

# AADA SUBMISSION

2014 REVIEW OF THE MOTOR VEHICLE  
STANDARDS ACT 1989

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## **EXECUTIVE SUMMARY**

Australian Automotive Dealer Association Limited (AADA) is the peak industry body representing franchised new car dealers in Australia and is pleased to make a submission in respect of the review of the *Motor Vehicle Standards Act 1989* (the MVS Act).

AADA believes the manner by which new motor vehicles are sold in Australia over the past 100 years has evolved having regard to competition, consumer laws and emerging technologies particularly in the areas of safety.

AADA has identified many practical issues that the Government and the Department of Infrastructure and Regional Development (the Department) need to consider in terms of community protection, consumer protection and competition policy before contemplating legislative change.

AADA believes there is little evidence of market failure and strenuously opposes the large-scale importation of used motor vehicles into Australia. Any perceived marginal net benefit to the community based on economic theory does not reflect the reality of the Australian retail motor vehicle market which is one of the most highly competitive in the world. A policy change has the potential to erode Australia's extremely high standards in motor vehicle safety, theft protection, environmental protection and consumer protection.

The automotive retail sector in Australia has made significant contributions to the economy through employment of in excess of 66,000 people, training, taxes, levies and duties including the luxury car tax (LCT). Any policy deliberations should include consideration of the abolition of the LCT which has been referred to as a thinly disguised tariff barrier affecting price competition in the Australian market.

AADA would welcome the opportunity to meet and discuss this submission.

## **1. INTRODUCTION**

- 1.1 AADA is the peak industry body representing franchised new car dealers in Australia. There are over 1500 new car dealers in Australia that operate something in the order of 2600 new vehicle outlets. Motor vehicle dealership agreements which number in excess of 4000 are subject to the Franchising Code of Conduct which regulates the conduct of participants. Dealerships range from family-owned small businesses to larger businesses and two public companies operating in the regions, metropolitan areas and across Australian States and Territories. The authorised dealer network generates revenue in excess of \$72 billion, employs in excess of 66,000 people, pays wages in excess of \$5.6 billion annually and has invested around \$17 billion in facilities.
- 1.2 AADA's application for registration as a "motor industry group" under Part 6 of the Motor Dealers and Repairers Act 2013 (NSW) was recently approved and AADA as the peak body can now represent a motor dealer or classes of motor dealers in disputes or legal proceedings with a manufacturer regarding unfair contracts.
- 1.3 AADA welcomes the opportunity to lodge a submission to the Government's 2014 Review of the MVS Act the Terms of Reference of which were approved on 16 January 2014 by the Hon Jamie Briggs MP, Assistant Minister for Infrastructure and Regional Development. On 4 September 2014 the Assistant Minister released an Options Discussion Paper for the review and called for submissions to be lodged by 20 October 2014 following a series of public workshops conducted by the Department.
- 1.4 The Act and associated regulations provide the regulatory framework to control the importation and first supply of road vehicles in Australia. Vehicles include passenger vehicles, heavy, medium, and light commercial vehicles, motorcycles and trailers. The Government's public policy intent of regulating the supply of vehicles to the Australian market is through the objects of the Act in section 3:

- a) to achieve uniform vehicle standards for new vehicles when they begin to be first used in transport in Australia; and
  - b) to regulate the first supply to the market of used imported vehicles.
- 1.5 The Act provided the regulatory framework for the entry of 1,136,227 new vehicles in 2012-13 and the importation of less than 2 per cent of non-standard vehicles (new and used).
- 1.6 The review of the Act is being conducted against the background of a number of other Government's reviews including public consultation of the Act in 2013, the Productivity Commission's report into Australia's Automotive Manufacturing Industry to the Government on 31 March 2014, the Government's response to the Productivity Commission's recommendations, Competition Policy Review, Small Business reviews, the proposed Taxation White Paper and development of the National Disability Insurance Scheme (NDIS).
- 1.7 AADA submits that the Government's acceptance of responsibility for, and administration of, the public policy objectives of community protection, consumer protection and competition are wider than the scope of this review and should involve consultation with other Departments and Agencies.
- 1.8 AADA respectfully requests that rather than base decisions on subjective perceptions of motor vehicle pricing and pure economic theory, the Government should carefully consider the current market optimisation of number of franchised dealers, consumer protection under Australian Consumer Law (ACL) provided by manufacturers and the franchised dealer network, consumer choice, quality and innovation of vehicles, asymmetry of information and effect of the LCT.
- 1.9 AADA believes there is little evidence of current market failure or international price discrimination and the perceived marginal net social benefit of market substitution of new vehicles with used vehicles will result in the lowering of community and consumer protection, and safety and environmental standards. Any decision to permit large-scale imports of used and parallel motor vehicles will

enable opportunistic economic rent seekers to free ride off the authorised dealer network which has served this country well for over 100 years.

