
FCAI Response to the 2014 Review of the Motor Vehicle Standards Act



Federal Chamber of Automotive Industries
Level 1, 59 Wentworth Avenue
KINGSTON ACT 2604
Phone: +61 2 6229 8217
Facsimile: +61 2 6248 7673

Contacts:
Mr James Hurnall, Technical Director
Mr Ashley Wells, Policy Director

(25 November 2014)

The Federal Chamber of Automotive Industries (FCAI) is the peak industry organisation representing the manufacturers and importers of passenger vehicles, light commercial vehicles and motorcycles in Australia.

On 4 September, the Government released the Options Discussion Paper for the 2014 Review of the *Motor Vehicle Standards Act 1989*. The Options Discussion Paper, and public consultation workshops, highlighted that the review of the Motor Vehicle Standards Act needed to address the Government's 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).

The Government's community protection objectives are best delivered through a strong regulatory regime that ensures new vehicles are delivered to the market meeting the latest safety and emission standards. The FCAI and member brands support and consider that we have significantly contributed to these three policy objectives through the supply of new motor vehicles fitted with modern environmental, security and safety technologies, and are engineered for the Australian operating environment.

The FCAI and member brands view the *Motor Vehicle Standards Act 1989* as having an overwhelmingly positive impact on the supply of motor vehicles into the Australian market, delivering improvements in safety and environmental outcomes, meeting buyer expectations and reduced motor vehicle theft; at the same time as contributing to a highly competitive market that delivers vehicles at internationally competitive prices. There is no compelling public policy case for reducing the barriers to personal importation of new vehicles ('parallel imports') or the importation of second-hand ('grey') vehicles.

However, the FCAI recognises there is the opportunity to improve the Motor Vehicle Standards Act to better deliver on the Government's policy objectives. Of the options outlined in the paper the FCAI supports:

- The need to modernise and strengthen the legislation.
- Harmonise with international standards (i.e. United Nations Regulations) where the case exists for a regulation and streamline the certification process to automatically accept type approvals to United Nations (UN) Regulations.
- Consolidate concession scheme arrangements and apply a risk based approach where higher risk schemes would require a more intensive certification, compliance and auditing regime.

The Motor Vehicle Standards Act provides the legislative framework to control the supply to the market of all vehicles, i.e. it puts in place the checks and balances for supply of new and used vehicles. Personal imports and importation of second-hand vehicles are part of concessional schemes where the requirements to import (i.e. the standards to be met and the burden of proof) are already lower than for new vehicles supplied in full-volume. The FCAI does not support allowing greater access (i.e. providing additional concessions) to personal importation of new vehicles or the importation of second-hand vehicles.

Any regulatory change that allows older vehicles to be introduced into the market would result in an increase in fleet age and would be detrimental to the Government's community protection (i.e. road safety and environment) objectives.

The highest possible level of consumer protection is available under the current regime where the vast majority of new passenger cars, motorcycles and light commercial vehicles entering the market are

introduced by the vehicle brand and sold via authorised dealerships. Consumer risk is increased with the importation of either used or parallel imports. The FCAI has a number of case studies in this submission that highlight the significant consumer risk with grey vehicles. The FCAI recommends that the SEVS be reviewed with an aim to develop appropriate entry criteria to meet the intention of the SEVS, i.e. providing access to specialist and enthusiasts' vehicles that are not currently available in the Australian market.

Australia has one of the most competitive new car markets in the world, with 67 brands, 350 models and 1.1 million new car sales annually. The competitiveness in the Australian new car market has delivered better safety and environmental outcomes for consumers. This highly competitive market has delivered value to consumers through more affordable vehicles and also a higher level of specification in those vehicles. Research conducted by the FCAI and member brands demonstrates that when conducting a like-for-like comparison, the vast majority of the new car market is more competitively priced in Australia than in comparable overseas right hand drive markets.

Overall, there is no compelling public policy case for expanding the concessions already provided to the personal importation of new or second-hand vehicles.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
1.0 INTRODUCTION.....	6
2.0 GOVERNMENT POLICY OBJECTIVES.....	7
2.1 COMMUNITY PROTECTION	7
2.1.1 <i>Safety Standards</i>	7
2.1.2 <i>Environmental Standards</i>	9
2.1.3 <i>Age of Fleet</i>	10
2.1.4 <i>FCAI Conclusions/Position</i>	11
2.2 CONSUMER PROTECTION	11
2.2.1 <i>Buyer Risk</i>	12
2.2.1.1 <i>New Motor Vehicles</i>	12
2.2.1.2 <i>Used Motor Vehicles</i>	14
2.2.2 <i>Australian Consumer Law Issues</i>	15
2.2.3 <i>Specified for Australian Operating Conditions</i>	18
2.2.4 <i>Theft Reduction</i>	20
2.2.5 <i>FCAI Conclusions/Position</i>	22
2.3 COMPETITION	23
2.3.1 <i>Vehicle Availability and Ownership</i>	23
2.3.2 <i>Vehicle Price</i>	25
2.3.3 <i>Market Competition</i>	28
2.3.4 <i>FCAI Position</i>	31
3.0 RESPONSE TO CONSULTATION PAPER QUESTIONS.....	32
3.1 IS THERE A PROBLEM?	32
3.1.1 <i>Current Situation</i>	32
3.1.2 <i>Interaction with other legislation</i>	32
3.1.3 <i>Enforcement of standards</i>	33
3.1.4 <i>Aftermarket industry and non-genuine parts</i>	34
3.2 RISK BASED APPROACH	36
3.3 OPTION 1—DO NOTHING	37
3.4 OPTION 2—REPEAL THE LEGISLATION	38
3.5 OPTION 3—MODERNISE THE LEGISLATION	39
3.6 OPTION 4—STRENGTHEN THE LEGISLATION	41
3.7 OPTION 5—HARMONISATION OF AUSTRALIAN VEHICLE STANDARDS WITH INTERNATIONAL STANDARDS	44
3.8 OPTION 6—STREAMLINE NEW VEHICLE CERTIFICATION PROCESSES	46
3.9 OPTION 7—REDUCE THE BARRIERS TO PERSONAL IMPORTATION OF NEW VEHICLES AND THE IMPORTATION OF QUALITY SECOND-HAND VEHICLES	47
3.10 OPTION 8 - REDUCE/CONSOLIDATE CONCESSIONAL ARRANGEMENTS.....	48
3.11 COSTS AND BENEFITS	50
3.12 IMPLEMENTATION.....	51
3.13 FCAI POSITION.....	52
3.13.1 <i>Risk Based Approach</i>	52
3.13.2 <i>Harmonisation with UN Regulations</i>	52
3.13.3 <i>Compliance/Approval Costs</i>	52
3.13.4 <i>Personal Importation of New Vehicles or the Importation of Second-hand Vehicles</i>	53
4.0 CONCLUSION	54
APPENDIX A THE AUSTRALIAN AUTOMOTIVE INDUSTRY.....	55
APPENDIX B PRICE AND SPECIFICATION ANALYSIS.....	57

APPENDIX C PEGASUS ECONOMICS REPORT..... 60
APPENDIX D SEVS EXAMPLES 61
APPENDIX E TUFF BULLBARS ADVERTISEMENT..... 63

The Federal Chamber of Automotive Industries (FCAI) is the peak industry organisation representing the vehicle manufacturers and importers of passenger vehicles, light commercial vehicles and motorcycles in Australia.

On 4 September, the Government released the Options Discussion Paper for the 2014 Review of the *Motor Vehicle Standards Act 1989*¹. The FCAI welcomes the opportunity to provide a response to the Australian Government's Discussion Paper.

In considering the Motor Vehicle Standards Act Review, the Government has identified three over-arching policy objectives:

- 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).

The FCAI and member brands support and consider that we have significantly contributed to these three policy objectives through the supply of new motor vehicles fitted with modern environmental, security and safety technologies and are engineered for the Australian operating environment.

The FCAI and member brands view the *Motor Vehicle Standards Act 1989* as having an overwhelmingly positive impact on the supply of motor vehicles into the Australian market, delivering improvements in safety and environmental outcomes, meeting buyer expectations and reduced motor vehicle theft; at the same time as contributing to a highly competitive market that delivers vehicles at internationally competitive prices. There is no market failure and no compelling public policy case for reducing the barriers to personal importation of new vehicles ('parallel imports') or the importation of second-hand ('grey') vehicles.

However, the FCAI recognises there is the opportunity to improve the Act to better deliver on the Government's policy objectives. Of the options outlined in the paper the FCAI supports:

- The need to modernise and strengthen the legislation.
- Harmonise with international standards (i.e. UN Regulations) where the case exists for a regulation and streamline the certification process to automatically accept type approvals to UN Regulations.
- Consolidate concession scheme arrangements and apply a risk based approach where higher risk schemes would require a more intensive certification, compliance and auditing regime.

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

2.0 GOVERNMENT POLICY OBJECTIVES

The following section outlines how the FCAI sees these options as contributing to the Government policy objectives² 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).

During the consultation workshops, a range of opinions were expressed on how *the Motor Vehicle Standards Act 1989* and by extension, the current makeup of the automotive industry does (or does not) contribute to these policy objectives.

Even though Section 5 of the Discussion Paper is titled *Is there a problem?* the FCAI considers this section does not address the threshold question of whether or not there is a market failure in delivering the Government Policy Objectives. The following sections outline the FCAI's view on how the current regulatory regime delivers the best outcome for Government, in terms of these policy objectives.

2.1 Community Protection

2.1.1 Safety Standards

The Discussion Paper highlights, in Section 4 *Overview of the Current Situation*³ and in Section 5 *Is there a problem?*⁴, the significant contribution from new vehicles and new vehicle technology to improvements in road safety. This contribution is also acknowledged in the *National Road Safety Strategy (NRSS) 2011-2020*⁵, in the opening paragraph in Section 8 *Safe Vehicles*:

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

The NRSS acknowledges existing safety systems that are already standard on new vehicles such as electronic stability control (ESC) and crash protection systems that need to be designed into the vehicle structure such, as crumple zones and restraint systems (seat belts and airbags), will continue to deliver benefits as new cars with these systems become a greater proportion of the in-service fleet.

The safety benefits of newer vehicles are also supported by research undertaken by the Monash University Accident Research Centre (MUARC) for the Used Car Safety Rating Update⁶. This is best summarised in the following graph from the 2014 update report that demonstrates year-on-year crashworthiness improvements in the light vehicle fleet.

² DIRD, op. cit., p. 18

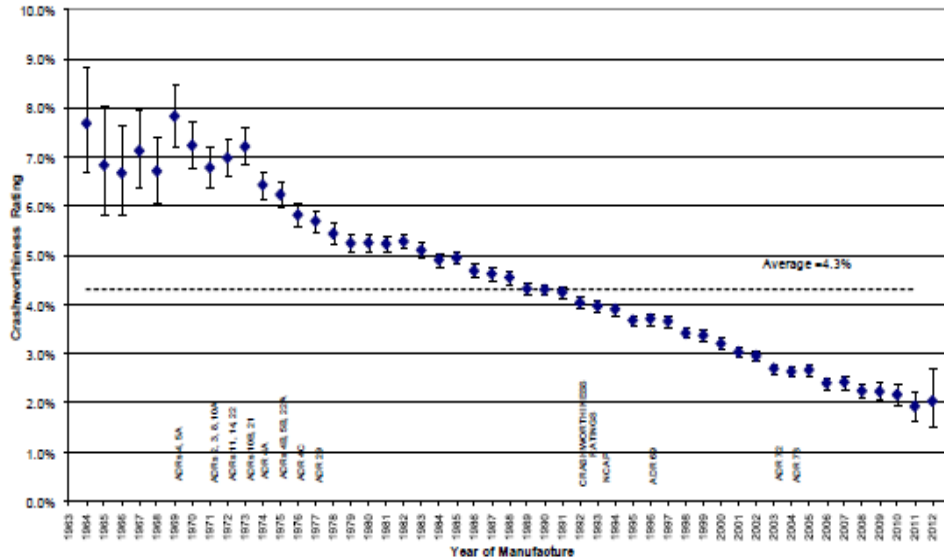
³ DIRD, op. cit., p. 15

⁴ DIRD, op. cit., p.18

⁵ National Road Safety Strategy 2011-2020, www.infrastructure.gov.au [accessed 30 Sep 2014]

⁶ Newstead, S., Watson, L. and Cameron, M. Vehicle Safety Ratings estimated from police reported crash data: 2014 update. Australian and New Zealand crashes during 1987-2012, Monash University Accident Research Centre - Report #323 [August 2014]

Figure 2.1: Crashworthiness by Year of Manufacture⁷



The NRSS also identifies primary safety systems that are being progressively introduced by manufacturers with new models as providing significant potential to continue to improve road safety. Advanced driver assistance systems (ADAS) such as lane keeping assist, lane departure warning, blind spot monitoring, adaptive headlights and autonomous emergency braking (AEB) assist the driver with warnings or automatic braking to help avoid or mitigate accidents⁸.

Many of these technologies are calibrated for the motor vehicle’s initial market. FCAI member brands advise that safety systems such as Smart City Brake Support or High Beam Control are uniquely tuned for Australia. For example, the High Beam Control on Australian specified motor vehicles are tuned to ensure the Australian unique red roadside reflectors will not turn off automatic high beam.

Moreover, due to the average age of the fleet (10 years⁹) it can take several years for vehicles with this technology to comprise a significant proportion of the fleet. In addition to ADAS that are now being introduced to the market, it has been widely acknowledged that cooperative intelligent transport systems (C-ITS) such as vehicle-to-vehicle communications (V2V) have significant potential to deliver safety benefits. In their Advanced Notice of Proposed Rule Making¹⁰ (ANPRM), the United States government quoted a study that found V2V technology had the potential to reduce up to half of all intersection crashes.

All vehicle brands are working to develop this technology at a global level and for Australia to receive the safety (plus environmental and traffic management) benefits its introduction must be managed at a national level. Unfortunately, not all markets are using the same frequency bands for C-ITS. For example the next generation V2V and vehicle to infrastructure (V2I) safety systems from Japan will not work in Australia, and moreover, the radio transmitters in these vehicles may cause harmful interference to other licensed spectrum users.

The Japanese DSRC systems operate in the 5.8GHz band. This is used in Japan for toll collection as well as vehicle to infrastructure communication for traffic congestion, parking, etc. These systems may interfere with our freeway toll collection systems if not turned off.

