

Feedback for the Department of Infrastructure and Regional Development's review of the *Motor Vehicle Standards Act 1989* (MVSA)

Provided by:

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in consultation with:

Motor Trade Association of WA

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1. General Comments on the options listed in the review

Option 1: Do Nothing

As outlined in the options discussion paper, the main objectives of the *Motor Vehicle Standards Act 1989* (MVSA) concern community safety, consumer protection and competition issues. Although the current MVSA and the associated regulations and standards have mostly served these objectives adequately until now, there are a number of areas where improvements could be made. In general, these areas involve the scope and completeness on the vehicle standards established under the MVSA (ie: the *Australian Design Rules* - ADRs), as well as the effectiveness of the powers provided under the MVSA to assure compliance with these standards; however, more detail will be provided further on in these comments, in relation to suggestions for modernising and strengthening the Act.

Closely related to these existing areas for improvement, there are a number of issues which are becoming increasingly significant, to the extent that they are "outstripping" the ability of the existing MVSA to deal with them. These issues include:

- alternative vehicles and the current lack of standards for regulating the manufacture, importation and use of these vehicles;
- growth of the low volume markets for individually constructed vehicles (ICVs) and low-volume manufactured vehicles (including replicas);
- the rapid rate of technological innovation in vehicle equipment and aftermarket accessories, with complex and unforeseen effects on compliance with other vehicle standards and safety in general;

If the current system is maintained and nothing is done to improve the effectiveness of regulation, it appears likely that the above problems will only get worse over time. Therefore, it is believed that the "do nothing" option is not viable.

Option 2: Repeal the Legislation

The repeal of the MVSA would lead to the total deregulation of vehicle manufacture and importation in Australia. In regard to this option, the main concern is that the importation of vehicles into Australia, if deregulated, could

lead to a substantial degradation of the quality and safety of the Australian vehicle fleet.

It should also be noted that, in the absence of the required standards at a federal level, there will be a tendency to incorporate them into legislation at a State and Territory level; this is likely to lead to significant non-consistencies in the standards between individual State and Territory jurisdictions, with consequent increases in the cost of compliance to industry.

Because of these concerns, the repeal of the MVSA is not seen as a viable option.

Option 3: Modernise the Act / Option 4: Strengthen the Act

As mentioned in the response to Option 1, there are a number of areas where the MVSA and associated regulations and standards could be modernised or strengthened in order to more effectively meet the objectives relating to community safety, consumer protection and competition issues. It is therefore recommended that consideration be given to implementing the following changes:

Completeness of safety standards under the MVSA

As the ADRs were designed to guide the conformity of high volume manufactured vehicles, they are by no means a complete standard. As such, it is possible to build a vehicle which is unsafe, even though it complies with all relevant ADRs.

This is generally not of concern in the case of high volume manufactured vehicles, as the manufacturers of these vehicles have a worldwide market, a large business liability and substantial product development resources. However, it can be of concern in the case of low volume manufacturers and importers, who may be less likely and less able to conform with the prescriptive ADR requirements, let alone the “unwritten” good safety and engineering practices in design, construction and modification.

It is therefore suggested that consideration be given to an overarching ADR standard for safety and roadworthiness. The requirements in this standard may be performance based and / or linked to requirements in Vehicle Standards Bulletin 6 (VSB 6) and Vehicle Standards Bulletin 14 (VSB 14) - the national codes of practice for the modification of heavy and light vehicles, respectively.

Personally Imported Vehicles

Currently, personally imported vehicles are exempt from most ADR requirements at the federal level. However, State or Territory jurisdictions may subsequently refuse to license one of these vehicles if it does not meet one or more requirements in the jurisdiction's in-service vehicle standards regulations. Unfortunately, the owners of these vehicles are often unaware of the differences between federal and State / Territory requirements. The literature on the federal website states that these vehicles need to comply with

State / Territory requirements, but in some instances this is not adequately heeded by the owners, who appear to be making the very reasonable assumption that the importation and in-service vehicle standards requirements will be in agreement.

