Road Vehicle Standards Act 2018

No. 163, 2018

An Act to provide for the regulation of road vehicles and road vehicle components, to set national road vehicle standards, and for other purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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Road Vehicle Standards Act 2018

No. 163, 2018

An Act to provide for the regulation of road vehicles and road vehicle components, to set national road vehicle standards, and for other purposes

[*Assented to 10 December 2018*]

The Parliament of Australia enacts:

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Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *Road Vehicle Standards Act 2018*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	11 December 2018
2. Sections 3 to 14	The day after this Act receives the Royal Assent.	11 December 2018
3. Sections 15 to 18	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
4. Sections 19 to 21	The day after this Act receives the Royal Assent.	11 December 2018
5. Section 22	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
6. Section 23	The day after this Act receives the Royal Assent.	11 December 2018
7. Section 24	The day after the end of the period of 12 months beginning on the day this Act	10 December 2019

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	receives the Royal Assent.	
8. Section 25	The day after this Act receives the Royal Assent.	11 December 2018
9. Section 26	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
10. Sections 27 and 28	The day after this Act receives the Royal Assent.	11 December 2018
11. Section 29	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
12. Sections 30 to 37	The day after this Act receives the Royal Assent.	11 December 2018
13. Sections 38 to 47	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
14. Sections 48 to 74	The day after this Act receives the Royal Assent.	11 December 2018
15. Sections 75 to 78	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	10 December 2019
16. Sections 79 to 82	The day after this Act receives the Royal Assent.	11 December 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Division 2—Objects of this Act

3 Objects of this Act

(1) The objects of this Act are:

(a) to set nationally consistent performance based standards that road vehicles must comply with before being provided in Australia; and

(b) to 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) to give effect to Australia's international obligations to harmonise road vehicle standards.

(2) This Act aims to achieve its objects by:

(a) empowering the Minister to determine national road vehicle standards for road vehicles and road vehicle components; and

(b) prohibiting the importation into Australia of road vehicles that do not comply with national road vehicle standards (except in limited circumstances); and

(c) establishing a Register of Approved Vehicles, on which road vehicles must be entered before they are introduced onto the Australian market; and

(d) establishing a framework for recalling road vehicles and approved road vehicle components that are unsafe or do not comply with national road vehicle standards.

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Division 3—Simplified outline of this Act

4 Simplified outline of this Act

This Act regulates the importation and provision of road vehicles. It also regulates the provision of certain road vehicle components.

Road vehicles and certain road vehicle components must comply with national road vehicle standards set by the Minister, except in limited circumstances.

An approval is required to import a road vehicle into Australia and, generally, vehicles must be entered on the Register of Approved Vehicles before being provided for the first time in Australia.

If a recall notice is issued to a person in relation to road vehicles or approved road vehicle components, due to concerns about safety or non-compliance with national road vehicle standards, the person must comply with the notice.

To ensure compliance with this Act, the Department has a range of enforcement powers to ensure the most proportionate and effective regulatory response.

This Act also provides for the rules to set out matters to support the regulatory framework of this Act.

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Division 4—Definitions

5 Definitions

(1) In this Act:

1958 Agreement means 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 done at Geneva on 20 March 1958, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2000 No. 11 ([2000] ATS 11) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

1998 Agreement means 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 done at Geneva on 25 June 1998, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2008 No. 7 ([2008] ATS 7) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

approved road vehicle component means a road vehicle component to which a road vehicle component type approval applies.

Australia does not include any external Territory.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

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constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

cost-recovery charge means:

(a) a fee prescribed by rules made for the purposes of section 66 for a fee-bearing activity; or

(b) a charge imposed by:

(i) the *Road Vehicle Standards Charges (Imposition—Customs) Act 2018*; or

(ii) the *Road Vehicle Standards Charges (Imposition—Excise) Act 2018*; or

(iii) the *Road Vehicle Standards Charges (Imposition—General) Act 2018*; or

(c) a late payment fee relating to a fee or charge described in paragraph (a) or (b).

disclosure notice: see subsection 41(2).

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

entry pathway: see subsection 15(2).

executive officer of a body corporate means a person (whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

Federal Circuit Court means the Federal Circuit Court of Australia.

Federal Court means the Federal Court of Australia.

fee-bearing activities: see section 66.

import, in relation to a road vehicle, means do an act which constitutes importation of the vehicle for the purposes of the *Customs Act 1901*.

import approval means:

(a) a RAV entry import approval; or

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(b) a non-RAV entry import approval; or
(c) any other import approval granted under the rules.

inspector means a person appointed as an inspector under section 49.

late payment fee: see section 68.

listed corporation has the meaning given by section 9 of the *Corporations Act 2001*.

manufacture, in relation to a road vehicle, includes modify the vehicle and assemble the 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.

national road vehicle standard: see section 12.

non-RAV entry import approval means a non-RAV entry import approval granted under the rules.

permitted to import, in relation to a road vehicle: see subsection 22(2).

personal information has the same meaning as in the *Privacy Act 1988*.

premises has the same meaning as in the Regulatory Powers Act.

provide, in relation to a road vehicle, includes the meaning given by subsection (2).

public road means a road open to the public for the passage of vehicles, excluding:

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(a) a footpath or bicycle path; and
(b) a bikeway, also known as a bike or cycle lane.

RAV: see ***Register of Approved Vehicles***.

RAV entry import approval means a RAV entry import approval granted under the rules.

recall notice means a recall notice issued under the rules.

Register of Approved Vehicles or ***RAV***: see subsection 14(1).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

relevant court means:
(a) the Federal Court; or
(b) the Federal Circuit Court; or
(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

road vehicle: see section 6.

road vehicle component: see section 7.

road vehicle component type approval means a road vehicle component type approval granted under the rules.

road vehicle type approval means a road vehicle type approval granted under the rules.

rules means the rules made under section 82.

Secretary means the Secretary of the Department.

SEVs Register: see ***Specialist and Enthusiast Vehicles Register***.

Specialist and Enthusiast Vehicles Register or ***SEVs Register***: see section 20.

supply:
(a) when used as a verb, includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase; and

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(b) when used as a noun, has a corresponding meaning;

and ***supplied*** and ***supplier*** have corresponding meanings.

Note: For Part 3, the meaning of ***supply*** is also affected by section 45.

this Act includes:

(a) the rules and any instruments made under the rules; and

(b) other instruments made under this Act; and

(c) the Regulatory Powers Act as it applies in relation to this Act.

trade or commerce means:

(a) trade or commerce within Australia; or

(b) trade or commerce between Australia and places outside Australia;

and includes any business or professional activity (whether or not carried on for profit).

Extended meaning of ***provide***

(2) A reference in this Act to a person ***providing*** a road vehicle includes a reference to:

(a) the provision of the vehicle due to a sale, exchange, gift, lease, loan, hire or hire-purchase; or

(b) the provision of access to the vehicle.

6 Meaning of *road vehicle*

(1) A ***road vehicle*** means any of the following:

(a) a motor vehicle designed solely or principally for use in transport on public roads;

(b) a trailer or other vehicle (including equipment or machinery equipped with wheels) designed to be towed on a public road by a motor vehicle covered by paragraph (a);

(c) a vehicle that is within a class determined in an instrument under paragraph (5)(a) and not determined in an instrument under paragraph (6)(b);

(d) a vehicle determined in an instrument under paragraph (6)(a);

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(e) a partly completed or unassembled vehicle that would otherwise be covered by any of the above paragraphs.

