSS SAE JIS](#) etc.

⁵ Such as NHV or noise handling vibration technology.

⁶ Such as pedestrian devices, disability devices and low emissions vehicles without appropriate safety features.

Recommendation 3

That Australia should retain a central regulatory facilitator of vehicle safety standards to ensure current standards encourage broader acceptance of international standards and to achieve greater transparency of process.

Q. 7-4 Could the Australian Vehicle Standards Rules [AVSR] be used as an alternative to the national standards? If so, what would be the necessary approach to minimise the regulatory burden, industry compliance costs and inconsistent application across states and territories?

AVSR is model law imported by state legislatures from the NTC and largely reflect ADR content. The ADR are, however, nationally subject to analysis of the anticipated regulatory impact through a formal RIS process, whereas jurisdiction-specific regulations are developed and the NTC's model AVSR law imported by a given state or territory and approved under their applicable legislative processes.

The MVSA is primary legislation that speaks to minimum safety levels for mainstream road vehicles that form the majority in the market and the majority of traffic on Australian roads, while acknowledging various vehicle types are not true road vehicles (e.g. tractors, plant and agricultural machinery) but nevertheless require ad hoc or limited road network access. This special form of access is managed by states and territories through restricted/conditional registration permits.

States have also acted independently of the ADR process, for example through their agreement to include *Rear Marker Plates* in vehicle standards a move which could not be justified in an ADR regulatory impact statement. Separately, Victoria has acted to impose a mandate of ESC on smaller light vehicles in advance of the ADR.

Q. 7-5 Are there non-regulatory ways of achieving the same policy objectives of road safety, environment, security, and adequate consumer choice?

There are non-regulatory and regulatory ways to achieve policy objectives and some approaches produce better outcomes than others. However, whether the administrative approach is through light-touch regulation or a coercive mandate, there should be consistency across Australia in terms of its requirements.

Industry's preferred way to achieve safety policy objectives nationally is through a single regulator directed by legislation to conduct regulatory impact statements and cost benefit analyses. Regulation in this area needs to have its primary focus on existing international standards, specifically avoiding re-inventing the wheel domestically.

Q. 7-6 What other legislative 'fixes' to the Act do you consider necessary?

In the Options paper, Figure. 1 (p11) provides inconclusive information in that it seems to refer to motor vehicles *per se*, but not, for example, the percentage of vehicle units that are heavy trailers.

Q. 7-7 What examples of duplication between the Act and other key pieces of legislation could potentially be removed?

The review could mandate removal of content that is neither prescriptive nor requires a performance outcome. An example of what can be removed are 'fuzzy' requirements contained in ADR 42/04 Clause 12.1).

Q. 7-8 In what areas do you consider the Act's compliance processes and enforcement powers could be better targeted to the risks? And what additional or alternative enforcement or compliance activities would you consider as effective and efficient?

Identification and management of Risk: Eradicate petty delays in the compliance administration process.

Brake Safety Risk: UN braking regulations permit combinations to be 'parked' on the service brake and yet mechanical parking brakes are not mandatory on trailers. This is a high-risk recommended practice for Australia's heavy vehicle fleet and so the road transport industry supports and requires a very specific adjustment to commercial vehicle braking system design requirements.

Q. 7-9 Are the provisions in the Regulatory Powers (Standard Provisions) Act 2014 a suitable alternative? Or are there issues that are unique to the industry that will not be addressed through the use of provisions contained in this Act?

Frequent comments are made about the uniqueness of the Australian heavy vehicle fleet and in operational terms this is particularly accurate.

However, the MVSA as a framework, only addresses individual vehicle units not combinations. Units are then designed and manufactured to be fit-for-purpose whilst complying with the relevant standards but not directly in relation to their safe use in multiple configurations.

Q. 7-10 What regulatory services under the Act could be delivered through private sector or other organisations?

The leadership potential of Australia in the area of (heavy vehicle) road safety should remain unconstrained by the MVSA. Due to the dynamic nature of worldwide manufacture and innovation, the capacity for accepting simple or minor amendments and sensibly adjusting the rules to cope with new global circumstances as they arise is very important for this area of legislation.

For example, powered trailers are now in use in Australia but they are not currently envisaged in the definition of ‘trailer’ under the MVSA. Similarly, vehicle width limits are 2.6 metres globally. It is not sustainable for Australia to become more restrictive with its present 2.5 metre width limit. Hence, there is a desire for some technical refinements to the MVSA to be assessed on their individual merits for the impact on safety, compliance and regulatory oversight they may pose.