1.10 A modern motor vehicle is not a product that a consumer purchases “off the shelf” every day. It is not like buying a television or camera online or even at a retail outlet. Although it is possible to research and purchase a new vehicle online (asymmetry of information) each purchase is unique to a customer and may require an authorised dealer to provide a valuation of a traded vehicle, assist with the provision of finance and insurance, attend to warranty and recalls, and provide servicing, genuine parts and repairs. A purchaser of a used or parallel import would not have the same degree of consumer protection.

1.11 A motor vehicle is a highly complex product utilising sophisticated technologies and is supported by AADA members who have made significant investment in people and facilities including specialised tooling and country-specific diagnostic equipment. Motor vehicle dealers fiercely compete for high customer satisfaction ratings in sales and service in order to retain their franchises and qualify for manufacturer incentives.

## **2. KEY PRACTICAL ISSUES OF GOVERNMENT POLICY OBJECTIVES**

2.1 The current authorised dealer network has evolved over the past 100 years and continues to meet community and consumer expectations. While there is an understanding that the decision by manufacturers to cease new car production in Australia has, in part, led to this review there are many unintended consequences to the community and consumers that need to be understood before matters, such as changing the manner by which used vehicles are imported into Australia, is legislated.

2.2 AADA holds the view that any large-scale commercial importation of second-hand (used) or parallel (grey) vehicles may have many unintended consequences that will result in greater risk to the community and consumers as a result of

diminishing of the age and quality of cars on Australian roads. Some matters to consider include:

- Australia being perceived as a dumping ground for used cars not registrable after 5 years in other countries such as Japan because of the “shaken” system;
- a reduction in the value of all cars and in particular used cars in the Australian fleet;
- a reduction in the safety and environmental standards of vehicles sold in Australia; and
- a strong regulatory framework that will enforce consumer rights such as vehicle recalls, sales of vehicles by unlicensed persons or opportunistic importers lacking substance or the ability to comply with ACL.

2.3 AADA sees the current situation giving rise to a similar opportunity to that which existed with the Y2K event in January 2000. That is, an opportunity to modernise and strengthen the legislation and regulatory framework. The cessation of motor vehicle manufacturing in 2017 should be seen as an opportunity to improve the safety and quality of vehicles driven in Australia and any large-scale or personal importation of used or parallel vehicles could have the opposite effect.

2.4 The following are some of the practical issues that AADA recommends being understood when Government policy is being formulated and legislative change contemplated as each impact the community and consumers.

#### *2.4.1 Registration and regulatory oversight*

- certification of every vehicle imported into Australia should be carried out by the Commonwealth or a certified authority registered in Australia with the financial and technical capability to meet its obligations under the Act and ACL;
- every vehicle sold in Australia must have an ANCAP rating but note the proposed adoption of Euro NCAP which has lower standards and may cause confusion among consumers and the motoring public;
- every vehicle sold in Australia must comply with the highest international standards safety standards including Australian Design Rules (ADRs) -

devices such as rear air bags and speed limit change warnings should be mandatory;

- every vehicle sold in Australia must meet the highest environmental standards;
- review of Australian fuel standards as Australian fuels with a higher sulphur content are considered to be below international emissions standards;
- Vehicle Identification Number (VIN) plates or advanced electronic tagging should be extended for all new and used vehicles imported into Australia to identify the type, age, import date, country specific specification including fuel, and other characteristics to enable manufacturers, dealers, customers and regulators to identify relevant information about the vehicle;
- extreme caution should be exercised when vehicles are imported into Australia other than by a vehicle manufacturer;
- all used vehicles imported into Australia should have a separate and clearly identifiable VIN, similar plate or consumer notice clearly indicating to all stakeholders that the vehicle is an imported used vehicle – type, age, import date, vehicle is “fit for purpose in Australia”, ANCAP or equivalent rating, country specific specification including fuel, lack of warranty and spare parts, certified odometer reading and other relevant information, to ensue “asymmetry of information” for the consumer;
- where a manufacturer imports vehicles into Australia for sale direct to the public and not through a franchised dealer ACL should apply in the same manner as it does under a motor vehicle dealership agreement between a manufacturer and a franchisee;
- importers of new vehicles must be licensed;
- importers of more than 50 used vehicles in a calendar year must be licensed;
- a national uniform registration process for all vehicles should be operated and maintained by each State and Territory;
- a registration process that does not permit jurisdictional shopping;
- in the event of a new vehicle recall procedures must enable the manufacturer or other importer to identify the current owner of the vehicle of the recall notice;
- in the event of a vehicle recall regulatory procedures must be established and enforced to ensure the importer of a used vehicle identify and inform the current owner of the recall notice;

- failure of the new or used car importer to advise the current owner of a vehicle recall must be enforced and carry significant financial penalties and the possibility of loss of registration/licence to sell vehicles in Australia;
- adequate funding mechanisms should be established to regulate, monitor and enforce the above requirements to ensure that vehicles operating in Australia are of the highest standards and quality; and
- the cost of funding the regulatory regime should be determined according to risk of the type of vehicle being imported and new vehicle manufacturers should not cross-subsidise the additional inspection, compliance and enforcement costs associated with the higher risk of importation of a used or parallel import.