It is highly desirable to align importation and in-service requirements, in order to stop the importation of these non-compliant vehicles, as well as the consequent financial losses to the owners who are unable to license them. Therefore, it is recommended that federal and State / Territory jurisdictions agree on a single set of requirements to be applied to all personal imports as a condition of both importation and licensing. This set of requirements would need to include critical dimensional requirements (especially width), as well as other crucial safety aspects, such as lighting.

Light Trailer Compliance

Under the current system, the responsibility for assuring light trailer compliance is effectively delegated to the State and Territory authorities. This strategy does not appear to be working, as the compliance rate of light trailers with ADR requirements appears to be gradually deteriorating. The problem seems especially prominent in imported trailers; especially boat trailers, which regularly exceed the 2.5m width limit. It is understood that, in many cases, imported trailers not complying with the requirements are allowed to be imported, as they “can be made to comply”. The problem is then passed on to State and Territory authorities, which need to detect the non-compliance in their inspection processes (if any) before the owner can be required to rectify the problem.

The main difficulty in addressing light trailer compliance issues is finding the resources to deal with the high volume of units manufactured and imported. Bearing this in mind, it is recommended that resource-efficient means of dealing with this problem be considered. This could include measures that focus on assuring compliance for the relatively higher volume manufacturers and importers, in the same way that high volume manufacturers and importers of motor vehicles are subject to more stringent evidentiary requirements than those in low volume schemes.

Off-road Vehicles

At present, the MVSA only enables the setting of vehicle standards for road vehicles. The increasing range and numbers of non-compliant “off-road” vehicles, such as Segways, power assisted cycles ATVs, quad bikes, non-compliant motor cycles, etc. is placing increasing pressure on the State and Territory systems for regulating vehicle standards compliance. These vehicles are allowed to be imported as “off-road” vehicles; however in some cases they subsequently find their way onto public infrastructure, either through unlawful use or local political processes.

If the MVSA allowed the setting of standards for off-road vehicles, it is believed that this would allow some measure of control over the compliance of the off-road vehicles that are being imported. In addition, it may encourage the prospective importers to source vehicles that comply with these standards.

Therefore, it is recommended that the scope of powers under the MVSA be expanded to allow the setting of vehicle standards requirements for off-road vehicles. This would only require the deletion of the word “road” from section 7 of the MVSA. It is acknowledged that specific proposals for the regulation of off road vehicles would need to be subject to a regulatory impact statement and cost benefit analysis.

Individually Constructed Vehicles (ICVs)

At present, the responsibility for compliance of ICVs rests with State and Territory jurisdictions. The vehicle standards evidentiary requirements for ICVs are less stringent than the requirements under the federal low volume manufacture schemes; this provides an incentive for some low volume manufacturers to masquerade their products as ICVs by pretending that the customers are the builders of the vehicles. The practice most commonly occurs with low volume replica motorcycles.

As such, the current system is providing an opportunity for some low volume manufacturers to fraudulently avoid the appropriate vehicle standards evidentiary requirements and gain an unfair advantage over other industry members. To address this issue, it is recommended that ICVs be brought under the federal low volume schemes and that builders of ICVs be subject to a rigorous process to show that they are the true manufacturer of the vehicle.

Option 5: Harmonise Australian standards with international standards

The harmonisation of Australian vehicle standards with international standards is desirable from the perspective of reducing the costs of regulation on vehicle importers. Three options were presented in the Options Discussion Paper:

- A. Mandate UN regulations in entirety, with no additional Australian requirements
- B. Mandate UN regulations in entirety, with the capacity to allow exemptions or set additional requirements for Australia
- C. Maintain current practice – increasingly amend the ADRs to harmonise with UN regulations

Of the above options, option B is seen as the most preferred for the following reasons:

- Option A is not seen as viable, as it would remove Australia’s ability to introduce additional vehicle standards requirements, or variations on the UN requirements, to suit Australian conditions. The mandating of UN standards would also have a substantial effect on certain categories of aftermarket automotive equipment, such as bull bars.
- Of the remaining options, option B is preferable to option C (status quo) because it presents a simpler and clearer regulatory environment for vehicle importers and manufacturers.

However, it is recommended that a further option be considered:

D. Maintain the Australian ADRs, but also accept compliance with UN regulations (and possibly the US FMVSS or other international standards).

