



Australian Government

Department of Infrastructure,
Regional Development and Cities



RVSA Implementation Consultation Framework

Type Approvals Consultation Group

*Discussion Paper TA5 – Test Reports not submitted by an RVS
Approved Testing Facility*

27 March 2019



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Introduction

The Road Vehicle Standards (RVS) legislation has been passed by both houses of Parliament and will come into effect on 10 December 2019. In preparation for commencement of the legislation, the department is currently undertaking policy and procedures development to ensure an effective transition.

The department has continued to consult with stakeholders and is aware that some industry participants remain concerned about how certain aspects of the legislation will work in practice. The RVSA Implementation Consultation Framework (the framework) was established as a mechanism to continue to engage with the road vehicle industry and in-service regulators to identify and develop practical solutions to issues relevant to the administration of the RVS legislation.

The department acknowledges that during the last round of consultation, industry expressed concern over the validity of test evidence used in support of approvals under the Motor Vehicle Standards Act 1989 (MVSA) once the opt-in period or the validity period of opt-in approvals has expired under the RVS legislation. This paper will form the basis for discussion at the Type Approvals Consultation Group meeting on 27 March 2019. Outcomes of the discussion and a copy of this paper will be made available on the department's website.

Issue

Stakeholders have advised the department that test evidence used for an approval under the MVSA (and subsequently granted an RVSA approval under opt-in provisions) may still be relevant, correct, and current when the five year validity of opt-in RVSA type approvals expires. The Rules, however, require that, after the five year period, all test evidence must come from RVSA approved testing facilities.

This means that type approval holders of vehicles with long model lives may be required to retest their vehicle under an RVSA testing facility approval. This only occurs where the entity that originally tested the vehicle has not become an RVSA Testing Facility Approval holder.

Industry has advised that this retesting can be very expensive and may impose a significant regulatory and cost burdens on their operations.

Discussion

The Rules express the department's policy position when it comes to assessing evidence of compliance with national road vehicle standards: evidence should come from approved testing facilities (regardless of when the testing was conducted).

This approach allows us to have regulatory reach to the organisations that are providing the foundation for evidence that a vehicle complies with the national road vehicle standards. This helps ensure that evidence is not only accurate, but that someone is accountable for the accuracy of that

evidence. From this perspective, the department reaffirms its commitment to ensuring that testing facility evidence must come from approved testing facilities as our default policy position.

There is, however, some flexibility to consider other types of evidence. We can, for example, consider a declaration made by an applicant. We can also consider any information about the accuracy of that declaration and the extent to which we should use it to assess compliance with the national road vehicle standards.

We will not employ this flexibility, however, unless applicants are able to justify to us that we should accept an alternative form of evidence. In addition, we would expect applicants to be able to provide a similar level of accountability for that evidence (that is, the applicant agrees to be responsible for the accuracy and relevance of that evidence).

The department recognises that there may be specific situations where older testing evidence may be acceptable, such as when re-testing would impose a significant regulatory and financial burden on a transitioned type approval, for example:

In the case of ADR 59 bus rollover testing, industry participants indicated that they have identified instances where local testing has been conducted several years ago, yet is still relevant to the type approved vehicles currently being manufactured. The department notes that industry estimates that at times, such retesting to the RVS legislation requirement could cost millions of dollars and threaten the viability of affected businesses.

Department's proposed solution

Given the above considerations, the department is willing to consider, on a case by case basis, requests to continue to use older evidence. This consideration will only be afforded to opt-in approval holders who are renewing their approval.

It will not be available for new models, model reports or component type approvals, which must provide evidence from a Testing Facility Approval – consistent with the policy expressed in the Rules.

The current administrative registration process for Component Type Approvals (CRNs) and Sub Assembly Registration Numbers (SARNs) is not a formal approval, whereas a Component Type Approval (CTAs) will be under the RVSA. The department has identified issues with test evidence for CRNs and SARNs in the past and is committed to obtaining an assurance that all evidence is current, and demonstrates compliance with the national standards.

The requirement for new type approvals and model reports to provide evidence from a registered testing facility shall remain.

Proposed process

Once the five-year period has expired, type approval holders will submit an application to have the approval renewed. At this time, the approval holder will submit the required forms with the testing facility identification numbers recorded. If a facility is identified as not being registered under the RVSA, the approval holder will be required to submit:

- a signed declaration that they meet the eligibility considerations for older evidence to be considered
- the original test report documentation
- information to support the accuracy of the declaration

If the evidence is assessed as acceptable, the approval will be granted under the RVSA for a further seven years until the next renewal is due.

If the submitted evidence is determined to be insufficient to provide an assurance of compliance with the national road vehicle standards, new test evidence provided by a registered testing facility under the RVSA will be required before an approval will be granted.

Upon the second renewal date, the approval holder will be required to provide test evidence that has been conducted under a Testing Facility Approval. This will provide a 13 year period from implementation of the RVSA for approval holders that have applied under the opt-in provisions to obtain testing evidence that meets the requirements set out in the Rules.

Eligibility and declaration

The below table outlines the eligibility for older evidence to be considered:

Table 1

ELIGIBILITY TO HAVE OLDER EVIDENCE CONSIDERED	
•	This consideration will only be afforded to approval holders that choose the opt-in
•	Only approval holders submitting evidence against the national standards will be considered. Model reports and component type approvals will not be eligible for this pathway.
•	The approval holder must provide a detailed justification as to why the test reports being submitted cannot be provided by a testing facility approved under the RVSA.
•	The approval holder will need to demonstrate that there is a significant financial and administrative burden to the organisation by being required to re-test. For example, if the cost of re testing as cannot be amortised due to the number of vehicles likely to be provided under the approval.
•	Retesting to the national road vehicle standards would not provide any additional safety, environmental, or antitheft benefits.

