

DRAFT EXPLANATORY STATEMENT

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

*Road Vehicle Standards (Information on the Register of Approved Vehicles)
Determination 2020*

Introduction

This draft Explanatory Statement accompanies the Exposure Draft of the *Road Vehicle Standards (Information on the Register of Approved Vehicles) 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

For the purposes of section 12 of the *Road Vehicle Standards Rules 2019* (the Rules), the Determination sets out the information that must be included on the Register of Approved Vehicles (RAV) in relation to a vehicle. It also sets out the information on the RAV that may be made publicly accessible under section 10 of the Rules.

Legislative context

The Rules, and determinations made under 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.

Legislative authority

The Determination is made under section 12 of the Rules. Section 12 of the Rules provides that the Minister may, by legislative instrument, determine information that must be included on the RAV in relation to a vehicle and whether the information may be made publicly accessible under section 10 of the Rules.

Purpose and operation of the instrument

Overview of the Act and Rules

The Act regulates the importation and provision of road vehicles. 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.

Section 14 of the Act provides for the keeping of the RAV. Broadly speaking, section 24 of the Act provides that a road vehicle must generally be on the RAV before a person may provide it for the first time in Australia. A vehicle is only taken to be on the RAV if all the information set out in section 8 of the Rules is entered on the RAV in relation to that vehicle.

Section 19 of the Act provides that the Rules must provide for the keeping of the RAV, including the content of the RAV and persons who may enter information on it. Rules may also be made in relation to publication of information on the RAV.

Purpose of the Determination

The purpose of the Determination is to set out the information (in addition to information required by the Rules) that must be included on the RAV, and may be made publicly accessible under section 10 of the Rules, in relation to a vehicle. The kinds of information to be included on the RAV, or made publicly accessible, differ depending on the entry pathway through which the vehicle is entered on the RAV.

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

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>).

The Department then conducted more targeted consultation with industry associations and in-service regulators on the development of the Determination, primarily through the Road Vehicle Standards Act Implementation Consultation Framework, which established three consultation groups.

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 references the following instruments:

- *Vehicle Standard (Australian Design Rule 63/00—Trailers Designed for Use in Road Trains) 2006*, which is available without cost to the public through the Federal Register of Legislation (www.legislation.gov.au)
- *Vehicle Standard (Australian Design Rule 64/00—Heavy Goods Vehicles Designed for Use in Road Trains and B-Doubles) 2006*, which is available without cost to the public through the Federal Register of Legislation (www.legislation.gov.au)
- *Vehicle Standard (Australian Design Rule—Definitions and Vehicle Categories) 2005*, which is available without cost to the public through the Federal Register of Legislation (www.legislation.gov.au)
- United Nations Regulation No 85, ‘Uniform Provisions Concerning the Approval of Internal Combustion Engines or Electric Drive Trains Intended for the Propulsion of Motor Vehicles of Categories M and N with regard to the Measurement of Net Power and the Maximum 30 Minutes Power of Electric Drive Trains’, which can be viewed on the United Nations Economic Commission for Europe website (<https://www.unece.org>).

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.

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 (Information on the Register of Approved Vehicles) 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 (Information on the Register of Approved Vehicles) Determination 2020* (the Determination) is made under section 12 of the *Road Vehicle Standards Rules 2019*. The Determination sets out information that must be included on the RAV, and may be made publicly accessible under section 10 of the Rules, in relation to a vehicle. The Determination also sets out different information to be included on the RAV, or made publicly accessible, depending on the entry pathway through which the vehicle is entered on the RAV.

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 (Information on the Register of Approved Vehicles) Determination 2020*

Part 1—Introduction

Division 1—Preliminary

Section 1— Name

Section 1 sets out that the name of this legislative instrument is the *Road Vehicle Standards (Information on the Register of Approved Vehicles) Determination 2020*.

Section 2—Commencement

Section 2 provides that the Determination is to commence at the same time as section 15 of the *Road Vehicle Standards Act 2018*.

Section 3—Authority

Section 3 provides the Determination is made under section 12 of the *Road Vehicle Standards Rules 2019* (the Rules).

Section 4—Purpose of this instrument

Section 4 provides that the purpose of this instrument is to set out:

- the information required to be included on the RAV, and
- the information on the RAV that may be made publicly accessible under section 10 of the Rules.

The information prescribed by the Determination is in addition to the information that must be entered on the RAV under paragraphs 8(a)-(d) of the Rules, and the information on the RAV that is to be made publicly accessible as a result of paragraphs 10(a)-(c).

