

Vehicle Standard (Australian Design Rule 72/00 – Dynamic Side Impact Occupant Protection) 2005 Amendment 1

Made under section 12 of the *Road Vehicle Standards Act 2018*

Explanatory Statement

Approved by the Hon Catherine King MP, Minister for Infrastructure,
Transport, Regional Development and Local Government

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1. LEGISLATIVE AUTHORITY

1.1. National Road Vehicle Standards

The Vehicle Standard (Australian Design Rule 72/00 – Dynamic Side Impact Occupant Protection) 2005 Amendment 1 (“the Amending Instrument”), which may also be cited as the Australian Design Rule 72/00 – Dynamic Side Impact Occupant Protection Amendment 1, is made under section 12 of the *Road Vehicle Standards Act 2018* (RVSA).

The RVSA enables the Australian Government to establish nationally uniform standards that apply to new road vehicles or road vehicle components when they are provided to the market in Australia. The RVSA applies to vehicles or components whether they are manufactured in Australia or imported.

The making of the vehicle standards necessary for the RVSA’s effective operation is provided for in section 12, which empowers the Minister to “determine standards for road vehicles or road vehicle components”.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides, in part, that the power to amend instruments is conferred by the same power to make the instrument.

1.2. Exemption from Sunsetting

The Australian Design Rules (ADRs) are exempt from the sunseting provisions of the *Legislation Act 2003*.

Source of the Exemption

A standard made under section 12 of the RVSA is not subject to the sunseting provisions of section 50 of the *Legislation Act 2003* through section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015 (table item 56C). A similar exemption was previously granted in respect of national road vehicle standards made under section 7 of the *Motor Vehicle Standards Act 1989* (MVSA) (item 40, section 12 of the Legislation (Exemptions and Other Matters) Regulation 2015). This exemption is important to ensure that ADRs, including those amended by the Amending Instrument, continue to remain in force and available to regulators and industry.

Intergovernmental Dependencies

The exemption concerns ADRs which facilitate the establishment and operation of the intergovernmental vehicle standard regime that Commonwealth, state and territory governments rely on to regulate the safety of vehicles on public roads.

The Commonwealth uses the ADRs as the basis on which approvals to supply types of road vehicles to the market are granted under the Road Vehicle Standards Rules 2019. States and territories and the National Heavy Vehicle Regulator use the ADRs as the primary criteria on which vehicles are assessed for road worthiness. This ‘in-service’ aspect is dependent on the date of manufacture, which determines the applicable version of the ADRs against which the vehicle can be assessed. The ability to rely on national standards is particularly relevant given the long service life of vehicles – the average age of vehicles in Australia is over 10 years.

While the ADRs are regularly updated to reflect changes in technology, it is not possible to apply these new standards retrospectively to vehicles that are already in use. With former ADRs kept on the Federal Register of Legislation, state and territory governments can use them to ensure vehicles continue to comply with the ADRs that were in force when they were first supplied to the market.

In the event that the Commonwealth could not justify the maintenance of the ADRs, state and territory governments would be compelled to create their own vehicle standards. Whilst this could mean adopting the substance of the lapsed ADRs as an interim measure, the differing needs and agendas of each state and territory government may result in variations to in-service regulations. Having different vehicle standards across the states and territories would make the scheme operate contrary to the underlying policy intent of the RVSA which is to set nationally consistent performance-based standards.

Commercial Dependencies

The effect on vehicle manufacturers to redesign existing models to comply with new ADRs would present a burden and be a costly and onerous exercise. Manufacturers should not be expected to continually go back to redesign existing vehicle models that are still being newly supplied to the market. Furthermore, ongoing product recalls to update vehicles to comply with new ADRs (where such an update is feasible) would undermine consumer confidence with significant financial impact to manufacturers. This exemption allows vehicle manufacturers to focus their efforts to ensure new models supplied to the market continue to comply.

