

Chapter 1

Introduction

Referral of the inquiry

1.1 On 28 March 2018, the Senate referred the provisions of the Road Vehicle Standards Bill 2018, the Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018, the Road Vehicle Standards Charges (Imposition—General) Bill 2018, the Road Vehicle Standards Charges (Imposition—Customs) Bill 2018, and the Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 to the Senate Rural and Regional Affairs and Transport Legislation Committee (committee) for inquiry and report by 7 May 2018.¹

1.2 The package of bills seeks to replace the *Motor Vehicle Standards Act 1989* and establish a new regulatory framework for the importation and supply of road vehicles and road vehicle components into the Australian market.

Conduct of the inquiry

1.3 The committee advertised the inquiry on its website, and wrote to a range of stakeholders inviting submissions by 17 April 2018. The committee received 34 submissions, as listed in Appendix 1. The submissions were published on the committee's inquiry webpage.

1.4 The committee did not conduct public hearings for the purposes of the inquiry, instead basing its deliberations on the written evidence provided. The committee's decision to hold the inquiry on the papers also took into consideration the fact that the Senate Rural and Regional Affairs and Transport Reference Committee had recently undertaken a lengthy and detailed inquiry into aspects of road safety in Australia which considered issues of road vehicle standards and importation.

Acknowledgement

1.5 The committee thanks the organisations and individuals that made submissions to the inquiry.

Structure of the report

1.6 The report consists of three chapters. This chapter provides background information on motor vehicle regulation in Australia. It also details the key provisions of the bills and consideration of the bills by the Parliamentary Joint Committee on Human Rights.

1 *Journals of the Senate*, No. 94–28 March 2018, p. 2978.

1.7 Chapter 2 of the report details the concerns raised by the Senate Scrutiny of Bills Committee, and Chapter 3 discusses the views raised in evidence to the committee. Chapter 3 concludes with the committee's views and recommendation.

Background

1.8 Strong and effective motor vehicle regulations have played an important role in maintaining road safety in Australia for the last 40 years. The Australian Design Rules, administered through the *Motor Vehicle Standards Act 1989* (MVS Act), ensure that vehicles entering the Australian market for the first time meet certain safety, anti-theft and environmental standards, such as the provision of seatbelts and airbags.²

1.9 In his second reading speech, the Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, (the Minister) noted that the annual road toll has more than halved since the introduction of the MVS Act, whilst the number of vehicles registered for use on Australian roads has grown at a rate of around two per cent per annum.³

1.10 The Road Vehicle Standards Bill 2018 and related bills have been introduced to replace the MVS Act which has been in force for almost three decades. During this period, consumer expectations, vehicle preferences, improvements in vehicle technology, and trends in global and domestic automobile markets have all undergone considerable change and transformation. Therefore, the Road Vehicle Standards Bill 2018 and related bills will provide a renewed regulatory platform to strengthen and modernise the current legislative framework.⁴

1.11 The Road Vehicle Standards Bill 2018 will also give effect to Australia's international obligations under the *'Agreement concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions'* (1958 Agreement) and the *'Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be fitted and/or be used on Wheeled Vehicles'* (1998 Agreement).

2 Explanatory Memorandum, p. 5.

3 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/8f7b4904-e5ab-452a-8736-6158744bd454/0021/hansard_frag.pdf;fileType=application%2Fpdf (accessed 23 April 2018).

4 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018.

Consultations and reviews

1.12 Since 2000, the MVS Act has been subject to numerous reviews and extensive consultation processes on possible reforms. The development of the Road Vehicle Standards Bill 2018 and related bills was informed by these processes.⁵

1.13 In 2013, the then-Department of Infrastructure and Transport (now the Department of Infrastructure, Regional Development and Cities) held public consultations on possible changes to the MVS Act and its Regulations. During the exercise, almost 200 submissions were received, and a number of open workshops took place in major cities around the country.⁶

1.14 Many submitters to that process called for relaxed restrictions on the importation of used vehicles. In particular, submitters suggested expanding the range of vehicles allowed for importation to include newer vehicles and variants of vehicles currently available in the Australian market. Several submissions also highlighted that the current criteria used to grant vehicles entry onto the Register of Specialist and Enthusiast Vehicles was outdated.⁷

1.15 In 2014, a review of the MVS Act was announced, with a focus on reducing business costs and the regulatory burden, and to improve safety.⁸ The Department produced an Options Discussion Paper for public comment. Public consultations were also conducted throughout September and October 2014.⁹