(2) If:

(a) a person holds a road vehicle type approval for a vehicle of a particular type; and

(b) that type of vehicle is not a road vehicle covered by subsection (1); and

(c) the person enters, or authorises the entry of, a vehicle of that type on the RAV in accordance with this Act;

the vehicle becomes a ***road vehicle*** at the time the vehicle is entered on the RAV.

(3) For the purposes of paragraphs (1)(a) and (b), in determining whether a motor vehicle is designed solely or principally for use in transport on public roads, regard is to be had only to the physical and operational features of the motor vehicle.

(4) However, a vehicle is not a ***road vehicle*** if:

(a) the vehicle is within a class determined in an instrument under paragraph (5)(b) and not determined in an instrument under paragraph (6)(a); or

(b) the vehicle is specified in an instrument under paragraph (6)(b).

Determination of classes of vehicles

(5) The Secretary may, by legislative instrument:

(a) determine classes of vehicles that are ***road vehicles***; or

(b) determine classes of vehicles that are not ***road vehicles***.

Determination of specified vehicles

(6) The Secretary may, by notifiable instrument:

(a) determine that a specified vehicle is a ***road vehicle***; or

(b) determine that a specified vehicle is not a ***road vehicle***.

(7) The power to make a notifiable instrument under subsection (6) is not limited by a legislative instrument made under subsection (5).

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Incorporation of other instruments

(8) An instrument under subsection (5) or (6) may 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:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

(9) Subsection (8) has effect despite subsection 14(2) of the *Legislation Act 2003*.

7 Meaning of *road vehicle component*

(1) A ***road vehicle component*** means any of the following:
  (a) a component to be used in the manufacture of a road vehicle, including an assembly;
  (b) a component that is within a class determined in an instrument under paragraph (3)(a) and not determined in an instrument under paragraph (4)(b);
  (c) a component determined in an instrument under paragraph (4)(a).

(2) However, a component is not a ***road vehicle component*** if:
  (a) the component is within a class determined in an instrument under paragraph (3)(b) and not determined in an instrument under paragraph (4)(a); or
  (b) the component is specified in an instrument under paragraph (4)(b).

Determination of classes of components

(3) The Secretary may, by legislative instrument:
  (a) determine classes of components that are ***road vehicle components***; or
  (b) determine classes of components that are not ***road vehicle components***.

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Determination of specified components

(4) The Secretary may, by notifiable instrument:
  (a) determine that a specified component is a ***road vehicle component***; or
  (b) determine that a specified component is not a ***road vehicle component***.

(5) The power to make a notifiable instrument under subsection (4) is not limited by a legislative instrument made under subsection (3).

Incorporation of other instruments

(6) An instrument under subsection (3) or (4) may 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:
  (a) as in force or existing at a particular time; or
  (b) as in force or existing from time to time.

(7) Subsection (6) has effect despite subsection 14(2) of the *Legislation Act 2003*.

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Division 5—Miscellaneous

8 Act to bind Crown

This Act binds the Crown in each of its capacities.

9 Crown not liable to prosecution

This Act does not make the Crown liable to be prosecuted for an offence.

Note: See also section 54 for the liability of the Crown to a pecuniary penalty for the breach of a civil penalty provision, and section 55 for the liability of the Crown to be given an infringement notice.

10 Extraterritorial application

This Act extends to acts, omissions, matters and things outside Australia.

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Part 2—Regulation of road vehicles and road vehicle components

Division 1—Simplified outline of this Part

11 Simplified outline of this Part

This Part provides for the regulation of road vehicles and road vehicle components by:

(a) allowing the Minister to determine national road vehicle standards; and

(b) establishing the Register of Approved Vehicles (the RAV), on which road vehicles must generally be entered before being provided for the first time in Australia; and

(c) establishing the Register of Specialist and Enthusiast Vehicles, on which road vehicles may be entered to facilitate their importation into Australia; and

(d) creating offences and civil penalty provisions that apply if road vehicles are imported without relevant approvals or are provided to consumers without being on the RAV; and

(e) allowing the rules to set out matters to support the regulatory framework; and

(f) dealing with other miscellaneous matters.

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Division 2—National road vehicle standards

12 Minister may determine national road vehicle standards

(1) The Minister may, by legislative instrument, determine standards for road vehicles or road vehicle components that are designed to do any or all of the following:

(a) make road vehicles safe to use;

(b) control the emission of gas, particles or noise from road vehicles;

(c) secure road vehicles against theft;

(d) provide for security marking of road vehicles;

(e) promote the saving of energy.

These standards are the ***national road vehicle standards***.

Incorporation of other instruments

(2) National road vehicle standards may 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:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(3) Without limiting subsection (2), national road vehicle standards may make provision in relation to a matter by applying, adopting or incorporating any matter contained in the 1958 Agreement or 1998 Agreement.

(4) Subsection (2) has effect despite subsection 14(2) of the *Legislation Act 2003*.

13 Rules

(1) The rules must provide for or in relation to the testing and inspecting of road vehicles and road vehicle components for compliance with national road vehicle standards.

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(2) The rules may provide for or in relation to the issuing of advisory notices advising that a specified thing is not a road vehicle.

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Division 3—The Register of Approved Vehicles

14 Register of Approved Vehicles

(1) The Secretary must ensure that a register, to be known as the Register of Approved Vehicles (the ***RAV***), is kept.

(2) The RAV is to be maintained by electronic means.

(3) The RAV may be maintained as part of, or together with, another register or database relating to road vehicles.

15 Entering vehicles on RAV

(1) A vehicle may be entered on the RAV if the vehicle satisfies the requirements of an entry pathway.

Note: Under the rules, a vehicle may only be entered on the RAV by certain persons.

(2) Each of the following is an ***entry pathway***:
(a) the type approval pathway;
(b) the concessional RAV entry approval pathway;
(c) any other pathway set out in the rules.

Note: The rules set out the requirements of each entry pathway.

16 Entry of non-compliant vehicles on RAV

(1) A person contravenes this subsection if:
(a) the person enters a vehicle on the RAV; and
(b) the vehicle does not satisfy the requirements of an entry pathway.

(2) A person contravenes this subsection if:
(a) the person is the holder of a road vehicle type approval; and
(b) the person authorises another person, in writing, to enter a vehicle on the RAV; and
(c) the other person purports to enter the vehicle on the RAV; and

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(d) the vehicle does not satisfy the requirements of an entry pathway.

(3) Subsections (1) and (2) do not apply if:

(a) a road vehicle component was used in accordance with the national road vehicle standards in the manufacture of the vehicle; and

(b) the road vehicle component was represented by the supplier to be an approved road vehicle component; and

(c) the road vehicle component did not comply with the relevant national road vehicle standards, as in force at the time the road vehicle component was acquired by the person; and

(d) there is no other reason why the vehicle does not satisfy the requirements of the relevant entry pathway.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Offence

(4) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 120 penalty units.

(5) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (4).

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

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17 Information entered on RAV dishonestly or improperly

Offences

(1) A person commits an offence if:
  (a) the person enters information on the RAV; and
  (b) the information relates, or purportedly relates, to a vehicle; and
  (c) the person knows that:
    (i) the person is not authorised under the rules to enter the information on the RAV; or
    (ii) the vehicle does not exist; or
    (iii) the information is incorrect.