#### *2.4.2 Consumer protection*

- new vehicles imported into Australia must be supported by a manufacturer or importer warranty;
- consumers at the time of purchase of a new vehicle must be advised of all warranty terms and conditions;
- new vehicles imported by an importer other than a manufacturer must comply with ACL and be an importer of substance;
- a consumer or other notice including compliance plate must be attached to a personal import of a vehicle indicating lack of consumer protection and acceptance of personal responsibility; and
- increased risk of an import outside the authorised dealer network may result in no insurance or substantial premiums (including compulsory third party) leading to a number of uninsured vehicles.

#### *2.4.3 Other issues impacting new car stakeholders*

- dealers should not be compelled to transact (service, supply parts or trade in) with the owner of a used or parallel import and assume other parties' risks;
- decrease in value of current and used stocks of vehicles will affect financial and insurance support for the existing dealer network; and

- abolition of the LCT will remove a market distortion and lead to greater competition.

2.5 AADA submits that the Government has a fiduciary duty of care in protection of the health and safety of the people of the Commonwealth of Australia and supports the public policy objectives of:

- community protection (through vehicles that are safe and have low emissions);
- consumer protection (through vehicles that meet buyers expectations and are theft resistant); and
- competition (through vehicles that are readily available and reasonably priced).

2.6 This duty of care particularly in respect of safety and emission standards is manifested in the Act and regulations which have been amended from time to time to reflect Government and community concerns.

2.7 While the role and actions of Government should serve, protect and enhance the needs of the community and individuals it should not be done through the erosion of the franchised dealer network that has served this country well for over 100 years. The emergence of the internet, specialised motor vehicle sites, a highly contestable market, a choice of over 67 brands and 350 models indicate that the market is close to optimum with some minor rigidities.

2.8 In our submission we will attempt to address, where relevant, the 30 or so questions listed by the Department and the 8 options for consideration including:

- Option 1 – Do nothing
- Option 2 – Repeal the legislation
- Option 3 – Modernise the legislation
- Option 4 – Strengthen the legislation
- Option 5 – Harmonisation of Australian vehicle standards with international standards
- Option 6 – Streamline new vehicle certification processes

- Option 7 – Reduce the barriers to personal importation of new vehicles and the importation of quality second-hand vehicles
- Option 8 – Reduce/consolidate concessional arrangements.

2.9 AADA submits that the scope of the review and the relatively short consultation period has limited the capacity of stakeholders to comprehensively address all the issues in the Discussion Paper. We would welcome the opportunity to work with the Department on specific issues affecting our members.

2.10 Our submission will focus primarily on Option 7 – Reduce the barriers to personal importation of new vehicles and the importation of quality second-hand vehicles as this and the structural changes in the automotive value chain will have the greatest impact on the stated Government policy objectives, ability of franchised dealer network to adjust to any change, devaluation of existing stocks of vehicles and sustainability of commercial operations.

### **3. COMMUNITY PROTECTION POLICY**

3.1 Section 5 of the Options Paper estimates that the current cost to the community of road accidents is around \$27 billion per annum and vehicle safety technologies being mandated and future technologies have the potential to significantly reduce road fatalities and injuries in the future. The Government through the elected members of Parliament has a fiduciary duty towards the community in the reduction of trauma and disability by maintaining high motor vehicle safety standards and this is also a relevant consideration in the development of the NDIS.

3.2 The National Road Safety Strategy (NRSS) 2011-2020 states at page ii that:

“On average four people die and 90 people are seriously injured on Australian roads every day. Most Australians have been personally affected by the trauma of a road crash and the cost to the community is enormous in terms of economic loss and personal suffering is enormous.”

3.3 While the NRSS indicated that there must be a focus on safe roads, safe speeds, safe vehicles and safe road user behaviour as well as a range of associated activities including performance monitoring and reporting. AADA's submission in this context will focus on motor vehicle safety standards.

### *3.3.1 Safety standards*

The regulatory standards for vehicle safety, anti-theft and emissions for new vehicles whether manufactured in Australia or imported as new or second-hand vehicles are set out in the ADRs. It is important to note that the Act and ADRs regulate:

- uniform vehicle standards for new vehicles when first used in transport in Australia; and
- the supply of used imported vehicles.

The distinction in the objects of the Act – uniform new vehicle standards and supply of used vehicles is important in terms of Option 7. Any major policy change may require amendment of the objects.

In the context of new motor vehicles NRSS states:

“Improvements in vehicle safety have contributed significantly to road trauma reduction. These improvements reflect steady advances in automotive safety design, including occupant performance protection, braking, handling, and lighting and the inclusion of life saving safety features such as seatbelts and airbags.”

NRSS and the Australian New Car Assessment Program (ANCAP) acknowledge that safety of motor vehicles has been enhanced by innovation and safety assist technology of manufacturers to include:

- electronic stability control;
- lane departure warning devices;
- collision warning devices;
- fatigue management;
- adaptive headlights;
- blind spot monitoring;
- autonomous emergency braking; and
- driver management systems.

