



2014 Review of the *Motor Vehicle Standards Act 1989*

Submission

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About NALSPA

The National Automotive Leasing and Salary Packaging Association (NALSPA) represents the combined interests of Australia's major vehicle fleet leasing and salary packaging providers. The Association was formed in 2014 to provide a dedicated and considered focus on key policy matters relevant to its members and to, importantly, those many thousands of organisations and employees who rely on the products and services provided by the sector.

NALSPA's members manage or facilitate a significant bulk of leased employer-provided and salary-packaged vehicles in Australia and the salary packaging arrangements of hundreds of thousands of employees. Combined NALSPA members administer more 200,000 wheeled assets. Based on these numbers it has the largest representation of any Association of its type in Australia.



Submission to the 2014 Review of the *Motor Vehicle Standards Act 1989*

Executive summary

The Australian motor vehicle market is one of the most competitive in the world, rendering very high levels of domestic affordability of both new and second-hand vehicles. This status has been achieved with defined standards in place for the benefit of consumers to ensure that all vehicles sold in or imported into Australia are safe, environmentally friendly, and are fit to be driven on Australian roads and conditions which are different to many other parts of the world.

The intent of the then Federal Government when introducing the *Motor Vehicle Standards Act 1989* (the MVSA) was to set minimum safety, environmental and other standards for motor vehicles entering the Australian market, and to restrict the importation of used vehicles to those meeting equivalent standards of safety to those of the Australian Design Rules (ADRs).

In our view, no material evidence exists that Australian consumers or the wider Australian automotive sector and its constituent stakeholders would derive meaningful net benefit from reducing existing barriers to the personal importation of new vehicles or the general importation of second-hand vehicles.

We believe the case for reducing those barriers is weak and ignores the potential for realising the very risks the MVSA is intended to avoid, to the detriment of consumers and the community, together with the potential for significant disruption to Australia's wider automotive sector and its many stakeholders.

The risks to consumers presented by such a reform significantly outweigh any perception cheaper and more affordable cars for the bulk of consumers would be the outcome. Moreover, it is our view that such perception is misplaced – **consumers will, in the overwhelming majority of cases, not be able to buy and import more affordable cars than those already available in the Australian market.**

In addition, a consumer buying a personally-imported new vehicle or an imported second-hand vehicle is likely to face a range of issues, including potentially higher repair, maintenance and insurance costs, as well difficulties in determining whether such a vehicle is 'fit for purpose' for Australian conditions, whether overseas warranties will be obligated, whether its safety and environmental performance meets Australian requirements and so on. Critically, the bulk of consumers are unlikely to be unsuspecting of such matters.

The National Automotive Leasing and Salary Packaging Association (NALSPA) therefore does not support the implementation of amendments to the MVSA having the effect of lowering existing barriers to the importation of vehicles.



Overview

This submission is the response of NALSPA to the Options Discussion Paper (the Discussion Paper) issued in September 2014 by the Department of Infrastructure and Regional Development (the Department) as part of the Review of the *Motor Vehicle Standards Act 1989* (the MVSA Review).¹ It focuses on the following questions raised in the Discussion Paper:

- What arguments support little or no change to the legislation? (Question 7-2)
- What risks would a regulatory framework need to address if barriers were reduced on vehicle imports? (Question 7-17)
- What impact would second-hand vehicle imports and personal imports of new vehicles have on the automotive sector in the short, medium and long term? (Question 7-18)
- Could constraints around a vehicle's age and country of origin effectively manage the safety, environmental and theft risk to the community? (Question 7-19)
- How can standards be used to affect the average age of the vehicle fleet and the distribution of the age profile? (Question 7-20)
- Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not? (Question 7-21)
- How could the Government facilitate vehicle safety recalls for vehicles not imported by manufacturers? (Question 7-23)
- What transitional arrangements, including length of notice period, should be put in place to assist businesses to adjust to potential changes in the regulatory framework? (Question 9-1)

The three key public policy objectives of the MVSA are **community safety**, **consumer protection**, and **competition/pricing**. The primary policy objective of community safety is contributed to by safe vehicles being on the road, and this is the desired outcome of current motor vehicle standards and the current regulatory system applying to imported used vehicles.

NALSPA notes that the Department is cognisant of the fact that the Productivity Commission did not specifically address those objectives in its recent report into Australia's automotive manufacturing sector and that the outcomes of the MVSA

¹ Australian Government, Department of Infrastructure and Regional Development (DIRD), *Options Discussion Paper – 2014 Review of the Motor Vehicle Standards Act 1989*, Canberra, September 2014.