1.16 In addition to the consultation process, the government commissioned three reports to evaluate the costs and benefits relating to the potential relaxation of the vehicle import policy:

- Report 1, known as Castalia I, focused on the economic opportunities that would emanate from a relaxation of the current restrictions on the importation of used vehicles;¹⁰

5 Explanatory Memorandum, p. 63.

6 Department of Infrastructure, Regional Development and Cities, *2013 Public Consultation on the Motor Vehicle Standards Act 1989 and Regulations*, https://infrastructure.gov.au/vehicles/mv_standards_act/2013_public_consultation_process.aspx (accessed 10 April 2018).

7 Department of Infrastructure and Transport, *Public Consultation Report: Motor Vehicle Standards Act 1989*, August 2013, pp. 2–4.

8 Department of Infrastructure, Regional Development and Cities, *2016 to 2017 reform process prior to exposure draft of Bills*, https://infrastructure.gov.au/vehicles/mv_standards_act/pre-reform-process.aspx (accessed 23 April 2018).

9 Department of Infrastructure, Regional Development and Cities, *Submissions to the 2014 Review*, https://infrastructure.gov.au/vehicles/mv_standards_act/2014_submissions.aspx (accessed 10 April 2018).

10 Castalia Strategic Advisors, *Reduced Used Vehicle Import Restrictions: Cost Benefit Analysis*, June 2014.

- Report 2, known as Castalia II, looked at the economic opportunities available to consumers to privately import vehicles from the United Kingdom or Japan – countries that have comparable vehicle standards to Australia;¹¹ and
- Report 3 provided a safety analysis of Australian concessional vehicle imports. The report analysed the crash risk of vehicles imported under concessional schemes such as the Low Volume Scheme, Personal Imports, Pre-1989, and the Registered Automotive Workshop Scheme, as compared to the non-concessional vehicles manufactured in similar years.¹²

1.17 In 2016, the government announced changes to the MVS Act. Included in the changes was a proposal to allow the personal importation of new vehicles from countries with comparable standards, and improved arrangements for the importation of rare and special purpose vehicles. Consultations on the changes took place in 2016 and 2017.¹³

1.18 Exposure drafts of the Road Vehicle Standards Bill 2018 package, and the associated Rules, were released in December 2017 for consultation. The Minister then introduced the package of bills in Parliament on 7 February 2018.

Purpose of the bills

1.19 If enacted, the Road Vehicle Standards Bill 2018 will replace the MVS Act. The purpose of the bill is to:

- enable national road vehicle standards to be set for both road vehicles and their components, including environmental, safety and anti-theft standards;
- allow only vehicles that meet these standards to be imported into Australia (with some exceptions);
- establish a Register of Approved Vehicles onto which road vehicles must be entered before entering the Australian market; and
- establish a framework for recalling non-compliant road vehicles or components.¹⁴

1.20 The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 repeals the MVS Act and provides transitional arrangements and consequential amendments to support the commencement of the new legislation.

11 Castalia Strategic Advisors, *Reduced Vehicle Import Restrictions: Cost Benefit Analysis*, March 2015.

12 Monash University Accident Research Centre, *Safety Analysis of Australian Concessional Vehicle Imports*, August 2014, https://infrastructure.gov.au/vehicles/mv_standards_act/files/Safety_Analysis_of_Australian_Concessional_Vehicles.pdf (accessed 23 April 2018).

13 Department of Infrastructure, Regional Development and Cities, *Submissions to the 2014 Review*.

14 Explanatory Memorandum, pp. 5–10.

1.21 The Road Vehicle Standards Charges (Imposition—General) Bill 2018, the Road Vehicle Standards Charges (Imposition—Customs) Bill 2018, and the Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 allow for the imposition of charges for activities and services relating to the administration of the Road Vehicle Standards Bill 2018.

Overview of the bills

1.22 The package of bills establishes a legislative framework for the regulation and importation of the supply to market of road vehicles, and road vehicle components.