This option is seen as preferable to option B because:

- International manufacturers would not have to separately prove compliance with an Australian set of requirements (albeit one similar to UN requirements in most respects) – they would only need to provide the original proof of compliance with the UN regulations in order to gain approval for sale in the Australian market.
- Changes in the UN regulations would immediately become available to the Australian regulatory environment, without the need for Department for Infrastructure and Regional Development (DIRD) to implement them into the Australian standards (although this may be seen in a negative light, as a loss of control).
- If appropriate, other international standards (such as the US Federal Motor Vehicle Safety Standards or the Canadian Motor Vehicle Safety Standards) can be recognised in this scheme without having to amend the Australian standards.

Option 6: Streamline new vehicle certification

Any initiative to streamline new vehicle certification could be beneficial in reducing the costs of compliance, resulting in lower prices for vehicles. However, this benefit would need to be weighed against any other potential effects on the industry as a whole. For example, certain initiatives may provide significant benefits for only a segment of the industry (eg: high volume imports, as opposed to low volume schemes) and thereby affect the viability of other industry segments.

The adoption of option D from the previous section (Harmonisation of Australian Standards) would provide significant benefits in streamlining compliance requirements.

Option 7: Reduce barriers to the personal importation of vehicles

In any reduction of the current barriers to the personal importation of vehicles, there are a number of potential risks:

- deterioration of the safety of the vehicle fleet, due to a significant increase in personally imported vehicles that do not have to satisfy the same standards and safety requirements as vehicles imported under commercial schemes;
- deterioration in the current consumer protections / warranties offered by dealers, due to a reduction in market share and consequent loss of profitability for dealers (some of whom may even cease to trade in Australia);

- an increase in individual consumer issues, due to the higher rate of importation of vehicles which are not manufactured for Australian conditions and not supported by Australian dealers;
- loss of reputation for vehicle brands, due to the importation of vehicles designed and equipped for overseas markets and not suited to Australian conditions;
- a clash with in-service vehicle standards requirements, resulting in vehicles which are allowed to be imported at a federal level (as they meet the basic set of standards for personal imports), but cannot be licensed as they are non-compliant with the in-service standards of the States and Territories.

Consequently, before any reduction in the current barriers to personal importation can occur, it is essential that measures be implemented to address all of these risks. In particular, it will be necessary to develop a set of vehicle standards requirements which, as a condition for the approval of personal imports at a federal level, will ensure that these vehicles meet in-service requirements and can be licensed.

In addition, any expansion of personal imports would need to be accompanied by the provision of sufficient advisory material on the DIRD website (and possibly a Vehicle Standards Bulletin) to guide personal importers.

Option 8: Reduce / consolidate concessional arrangements

The proposal for the “Consolidation of existing schemes”, as provided in diagram 3 of the Options Discussion Paper, seems to be logical means of grouping and rationalising the various concessional schemes according to risk.

However, in grouping the “non-road” vehicles together in the proposed Scheme 2 and handling them “en masse”, care must be taken to ensure that certain types of non-compliant vehicle do not slip through the system and end up on public roads. In addition, the federal regulations underlying the prohibition of road access, as a condition of importation, must be strong enough to ensure compliance with this condition. Similar comments apply to the proposed “Scheme 3”, for “limited access and special purpose” vehicles.

The following comments apply specifically to the *Registered Automotive Workshop Scheme (RAWS)*

Due to current profitability issues for RAWS, industry members are proposing an expansion of the Specialist and Enthusiast Vehicle Scheme (SEVS) register, in the belief that this will enable them to supply a more diverse market. Two issues could arise from this proposal:

- Expanding the range of allowable vehicles under SEVS could substantially increase the amount of RAWS vehicles imported per year. This could raise criticism from the major manufacturers and importers, as occurred at the time RAWS was introduced.

- Most vehicles released into the Australian market are specifically configured for Australian conditions and in some cases a vehicle built for another market may not be entirely suitable. Such vehicles may be more susceptible to certain problems such as overheating and premature failure of components.