Q. 7-11 What regulatory mechanisms should be in place to ensure that motor vehicles are effectively recalled when safety concerns arise?

Regulatory mechanisms selected by policymakers should be underpinned by principles and a process that:

- Provides a platform that is readily accessible to the industry
- Reviews the safety risk concern – efficiently and in good time
- Advises the relevant supply chain parties and
- Informs the public

Q. 7-12 What costs and benefits do you see from providing a legislated role for the vehicle safety standards regulator in vehicle safety recalls?

If the risk is embraced by regulatory compliance and results in a non-compliance to the ‘standard’ then it is worthy of recall; including consideration of recall levels e.g.: low scale (1) thru high scale (5).

Q. 7-13 Are there any specific local requirements for light vehicles that would prevent full harmonisation with UN regulations for light vehicles?

Removing the ADR and replacing them with legislative reference to UN Regulations would result in bias towards European suppliers and would potentially result in other likely market suppliers (e.g. USA) being required to provide additional compliance certification, which at best is an anti-competitive result.

Unique Australian requirements: As mentioned earlier, the argument for the uniqueness of our motor vehicle market is strong for the heavy vehicle sector, where the nature of the Australian freight task is quite different to that of Europe, Japan and even the USA.

Such differences include axle loading (hence, braking capacities), multiple trailers (requiring unique coupling standards) and road infrastructure restrictions that constrain vehicle and trailer width.

The regulations refer to the ‘significantly different’ Australian heavy vehicle fleet yet the MVSA only addresses individual vehicle units. As noted above, these units are designed and manufactured to be individually fit for purpose whilst complying with the relevant standards.

Q. 7-14 How much business compliance cost savings could be made through the above options to harmonise Australian standards with the UN Regulations and the acceptance of evidence of compliance with those standards?

As a technology taker, Australian fleet/vehicle compliance costs are likely to reduce rather than rise through any adherence to, and harmonisation with, 'international standards'. However, Australia should abandon its modern bias toward, or dependency on, the United Nations approach alone and be open to new and refined vehicle standards wherever these may emerge in future around the world.

Recommendation 4

That, in addition to consideration of suitable UN regulations, Australia should remain open to possible adoption of other appropriate vehicle standards wherever they may emerge around the world.

Q. 7-15 Would there be any increased cost to consumers for a vehicle that complies with UN Regulations not required for Australian conditions (such as cold start) as opposed to the current hybrid compliance arrangement?

This is unlikely except where, as in some past situations, vehicles manufactured off-shore have incurred cost hikes so otherwise 'standard' safety items can be removed prior to delivery into the Australian market.

Q. 7-16 Is there benefit in providing for the approval of modules of design/assembly of a vehicle? How could this be done to ensure the certification is valid for a range of later added componentry and bodies?

Yes. From a global heavy vehicle industry perspective, the Australian trailer sub-assembly approval system is the envy of many of our international counterparts.

Q. 7-17 What risks would a regulatory framework need to address if barriers were reduced on vehicle imports?

In terms of risk, the MVSA framework should have a view to:

- protecting the 'level playing field' for vehicle stakeholders who have an important vested financial and commercial interests in stable, consistent rules
- preventing possible increases in performance risks for safety-related items
- clarifying the ownership of liabilities

Treatment of various sub-groupings in the framework could also be improved:

- For the specialist and enthusiast vehicles scheme, there is a need to identify and manage risk, re-assess the conditional registration system and consolidate concession scheme arrangements
- Reduce the barriers to the importation of second-hand quality vehicles and personally imported new vehicles. It seems reasonable to reduce barriers to importation of new and or second hand vehicles but there must continue to be 'obligations' on importers
- For individuals importing single units (new and used), these units must be compliant with the standards at the time of first registration; and, the individuals must commit to responsibility to issues potentially arising for safety recalls and/or identified safety issues
- For corporations, partnerships or individuals importing multiple vehicle units (new or used), the units again must be compliant with the standards at the time of first registration; and, the corporation, partnership, or individual should commit to certain responsibility and liability for issues potentially arising for safety recalls and/or identified safety issues.

Q. 7-18 What impact would second-hand vehicle imports and personal imports of new vehicles have on the automotive sector in the short, medium and long term?

This is difficult to gauge but industry expects a suitable level of control would be exerted over this situation via appropriate restrictions on vehicle age.

Q. 7-19 Could constraints around a vehicle's age and country of origin effectively manage the safety, environmental and theft risk to the community?

Yes, vehicle age together with compliance with vehicle standards should yield an effective result.

