

## DRAFT EXPLANATORY STATEMENT

Approved by the Hon Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development

*Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020*

### Introduction

This draft Explanatory Statement accompanies the Exposure Draft of the *Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020* (the Determination).

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) invites interested parties to provide feedback on the Determination and Explanatory Statement.

Please note that this Explanatory Statement is still being developed and is intended only as a guide to assist with interpretation of the Determination. The Department will undertake further editorial review post consultation once the final version of the Determination is settled.

### Summary

The Determination is made under section 107 of the *Road Vehicle Standards Rules 2019* (the Rules). It is relevant to the work of both authorised vehicle verifiers (AVVs) and registered automotive workshops (RAWs).

The Determination establishes limits of damage or corrosion, and repair of damage or corrosion, that road vehicles verified by AVVs are permitted to have. AVVs verify road vehicles manufactured or modified by RAWs in accordance with a Model Report. The Determination sets out the extent or types of damage or corrosion, and repair of damage or corrosion, that will not prevent the holder of an AVV approval from verifying a road vehicle or verifying modifications of a road vehicle.

The holder of a RAW approval must also have regard to the damage or corrosion limit when preparing to modify a vehicle in accordance with a Model Report. Under subsection 65(3) of the Rules, the RAW must ensure that a road vehicle is inspected for damage or corrosion, and repair of damage or corrosion, before modifying it. Where a vehicle is found to have a level of damage or corrosion, or repair of damage or corrosion, that exceeds the limit set under section 107 of the Rules, the RAW must notify the Secretary in writing and must not continue to work on the vehicle or declare that the vehicle has been modified in accordance with the Model Report (as required by subsections 65(3)–(4) of the Rules).

### Legislative context

The Rules set out matters that support the regulatory framework of the *Road Vehicle Standards Act 2018* (the Act). The Act provides a modern framework for the Commonwealth to regulate, among other matters, the importation and the first provision of road vehicles in Australia. It includes measures to manage the risks associated with road vehicles and road vehicle components. Such measures are designed to ensure that road vehicles and approved road vehicle components provided in Australia meet certain safety, anti-theft and environmental standards. The Act also gives effect to Australia's obligations regarding the international harmonisation of road vehicle standards.

The Rules set out a series of 'tools' (to adopt the name of Part 4 of the Rules)—approvals that enable road vehicles to satisfy the requirements of entry pathways, which, in turn, enable the vehicles to be provided for the first time in Australia. In particular, Division 4 of Part 4 deals with AVV approvals, and regulates the manner in which an AVV may 'verify' road vehicles or

modifications of road vehicles under such an approval. The damage or corrosion limit is relevant to the conduct of such verifications.

### **Legislative authority**

The Determination is made under section 107 of the Rules. Section 107 of the Rules currently provides that the Minister may, by legislative instrument, determine the extent or types of damage or corrosion that will not prevent the holder of an AVV approval from verifying a road vehicle, or modifications of a road vehicle, under the approval. This section will be amended to allow the Minister to also determine the extent or types of ‘repair of damage or corrosion’ that will not prevent AVV verification. The Determination deals with both damage and corrosion, and repair of damage and corrosion.

This is referred to as the ‘*damage or corrosion limit*’ in section 107 of the Rules.

### **Purpose and operation of the instrument**

#### Overview of the Act and Rules

The Act regulates the importation and first provision of road vehicles in Australia. The Rules set out matters that support the regulatory framework of the Act. The Rules provide for the keeping of a Register of Approved Vehicles (RAV) (Part 2 of the Rules) on which a road vehicle must generally be entered before it may be provided for the first time in Australia (section 24 of the Act). A vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway (subsection 15(1) of the Act).

Subsection 19(2) of the Act states that the Rules may provide for or in relation to the grant of approvals to enable road vehicles to satisfy the requirements of the type approval pathway or other entry pathways.

There are currently two pathways available for vehicles to be entered on the RAV (Part 3 of the Rules):

- the type approval pathway, which applies to all vehicles of a particular type that fully or substantially comply with the applicable national road vehicle standards made under the Act and are approved for volumetrically unrestricted supply to the Australian market (section 15 of the Rules)
- the concessional RAV entry approval pathway, which applies to an individual vehicle if:
  - there is a concessional RAV entry approval in force for that vehicle
  - certain conditions of the approval have been met, and
  - the vehicle is in Australia, unless the approval lifts this requirement (section 31 of the Rules).