Penalty: 120 penalty units.

(2) A person commits an offence if:
  (a) the person is the holder of a road vehicle type approval (the ***approval holder***); and
  (b) the person authorises another person, in writing, to enter information on the RAV; and
  (c) the other person enters information on the RAV; and
  (d) the information relates, or purportedly relates, to a vehicle; and
  (e) the approval holder knows that:
    (i) the vehicle does not exist; or
    (ii) the information is incorrect.

Penalty: 120 penalty units.

(3) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsections (1) and (2).

Civil penalty provisions

(4) A person contravenes this subsection if:
  (a) the person enters information on the RAV; and

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(b) the information relates, or purportedly relates, to a vehicle; and

(c) either:

(i) the person is not authorised under the rules to enter the information on the RAV; or

(ii) the vehicle does not exist.

Civil penalty: 120 penalty units.

(5) A person contravenes this subsection if:

(a) the person is the holder of a road vehicle type approval; and

(b) the person authorises another person, in writing, to enter information on the RAV; and

(c) the other person enters information on the RAV; and

(d) the information relates, or purportedly relates, to a vehicle; and

(e) the vehicle does not exist.

Civil penalty: 120 penalty units.

18 Incorrect information entered on RAV

(1) A person contravenes this subsection if:

(a) the person enters information on the RAV; and

(b) the information relates, or purportedly relates, to a vehicle; and

(c) the information is incorrect.

(2) A person contravenes this subsection if:

(a) the person is the holder of a road vehicle type approval; and

(b) the person authorises another person, in writing, to enter information on the RAV; and

(c) the other person enters information on the RAV; and

(d) the information relates, or purportedly relates, to a vehicle; and

(e) the information is incorrect.

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Offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 60 penalty units.

19 Rules

(1) The rules:
  (a) must provide for or in relation to:
    (i) the keeping of the RAV, including the content of the RAV and the persons who may enter information on the RAV; and
    (ii) the requirements of an entry pathway; and
  (b) may provide for or in relation to the publication of information on the RAV.

(2) The rules may provide for or in relation to the following:
  (a) the grant of approvals:
    (i) to enable vehicles to satisfy the requirements of the type approval pathway; or
    (ii) to enable road vehicles to satisfy the requirements of other entry pathways; or
    (iii) relating to road vehicle components;
  (b) conditions of such approvals;
  (c) variation, suspension or revocation of such approvals;
  (d) obligations of former approval holders.

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Division 4—Specialist and Enthusiast Vehicles Register

20 Specialist and Enthusiast Vehicles Register

(1) The Secretary must keep a register, to be known as the Register of Specialist and Enthusiast Vehicles (the ***SEVs Register***).

Note: The SEVs Register relates to one of the eligibility criteria of the concessional RAV entry approval pathway.

(2) The SEVs Register is to be kept in electronic form.

(3) The SEVs Register is to be made available on the Department's website.

21 Rules

(1) The rules must provide for or in relation to the keeping of the SEVs Register.

(2) The rules may provide for or in relation to applications to be made for the entry of road vehicles on the SEVs Register.

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Division 5—Importation of road vehicles

22 Importing road vehicles

(1) A person contravenes this subsection if:
  (a) the person imports a road vehicle into Australia; and
  (b) at the time of importation, the person is not permitted to import the vehicle.

(2) A person is ***permitted to import*** a road vehicle if:
  (a) at the time of importation, all of the following apply:
    (i) the person is the holder of a road vehicle type approval;
    (ii) the road vehicle type approval is in force;
    (iii) the road vehicle is of a type to which the road vehicle type approval applies; or
  (b) at the time of importation, all of the following apply:
    (i) the person is authorised, in writing, by the holder of a road vehicle type approval to import the road vehicle;
    (ii) the road vehicle type approval is in force;
    (iii) the road vehicle is of a type to which the road vehicle type approval applies; or
  (c) at the time of importation, all of the following apply:
    (i) the person is the holder of an import approval;
    (ii) the import approval is in force;
    (iii) the road vehicle is specified in the import approval; or
  (d) at the time of importation, a circumstance set out in the rules applies.

Offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

23 Rules

The rules may provide for or in relation to the following:

(a) the grant of approvals in relation to the importation of road vehicles;
(b) conditions of such approvals;
(c) variation, suspension or revocation of such approvals;
(d) obligations of former approval holders.

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Division 6—Provision of road vehicles not on RAV

24 Providing road vehicle for the first time in Australia—vehicle not on RAV

Basic rule

(1) A person contravenes this subsection if:
  (a) the person provides a road vehicle to another person in Australia; and
  (b) the vehicle is provided for the first time in Australia; and
  (c) the vehicle is not on the RAV.

(2) For the purposes of paragraph (1)(b), in working out whether a road vehicle is provided for the first time in Australia, the provision of a road vehicle in a circumstance mentioned in subsection (3) is to be disregarded.

Exceptions

(3) Subsection (1) does not apply if the road vehicle is provided to another person:
  (a) to have work done on it; or
  (b) to protect it; or
  (c) to store it; or
  (d) if the vehicle has been imported—to transport it to the importer; or
  (e) if the vehicle is to be exported—to transport it to the exporter; or
  (f) in a circumstance set out in the rules.

(4) Subsection (1) does not apply if:
  (a) the person providing the road vehicle is the holder of a non-RAV entry import approval that relates to the vehicle; or
  (b) the road vehicle is manufactured in Australia and the person providing the vehicle makes it clear to the recipient that:

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(i) the vehicle is not being provided for a purpose that involves use in transport on a public road; or

(ii) the vehicle is being provided for a purpose that involves use in transport on a public road only in exceptional circumstances.

Note: A person who wishes to rely on subsection (3) or (4) bears an evidential burden in relation to the matters in that subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Offence

(5) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

Civil penalty provision

(6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

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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.

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Offence

(4) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 120 penalty units.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

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Division 8—Supplying road vehicle components

27 Misrepresentation that a road vehicle component is an approved road vehicle component

(1) A person contravenes this subsection if:

(a) the person supplies a road vehicle component to another person; and

(b) the person represents that the road vehicle component is an approved road vehicle component; and

(c) the representation is false or misleading in a material particular.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

(3) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (2).

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

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Division 9—Miscellaneous

Subdivision A—Breach of condition of approvals

28 Breach of condition of approval—general

(1) A person contravenes this subsection if:
  (a) the person is the holder of an approval under the rules; and
  (b) the approval is subject to a condition; and
  (c) the condition is not one that requires the person to export or destroy a road vehicle to which the approval applies; and
  (d) the person engages in conduct; and
  (e) the person's conduct contravenes the condition.

(2) A person contravenes this subsection if:
  (a) the person is the holder of an approval under the rules; and
  (b) the approval is subject to a condition; and
  (c) the condition is not one that requires the person to export or destroy a road vehicle to which the approval applies; and
  (d) another person engages in conduct; and
  (e) that other person's conduct contravenes the condition.

Offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 120 penalty units.

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 120 penalty units.

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29 Breach of condition of approval—export or destruction of road vehicle

(1) A person contravenes this subsection if:

(a) the person is the holder of an import approval; and

(b) the approval is subject to a condition that requires the person to export or destroy a road vehicle to which the approval applies; and

(c) the road vehicle is not exported or destroyed within the period specified in the approval.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 120 penalty units.