Q. 7-20 How can standards be used to affect the average age of the vehicle fleet and the distribution of the age profile?

In summary, standards should not affect the average age of fleets or distribution of age profile. 'In service roadworthiness' provides a better benchmark.

Q. 7-21 Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not?

No. It is unreasonable to expect local importers to offer warranty type protection for a personal import.

Q. 7-22 What impact would an increase in second hand imports and personally imported new cars have on the insurance industry?

The insurance industry will be asked to underwrite obscure vehicles some at lower price points and will no doubt gauge the inherent business risk and provide options for coverage accordingly. This is an ancillary or indirect issue for the MVSA review and should be out of scope.

Q. 7-23 How could the Government facilitate vehicle safety recalls for vehicles not imported by manufacturers?

Attention to vehicle safety should continue under this framework to impose an 'obligation' on importers

Individuals must commit to responsibility (through legal instrument) to any potential issues arising for safety recalls and/or identified safety issues. Whether corporations, partnerships, or individuals, there must be commitment to a level of responsibility (through the MVSA legal instrument) and potentially accept liability for issues arising from safety recalls and/or other identified safety-related matters.

Q. 7-24 Do you agree that the concessional options could be grouped into risk categories to allow the possible consolidation of the scheme? If so, do you agree with the model proposed in this review?

The model requires further refinements, e.g. the high risk category needs to be reviewed with a risk matrix.

Q. 7-25 In the event that barriers to the importation of quality second-hand vehicles are reduced, would there still be a need for the Register of Specialist and Enthusiast Vehicles?

Yes there is still a need inter alia for a Register to identify and manage risks; conditional registration.

The ATA believes the regulations implemented under the MVSA do not limit competition, do promote best practice in automotive design and allow motor vehicle enthusiasts to import safe on-road vehicles.

Further, the ADR do not constrain in-service modifications, provided that the process is risk-managed and modifications that warrant continued compliance assurance are undertaken by a suitable engineering signatory. The NHVR has further work to do in this area to address current disparities in signatory management practices by road agencies.

Recommendation 5

That changes to the MVSA and/or the ADR do not seek to constrain in-service modifications and that modifications warranting ongoing compliance assurance are undertaken by a suitable engineering signatory.

Q. 7-26 If the Register is still required, how could it be improved to increase standards and reduce regulatory burden?

Australian vehicles still need to meet international standards but more timely administrative services are requested by mainstream industry.

Concessional schemes (including the Registered Automotive Workshop scheme) allow for non-compliance of non-standard vehicles to be approved for importation. These concessions provide a legal way for people to import non-compliant vehicles. However, scheme users should pay the full cost of associated administration and enforcement activity, otherwise there will be cost transfers to other parties.

The 2001 MVSA amendments addressed market demand for low volume vehicles through the creation of a new approvals regime. The RAW scheme was updated to assist low volume manufacturers of new vehicles to comply with ADR and compete in the domestic market. The amended approval regime provides more oversight and ADR compliance than the previous system. The regulation also provides consumers with a network of services and spare parts, creating a responsible entity to conduct safety recalls and restrict the

scheme to legitimate vehicle converters. This amendment also increased allowable volumes of imported vehicles including both specialist and enthusiast vehicles.

Nevertheless, the RAW scheme is labour intensive for agencies and this has led to mainstream industry (including the heavy vehicle industry) becoming desperate to see the few ADR of concern updated and the backlog of issues resolved. A stronger focus on the core safety objectives of the MVSA could be achieved if second-hand vehicle importers supplying vehicles to satisfy enthusiasts attract fees matching full cost recovery under the MVSA.

Q. 7-27 Could the regulation of the Registered Automotive Workshops and the New Low Volume Manufacturers be combined under a new legislative framework (Figure 3)?

Yes, this option appears feasible.

Q. 8-1 Do you have any comment on the compliance cost assumptions?

New full volume costs featured in the options paper appear skewed, or at least influenced to some degree, by high volumes of some vehicles, and the '33,333 concessional imports' noted. This latter figure also seems too low.

Q. 9-1 What transitional arrangements, including length of notice period, should be put in place to assist businesses to adjust to potential changes in the regulatory framework?

The time period for notice should be not less than twelve months for new models, and not less than six months for existing models - from the date the new amendments enter into force.

Recommendation 6

That, absent any compelling and immediate safety concern⁷, any change to the regulatory framework should permit a grace period for industry adoption not less than twelve months for new models, and not less than six months for existing models, from the date new amendments enter into force.

⁷ Such as **ADR 38/04** and industry concern with trailer braking safety in Australia.