

DRAFT EXPLANATORY STATEMENT

Approved by the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development

Road Vehicle Standards (Additional Matters Relating to Eligibility for a Road Vehicle to be Entered on the Specialist and Enthusiast Vehicles Register) Determination 2020

Introduction

This draft Explanatory Statement accompanies the Exposure Draft of the *Road Vehicle Standards (Additional Matters Relating to Eligibility for a Road Vehicle to be Entered on the Specialist and Enthusiast Vehicles Register) 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. Some elements of this Determination will rely on amendments to the *Road Vehicle Standards Rules 2019* (the Rules), which will be made prior to the making of this Determination.

Summary

The Determination sets out matters related to various aspects of sections 128 to 135 of the Rules. Those sections of the Rules deal with the entry of road vehicles on the Specialist and Enthusiast Vehicles (SEVs) Register.

Specifically, the Determination sets out when differences in the design characteristics of road vehicles will or will not be significant for the purposes of subsection 128(1) of the Rules. The lists of significant differences are not exhaustive.

The Determination prescribes the differences in design characteristics that are significant for different categories of vehicles. For example:

- a difference in engine capacity of 20% or more will be significant for a passenger vehicle
- a difference of 10% or more in the maximum driving range of electric-only vehicle will be significant
- a difference in the number of steered axles of a light omnibus will be significant
- a difference in engine capacity of 50% or more will be significant for a heavy goods vehicle.

The Determination also provides that differences in design characteristics that are not significant on their own may be significant when considered in combination, and sets out the principles by which the 'significance in combination' may be assessed. Further, it provides that differences are not significant when they result only from the use of different reference standards, marketing specifications or measurement/testing methods to measure, test, describe or classify a road vehicle or element thereof.

Part 3 of the Determination sets out additional matters relating to the eligibility criteria in sections 130, 131 and 134 of the Rules, as follows:

- for the performance criterion (section 130) – it provides a formula for calculating the power to weight threshold of a variant of a model, or a make and model, of a road vehicle.
- for the environmental criterion (section 131) – among other things, it specifies emissions standards that are comparable to the national road vehicle standards mentioned in subparagraph 131(a)(i) of the Rules.
- for the campervans and motorhomes criterion (section 134) – it provides additional guidance on when a vehicle will not be a campervan or a motorhome.

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 136 of the Rules. Section 136 provides that the Minister may determine matters relating to any aspect of sections 128 to 135 of the Rules.

Purpose and operation of the instrument

Overview of the Act and Rules

The Rules complement the Act by prescribing matters relating to the keeping of a Register of Approved Vehicles (RAV), on which a road vehicle must generally be entered before a person may provide the vehicle for the first time in Australia. A vehicle may be entered on the RAV if it satisfies the requirements of an entry pathway. The ‘concessional RAV entry approval pathway’ is one such pathway. A vehicle can be entered on the RAV by that pathway if, among other things, it is covered by a concessional RAV entry approval. A concessional RAV entry approval can only be granted in respect of a road vehicle that meets certain eligibility criteria.

Section 37 of the Rules sets out the eligibility criterion for vehicles that will be modified or manufactured by the holder of a RAW approval. This eligibility criterion is only available in respect of certain kinds of vehicles, including vehicles covered by an entry on the SEVs Register. Division 6 of Part 4 of the Rules deals with the entry of vehicles on the SEVs Register. Once amended, the Division will provide for the entry on the SEVs Register of a make and model, or one or more ‘variants’ of a model, of a road vehicle.

Section 128 of the Rules sets out when a particular kind of road vehicle constitutes a variant of a road vehicle model. Section 129 of the Rules sets out the circumstances under which a make and model of vehicle, or a variant of a model of vehicle, is eligible for entry on the SEVs Register. Sections 130 to 135 of the Rules set out the criteria to be satisfied for eligibility for entry on the SEVs Register in six categories.

Purpose of the Determination

The Determination helps to identify when a group of vehicles of a particular model will be considered to be a different variant to other vehicles within the model under section 128 of

the Rules.

The Determination provides clarity and certainty around the eligibility criteria and the application of sections 130 to 135 of the Rules. It should be read in conjunction with the requirements under sections 128 to 135 of the Rules.