⁷ Newstead et al, Op. Cit., p.50

⁸ Insurance Institute for Highway Safety, Crash avoidance technologies, www.iihs.org [accessed 6 October 2014]

⁹ Australian Bureau of Statistics, 9309.1 Motor Vehicle Census, 31 January 2014

¹⁰ US NHTSA 43-14, 18 August 2014, Notice and NHTSA report outline promise of cutting-edge technology, www.nhtsa.gov [accessed 5 Sep 2014]

Japanese C-ITS systems operating in the 700 MHz band will most likely interfere with new services in the “Digital Dividend” band. The Japanese V2V band (715 – 725 MHz) occupies part of the band that Telstra just purchased from Australian Communications and Media Authority (ACMA) for \$1.3 billion for next generation mobile applications.

While the United States and Europe are both using the 5.9 GHz band there are different channel allocations within this band. Therefore vehicles specified and manufactured for these two markets would not be able to communicate with each other, negating the safety benefits of V2V technology.

The Austroads Cooperative ITS Steering Committee is currently working with ACMA to allocate the frequency spectrum for C-ITS in Australia. It is expected that Australia will harmonise with either the United States or Europe.

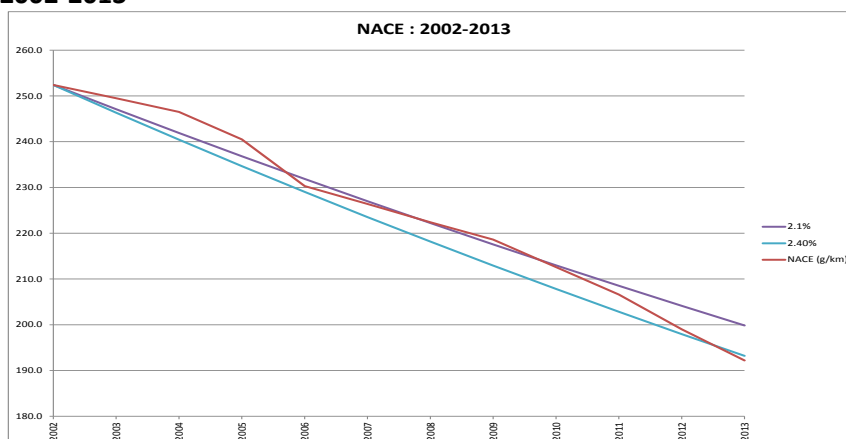
2.1.2 Environmental Standards

The Discussion Paper includes emission standards as part of the Government’s community protection objectives. Through the Australian Design Rules (ADRs), the Government has introduced successively more stringent air quality standards for vehicles to reach the point where new light vehicles introduced into Australia need to meet the Euro 5 standards (ADR 79/03 introduced from 1 November 2013) and plan to introduce the requirements for Euro 6 standards (ADR 79/05) from 1 July 2017¹¹.

The progressive tightening of vehicle emissions standards has contributed to improvements in air quality in Australian cities. For example, a 2013 study by the CSIRO for the Victorian EPA found that by 2030, total motor vehicle exhaust emissions will have significantly reduced and that improved technology is entering the vehicle fleet at a faster rate than growth of vehicle use¹².

In addition to the reduction in pollutant emissions, new light vehicles have also provided a year-on-year reduction in CO₂ (or fuel consumption) as demonstrated by the National Road Transport Commission’s annual update¹³. The National Average Carbon Emissions (NACE) for all new light vehicles (including passenger cars, SUVs and light commercial vehicles) sold in Australia for each calendar year from 2002 to 2013 (in Figure 2.2) reduced from 252.4 gCO₂/km to 192.2 gCO₂/km. This is an overall reduction of 23.8 per cent with an average annual reduction of 2.4 per cent.

Figure 2.2: NACE 2002-2013



¹¹ DIRD Vehicle Emission Standards, www.infrastructure.gov.au [accessed 3 October 2014]

¹² EPA Victoria, Future air quality in Victoria-Final Report, Publication 1535 July 2013

¹³ NTC Australia, Carbon Dioxide Emissions from New Australian Vehicles 2013, Information Paper, May 2014

2.1.3 Age of Fleet

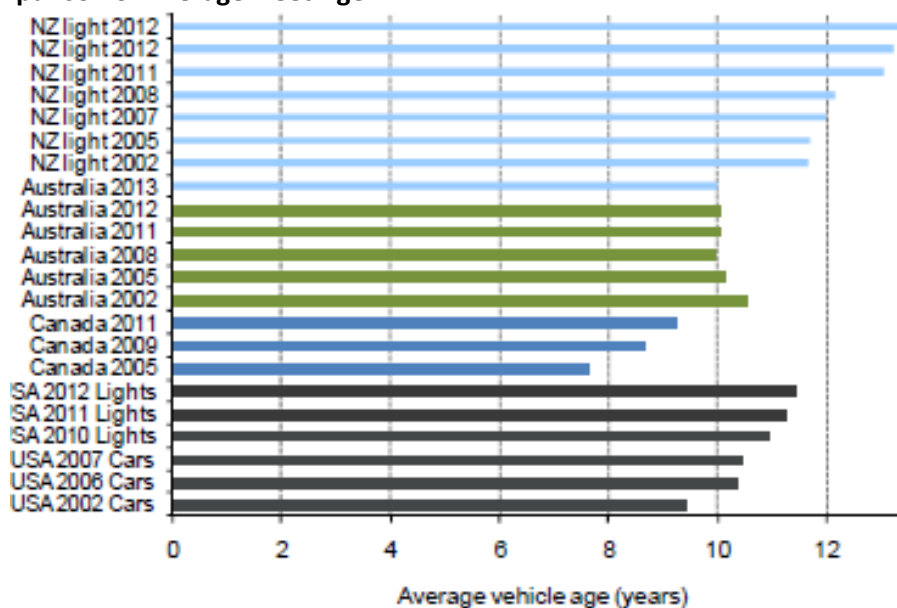
The Discussion Paper acknowledges that the Government’s community safety objective is best achieved with a fleet of lowest possible age¹⁴. Therefore consideration of the average age of the light vehicle fleet is required.

As outlined in the Discussion Paper¹⁵, according to the Australian Bureau of Statistics¹⁶ (ABS) there were 17.6 million motor vehicles registered in Australia as at 1 January 2014. The majority of registered vehicles were passenger vehicles (13.3 million) and light commercial vehicles (2.8 million). With a new vehicle market of around 1.1 million sales annually, the penetration of new safety technology will take a significant period of time.

The Discussion Paper compares the average age of the Australian registered passenger vehicles with the average of passenger vehicles in both Great Britain and Japan and concludes that “the average Australian vehicle is one model older than these other countries”.

Figure 2.3 (below) from the New Zealand Ministry of Transport¹⁷ shows that the average fleet age in New Zealand has increased from less than 12 years to almost 14 years between 2002 and 2012. In a similar time period the average fleet age in Canada, South Africa and the United States have all increased while the average fleet age in Australia has decreased from around 10.5 years to 10 years.

Figure 2.3: Comparison of Average Fleet Age¹⁸



The FCAI concludes that while the average age of the Australian passenger car fleet is higher than in Canada, Japan or Great Britain, it is lower than New Zealand, South Africa or the United States. The experience in New Zealand, where used imports contribute in excess of half of vehicles entering the market each year, shows the average age of the fleet has increased.

In addition to the delayed introduction of new safety technology due to the age of the fleet, the introduction of new safety related regulations in New Zealand significantly lag behind that of the UN Regulations and ADRs. For example, ESC was broadly available on all new passenger cars when it was

¹⁴ DIRD, op. cit., pp. 15-16

¹⁵ DIRD, op. cit., pp. 11-12

¹⁶ Australian Bureau of Statistics, 9309.1 Motor Vehicle Census, 31 January 2014

¹⁷ New Zealand Ministry of Transport (NZ MoT), The New Zealand Vehicle Fleet Annual Fleet Statistics 2013, February 2013

¹⁸ NZ MoT, op. cit., p. 10

mandated in Australia from 2011^{19,20} (for new models). In contrast, the New Zealand Government has only recently mandated ESC from 2015 for new model passenger cars. However, used passenger cars and light commercials will not require ESC until 2020²¹.

Any policy change to consider increasing numbers of used vehicles needs to carefully consider the implications of increasing the average age of the fleet and corresponding impact on community protection.

2.1.4 FCAI Conclusions/Position

The Government's community protection objectives are best delivered through a strong regulatory regime that ensures new vehicles are delivered to the market meeting the latest safety and emission standards. Any regulatory change that allows older vehicles to be introduced into the market would result in an increase in fleet age and would be detrimental to the Government's community protection (i.e. road safety and environment) objectives.

The optional method to continue to deliver improvements in both safety and environment is through harmonisation of the ADRs with the UN Regulations where the case exists for a regulation, i.e. a rigorous process is undertaken to assess the need, costs and benefits of introducing an ADR. In this case, the Australian Government should introduce the corresponding UN Regulation in a similar timeframe and with a similar scope as the introduction of the same UN Regulations in Europe. National supporting regulations also need to be harmonised to ensure vehicle categories, masses, dimensions and tolerances are compatible with UN Regulations (e.g. ADR and UN Regulations have different definitions for Passenger Mass, Tare Mass).

2.2 Consumer Protection

The Options Discussion Paper identified consumer protection as the second Government policy objective of the Motor Vehicle Standards Act. During the public consultation workshops, the Department noted that many aspects of consumer protection such as standards, recalls, warranties, parts and servicing are all part of the ownership experience that were not necessarily apparent to consumers. These all operate outside of the bounds of the Motor Vehicle Standards Act and are instead covered by the Australian Consumer Law and complementary state and territory legislation, and by the brands themselves providing a higher level of customer service and a manufacturer's warranty.

It is the FCAI's view that while the Department is reviewing only the Motor Vehicle Standards Act, this review affects consumer protection matters that predominantly fall outside of the scope and reach of that Act. Accordingly, consumer protection issues that arise from the operation of the Motor Vehicle Standards Act need to be considered in light of the existing legislation with the Australian Consumer Law and corresponding state and territory consumer laws.

Consideration of the Motor Vehicle Standards Act's interaction with consumer protection legislation is especially important in the context of the Options Discussion Paper's examination of personal new motor vehicle imports (i.e. parallel imports) and second-hand motor vehicle imports. Both options significantly alter the risk profile associated with the purchase of a motor vehicle in Australia.

¹⁹ Federal Chamber of Automotive Industries (FCAI), 2009, FCAI Response to the Regulatory Impact Statement for the Control of Vehicle Stability

²⁰ Vehicle Standard (Australian Design Rule 31/02 Brake Systems for Passenger Cars) 2009

²¹ Ministry of Transport (New Zealand), <http://www.transport.govt.nz/land/electronic-stability-control>, [accessed 1 October 2014]

2.2.1 Buyer Risk

2.2.1.1 New Motor Vehicles

Buyer risk is minimal when purchasing a new car from a franchised dealership of the manufacturer. The vehicle brand and dealer carry all of the risk due to their obligations under the Australian Consumer Law and manufacturer's warranty.

- **Warranty:** Many vehicle brands provide a manufacturer's warranty beyond the minimum statutory requirements to be able to attract and retain customers in the highly competitive Australian new car market. For example, Kia recently announced a seven-year, unlimited kilometre warranty²².
- **Service and parts:** The brand's dealer network is able to provide assurance to customers that their new cars will be able to be serviced and maintained, which contributes to sustaining the expected residual value of the car. With the widespread introduction of capped price servicing, the new car buyer is also assured of cost of servicing throughout the warranty period.
- **Recalls:** Vehicle brands are able to undertake effective recall campaigns where necessary as they have an accurate record of all vehicles they have introduced into Australia. Through their own records and with the assistance of state and territory registration authorities (via NEVDIS) vehicle brands are able to contact all registered owners to advise of any recall action on their vehicle²³.

Case study 2.1: Product recalls in Australia

In the event of a recall, the brand is only able to notify the known registered owners of cars bought through the brand and its authorised dealers in Australia. An example of this system working effectively is Mazda's 2013 product recall for its Mazda6 due to a potential fault with the DC/DC convertor located under the passenger's seat that, in a worst case scenario, could overheat and cause a fire. Using its established systems, Mazda was able to very quickly contact registered owners of the Mazda 6 and replace the DC/DC convertor in their cars and minimise any risk to safety. This recall is considered by some to be industry best-practice, with the brand quickly and efficiently resolving the problem, to the consumer's benefit. Mazda Australia was able to undertake this recall because it had exposure to all first-supplied owners of the affected model.

Case study 2.2: Product recalls with parallel imports

This situation simply isn't possible where a motor vehicle sits outside the established brand infrastructure, such as a grey or parallel import. BMW NZ is confronted with this issue over a safety recall affecting its 3 series (E46) model airbag. BMW NZ has noted that its campaign involves around 3,400 cars it has imported; however, based on the number of parallel imports, this number is expected to double.

This has a range of consumer and safety aspects, as well as logistical and communication challenges for the brand. On a logistical basis alone, the brand will struggle to identify those BMWs imported outside BMW NZ channels, and their owners. While technically the importer who brought the parallel import into New Zealand is the responsible entity for meeting these recall requirements, it is practically difficult to ensure that firstly, they are informed that they are in possession of (or have sold) a recalled vehicle; and secondly, the appropriate measures are in place to enforce the recall with appropriate compensatory measures. The result is that the necessary recall action may not be undertaken and the vehicle could continue to be used by its owner, with a safety recall open that the owner knows nothing about. This puts the driver, passengers and other road users at risk.

²² Kia Motors Australia, Australia's Best Factory Warranty, www.kia.com.au [accessed 6 October 2010]

²³ Federal Chamber of Automotive Industries, (FCAI), 2014, Code of Practice for the Conduct of Automotive Safety Recall

Case study 2.3: Kawasaki recall

Kawasaki Motors Australia has identified a similar problem in relation to an off-road vehicle. With off-road vehicles already parallel imported from other countries, motorcycle brands have for some time confronted issues of product recalls of models they do not support or for which they have no record as being in Australia.