However, despite these potential issues, an expansion of SEVS would not be opposed, provided that:

- the above issues are monitored to see if they become a problem requiring ameliorative action; and
- arrangements are made, at a federal level, to provide the additional auditing resources necessitated by the expanded range of models.

2. Specific answers to the discussion paper questions

5. Is there a problem?

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

As a general comment, the Paper has accurately reflected most of the problems with the current situation. However, one issue which does not appear to have been considered in the paper is the completeness of the standards established under the Act. These standards (the Australian Design Rules – ADRs) are incomplete as specifications to ensure the safety of the vehicle; which is evident in the fact that a vehicle can be manufactured to meet the relevant ADR requirements in all respects, but still be inherently unsafe.

Although the ADRs adequately perform their intended functions for high volume manufacturers and importers, the problems associated with their lack of completeness arise due to the fact that they are put to a number of other uses by authorities, including the assessment / approval of:

- ICVs and kit cars
- vehicles imported or manufactured under low volume schemes
- alternative vehicles
- aftermarket accessories
- vehicle modifications

At present, the ADRs only take a prescriptive approach to certain aspects of vehicle safety. What is needed is an over-arching, performance based standard for vehicle safety – comprising aspects such as performance, operator safety, passenger safety, safety to other road users (including pedestrians), visibility, signalling, manoeuvrability, etc.

7. What policy options could be considered?

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

There is an obvious justification in continuing with a risk-based approach, as this would appear to result in the focussing of “regulatory effort” in the areas where the greatest risk exists. However, care needs to be taken in separating out the different risk “factors”, so that the risk-based decisions can be based on consistent grounds that are understood by all. The various risk factors include:

- performance based risk of the individual vehicle;
- overall risk exposure due to number of the vehicles in use;
- risk associated with the use of the vehicle (eg: in remote areas only); etc.

Q7-2 What arguments support little or no change to the legislation?

One possible argument could be that the existing system appears to be working adequately at present (ie: “If it isn’t broken, don’t fix it.”); however, as already noted in these comments, there are emerging issues (such as alternative vehicles) which are currently outstripping the ability of the current system to deal with them. In addition, there appears to be a lack of resources to maintain the current system and a Government direction to reduce the level of regulatory burden.

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

Regulation is still required in order to meet the declared objectives in relation to community safety, consumer protection and competition issues, due to:

- the severity of the potential risk to public safety which can result in non-compliance with vehicle standards; as well as
- the need for government to assure a fair commercial environment in order to assist industry members to meet these standards.

Q. 7-4 Could the Australian Vehicle Standards Rules 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?

While it is conceivable that the Australian Vehicle Standards Rules (AVSRs) be used as an alternative to the national standards (resulting in an amalgamation of the new ad in-service standards), there would be substantial practical issues and risks:

- In terms of specifying the requirements for a “safe vehicle”, the AVSRs are even less complete than the ADRs; and in fact rely on continued compliance with the ADR standards (as per the requirements in Part 3 of the AVSRs). In order to make the AVSRs perform the required purpose, it would be necessary to write the ADRs into them and maintain / harmonise these

requirements in the same way as DIRD does for the current ADRs. As the effort and regulatory outcomes would remain the same, it is difficult to see the justification for such a change.

- The AVSRs are model legislation and thereby subject to the individual interpretation of States and Territories as they implement them into their own regulations. This leads to significant differences between jurisdictions in the implementation of the in-service standards. The implementation of national standards for the manufacture and importation of vehicles in the same way would risk similar inconsistencies between State and Territory jurisdictions, which would impose a substantial additional compliance cost burden on vehicle manufacturers and importers.

Therefore, the incorporation of the ADR functions into the AVSRs is not seen as viable or practical.

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

No non-regulatory options can be envisaged that will provide adequate assurance of addressing the safety risks.

[Q. 7-6 What other legislative 'fixes' to the Act do you consider necessary?](#)

In section 1 of these comments, it has been recommended that section 7 of the MVSA be amended to allow the setting of standards for off-road vehicles. It is believed that this would allow some measure of control of the compliance of the off-road vehicles (including "alternative" vehicles) that are being imported. In addition, it may encourage the prospective importers to source vehicles that comply with these standards.

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

Not aware of any.