ANCAP is a non-regulatory program that provides consumers with independent and transparent advice and information on the level of occupant protection provided by vehicles in serious crashes and in more recent years on the fitting of advanced safety technology, which can help avoid crashes. Consumers are aware of and often ask dealers whether a particular motor vehicle has a 5 star ANCAP safety rating which is usually displayed on the vehicle.

Any regulatory adoption of a program such Euro NCAP needs to be justified in terms of safety policy objectives and may cause confusion in the community and among the motoring public.

AADA has reviewed ANCAP submissions to the 2013 review of the Act and Productivity Commission and has taken the liberty to summarise a number of relevant comments including:

- as a non-regulatory program ANCAP can set higher standards than ADRs;
- it has become extremely difficult to sell any vehicle in Australia without a 4 or 5 star ANCAP safety rating;
- imported vehicles say 5-10 years old are built to older safety standards and may well be less safe than older vehicles from full volume manufacturers in Australia;
- technology plays an important role in vehicle safety and newer vehicles in the main are safer than older vehicles;

- when it comes to imported used vehicles consumer choice should be given a lower priority than safety and environment;
- current regulatory system may not be flexible enough to deal with emerging technology; and
- an ADR approved vehicle may only score an ANCAP 1 or 2 star rating

The Monash University Accident Research Centre focuses primarily on road safety research including evaluation of new vehicle safety technologies which has led to the Used Car Safety Ratings (UCSR), a comprehensive guide giving consumers real-world information on the safety of their current vehicle and any used vehicle they are considering buying. The crashworthiness of passenger vehicles in the Australian vehicle fleet has shown patterns of improvement for the years 1964 to 2012 with the greatest gains over the years 1970 to 1979 when a number of ADRs aimed at occupant protection took place and further significant gains observed over the years 1986 to 2010 (Report no. 323 August 2014).

AADA submits that vehicle age increases the odds of being involved in a fatal vehicle crash but regular inspection programs and vehicle maintenance are also important and should be considered as part of this review. The lack of standards after first use and supply of vehicles say 5 years or older (or out of warranty) undermine the initial Government investment in protecting the safety of the public and motoring community.

### 3.4 *Environmental standards*

The Discussion Paper notes that there are 8 active ADRs in respect of energy/emissions and the impact of emissions on the wider community and the environment are a key reason for their regulation including the imposition of national standards for air quality.

The information paper by the National Transport Commission (NTC) dated May 2014 provides detailed data on the carbon emissions performance of new passenger and light commercial vehicles sold in Australia. The report noted that vehicle emissions performance which is measured in grams of carbon dioxide per

kilometre (g/km) is a measure of vehicle efficiency rather than a measure of actual vehicle emissions, which depends on many factors such as distance travelled, the nature of driving and road and traffic conditions.

Some of the key findings of the NTC report include:

- in 2013 the national average carbon emissions from new passenger and light commercial vehicles was 192 g/km – a 3.4 per cent reduction from 2012 and the 3<sup>rd</sup> largest annual reduction since records started in 2002;
- if all Australians who purchased new vehicles in 2013 had purchased vehicles with best-in-class emissions, the national average would be 34 per cent lower (126g/km) than the national average that was achieved in 2013;
- new vehicles bought by private buyers had the lowest emissions (186g/km), followed by business buyers (198g/km) and then government buyers (210g/km); and
- Australian consumer preference for heavier vehicles with larger and more powerful engines, a lower proportion of diesel powered engines, and automatic transmission has led to much higher carbon emissions than in Europe and the United Kingdom.

AADA submits that there has been a progressive improvement in motor vehicle emission standards as indicated in the NTC report which will be strengthened with the Euro 5 standard adopted in ADR 79/03 from 1 November 2013 together with a commitment to meet the very low particle emission limits of the Euro 6 standards from 1 July 2017.

It should also be noted that ADR 81/02 requires all new light vehicles sold in Australia to display a Fuel Consumption Label on the front windscreen to assist consumers to make informed choices about the environmental impact of their new car and the cost of running their vehicle. The figures displayed are based on specific tests conducted by vehicle manufacturers to demonstrate compliance with the ADR.

### 3.5 *Other standards*

The Fuel Quality Standards Act 2000 and regulations provide the legislative framework for setting national fuel quality and fuel quality information standards in Australia. It provides the framework to facilitate the adoption of better, cleaner emission control technology, the more effective operation of engines, and to reduce pollution and vehicle emissions.

A number of manufacturers have been unable to offer more efficient engines in Australia due to the high sulphur content of local fuel resulting in higher fuel consumption and higher CO<sub>2</sub> emissions. This results in many variations of the same engine to suit various fuel qualities and standards throughout the world (GoAuto 8 May 2012). A parallel or used imported vehicle may have an engine specified for a higher fuel quality in an overseas country and if used in Australia may cause early engine failure with very limited recourse available to the consumer under ACL.