Review would need to accommodate them and some of the risks that lowering the barriers to the importation of motor vehicles into Australia may represent.

Some of those risks are raised by the Department in the Discussion Paper – for example, the risks to consumers of purchasing vehicles in respect of which their service history, after sales parts and service availability, their bona fide ownership history, and their compliance with safety standards to name a few, are either unknown, difficult to quantify or at a standard which may be below what has otherwise been deemed a minimum for Australian conditions and consumers.

These important issues are not a rare occurrence and go directly to the core regulatory objectives of community safety and consumer protection, however they cannot be easily mitigated, let alone negated. They are material and demonstrate factors involved with the acquisition and operation of motor vehicles that set them apart from other consumer goods.

As such, NALSPA submits that the case for reducing the barriers to imported new and second-hand vehicles is weak and ignores the potential for realising those risks to the detriment of consumers and the community, together with the potential for significant disruption to Australia's wider automotive sector and its many stakeholders.

Note that we have not sought to provide comment or recommendation in relation to the current concessional schemes – including the Specialist and Enthusiast Vehicles scheme that provides for used vehicle imports – therefore the views in this submission should not be read as necessarily extending to those schemes.

Submission in detail

What arguments support little or no change to the legislation? (Question 7-2)

This question in our view is somewhat pre-empting change and requires a defensive rather than a positive response. NALSPA suggests that it is more relevant to ask what grounds are there for change?

Australia is blessed with one of the most open and competitive car markets in the world, with 67 brands competing with each other to sell a combined range of over 350 models to only 1.1 million new car purchasers per annum.² By comparison, 51 brands compete for 13 million annual sales in the United States, and in the United Kingdom 53 brands are competing for 2.25 million annual sales.³

² Federal Chamber of Automotive Industries, *Consumers benefit from Australia's competitive car market*, 2014.

³ Federal Chamber of Automotive Industries (2014) *International new vehicle price and specification comparison—Australia, United Kingdom and New Zealand*, 2014.



Australia's robust car market thrives because car affordability is at its best levels in 37 years.⁴ In addition, Australia has experienced average wage increases combined with across the board decreases in car prices.

Our members believe it is a myth that consumers will be able to secure comparable second-hand vehicles from overseas markets, including Japan, for materially lower cost than if purchased in Australia as a full volume import. For the overwhelming majority of suitable vehicles, it is our view that any apparent sticker price differential dissipates once landed costs and refits for compliance, safety and likewise are taken into account. This is a fundamental matter that resides at the core of any policy re-consideration and which has been cited by other submissions to this review and related analysis, including that conducted by Deloitte Touche Tohmatsu, the Federal Chamber of Automotive Industries and RedBook Australia.

For example, NALSPA notes the following statements by Deloitte:

"The Federal Chamber of Automotive Industries has recently released a comparison of international car prices. Case studies were undertaken of fully optioned popular Australian car models and similarly optioned models in the UK and New Zealand. The FCAI analysis indicated that for many models of car Australian prices were at least comparable and in many cases cheaper than overseas market.."

...Though there are many upfront financial benefits of used import vehicles, it is likely that used import cars will have higher operating costs than similar cars in the Australian market. These costs are likely to stem from three major areas: parts and servicing and insurance."⁵

We also submit that direct comparisons with regard to the underlying demand for second-hand imports in New Zealand are somewhat misplaced, given NALSPA's understanding that retail prices of new and imported-new second hand vehicles in that market are consistently higher than in Australia for comparable vehicles and that vehicle safety standards are not as robust as Australia's.

In its submission to the MVSA Review, Deloitte also note that given Australia's population is five times that of New Zealand's, competition for the same supply of spare parts for imported second-hand vehicles makes it conceivable that "consumers would not have access to significantly lower prices".⁶

NALSPA contends that the current protections for consumers of light commercial and passenger vehicles operate well and are contributing to safer roads and less harmful carbon emissions and we question why Australia would threaten the inherent integrity

⁴ CommSec, *Car affordability at best levels in 37 years*, 2013.

⁵ Deloitte Touche Tohmatsu, *Final Draft Report: Impact analysis of potential changes to the current restrictions on the import of used motor vehicles into Australia*, 9 September 2014, page's 44 and 48.

⁶ Deloitte Touche Tohmatsu, fn 5, at page 46.



and efficiency of its car market for a questionable consumer price benefit that does not exist for the bulk of relevant vehicles.