The purpose of the Determination is to remove ambiguity and to aid industry understanding as well as the Department's administration of the SEVs Register. The matters referred to in the Determination apply in conjunction with criteria set out in the Rules.

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 the Determination.

Initially, consultation on the development of the Road Vehicle Standards Bill 2018 was conducted in three distinct phases from 2013 onwards. 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.

In November 2018 and July 2019 the Department consulted with the Tools Consultation Group considering the Department's approach to entry of vehicles on the SEVs Register. The Department further consulted with the combined Consultation Groups in November 2019. Details of the consultation process and the position papers presented to meetings are published on the Department's website.

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:

- *Vehicle Standard (Australian Design Rule—Definitions and Vehicle Categories) 2005*

This instrument is available without cost to the public through the Federal Register of Legislation (www.legislation.gov.au).

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared in relation to the *Motor Vehicle Standards Act 1989* and policy options for its repeal and replacement with what would become the Act. This RIS is included in the Explanatory Memorandum for the Act, and also applies to the Rules as amended by this instrument. 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 (Additional Matters Relating to Eligibility for a Road Vehicle to be Entered on the Specialist and Enthusiast Vehicles Register) 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 (Additional Matters Relating to Eligibility for a Road Vehicle to be entered on the Specialist and Enthusiast Vehicles Register) Determination 2020* sets out matters related to various aspects of sections 128 to 135 of the Rules. Those sections of the Rules deal with the entry of road vehicles on the Specialist and Enthusiast Vehicles (SEVs) Register. Specifically, the Determination:

- helps to identify when a group of vehicles of a particular model will be considered to be a different variant to other vehicles within that model under the Rules, and
- prescribes further matters relating to the eligibility criteria in sections 130, 131 and 134 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 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 (Additional Matters Relating to Eligibility for a Road Vehicle to be Entered on the Specialist and Enthusiast Vehicles Register) Determination 2020*

Part 1—Introduction

Section 1—Name

Section 1 sets out that the name of the instrument is the *Road Vehicle Standards (Additional Matters Relating to Eligibility for a Road Vehicle to be Entered on the Specialist and Enthusiast Vehicles Register) Determination 2020* (the Determination).

Section 2—Commencement

Section 2 provides that the Determination is to commence at the same time as section 136 of the *Road Vehicle Standards Rules 2019*.

Section 3—Authority

Section 3 states that the Determination is made under section 136 of the *Road Vehicle Standards Rules 2019* (the Rules).

Section 4—Definitions

Section 4 sets out definitions for the Determination. Of note, it explains that ‘**L-group vehicle**’ has the same meaning as in the *Vehicle Standard (Australian Design Rule—Definitions and Vehicle Categories) 2005*. The definitions ensure consistency of terminology and intent across the range of instruments supporting the *Road Vehicle Standards Act 2018* (the Act).

The definition of ‘**electric-only vehicle**’ is included to provide clarity on provisions that relate to electric vehicles.

Part 2—Significant differences in design characteristics

Division 1—Preliminary

Section 5—Simplified outline of this part

Section 5 sets out a simplified summary of Part 2 of the Determination. The Part sets out the differences in the design characteristics of road vehicles that will, or will not, be significant for the purposes of subsection 128(1) of the Rules. It also clarifies when a combination of individual differences that are not, in and of themselves, significant, can nonetheless render the design characteristics of road vehicles of a particular kind significantly different from those of other vehicles of the same model for the purposes of subsection 128(1) of the Rules.

Section 6—Purpose of this Part

Section 6 explains the purpose of Part 2 of the Determination. That Part sets out, for the purposes of paragraph 136(2)(c) of the Rules, when differences in the design characteristics of road vehicles will, or will not, be significant for the purposes of subsection 128(1) of the Rules.

In the context of the SEVs Register, vehicles of a particular kind only constitute a variant of a vehicle model if their design characteristics are significantly different from those of other vehicles of that model of road vehicle. The concept of significant difference provides simplicity and clarity for decision-makers when determining if a vehicle is of a different variant.

Section 128 of the Rules identifies design characteristics in respect of which differences will or will not be ‘significant’ for the purposes of subsection 128(1). However, it does not exhaustively state when differences in the design characteristics of road vehicles can or cannot be considered ‘significant’ for that purpose.

