

Motor Vehicle Standards (Road Vehicles) Determination 2017

Made under section 5B of the *Motor Vehicle Standards Act 1989*

Replacement Explanatory Statement

Issued by the authority of the Minister for Urban Infrastructure

November 2017

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1. LEGISLATIVE CONTEXT

The Motor Vehicle Standards (Road Vehicles) Determination 2017 (the Determination) is made under the *Motor Vehicle Standards Act 1989* (the Act). The Act sets standards for road vehicles to ensure they are safe, environmentally friendly, energy efficient and secure from theft when they are supplied to the Australian market, whether manufactured locally or imported from overseas. These vehicle standards are called the Australian Design Rules (ADRs) and they cover aspects of vehicle design such as braking, lighting, impact occupant protection and the emission of pollutants.

Section 5B(1) of the Act allows the Minister to determine, by legislative instrument, that vehicles of a particular class or description are not road vehicles for the purposes of the Act and so are not required to meet the ADRs (or any other part of the Act). One intention of this section is to prevent wheeled machines that are not designed or intended to be used as road vehicles from being inadvertently captured under the definition of a road vehicle under the Act.

In 2003, the first determination under section 5B(1) was gazetted. The Motor Vehicle Standards (Road Vehicles) Determination 2003 determined that motorised wheelchairs (as defined in the determination) were not road vehicles and was scheduled to sunset on 1 October 2017.

2. CONTENT AND EFFECT OF THE DETERMINATION

2.1. Overview of the Determination

The Determination repeals and replaces Motor Vehicle Standards (Road Vehicles) Determination 2003. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The Determination provides for not only motorised wheelchairs but a series of other vehicle classes, such as power-assisted pedal cycles and quad bikes (as defined in the Determination), as not road vehicles for the purposes of the Act. Prior to this Determination, vehicles of these classes were being assessed on an administrative basis. The new Determination will provide clarity and certainty and so reduce the burden on industry and the public seeking to import these non-road vehicles.

The Determination is not exclusive. That is, while it identifies vehicle classes not subject to the Act, any other vehicle or vehicle class can continue to be assessed on its own merits on an administrative basis.

Inclusion in the Determination of particular vehicle classes does not indicate permission for use. State and territory governments regulate in-service vehicle use and, as such, vehicle users will need to familiarise themselves with local requirements.

2.2. Effect of the Determination

The Determination provides clarity to vehicle manufacturers, importers and members of the public about vehicle classes which are not required to meet the Act.

2.3. Incorporated Documents

The Determination incorporates references to European Standards EN 15194:2009 and EN 15194:2009+A1:2011, Cycles - Electrically power assisted cycles - EPAC Bicycles. These standards specify safety requirements and test methods for the design and assembly of electrically power assisted bicycles. They are intended to cover electrically power assisted cycles of a type which have a maximum continuous rated power of 250 Watts, of which the output is progressively reduced and finally cut off as the bicycle reaches a speed of 25 km/h, or sooner, if the cyclist stops pedalling.

In accordance with subsections 14(1)(b) and 14(2) of the *Legislation Act 2003* these standards are incorporated as in force at the commencement of the Determination.

The standards may be freely accessed online through the National Library of Australia (NLA) eResources system, which provides access to the British Standards Online database. A library card is required and can be obtained by anyone with an Australian residential address. The NLA website is <https://www.nla.gov.au/>.

3. BEST PRACTICE REGULATION

3.1. Business Cost Calculator

The Determination will have no regulatory impacts as only vehicle classes that have previously been assessed on an administrative basis as non-road vehicles are being determined. It is estimated that the Determination will provide savings of \$20,000 a year for vehicle and other machine manufacturers and importers through reduced administrative burden.

3.2. General Consultation Arrangements

It has been longstanding practice to consult widely on proposals related to vehicle standards. For many years there has been active collaboration between the Commonwealth and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the proposal is expected to have on industry or road users.

Depending on the nature of the proposed changes, consultation could involve the Austroads Safety Taskforce Safe Vehicle Theme Group (SVTG), Strategic Vehicle Safety and Environment Group (SVSEG), Australian Motor Vehicle Certification Board (AMVCB),

Technical Liaison Group (TLG), Transport and Infrastructure Senior Officials' Committee (TISOC) and the Transport and Infrastructure Council (the Council).

- SVTG consists of senior representatives of government agencies (Australian and state/territory), the National Transport Commission and the National Heavy Vehicle Regulator.
- SVSEG consists of senior representatives of government agencies (Australian and state/territory), the National Transport Commission and the National Heavy Vehicle Regulator, the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and of representative organisations of consumers and road users (particularly through the Australian Automobile Association).
- AMVCB consists of technical representatives of government regulatory authorities (Australian and state/territory) that deal with technical standards and other general vehicle issues, as well as the National Transport Commission and the National Heavy Vehicle Regulator (the same organisations as represented in SVTG).
- TLG consists of technical representatives of government agencies (Australian and state/territory), the National Transport Commission and the National Heavy Vehicle Regulator, the manufacturing and operational arms of the industry and of representative organisations of consumers and road users (the same organisations as represented in SVSEG).
- TISOC consists of state and territory transport and/or infrastructure Chief Executive Officers (CEOs) (or equivalents), the CEO of the National Transport Commission, New Zealand and the Australian Local Government Association.
- The Council consists of the Australian, state/territory and New Zealand Ministers with responsibility for transport and infrastructure issues.

Proposals that are regarded as significant need to be supported by a Regulation Impact Statement meeting the requirements of the Office of Best Practice Regulation (OBPR) as published in the *Australian Government Guide to Regulation* and the Council of Australian Governments' *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*.

3.3. Specific Consultation Arrangements for this Determination

The need to replace the sunseting 2003 determination was discussed with SVTG in September 2016 and a draft replacement was presented in March 2017.

Consultation continued out-of-session with SVTG and AMVCB and an updated draft was presented to AMVCB in May 2017. A final consultation period followed.

As the Determination does not impose any additional regulatory burden there is no need for further consultation through TISOC, the Council or the public comment process.

3.4. Regulation Impact Statement

As the Determination will not impose any impact on business, and will reduce regulatory burden when compared to the status quo of allowing the existing determination to sunset, a Regulation Impact Statement is not required.

Since the proposal is not considered significant, the Office of Best Practice Regulation requirements have been met for this regulatory proposal (OBPR Reference ID 22092).

4. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

4.1. Overview of the Legislative Instrument

The Motor Vehicle Standards (Road Vehicles) Determination 2017 repeals and replaces the Motor Vehicle Standards (Road Vehicles) Determination 2003. It determines a series of vehicle classes as not road vehicles for the purposes of the *Motor Vehicle Standards Act 1989*.

4.2. Human Rights Implications

This Determination does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

4.3. Conclusion

This Determination is compatible with human rights as it does not raise any human rights issues.