Compliance issues with imports of motorcycles, large recreational vehicles and trucks are known to exist, and we are aware that the Department has received specific and detailed information about these issues from local industry representatives during its public consultation for the MVSA Review. Specific cases cited at the Department's public consultation forum in Parramatta on 23 September 2014, for example, included:

- A new motor home imported from Europe that passed compliance checks and was "clearly unroadworthy". It was over 5 tonnes (the limit is 4.5 tonnes) due to non-Chrysler parts and modifications done on a Chrysler chassis.
- Inconsistent enforcement of ADRs by the states and territories on registration of imported motor homes and caravans under 4.5 tonnes.
- Heavy vehicles imported from the United States and passed for registration despite not being re-engineered to less than 2.55m width (standard in the US).

These issues not only demonstrate a need for the Department to address relevant current problems with operation of the Act – they also serve as a clear warning that lowering the barriers to the personal importation of new passenger vehicles and the importation of second-hand passenger vehicles would present a raft of problems.

To help demonstrate, it needs to be understood that for a new vehicle to be sold in Australia it must comply with a range of ADRs and having done that, a "type approval" is given to that vehicle model. This means that all new vehicles coming off the production line that meet the description of the model in the "type approval" are certified.

Quality control in the manufacturing of new cars allows for this type of sample-based certification. Similarly, the Australasian New Car Assessment Program (ANCAP) is able to select vehicles for testing that will be representative of all vehicles covered by the "type approval" and in turn the community can rest assured that all of these vehicles will be of equivalent safety.

However, this is not the case for imported used vehicles or personal new imports which have not been subject to this process. Irrespective of whether these vehicles may have had an original certification in another country, this certification typically will be to a lower standard and therefore consumers will have no or little visibility on the safety performance of the vehicles. Importantly, **it is not possible for ANCAP to sample test these vehicles because it is not possible to identify a test vehicle, which will be representative of them all.**

These processes mean that consumers acquire full volume vehicles in Australia with the knowledge and comfort that they meet necessary safety, environmental, theft and related design standards.



Furthermore consumers also know that these vehicles are specified 'fit for purpose' for Australian road and climate conditions, so that their purchase decisions focus ostensibly around vehicle preference, colour, price, engine capacity, visual appeal and condition (in the case of used vehicles).

Such purchase decisions do not generally need to consider whether the vehicle meets certain safety criteria, whether it will be readily repairable, whether it will cope with Australian roads, whether its drivetrain is as normally found in that model type and so on.

NALSPA's concern is that in Australia the average consumer does not have the capacity to clearly identify and comprehend the potential unique risk issues associated with imports in the absence of the existing MVSA regime and its association compliance and certification processes. For example:

- How would a consumer know if a given imported vehicle is fit to be driven safely on Australian roads? As described above full volume new vehicles imported to Australia are designed and manufactured to specification to be 'fit for purpose' for Australian conditions (ie to cope with our hot climate, harsh roads, long distances travelled, high incidence of towing compared with countries such as Japan, etc).
- How would a consumer know if a given imported vehicle had been subject to a recall notice?
- How would a consumer be able to confirm the provenance of a given imported vehicle or the genuine nature of any repairs or maintenance? How would such a consumer obtain redress for any problems with the legality of their ownership or with substandard repairs or maintenance? It cannot be assumed that local dealer networks will honour any overseas-sourced warranties, and nor can the consumer assume that parts will be available in Australia or that local repairers will have the necessary diagnostic tools.
- Given these issues, will consumers be able to secure insurance or finance in respect of any given imported second-hand vehicle without paying more than would be the case for an imported new vehicle. And would such issues be known to consumers prior to them acquiring such vehicles so that they can make an informed decision?

Safety is paramount. It is a major purpose of the MVSA. Reducing barriers to importations of second-hand vehicles will defeat or at best significantly weaken that purpose.



What risks would a regulatory framework need to address if barriers were reduced on vehicle imports? (Question 7-17)

We note that this and other questions raised by the Discussion Paper pertain to Option 7, being a reduction of the barriers to personal importation of new vehicles and the importation of second-hand vehicles. This option is stated to be under potential consideration as part of the MVSA Review, and is not reflective of any proposed policies being recommended by the Department.

However, as a general comment we note that the Department's questions for discussion are mostly framed from the perspective of Option 7 being implemented. Again, this requires defensive responses, which we believe to be an inappropriate approach to the consultative process.