1.23 In his second reading speech, the Minister stated that the following five principles were used to guide the design of the new legislation:

- flexible and responsive legislation;
- clear and modern legislation;
- increased choice of road vehicles for Australians;
- improved compliance and enforcement powers to improve safety outcomes; and
- harmonisation with international standards.¹⁵

1.24 The following section provides an overview of the key provisions of each of the bills.

Key provisions of the Road Vehicle Standards Bill 2018

1.25 The Road Vehicle Standards Bill 2018 (the bill) is divided into six parts:

- Part 1 of the bill contains preliminary provisions, including definitions;
- Part 2 provides for the regulation and importation of road vehicles and road vehicle components, and introduces the new Register of Approved Vehicles, and the Register of Specialist and Enthusiast Vehicles;
- Part 3 provides for the recall of road vehicles and approved road vehicle components;
- Part 4 sets out the compliance and enforcement framework;
- Part 5 details administrative matters, including the use of computerised decision-making, delegation of the Minister's and Secretary's powers, and cost recovery; and
- Part 6 contains miscellaneous provisions including how the bill will interact with existing laws.

15 The Hon Paul Fletcher MP, Minister for Urban Infrastructure and Cities, *House of Representatives Hansard*, Second Reading Speech, 7 February 2018.

Preliminary provisions

1.26 Part 1 of the bill sets out the preliminary provisions of the new legislative framework for the regulation, importation and supply to market of road vehicles and road vehicle components. Clause 3 states that the objects of the proposed legislation are to:

- (a) set nationally consistent performance based standards that road vehicles must comply with before being provided in the Australia market; and
- (b) provide consumers in Australia with a choice of road vehicles that:
 - (i) meet safety and environmental expectations of the community; and
 - (ii) use energy conservation technology and anti-theft technology; and
 - (iii) are able to make use of technological advancements; and
- (c) give effect to Australia's international obligations to harmonise road vehicle standards.¹⁶

Definitions

1.27 A number of definitions are set out in clause 5 of the bill, including the definition of 'motor vehicle':

motor vehicle means a vehicle that uses, or is designed to use:

- (a) volatile spirit, gas, oil, electricity or any other power (other than human or animal power) as the principal means of propulsion; or
- (b) more than one of the powers mentioned in paragraph (a) (other than human or animal power) as a means of propulsion;

but does not include a vehicle used exclusively on a railway or tramway.¹⁷

1.28 Further definitions are provided in clauses 6 and 7 of the bill. In clause 6, a 'road vehicle' is defined as a motor vehicle designed solely or principally for use in transport on public roads; a trailer or other vehicle designed to be towed on a public road; a vehicle that is within a class of vehicles or specified vehicles determined in an instrument by the Secretary of the Department (Secretary); or a partly completed or unassembled vehicle that would otherwise be covered by the other road vehicle provisions of clause 6.¹⁸

1.29 The broad definition of a 'road vehicle' includes cars, heavy vehicles and caravans to ensure that they are also regulated under the bill.¹⁹

16 Road Vehicle Standards Bill 2018, sub cl. 3(1).

17 Explanatory Memorandum, p. 22.

18 Road Vehicle Standards Bill 2018, sub cl. 6(1).

19 Explanatory Memorandum, pp. 22–23.

1.30 Clause 7 defines a 'road vehicle component' as a component to be used in the manufacture of a road vehicle, including an assembly; a component that is within a class of components or specified components determined in an instrument by the Secretary.²⁰

Regulation of road vehicles and road vehicle components

1.31 Part 2 provides for the regulation of road vehicles and road vehicle components by allowing the Minister to determine road vehicle standards; establish the Register of Approved Vehicles; establish the Register of Specialist and Enthusiast Vehicles; create offences and civil penalty provisions for import contraventions; and permit Rules to be made to support the legislative framework and other related matters.

1.32 Clause 12 empowers the Minister to make standards for road vehicles and road vehicle components by legislative instrument, and through applying, adopting or incorporating other instruments. This includes the adoption of international technical standards, such as those established by the United Nations, the International Standards Organisation or the Australian Standards Organisation.²¹

Register of Approved Vehicles

1.33 Division 3 of Part 2 provides for the establishment of the Register of Approved Vehicles (RAV), which is intended to be the main entry pathway for road vehicles into Australia. Clause 14 provides that the Secretary must ensure the RAV is maintained by electronic means.

1.34 Clause 15 provides that a vehicle may be entered on the RAV if the vehicle satisfies the requirements of an entry pathway—that is, through the type approval pathway; the concessional RAV entry approval pathway; or any other pathway set out in the Rules. Contraventions relating to the entry of non-compliant vehicles on the RAV are set out in clause 16. Offences relating to dishonest, improper and incorrect information entered on the RAV are provided in clauses 17 and 18.