The Rules set out eligibility requirements for each pathway. The Rules also set out the mechanisms through which road vehicles may satisfy the requirements of RAV entry pathways, such as approvals relating to RAWs, AVVs, Model Reports and testing facilities.

Where entry on the RAV is sought for a vehicle through the concessional RAV entry pathway following modification or manufacture by a RAW (see section 37 of the Rules), there are various conditions that apply. Section 48 of the Rules provides that it is a condition of the concessional RAV entry approval that (among other things) the road vehicle to which the approval applies must not be entered on the RAV until the holder of an AVV approval has verified the vehicle or modifications of the vehicle in accordance with section 100 of the Rules (which sets out the condition about the conduct verifications). Where there is a damage or corrosion limit determined under section 107 of the Rules, the AVV may only verify the road vehicle or modifications of a road vehicle if the level of damage or corrosion (or repair thereof) on the vehicle does not exceed the limit specified in the Determination (see subparagraph

100(1)(b)(ii) of the Rules).

AVV verification may also be required as a condition of a concessional RAV entry approval, a non-RAV entry import approval or a reimportation import approval in individual cases (see paragraphs 47(2)(d)-(e), 157(2)(d) and 168(2)(c) of the Rules respectively). The damage or corrosion limit will also generally be relevant in such cases.

Under subsection 65(3) of the Rules (read with subsection 65(4)), the holder of a RAW approval must notify the Secretary and must not continue to work on a vehicle or declare that it has been modified in accordance with an approved Model Report, if the vehicle, upon inspection, is found to have a level of damage or corrosion (or repair thereof) that exceeds any damage or corrosion limit determined under section 107 of the Rules.

#### Purpose of the Determination

The purpose of the Determination is to set limits to the damage or corrosion, or repair of damage or corrosion, that can be present on vehicles which will be entered on the RAV after being verified by an AVV. RAWs are also required to assess each vehicle they manufacture or modify against the damage or corrosion limit. The intention of the RAW assessment is to leverage the RAW's ability to inspect the vehicle prior to modification and to reduce the likelihood of vehicles failing verification after being modified (potentially resulting in the owner of the vehicle suffering hardship due to the costs incurred in having the vehicle modified by the RAW).

The damage or corrosion limit is intended to ensure that only vehicles of good quality are imported and added to the RAV. It is also designed to deal with the possibility that damaged or corroded vehicles or vehicles that have been repaired will no longer offer the same levels of safety that they had when new, and may no longer comply with certain standards.

While the limit is primarily concerned with structural integrity (rather than non-structural damage on the vehicle), the Determination assists in maintaining a minimum level of general quality of vehicles being approved for use on public roads in Australia. It is the Government's policy that the concessional RAV entry pathway through RAWs does not encourage the dumping of poor quality vehicles in Australia.

A Statement of Compatibility with Human Rights for the Determination is at Attachment A.

A section by section explanation of the Determination is at Attachment B.

#### **Consultation**

The Department has consulted with industry associations, in-service regulators and the public on the development of policy relating to the damage or corrosion limit.

Initially, consultation on the development of the Road Vehicle Standards Bill 2018 was conducted in three distinct phases from 2013 onward. Further information about this consultation process can be found at chapter 6, 'Consultation', in the *Review of the Motor Vehicle Standards Act 1989 Regulation Impact Statement, 6 March 2018* (<https://ris.pmc.gov.au/2018/03/06/review-motor-vehicle-standards-act-1989>).

#### **Prescribing matters by reference to other instruments or documents**

Subparagraph 14(1)(a)(ii) and subsection 14(3) of the *Legislation Act 2003* provides that a legislative instrument may incorporate the provisions of a disallowable legislative instrument as in force from time to time unless a contrary intention appears in the enabling legislation. Subsection 82(6) of the Act further permits the Determination to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

The Determination does not reference any instruments or documents.

