



Australian Government

Department of Infrastructure,
Regional Development and Cities



RVSA Implementation Consultation Framework

Type Approvals Consultation Group

*Discussion Paper TA1 – Modification of a road vehicle on the RAV
before first provision to a consumer*

10 August 2018



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Introduction

The Australian Government released exposure drafts of the suite of Road Vehicle Standards (RVS) legislation, including draft Road Vehicle Standards Rules (the Rules), for public consultation in mid-December 2017. This formal consultation process closed on 16 February 2018 and the Department of Infrastructure, Regional Development and Cities (the Department) received a total of 86 public submissions. In response to feedback received, the Government announced that it would make a number of refinements to the Rules. These have been published on the Department's website.

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 framework established three separate consultation groups to address specific issues through a targeted consultation process. The Department is committed to working collaboratively with industry and in-service regulators through these groups to facilitate the smooth and effective implementation of the RVS legislation.

This paper will form the basis for discussion at the Type Approvals Consultation Group meeting on 10 August 2018. Outcomes of the discussion and a copy of this paper will be made available on the Department's website.

Issue

Modification of road vehicle on the RAV before being provided to a consumer for the first time in Australia

A number of stakeholders have expressed concern that, on a strict interpretation of the legislation, they would be in breach of the RVS legislation if they continued their normal business practice of fitting accessories/options to new vehicles prior to providing those vehicles to consumers. This could include the fitment of tow bars, tinted windows and other accessories regularly requested by their customers.

It is not the Department's intention that minor modifications such as these should be prohibited or regarded as a breach of the RVSA, as long as they comply with applicable national road vehicle standards (for example, tow bars should comply with Australian Design Rule 62).

Modification of road vehicles prior to provision is also common practice in the heavy vehicle sector. However, following stakeholder feedback on this specific issue, the Government has agreed to amend the Rules to allow for modifications to new heavy vehicles prior to provision if those modifications are undertaken in accordance with Vehicle Standards Bulletin 6 (VSB6 – also known as the National Code of Practice Heavy Vehicle Modifications).

Legislation

The relevant provisions in the RVS legislation are contained in sections 25 and 26 of the RVS Bill. Section 26 of the RVS Bill makes it a breach of the legislation to modify a road vehicle that has been entered on the RAV if:

- the modification occurs before the vehicle is provided to a consumer for the first time in Australia; and
- the modification causes the road vehicle to not satisfy the requirements of the entry pathway that applied at the time the vehicle was entered on the RAV; and
- the modification is not otherwise allowed by the Rules.

Section 25 of the RVS Bill allows for the Rules to prescribe the circumstances in which a road vehicle on the RAV may be modified. The relevant provision in the exposure draft of the Rules is at section 49, which states that the only modifications allowed are those undertaken during second stage of manufacture (SSM). This section will be amended to include modifications made in accordance with VSB6 for heavy vehicles.


For the purposes of modifications made in these circumstances, the most relevant provisions in the draft Rules are at subsections 16(b) and 16(d). Subsection 16(b) states that one of the requirements of the type approval entry pathway is that the design and componentry of the road vehicle must be in accordance with the design and componentry described in the supporting material/evidence for the vehicle's type approval. Subsection 16(d) states that the vehicle must comply with all applicable national road standards that were in force at the time of the vehicle's entry on the RAV, unless otherwise specified in the vehicle's type approval.

In summary, if a vehicle has already been entered on the RAV and is modified prior to being provided to a consumer for the first time in a way that meant it would no longer meet the requirements of its entry pathway (other than those permitted through a SSM approval or under VSB6), then the person who modified the vehicle will have breached the RVS legislation.

Options for resolution

1 – Legislative options

- a) Amend section 49 of the draft Rules to include a further circumstance that sets out principles for deciding whether a modification to a road vehicle results in either a change to its design and/or componentry such that it no longer meets the requirements of subsection 16(b) of the Rules, and/or the vehicle no longer meeting all the applicable national road standards associated with its type approval.

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- b) Amend section 49 of the draft Rules to include a list of specific modifications that would not be considered to result in either a change to a vehicle's design and/or componentry such that it no longer meets the requirements of subsection 16(b) of the Rules, and/or the vehicle no longer meeting all the applicable national road standards associated with its type approval.

2 – Administrative options

- a) Publish guidance material that sets out principles for deciding whether a modification to a road vehicle results in either a change to its design and/or componentry such that it no longer meets the requirements of subsection 16(b) of the Rules, and/or the vehicle no longer meeting all the applicable national road standards associated with its type approval.
- b) Publish guidance material that lists specific modifications that would not be considered to result in either a change to a vehicle's design and/or componentry such that it no longer meets the requirements of subsection 16(b) of the Rules, and/or the vehicle no longer meeting all the applicable national road standards associated with its type approval.

3 – Hybrid legislative/administrative option

A combination of option 1a) and 2b), where the draft Rules are amended to include principles for deciding whether a modification to a road vehicle is permitted and guidance material that lists specific modifications that would not be considered a breach of the RVS legislation.

Advantages and disadvantages of options

Option 1a): Amend Rules to include principles for deciding if a modification is permitted	
Advantages	Disadvantages
Provides legislative certainty for stakeholders regarding how the Department must decide whether modifications are allowed.	More difficult to amend legislation than guidance material if any changes are necessary.
Allows flexibility to consider modifications that may not yet have been thought of.	May limit ability of the Department to use discretion for some (unusual) modifications.
Option 1b): Amend Rules to include specific modifications that are permitted	
Advantages	Disadvantages
Provides legislative certainty regarding exactly what modifications are allowed.	The list of modifications may not be exhaustive and is likely to need updating over time.
	More difficult to amend legislation than guidance material, which would delay inclusion of any further allowable modifications.
	No discretion for any modifications not listed in the Rules.