1.35 The concessional RAV entry approval pathway will allow entry of road vehicles that do not necessarily meet the national vehicle standards, but are able to meet one of the eligibility criteria for the pathway. This may include road vehicles that are older than 25 years, specialist and enthusiast vehicles, and vehicles that, if required to fully meet national standards, could not fulfil their intended purpose. The Explanatory Memorandum (EM) states that the Rules made under the bill will provide the eligibility criteria for this pathway.²²

20 Road Vehicle Standards Bill 2018, sub cl. 7(3) and sub cl. 7(4).

21 Explanatory Memorandum, p. 26.

22 Explanatory Memorandum, p. 28.

1.36 Clause 19 states that the Rules may also provide for the granting of approvals; conditions of such approvals; variation, suspension or revocation of such approvals; and obligations of former approval holders.

1.37 In Division 6 of Part 2 of the bill, clause 24 sets out contraventions pertaining to the entry of a road vehicle on the RAV. If a vehicle is not on the RAV, it is a contravention to provide it to another person in Australia or provide it for the first time in Australia. Exceptions apply if the road vehicle is provided to another person to have work done on it, to protect it, to store it, transport it to the importer or exporter, or 'in a circumstance set out in the rules'. This may include circumstances where work is underway on the road vehicle to meet compliance with a national standard, or to make it consumer ready, such as by installing upgrades or detailing the vehicle.²³ Clause 26 prevents the modification of road vehicles already entered on the RAV.

Register of Specialist and Enthusiast Vehicles

1.38 Clause 20 requires the Secretary to maintain a Register of Specialist and Enthusiast Vehicles (SEV register). The SEV register is for road vehicle make/models, and make/model/variants that have been assessed as genuine specialist and enthusiast vehicles, as per the Rules.²⁴

1.39 The EM states that vehicles registered on the SEV register must meet one of the six criteria to be set out in the rules. The six criteria are:

- Performance – high performance vehicles with specifications significantly superior to mainstream vehicles in Australia;
- Environmental – vehicles that offer environmental performance significantly superior to mainstream vehicles in Australia;
- Mobility – vehicles manufactured with special features to assist people with a disability;
- Rarity – vehicles of which only small quantities have been produced;
- Left-hand drive – vehicles originally manufactured as left-hand-drive, of which right-hand-drive versions are not available in any other country; and
- Campervans and motor homes – vehicles that have been originally manufactured as a campervan or motorhome.²⁵

Importation

1.40 Clause 22 provides for the importation of road vehicles into Australia, on condition that the person is the holder of a road vehicle type approval and an import

23 Explanatory Memorandum, p. 32.

24 Explanatory Memorandum, p. 31.

25 Explanatory Memorandum, p. 7.

approval, and is authorised to import the road vehicle. Clause 23 allows for Rules to be made in relation to granting approvals, the conditions of such approvals, and the obligations of former approval holders.

1.41 Contraventions regarding misrepresentation and breaches of obligations are set out in the remainder of Part 2.

Recalls

1.42 Part 3 of the bill provides for the Minister to issue a recall notice to suppliers of vehicles or components for the purpose of safety or non-compliance with national road vehicle standards. Clause 37 allows for Rules to be made in relation to issuing recall notices, compulsory and voluntary recalls, and notification requirements.

1.43 Clauses 38 to 40 specify contraventions related to recalls, and the penalties for non-compliance. Clause 41 empowers the Minister, Secretary, or a Senior Executive Service (SES) employee to issue a disclosure notice to a supplier if there is a risk of injury, misuse, or non-compliance with the applicable national road vehicle standards.

Compliance and enforcement

1.44 Part 4 provides for the enforcement of the new legislation by triggering the *Regulatory Powers (Standard Provisions) Act 2014*. The appointment of inspectors with monitoring, inspection and enforcement powers for offences related to the bill is detailed in Clause 49. Clauses 50 and 51 establish monitoring powers, while clauses 52 and 53 set out powers for inspection.

Other provisions

1.45 Part 5 provides for administrative matters, such as the utilisation of computer programs for decision making purposes, information sharing, cost recovery and delegations of power. Clause 73 provides the Minister with the power to delegate all or any of the Minister's functions or powers to a Secretary or SES employee in the Department. Clause 74 provides the Secretary similar powers to delegate any or all of his or her functions or powers.

1.46 Clause 78 permits a road vehicle to be used in transport on a public road without complying with state or territory laws if it meets a number of conditions.