Most recently, an off-road vehicle was listed for sale on bikesales.com.au. Kawasaki advised the model is not sold in Australia but was asked by bikesales.com.au to identify the model. The off-road vehicle was found to be under a Kawasaki United States recall for replacement of the front brake callipers. Kawasaki Australia did not have access to the parts through their spare parts system and any parts would need to be sourced from the selling Kawasaki United States dealer, causing complication and confusion for the owner.

This example also illustrates how under normal circumstances a safety recall would not be picked up in Australia for a significant safety issue. It was only when the matter was referred to Kawasaki that the issue even came to light.

By contrast, consumers purchasing a motor vehicle through other means, such as through dealers in other countries and via the internet, have no such protections. As the experience in New Zealand has shown, consumers who purchase a motor vehicle outside of the established brand and authorised dealer network often find themselves exposed if something goes wrong. Table 2.1 highlights how the consumer profile changes when motor vehicles not supported by the brand are allowed to enter the market.

This risk is heightened in the event that motor vehicles imported on an individual basis from a different market are not specified adequately to cope with Australia's climatic and environmental differences. As these motor vehicles sit outside the brand's service network, they are often regarded as "orphan" vehicles. Situations where a personal import does not meet the specification levels of those brought in and sold by the brand will lead to motor vehicles not being able to be supported, without significant additional expense.

Under the ACL, a supplier must be able to support and service those motor vehicles it sells. Some of these unique market features are outlined below.

Table 2.1 – Summary of Consumer Risk

New car sourced from an authorised Australian dealer	Parallel and personal imports (new or used)
No (or minimal) consumer risk	Consumer personally carries all risk
Risk borne by the brand to fully meet requirements of the ACL	Will the importer (or individual) be able to provide the same level of service, warranty and dealer network support as the established brands?
Statutory guarantee requirements, which brands exceed in order to maintain and grow their positioning in a competitive marketplace	Ability of Government consumer affairs agencies (at state and federal level) to effectively enforce the ACL heavily curtailed
Service and dealer network provide assurance to consumers their car is looked after properly	
Will have expected residual value based on the history of the market	Retained value in 'new' cars undermined

2.2.1.2 Used Motor Vehicles

The federal and state/territory governments have introduced a range of initiatives aimed at reducing consumer risk in the purchase of second-hand vehicles including:

- The Personal Properties Securities Register (PPSR). A national database that stores details of security interests against personal property such as cars, trailers and motorcycles.
- National Exchange of Vehicle and Driver Information Services (NEVDIS).
- Written-off Vehicle Register.

Using these government records and other recorded information, a number of web-based products are available that allow a prospective buyer of a used vehicle to reduce their risk of unknowingly purchasing a stolen, rebuilt or otherwise damaged vehicle. For example, ppsr.com.au²⁴ offers a Car History Report that provides:

- Financial Interests Check (PPSR);
- Written off check;
- Stolen vehicle check;
- Flood and storm damage check;
- Odometer roll back check;
- Vehicle Buyback Insurance; and
- Valuation.

This level of information is not available for grey and/or parallel imports (including personal imports). While the original owner might be well aware and willing to take the risk, there is an issue over the impact on the subsequent owners of the vehicle.

Case study 2.4: Vehicle Identification Number (VIN)

The provenance of a motor vehicle sourced outside of the authorised brand network for both used and new imported motor vehicles remains a real concern. Again using the New Zealand experience, FCAI member brands advise that fraudulent activity with rebirthing of motor vehicles continues to be a problem, with the result that at the very least, non-compliant vehicles are operating on New Zealand roads.

BMW NZ has provided an example where the VIN of a BMW on a vehicle allegedly imported from Singapore had been re-stamped. The car was certified, imported into New Zealand and registered as a complying Singapore-sourced motor vehicle. The vehicle was subsequently sold several times. BMW NZ were only notified there was a problem with this vehicle when NZTA contacted BMW to advise that another vehicle with the same VIN had come into the country. Investigation into the matter found that the first vehicle had entered New Zealand after being stolen in Malaysia and re-birthing, i.e. stamped with a valid VIN of an existing vehicle. It was subsequently taken off the road in New Zealand as an illegal motor vehicle. The owner had no redress on the importer who was now several times removed and had since gone out of business. The outcome was the owner of the vehicle lost approximately \$25,000 with no recourse.

Case study 2.5: Flood damaged vehicles

New Zealand allows the personal importation of new and used motor vehicles. Many FCAI members are also responsible for their brands in both Australia and New Zealand, and so see first-hand the problems consumers face with parallel and second-hand imports. Flood damaged cars are one such example. If a

²⁴ ppsr.com.au, Motor Vehicle Search, www.ppsr.com.au, [accessed 18 September 2014]

flood damaged car comes into the country they are not always identified as such, causing problems for both the consumer and the brand.

In Australia, flood damaged vehicles are reported to the relevant state government Written-off Vehicle Register²⁵ and recorded on the national Written-off Vehicle Register (WOVR)²⁶.

BMW NZ reports that they had the example of a BMW motor vehicle imported from Japan. The vehicle underwent the relevant inspections in Japan required by the New Zealand Government prior to its shipment to the South Island. The inspections failed to pick up that the vehicle had been damaged by flood waters in Japan and it was sold by a grey importer in New Zealand. The vehicle subsequently developed problems and was referred to BMW NZ for repair. The grey importer had ceased trading and the compliance certifier who inspected the vehicle would not take responsibility for the vehicle's clearance. Consequently, the owner of the vehicle had little recourse and was left with a costly repair.

A second situation arose with a potential consumer contacting BMW NZ about a current model BMW X1 for sale on TradeMe (NZ internet auction website) by a private seller. The sale price was cheaper than a dealer demonstrator model, with lower kilometres. BMW NZ contacted the local dealer, who was able to check the vehicle to find it was an Australian flood damaged vehicle, information that was not picked up by certifiers upon the vehicles entry into New Zealand. If the customer had purchased the flood damaged vehicle, they would have no real recourse with a private sale.

2.2.2 Australian Consumer Law Issues

The FCAI has serious reservations as to the possibility of implementing an adequate regulatory compliance framework that is consistent with existing Government policy objectives in the area of consumer protection. Although acknowledged by the Department as being outside the scope of the Review, such issues must be factored into any consideration of this matter.

2.2.2.1 Australian Consumer Law is inadequate: If a decision to enable individuals to personally import a motor vehicle is adopted, it must be ensured that local distributors are not the deemed manufacturers of these vehicles by the ACL (and therefore not be liable for ACL claims made by consumers of the imported vehicle). The FCAI submits that any reduction to the barriers to importing motor vehicles will result in significant brand damage, a decline in the standard of vehicle quality and safety, and widespread consumer dissatisfaction.

2.2.2.2 Identifying the 'manufacturer' is problematic: A key element in enforcing consumer rights implied by the ACL is identifying the manufacturer of the infringing good. The meaning of 'manufacturer' is relevant to three areas of the ACL, namely:

- consumer guarantees and remedies relating to consumer guarantees²⁷;
- liability of manufacturers for defective goods²⁸; and
- country of origin representations²⁹.

While the meaning of manufacturer in the ACL is rather broad³⁰, in the case of parallel or grey import vehicles, there remains some ambiguity³¹ Specifically, the FCAI notes that:

²⁵ Queensland Government Department of Transport and Main Roads (TMR), Written-off vehicle register, www.tmr.qld.gov.au, [accessed 10 October 2014]

²⁶ Austroads, NEVDIS Support, www.austroads.com.au, [accessed 10 October 2010]

²⁷ Ch 3, Pt 3-2 and Ch 5, 5-4, ACL

²⁸ Ch 3, Pt 3-5, ACL

²⁹ Ch 5, Pt 5-3, ACL

³⁰ "The meaning of manufacturer encompasses a wide range of activities that that represent the first point in the chain of distribution of a product into an Australian market, whether directly by a person or in that person's name or brand." See Explanatory Memorandum to the Trade Practices Amendment (Australian Consumer Law) Bill (No 2) at 2.36.

- It will be practically difficult for individual consumers to make an ACL claim against a foreign entity with no direct Australian presence (other factors such as financial standing, any differences in vehicle safety standards, resources to provide remedies will also contribute to such difficulties).
- Consumers may be misguided to believe that independent authorised domestic distributors of vehicles of the same brand as their grey or parallel import are the deemed manufacturer of the imported vehicle. Certainly, in practice, it is foreseeable that the average consumer would believe that by purchasing a specific car from an overseas supplier, that they can return the vehicle to their local dealer of the same brand to address a manufacturing fault claim.

Additionally, the FCAI notes the problematic scenario where a consumer purchases a parallel or grey import from a supplier who does not have a place of business in Australia, meaning the individual consumer would be deemed to be the manufacturer for the purposes of the ACL. This outcome does not afford an adequate level of consumer protection to such individuals, especially given the significant financial outlay and safety considerations involved with the purchase of vehicles.

2.2.2.3 Not all imports are 'fit for purpose': Under the ACL, consumers may rely on an implied guarantee that motor vehicles that they purchase will be reasonably fit for any purpose the consumer or supplier has specified. As discussed above, not all parallel or grey imports will be fit for use on Australian roads as they have been tested and built for use in foreign jurisdictions with different terrain and climate to that of Australia.

Further, even if a parallel or grey import meets relevant Australian standards, it would be very difficult for a consumer who has purchased the vehicle for a specified purpose, to return it to the overseas supplier if the vehicle turns out to be unsuitable. For example, a consumer may wish to purchase a four wheel drive to tow a caravan. If the four wheel drive which is imported does not have the required suspension to tow the caravan, a dispute is likely to arise as to who bears the cost of returning the vehicle to the overseas supplier (the consumer or the supplier) given that returning a vehicle overseas will be significantly more costly than returning a vehicle to a domestic supplier.

2.2.2.4 Service and repairs: As noted above, the FCAI submits that the cost of servicing and obtaining parts for motor vehicles that are not supported by established brands, and the limited availability of trained technicians to service offshore models that are not currently imported into Australia by the authorised distributor of the brand in this market, must be carefully considered.

Consumers may mistakenly believe that local distributors of vehicles of the same brand as their parallel or grey import are required to comply with the consumer guarantee that manufacturers must take reasonable action to ensure that facilities for the repair of goods, and parts for the goods, are reasonably available for a period after the goods are supplied. For this reason it is important to ensure that appropriate safeguards and compliance measures are introduced and enforced to ensure that all suppliers of parallel or grey imported vehicles are able to meet this consumer guarantee.

In any event, as noted above, if the parallel or grey import is of a brand that is not present in the Australian market, consumer who import directly from an overseas supplier may face difficulty in obtaining appropriate spare parts and specialised servicing.

2.2.2.5 Allocating risk to consumers: The FCAI believes that allowing personally imported vehicles will only disadvantage end-consumers who rely heavily on protection from current regulatory compliance frameworks and consumer rights. There is an increased risk that is borne totally by the consumer who would, in nearly all instances, not be in a position to determine that degree of risk with any real certainty. Subsequent purchasers of personally imported vehicles will not even know that they are taking on the risk.

³¹ See section 7 of the ACL

The Productivity Commission's position that:

"Consumers have to weigh up the risk that the lower priced product purchased online from an offshore supplier may not be subject to the same warranties and rights to refunds or service as the higher priced domestic product. In effect, by purchasing the lower priced product online from an offshore supplier, consumers have opted to 'self insure' against the potential risk of product failure or defects."³²

simply does not afford the protection that should be provided to consumers of these vehicles, and indeed, other affected individuals such as subsequent purchasers of those vehicles and other road users.

The purchase of a motor vehicle is not comparable to other commonly purchased overseas products such as clothing and DVDs. The significant costs involved with returning such vehicles, practical difficulty in enforcing claims against foreign entities, increased consumer dissatisfaction with consumer protection agencies' inability to facilitate resolutions of such disputes are all factors which ought to be weighed against any benefits which would result from easing the restrictions on parallel or grey imported vehicles.

2.2.2.6 Aligning legislation between State and Federal jurisdictions: While considering the issue of unwarranted regulatory impediments it is essential to note that any changes to competition and consumer policy ought to be undertaken in coordination with state and territory governments. A nationally consistent framework is essential to ensure that duplication of effort and inconsistency in approach does not become an impediment to business efficiency.

A recent example of an approach that does not achieve these outcomes can be seen through moves to introduce laws aimed at motor vehicle dealer and distributor relationships in New South Wales. These moves have led to an inconsistency in approach and confusion for both dealers and distributors who operate both in NSW and nationally in many instances. The national Franchising Code, together with the Competition and Consumer Act, already provide the national framework for dealing with commercial disputes involving motor vehicle dealers and distributors.

2.2.2.7 Enforcing a claim: In addition to the obvious impediments to enforcing consumer rights implied by the ACL, the ability of a consumer to assert common law rights (for example, breach of contract) against an offshore entity is severely hindered and often impractical.

Further, the financial standing of overseas manufacturers and smaller importers to be able to meet claims by consumers in relation to defective vehicles is a cause of serious concern for the FCAI.

2.2.2.8 Vehicle recalls: As noted above, it is unclear how any vehicle recalls from overseas manufacturers would be implemented in Australia. Any regulatory framework underpinning the easing of restrictions on parallel or grey imported vehicles ought to consider appropriate compensation measures required to protect consumers who can no longer safely use their imported vehicle.

Further, it is difficult to envisage how exactly the announcement of a recall by a foreign entity would be communicated to the consumer in Australia. Any lack of communication in this instance will result in the use of unsafe cars on Australian roads, severely jeopardising the health and safety of the driver as well as other road users and pedestrians.

If the barriers to entry for the importation of parallel or grey vehicles were to be lowered, the Department must ensure that it also implements a clear and enforceable recall process for parallel and grey imports in order to maintain safe roads for both drivers of the vehicle, other roads users and pedestrians. The FCAI

³² Productivity Commission 2011, Economic Structure and Performance of the Australian Retail Industry, page 130

queries whether this is indeed possible, in light of the experience in other jurisdictions (see case studies 2.1 – 2.3 above).