Continuing offences and continuing contraventions of civil penalty provisions

(4) The maximum penalty for each day that an offence under subsection (2) continues is 10% of the maximum penalty that can be imposed in respect of that offence.

Note: Subsection (2) is a continuing offence under section 4K of the *Crimes Act 1914*.

(5) The maximum civil penalty for each day that a contravention of subsection (3) continues is 10% of the maximum civil penalty that can be imposed in respect of that contravention.

Note: Subsection (3) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

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Subdivision B—Record-keeping obligations

30 Breach of obligation to provide records after approval ceases to be in force

(1) A person contravenes this subsection if:
  (a) the person was the holder of an approval granted under the rules; and
  (b) a condition of the approval was that the holder of the approval retain a record; and
  (c) the person does not retain the record:
    (i) if a period was specified in that condition—for that period; or
    (ii) in any other case—for the 7 year period starting on the day the record is made.

(2) A person contravenes this subsection if:
  (a) the person was the holder of an approval granted under the rules; and
  (b) the person is required by or under the rules to provide information or a document to the Minister; and
  (c) the person does not provide the information or document to the Minister.

Offence

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

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Civil penalty: 60 penalty units.

Subdivision C—False or misleading declarations etc.

31 False or misleading declaration

Offence

(1) A person commits an offence if:
  (a) the person signs a declaration; and
  (b) the person does so knowing that:
    (i) the declaration is false or misleading in a material particular; or
    (ii) the declaration omits a matter or thing without which the declaration is misleading in a material particular; and
  (c) the declaration is made in an application for an approval under the rules.

Penalty: 60 penalty units.

Civil penalty provision

(2) A person contravenes this subsection if:
  (a) the person signs a declaration; and
  (b) either:
    (i) the declaration is false or misleading in a material particular; or
    (ii) the declaration omits a matter or thing without which the declaration is misleading in a material particular; and
  (c) the declaration is made in an application for an approval under the rules.

Civil penalty: 60 penalty units.

32 False or misleading information

(1) A person contravenes this subsection if:

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(a) the person gives information or a document to another person; and

(b) the information or document:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information or document is misleading; and

(c) the information or document is given, or purportedly given, under or for the purposes of this Act.

(2) Subsection (1) does not apply if the information or document is not false or misleading in a material particular.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

Offence

(3) A person commits an offence if the person contravenes subsection (1).

Penalty: 60 penalty units.

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (3).

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

Subdivision D—Liability of executive officers

33 Personal liability of an executive officer of a body corporate

Offence

(1) An executive officer of a body corporate commits an offence if:

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(a) the body corporate commits an offence against:
(i) this Part (other than section 18, 27, 30, 31 or 32); or
(ii) section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence covered by subparagraph (i); or
(iii) section 136.1, 137.1 or 137.2 of the *Criminal Code* in relation to this Act; and
(b) the officer knew that the offence would be committed; and
(c) the officer was in a position to influence the conduct of the body in relation to the commission of the offence; and
(d) the officer failed to take reasonable steps to prevent the commission of the offence.

(2) The maximum penalty for an offence against subsection (1) is the maximum penalty that a court could impose in respect of an individual for the offence committed by the body corporate.

(3) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Civil penalty provision

(4) An executive officer of a body corporate contravenes this subsection if:
(a) the body corporate contravenes a civil penalty provision of this Part (other than section 18, 27, 30, 31 or 32); and
(b) the officer knew that the contravention would occur; and
(c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
(d) the officer failed to take reasonable steps to prevent the contravention.

(5) The maximum civil penalty for a contravention of subsection (4) is the maximum civil penalty that a court could impose in respect of an individual for the civil penalty provision contravened by the body corporate.

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34 Reasonable steps to prevent offence or contravention

(1) For the purposes of section 33, in determining whether an executive officer of a body corporate failed to take reasonable steps to prevent the commission of an offence, or the contravention of a civil penalty provision, a court is to have regard to:

(a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affect the employees, agents or contractors concerned; and

(b) what action (if any) the officer took when he or she became aware that the body was committing an offence against, or otherwise contravening, this Act.

(2) This section does not, by implication, limit the generality of section 33.

Subdivision E—Pecuniary penalties and bodies corporate

35 Determining pecuniary penalties for bodies corporate

If an offence against a provision of this Part may:

(a) in some circumstances be committed by both a natural person and a body corporate; and

(b) in other circumstances only be committed by a body corporate;

then, in the circumstances mentioned in paragraph (b), despite subsection 4B(3) of the *Crimes Act 1914*, the court may, if the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to 5 times the amount of the pecuniary penalty specified for the offence.

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Part 3—Recalls of road vehicles or approved road vehicle components

Division 1—Simplified outline of this Part

36 Simplified outline of this Part

This Part deals with recalls of road vehicles and approved road vehicle components for safety purposes or non-compliance with national road vehicle standards.

The rules provide for the Minister to issue a recall notice to suppliers of vehicles or components. If a recall notice is issued to a supplier, there are very substantial criminal and civil penalties for refusing or failing to comply with the recall notice.

The rules may also set out requirements for notifying the Minister of certain matters in relation to compulsory or voluntary recalls. Penalties apply for refusing or failing to comply with the notification requirements.

If there are concerns about a vehicle or component causing injury or not complying with national road vehicle standards, the Minister (or certain other officials) may issue a disclosure notice to the supplier, requiring that certain information be disclosed. Penalties apply for refusing or failing to comply with the notice or giving false or misleading information.

Note: Some road vehicles or approved road vehicle components may be recalled under the Australian Consumer Law as consumer goods. For the interaction with the Australian Consumer Law, see also sections 47 and 77 of this Act.

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Division 2—Rules

37 Rules

(1) The rules must provide for or in relation to the recall of road vehicles or approved road vehicle components for:

(a) safety purposes; or

(b) non-compliance with national road vehicle standards.

(2) The rules may provide for or in relation to the following:

(a) issuing recall notices;

(b) compulsory recalls of road vehicles or approved road vehicle components;

(c) voluntary recalls of road vehicles or approved road vehicle components;

(d) notification requirements relating to compulsory or voluntary recalls.

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Division 3—Complying with recalls

38 Compliance with recall notices

(1) A person contravenes this subsection if:
  (a) a recall notice for road vehicles or approved road vehicle components is in force; and
  (b) the notice requires the person to do one or more things; and
  (c) the person refuses or fails to comply with the notice.

(2) A person contravenes this subsection if:
  (a) a recall notice for road vehicles or approved road vehicle components is in force; and
  (b) the person, in trade or commerce:
    (i) if the notice identifies a defect in, or a dangerous characteristic of, the vehicles or components—supplies vehicles or components of the kind to which the notice relates which contain that defect or have that characteristic; or
    (ii) in any other case—supplies vehicles or components of the kind to which the notice relates.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty:
  (a) if the person is a body corporate—5,250 penalty units; or
  (b) if the person is not a body corporate—1,050 penalty units.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty:
  (a) if the person is a body corporate—5,250 penalty units; or

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(b) if the person is not a body corporate—1,050 penalty units.

39 Notification requirements—compulsory recalls

(1) A person contravenes this subsection if:

(a) the person is required by the rules to give a copy of a notice to the Minister in relation to a compulsory recall of road vehicles or approved road vehicle components; and

(b) the person refuses or fails to give the copy as required by the rules.

Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty:

(a) if the person is a body corporate—80 penalty units; or

(b) if the person is not a body corporate—16 penalty units.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) if the person is a body corporate—80 penalty units; or

(b) if the person is not a body corporate—16 penalty units.

40 Notification requirements—voluntary recalls

(1) A person contravenes this subsection if:

(a) the person is required by the rules to give a notice, or a copy of a notice, to the Minister in relation to a voluntary recall of road vehicles or approved road vehicle components; and

(b) the person refuses or fails to give the notice, or the copy of the notice, as required by the rules.

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Strict liability offence

(2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty:

(a) if the person is a body corporate—80 penalty units; or

(b) if the person is not a body corporate—16 penalty units.

Civil penalty provision

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) if the person is a body corporate—80 penalty units; or

(b) if the person is not a body corporate—16 penalty units.

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Division 4—Disclosure notices

41 Power to obtain information etc.

(1) The Minister, the Secretary or an SES employee or acting SES employee in the Department, may give a disclosure notice to a person (the ***supplier***) who, in trade or commerce, supplies road vehicles or approved road vehicle components of a particular kind if the person giving the notice reasonably believes:

(a) that:

(i) vehicles or components of that kind will or may cause injury to any person; or

(ii) a reasonably foreseeable use (including a misuse) of vehicles or components of that kind will or may cause injury to any person; or

(iii) vehicles or components of that kind do not, or it is likely that they do not, comply with the applicable national road vehicle standards; and

(b) that the supplier is capable of giving information, producing documents or giving evidence in relation to those vehicles or components.

(2) A ***disclosure notice*** is a written notice requiring the supplier:

(a) to give, in writing signed by the supplier, any such information to the person specified in the notice:

(i) in the manner specified in the notice; and

(ii) within such reasonable time as is specified in the notice; or

(b) to produce, in accordance with such reasonable requirements as are specified in the notice, any such documents to the person specified in the notice; or

(c) to appear before the person specified in the notice at such reasonable time, and at such place, as is specified in the notice:

(i) to give any such evidence, on oath or affirmation; and

(ii) to produce any such documents.

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(3) The person specified in the notice may be:
  (a) the Minister; or
  (b) the Secretary; or
  (c) an SES employee, or acting SES employee, in the Department (whether or not that SES employee, or acting SES employee, gave the notice).

Holder of a type approval taken to be a supplier

(4) For the purposes of this section, a person is taken to supply, in trade or commerce, road vehicles or approved road vehicle components of a particular kind, if:
  (a) the person is the holder of a road vehicle type approval under which a vehicle is entered on the RAV; or
  (b) the person is the holder of a road vehicle component type approval.

42 Self-incrimination

(1) A person is not excused from:
  (a) giving information or evidence; or
  (b) producing a document;
as required by a disclosure notice given to the person on the ground that the information or evidence, or production of the document, might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:
  (a) the information or evidence given, or the document produced; and
  (b) giving the information or evidence, or producing the document;
are not admissible in evidence against the individual:
  (c) in civil proceedings; or
  (d) in criminal proceedings, other than proceedings against the individual for:
    (i) an offence against section 43 or 44; or

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(ii) an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division.

43 Compliance with disclosure notices

(1) A person commits an offence of strict liability if:

(a) the person is given a disclosure notice; and

(b) the person refuses or fails to comply with the notice.

Penalty:

(a) if the person is a body corporate—200 penalty units; or

(b) if the person is not a body corporate—40 penalty units.

(2) Subsection (1) does not apply if the person complies with the disclosure notice to the extent to which the person is capable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

44 False or misleading information etc.

A person commits an offence if:

(a) the person gives information, evidence or a document in purported compliance with a disclosure notice; and

(b) the person does so knowing that the information, evidence or document is false or misleading in a material particular.

Penalty:

(a) if the person is a body corporate—300 penalty units; or

(b) if the person is not a body corporate—60 penalty units or imprisonment for 12 months, or both.

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Division 5—Miscellaneous

45 References to supply of road vehicles and approved road vehicle components

In this Part and rules made for the purposes of section 37, a reference to the supply of road vehicles or approved road vehicle components includes a reference to agreeing to supply the vehicles or components.

46 Compensation for acquisition of property

(1) If the operation of this Part, or any other provision of this Act (to the extent to which it relates to this Part), would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

47 Operation of other laws

This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

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Part 4—Compliance and enforcement

Division 1—Simplified outline of this Part

48 Simplified outline of this Part

Inspectors have monitoring, inspection and enforcement powers under the Regulatory Powers Act to ensure this Act is being complied with.

The Regulatory Powers Act creates a framework for monitoring and investigating compliance with this Act, as well as providing for the enforcement of civil penalty provisions, and the use of infringement notices, enforceable undertakings and injunctions.

This Part provides for the application of the Regulatory Powers Act in relation to these matters.

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Division 2—Inspectors

49 Appointment of inspectors

(1) The Secretary may, in writing, appoint any of the following persons as an inspector:

(a) an APS employee in the Department;

(b) an employee of a State or Territory or an authority of a State or Territory.

(2) The functions and powers conferred on a person as an inspector are subject to such conditions and restrictions as are specified in the person's instrument of appointment.

Prerequisites to appointment

(3) The Secretary must not appoint a person as an inspector unless the Secretary is satisfied that the person has the knowledge or experience necessary to properly perform the functions or exercise the powers of an inspector for which the person is to be authorised.

(4) The Secretary must not appoint an employee of a State or Territory or an authority of a State or Territory as an inspector without the agreement of the State or Territory.

Directions to inspectors

(5) An inspector appointed under subsection (1) must, in performing functions or exercising powers as such, comply with any directions of the Secretary.

(6) If a direction is given under subsection (5) in writing, the direction is not a legislative instrument.

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Division 3—Monitoring

50 Monitoring under Part 2 of the Regulatory Powers Act

Provisions subject to monitoring

(1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:

(a) a provision of this Act;

(b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, each of the following provisions is related to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

(a) section 133G of the *Competition and Consumer Act 2010*;

(b) a provision of the Australian Consumer Law relating to the safety of consumer goods.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(4) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

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(a) each of the following is an authorised applicant:
(i) the Secretary;
(ii) an SES employee, or an acting SES employee, in the Department; and
(b) an inspector is an authorised person; and
(c) each of the following is an issuing officer:
(i) a magistrate;
(ii) a Judge of a court of a State or Territory;
(iii) a Judge of the Federal Court or the Federal Circuit Court; and
(d) the Secretary is the relevant chief executive; and
(e) a relevant court (as defined in section 5) is a relevant court.

Person assisting

(5) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

51 Modifications of Part 2 of the Regulatory Powers Act

Additional monitoring powers

(1) For the purposes of determining:
(a) whether a provision mentioned in subsection 50(1) has been, or is being, complied with; or
(b) the correctness of information mentioned in subsection 50(2);
the additional powers mentioned in subsection (2) of this section are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.

(2) The additional monitoring powers are:
(a) the power to sample any thing on premises entered under Part 2 of the Regulatory Powers Act; and
(b) the power to remove and test such samples.