Paragraph 136(2)(c) of the Rules provides that this Determination may set out when differences in the design characteristics of road vehicles are, or are not, significant for the purposes of subsection 128(1) of the Rules. Accordingly, the Determination identifies further differences in the design characteristics of road vehicles that will, or will not, be treated as ‘significant’ for that purpose.

Division 2—Prescription of significant differences

Section 7—Significant differences—L-group and MA, MB and MC category vehicles

Section 7 applies to vehicles in the L-group, MA, MB and MC categories, and identifies differences in the design characteristics of such road vehicles that are considered significant (further to those specified in subsection 128(3) of the Rules).

This section provides that the following differences are significant in isolation:

- certain differences relating to the fuel type or engine capacity of an internal combustion engine;
- certain differences in the maximum range of an electric-only vehicle;
- certain increases in maximum power;
- certain differences in the number of seating positions; and
- differences in the number of steered axles.

These differences, which are in addition to those specified in the Rules, are prescribed to provide more specific, clarifying detail for the definition of ‘variant’. The intent is to remove ambiguity, aiding both industry’s understanding and the Department’s administration of the SEVs Register. Where a difference is not on the list, it would be incumbent on an applicant to demonstrate how the difference is significant.

Section 8—Significant differences—MD, ME (≤ 12 tonnes), NA and NB category vehicles

Section 8 applies to vehicles in vehicle categories MD (light omnibus), ME (heavy omnibus—not exceeding 12 tonnes), NA (light goods vehicle) and MB (medium goods vehicle). This section sets out differences in the design characteristics of road vehicles that are considered significant (further to those specified in subsection 128(3) of the Rules).

The differences set out in this section that are significant in isolation are:

- certain differences relating to the fuel type or engine capacity of an internal combustion engine;
- certain differences in the maximum range of an electric-only vehicle;
- certain increases in maximum power;
- certain differences in the number of seating positions; and
- differences in the number of steered axles.

These differences, which are in addition to those specified in the Rules, are prescribed to provide more specific, clarifying detail for the definition of 'variant'. The intent is to remove ambiguity, aiding both industry's understanding and the Department's administration of the SEVs Register. Where a difference is not on the list, it would be incumbent on an applicant to demonstrate how the difference is significant.

Section 9—Significant differences—ME (> 12 tonnes) and NC category vehicles

Section 9 applies to road vehicles in the ME (heavy omnibus, more than 12 tonnes) and the NC (heavy goods vehicle) categories. This section sets out differences in the design characteristics of road vehicles that are considered significant (further to those specified in subsection 128(5) of the Rules).

The differences set out in this section that are significant in isolation are:

- certain differences relating to the engine configuration, fuel type or engine capacity of an internal combustion engine;
- certain differences in the maximum range of an electric-only vehicle;
- certain increases in maximum power;
- differences in the number or position of powered axles;
- differences in the number of steered axles; and
- differences in the vehicle category.

These differences, which are in addition to those specified in the Rules, are prescribed to provide more specific, clarifying detail for the definition of 'variant'. The intent is to remove ambiguity, aiding both industry's understanding and the Department's administration of the SEVs Register. Where a difference is not on the list, it would be incumbent on an applicant to demonstrate how the difference is significant.

Section 10—Circumstances in which combinations of differences are significant

Section 10 clarifies when differences in the design characteristics of road vehicles that, when considered individually, are not significant, can become significant when considered in combination.

It sets out the factors that must be taken into account when assessing the significance of differences in combination. Such differences must be assessed by reference to their impact on the vehicle as a whole and the operational performance of the vehicle, as well as other principles specified in the Determination.

The intent of this provision is to provide the framework against which the significance of combinations of differences may be assessed. Due to the nature and variety of differences in design characteristics, any attempt to be prescriptive is likely to be onerous on industry and difficult for the Department to manage, especially as technology and design change over time. The setting out of these principles assists industry's understanding of this matter.

Section 11—Differences in design characteristics that are not significant

Section 11 specifies that the instrument does not generally limit the kinds of differences in design characteristics that could be considered significant for the purposes of subsection 128(1). However, it also specifies particular circumstances in which differences in the design characteristics of road vehicles will not be considered significant.

This section provides further clarity for industry relating to the assessment of whether a difference is significant. The circumstances specified in the section are designed to

address the situation where the difference occurs only from the way in which it is measured, tested, described or classified.

