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Director
Vehicle Safety Standards Division
Department of Infrastructure, Regional Development and Cities
GPO Box 594
Canberra ACT 2601
Via email: MVSAreview@infrastructure.gov.au

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Submission by the Motor Trades Association of Australia Limited (MTAA) for the proposed introduction of the Roads Vehicle Standards Bill

Dear Director Vehicle Safety Standards Division

The Motor Trades Association of Australia (MTAA) and its State and Territory Associations and thousands of automotive business constituents welcome the progress of reforms regarding the importation of vehicles into Australia and the development of the Road Vehicles Standards Bill (RVSB).

The MTAA is the peak Australian automotive association and represents the interests of its State and Territory jurisdictional associations which include: the Motor Traders Association of New South Wales, the Victorian Automobile Chamber of Commerce (incorporating the Tasmanian Automobile Chamber of Commerce), the Motor Trade Association of South Australia, the Motor Trade Association of Western Australia, the Motor Trades Association of the ACT and the Motor Trades Association of the Northern Territory.

The MTAA Members represent more than 95% of the automotive supply chain consisting of many of the 69,365 automotive businesses across Australia that employ over 379,365 Australians. Many of these businesses and their employees are directly impacted by automotive importing regulations and legislation whilst others are impacted by conducting repair, servicing, maintenance and modification of new and used imported vehicles.

MTAA has taken a keen interest in the activities regarding the importation of vehicles into Australia and has previously supported restricting the parallel importation of vehicles through non established dealer networks.

At this vital stage of the development of the RVSB, MTAA is providing the attached submission that incorporates the majority views and concerns of its State and Territory affiliated member associations.

This submission should be considered alongside any of those that may have been submitted by any of the Association's Members.

MTAA on behalf of its State and Territory Association Members remain available to assist with any additional line of inquiry related to the views and concerns highlighted in this submission or any other issues regarding the proposed introduction of the RVSB or automotive issues more generally.

Yours Sincerely,



Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia Limited



MTAA Limited's

Submission to the Department of
Infrastructure, Regional Development
and Cities regarding the proposed
introduction of the Road Vehicles
Standards Bill

Executive Summary

MTAA Key Recommendations:

- Review and ensure effective integration and intersection of the RVSBS into other key national legislation (i.e. *Australian Consumer Law (ACL)*, *Competition and Consumer Act 2010 (CCA)*, etc.) to address issues such as warranties (particularly those involved in the modification approval process), product recalls and business to business relationships.
- Consider proposed changes to national legislation (i.e. ACL, CCA, etc.) that have been recommended in the Australian Competition and Consumer Commission (ACCC) New Car Retailing Market study including: provisions relating to consumer guarantees, warranties and minor and major product failures providing reasons for product recalls, and freedom of repair information for independent repairers (potentially being provided through the RVSBS or ACL) and how this aligns with the RVSBS.
- Examine variations between the RVSBS and international and state and territory legislation to determine variations in standards and how these impact vehicle importation (including compliance and standards); both currently and in the future.
- Continue investigation to ensure that the harmonisation of Australian and International standards are relevant to the Australian market with the aim of protecting the economic interests and sustainability of the Australian automotive industry (and those industries which are dependent on automotive services) and the safety and security of consumers and businesses.
- Provide guarantees of system continuity, capability and useability of the Register of Approved (RAV) electronic management system; including integration with other databases.
- Provide assurances of fair and equitable access to business opportunities provided to third parties managing RAVs and outline tender, probity and privacy assurances.
- Provide assurances on compliance requirements and activities; particularly for overseas stakeholders impacted by the standards outlined in the RSVB.

MTAA Key Recommendations (continued):

- **Make clear the information requirements of Model Reports (MRs) and how Government will ensure that the commercial activities surrounding the sale and application of MRs are not anti-competitive or disadvantage low volume importers.**
- **Remove subjectivity on what constitutes retail items used as components for road vehicles and those automotive components that are incorporated under the RSVB.**
- **Provide clarity on the implications of making modifications to the vehicle after the first time the vehicle is provided to market, e.g. roll over protection systems for quad bikes and implements for farm equipment, and automotive performance accessories.**
- **Make clear risk thresholds for determining vehicle safety and security.**
- **Consider how imports can be limited if negatively impacting the competitiveness of existing automotive dealerships.**
- **Ensure industry is involved in on-going consultation as operational changes are incorporated into managing vehicle importation under the RSVB.**