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Division 4—Investigation

52 Investigating under Part 3 of the Regulatory Powers Act

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence against this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):

(a) section 133G of the *Competition and Consumer Act 2010*;

(b) a provision of the Australian Consumer Law relating to the safety of consumer goods.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) each of the following is an authorised applicant:

(i) the Secretary;

(ii) an SES employee, or an acting SES employee, in the Department; and

(b) an inspector is an authorised person; and

(c) each of the following is an issuing officer:

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(i) a magistrate;
(ii) a Judge of a court of a State or Territory;
(iii) a Judge of the Federal Court or the Federal Circuit Court; and

(d) the Secretary is the relevant chief executive; and

(e) a relevant court (as defined in section 5) is a relevant court.

Person assisting

(4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

53 Modifications of Part 3 of the Regulatory Powers Act

Additional investigation powers

(1) The additional powers mentioned in subsection (2) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act.

(2) The additional investigation powers are:
(a) the power to sample any thing on premises entered under Part 3 of the Regulatory Powers Act; and
(b) the power to remove and test such samples.

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Division 5—Civil penalties, infringement notices, enforceable undertakings and injunctions

54 Civil penalties under Part 4 of the Regulatory Powers Act

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant and relevant court

(2) For the purposes of Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act:
  (a) each of the following persons is an authorised applicant:
    (i) the Minister;
    (ii) the Secretary;
    (iii) an SES employee, or acting SES employee, in the Department; and
  (b) a relevant court (as defined in section 5 of this Act) is a relevant court.

Maximum penalties

(3) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty in relation to a contravention of one of the following civil penalty provisions must not be more than the applicable pecuniary penalty specified in the provision:
  (a) subsection 38(4) (compliance with recall notices);
  (b) subsection 39(3) (notification requirements—compulsory recalls);
  (c) subsection 40(3) (notification requirements—voluntary recalls).

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Note: Those civil penalty provisions specify the maximum civil penalty that applies in relation to a person who is a body corporate and a person who is not a body corporate.

Liability of Crown

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.

55 Infringement notices under Part 5 of the Regulatory Powers Act

Provisions subject to an infringement notice

(1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  (a) a civil penalty provision in Part 2 (regulation of road vehicles and road vehicle components) of this Act;
  (b) a strict liability offence against a provision in Part 3 (recalls of road vehicles or approved road vehicle components) of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer and relevant chief executive

(2) For the purposes of Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):
  (a) each of the following persons is an infringement officer:
    (i) the Secretary;
    (ii) an SES employee, or acting SES employee, in the Department; and
  (b) the Secretary is the relevant chief executive.

Single infringement notice may deal with more than one contravention

(3) Despite subsection 103(3) of the Regulatory Powers Act, a single infringement notice may be given to a person in respect of:

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(a) 2 or more alleged contraventions of a provision mentioned in subsection (1); or

(b) alleged contraventions of 2 or more provisions mentioned in subsection (1).

However, the notice must not require the person to pay more than one amount in respect of the same conduct.

Liability of Crown

(4) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), does not make the Crown liable to be given an infringement notice.

56 Modifications of Part 5 of the Regulatory Powers Act

Amount to be stated in an infringement notice

(1) Subsections 104(2) and (3) of the Regulatory Powers Act do not apply in relation to the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of that Act for an alleged contravention by a person of any of the following strict liability offences:

(a) subsection 38(3) (compliance with recall notices);

(b) subsection 39(2) (notification requirements—compulsory recalls);

(c) subsection 40(2) (notification requirements—voluntary recalls).

(2) The amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for an alleged contravention by a person of a strict liability offence mentioned in subsection (1) of this section is:

(a) if the notice relates to only one alleged contravention of the offence by the person—the amount worked out using the table below; or

(b) if the notice relates to more than one alleged contravention of the offence by the person—using the table below, the total amount worked out by adding together the amounts for each alleged contravention to which the notice relates.

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Amount to be stated in an infringement notice		
Item	**If the infringement notice is for an alleged contravention of one of the following strict liability offences …**	**the amount is …**
1	subsection 38(3)	(a) if the person is a listed corporation—600 penalty units; or (b) if the person is a body corporate other than a listed corporation—60 penalty units; or (c) if the person is not a body corporate—12 penalty units
2	subsection 39(2) or 40(2)	(a) if the person is a body corporate—30 penalty units; or (b) if the person is not a body corporate—6 penalty units

57 Enforceable undertakings under Part 6 of the Regulatory Powers Act

Enforceable provisions

(1) A civil penalty provision of this Act is enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person and relevant court

(2) For the purposes of Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):

(a) each of the following persons is an authorised person:

(i) the Minister;

(ii) the Secretary;

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(iii) an SES employee, or acting SES employee, in the Department; and

(b) a relevant court (as defined in section 5 of this Act) is a relevant court.

Enforceable undertaking must be published on the Department's website

(3) An authorised person in relation to a provision mentioned in subsection (1) must publish, on the Department's website:

(a) notice of a decision to accept an undertaking given in relation to the provision; and

(b) the name of the person who gave the undertaking.

58 Injunctions under Part 7 of the Regulatory Powers Act

Enforceable provisions

(1) A civil penalty provision of this Act is enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person and relevant court

(2) For the purposes of Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1):

(a) each of the following persons is an authorised person:

(i) the Minister;

(ii) the Secretary;

(iii) an SES employee, or acting SES employee, in the Department; and

(b) a relevant court (as defined in section 5 of this Act) is a relevant court.

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Division 6—Miscellaneous

59 Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

60 Contravening an offence provision or a civil penalty provision

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference a contravention of the conduct provision.

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Part 5—Administration

Division 1—Simplified outline of this Part

61 Simplified outline of this Part

This Part deals with administrative matters, such as using computer programs to make decisions, information sharing, cost recovery and delegations.

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Division 2—Computerised decision-making

62 Minister may arrange for use of computer programs to make decisions etc.

(1) The Minister may arrange for the use, under the Minister's control, of computer programs for any purposes for which the Minister may, or must, under this Act:

(a) make a decision; or

(b) exercise any power or comply with any obligation; or

(c) do anything else related to making a decision, exercising a power, or complying with an obligation.

(2) The Minister is taken to have:

(a) made a decision; or

(b) exercised a power or complied with an obligation; or

(c) done something else related to the making of a decision, the exercise of a power, or the compliance with an obligation;

that was made, exercised, complied with, or done (as the case requires) by the operation of a computer program under an arrangement made under subsection (1).

63 Minister may substitute more favourable decisions for certain computer-based decisions

(1) The Minister may substitute a decision (the ***substituted decision***) for a decision (the ***initial decision***) made by the operation of a computer program under an arrangement made under subsection 62(1) if:

(a) the computer program was not functioning correctly:

(i) at a specified time or during a specified period; and

(ii) in relation to specified outcomes from the operation of that program under an arrangement made under subsection 62(1); and

(b) the substituted decision could have been made under the same provision of this Act as the initial decision; and

(c) the substituted decision is more favourable to the applicant.

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(2) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances.

(3) Subsection (1) has effect despite:

(a) any law of the Commonwealth; or

(b) any rule of common law;

to the contrary effect.

64 Use of computer programs by Secretary to make decisions etc.

Sections 62 and 63 apply in relation to the Secretary in the same way as those sections apply in relation to the Minister.