Section 5—Definitions

Section 5 sets out the definitions for this Determination. Among other things, it provides definitions for various items of information to be included on the RAV, and sets out the terms used in the Determination that have the same meaning as in the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*.

Section 6—Definition of entry pathway sub-category

Section 6 defines the various subcategories of RAV entry pathway. This is used in two different ways.

First, the entry pathway sub-category is specified in this Determination as information that must be entered on the RAV, and will be used to identify circumstances relevant to the approval. Subcategories provide detail that may be used by in-service regulators in compliance and enforcement activities or to assist in administering recall actions.

Second, the information required to be included on the RAV for a specific vehicle will vary according to the criterion under which the vehicle is eligible for entry on the RAV. Definitions of an entry pathway sub-category ensure overall consistency.

Part 2—Information that must be included on the RAV

Division 1—Information required for all vehicles entered on the RAV

Section 7—Purpose of this Division

Section 7 explains that Division 1 sets out the information that is required for all road vehicles entered on the RAV. This is in addition to the information required under section 8 of the Rules.

Section 8—Information that must be included on RAV—all vehicles entered on RAV

Section 8 lists the information that must be included on the RAV for all vehicles entered on the RAV. The purpose of providing information on the ‘make,’ ‘model,’ ‘build date’ and ‘entry pathway sub-category’ is to provide a mechanism to adequately identify the vehicle. The ‘entry pathway sub-category’ may also assist members of the public to better understand whether the vehicle may have some concessions from full compliance with national road vehicle standards.

This information may also be used to support the conduct of a mandatory recall, allowing the Department to better target affected vehicles, particularly in situations where the recall relates to components used by multiple manufacturers.

Information that must be included on the RAV in relation to ‘authorised by’ name, ‘authorised by’ number and ‘added by’ number is required for governance and an audit trail purposes, to support compliance and enforcement efforts.

Division 2—Information required—type approval pathway

Section 9—Purpose of this Division

Section 9 explains that Division 2 sets out the information that must be included on the RAV in relation to vehicles entered on the RAV through the type approval pathway.

The requirements of this Division are in addition to the requirements of Division 1 of Part 2.

Section 10—Information that must be included on RAV—vehicles entered on RAV via the type approval pathway

Section 10 sets out the information that must be included on the RAV in relation to a vehicle entered on the RAV through the type approval pathway.

Specifically, information set out in column 2 of the table in section 10 must be included on the RAV in relation to such a vehicle if the vehicle falls within a vehicle category specified in column 1 of the table.

Division 3—Information required—concessional RAV entry approval pathway

Section 11—Purpose of this Division

Section 11 explains that Division 3 sets out the information that must be included on the RAV in relation to vehicles entered on the RAV through the concessional RAV entry approval pathway.

The requirements of this Division are in addition to the requirements of Division 1 of Part 2.

Section 12—Information that must be included on RAV—vehicles entered on RAV via the concessional RAV entry approval pathway

Section 12 sets out the information that must be included on the RAV in relation to vehicles entered on the RAV through the concessional RAV entry approval pathway.

Specifically, information specified in column 3 of the table in section 12 must be included on the RAV in relation to such a vehicle if:

- the vehicle falls within a vehicle category specified in column 1 of the table, and
- the vehicle falls within an entry pathway sub-category specified in column 2 of the table.

Part 3—Information on RAV that may be made publicly available

Section 13—Purpose of this Part

Section 13 explains that the purpose of Part 3 is to set out the information on the RAV that may be made publicly accessible under section 10 of the Rules. Section 10 of the Rules, in broad terms, requires the Secretary to ensure that a website is established through which a person can access certain information on the RAV in relation to a vehicle upon searching for the vehicle by VIN.

Section 14—Information that may be publicly accessible

Section 14 provides that, generally, the information covered by sections 8, 10 and 12 of the Determination may be made publicly accessible. Other information on the RAV that must be made publicly accessible in relation to a vehicle on the RAV is set out in section 10 of the Rules.

However, information that is an ‘authorised by’ number or an ‘added by’ number must not be made publicly accessible. These identifications are for organisations, such as type approval holders, AVVs or the Department when making a submission as well as submitters, such as persons nominated by the approval holder. Identifiers are used as part of the security for the RAV and provide an audit trail for when records are added. To maintain RAV security, these records are not disclosed.