2.2.3 Specified for Australian Operating Conditions

Automotive brands engineer their motor vehicles for each market they are sold in. Accordingly, motor vehicles supplied to the Australian market by brands are engineered for our local conditions. These conditions vary considerably when compared to other geographic regions around the world. Importantly, in the context of the Government's consideration of providing additional concessional arrangements for personally imported motor vehicles, Australia's climatic and environmental conditions are significantly different to other substantial right-hand drive markets, such as the United Kingdom and Japan, which are generally cooler and less prone to extreme temperatures. These differences necessitate substantial engineering changes to motor vehicles imported into Australia to enable those motor vehicles to perform as intended. This includes differences such as:

- Radiators;
- Alternators;
- Suspension;
- Engines and ECUs;
- Safety systems;
- On-board electrics;
- Dust protection;
- EMC compliance;
- Heating/cooling systems;
- Infotainment systems;
- Speedometers calibrated in km/hr and odometers in km;
- Owner's manuals in English with Australian specific content; and
- Towing systems.

FCAI member brands advise that the range of specification differences mean that a motor vehicle sourced from another market may not be 'fit for purpose' in Australia. A number of brands will provide examples in their individual submissions. These include:

- Radio and remote control frequencies being different in other markets compared to Australia. This means that a customer choosing to import a vehicle from Japan might be faced with the potentially expensive outlay of replacing the audio unit. In the event that the customer was to lose a key, brands would be unable to supply a replacement key operating on the same frequency as the car.
- Satellite navigation units and systems will often differ from one market to another. In many cases, this would render the satellite navigation system unusable in another country. A replacement, in-built satellite navigation system could be in excess of \$1,000.
- Child restraint mounting points—motor vehicles from overseas markets may not have top tether points meaning that a child restraint would be unable to be fitted correctly.
- Parts fitment differs from region to region and the parts used in an Australian-specified motor vehicle aren't necessarily the same as those used in a United Kingdom or Japanese market motor vehicles. Consequently, Australian OEMs (original equipment manufacturers) and dealers would not be able to guarantee parts supply.
- Brake components and engine gaskets free of asbestos.

One area that is of particular concern relates to engine choice and engine technology arising from the quality of fuel available in Australia compared to other markets in the world. Given that fuel quality differs from country to country, engines and the ECUs that control them are required to be calibrated differently. Using the incorrect fuel in an engine not calibrated for that fuel increases the likelihood that the engine will suffer from degraded performance and increased emissions. It also increases the likelihood that the engine will not meet the expectations of the consumer, and may need replacing sooner than would ordinarily be the case for an equivalent Australian specified model. Audi recently announced changes to its 'Hot Climate' tune for its S3 Sportback, Sedan and Cabriolet range. Engines had been limited to 206kW for Australia, which, like the Emirates and South Africa, is deemed to be a 'Hot Climate' market. The revised output has been increased to 210kW, still below the European tuning, where engines are rated at 226kW³³.

Case-study 2.6: electrical and cooling equipment

There are also differences in the electrical systems fitted to Australian-market motor vehicles to compensate for additional equipment associated with a hot climate. Mercedes-Benz, for example, fits additional cooling capacity to Australian-market motor vehicles. The M-Class is fitted with larger fans as standard to avoid overheating when towing. To ensure these additional features operate as required, Mercedes-Benz also fits larger alternators to their Australian-market motor vehicles. A comparable Mercedes-Benz M-Class imported from another market will not have these features, potentially leaving the consumer vulnerable and with a motor vehicle not performing as intended and incapable of towing safely.

Case-study 2.7: Safety equipment on comparable motor vehicles

Mercedes-Benz positions itself in the Australian new-car market as a premium brand with high levels of safety and other equipment. Accordingly, there is a range of equipment that comes standard on the Australian-specified vehicle that is not equipped to apparently comparable vehicles in other markets. Each of these functions delivers additional safety enhancements to motor vehicle occupants and other road users.

The new Mercedes-Benz C-Class is equipped with nine airbags in Australia, while the comparable model in the United Kingdom is equipped with seven.

More significantly, the Australian-specified Mercedes-Benz E200 comes equipped with a rear camera, Blind Spot Assist as well as a range of airbags for front and rear occupants, including full-length window bags and side bags. None of these features are equipped as standard on the UK-specified Mercedes-Benz E200.

The Australian-specified E250 comes equipped with the Driver Assistance Package as standard, which includes proximity control, lane-change control and blind spot warning functions, together with autonomous braking in the event of an emergency. These functions do not come as standard equipment on UK-specified E250 models, and have to be optioned by the purchaser, at significant additional cost. Similarly, the UK-market specified Mercedes-Benz ML250BT does not have as standard rear airbags or a rear camera. The UK-market specified ML350BT does not have the Driver Assistance Package as standard, which is again specified as standard on the Australian-market model.

There are some safety differences in overseas-market motor vehicles that do not feature in Australian-specified motor vehicles. For example, cars for European markets (including the UK) are able to switch off passenger airbags to cater for rearward facing child restraints that are fitted into the front passenger seat. This is not the practice in Australia as the Government's interpretation of ADR 69/00³⁴ and

³³ <http://www.goauto.com.au/mellor/mellor.nsf/story2/CE8C39D6C0E77441CA257D74001D6901>

³⁴ Vehicle Standard (Australian Design Rule 69/00 – full Frontal Impact Occupant Protection) 2006 Compilation 2

ADR 73/00³⁵ require all airbags to be active on Australian-specified motor vehicles, unless it can be demonstrated that the vehicle meets both ADR 69/00 and ADR 73/00 with the passenger airbag disabled.

Similarly, some motor vehicles sold in other markets do not contain the same number of airbags that an otherwise comparable Australian specified model. Subaru, for example, has identified that the base-level Subaru 2.0i Forester in Japan does not include the side, curtain or knee airbags that are equipped as standard on the Australian specified model.

Case study 2.8: Fit for purpose; Fiat Ducato motorhome

Whether a motor vehicle is fit-for-purpose is a crucial element in considering the purchase of a vehicle. Vehicles sold by brands in Australia are engineered to certain design parameters. This situation cannot be guaranteed when a motor vehicle is imported into Australia from outside the established brand.

Fiat Chrysler Group Australia recently had a matter where earlier in 2014 an individual purchased a Swift motorhome, built overseas on a Fiat Ducato cab/chassis. The customer bought the motor vehicle through an intermediary who had imported the vehicle from overseas, which meant that Fiat Chrysler Group Australia had no knowledge of the vehicle or that the vehicle had been brought into Australia and it was not listed on any of Fiat Chrysler Group Australia systems. Consequently, they had no start date for the international warranty cover for the vehicle, which is two years.

With just over 3,700 kilometres on the odometer, the vehicle failed as it climbed through the Toowoomba range, with the cabin filling with smoke. Investigation by an authorised Fiat dealer identified that the vehicle's clutch had failed, but the cause of its failure was unable to be identified. Because the vehicle was not listed on the Fiat Chrysler Group Australia systems and because there was no identified defect in either factory cab/chassis construction or workmanship, the customer was advised that Fiat would not be responsible for covering its repair.

While the customer paid for the repair, the dealer took it upon itself to weigh the vehicle. The approved GVM (gross vehicle mass) for the Fiat Ducato cab/chassis is 4.5 tons. The weigh test revealed a motor vehicle weight of 4.84 tons, without fuel, occupants and luggage and confirming that the GVM was exceeded. This has now resulted in this vehicle having warranty restrictions applied to it; and the vehicle cannot be legally driven on Australian roads or driven by someone who has a car license.

2.2.4 Theft Reduction

Motor vehicle theft rates have been decreasing year-on-year and are at the lowest recorded levels since the 1970s³⁶. This is the result of a number of Australia-wide initiatives promoted and implemented by various organisations including Federal and state governments. Important initiatives include:

- Linking all state and territory registration authorities through NEVDIS.
- State and territory registration authorities implementing written off vehicle registers (i.e. Wrecks Registers) along with consistent criteria for assessing and reporting of written-off and repaired vehicles.
- Implementation of the Personal Properties Security Register (PPRS).

In addition to reducing risk to purchasers of second-hand vehicles (as noted above), these systems have reduced the ability for stolen cars to be 're-birthed' i.e. the identification of a damaged vehicle being used to re-register a stolen vehicle in another state/territory. This situation cannot be guaranteed where parallel new and used motor vehicle imports are concerned.

³⁵ Vehicle Standard (Australian Design Rule 73/00 – Offset Frontal Impact Occupant Protection) 2005

³⁶ National Motor Vehicle Theft Reduction Council (NMVTRC), Annual Report 2013, Adapting to New Challenges

The experience from New Zealand highlights the depth of the problem. In 2008, New Zealand Senior Constable Mark Gibson of the New Zealand Police commented:

We know of a number of stolen vehicles being driven legally in New Zealand.

We don't know the full extent of it here in New Zealand – the exact number of stolen cars that come here we have no idea about. New Zealand is seen as a dumping ground. Organised crime was at the root of the problem ...

The source of the cars was the Japanese equivalent of the American mafia, the Yakuza – one of the largest crime organisations in the world.

They distribute these stolen vehicles right throughout the world – New Zealand is one of the recipients.³⁷

In 2011, Yutaka Shiota, the executive director at the Japan Used Motor Vehicle Exporters Association (JUMVEA) commented there had been a sharp increase in illicit activities including the export of stolen cars and illegally rebuilt or remodeled vehicles and that this could hurt Japanese cars' image and reputation.³⁸

Case-study 2.9: Auto Theft Overseas

In the aftermath of an earthquake and tsunami in Japan in 2011, media reports noted the increase in flood-affected, stolen and re-birthed cars being exported from Japan. In particular, it was noted that many vehicles affected by flood were exported to other countries. An extract of one such article from the Asahi Shimbun is below³⁹:

In the days following the March 11 Great East Japan Earthquake, the absence of looters in the disaster-ravaged areas was viewed with amazement by the rest of the world.

However, more than four months after the quake and tsunami ravaged northeast Japan, investigations have begun into allegations that unscrupulous individuals have been exporting affected vehicles—some stolen even from the municipal parking lots where they were temporarily stored.

In quake-hit Higashi-Matsushima, Miyagi Prefecture, where most houses were wiped out by huge waves, three men, including two Afghanis, were seen loading a large truck with small cars at the end of June.

...

According to the Miyagi prefectural police, about 100 stolen vehicles have been reported stolen since January, double the number of previous years. However, the owners are dealing with many other quake-related problems and have less inclination to insist the thieves be found, police said...

According to a Japanese used-car dealer, a typical method of transporting stolen cars overseas involves replacing the vehicle identification numbers with those of vehicles that were legitimately purchased. Smugglers also break down the cars into major parts, such as engines, and ship those overseas, sources said. To export used cars, owners are required to submit export-related documents to customs, which are not needed to export parts. When the parts reach their destination countries, the cars will be reassembled using the parts, sources said.

The National Police Agency has identified about 1,400 known chop shops, where cars are dismantled, in Japan. Police began searching for them last June after suspicions arose that they had become a relay point for smuggling stolen goods.

³⁷ Morgan, J. (10 May 2008). Yakuza Linked to New Zealand Car Imports. The Southland Times, p. 1.

³⁸ Kambayaski, T. (11 January 2011). Japan's booming used car exports tackle Moscow recession, Business Recorder.

³⁹ http://ajw.asahi.com/article/0311disaster/quake_tsunami/AJ201107264950

In the meantime, larger numbers of cars affected by the quake have been traded in Japan's used car market. Many were sold to foreign companies.

In disaster-hit areas, survivors have been startled to find notes attached to their cars saying, "We will help you with the car removal process free of charge" and "We buy average size cars for 2,000 yen (about \$26)." A 40-year-old car dealer in Ishinomaki, who has provided free parking space for about 200 affected vehicles, said that with the owners' consent he sold about 20 vehicles to foreign car traders for between 100,000 yen to 500,000 yen per vehicle. Companies from Russia, Pakistan and Bangladesh visited his office, he said. A trading company in the same city run by a Pakistani man has exported about 20 affected cars to Dubai, Africa and Russia, according to the president. The man said that since the cars had been flooded with seawater, he had to wash them. But otherwise, the cars should still sell well after being repaired in the destination countries, where labor costs are much lower, he said.

Toyota vehicles are especially popular, as the automaker has dealerships worldwide, allowing for easier access to replacement parts.

Tsunami-affected cars that cost 3 million yen new can be had for 50,000 yen to 100,000 yen. Although transportation and repairs add about 500,000 yen, the cars can be sold for more than 1 million yen, creating profit margins of 200,000 yen to 300,000 yen. It's a great business, a trader said.

Case-study 3.0: Auto Theft Overseas—United Kingdom

Large-scale theft operations of high-end motor vehicles in the United Kingdom for export by organised crime continue to be a significant problem.

The United Kingdom's National Crime Agency, together with several other law enforcement agencies, recently undertook 'Operation Toyer' to target container ports for stolen motor vehicles. That Operation uncovered a cache of stolen prestige current model vehicles in containers at eight British ports. The cars were ready to be smuggled around the world. Current model Range Rovers, BMWs, Audis and a Porsche Cayenne were amongst the vehicles seized. Eighteen motor vehicles had been stolen from owners' driveways, while the remaining vehicles had been bought on finance and had outstanding payments on them. One container was full of parts from 29 BMWs.

According to media reports, the cars were destined for a range of right-hand drive markets including Kenya, Myanmar and Malaysia.

In 2013, 90,000 vehicles were stolen in the United Kingdom and a significant number of these were exported by crime groups. The United Kingdom National Crime Agency has advised that four wheel drives are popular with thieves and that they are commonly "...stolen to order in countries where their prestige makes them valuable."⁴⁰

The National Crime Agency posted a video of the cache on 20 October 2014. It can be accessed at: <https://www.youtube.com/watch?v=I8fe3nNUmBg>

In the event that the Australian Government eased concessions on the personal import of motor vehicles, there would be no way to guarantee that such motor vehicles would be prevented from entering Australia, with profound implications for the Australian purchaser and authorities to deal with.

2.2.5 FCAI Conclusions/Position

The highest possible level of consumer protection is available under the current regime where the vast majority of new passenger cars and light commercial vehicles entering the market are introduced by the vehicle brand and sold via authorised dealerships. Consumer risk is increased with the importation of grey

⁴⁰ <http://www.autoexpress.co.uk/car-news/consumer-news/89114/12m-of-stolen-luxury-cars-seized-at-uk-ports>

vehicles (either used or parallel imports) as has been demonstrated with parallel imports of new motorcycles.

FCAI member brands specify their vehicles to operate to buyer’s expectations within Australia’s operating environment.

The Motor Vehicle Standards Act can be improved and strengthened with better linkages to other legislation (especially Australian Consumer Law) and/or improved enforcement activities to address the types of consumer risks that have been identified via the FCAI case studies.

