



Australian Government

**Department of Infrastructure,
Regional Development and Cities**



RVSA Implementation Consultation Framework

Type Approvals Consultation Group

Discussion Paper TA3 – Road Vehicle Type Approvals Opt In

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Introduction

The Road Vehicle Standards (RVS) legislation includes a number of elements designed to assist industry participants in transitioning to the new regulatory framework from the current Motor Vehicle Standards Act 1989 (MVSA) and its regulations and processes.

These elements include:

- a 12-month pre-commencement period, following passage of the new legislation through Parliament, during which the current legislation will remain unchanged and in-force
- a subsequent 12-month transitional period during which the new legislation will come into force but approvals that were issued, or applied for, under the MVSA will automatically continue and remain valid until the end of the period
- the option, during the first six months of the transitional period, for holders of certain kinds of approvals under the MVSA to 'opt in' to the new legislative framework by utilising the evidence and information that was already supplied to obtain the existing approval

Note: An indicative timeline is shown at Appendix A.

The intention of this opt in ability is to provide holders of an approval under the MVSA with an incentive to become early adopters by enabling an easier transition to the new law. This paper provides information on, and seeks feedback from industry about, the operation of the opt in facility.

Opting in to a road vehicle type approval

General information

The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 (Transitional Bill) details the processes to transition approvals for the placement of identification plates, or approvals to supply nonstandard vehicles, to road vehicle type approvals in the first 6 months of the transitional period. This is informally referred to as 'opting in'.

If the holder of an old approval does not opt in during the 6-month window then the approval will cease at the end of the transitional period and any new approval will have to be applied for through the conventional manner under the RVS Rules (the Rules).

Eligibility

Entities that can apply to opt in under the new legislation are those who hold an approval, or who have applied for an approval, under:

- subsection 10A(1) or (2) of the MVSA (i.e. for a vehicle type that is either fully compliant or is non-compliant only in minor and inconsequential respects)
- section 14A of the MVSA or regulation 20 of the Motor Vehicle Standards Regulations 1989 (i.e. nonstandard vehicles)

Existing evidence

The benefit of opting in is that evidence that was used to obtain the old approval under the MVSA will be taken to be sufficient to satisfy continued compliance with the relevant criteria for granting the new approval. A holder of an approval will not be required to submit new evidence that meets the requirements of the new legislation (e.g. where testing must be conducted under a testing facility approval).

Exceptions to the use of existing evidence are where:

- the evidence is found to be false, misleading or omits relevant information
- a variation to the new approval is sought, in which case existing evidence used for the old approval will not be sufficient to the extent of the variation

Existing conditions

Any written conditions that applied to the old approval will be taken to be conditions that are specified in the new approval. Evidence that demonstrated compliance with those conditions will, as above, be taken to be sufficient to satisfy the relevant conditions of the new approval – with the same exceptions.

Note: If any condition that applied to the old approval is inconsistent with either a requirement of the Rules or a relevant condition for a road vehicle type approval under the Rules then, to the extent of that inconsistency, the Rules prevail.

Process to opt in

To opt in, during the 6-month window the person who holds an eligible old approval must:

1. provide, in the approved form, written acknowledgement of the conditions applying to road vehicle type approvals, as set out in the Rules, and that breach of any of those conditions is an offence under the new law
2. provide, in the approved form, a signed declaration that the person satisfies the conditions applying to road vehicle type approvals, as set out in the Rules, in respect of the type of vehicle covered by the old approval
3. pay the charges payable

Note: Steps 1 and 2 reference 'approved forms'; these have not yet been developed.

Note: Charges are yet to be finalised.

Once all three steps are complete:

- the person is taken to have been granted a road vehicle type approval under the Rules for the type of vehicle covered by the old approval for a 5 year period
- the old approval ceases to be in force

The department is considering options to enable some flexibility as to when the new approval is taken to have been granted, and when the old approval ceases to be in force.

Note: The 5-year period differs from road vehicle type approvals issued under the RVS Rules which, following the consultation process earlier in the year, were extended to 7 years. This difference will facilitate a staggering of subsequent approval applications and processing.

Please be aware that if an entity chooses to opt in and followed the steps outlined above is, then an approval is 'taken to have been granted a road vehicle type approval under the Rules' and no actual assessment or decision making is undertaken by the department to grant the approval. The department is considering what information can be provided to a holder of an approval who chooses to opt in to record that a road vehicle type approval has been taken to have been granted.

For practical purposes – such as providing vehicles to the market and entering them on the Register of Approved Vehicles (RAV) – there is no difference between entities who opt in and those who apply for and are granted road vehicle type approvals under the Rules.