Question 7-17 in particular is somewhat self-serving in our opinion, as we believe that the Department is aware of the risks associated with lowering the barriers to imported vehicles. They are appropriately raised in the Discussion Paper and discussed in this submission. **The point NALSPA wishes to make is that addressing those risks in relation to second-hand vehicles entering Australia on a large scale may well be unachievable within the existing framework of ADRs and other standards.**

What impact would second-hand vehicle imports and personal imports of new vehicles have on the automotive sector in the short, medium and long term? (Question 7-18)

The most significant potential impact upon the automotive sector relates to those stakeholders, such as the dealer and servicing networks, who have made significant investment in capital, stock and people under the existing regulatory regime.

It is our understanding that many established new vehicle and second-hand car dealers would, either due to contractual obligations or preference, not market or service second-hand or personal imports which we understand has generally been the experience in New Zealand.

Therefore if a significant change to the existing regulatory regime was to occur under which a material number of second-hand or personal imports entered Australia and diminished demand for existing distribution and service channels, it is likely there would be material detrimental financial impact to such dealer and servicing networks and their ongoing ability to provide existing levels of employment and service.

Furthermore, in the absence of a lengthy transitional period or staggered implementation of lowering the barriers to the importation of second-hand vehicles, lease companies may also face financial loss on the resale of second-hand vehicles currently under operating leases. This would be on the basis that existing residual values are "locked in" in a change environment and that the scale and volume of imported vehicles drives down the purchase price of vehicles in Australia more generally.

An associated cost outcome for lease providers on lowering barriers would arise in respect of depreciation values and annual write-downs. Whilst for accounting purposes, adjustments to opening values are possible to accommodate structural change to the Australian car fleet, for tax purposes no such adjustments are possible. Rates are set on acquisition and the Australian Taxation Office does not have the discretionary power to “re-set” rates mid-depreciation.

Could constraints around a vehicle’s age and country of origin effectively manage the safety, environmental and theft risk to the community? (Question 7-19)

Given the nature of motor vehicles and their inherent potential to cause serious injury or death to occupants and others, NALSPA believes it would be exceedingly difficult; if not impossible, to “effectively manage” or even mitigate those risks in the manner proposed.

For example, the Discussion Paper states that the regulatory regime for imported second-hand vehicles would need to consider requiring that such vehicles meet a minimum Australasian New Car Assessment Program (ANCAP) or European New Car Assessment rating of 5 stars.⁷

However, as outlined earlier in this submission, ANCAP previously submitted to the Productivity Commission that imported second-hand vehicles cannot be reliably tested in Australia.⁸ This is because it is not possible to identify a vehicle for testing that is representative of all imported second-hand vehicles of the same make, model and year of manufacture. ANCAP highlighted the case of 4 specific imported vehicles, each of which complied with the ADRs but which had “very poor ANCAP safety ratings” which “put occupants at extreme risk of life-threatening injuries in a crash (test speed 64 km/h).”⁹ ANCAP concluded that

“[v]ehicles similar to these would be likely candidates for importation as used vehicles. The difference being that the community would have no visibility of their safety ratings - used cars cannot be reliably tested and in many cases they may never have been tested, in their country of origin, when new. These and many similar vehicles would be sold to consumers without knowledge of the serious life---threatening safety deficiencies.”¹⁰

Whilst we recognise that the Discussion Paper also states that the regulatory regime would need to consider limiting the age of imported second-hand vehicles,¹¹ NALSPA

⁷ DIRD, fn 1, at page 44.

⁸ Australasian New Car Assessment Program (ANCAP), *Response to Information Request 3.2, Productivity Commission Position Paper (January 2014) on Australia’s Automotive Manufacturing Industry*, 13 February 2014, at pages 2-3.

⁹ ANCAP, fn 3, at page 2. The vehicles were the Chery J1 (still on the market), the Proton Jumbuck (withdrawn in 2012), the 2006 Holden Barina and the 2008 Chrysler Voyager.

¹⁰ ANCAP, fn 3, at page 3.

¹¹ DIRD, fn 1, at page 44.



believes it would be exceedingly difficult to impose compliance obligations when a number of the relevant issues (for example, repair and maintenance history, whether the vehicle is 'fit for purpose' for Australian conditions, whether the odometer is accurate, whether parts would be available, whether any warranties could be relied upon) are problematic and difficult to verify even through visual inspection.