MTAA Support for Reform

- **MTAA supports efforts undertaken by the Department of Infrastructure, Regional Development and Cities (Department) to harmonise Australian vehicle standards with international vehicle standards and to ensure they are relevant to the Australian context and there is no increased risk to consumers or Australian automotive businesses.**
- **The MTAA supports the timely reform of vehicle importation legislation, particularly now that large scale automotive manufacturing has ceased in Australia and that the automotive industry is progressing through a period of rapid structural and technological change.**

- The MTAA supports reform that will increase quality assurance of imported vehicles, simplify importation processes, streamline the supply of mainstream (full volume) vehicles, strengthen Government compliance and enforcement standards and clarify suppliers recall responsibilities for all new vehicles.
- MTAA is supportive of enhancing electronic processing capabilities for importing vehicles and managing vehicle identification when on Australian roads (including integration with state based vehicle registration systems).
- MTAA supports incorporating any changes to vehicle importation legislation into the proposed RVSBS which is proposed to replace the *Motor Vehicle Standards Act (1989)*.
- However, MTAA does *not* support reforms that are economically and legally detrimental to businesses within the automotive industry; particularly those that retail, service, maintain, repair and modify automotive vehicles. Nor is MTAA supportive of reforms that inhibit the supply of available work and products to automotive businesses or increase safety risk for consumers and businesses.

MTAA Key Recommendations

MTAA requests that the Department undertake the following activities when considering amendments to the RVSBS:

Financial concerns

- Consider the financial and legal impacts that the introduction of the RVSBS will have on industry and provide evidence to address industry concerns including risk management strategies in the event of identified policy issues or failures.

Import limits

- Provide details on limiting the numbers of personally imported vehicles if numbers impede the competitiveness of existing automotive dealerships that are subject to stringent safety and security standards.

Harmonisation of standards (international/national/state)

- Examine the current and forecasted impact of the harmonisation of Australian and international vehicle standards on the Australian automotive industry. Ensure that the research

considers both business *and* consumers and provide a report to industry prior to the RVSB being debated in Parliament and considered for approval. MTAA considers that transparency will allow industry stakeholders to make better informed decisions on the appropriateness of international standards in the Australian context and on industry profitability and sustainability now and in the future; particularly as new technologies are introduced into imported vehicles including safety and security systems.

- Make clear how the standards set out in the RVSB align with or operate alongside other Australian legislation (i.e. *ACL, CCA, Customs Tariff Act 1995, Environmental Protection and Biodiversity Conservation Act 1999*) and international standards (i.e. the United Nations International Whole of Vehicle Type Approvals (IWVTA)). Identify areas where the RVSB may be in conflict with this legislation and what are potential consequences. Include variations in standards and resolution requirements and how they will be addressed.
- Identify possible contradictions with state legislation and how jurisdictional conflicts will be resolved and what impacts this may have on the operations of the RVSB.
- Clarify whether the RVSB considers the outcomes of the ACCC New Car Market Study into new car retailing; including a suggestion that access to repair information might be provided through RVSB or through Australian Design Rules (ADRs).

Model reports

- Provide clarity on the implications of making modifications to the vehicle after the first time the vehicle is provided to market. Include how this may impact MRs particularly if they are based on safety / security / environmental issues.
- Provide more transparency on the information within MPs and their comparison with MR checklists (including omissions and inclusions).
- Clarify the process of how owners of MRs can sell vehicle requirements to others for profit and provide evidence how Government will mitigate unfair and anti-competitive activities by MR owners or when trading MRs and the information contained within.
- Clarify if there are any restrictions to the distribution and application of approved designs within a MR to other applications.

Recalls and warranties

- Investigate and make clear warranty accountability and costs imposed for those undertaking vehicle modifications for approval, assessing modified vehicles, importing vehicles and those undertaking repairs on vehicles that may have been previously modified correctly or not. Include clarity on whether the modifiers are subject to Chain of Responsibility and ACL requirements to supply goods fit for purpose and of acceptable quality.
- As Consumer Affairs Australia and New Zealand (CAANZ) is currently recommending changes to provisions of the ACL pertaining to consumer guarantees / warranty and major and minor failures (including their definitions and potential for product recalls), clarify how the RVSB incorporates potential changes to the ACL or CCA.