Road vehicle type approval conditions

In order to be able to provide the acknowledgement and declaration referred to in steps 1 and 2 above, it is necessary that the holder of the old approval is familiar with, and can satisfy, the conditions that apply to road vehicle type approvals in the Rules. These include:

- at all times, the holder of the approval:
 - ensures that vehicles covered by the approval comply with the applicable national road vehicle standards at the time they are entered on the RAV
 - is able to produce evidence that demonstrates that vehicles covered by the approval comply with those standards at the time they are entered on the RAV
- the holder of the approval implements a conformity of production system that governs the manufacturing process detailed in the supporting information for the type approval and ensures that, at the time that a road vehicle is entered on the RAV under the type approval, the vehicle satisfies the requirements of the type approval pathway
- if the holder of the approval becomes aware of an error in information entered on the RAV under the approval, the holder must notify the Secretary of the department as soon as practicable after becoming aware of the error
- when requested in writing and within reasonable time, the holder of the approval:
 - provide, or arrange access to, the original and any subsequent versions of the supporting information for the type approval
 - provide information, documents and written answers to questions specified in the request
 - allow, or arrange for, an inspector to inspect premises where road vehicles are designed or manufactured, where road vehicle components of those vehicles are designed or manufactured, or things associated with the design or manufacturing process, including documents, vehicles and components
- any conditions specified in the approval

Note: This is a simplified and abbreviated list of conditions for illustrative purposes only.

Offences and civil penalties

Before deciding whether to opt in, holders of approvals granted under the MVSA should give due consideration to whether they are able to make the declaration and meet the conditions as required.

The Transitional Bill makes it clear that:

- the written acknowledgement mentioned in step 1 of the opt in process is, for the purposes of section 32 of the Road Vehicle Standards Bill 2018 (RVS Bill), information given, or purportedly given, under or for the purpose of the Rules; and
- the declaration mentioned in step 2 is, for the purposes of section 31 of the RVS Bill, taken to be made in an application for an approval under the Rules.

This means that if the holder of an old approval makes a false or misleading declaration or provides false or misleading information in the process of opting in then the person has contravened section 31 and/or 32 of the RVS Bill. A contravention of section 31 or 32 of the RVS Bill could result in criminal and/or civil proceedings being brought against the alleged contravening person.

An offence against either section 31 or 32 has a maximum penalty of 60 penalty units. Similarly, the maximum civil penalty applicable if a person breaches these sections is also 60 penalty units. However, if the entity who has contravened these sections is a body corporate then the penalty may be 5 times the specified value, i.e. 300 penalty units.

In addition, the written acknowledgement mentioned in step 1 refers to breach of conditions. Offences and civil penalty provisions for breaches of conditions are detailed in section 28 of the RVS Bill and each carry a penalty of 120 penalty units for individuals or 600 penalty units for a body corporate.

Currently, one penalty unit equates to \$210. The table below summarises the dollar values corresponding to maximum penalties for contraventions against these sections.

Summary of breach	Individual	Body Corporate
Section 31 – Providing a false or misleading declaration in relation to an application for approval	\$12,600	\$63,000
Section 32 - False or misleading information under or for the purpose of the RVS legislation	\$12,600	\$63,000
Section 28 – Breach of a condition of approval	\$25,200	\$126,000

An enforcement response, other than criminal prosecution or civil penalty proceedings, may be appropriate in the event of a holder of an approval opting in and possibly contravening any of the above sections. Other enforcement responses that may be considered include the giving of an infringement notice, entering into an enforceable undertakings or seeking an injunction.

Legislation

Transitional provisions

Provisions covering the transition of MVSA approvals to road vehicle type approvals are contained in the [Road Vehicle Standards \(Consequential and Transitional Provisions\) Bill 2018](#).

- For approvals issued under subsections 10A(1) or (2), i.e. for 'standard' vehicles that are either fully compliant with relevant requirements or are non-compliant in only minor and inconsequential respects, opt-in provisions are at Schedule 3, Part 3, section 5.
- For approvals issued under section 14A of the MVSA or regulation 20 of the Motor Vehicle Standards Regulations 1989, i.e. for 'non-standard' vehicles, opt-in provisions are at Schedule 3, Part 4, section 12.

Type approval conditions

Conditions that apply to a road vehicle type approval are detailed in the Rules. The Rules are undergoing final drafting and will be made by the Minister subject to passage of the Bills. An [exposure draft of the Rules](#) is available from the department's website.

Type approval conditions are detailed in sections 25 to 30.

Requirements of the type approval pathway are detailed in section 16.

Offences and civil penalties

Provisions detailing offences and civil penalties relevant to opting in to road vehicle type approvals are contained in the [Road Vehicle Standards Bill 2018](#).

Details of offences and civil penalties for:

- breach of condition of an approval are contained in section 28
- false or misleading declarations are contained in section 31
- false or misleading information are contained in section 32

Compliance and enforcement measures, including provisions linked to the [Regulatory Powers \(Standards Provisions\) Act 2014](#), are contained in Part 4.

Discussion questions

- How many approvals do you expect to transition to the new legislation by opting in?
- Do you expect to provide all opt in submissions at or around the same time, or space them out during the opt in window?
- As the opt in provisions do not include the act of granting of an approval, what kind of information would you prefer to receive as a record that a road vehicle type approval has been taken to have been granted?

Transitional Arrangements for Type Approvals