Reviews of Australian Design Rules

ADRs are subject to regular reviews, as resources permit, and when developments in vehicle technology necessitates updates to requirements. Reviews of the ADRs ensure the ongoing effectiveness of a nationally consistent system of technical regulations for vehicle design, which are closely aligned, wherever appropriate with leading international standards such as United Nations (UN) regulations. This method facilitates the rapid introduction of the latest safety devices and technological advances into the Australian market, while also contributing to the industry's cost competitiveness in the domestic market. Where a review results in a new or amended ADR, these changes are subject to full parliamentary scrutiny.

2. PURPOSE AND OPERATION

2.1. Overview of the Regulatory Framework

The RVSA establishes a regulatory framework to regulate the importation and first supply of road vehicles to the market in Australia. The core principle of this framework is that vehicles which comply with appropriate standards are suitable for provision to the market in Australia. The ADRs have set out those standards since the early 1970s. At that time, they were applied cooperatively by the Australian Motor Vehicle Certification Board representing the Commonwealth and state and territory governments. In 1989, this arrangement was replaced by the MVSA and the ADRs were determined as national standards. The RVSA commenced in full and replaced the MVSA on 1 July 2021. A two-year transition period was provided between 1 July 2021 and 30 June 2023.

Under the RVSA, the ADRs are National Road Vehicle Standards intended to make vehicles safe to use, control the emission of gas, particles or noise, secure vehicles against theft, provide for the security marking of vehicles and promote the saving of energy. The ADRs are applied to vehicles as criteria for approval under various regulatory pathways set out in the Road Vehicle Standards legislation. Vehicles approved under these regulatory pathways can be provided to the market in Australia for use in transport.

2.2. Overview of the Amending Instrument

The Amending Instrument implements transition arrangements from the vehicle standard the Australian Design Rule 72/00 — Dynamic Side Impact Occupant Protection (ADR 72/00) to a later vehicle standard the Australian Design Rule 72/01 (ADR 72/01). Under these arrangements, vehicles certified as complying to the new standard ADR 72/01 are not required to comply with ADR 72/00.

The change does not affect the original intent of ADR 72/00, but is essential to allow its correct operation in conjunction with ADR 72/01.

3. MATTERS INCORPORATED BY REFERENCE

3.1. Legislative Instruments

Item 3 in the schedule to the Amending Instrument inserts a new clause 3.2 which includes a reference to the Australian Design Rule 72/01. This ADR 72/01 specifies crash worthiness requirements in terms of force and accelerations measured by anthropomorphic dummies so as to minimise the likelihood of injury to the occupants of ADR category MA, MB, MC, and NA vehicles in side impact.

The ADRs may be freely accessed online through the Federal Register of Legislation. The website is www.legislation.gov.au.

In accordance with paragraph 12(2)b of the RVSA, this ADR 72/01 is incorporated as in force or existing from time to time.

3.2. Other Documents

The Amending Instrument does not incorporate any other documents by reference.

4. CONSULTATION

4.1. General Consultation Arrangements

It has been longstanding practice to consult widely on proposed new or amended vehicle standards. For many years, there has been active collaboration between the Commonwealth and the state and 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 new or amended standard (or package of new or amended standards) is expected to have on industry or road users.

Proposals that are regarded as significant need to be supported by an Impact Analysis (IA) meeting the requirements of the Office of Impact Analysis (OIA) as published in the *Australian Government Guide to Policy Impact Analysis* or the *Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies*.

4.2. Specific Consultation Arrangements

The Amending Instrument is related to the introduction of ADR 72/01. As it is minor in nature, and does not affect the requirements of the ADR, further consultation was not considered necessary and so not carried out.

5. REGULATORY IMPACT

5.1. Impact Analysis

As the Amending Instrument is purely administrative in nature and does not increase the stringency of the ADR, an IA is not required.

5.2. Benefits and Costs

As the Amending Instrument does not affect the requirements of the ADR, there are no expected changes in the benefits or costs for society.

6. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

6.1. Overview

The Amending Instrument allows for a transition between ADR 72/00 and the later version ADR 72/01. It does not affect the original intent or operation of the standard.

6.2. Human Rights Implications

The Amending Instrument 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*.

6.3. Conclusion

The Amending Instrument is compatible with human rights, as it does not raise any human rights issues.