2.3 Competition

2.3.1 Vehicle Availability and Ownership

In Section 5, the Options Discussion Paper recognises that another objective of the Act is the facilitation/existence of market competition and competitive pressure on vehicle price.⁴¹

The FCAI considers that the Australian car market is one of the most competitive in the world. For a relatively small market that comprises only 1.5 per cent of global production Australia has around 67 brands and 350 models competing for around 1.1 million sales. This has come about for a number of reasons. Principally, as the tariff barriers on automotive products have reduced from 57.5 per cent in the 1980s to between 3 and 4 per cent and the number of vehicle brands and models in the Australian market has increased.

Table 2.1 Competitiveness of Global Markets⁴²

	Australia	Canada	UK	USA
No. brands in market	67	49	53	51
Sales	1,112,032	1,620,221	2,249,483	13,040,632
Market size per brand	16,597	33,066	42,443	255,699

Table 2.1 demonstrates the competitiveness of the Australian market through a comparison with Canada, the United Kingdom and the United States. Australia has more brands offered for sale than these other three markets. There are double the number of vehicles sold per brand in Canada, almost three times as many in the United Kingdom and more than 15 times the number of vehicles sold per brand in the United States than in Australia.

⁴¹ DIRD, op. cit., p.21

⁴² Australian Government, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, March 2013 Automotive Update.

Figure 2.4: Vehicle Ownership per 1000 inhabitants⁴³

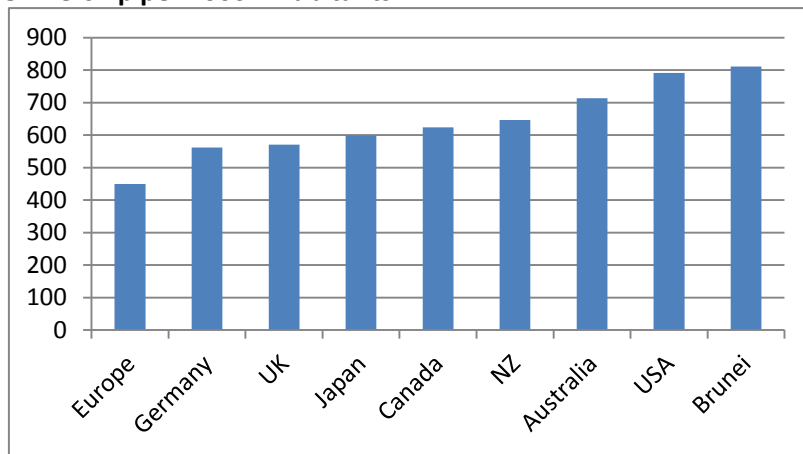
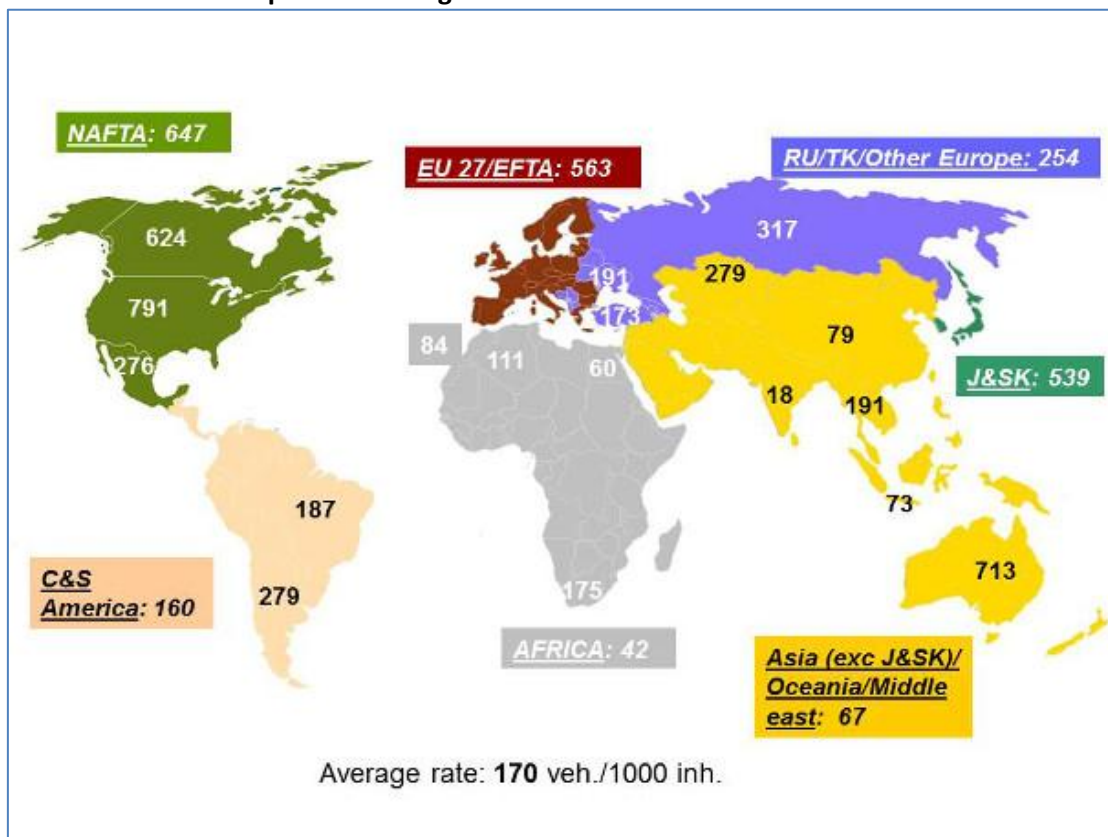


Figure 2.5: Vehicle Ownership Rates for Regions⁴⁴



Figures 2.4 and 2.5 show vehicle ownership among a selection of countries demonstrates that Australia has among the highest ownership levels of vehicles with an ownership concentration of 713 vehicles per 1000 inhabitants. In comparison, the United States has ownership levels of 791 vehicles per 1000 head of population, NZ is at 646, Canada is 624, and Japan, the United Kingdom and Germany are all below 600 vehicles per 1000 head of population.

Therefore, it would appear that the market is effective in Australia through providing a wide range of consumer choice and providing access to vehicles that have resulted in some of the highest vehicle ownership levels in the world.

⁴³ Organisation Internationale des Constructeurs automobiles (OICA), Total World Vehicles In Use, www.oica.net, [accessed 26 September 2014]

⁴⁴ Organisation Internationale des Constructeurs automobiles (OICA), www.oica.net, [accessed 26 September 2014]

2.3.2 Vehicle Price

The Options Discussion Paper discussed the price of cars sold in Australia and refers to submissions to the Department's 2013 public consultation process and the Productivity Commission inquiry where it was asserted that some classes of cars, typically premium classes, are being sold at considerably higher prices in Australia⁴⁵.

One of the submissions referred to by the Options Discussion Paper purported to compare the price of a number of vehicle models in Australia with various overseas markets⁴⁶. The submission claimed that prices were adjusted to account for differences in taxes and charges and, after searching for the cheapest variant in any of the selected markets, concluded that only four models were sold more cheaply in Australia than overseas.

The FCAI considers this analysis is not accurate as it does not reflect the substantial differences in specifications of various models that are provided in each market, subject to the brand positioning in that market. For example, in Australia many European brands are positioned in the premium part of the market and only import cars that have a high specification level. While in the European markets, these same brands compete in the mainstream parts of the market (e.g. fleet cars and taxis) and as such offer a variant of that model with a much lower specifications. The FCAI does not agree that the methodology of this analysis was rigorous or thorough enough to establish an accurate price comparison.

The Options Discussion Paper also cites a report by the Centre for Independent Studies (CIS) that concludes that motor vehicles provided to the Australian market are more expensive than an equivalent vehicle sold in Europe⁴⁷. In coming to this conclusion, the CIS report provides a comparison of four used cars first registered in 2010, and provides a table listing three new motor vehicles which are sold in seven European nations using the same nomenclature. It is unknown if these vehicles were of the same specification level in each market.

First, an analysis of four used cars with 2010 registration dates in a market of 1.1 million new car sales and substantially more second-hand car sales each year is of questionable statistical significance.

Second, the Options Discussion Paper does not acknowledge that the table in the CIS report listing the three new vehicles sold across Europe shows that each vehicle is sold at a different price in each market. Had it done so it would have noted that it shows a difference of more than €11,000 (approx. \$16,000) for supposedly the same car in two markets (i.e. Austria and the UK)⁴⁸. The FCAI suggests that these models would be specified substantially different in each of these markets relevant to that part of the car market being targeted by the brand.

To provide independent and rigorous data on comparison of price and specification levels the FCAI undertook a benchmarking project to compare the price and specification levels of various new motor vehicles available in the Australian market with equivalent models in the UK, and subsequently, Japan. These markets chosen are right-hand drive markets, like Australia. The vehicles chosen for the project represent a cross section of mainstream and premium brands, and are available in each market. The benchmarking was initially undertaken by IHS Automotive, the leading source of information, insight and analytics to the global automotive industry, and verified with FCAI members. For conversion purposes the FCAI used the average daily exchange rate during the 1st half of 2014 from the Reserve Bank of Australia⁴⁹.

⁴⁵ DIRD op. cit., p.42

⁴⁶ Submission 174 to the 2013 MVSA Review

⁴⁷ DIRD op. cit., p.42

⁴⁸ Hartwich O. M. and Gill R., Price Drivers: Five Case Studies in How Government is Making Australia Unaffordable, CIS policy monographs, <http://cis.org.au/images/stories/policy-monographs/pm-125.pdf>, p.8 [accessed 8 October 2014]

⁴⁹ Reserve Bank of Australia, Exchange Rate Data, www.rba.gov.au. [accessed 2 September 2014]

The benchmarking data shows specification levels for each model vary between countries. As such, the pricing provided reflects specification levels. This data is publically available on the FCAI website and a summary is included in Appendix B.

Taking into account the different specifications, the benchmarking demonstrates that Australian-market vehicles are price competitive, against comparable motor vehicles sold in the United Kingdom, Japan or New Zealand. New motor vehicles in New Zealand were consistently more expensive than the same model/variant available in Australia.

To produce a like for like comparison, the FCAI and member brands reviewed the data provided by HIS Automotive and provided an estimate of the cost in the United Kingdom of the model variant with specifications equal to that available in Australia. Further comparison research was also undertaken for other models, independent of the IHS analysis.

This vehicle price and specification comparison research shows that when comparing 'like-for-like' (the same model with comparable specification and sold into a similar market segment) vehicles, in four representative markets (Australia, the UK, Japan and NZ) the vast majority of new cars are cheaper in Australia than in these markets.

The research also highlighted that in considering new car costs across countries, buyers need to consider each car's specification levels, as this can vary substantially for each country.

It is not feasible to check the price and specification of all 350 models available in Australia, but from the research conducted, the FCAI estimates that the overwhelming majority of the new cars available for sale are less expensive in Australia than overseas. To date, the FCAI has provided benchmarking against 38 individual models available on the Australian market. This represents approximately 10 per cent of the models and variants available in the Australian new car market today.

However, a comparison of the Australian and United Kingdom markets show that premium and luxury sales contributed a similar proportion of both markets, i.e. 5 per cent. In 2013, luxury cars comprised 0.5 per cent, and executive cars comprised 4.5 per cent of new light vehicle sales in the UK⁵⁰. While, direct comparison is not possible, due to assigning different market segmentation in reporting data, 2013 Australian new light vehicle sales are similar. Sales of cars and SUVs worth over \$100,000 was less than 1 per cent of the market, and sales of new cars and SUVs over \$60,000 and up to \$100,000 made up approximately 4 per cent of the market⁵¹.

Complimenting this position is the independent CommSec Car Affordability Index,⁵² which has found that cars in Australia are at their most affordable levels since records began in 1976. Specifically, it has noted that over the last 10 years average weekly wages have increased by 55 per cent while car prices have fallen. In contrast, the affordability of both petrol and housing has decreased over this same period.

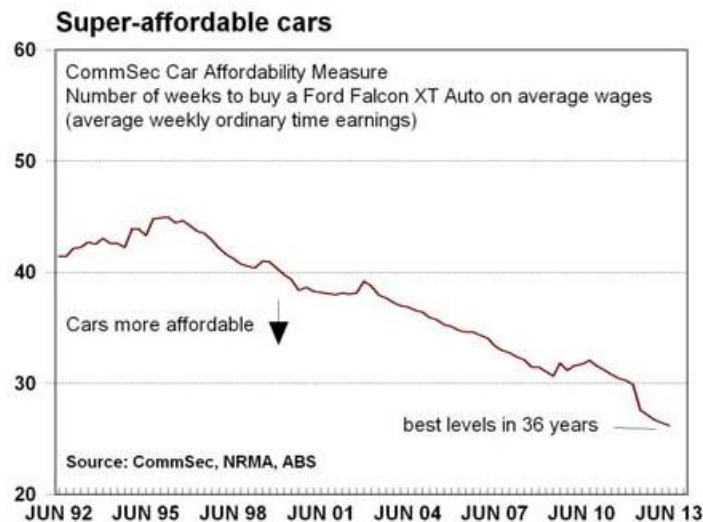
It currently takes around 26 weeks on an average weekly wage to purchase a mainstream model like the Ford Falcon XT, down from around 30 weeks in 2011 (see Figure 2.6).

⁵⁰ The Society of Motor Manufacturers and Traders (SMMT), Industry Facts 2014

⁵¹ Federal Chamber of Automotive Industries (FCAI), 2013, Vfacts National Report, New Vehicle Sales December 2013

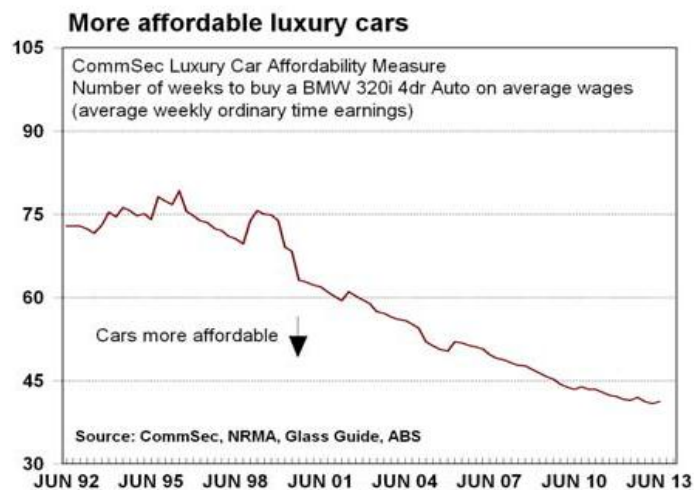
⁵² CommSec Economic Insights, Car affordability at best levels in 37 years, 16 October 2013

Figure 2.6 – Weeks to buy Ford Falcon⁵³



The CommSec report has also found that premium brands are also more affordable in Australia. For example, it has fallen from 57.5 weeks (of the average weekly wage) in 2003 to 41.2 weeks in 2013 to purchase a BMW 320i sedan in 2003 (Figure 2.7).