### 3.6 *Age of fleet*

The Discussion Paper acknowledges that a lower average age of the vehicle fleet indicates a greater penetration of contemporary safety technology and states “It is generally accepted that measures to reduce the age of the fleet would improve vehicle safety and environmental outcomes”.

The Australian Bureau of Statistics (ABS) estimates there are approximately 17.2 million registered road vehicles (excluding trailers) in Australia today and the overall fleet is steadily increasing in size by 2.4 per cent per annum. In the Department’s Discussion Paper it is estimated that 1,158,608 vehicles entered the fleet in 2012-13: new imported vehicles accounted for 1,017,717 units, domestically produced new vehicles 118,510 units and used vehicles 22,318 units. The rate of fleet renewal is approximately 6.7 per cent of the total fleet which is lower than comparable countries.

The ABS estimates that the average age of Australian registered vehicles is 10 years which is older than comparable countries. In Great Britain the average is 7.3 years and in Japan it is 7.5 years which according to the Department means that “the average Australian vehicle is one model older than these other countries.”

The rejuvenation of that Australian fleet through the supply of new motor vehicles rather than the substitution of used or parallel imports can only enhance community protection through continuous improvement in safety and environment.

### 3.7 *Transnational Organised Crime (TOC)*

Motor vehicle theft is a global problem and cross border movement of vehicles, cloned vehicles, parts and accessories is of concern to international law enforcement agencies. It is recognised that TOC concerning motor vehicles is often linked to other crime areas such as corruption, terrorism, robbery, trafficking in human beings, drug trafficking, and the illicit trade in weapons.

Interpol released an analytical report titled “Motor Vehicle Crime in Global Perspective” in January 2014 and noted that “stakeholders affected by motor vehicle crime are car manufacturers, the vehicle owner, law enforcement agencies, registration authorities, insurance companies, legislative bodies, justice departments, and vehicle related business such as rental companies and scrap yards.”

The review should give careful consideration to the concerns of international law enforcement agencies in the development and enforcement of a regulatory regime that would allow large-scale importation of used and parallel imports.

## **4. CONSUMER PROTECTION POLICY**

4.1 The second Government public policy objective is consumer protection through vehicles that meet buyers' expectations and are theft resistant. It is recognised in the Discussion Paper that automotive consumer expectations for vehicle features, safety systems and emissions performance have been driven by a number of factors including:

- global automotive technologies;
- international regulatory regimes;
- global internet access; and
- online purchasing.

4.2 A review and any amendment of the Act would not in AADA's view be comprehensive without consultation with State and Territory Governments, other Federal Departments with reference to, and any consequential amendment (and harmonisation) of, other key Federal, State and Territory acts and regulations including:

- Competition and Consumer Act 2010 (Australian Consumer Law);
- Customs Act 1901;
- Income Tax Assessment Act;
- Privacy Act 1998;
- Personal Property Securities Act 2009;
- Other Federal Acts; and
- Various State and Territory Acts and regulations including fair trading and consumer protection.

4.3 Consumer protection is significant in terms of Option 7 – Reduce the barriers to personal importation on new vehicles and the importation of quality second-hand vehicles reflecting recommendation 5.4 of the Productivity Commission to progressively relax restrictions on the importation of second-hand passenger and light commercial vehicles. The Productivity Commission recommended that this

be “preceded by a regulatory compliance framework” to support the Government’s policy objectives.

4.4 The risk profile to a consumer of the acquisition a near new or used imported vehicle built to a comparable international standard is considerably higher than a vehicle purchased from a franchised dealer. It is important to examine the risks and protections under ACL given the protections provided by manufacturers’ warranties and recalls, and the authorised franchised dealer network.

#### 4.4.1 *New motor vehicle*

The purchase of a new motor vehicle is not a usual product that a consumer purchases “off the shelf” every day. It is a significant financial investment for a consumer and second only to purchasing a home.

A motor vehicle is a highly complex mechanical product incorporating computer and other technological innovations requiring skilled technicians to maintain and service the product and a significant investment in facilities including tooling and diagnostic equipment. A vehicle purchased from a franchised dealer operating under a motor vehicle dealership agreement with a manufacturer are both subject to ACL which regulates or prohibits a range of unfair practices and provide specific protections in terms of warranty and safety.

ACL provides consumers with the following guarantees in respect of the supplies of goods:

- the supplier has the right to sell the goods;
- the goods are free from any undisclosed security;
- the consumer will have undisturbed possession of the goods;
- the goods are of ‘acceptable quality’;
- the goods match their description or a sample;
- the goods are fit for a purpose that the consumer makes known to the supplier;

- spare parts and facilities for the repair of the goods are reasonably available for a reasonable period; and
- any express warranty is complied with.

ACL provides the following guarantees in respect of supplies of services:

- a guarantee that the services are carried out with due care and skill;
- a guarantee that services are fit for a purpose made known to the supplier; and
- a guarantee that services are provided within a reasonable time.