### **Regulation Impact Statement**

A Regulation Impact Statement (RIS) was prepared in relation to policy options regarding the *Motor Vehicle Standards Act 1989* and policy options for its repeal and replacement with the *Road Vehicle Standards Act 2018* and the *Road Vehicles Standards Rules 2019*. The Office of Best Practice Regulation (OBPR) reference number for the RIS is 17240. OBPR has advised that no further RIS is required.

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## **ATTACHMENT A—STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*  
***Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020***

This disallowable legislative instrument is compatible with the human rights and freedoms recognised or declared in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Disallowable Legislative Instrument**

The *Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020* (the Determination) is made under section 107 of the *Road Vehicle Standards Rules 2019* (the Rules). The purpose of the Determination is to set out the extent or types of damage or corrosion, or repair of damage or corrosion, that will not prevent the holder of an authorised vehicle verifier approval (AVV) from verifying a road vehicle, or modifications of a road vehicle, under the approval.

Where a damage or corrosion limit is established under section 107 of the Rules, the AVV must not verify a vehicle unless satisfied that the level of damage or corrosion (or repair thereof) on the vehicle does not exceed that limit (as required by subparagraph 100(1)(b)(ii) of the Rules).

### **Human rights implications**

This disallowable instrument supports the regulatory framework of the *Road Vehicle Standards Act 2018* and the Rules to ensure that vehicles on public roads meet safety and environmental standards to support the human right to life and health. The Determination does not engage any human rights beyond those addressed in the Explanatory Statement for the Rules.

### **Conclusion**

This disallowable instrument 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 considered to be reasonable, necessary and proportionate.

**Deputy Prime Minister and Minister for Infrastructure, Transport and Regional  
Development**

**The Hon Michael McCormack MP**

## ATTACHMENT B—OVERVIEW OF PROVISIONS

### Section by section explanation of the *Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020*

#### Section 1—Name

Section 1 provides that the name of this legislative instrument is the *Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2020*.

#### Section 2—Commencement

Section 2 provides that the Determination is to commence at the same time as section 107 of the *Road Vehicle Standards Rules 2019* (the Rules).

#### Section 3—Authority

Section 3 provides that the Determination is made under section 107 of the Rules

#### Section 4—Purpose of this instrument

Section 4 provides that the purpose of the instrument is to set out the extent or types of damage or corrosion, or repair of damage or corrosion, that will not prevent the holder of an authorised vehicle verifier approval (AVV) from verifying a road vehicle, or modifications of a road vehicle, under the approval.

#### Section 5—Definitions

Section 5 sets out new definitions for the Determination. Notes are provided on some key definitions below.

The Determination provides a definition of a ‘*body alignment test*’, which is used to identify and assess distortion of a structural component of a vehicle, or distortion of the vehicle structure. The test is used to assess the impact of repair of damage and corrosion on the structural integrity of the vehicle.

The Determination provides definitions of ‘*flaking*’ and ‘*pitting*’ resulting from corrosion. These definitions assist the user to assess the significance of corrosion on the vehicle.

In relation to a vehicle, a ‘*structural component*’ is defined as ‘any component intended to carry a load or force in the operation of the vehicle (including a load or force imposed as a result of a crash), other than components only used to support trim and lamps’. Examples of structural components are door structures, hinges, latches, anchorages, airbag mounts and suspension mounts. The instrument limits the extent to which damage to, or corrosion of, structural components of a vehicle is acceptable.

In relation to a vehicle, the ‘*vehicle structure*’ is defined to mean ‘the parts of a vehicle that are integral to the vehicle’. The instrument limits the extent to which damage to, or corrosion of, structural components of a vehicle is acceptable. The definition includes a non-exhaustive list of what is included in the vehicle structure (the vehicle chassis, the vehicle frame and the monocoque frame).

#### Section 6—Limit of acceptable damage or corrosion

Section 6 provides limits of acceptable damage or corrosion, or repair of damage or corrosion, to a vehicle. The key purpose of this section is to ensure that vehicles to be entered on the Register

of Approved Vehicles (RAV), through the concessional RAV entry pathway on the basis of the eligibility criteria in section 37 of the Rules, are structurally sound in order to improve road safety outcomes.