Figure 2.7: Weeks to buy BMW 320i⁵⁴



The fact that cars are more affordable is supported by data presented by Australian Automotive Intelligence (AAI). In their 2014 Yearbook⁵⁵, AAI outlines three key periods when comparing the CPI motor vehicle indexes and average weekly wage earnings:

- Up to 1988 when car price increases markedly exceeded increases in earnings.
- Then to the mid-1990s when movements in car prices and earnings were roughly equal.
- From the mid-1990s when earnings moved well ahead of falling or stable car prices.

The three phases detailed above are shown clearly in the affordability indexes (see Chart 2.8), and are broadly the same for the three measures—the major differences are the degrees of recovery in affordability since the mid-1990s:

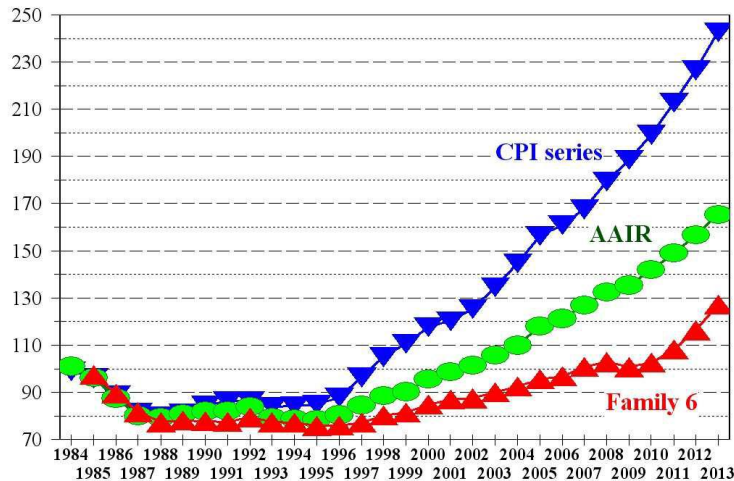
⁵³ *ibid*, p.2

⁵⁴ *ibid*, p.2

⁵⁵ Australian Automotive Intelligence, Yearbook 2014

- The CPI motor vehicle index shows the most improvement in affordability, but this is mainly because it discounts prices for specification improvements and therefore does not simply reflect the changes in actual car prices.
- The Family 6 series shows the least improvement because the prices of these cars have risen more rapidly than for cars generally, although better specifications offset some of the rise.

Figure 2.6: Car Affordability Indexes



2.3.3 Market Competition

In considering the issue of the competitiveness of the Australian new car market, the Government has specifically tasked the Department with exploring whether or not parallel imports of new and ‘quality’ second-hand motor vehicles should be considered as part of the Motor Vehicle Standards Act Review.

As has already been canvassed, Australia has one of the most competitive new car markets in the world, delivering a wide range of consumer choice both within brands, and between brands. Competition between brands is delivering more affordable motor vehicles, with higher levels of specification and features. This has been to the benefit of both consumers and the broader community.

The main argument in support of permitting parallel imports is to arbitrage away international price discrimination. As has been demonstrated in our price and specification analysis (Section 2.3.2 and Appendix B), there is little evidence to suggest that Australian consumers are at risk of any widespread international price discrimination in relation to passenger vehicles. This has also been supported by the Productivity Commission, which concluded in relation to the global automotive industry that:

Competition within the global automotive industry is intense...

As a result of this competition, especially amongst the lower-priced, high-volume vehicle models, there is limited ability for producers to raise their prices ...

The limited scope for producers to raise their selling prices within particular vehicle market segments has resulted in cost pressures throughout the automotive supply chain.⁵⁶

Specifically in relation to Australia, the Productivity Commission has concluded:

The Australian market for new motor vehicles is small in global terms. At the same time, due to a high level of import penetration (with few barriers to those imports), the Australian automotive market is highly fragmented, and appears to have become more so over the past decade...⁵⁷

⁵⁶ http://www.pc.gov.au/data/assets/pdf_file/0020/135218/automotive.pdf, p48-49

⁵⁷ http://www.pc.gov.au/data/assets/pdf_file/0020/135218/automotive.pdf, p63-64

Australian consumers benefit from this highly competitive new vehicle market. They have greater choice, and competition encourages lower prices, improved vehicle quality and more extras for a new vehicle in a particular market segment.

According to the Productivity Commission:

*The highly competitive Australian automotive market limits the scope for all sellers of cars in Australia to increase the selling price of their vehicles.*⁵⁸

Given that the Australian market is already experiencing a very high level of inter-brand competition, to adequately consider this issue the FCAI commissioned economic analysis by Pegasus Economics to look at the complications and some of the unintended consequences that can arise in a situation where parallel imports are allowed. The full report is attached at Appendix C.

Central to any consideration of this matter must be the investment made by an established brand in the product development, intellectual capital, its dealer network and associated supply infrastructure in the product it has developed for a specific market. This includes servicing, supply of parts and training. Parallel imports undermine this investment by encouraging a 'free rider' to import a good without the authorisation or consent of the trade mark owner (in this case, the automotive brands in question).

A free rider is someone who enjoys the benefits of someone else's investment without having to pay compensation for that benefit. As the Pegasus report finds, free-riding on someone else's trade mark will, at little cost, capture some of the profits associated with a strong trade mark because some consumers will assume (at least in the short run) that the free rider's and the original trade mark holder's brands are identical. Free riding occurs in the context of parallel imports because unauthorised distributors obtain goods at prices that do not properly reflect the legitimate costs imposed on authorised distributors at various points in the distribution chain, such as pre-sale marketing and post-sale services costs that are paid in full by authorised dealers.

Unfortunately, most consumers will be unaware of this situation. This is because most consumers will focus on the headline price. This situation occurs because many consumers who purchase grey goods mistakenly believe they are purchasing products whose reliability, integrity and service, as symbolised by the trade mark, are maintained and guaranteed by the local trade mark owner. Consumers often make the false assumption that they are receiving the same goods and services by purchasing a grey import that they would receive if they purchased from an authorised seller.

Consumer risk and brand damage caused by free-riding

One of the common assertions made by proponents of parallel new and second-hand motor vehicle imports is that motor vehicles are cheaper overseas. However, if an imported vehicle is priced lower than a domestic alternative through the authorised channels but lacks the quality, specifications, warranty and support that the authorised product does then much of the benefit of lower prices is illusory.

In the first place, the specification of motor vehicles sold in the domestic market may be entirely different to an imported grey motor vehicle originally destined for an overseas market. In this regard, a brand may position itself in different market segments across countries, and hence the same vehicle model may end with completely different specifications between countries.

Secondly, imported grey motor vehicles are not subject to the inspection, transit or quality controls of the local trade mark owner and their distributors. On the other hand, new motor vehicles imported into Australia through the local trade mark owner and their distributors undergo a rigorous pre-delivery inspection shortly after they land including fitting compliance plates, insertion of log books into the vehicle, removing protective wrapping

⁵⁸ http://www.pc.gov.au/data/assets/pdf_file/0020/135218/automotive.pdf, p67

from vehicles, surveying any vehicle damage, ensuring vehicles are built to specifications, mechanical testing, fitting accessories, cleaning and washing vehicles, and performing any rectification services to repair any damage.

This raises the distinct possibility, if not likelihood, that imported grey motor vehicles may be of lower quality than those sourced through trade mark holder authorised channels. Indeed, common deficiencies observed in relation to grey goods include foreign-language instruction manuals, ineligibility for factory-authorised warranty service, inadequate warranties and service by grey import distributors and unavailability of replacement parts and inventory.

A consumer may be motivated to purchase an imported grey vehicle import, not just because of perception it is cheaper but also because they think they are obtaining genuine goods of comparable quality and specifications to those offered by authorised distributors. A claim to 'genuineness' of the vehicle in these circumstances will be confusing, if not misleading, where it is of inferior quality and/or has different specifications, or attracts inferior warranty and support in comparison to the authorised vehicle.

This will result in consumer demand being misdirected towards the grey import. The differences between the expectation and performance of the grey import may result in a diminution in consumer welfare. When a consumer purchases an inferior-quality item, their estimate of the brand's quality declines which in turn reduces the goodwill the trade mark owner enjoys and, as a result, the premium the brand can command in the future. Thus, inferior quality goods not only redirect the premium away from the trade mark owner, but also injure the trade mark owner's goodwill, reducing the expected future stream of returns that flow from the trade mark. In turn, they will diminish the incentives to make the kinds of investment required to create goodwill in the first place.

The Pegasus Report notes that free-riding can undermine the value-added services and activities that often lie at the heart of many firms' sources of differentiation and competitive strategy in the marketplace. This is particularly the case in the automotive industry, as an individual or business involved in parallel importing motor vehicles essentially free-rides on the existing domestic reputation of the brand, and on the service offerings that the authorised importer (the trade mark holder) makes to its customers. This is ultimately to the detriment of the brand and the consumer.

This is unsustainable as the full-service retailer (the brand and its dealership network) cannot incur the extra expense of these services and still match the discounter's low price, and must cut back its marketing efforts. This reduction in retail service reduces demand for the manufacturer's product and this produces detrimental consequences for consumers as well as for the manufacturer.⁵⁹

Consequently, permitting parallel importing of motor vehicles promotes unauthorised participants to free ride on a brand's established trade mark and associated reputation, while at the same time introducing intrabrand competition.⁶⁰ Intrabrand competition is essentially a brand competing against itself for the same sale.

Intra-brand competition can have the perverse effect of diminishing competition within a market. This is because permitting the unrestricted parallel importation of second-hand motor vehicles will not only subject motor vehicle manufacturers to free riding on their trademarks, it will in turn threaten the goodwill invested in their brands, as well as pose a massive risk for consumers. Left unchecked, at its worst excess there is a risk that intra-brand competition will erode the brand's ability to service its own brand (but unsupported) motor vehicles, and impact on the ability of the brand to support its authorised dealer network. This in turn risks eroding the level of inter-brand competition in the marketplace. This will ultimately leave consumers worse off. This was summarised neatly by Professor Eleanor Fox of New York University, who states:

⁵⁹ Pegasus Economics, Implications of Parallel Imports of Passenger Motor Vehicles, p.14

⁶⁰ Pegasus Economics, Implications of Parallel Imports of Passenger Motor Vehicles, p.20

There is growing recognition in the world that rivalry between and among competing producers (“interbrand competition”) is the essence of competition. It is that interplay that tends to keep prices relatively close to costs, to provide choices for consumers, and to allocate resources to their best use in view of consumer demand. Intrabrand competition – a producer’s product competing against itself – cannot do this job.⁶¹

2.3.4 FCAI Position

There is no compelling public policy case to permit parallel imports as there is evidence of robust interbrand competition in the Australian passenger vehicle market.

The overriding problem with the parallel import of new and second-hand vehicles is the direct link between the trade mark owner’s product and the consumer has been broken because some extraneous third party has broken the nexus. As the trade mark owner can no longer guarantee the quality of a parallel imported vehicle, this leaves the consumer vulnerable to the risk of purchasing a ‘lemon’ or defective vehicle.

Strong intra-brand competition (e.g. via large scale importation of used or near-new vehicles) introduces the risk of reducing competition within the market. The flow-on effect could be an overall reduction in the number of new motor vehicle sales from the brands (used or new-new imports will be substituted for new car sales – see Case Study Scenario below) with a subsequent negative impact on the government policy objectives of community safety, consumer protection as well as competition.

Case Study Scenario: Substitution of New Vehicles with Large Scale Imports of Used Vehicles

If used vehicles or parallel imports are introduced into the market, it is unlikely that there will be an corresponding increase in demand as Australia has one of the highest levels of car ownership (refer to Section 2.3.1). Without an increase in demand, the increase in supply can be expected to lead to a decrease in price for used vehicles which will then result in an increased ‘change-over’ price for a consumer purchasing a new vehicle.

If there is a sufficient increase in the change-over price, new car consumers may change their purchasing behaviour and delay their purchase of a new car. If new car consumers delay their purchase by 1 year, a likely impact on the new car industry would be:

- Business buyers move from a 3 year to a 4 year change-over;
- Private buyers move from a 5 year to a 6 year change-over

As new light vehicle purchases were distributed between business and private buyers of 47% to 53% in 2013⁶², the impact on the overall new vehicle market can be calculated as follows:

- Reduction in new vehicle market = $0.47 \times 3/4 + 0.53 \times 5/6 = 0.79$.

That is, under this scenario, the new light vehicle market would be expected to fall to 80% of the current sales.

Obviously, this would not be an immediate outcome and would happen over a number of years. This would result in a reduced growth of sales in new vehicles (at best) or even no growth at all as has been the experience in New Zealand. Either way, the outcome is an increasing age of the in-service fleet.

⁶¹ See Fox, E. M. (2001). Parallel Imports, The Intrabrand/Interbrand Competition Paradigm, and the Hidden Gap Between Intellectual Property Law and Antitrust. *Fordham International Law Journal*, 25, 982-985.

⁶² Federal Chamber of Automotive Industries (FCAI), Vfacts National Report, New Vehicle Sales December 2013

3.0 RESPONSE TO CONSULTATION PAPER QUESTIONS

The Department of Infrastructure and Regional Development's Options Discussion Paper posed a number of questions. Following are the FCAI's responses to the questions.

3.1 Is there a problem?

The Options Discussion Paper asks:

Q 5-1 Have the problems with the current situation been reflected accurately and are there other problems that should be addressed?

The FCAI does not consider that the problems with the current situation have been accurately reflected in the Options Discussion Paper in terms of:

1. Current situation, i.e. is there a market failure?
2. Interaction with other legislation.
3. Enforcement of standards.
4. Continued compliance of the vehicle when fitted with aftermarket accessories and the subsequent responsibilities of the aftermarket industry.