1.47 Clause 82 allows the Minister to make rules by legislative instrument that prescribe matters required or permitted by the new legislation, or if necessary or convenient to carry out or give effect to the bill.

Key provisions of the Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018

1.48 The Road Vehicle Standards (Consequential and Transitional Provisions) Bill 2018 (Consequential Provisions bill) is divided into four schedules.

1.49 Schedule 1 sets out transitional arrangements for national road vehicle standards. Under these arrangements, the road vehicle standards in force under the MVS Act will continue to be in force for 12 months after Royal Assent of the Road Vehicle Standards Bill 2018. Schedule 2 then repeals the MVS Act.

1.50 Schedule 3 outlines transitional provisions commencing on repeal of the MVS Act. Clause 2 provides that a vehicle standard in force under section 7 of the MVS Act will continue in force as if it were a national road vehicle standard determined under section 12 of the new Road Vehicle Standards Act. Other transitional provisions relate to changes to the supply and importation of vehicles, and arrangements for existing registered automotive workshops. Clause 29 provides that the Minister may make rules about matters of a transitional nature.

1.51 Schedule 4 provides for consequential amendments to existing legislation.

Key provisions of the Charges bills

1.52 The three Charges bills include the:

- Road Vehicle Standards Charges (Imposition—General) Bill 2018;
- Road Vehicle Standards Charges (Imposition—Customs) Bill 2018;
- Road Vehicle Standards Charges (Imposition—Excise) Bill 2018.²⁶

1.53 These bills allow the Commonwealth to impose charges in relation to the administration of the Road Vehicle Standards Bill 2018.

1.54 The EM notes that the imposition of charges will ensure that the government 'is able to develop the National Road Vehicle Standards; maintain appropriate compliance and enforcement arrangements; and provide support to consumers utilising the Road Vehicle Standards Bill'.²⁷

1.55 The authority to collect charges is provided by the Road Vehicle Standards Bill 2018 and the Consequential Provisions bill for the transitional period of twelve months.

1.56 The EM notes that the Charges bills do not contain the amounts of charges, as these will be prescribed in regulations, which are disallowable by Parliament. The EM argues that setting the charges through regulations will enable the Minister to consult with stakeholders on the amounts of the charges; make appropriate and timely

26 Throughout the remainder of the report, the Road Vehicle Standards Charges (Imposition—General) Bill 2018; Road Vehicle Standards Charges (Imposition—Customs) Bill 2018; and Road Vehicle Standards Charges (Imposition—Excise) Bill 2018 will be referred to collectively as the Charges bills.

27 Explanatory Memorandum, *Road Vehicle Standards Charges (Imposition – General) Bill 2018; Road Vehicle Standards Charges (Imposition – Customs) Bill 2018; Road Vehicle Standards Charges (Imposition – Excise) Bill 2018*, p. 2.

adjustments to the charges; and ensure that there is a level of parliamentary scrutiny for the charges.²⁸

Commencement of the bills

1.57 A number of clauses of the Road Vehicle Standards Bill 2018 will commence on the day after the bill receives Royal Assent. The remaining clauses will commence a day and a year after Royal Assent is received. The bill will therefore be completely operational one year and one day after commencement.

1.58 The schedules of the Consequential Provisions bill commence on various dates, following the commencement of certain clauses in the Road Vehicle Standards Bill 2018.

1.59 The commencement dates of the three Charges bills are also dependent on the commencement of certain clauses in the Road Vehicle Standards Bill 2018. Some clauses of the Charges bills will not commence if clause 3 of the Road Vehicle Standards Bill 2018 does not commence.

Consideration by Parliamentary Joint Committee on Human Rights

1.60 The EM states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.²⁹

1.61 The Parliamentary Joint Committee on Human Rights assessed the bills and reported that human rights concerns were not raised by the Consequential Provisions bill, and the three Charges bills.³⁰

1.62 At the time of writing, the Parliamentary Joint Committee on Human Rights had deferred consideration of the Road Vehicle Standards Bill 2018.³¹

28 Explanatory Memorandum, *Road Vehicle Standards Charges (Imposition—General) Bill 2018*; *Road Vehicle Standards Charges (Imposition—Customs) Bill 2018*; *Road Vehicle Standards Charges (Imposition—Excise) Bill 2018*, p. 2.

29 Explanatory Memorandum, p. 16.

30 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, 13 February 2018, p. 42.

31 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 285.