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Division 3—Sharing information

65 Sharing information

(1) The Secretary may give information, a record or document, or a copy of a record or document, obtained in the performance of functions or exercise of powers by a person under this Act (the ***road vehicle information***) to:

(a) a body responsible for maintaining the RAV; or

(b) the Australian Competition and Consumer Commission for use by the Commission in relation to:

(i) any of the Commission's functions and powers under or in relation to Part XI of the *Competition and Consumer Act 2010* or the Australian Consumer Law; or

(ii) any of the Commission's powers under Part XII of that Act that relate to the laws mentioned in subparagraph (i); or

(c) the Immigration and Border Protection Department for the use by the Department in relation to the Department's functions and powers under or in relation to the *Customs Act 1901*; or

(d) an authority of a State or a Territory that has responsibilities for the registration of road vehicles; or

(e) a national regulatory authority of a foreign country that has national responsibility relating to road vehicle standards; or

(f) an international body responsible for:

(i) investigating contraventions of international agreements or international decisions; or

(ii) administering or ensuring compliance with international agreements or international decisions; or

(g) any other body prescribed by the rules.

(2) The road vehicle information may be or include personal information.

Note: For use or disclosure of personal information, see the *Privacy Act 1988*.

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(3) The road vehicle information may not be used or disclosed by a body mentioned in subsection (1) for a commercial purpose.

(4) This section does not limit any other powers the Secretary has to disclose information to a person.

(5) In this section:

Immigration and Border Protection Department means the Department administered by the Minister administering the *Customs Tariff Act 1995*.

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Division 4—Cost recovery

Subdivision A—Fees

66 Fees for fee-bearing activities

(1) The rules may prescribe fees that may be charged in relation to activities (***fee-bearing activities***) carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under this Act.

(2) Without limiting subsection (1), the rules may do any of the following:

(a) prescribe 2 or more fees for the same matter;

(b) prescribe a method for working out a fee;

(c) prescribe the circumstances in which a person is exempt from paying a specified fee;

(d) prescribe the circumstances in which the Secretary may waive a fee;

(e) prescribe the circumstances in which a fee may be refunded, in whole or in part;

(f) prescribe a method for working out the refund of part of a fee.

(3) A fee prescribed under subsection (1) must not be such as to amount to taxation.

Subdivision B—Payment of cost-recovery charges

67 Paying cost-recovery charges

The rules may:

(a) prescribe the time when a specified cost-recovery charge is due and payable; and

(b) prescribe the way in which a specified cost-recovery charge is payable; and

(c) prescribe one or more persons who are liable to pay a specified cost-recovery charge.

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Subdivision C—Unpaid cost-recovery charges

68 Late payment fee

(1) If the rules specify the time when a cost-recovery charge (the ***basic charge***) is due and payable, the rules may also specify a fee (a ***late payment fee***) that is due and payable if the basic charge is not paid at or before that time.

(2) Without limiting subsection (1), a late payment fee may relate to each day or part of a day that the basic charge remains unpaid after becoming due and payable.

(3) The rules may prescribe one or more persons who are liable to pay a late payment fee in relation to a cost-recovery charge referred to in paragraph (a) or (b) of the definition of ***cost-recovery charge*** in subsection 5(1).

69 Recovery of cost-recovery charges

A cost-recovery charge that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

70 Suspending or revoking approvals because of unpaid cost-recovery charges

(1) The rules may, in relation to approvals granted under this Act, provide for or in relation to the suspension or revocation of such approvals in circumstances where the holder of such an approval is liable to pay a cost-recovery charge that is due and payable.

(2) To avoid doubt, subsection (1) does not limit the rules from providing for or in relation to other circumstances in which approvals granted under this Act can be suspended or revoked.

Note: See for example paragraphs 19(2)(c) and 23(c), which allow the rules to provide for or in relation to suspension or revocation of certain approvals.

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71 Secretary may direct that activities not be carried out

If a person (the ***debtor***) is liable to pay a cost-recovery charge that is due and payable, the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the cost-recovery charge has been paid.

Subdivision D—Miscellaneous

72 Secretary may remit or refund cost-recovery charges

(1) The Secretary may remit or refund the whole or part of a cost-recovery charge that is payable or paid to the Commonwealth if the Secretary is satisfied there are circumstances that justify doing so.

(2) The Secretary may do so on his or her own initiative or on written application by a person.

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Division 5—Delegations

73 Delegation by the Minister

(1) The Minister may, by writing, delegate all or any of the Minister's functions or powers under this Act (other than those mentioned in subsection (4)) to:

(a) the Secretary; or

(b) an SES employee, or an acting SES employee, in the Department.

(2) The functions or powers that may be delegated under subsection (1) include functions or powers the Minister has as an authorised applicant or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.

(3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

(4) Subsection (1) does not apply to the following functions and powers:

(a) the power to determine national road vehicle standards under section 12;

(b) the power to make rules under section 82.

(5) The rules may provide for and in relation to the delegation of all or any of the Minister's functions or powers under the rules or any instruments made under the rules (other than those mentioned in subsection (6)) to:

(a) the Secretary; or

(b) an APS employee.

(6) Subsection (5) does not apply to the following functions and powers:

(a) the power to issue a recall notice in relation to the compulsory recall of a road vehicle or approved road vehicle component;

(b) the power to determine specified matters by legislative instrument.

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(7) The definition of ***this Act*** in section 5 does not apply to this section.

74 Delegation by the Secretary

(1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act (other than those mentioned in subsection (4)) to an SES employee, or acting SES employee, in the Department.

(2) The functions or powers that may be delegated under subsection (1) include functions or powers the Secretary has as a relevant chief executive, authorised applicant, infringement officer or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.

(3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

(4) Subsection (1) does not apply to the power to determine that:
  (a) a vehicle of a particular class is, or is not, a road vehicle under section 6; and
  (b) a component of a particular class is, or is not, a road vehicle component under section 7.

(5) The rules may provide for and in relation to the delegation to an APS employee of all or any of the Secretary's functions or powers under:
  (a) the rules; and
  (b) any instruments made under the rules.

(6) The definition of ***this Act*** in section 5 does not apply to this section.

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Part 6—Miscellaneous

Division 1—Simplified outline of this Part

75 Simplified outline of this Part

This Part deals with miscellaneous matters, such as interactions with other laws and rules.

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Division 2—Interactions with other laws

76 Authority to take delivery of imported vehicles

If an authority to deal with an imported road vehicle under the *Customs Act 1901* is subject to the condition that a specified permission for the vehicle be obtained under this Act, then that condition is taken to be satisfied if:

(a) both:

(i) the person to whom the authority relates is the holder of a road vehicle type approval; and

(ii) the imported road vehicle is of a type to which the road vehicle type approval applies; or

(b) the person to whom the authority relates is the holder of an import approval and details of the imported road vehicle are specified in the approval.

77 Application of the Australian Consumer Law

For the purposes of sections 106 and 122 (other than subsection 106(7)) of the Australian Consumer Law, a national road vehicle standard is to be taken to be a safety standard (within the meaning of the Australian Consumer Law).