[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?](#)

It is believed that enforcement powers could be better targeted to the risks for light trailers, which appear to have a high rate of non-compliance under current arrangements. Under the current system, the responsibility for checking light trailer compliance is delegated to the State and Territory authorities. This strategy does not appear to be working, as the compliance rate of light trailers with ADR requirements appears to be gradually deteriorating.

[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?](#)

No comment at this time.

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

Not aware of any.

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

Consumer law provisions may need to be strengthened, especially in relation to smaller volume vehicle importers and manufacturers.

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?

Not aware of any.

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

Not aware of any in relation to the actual vehicles. However, it is understood that the adoption of UN requirements for pedestrian friendliness would cause substantial compliance problems for manufacturers of bull bars.

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?

Any option which allowed international vehicle manufacturers to comply on the basis of evidence of compliance with the UN standards would provide obvious benefits in terms of simplicity and reduced compliance costs. For this reason, the additional option put forward in section 1 of these comments (“option D”) is preferable to option B, which would still require proof of compliance with the Australian standard in all cases.

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?

Unknown. Possibly depends on the specific circumstances.

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?

No comment at this time.

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

As explained in section 1 of these comments, the risks include:

- deterioration of the safety of the vehicle fleet;

- deterioration in the current consumer protections / warranties offered by dealers;
- increase in individual consumer issues;
- loss of reputation for vehicle brands;
- clash with in-service vehicle standards requirements.

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?

The aforementioned risks may adversely affect the ability of government and industry to meet the objectives in regard to community safety, consumer protection and competition issues.

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?

Possibly, although the details would need to be seen before any further comment could be made.

It would be highly desirable that any proposed changes require that imported second-hand vehicles reflect the Australian equivalent or better standard for vehicle safety, environmental protection or personal safety (anti-theft). It is recognised that ADRs or the equivalent country of origin standards are minimum requirements. Recent motor vehicle road safety gains can be attributed to the rapid development of 'Safety Assist Technologies' (SATs) and consumer pressure to have these technologies standard in new vehicles. Further safety gains will come from these new vehicles penetrating the second-hand vehicle fleet. SATs such as, Electronic Stability Control (ESC), Active Emergency Braking (AEB), seatbelt reminder systems and crash avoidance technologies (e.g. lane departure warning) should be encouraged even in imported vehicles. Consideration should be given to the inclusion of SATs (particularly ESC and AEB) as a minimum requirement of any scheme or reregulation.

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

If standards restrict the age profile of vehicles being imported into Australia, then this will affect the age profile and cost of vehicles on the market. The correlation between the age of the vehicle and crashworthiness is of prime concern and should be considered. Therefore it is desirable that the aim of whatever is finally agreed to should be to at least maintain the average age of the vehicle fleet to continue achieving safety gains.

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

In the case of a personal import, it is uncertain who would bear the liability for rectifying the problem. Therefore, current consumer laws may not be adequate for this situation.

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

Unknown.

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

See question 7-21.

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 proposal for the “Consolidation of existing schemes”, as provided in diagram 3 of the Options Discussion Paper, seems to be logical means of grouping and rationalising the various concessional schemes according to risk.

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?

It would depend on how far the barriers are reduced and whether there are limits (eg: vehicle age limit) for personally imported vehicles. SEVS might still be required to enable some importation of specialist vehicles outside the prescribed limits for personal imports.

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

No comment at this time.

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

Possibly. It depends on the details of how the joint arrangements will be handled. As previously mentioned, measures must be implemented to address the risk of vehicles “slipping through” the regulatory arrangements of a scheme that is larger and possibly more complex to administer.

Q. 7-28 What are the advantages and disadvantages of such a consolidation approach?

A consolidation of the concessional schemes may simplify the regulatory environment and provide greater uniformity in requirements for prospective vehicle importers.

8. Costs and benefits

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

No comment at this time.

Q. 8-2 Are the costs of compliance reasonable when considered alongside the safety and environmental outcomes being delivered?

It is not possible to comment on this question, as this would require a cost-benefit analysis in light of the vehicle population, rate of crashes, etc.

9. Implementation

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?

This would depend on the details of the changes being proposed, as well as their likely effects on industry.