- **The approval holder must hold the original test reports approved under the MVSA and be able to provide these to VSS upon request.**

If the applicant and evidence satisfies the above considerations, the applicant will need to provide a declaration to the department (s19(2)(g)). The declaration will need to state that:

- The original test evidence is still applicable and continues to demonstrate the vehicle's compliance with the national road vehicle standards.
- That the original test evidence is accurate
- That retesting for compliance with the national road vehicle standards will impose a significant and unreasonable financial burden on their business
- That retesting would not provide any additional safety, environmental, or antitheft benefits to the community
- That the applicant accepts responsibility for the accuracy of the test evidence and the vehicle's compliance with the national road vehicle standards

In addition to the declaration, the department will ask for information that is relevant to assessing the accuracy of the declaration (s19(2)(i)) and whether the declaration demonstrates compliance with the national road vehicle standards (s19(2)(h)) :

- A copy of the original test report/evidence
- A quote for the cost of retesting provided from a Testing Facility Approval holder
- A statement about the financial burden of retesting
- A statement about why retesting does not provide the community with any additional safety, environmental, or antitheft benefits

Background

When assessing an application for a type approval or component type approval (for compliance with the national road vehicle standards) the Road Vehicle Standards Rules (the Rules) list the types of evidence that can be taken into account (s19). While other approvals allow assessors to take into other relevant matters, type approvals and component type approvals require assessors to only take into account the items on that list (see attachment A).

Evidence from RVSA approved testing facilities is included on this list. Evidence from entities that were previously registered with the department as testing facilities will also be acceptable, but only if that entity has a Testing Facility Approval under the RVS legislation. Older test reports from testing facilities that do not become the holder of a Testing Facility Approval are not included on the list.

MVSA approval holders that choose to opt-in using the processes set out in the Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Transitional Act), will be eligible to

transfer all current test evidence regardless of whether it was conducted by an RVS Approved Testing Facility or not.

The applicable MVSA approvals eligible for opt-in are:

- subsection 10A(1) or (2) of the MVSA (i.e. for a vehicle type that is either fully compliant or is non-compliant only in minor and inconsequential respects)
- section 14A of the MVSA or regulation 20 of the Motor Vehicle Standards Regulations 1989 (i.e. nonstandard vehicles)

The approval granted within the opt-in period remains valid for five years. If the holder of an MVSA approval does not opt-in during the 6-month window, the approval will cease at the end of this period and any new approval will have to be applied for through the conventional manner under the Rules.

In this instance, all test evidence will need to have been conducted by a Testing Facility Approval holder or by a person who has become the holder of a Testing Facility Approval. This also applies for all new models being approved under the RVS legislation.

Once the five year validity of an opt in approval has expired, approval holders will be required to submit an application to renew the approval. As with applications for new models, test evidence for this renewal will need to have been conducted by a Testing Facility Approval holder or by a person who has become the holder of a Testing Facility Approval. This renewal will be granted for a period of seven years.

Compliance and enforcement measures, including provisions linked to the *Regulatory Powers (Standards Provisions) Act 2014*, are contained in Part 4.

Discussion questions

- How many approvals do you expect may be affected by test reports that have been conducted under the MVSA and will not be eligible under the RVSA due to the facility not registering or no longer existing?
- Do you expect there to be any test reports prepared for MVSA approvals to be still required for an approval after 13 years?
- Are there circumstances where it would be difficult for an approval holder to access the original test reports?

ATTACHMENT A – Extract from the exposure draft of the Road Vehicle Standards Rules

20 Criteria for deciding application

(2) For the purposes of subparagraph (1)(a)(i) and paragraph (3)(a), the Minister may take into account only the following matters:

(a) the results of testing:

(i) conducted under a testing facility approval; or

(ii) conducted by a person who holds a testing facility approval but did not at the time the testing was conducted;

(b) an approval or other document:

(i) issued by the government of a foreign country that is a contracting party to the 1958 Agreement, or by a person who is a competent authority of such a government for the purposes of that agreement; and

(ii) that indicates that the type of road vehicle complies, or substantially complies, with requirements applying under that agreement that are equivalent to the applicable national road vehicle standards as in force at the time the approval is to be granted;

(c) in respect of road vehicle components used in the type of road vehicle—whether the road vehicle components are approved road vehicle components;

(d) any declaration made by the applicant;

(e) any information relevant to determining the accuracy of the matter mentioned in paragraph (a) or (d);

(f) any approved model reports that relate to the type of road vehicle;

(g) any information about whether the matters mentioned in paragraphs (a), (b), (c) or (f) demonstrate that road vehicles of the type to which the approval is to be granted comply with applicable national road vehicle standards.

The Minister must not take into account any other matters.

8 Further information and inspection of premises etc.

(1) To assist in deciding an application relating to a road vehicle of a particular type, the Minister may request the applicant to:

(a) give the Minister further specified information; or

(b) allow the Minister or an inspector to inspect premises where:

(i) vehicle components of vehicles of that type are designed or manufactured; or

(ii) vehicles of that type are designed or manufactured; or

(c) allow the Minister or an inspector to inspect vehicles of that type, or vehicle components of vehicles of that type.

(2) A request under subsection (1) must:

(a) be in writing; and

ATTACHMENT A – Extract from the exposure draft of the Road Vehicle Standards Rules

(b) state that the request must be complied with within the period of 30 days starting on the day the request is given, or within such longer period as the Minister allows.