A manufacturer and franchised dealer meet and exceed their obligations under ACL through:

- compliance with ADRs;
- investment in service facilities and equipment;
- training of technicians;
- provision of a warranty and the option of an extended warranty;
- service in accordance with manufacturer specifications;
- fixed price servicing during the warranty period;
- availability of genuine replacement parts;
- provision of a loan vehicle;
- ability to manage recall campaigns through access to their own records of all vehicles imported into Australia and the National Exchange of Vehicle and Driver Information System (NEVDIS) managed by State and Territory road agencies;
- ability to trade in vehicles;
- provision of other services such as finance and insurance; and
- majority of customers are satisfied with their dealer experience.

The purchase of a vehicle other than through the franchised dealer network in Australia increases consumer risk and may lack protection under ACL. A purchase from an overseas dealer and through the internet in a faceless

transaction may initially seem attractive in terms of choice and pricing but the ability of such an importer to be aware of, develop a recall strategy, and notify a purchaser of a product safety recall is problematic. The owner of the vehicle may also be blissfully unaware that the vehicle is defective.

#### *4.4.2 Used motor vehicle*

The biggest risk the purchaser of a used imported vehicle assumes is the inability of Government to certify the provenance of the vehicle. Is the vehicle actually what it purports to be by the importer as there is no global Vehicle Identification Number (VIN) database. While a vehicle may appear identical to a vehicle imported by a manufacturer parts and specifications will be different together with a lack of service and accident history. Unscrupulous operators may seize the opportunity to set up short term businesses in Australia.

The regulation of motor vehicle dealers and statutory dealer warranty requirements vary between the States and Territories but there is certain degree of protection available to a purchaser of a used vehicle including:

- Personal Property Securities Register (PPSR);
- NEVDIS managed by the States and Territories;
- Written-off Vehicle Register; and
- Websites

The lack of vehicle provenance of a used import up to the time of import into Australia carries with it a risk that must be assumed collectively by the Government, the importer, and the consumer. A strong regulatory framework needs to be developed to protect the community and the consumer and not transfer this risk to a franchised dealer or manufacturer.

Such an import will have a lesser value in the market compared to a depreciated new import and will affect the availability of insurance and rates of finance.

#### *4.4.3 Australian operating conditions*

Australia's harsh climatic conditions, geographical distances, state of road and communications infrastructure are different to other right hand drive countries such as the United Kingdom, Japan and New Zealand. Extensive testing is done in Australia by manufacturers to ensure a vehicle is "fit for purpose" in Australia and motorists have come to expect upgrades and modifications to:

- radiators;
- suspension;
- air conditioning systems;
- safety systems;
- dust protection; and
- audio system frequencies.

#### *4.4.4 Theft reduction*

The National Motor Vehicle Theft Reduction Council (NMVTRC) estimates that the number of vehicle thefts has halved in the last five years but it is still a crime that costs the Australian community over \$600 million each year. There is an important distinction between short term and profit motivated theft. Profit motivated thefts comprised 31 per cent of all motor vehicle thefts in 2013/14 as the vehicles are stolen for conversion to profit either as a whole vehicle or as separated parts.

Key findings of the NMVTRC in its 2013/14 statistical report include:

- Australia recorded a total of 53,450 thefts during the 2013/14 financial year which represents a 7 per cent decrease over the previous year;
- over the past 5 years, Australia's total vehicle thefts have reduced 9 per cent from the 2009/10 total of 58,582; and
- there has been a steady decline in the median age of stolen vehicles. In 2009/10 the median age of stolen vehicles was 13 years. In 2013/14 the median age had decreased to 11 years.

4.4.5 Automotive theft represents a significant cost to the community in terms of public safety, involvement of organised crime and increased insurance premiums. Technology plays an important part in reducing motor vehicle theft with the introduction of engine immobilisation systems, vehicle key coding and satellite tracking systems. These and other emerging technologies such as electronic marking of vehicles and parts, and microscopic data dots reduce the ability for new cars to be stolen and rebirthed.

## **5. COMPETITION POLICY**

5.1 The third public policy objective in the Discussion Paper is competition through vehicles that are readily available and reasonably priced and whether the Act achieves regulatory effectiveness in this area. While the LCT is outside the scope of this review it is a tax which has been described as “absurd” and adds to the cost of a motor vehicle above certain thresholds and is passed on to the consumer.

5.2 AADA has stated in its submission to the Productivity Commission that Australia’s trade liberalisation policies has resulted in one of the most open and competitive markets in the world and has brought many benefits to the community and it is doubtful there would be a substantial net benefit to the community if the Government were to open the market to allow large-scale importation of second-hand vehicles into the country.

5.3 Australia’s new car market is sub-optimal by global standards with sales of new vehicles in 2013 just over 1.1 million units or 1.4 per cent of vehicles sold globally that year. The market is characterised by intense competition with around 67 brand and 350 models competing for market share. By way of comparison Canada has 49 brands, the United Kingdom 53 brands and the USA 51 brands.