Part 3—Matters relating to entry on the SEVs Register

Division 1—Preliminary

Section 12—Simplified outline of this Part

Section 12 provides a simplified description of Part 3 of the Determination. The Part prescribes additional matters relating to:

- The formula for the power to weight ratio used in the performance criterion (section 130 of the Rules);
- Categories of road vehicle that can be entered on the SEVs Register under the environmental criterion (section 131 of the Rules);
- Emissions standards that are comparable to the national road vehicle standards mentioned in subparagraph 131(a)(i) of the Rules; and
- Additional guidance on when a vehicle is or is not a campervan or motorhome (section 134 of the Rules).

Section 13—Purpose of this Part

Section 13 provides that the purpose of Part 3 is to set out additional matters relating to the eligibility criteria in sections 130, 131 and 134 of the Rules.

Division 2—Matters relating to the performance criterion

Section 14—Performance criterion—how to calculate power to weight threshold

Section 14 provides a formula to measure the power to weight threshold under the performance criterion. Section 130 of the Rules provides that a variant of a model, or a make and model, of a road vehicle satisfies the performance criterion if the variant, or make and model, as originally manufactured, is above the specified power to weight ratio. The formula in this Determination provides clarity and consistency around the application of the criterion.

This section also defines the terms ‘Manufacturer’s nominal net engine power’ and ‘tare mass’, which are used in the formula.

Division 2—Matters relating to the performance criterion

Section 15—Environmental criterion—limitations on eligibility

Section 131 of the Rules provides a number of ways in which a variant of a model, or a make and model, of a road vehicle can satisfy the environmental criterion. One option is to demonstrate that the vehicle (among other things) has a maximum engine capacity of 660cc and a maximum engine output of 47 kilowatts, and is not more than 3.4 metres long and 1.48 metres wide (see subparagraph 131(b)(ii)).

Paragraph 136(2)(d) of the Rules provides that the determination may set out that specified eligibility criteria apply to particular road vehicle categories. Pursuant to that power, section 15 of the Determination limits the categories of vehicles that will be eligible under subparagraph 131(b)(ii) to vehicles in the ‘M’ and ‘N’ categories under the *Vehicle Standard Australian Design Rule – Definitions of Vehicle Categories) 2005*. This will mean that ‘L’ category vehicles such as motorcycles and motor tricycles cannot

satisfy the environmental criterion on this particular basis (but can still rely on the option in subparagraph 131(b)(i), which refers to the use of an alternative means of propulsion).

Section 16—Environmental criterion—equivalent standards

Section 16 specifies emissions standards that are comparable to national road vehicle standards mentioned in subparagraph 131(a)(i) of the Rules. Paragraph 136(2)(f) of the Rules provides that the Determination may do this. The standards specified are ‘standards that require emissions performance that is similar to or better than the performance required by the latest applicable national road vehicle standard’.

The section defines ‘latest applicable national road vehicle standard’, which is used in identifying the comparable standard, and also clarifies the date that is to be used to determine which version of the standard applies to the relevant model or variant of vehicle.

The purpose of this section is to allow for progression of standards over time, and to provide flexibility for applicants to request assessment of emissions standards for comparability.

Example: A vehicle is manufactured for the Japanese market and meets Japanese emission standard JC08. The latest applicable national road vehicle standard is ADR 79/. The requirements of Japanese emission standard JC08 meet or exceed the standard required by ADR 79/. In this example, Japanese emission standard JC08 is considered to be comparable to the national road vehicle standards relating to emissions.

Division 4—Matters relating to the campervans and motorhomes criterion

Section 17—Campervans and motorhomes criterion—vehicles that are campervans or motorhomes

Section 17 specifies road vehicles that are not campervans or motorhomes. Paragraph 136(2)(h) of the Rules provides that the Determination may do this for the purpose of the campervans and motorhomes criterion.

Section 17 sets out the body shapes that a campervan or motor home must have and, in the case of a campervan, its maximum gross vehicle mass. The intent of this section is to remove the possibility that applicants will attempt to use this pathway to seek entry on the SEVs Register for vehicles that are not suitable to be campervans or motorhomes. It also restricts the definition of ‘campervan’ to a low gross vehicle mass to ensure that larger buses and goods vehicles are not eligible to be entered on the SEVs Register through the less onerous campervan requirements.