Enforcement

- Make clear how compliance enforcement (including information security) will be operationalised; particularly in international jurisdictions where the Australian Government and Australian law may be less influential.

Electronic information management systems

- Illustrate and provide examples to industry how electronic management systems (or required standards) will operate and include user input into system development and management capabilities; including their ability to provide continuity and to evolve with changing market requirements.
- Provide evidence of how RAV data records will better secure and manage vehicle information as compared to current identification plates and how they will integrate into State and Territory jurisdictional registration schemes.

Provision of information

- Provide to suppliers operating under the current scheme (i.e. suppliers of sub-assemblies and component registration numbers, Vehicle Assessment Signatory Scheme (VASS) and Vehicle Safety Compliance Certification Scheme (VSCCS) engineers, and test facilities, etc.) detailed business and operational requirements for operation under the RVSB so they can make the required transfer arrangements and within a reasonable timeframe.

Third party RAV providers

- Make clear the eligibility of independent third party RAV providers (including private industry, Government and not-for-profit organisations, i.e. Industry associations).

- Provide clarity on Government oversight of independent third party RAV providers and their data management processes and systems; including the integration with other databases such as the Personal Property and Securities Register (PPSR).

Heavy vehicle regulation

- Considering that heavy vehicle requirements (including NC class vehicles) are not yet integrated into the RVSB and are under review, ensure that industry is provided the opportunity for input into legislative development; as with all proposed future RVSB operational changes.
- Make clear the role of the National Heavy Vehicle Regulator (NHVR) on the approval of heavy vehicle modification and component certification under the RVSB.

Retail components

- Remove subjectivity on what constitutes retail items used as components for road vehicles and those automotive components that are incorporated under the RVSB. For example, it is unclear how performance exhausts, performance chips, implements fitted to farm machinery and roll-over protection (ROPS) devices on quad bikes (noting they are not road vehicles) are considered under the RVSB or whether they should be considered.

Thresholds for risk

- Make clear risk thresholds for determining vehicle safety and security.

MTAA Issues of Concern

The following issues identified when examining the draft package are of concern to MTAA Members and their Business Constituents:

Financial concerns

- There are concerns that some businesses will be financially disadvantaged by operating under the requirements of the RVSB or through the process of transferring to the new scheme.
- There is concern from industry that Government does not have in place effective risk management strategies to address risk to industry and Government when transferring to the new arrangements under the RVSB or what will be done if policy issues or failures are identified.

Approval limits

- The RVSB stipulates that there are no caps on the numbers of vehicles to be imported either as a type approval pathway or a concessional RAV entry pathway. MTAA seeks clarification on the Department's efforts to establish how many vehicles will be imported and what impact this may have for industry stakeholders, particularly independent repairers and established dealer networks.

Harmonisation of standards

- MTAA supports the harmonisation of Australian automotive safety standards with international standards. However, MTAA seeks assurance that Government will not place unnecessary compliance burdens by forcing US or Euro-centric standards on Australians and the Australian automotive industry which are irrelevant or superfluous to the Australian automotive environment.
- Although the RVSB aims to accelerate the Australian design standards with international standards, it is unclear how the RVSB aligns with international standards and what are the implications when international standards change and potentially disadvantage Australian automotive industry stakeholders? For example, the Department has not provided a list of variations in standards or how the system may evolve. This is particularly important in the automotive industry which is undergoing rapid technological and structural change.
- The RVSB proposes that it will take precedent over State and Territory jurisdictional law and that national standards are the only standards that apply to components. It is unclear how this will be managed particularly with differences between state jurisdictional regulations and state verses national jurisdictional powers (or perceptions of them).
- Another concern is the implications of how the RVSB expands on the scope of ACL under Schedule 2 of the CCA (clauses 37, 76, 77).

Model reports

- There is a lack of transparency on what information is contained in a MR as is the relationship and similarities and differences (i.e. omissions and inclusions) of MR checklists with MRs.
- It is unclear whether there are any restrictions to the distribution and application of approved designs within a MR to other applications.

- The process of how owners of MRs can sell vehicle requirements and information contained within MRs to others for profit is uncertain and potentially anti-competitive. For example, ownership of MRs could be used to unfairly restrict low volume importers gaining access to information and approval processes at fair and reasonable costs.
- It is undecided how anti-competitive activity in relation to the issuing and ownership of MRs and the sale of information within MRs will be managed by Government.