5.4 The average age of all vehicles registered in Australia is around 10 years and has remained constant since 2008 and is older than in comparable countries. Vehicle ownership per 1000 inhabitants is amongst the highest in the world which suggests the Australian market is close to saturation.

#### 5.5 *Market competition*

5.5.1 The Productivity Commission in its Preliminary Findings Report of December 2013 stated noted at page 17:

Competition within the global automotive industry is intense... especially where preferential trade agreements give low (or zero) tariff entry into developed economies...

As a result of this competition, especially amongst lower-priced, high-volume vehicle models, there is limited ability for producers to raise their prices [but] have been attempting to differentiate their offerings on the basis of an increase in vehicle features, quality and performance.

The limited scope for producers to raise prices within a vehicle market segment has resulted in cost pressures throughout the automotive supply chain.

5.5.2 AADA submits that the Australian new car retail market is highly competitive and close to optimum. AADA is unaware of any Government economic modelling involving substitution of used vehicles with new vehicles (and cross price elasticity of demand) which would indicate there would be any significant reduction in the price of new vehicles.

#### 5.6 *Vehicle price comparison*

5.6.1 In the Discussion Paper the Department stated at page 42 that "A number of submissions to the Department's 2013 public consultation process and to the Productivity Commission's inquiry asserted that some classes of vehicles,

typically premium classes, are being sold at considerably higher prices in Australia than they are in comparable overseas markets.” It was also noted that comparing prices paid for cars in different markets is not straightforward for a number of reasons including the inclusion of various features in different markets and the point and type at which domestic taxes are applied. Such imposts would include tariffs (where applicable), GST, stamp duty, registration costs and the LCT. Currency exchange rate is also a consideration.

5.6.2 AADA is not aware of any comprehensive motor vehicle price comparison carried by the Productivity Commission or the Department to support a perception that motor vehicle prices are higher in Australia than comparable overseas right hand drive markets. It is not valid to compare prices in say the United States market which is a left hand drive market 13 times larger than Australia with 51 brands compared to 67 in Australia. The majority of vehicles manufactured in the world are left hand drive which results in economies of scale of production and lower prices in those countries.

5.6.3 AADA is aware that the Federal Chamber of Automotive Industries (FCAI) commissioned IHS Automotive to compare new car prices in the Australian, United Kingdom and New Zealand markets. The independent report showed that for the vast majority of the Australian new car market a model is cheaper in Australia than it is in the United Kingdom or New Zealand and Australians are getting world class cars at globally-competitive prices. Many of the brands imported into Australia have higher specification levels and are engineered specifically for the harsher Australian climatic conditions, and longer distances travelled.

5.6.4 In addition, the CommSec Car Affordability index shows car prices have improved to the best levels since 1976. CommSec estimated that someone earning the average wage has to work 26 weeks to purchase a new Ford Falcon XT auto sedan, down from around 30 weeks just two years ago. It also found that over the past decade the average wage has increased by 55 per cent and premium brands such as the BMW 321i and Porsche 911 Carrera have fallen in price.

## 6. DISCUSSION PAPER OPTIONS

6.1 The Discussion Paper considers a number of broad potential options based on a risk based approach to include:

- do nothing or repeal the Act;
- modernise and strengthen the legislation; and
- harmonise with international standards and streamline certification.

6.2 The main concern for AADA members is Option 7 – Reduce the barriers to personal importation of new vehicles and the importation of quality second-hand vehicles. This has been discussed in detail above but brief comments will be provided in respect of each option.

6.3 *Options 1 and 2 – Do nothing or repeal the Act*

While this option was supported during the 2013 public consultation process it did not consider the structural changes that have occurred in the Australian automotive industry with the impending cessation of motor vehicle manufacturing in Australia. Maintenance of the status quo would result in an Act that is inflexible and fails to recognise global forces of change in the economy and automotive industry: environment pressures, alternate fuel technologies, evolution of city cars, high tech materials, intelligent highways, vehicle monitoring, navigational and guidance systems, privacy of vehicle data and individual freedoms.

AADA does not support repeal of the Act and agrees with the statement in the Discussion Paper that it would expose both consumers and the community at large to an unacceptable level of risk in safety, environmental damage, theft, and consumer protection. To hand back responsibility to the State and Territories would be a backward step, result in a lack of uniform standards, additional red tape and open the door to jurisdictional shopping.

#### 6.4 *Options 3 and 4 – Modernise and strengthen the legislation*

The Act is 25 years old and AADA agrees that modernisation will improve its clarity, links with other related legislation and provide the best practice administration of the regulatory framework. Other relevant pieces of legislation such as ACL, UN Agreements, and *Franchising Code of Conduct* are renewed on a regular basis to reflect the current economic and business climate and the need for refining of policy. Definitions of new and used vehicles in the Act may need to be amended to reflect any policy change as to what might constitute a “near new vehicle”. Red tape reduction, duplication, and emerging issues such as ownership and privacy of motor vehicle data also need to be considered.