Subsection 6(1) provides that, subject to exceptions outlined further below, the matters listed at paragraphs (a) to (f) do not prevent the holder of an AVV approval from verifying a road vehicle, or modifications of a road vehicle, under the approval.

The limit identified in paragraph 6(1)(a) is ‘one or more dents less than 25 millimetres deep’. This would usually be measured with a straight ruler or depth gauge such as a Vernier caliper (but the determination made under section 106 of the Rules will set out specific requirements as to the tools that AVVs are to use when conducting inspections). The limit imposed in this paragraph is in recognition that used vehicles can have minor damage that will result in a minor impact to the structural integrity of the vehicle, while excluding those that pose a greater risk. This limit is based on the limit applying under the *Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002*.

The limit identified in paragraph 6(1)(b) is ‘distortion of a structural component of the vehicle or distortion of the vehicle structure where the difference in the length of corresponding diagonal lines, as ascertained through a body alignment test, is 5 millimetres or less’. The limit imposed in this paragraph is to assist AVVs to assess whether there have been compromises to a vehicle’s structural integrity (for example, following repairs made after a vehicle has been in an accident).

The limit identified in paragraph 6(1)(c) is damage to or corrosion of a structural component of the vehicle, or of the vehicle structure, where the damage or corrosion has been repaired by replacing damaged structural components with new components of the original specification. This concession is only available where the repairs did not involve cutting or welding of a structural component, or of the vehicle structure. Although corrosion can similarly cause a reduction to the structural integrity of a vehicle, repairs to corroded vehicles may safely be made if corroded components are replaced. The purpose of this section is to provide the method through which damaged or corroded parts may be replaced to ensure preservation of the overall structural integrity of the vehicle.

The limit identified in paragraph 6(1)(d) is variations of the size of gaps between adjacent panels where the variations are not the result of damage to the vehicle structure. In addition, if a body alignment test has not been conducted on the vehicle, it must be the case that a body alignment test would not be required under the *Road Vehicle Standards (Verification of Road Vehicles) Determination 2020* by reason of the variations. Alternatively, if a body alignment test has been conducted on the vehicle, it must be the case that the difference in length of corresponding diagonal lines, as ascertained through the test, is 5 millimetres or less.

The limit identified in paragraph 6(1)(e) is ‘corrosion that has not resulted in flaking or pitting’. This provision provides a limit of pitting or flaking to ensure that vehicles on the RAV do not have levels of corrosion that may compromise the structural integrity of the vehicle. This limit is based on the limit applying under the *Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002*.

The limit identified in subparagraph 6(1)(f)(i) captures alterations that amount to damage to a structural component of a vehicle, provided that the alteration ‘did not involve bending, distorting, heating the metal of, or drilling or cutting holes in, the structural component’. This limit is in recognition of the fact that not all damage to vehicles occurs as a result of crashes – deliberate alterations to a vehicle can also amount to damage. The intention is to prevent a vehicle from being verified if it has been modified in these ways, because such methods are likely to affect the structural integrity of the vehicle.

The limit identified in subparagraph 6(1)(f)(ii) captures alterations that amount to damage to a structural component of a vehicle, provided that the alterations ‘consisted of modifications carried out in accordance with an approved Model Report that applied to the vehicle’. This ensures that modifications carried out in accordance with an approved Model Report are acceptable. In some cases, the work instructions in a Model Report will require the vehicle to be structurally modified, such as by undertaking left to right hand drive conversions, fitting roll cages or making engine modifications.

Subsection 6(2) provides that subsection 6(1) does not apply where the damage or corrosion (or repair thereof) has resulted in the splitting of a seam or joint between two panels or the failure of a spot weld. This provision has been included because some types of damage, and damage repair, will not exceed the limits set out in subsection 6(1) but may nevertheless affect the structural integrity of the vehicle. The objective indicator of this is the increased flexibility of the vehicle which results in failures of joints between panels, seams and spot welds, which affect the structural integrity of a vehicle. The purpose of this provision is to ensure that such vehicles are not entered on the RAV.

Subsection 6(3) provides that the paragraphs of subsection 6(1) do not limit one another. This is explained further in the note. Even if one paragraph does not apply, the AVV may still be prevented from verifying the vehicle or modifications if another paragraph applies.

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