Recalls and warranties

- It is unclear whether compliance with recall orders would create a scenario whereby a business could expose itself to liability or prosecution in matters outside the direct scope of the recall notice. For example, the liability of a company who undertakes a repair to manufacturer standards prior to the Department issuing a recall is not clear within the RVSb. Also not outlined is whether the protection for an individual contained within the exposure draft would apply in that scenario.
- The RVSb does not outline warranty considerations for those Registered Automotive Workshops (RAWS) undertaking required modifications. For example, if an importer sends a vehicle to be modified, and requests that the modifications be made consistent with the standards and is assured that they are, what liability does the modifier and importer bear if that is not the case? MTAA requires clarity on whether the modifiers are subject to Chain of Responsibility and ACL requirements to supply goods fit for purpose and of acceptable quality?
- The RVSb does not specifically address modifications that occur *after* the vehicle has been provided for the first time? For example; if these modifications contrast to approval requirements and who is responsible for repairing the vehicle to required standards and how the timeline of modification is established? Examples might include fitment of performance exhaust systems, performance chips, additional lighting, implements to farm machinery, and roll-over protection (ROPS) devices on Quad Bikes.

Enforcement

- Although, the RVSb outlines penalties regarding non-compliance, it is not clear how enforcement will occur, particularly in international jurisdictions. For example, it is unclear how the Department will undertake inspections and oversight activities in overseas jurisdictions where the application of Australian law may not be possible.

- The delineation of powers and scope of responsibility and obligations between the ACCC and the Department is undecided particularly in events such as warranties and recalls.

Electronic information management systems

- It is uncertain how Government will ensure the proper and secure sharing and management of information within multiple departments and overseas organisations (clause 65).
- The RVSB proposes the introduction of modern electronic information management systems to improve system usability and processing. However, there are no assurances or guarantees on how these systems will operate, particularly if operated by third parties (clause 65) and artificial intelligence (clause 62). Nor are contingencies outlined for system disruption or details of staged implementation to ensure proof of concept.

Provision of information

- Suppliers operating under the current scheme (e.g. suppliers of sub-assemblies and component registration numbers, VASS and VSCCS engineers, and test facilities) are concerned that they have not been provided with detailed business and operational requirements for operation under the RVSB.

Third party RAV providers

- The legislation allows a private entity to operate and maintain the RAV for profit. Efforts to ensure fair and equitable market access and industry competition is not proposed nor are there indications of Government preferred suppliers.
- The privacy and probity protections of information within the RAV and those responsible for managing it are unclear.

Heavy vehicle regulation

- There is a lack of clarity concerning the role of the National Heavy Vehicle Regulator (NHVR) on the approval of heavy vehicle modification and component certification within the proposed system of vehicle importation.
- It is uncertain how 'NC' vehicle modification and certification by Australian companies who wish to import previously unregistered / untitled vehicles for modification will be undertaken under the RVSB.

- It is unclear how heavy vehicle recovery vehicles are treated under this legislation; noting that a current review is being undertaken? For example, are heavy vehicles eligible for inclusion on the SEVs register?

Retail components

- Retail items used as components for road vehicles are not regulated under the RVSB. It is not clear how these components are classified as retail items used as components for road vehicles as compared to those components requiring approval or incorporated in approval processes (clause 37).

Thresholds for risk

- The criteria for establishing the risk threshold of a vehicle is not stated in the RVSB. Nor is how the Minister determines reasonable belief that a vehicle or component poses a risk and requires documents from importers? By the exposure drafts own admission all vehicles pose a level of risk.

Conclusion

MTAA applauds the efforts by Government to streamline the process of importing vehicles into Australia and consultation undertaken with industry on the proposed changes. However, MTAA remains opposed to policy that makes personal importation an attractive substitute for consumers who would otherwise purchase vehicles through established dealer networks. MTAA is also concerned that Government should give more consideration of the impacts of personally imported vehicles on automotive businesses that are required to repair and service these vehicles; including warranty requirements. MTAA also urges Government to assess how the RVSB will incorporate recommendations from the ACCC market study including consumer guarantees and warranty arrangements for automotive dealers (including definitions of minor and major failures), and freedom of access to repair information for independent repairers.