#### 6.5 *Option 5 – Harmonisation of Australian vehicle standards with international standards*

It has been estimated by the Department that the additional costs of compliance attributable to the unique requirements of the ADRs not being fully harmonised with UN Regulations is in the order of \$261 million per year. Those costs are being borne by the consumers and the Productivity Commission has recommended (Recommendation 5.5):

“The Australian Government should accelerate the harmonisation of Australian Design Rules with the United Nations Economic Commission for Europe (UNECE) Regulations and the mutual recognition of other appropriate vehicle standards.

The Australian Government and all state and territory governments should justify any existing and future jurisdictional deviations from UNECE Regulations through comprehensive and independent cost benefit analyses.”

For passenger and light vehicles AADA understands the ADRs are substantially harmonised but there are a number of UN Regulations such as cold start regulations that are not essential for vehicles supplied to the Australian market.

AADA would not support the adoption of UN Regulations as the primary motor vehicle standard.

AADA supports the retention of the current practice to apply the UN Regulations through the ADRs providing Australia with a degree of flexibility to control vehicle safety design standards not inconsistent with Australia's obligations under the World Trade Organisation. This allows flexibility to recognise, among other things, Australia's harsh climatic conditions, geographical distances, fuel standards and the state of road and communications infrastructure.

The application of ADRs should be fair and equitable to all vehicles imported into Australia and in the case of large-scale importation of second-hand vehicles, personal importation of new or near new vehicles, importation of new vehicles by a non-registered Australian full volume importer should be applied at time of importation rather than the date of manufacture.

#### 6.6 *Option 6 – Streamline new vehicle certification process*

AADA agrees that the assessment of risk in accordance with the Government's public policy objectives is lowest where a vehicle is imported by a full volume manufacturer. The risk rises in respect of the personal importation of a new vehicle and the importation through non-manufacturer channels.

As a minimum all vehicles should comply with the ADRs at the time of importation and ultimate acceptance and adoption of the International Whole of Vehicle Type Approval (IWVTA) will in the longer term reduce regulatory costs associated with the trend of manufacturers towards the use of global platforms across a number of models.

The inspection and compliance cost of certification of new vehicles imported through non-manufacturer channels will require a greater allocation of resources and cost recovery should be based on a user pay principle. It should not be underwritten or subsidised by a full volume manufacturer importer.

6.7 *Option 7 – Reduce barriers to personal importation of new vehicles and the importation of quality second-hand vehicles.*

AADA's detailed consideration of this option is discussed in the sections above but some broad comments need to be made.

As a minimum AADA submits that all vehicles imported under this option must comply with the ADRs at the time of importation. We note in the Discussion Paper (page 47) there are a significant number of high risk, non-compliant and non-standard vehicles (less than 2 per cent) entering the Australian fleet through concessional schemes including the:

- Specialist and Enthusiast Vehicles Scheme (SEVS); and
- Registered Automotive Workshop Scheme (RAWS).

AADA has no major concerns with the concept of a vehicle imported under SEVS and RAWS but are aware of concerns about the management, compliance, and enforcement of the schemes and the increasing number of imported vehicles using the RAWS channel for entry into the Australian market.

The personal importation of a new motor vehicle may satisfy and enhance individual consumer choice but carries with it a number of risks the majority of which are borne by the consumer with limited recourse against the importer. Those risks should be brought to the attention of the consumer. A full volume importer registered in Australia and its authorised franchised dealer network should not bear any regulatory responsibility for warranties, recalls and provision of service and repairs of vehicles imported under concessional schemes.

The Discussion Paper does not deal with the question of "What is a personal importation?" and needs consideration of the following:

- is it for the personal use and enjoyment of an individual in a private or business capacity? ;
- what time limit should be imposed on ownership? ;

- is it to be limited to non-commercial quantities and what are those quantities?;  
and
- enforcement measures to ensure the system is not abused.

AADA does not support a policy that that would promote the large-scale importation of used vehicles into Australia.

#### 6.8 *Option 8 – Reduce/consolidate concessional arrangements*

AADA would support a reduction and/or consolidation of the 13 concessional arrangements subject to Government satisfaction that the allocation of risk to the different categories justifies the costs and benefits of reduction or consolidation.

## 7. **CONCLUSION**

AADA understands and recognises the need to regularly review and update policy and legislation to reflect current economic and commercial practices.

AADA believes that the cessation of motor vehicle manufacturing in Australia in 2017 is no justification for major changes to an industry that has operated successfully for over 100 years and is highly competitive and well regulated.

Over recent decades the number of new vehicles imported into Australia has increased substantially and now represents the majority of new vehicles sold in the country. The importation of new vehicles will increase and a policy change based on economic theory will see a substitution of new vehicles with used imports.

AADA opposes the large-scale importation of used vehicles into Australia and any policy change should be accompanied by major new regulatory and enforcement practices to ensure community and consumer protection and competition continues.