The FCAI considers that the Options Discussion Paper was deficient in that it did not consider these issues, especially when the Terms of Reference⁶³ included reference to both "interaction with state and territory requirements" and also "impacts of the aftermarket" as follows:

"Specific matters to be taken into consideration include, but are not limited to:

- c. the interaction with the state and territory regulatory requirements in relation to vehicles;*
- d. the impacts of the aftermarket on the integrity of the Australian Design Rules;"*

The FCAI strongly believes that "the interaction with the state and territory regulatory requirements in relation to vehicles" and "the impacts of the aftermarket on the integrity of the ADRs" are matters that are inter-related and need to be properly addressed in the Review of the Motor Vehicle Standards Act in order to ensure that ADRs are actually applied and enforced "in service".

3.1.1 Current Situation

The Options Discussion Paper did not demonstrate that there is a market failure in relation to delivering on any of the Government's three policy objectives. Therefore, there is no evidence to demonstrate that any significant change to the current regime governing the supply of motor vehicles to the Australian consumers is needed.

This has been extensively outlined in Section 2 of this response.

3.1.2 Interaction with other legislation

The Options Discussion Paper did not address some of the significant interaction with other legislation impacting on the supply of new vehicles, in particular:

- Australian Consumer Law (ACL) and relevant state consumer and fair trading legislation. This was extensively discussed in Section 2.2.
- Radiocommunications legislation administered by the Australian Media and Communications Authority (ACMA).

⁶³ DIRD (2014) Op. Cit., p.55

- Fuel quality standards determined through the *Fuel Quality Standards Act 2000*. Fuel standards are critical in ensuring in-service compliance with emission standards (e.g. ADR 79/04⁶⁴) and fuel consumption (e.g. ADR 81/02⁶⁵).
- Australian Vehicle Standards Rules and their foundation that “a vehicle that is subject to ADRs when it is built generally remains subject to the ADRs throughout its life”⁶⁶. In-service compliance is further addressed in Sections 3.4 and 3.5.
- Ozone Protection and Synthetic Greenhouse Gas Management Act and related Regulations that require importers of vehicles with air conditioning gas to be part of a product stewardship scheme.
- Industrial Chemicals (Notification and Assessment) Act 1989.
- Taxation.
- Customs.
- Australian Quarantine and Inspection Service (AQIS).
- Workplace Health and Safety.
- Chain of responsibility in transportation of vehicles and parts.
- State/territory legislation relating to registration and in-service use of vehicles (e.g. The Australian Road Rules and Australian Vehicle Standards Rules as implemented in each state/territory).

This list is not comprehensive and is intended only to highlight the need for the Department of Infrastructure and Regional Development to consult widely with other federal and even state government departments during the Review of the Motor Vehicle Standards Act.

3.1.3 Enforcement of standards

Another significant ‘part of the problem’ that was not adequately addressed by the Options Discussion Paper is the lack of enforcement of the current legislation and standards. This was raised during the public consultation workshops by a diverse range of organisations and individuals representing a broad spectrum of the industry including:

- State government vehicle inspectors who regularly inspect low volume imported vehicles that do not comply with their certification approvals even though the vehicles that should have been certified by a RAWs workshop. (See Appendix D for examples such as Example 4; Nissan Elgrand)
- RAWs workshops and small businesses that operate under the SEVS highlighted how parts of the industry were ‘rorting’ the system through actions such as:
 - Not modifying the vehicle to meet its certification approval.
 - Importing vehicles that were not in the spirit of the SEVS (i.e. vehicles that could be described as ‘family’ or mainstream models rather than specialists or enthusiasts models) even though the vehicle was on the SEVS Register.
 - Importing and supplying to the market a vehicle that was sub-standard and would not pass many state government roadworthy or safety inspections.

In addition to compliance with ADRs, the FCAI has concerns with the level of enforcement to determine compliance with other legislation that relates to the supply of vehicles into Australia, i.e. the range of legislation outlined in Section 3.1.2 above.

⁶⁴ Vehicle Standard (Australian Design Rule 79/04 — Emission Control for Light Vehicles) 2011 requires continued compliance up to 160,000 km

⁶⁵ Vehicle Standard (Australian Design Rule 81/02 — Fuel Consumption Labelling for Light Vehicles) 2011 prescribes the requirements for measurement of fuel consumption and carbon dioxide emissions and the design and application of fuel consumption labels to new passenger cars, SUVs and light commercial vehicles (<3.5 tonne GVM).

⁶⁶ National Transport Commission (Road Transport Legislation – Vehicle Standards Regulations 2006, Schedule 2 Text of the proposed *Australian Vehicle Standards Rules 1999*, 21 February 2007 compilation, Federal Register of Legislative Instruments F2007C00149

This is especially relevant to the importation of used motorcycles. Used motorcycles are given approval to be imported into Australia in unlimited numbers provided it can be demonstrated that the model meets the current ADRs. With the ability to advertise and then purchase over the internet, the enforcement of all legislation is called into question. For example, what enforcement action has been taken to ensure used motorcycles delivered in this manner comply with an applicable EMC standard and that the motorcycles are labelled in accordance with ACMA's EMC requirements (i.e. C-Tick)⁶⁷.

The FCAI recognises that the Department of Infrastructure and Regional Development has made an effective start with improving the compliance and enforcement of the Act with their "National Compliance and Enforcement Strategy for the Motor Vehicle Standards Act 1989." The effectiveness of the strategy and recommendations for improving the compliance and enforcement are further discussed under Section 3.6.

3.1.4 Aftermarket industry and non-genuine parts

The Options Discussion Paper did not address how the aftermarket industry who supply non-genuine parts (i.e. outside the vehicle brands approved supplier network) demonstrate that the vehicle will continue to comply with the relevant ADRs with their aftermarket (non-genuine) part fitted.

Under their Identification Plate Approval (IPA), FCAI member brands provide extensive evidence of compliance with the relevant ADRs for their vehicles supplied to the market and also for any parts or accessories that are fitted.

Under the IPA and also under the requirements of the various state legislation as the Options Discussion Paper⁶⁸ states:

"At the federal level, the ADRs govern the design and construction of new vehicles. The AVSRs (Australian Vehicle Standards Rules) are enacted by states and territories to ensure the ADRs continue to be applied "in service"."

The above statement may be correct in theory, but in practice, there is very little evidence that the states and territories apply and enforce the ADRs 'in service'. Due to the lack of "in-service" enforcement, there is a common misunderstanding that the ADRs do not apply to aftermarket accessories and replacement parts.

The states and territories need to do much more to enforce the ADRs, and other in-service regulatory standards, after vehicles have been supplied to the market. It appears that aftermarket suppliers of accessories and replacement parts are currently being allowed to supply their products to the Australian market without having to ensure that the fitment of their product does not invalidate the vehicle's compliance with the ADRs and other in-service regulatory standards.

When a road vehicle is first used on Australian roads, the relevant state or territory government's legislation generally requires that it continue to comply with the relevant ADRs as at the time of manufacture. The following text is taken from the Department of Infrastructure and Regional Development website⁶⁹:

"The current standards, the Third Edition ADRs, are administered by the Australian Government under the Motor Vehicle Standards Act. The Act requires all road vehicles, whether they are newly manufactured in Australia or are imported as new or second hand vehicles, to comply with the relevant ADRs at the time of manufacture and supply to the Australian market. When a road vehicle

⁶⁷ Australian Communications and Media Authority (ACMA), FACTSheet, "C-Tick compliance requirements of motor vehicles and motor accessories" FS 25-February 2010

⁶⁸ DIRD (2014), Op. Cit., p.30

⁶⁹ DIRD Website page, Australian Design Rules, www.infrastructure.gov.au [accessed 22 October 2014]

is first used on Australian roads the relevant state or territory government’s legislation generally requires that it continue to comply with the relevant ADRs as at the time of manufacture.”

This is supported by the AVSRs that are based on the premise that vehicles entering the market must meet the relevant ADRs and continue to comply with those ADRs (or later versions) throughout the vehicles life. This is outlined in the introduction to Part 3 of the AVSRs:

Note: This Part applies the second and third edition ADRs to various vehicles.

Under the Part, a vehicle that is subject to ADRs when it is built generally remains subject to the ADRs throughout its life. However, a vehicle need not comply with a standard if the standard is replaced by, or inconsistent with, a later standard and the vehicle complies with the later standard. Older vehicles may, therefore, be fitted with any equipment allowed on newer vehicles

Vehicles that are modified must continue to comply with the Vehicle Standards⁷⁰.

The AVSRs are then adopted into state legislation. For example, in Victoria, the AVSRs are adopted into the Road Safety (Vehicles) Regulations 2009⁷¹. Additionally, Schedule 2 *Vehicle Standards*, to Regulation 14, contains the following:

Note

This Schedule sets out standards that vehicles must comply with to be eligible for unconditional registration and to be driven on roads and road-related areas.

The ADRs (Australian Design Rules) are rules for designing and building vehicles. Imported vehicles must also comply with the ADRs.

The Vehicle Standards require a vehicle that is subject to an ADR when built or imported to continue to comply with the ADR.

Many aftermarket accessories have the potential to invalidate the vehicle’s compliance with the ADRs. For example, an aftermarket bullbar could invalidate the vehicles compliance with the lighting ADRs and the occupant protection ADRs.

Case Study 3.1: Tuff Bullbars and ADR Compliance

Tuff Bullbars claim their bulbar for the FJ Cruiser is “ADR compliant” and “airbag compatible” (see Appendix E for extract from Tuff Bullbars website).

The FCAI questions if there has any enforcement activity to seek to have Tuff Bullbars substantiate that fitting this bulbar to this vehicle, the vehicle will continue to comply with all applicable ADRs.

For example, FCAI member brands were audited in 1st quarter 2014 to ensure their vehicles complied with ADR 13—Installation of Lighting and Light-signalling Devices on other than L-Group Vehicles. During this audit many FCAI member brands were required to supply additional evidence when the vehicle was fitted with a genuine (i.e. branded) accessory.

For some replacement parts (e.g. lights) there are specific component ADRs (e.g. ADR 46 for Headlamps). However, there are many other replacement parts (e.g. exhaust mufflers, body parts) that do not have a

⁷⁰ National Transport Commission (Road Transport Legislation – Vehicle Standards Regulations 2006, Schedule 2 Text of the proposed *Australian Vehicle Standards Rules 1999*, 21 February 2007 compilation, Federal Register of Legislative Instruments F2007C00149

⁷¹ Victoria Road Safety (Vehicles) Regulations 2009, S.R. No 118/2009, Versions incorporating amendments as at 17 August 2010

specific component ADR but have the potential to invalidate the vehicle's compliance with the ADRs. For example:

- An aftermarket replacement muffler could invalidate a vehicle's compliance with ADR 83/00—External Noise.
- An aftermarket replacement cross-member could invalidate a vehicle's compliance with ADR 73/00—Offset Frontal Impact Occupant Protection.

Aftermarket and non-genuine parts are an issue for FCAI member brands as vehicle manufacturers and importers are required to comply with all relevant ADRs and also state legislation (i.e. AVSRs as outlined above). This obligation is summarised in Administrators Circular 0-2-4⁷² which states:

“To ensure compliance with section 13A of the Motor Vehicle Standards Act 1989⁷³, IPA holders must ensure that any optional equipment and/or modifications they offer for their vehicles, either as original equipment or for aftermarket fitting, do not invalidate compliance with any of the applicable ADRs.”

There is a widely held misunderstanding amongst many aftermarket suppliers (and others) that the ADRs only apply to a vehicle up until the time of first registration. This misunderstanding will continue until such time as the State/Territory Governments enforce ongoing compliance with the ADRs.

In the meantime, the safety of the vehicle could be compromised and the integrity of the Motor Vehicle Standards Act and certification system is being seriously undermined.

Stronger links between the ADRs and the AVSRs along with improved enforcement of the AVSRs will deliver the Government's community protection objection.

The FCAI's views on how the compliance and enforcement activities need to be improved are outlined in Section 3.5.

3.2 Risk based approach

The Options Discussion Paper asks:

Q7-1 What are the benefits or costs of refining the risk based approach to the regulation of vehicles entering the Australian market?

The FCAI supports the concept of a risk based approach to administration of regulation for vehicles entering the Australian market. A risk based approach needs to consider the impact on:

1. Consumers (including Australian Consumer Law issues, e.g. recalls, warranty, after-sales support, insurance, finance and residual value).
2. Health and safety of the broader community and other drivers.
3. Environmental outcomes and emissions targets.
4. The national vehicle fleet composition.

⁷² Administrators Circular 0-4-2, Fitting of Optional Equipment and/or Modifications to Road Vehicles, issue 3, June 2008

⁷³ Motor Vehicle Standards Act 1989 – Section 13A Vehicles not to be made nonstandard

(1) Subject to subsection (3), a person must not do an act that results in the modification of a standard vehicle in a way that makes it nonstandard.

(2) Subject to subsection (3), a person must not hand over a standard vehicle to a person for modification, whether by that person or otherwise, in a way that makes it nonstandard.

(3) A person may modify a standard vehicle in a way that makes it nonstandard, or hand over a new vehicle for such modification:

(a) in prescribed circumstances; or

(b) with the written approval of the Minister.

(4) An approval given under subsection (3) may be subject to written conditions determined by the Minister.

(A “standard” vehicle is a vehicle that complies with the national standards, i.e. the ADRs.)

5. Emerging technologies and their integration (Cooperative ITS).
6. Other legislation, e.g. Fuel Quality Standards Act, ACMA, state registration requirements.
7. Australian Customs compliance; used vehicles may not be able to adequately prove country of origin (used vehicle will lose their new car generic status) and therefore should not be eligible for tariff concession under free trade agreements such as Japan–Australia Economic Partnership Agreement without suitable substantiation from the manufacturer or exporter i.e. proof of regional value content.
8. After sales support, e.g. servicing, parts, training of technicians.

The administration of the Act, i.e. the certification system (Road Vehicle Certification System, RVCS) and auditing processes that demonstrate a vehicles compliance with the relevant ADRs, should reflect the risk to the vehicle buyer/owner. It is the FCAI’s view that this is not the current practice.