Option 2a): Publish guidance material that includes principles for deciding if a modification is permitted	
Advantages	Disadvantages
Provides high level of certainty for stakeholders regarding how the Department will decide whether modifications are allowed.	The Department may be perceived as having too much discretionary power (but this could also work to some stakeholders' advantage).
Easily updated if any changes are necessary.	Lower level of long term certainty for stakeholders.
Allows flexibility to consider modifications that may not yet have been thought of.	On a strict interpretation, this approach may not comply with the legislation.
Option 2b): Publish guidance material that includes specific modifications that are permitted	
Advantages	Disadvantages
Provides high level of certainty regarding exactly what modifications are allowed.	Lower level of long term certainty for stakeholders – may be concerns that modifications could be removed too easily.
Flexibility to include additional modifications within a relatively short timeframe.	On a strict interpretation, this approach may not comply with the legislation.

Option 3: Amend Rules to include principles for deciding if a modification is permitted and publish guidance material that includes specific modifications that are permitted

Advantages	Disadvantages
Best of both worlds – provides legislative certainty regarding how the Department must decide whether modifications (that are not listed in guidance material) are allowed, and high level of certainty about acceptability of specific modifications (that are listed).	Lower level of certainty regarding specific (listed) modifications.
Flexibility to include additional modifications within a relatively short timeframe.	

Discussion questions

- What type of modifications would commonly be made to vehicles after they are entered on the RAV and before being provided to a consumer?
- What type of modifications should be allowed* to be made to vehicles after they are entered on the RAV and before being provided to a consumer? What type should not?
- What other advantages or disadvantages are there for each of the options presented in this paper?
- Which option provides stakeholders with the best balance of certainty and flexibility in relation to which modifications are allowed and which would be considered a breach of the RVSA?

* An indicative list might include modifications such as:

- fitting of number/registration plates;
- car mats;
- headlight/bonnet protectors;
- window tinting;
- tow bars;
- roof racks;
- alloy wheels;
- driving lights

An overarching condition would be that any modifications would need to meet any applicable national road vehicle standards (for example, tow bars would need to comply with ADR62) as well as relevant state and territory regulations (for example, window tinting would need to comply with jurisdictional standards relating to visible light transmission).

Division 7—Modifying road vehicles

25 Rules

The rules may provide for or in relation to the circumstances in which a road vehicle on the RAV may be modified.

26 Modification of road vehicle on RAV

- (1) A person contravenes this subsection if:
 - (a) a road vehicle is on the RAV; and
 - (b) the person modifies the road vehicle; and
 - (c) the modification occurs before the vehicle is provided to a consumer for the first time in Australia; and
 - (d) the modification causes the road vehicle to not satisfy the requirements of the entry pathway that applied at the time the vehicle was entered on the RAV; and
 - (e) the modification is not otherwise allowed by the rules.
- (2) A person contravenes this subsection if:
 - (a) a road vehicle is on the RAV; and
 - (b) the person hands over the road vehicle to another person; and
 - (c) the road vehicle is handed over for modification; and
 - (d) the road vehicle is modified; and
 - (e) the modification occurs before the vehicle is provided to a consumer for the first time in Australia; and
 - (f) the modification causes the road vehicle to not satisfy the requirements of the entry pathway that applied at the time the vehicle was entered on the RAV; and
 - (g) the modification is not otherwise allowed by the rules.
- (3) In paragraphs (1)(c) and (2)(e), the definition of *provide* applies as if paragraph 5(2)(b) were omitted.

Division 2—Type approval pathway

Subdivision A—Requirements of the type approval pathway

16 Type approval pathway

A road vehicle of a particular type satisfies the requirements of the type approval pathway if, immediately before the road vehicle is entered on the RAV:

- (a) a road vehicle type approval that is in force applies to that type of vehicle; and
- (b) the design and componentry of the vehicle is in accordance with the design and componentry for that type of vehicle set out in any version of the supporting information for the road vehicle type approval that:
 - (i) exists immediately before the road vehicle is entered on the RAV; and
 - (ii) documents test results demonstrating the extent of the vehicle's compliance with the applicable national road vehicle standards; and
- (c) the vehicle was manufactured in accordance with the manufacturing process for that type of vehicle set out in any version of the supporting information for the type approval that:
 - (i) exists immediately before the road vehicle is entered on the RAV; and
 - (ii) documents test results demonstrating the extent of the vehicle's compliance with the applicable national road vehicle standards; and
- (d) either:
 - (i) the vehicle complies with all applicable national road vehicle standards, as in force at the time the road vehicle is entered on the RAV; or
 - (ii) if subparagraph (i) does not apply—the only respects in which the vehicle does not comply with all applicable national road vehicle standards, as in force at the time the road vehicle is entered on the RAV, are respects specified in the road vehicle type approval as not needing to be complied with before vehicles of that type are entered on the RAV; and
- (e) the vehicle is a new road vehicle; and
- (f) either:
 - (i) the vehicle is in Australia; or
 - (ii) the type approval allows the entry of the vehicle on the RAV when the vehicle is outside Australia.

Note: For a road vehicle that satisfies the type approval pathway, the holder of a road vehicle type approval that applies to the vehicle, or a person authorised in writing by the holder of the approval, may enter the vehicle on the RAV, see section 9.

49 Modifications of road vehicles

For the purposes of section 26 of the Act, if a road vehicle on the RAV is to be modified before being provided for the first time in Australia, the only modifications of the vehicle allowed are those carried out during second stage manufacture.