Problems with lawful ownership, odometer tampering, and other vehicle frauds are serious and ongoing in New Zealand,¹² and there is no reason to suspect the same issues will not be experienced in Australia with an influx of imported second-hand vehicles. Despite, for example, jurisdictions such as NSW recently introducing tougher sanctions against odometer tampering, these issues already have to be more strenuously managed in the current regulatory environment.

How can standards be used to affect the average age of the vehicle fleet and the distribution of the age profile? (Question 7-20)

It is NALSPA's contention that little benefit is to be derived from using standards to influence the average age of the Australian motor vehicle fleet or its distribution of the age profile.

Whilst it is simple enough to impose age restrictions on the importation of second-hand vehicles, demand for such vehicles will be equally if not more affected by their landed cost, which will by necessity include additional costs to obtain road worthiness status if not meeting ADR compliance. Less demand will in turn produce less of an impact on the age profile of the Australian fleet.

Conversely, consumer preference will lean towards the upper scale of whatever vehicle age restrictions are introduced, and as such are likely to create an upward movement in the average age. Furthermore, it is not unreasonable to assume that if a percentage of consumers determined to purchase a used import rather than a new full volume import, that it would contribute to an increase in the average age of the vehicle fleet rather than placing downward pressure on age.

Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not? (Question 7-21)

NALSPA submits that federally-sanctioned personal importation of new vehicles requires federal consumer protection and not divestment to each state and territory. The simple reason for this is that the respective consumer protection laws in each state and territory only apply to transactions conducted within those respective jurisdictions. Thus, at the state and territory level, personal importers of new vehicles have no statutory rights protecting them as consumers.

¹² See, for example, Australian Fleet Lessors Association (AFLA), Australian Equipment Lessors Association (AELA), and Australian Finance Conference (AFC), *Joint Submission in response to the Productivity Commission's Position Paper in relation to the Automotive Manufacturing Industry, February 2014*.



That said, the existing federal consumer body is still powerless under current Australian Consumer Law to enforce sanctions against overseas suppliers of imported vehicles. The Department has acknowledged this fact in the Discussion Paper, so we are uncertain as to why this question is being raised. The Department has noted that some protection may be available in respect of a vehicle acquired from an “accredited importer”, which presumably means an importer with an Australian presence, but even if the consumer transacts with that importer the Department is assuming that warranties would be routinely given.

Moreover, any protection that may be available will not extend to vehicles ostensibly complying with ADRs but nevertheless not fit for Australian driving conditions and thus prone to problems arising, typically in respect of cooling system capabilities and towing capacities. This issue extends to potential brand damage rather than being an issue associated with “one-off” imports.

How could the Government facilitate vehicle safety recalls for vehicles not imported by manufacturers? (Question 7-23)

NALSPA does not believe the Government can facilitate vehicle safety recalls as this question implies. For example, it was pointed out by the Truck Industry Council at the Department’s public consultation forum in Parramatta on 23 September 2014 that the New Zealand Government has no way of assisting in recalls initiated in Japan in respect of vehicles manufactured in that country and subsequently imported second-hand into New Zealand.

The Truck Industry Council also noted that in Europe, vehicle safety recalls are vehicle-specific, and hence the Australian Government would need to formulate some practical means of enforcing the checking of VINs.

What transitional arrangements, including length of notice period, should be put in place to assist businesses to adjust to potential changes in the regulatory framework? (Question 9-1)

It remains NALSPA’s position that no material changes to the MVSA should be made having the effect of lowering barriers to the personal importation of new vehicles or the importation of second-hand vehicles (these recommendations do not necessarily extend to existing concessional schemes).

However, were Government to decide to adopt the proposal as policy, we believe extensive further consultation is required on that basis. This would cover not only transitional measures, but also the parameters of the actual changes and the need for ancillary amendments to other legislation, for example the *Income Tax Assessment Act 1997* and the *A New Tax System (Goods and Services Tax) Act 1999*.



Conclusion

NALSPA's submission has focused on the specific questions the Department has sought responses to in its Discussion Paper. We have not discussed the multitude of other concerns we have in relation to any proposal to reduce barriers to the importation of second-hand vehicles into Australia, for example:

- the increased costs to establish an effective regulatory framework;
- the adverse impact on tax revenue;

These concerns have already been raised with the Department by various stakeholders.¹³ This submission has argued that the core policy objectives of **community safety**, **consumer protection**, and **competition/pricing** will not be met by implementation of Option 7.

¹³ See, for example, AFLA, AELA, AFC, fn 12.