78 Road vehicle need not comply with State or Territory standards

(1) Subject to this Act, a road vehicle may be used in transport on a public road in a State or Territory, even though it does not comply with a road vehicle standard imposed by a law of the State or Territory, if:

(a) at the time the road vehicle is provided by a person for the first time in Australia:

(i) the vehicle is a new road vehicle; and

(ii) the vehicle is on the RAV; and

(iii) the vehicle complies with the standards mentioned in subsection (3); and

(b) the vehicle:

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(i) was manufactured or provided by a constitutional corporation for use in transport; or

(ii) is owned or used, or to be owned or used, by a constitutional corporation; or

(iii) is used, or to be used, exclusively or predominantly in trade or commerce among the States or between a State and a Territory; or

(iv) is used, or to be used, in a Territory or Commonwealth place.

(2) For the purposes of paragraph (1)(a), in working out whether a road vehicle is provided for the first time in Australia, the provision of a road vehicle in a circumstance mentioned in paragraph (a) to (f) of the definition of ***new road vehicle*** in subsection (5) is to be disregarded.

(3) For the purposes of subparagraph (1)(a)(iii), the standards are:

(a) if the vehicle has been modified before the vehicle is provided for the first time in Australia and the modification causes the vehicle to not satisfy the requirements of the entry pathway that applied at the time the vehicle was entered on the RAV—the standards imposed by this Act, at the time of the modification, in relation to the vehicle as modified; or

(b) otherwise—the standards imposed by this Act in relation to the vehicle at the time the vehicle was entered on the RAV.

Note: For modifications of road vehicles on the RAV, see section 26.

(4) To avoid doubt, this section does not prevent a law of a State or Territory from prohibiting or regulating a road vehicle's use in transport on a public road in the State or Territory if:

(a) the vehicle ceases to comply with the standards mentioned in subsection (3); or

(b) the operation of the vehicle becomes defective in any respect.

(5) In this section:

new road vehicle means a road vehicle that has not been used in transport on a public road in Australia or outside Australia, other than:

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(a) to have work done on it; or
(b) to protect it; or
(c) to store it; or
(d) if the vehicle has been imported—to transport it to the importer; or
(e) if the vehicle is to be exported—to transport it to the exporter; or
(f) in a circumstance set out in the rules.

road vehicle standard means a standard for road vehicles that is designed to:
(a) make such vehicles safe to use; or
(b) control the emission of gas, particles or noise from such vehicles; or
(c) secure such vehicles against theft; or
(d) provide for security marking of such vehicles; or
(e) promote the saving of energy.

79 Severability—additional effect of Act

(1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.

(2) To avoid doubt, no subsection of this section limits the operation of any other subsection of this section.

(3) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce:
(a) between Australia and places outside Australia; or
(b) among the States; or
(c) within a Territory, between a State and a Territory or between 2 Territories; or
(d) by way of the supply of road vehicles or approved road vehicle components to the Commonwealth or an authority or instrumentality of the Commonwealth.

(4) This Act also has the effect that it would have if its operation were expressly confined to:

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(a) acts or omissions of:
(i) constitutional corporations; or
(ii) entities acting for or on behalf of a constitutional corporation; or
(b) exercising a power or performing a function that affects a person that is a constitutional corporation; or
(c) conferring a right or imposing an obligation on a constitutional corporation.

(5) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place outside Australia.

(6) This Act also has the effect that it would have if its operation were expressly confined to matters:
(a) with respect to Australia's rights and obligations under an agreement with one or more countries; or
(b) that are of international concern.

(7) This Act also has the effect it would have if its operation were expressly confined to acts using postal, telegraphic, telephonic, and other like services (within the meaning of paragraph 51(v) of the Constitution).

(8) This Act also has the effect that it would have if its operation were expressly confined to:
(a) acts or omissions that occur at a Commonwealth place; or
(b) exercising a power, performing a function, conferring a right, or imposing an obligation, in relation to a person or thing in a Commonwealth place.

(9) This Act also has the effect that it would have if its operation were expressly confined to:
(a) acts or omissions taking place in a Territory; or
(b) exercising a power, performing a function, conferring a right, or imposing an obligation, in relation to a person or thing in a Territory.

(10) The definitions of ***Australia*** and ***trade or commerce*** in section 5 do not apply to this section.

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Division 3—Basis on which approvals granted

80 Basis on which approvals granted

An approval granted under this Act is granted on the basis that:

(a) conditions may be imposed on the approval under this Act; and

(b) conditions imposed on the approval may be varied or removed under this Act; and

(c) the approval may be suspended or revoked under this Act; and

(d) the approval may be cancelled, revoked, terminated or varied by or under later legislation; and

(e) once the approval ceases to be in force—both:

(i) conditions may be imposed under this Act on the person who held the approval; and

(ii) conditions imposed on that person may be varied or removed under this Act; and

(f) no compensation is payable if:

(i) conditions are imposed on the approval as mentioned in paragraph (a), or are varied or removed as mentioned in paragraph (b); or

(ii) the approval is suspended, cancelled, revoked, terminated or varied, as mentioned in paragraph (c) or (d); or

(iii) conditions are imposed on the person who held the approval, or those conditions are varied or removed, as mentioned in paragraph (e).

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Division 4—Miscellaneous

81 Immunity from suit

(1) An action or proceeding does not lie against the Commonwealth in respect of any loss incurred, or any damage suffered, because of reliance on:

(a) an entry of a road vehicle on the RAV or the SEVs Register; or

(b) any test carried out under, or for the purposes of, this Act; or

(c) any express statement, or any statement or action implying, that a road vehicle or a road vehicle component complied with this Act; or

(d) an approval granted under this Act.

(2) An action or proceeding, whether criminal or civil, does not lie against the following persons:

(a) the Minister;

(b) the Secretary;

(c) an inspector;

(d) an APS employee in the Department;

in relation to anything done, or omitted to be done, in good faith by the person in connection with the performance or purported performance of functions or duties, or the exercise or purported exercise of powers, conferred by this Act.

82 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the rules may do the following:

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(a) provide for and in relation to the determination of specified matters by the Minister by legislative instrument;
(b) confer a power to make a decision of an administrative character on the Minister or the Secretary;
(c) provide for and in relation to the review of a decision made under this Act, the rules or any instrument made under the rules;
(d) provide, as a condition of an approval granted under this Act:
(i) a power to request information or documents from the holder of the approval; or
(ii) a power of entry and search of premises where activities are carried out under, or in relation to, the approval;
(e) provide for and in relation to the publication of approvals, and details relating to approvals, granted under this Act;
(f) in relation to matters which are required or permitted by this Act to be prescribed by the rules—provide for and in relation to ancillary or incidental matters.

(3) To avoid doubt, the rules may not do the following:
(a) create an offence or civil penalty;
(b) provide powers of:
(i) arrest or detention; or
(ii) entry, search or seizure (other than as mentioned in subparagraph (2)(d)(ii));
(c) impose a tax;
(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
(e) directly amend the text of this Act.

(4) The definition of ***this Act*** in section 5 does not apply to this section.

Consultation on rules etc. relating to personal information

(5) Before:
(a) making rules, or legislative instruments under the rules, that relate to the collection, use, disclosure or publication of personal information on the RAV; or

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(b) making rules for the purposes of paragraph 65(1)(g) to prescribe a body to which personal information may be disclosed;

the Minister must consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*) and have regard to any submissions made by the Information Commissioner because of that consultation.

Incorporation by reference

(6) Despite subsection 14(2) of the *Legislation Act 2003*, the rules and any instrument made under the rules may 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.

[*Minister's second reading speech made in—*
House of Representatives on 7 February 2018
Senate on 18 June 2018]

(9/18)

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