The current certification system actually holds the vehicle brand⁷⁴ that import vehicles in full volume to a higher burden of proof in certification than importers of used vehicles. The vehicle brand is required to provide either a UN Type Approval or a full set of test reports to demonstrate compliance with the relevant ADRs while an importer of used vehicles need only demonstrate that the vehicle is sourced from a country that has an acceptable level of standards. The importer (via the SEVS/RAWS) then utilises the original certification provided by the vehicle brand (e.g. a UN Type Approval ‘E’ mark) to demonstrate compliance.

New vehicles imported in full volume by the authorised representative of the vehicle brand are the lowest risk to the consumer as the brand and the authorised dealer network provide all the necessary after-sales support to protect the consumer and build the brand in the market. This effectively delivers the government’s policy objective of consumer protection.

Conversely, vehicles imported by a third party (i.e. parallel or grey imports) present the highest risk to consumers as identified in Diagram 3 of the options Discussion Paper⁷⁵. Low-volume importers do not have a dealer network and provide only minimal (if any) after-sales support.

The FCAI considers that the certification system needs to be substantially reviewed to recognise the risk level, i.e. lower risk have an easier route through certification (with lower cost) while higher risk has more detailed process (and corresponding higher cost reflecting time required to process). Similarly, the subsequent compliance activities (i.e. the various auditing and inspection systems) should also reflect the risk.

Given the multitude of regulations that rightly apply to protect Australia’s biosecurity and other border control risks it is likely that significant efficiencies and benefits would flow to government, industry and ultimately the community by addressing these various risks through a single filter. For example, the Department of Infrastructure and Regional Development could treat vehicle importers that have achieved “trusted trader⁷⁶” status with Australian Customs and Border Protection as a lower risk for import and certification approval.

3.3 Option 1—Do nothing

The Options Discussion Paper asks:

Q7-2 What arguments support little or no change to the legislation?

The FCAI does not support Option 1—*Do nothing*.

⁷⁴ The authorised vehicle brand in Australia is a subsidiary (or otherwise linked) of the multi-national vehicle brand and as such has significant resources to provide on-going support to the vehicle owner.

⁷⁵ DIRD (2014), Op. Cit., p. 48

⁷⁶ Australian Government, Australian Customs and Border Protection (ACBP), Trusted Trader Programme, www.customs.gov.au [accessed 27 October 2014]

The FCAI supports the objective of the Act, i.e. “to achieve national uniform vehicle standards to apply to new vehicles in Australia⁷⁷” and considers that the Act needs to be strengthened to prevent additional individual state regulations and ensure that the Department has sufficient powers to undertake necessary enforcement actions.

Additionally, changes are required to the Act and the supporting regulations, policies and administration guidelines (e.g. Administrators Circulars) to achieve the objectives of the Act. For example, the FCAI considers there needs to consistent approaches for all importers of vehicles:

- Low volume importers of new motorcycles have a lower compliance burden (than brands) providing an unfair advantage.
- Brands importing vehicles in full volume are excluded from accessing any of the low-volume schemes. As it is uneconomic to provide these vehicles to the Australian market under the full-volume rules, these brands are excluded from an opportunity to import specialist vehicles (e.g. disabled access vehicles) that are available in overseas markets in low numbers. This provides companies operating under the SEVS a market advantage.
- Import and certification approval fee structures should reflect full cost recovery from the relevant parties to the scheme. That is full-volume certification should not cross subsidise the low-volume side of the scheme.

3.4 Option 2—Repeal the legislation

The Options Discussion Paper asks:

Q7-3 Does a case still exist for Australian Government intervention in vehicle standards?

The FCAI does not support repeal of the Act.

The FCAI considers that Australian Government’s intervention in vehicle standards is necessary to meet the Government’s policy objectives in road safety, environmental improvements and security. As such the Motor Vehicle Standards Act provides an important regulatory framework for the importation and supply of motor vehicles into the Australian fleet through setting the minimum national standards for vehicles.

The risk of repealing the Act is regressing to pre-1989 situation where each state/territory had their own set of standards (for both new and in-service vehicles) and would regulate and certify vehicles prior to being introduced into service. Repealing the Act also introduces the risk of inconsistent legislation among the states, or in worst case no vehicle standards in one jurisdiction, leading to additional barriers to interstate vehicle sales, registration transfers and potentially interstate travel. Removing the Act and going back to this situation would impose significant costs on industry, vehicle owners and also on each state/territory government.

Repealing the Act also raises questions such as:

- How would the Australian Government meet its commitments under the UN 1958 Agreement?
- How would the Australian Government manage importation of vehicles to ensure compliance with all other relevant legislation (e.g. customs, taxation, AQIS)?
- How would the Australian Government meet its policy objectives of community protection and consumer protection?

⁷⁷ Motor Vehicle Standards Act 1989, Act No. 65 of 1989 as amended, 1 February 2012 compilation, Section 3 Objects of Act.

- How would the Australian Government administer other legislative requirements related to new vehicles that are often linked to import approvals, e.g. restricting ozone depleting air conditioning gas, quarantine requirements, ensure relevant customs duties are paid, etc?

The Options Discussion Paper asks:

Q7-4 Could the Australian Vehicle Standards Rules be used as an alternative to the national standards? If so, what would be the necessary approach to minimise the regulatory burden, industry compliance costs and inconsistent application across states and territories.

The FCAI considers the Australian Vehicle Standards Rules (AVSRs) are an important part of the overall regulatory framework for ensuring vehicles are safe to operate on the road and promoting a system of nationally uniform vehicle standards. An important part of the AVSRs is that vehicles entering the market must meet the relevant ADRs and continue to comply with those ADRs (or later versions) throughout the vehicles life. This is outlined in the introduction to Part 3 of the AVSRs;

Note: This Part applies the second and third edition ADRs to various vehicles. Under the Part, a vehicle that is subject to ADRs when it is built generally remains subject to the ADRs throughout its life. However, a vehicle need not comply with a standard if the standard is replaced by, or inconsistent with, a later standard and the vehicle complies with the later standard. Older vehicles may, therefore, be fitted with any equipment allowed on newer vehicles. Vehicles that are modified must continue to comply with the Vehicle Standards⁷⁸.

As such, the AVSRs are not structured to include detailed standards for new vehicles. To cater for new vehicle standards, the AVSRs would require a substantial change to include all of the current regulatory requirements as the Motor Vehicle Standards Act currently has, i.e.;

- Provision to develop and implement new national vehicle standards
- Provision to set up and administer a certification scheme.

The Options Discussion Paper asks:

Q7-5 Are there non-regulatory ways of achieving the same policy objectives of road safety, environment, vehicle security and adequate consumer choice?

The FCAI considers that setting and enforcement of national vehicle standards that are harmonised with the international standards (i.e. UN Regulations) is the best and most cost effective method of achieving the government's policy objectives of road safety, environment protection, vehicle security and consumer choice.

However, there are opportunities to reduce the regulatory burden on the mainstream industry by continuing to implement and expand a risk-based approach to importation and certification (as outlined throughout this submission).

3.5 Option 3—Modernise the legislation

The Options Discussion Paper asks:

Q7-6 What other legislative fixes to the Act do you consider necessary?

The Options Discussion Paper recognises the need to “improve definitional clarity.”⁷⁹ The FCAI requests that priority be given to improving the definitional clarity of “supply to the market” to remove the current ambiguity of the exact point at which the responsibility for enforcing compliance with the ADRs moves

⁷⁸ National Transport Commission (Road Transport Legislation – Vehicle Standards Regulations 2006, Schedule 2 Text of the proposed *Australian Vehicle Standards Rules 1999*, 21 February 2007 compilation, Federal Register of Legislative Instruments F2007C00149

⁷⁹ DIRD (2014) Op. Cit., p.32

from the Federal Jurisdiction (i.e. under the Motor Vehicle Standards Act) to the State and Territory Jurisdiction (i.e. under the relevant state legislation for in-service vehicle standards).

One of the two objects of the Motor Vehicle Standards Act is “to achieve uniform vehicle standards to apply to new vehicles when they begin to be used in transport in Australia”⁸⁰. There is a clear understanding that the Act is applicable up until the vehicle is supplied to the market as outlined in the relevant definitions⁸¹:

new vehicle means a locally made vehicle, or a new imported vehicle, that has been neither:

(a) supplied to the market; nor

(b) used in transport in Australia by its manufacturer or importer;

and includes a locally made vehicle, or a new imported vehicle, that has been supplied to the market but not yet used in transport in Australia.

supply to the market, in relation to a road vehicle, means deliver the vehicle to a person for use in transport in Australia.

use in transport, in relation to a road vehicle, means use the vehicle on a public road otherwise than:

(a) to move it in order to:

(i) have work done on it; or

(ii) have it registered under a law; or

(iii) protect it; or

(b) for a prescribed purpose.

However, there is no clear definition in the Motor Vehicle Standards Act as to when the relevant State or Territory legislation (i.e. the relevant state vehicle standards legislation that incorporate the AVSRs) takes over from the Federal legislation (i.e. the Motor Vehicle Standards Act).

Q 7-7 What examples of duplication between the Act and other key pieces of legislation could potentially be removed?

Light motor vehicles (passenger cars, SUVs, light commercial vehicles and motorcycles) are complex consumer products and there are various pieces of legislation that regulate:

- vehicle importation requirements to meet bio-security and financial duties are met;
- taxation and tax law;
- sale;
- usage; and
- interaction with other parts of community/environment, e.g. EMC, ACL, FQSA.

Consequently, the Motor Vehicle Standards Act needs to recognise that other legislation impacts on vehicle sale and use and suitable linkages with other legislation are required as outlined in Section 3.1 (above). One of the opportunities for modernising the Motor Vehicle Standards Act is through recognising the benefits of modern IT systems that are in place with extensive vehicle information that is now publically available to assist consumers. The efforts of many diverse groups have resulted in making vehicle information broadly available to prospective purchasers including:

⁸⁰ Motor Vehicles Standards Act 1989, Act No.65 of 1989 as amended, 1 February 2012 compilation, Section 3

⁸¹ Ibid, Section 5

- State/territory registration processes, e.g. requirement for brand to supply VIN and other data to NEVDIS.
- Personal Property Security Register (PPSR).
- Written-off Vehicle Registers (WOVR).

These systems are all based on the unique Vehicle Identification Number (VIN) that must be marked on each vehicle.⁸²

The FCAI acknowledges that Compliance (Identification) Plates/Labels still perform an important function for non-standard vehicles, vehicles on the SEVS Register and others including;

- Heavy vehicles; are often initially supplied as incomplete vehicles and both the incomplete vehicle and the final work (e.g. fitting of body) prior to supply to the market may be undertaken by other than the OEM and as such both the incomplete vehicle and final vehicle need to be identified.
- Heavy trailers that are certified using previously approved components and sub-assemblies.
- Light vehicles supplied under the low volume IPA and via the SEVS to identify them to consumers as not being supplied in full volume and may not meet all current (at date of supply to the market) ADRs.
- Light trailers; are self-certified and require the Trailer plate for identification of manufacturer for registration purposes.

The various colours of Identification (Compliance) Plates, as outlined in Administrators Circular 0-3-2 Identification Plate, assists with easy identification of non-standard or low volume vehicles.

3.6 Option 4—Strengthen the legislation

The FCAI agrees with the positions outlined in “Option 4 – Strengthen the legislation”⁸³ in relation to benefits of consistent national and state/territory legislation including:

“there are potential benefits in strengthening the provisions of the Act that impact local (i.e. state and territory) standards”

and

“local standards that are inconsistent with national and relevant international standards undermine the regulatory effectiveness and productivity benefits that accrue from national consistency of vehicle standards.”

The Victorian Government’s introduction of a regulation for Electronic Stability Control ahead of the ADRs exposed weaknesses in the current Motor Vehicle Standards Act.

The FCAI considers that the Motor Vehicle Standards Act needs to be strengthened to deliver national consistency of vehicle standards and in particular to prevent any further examples of inconsistent application of vehicle standards which undermine the object of the Motor Vehicle Standards Act, i.e. “to achieve uniform vehicle standards to apply to new vehicles”.

The Options Discussion Paper asks:

Q7-8 In what areas do you consider the Act’s compliance processes and enforcement powers could be better targeted to the risks? And what additional or alternatives enforcement or compliance activities would you consider as effective and efficient?

⁸² Vehicle Standard (Australian Design Rule 61/02 – Vehicle Markings) 2005

⁸³ DIRD (2014) Op. Cit., P. 33

Q 7-9 Are the provisions in the Regulatory Powers (Standard Provisions) Act 2014 a suitable alternatives? Or are there issues that are unique to the industry that will not be addressed through the use of provisions contained in this Act?

Q 7-10 What regulatory services under the Act could be delivered through private sector or other organisations

The FCAI considers that the Act needs to be appropriately enforced. As outlined in Section 3.1.3, during the public consultation workshops there were numerous examples given where the compliance and enforcement processes were not effective.

The FCAI supports a risk-based approach to compliance and enforcement. With this approach the Department of Infrastructure and Regional Development (as responsible for administering the Motor Vehicle Standards Act) should consider the brand (or importer's) ability and history in meeting regulatory burdens including certification, prior audits, recalls, undertaking rectification actions and other non-regulatory and pro-active consumer protection actions and product enhancement initiatives including customer service campaigns.

It must be acknowledged that a "National Compliance Strategy for the Motor Vehicle Standards Act 1989" has been prepared in 2013 by the Department of Infrastructure and Regional Development⁸⁴ and the FCAI congratulates the Department on developing this vital initial step. This Compliance Strategy recognises that other Government agencies, and state/territory governments, have an importance role in vehicle regulation and that the Department of Infrastructure and Regional Development needs to have a cooperative approach with these agencies. However, the strategy does not outline the responsibilities or authorities of the other Government agencies and state/territory governments.

Such a 'whole of government' approach to enforcement is particularly important to prevent or reduce market failings and the corresponding impact on consumers. For example, how do import approvals align with import customs clearance through to vehicle conversion before a vehicle is able to be registered?

The Compliance Strategy sets the framework for the Department of Infrastructure and Regional Development to develop complementary detailed compliance and enforcement plan using a risk based approach. The FCAI considers the risk approach outlined in the Diagram 3 of the Options Discussion Paper provides a good approach and has provided recommendations on how to further implement a risk based approach throughout this response.

As part of implementing an improved compliance and enforcement program, the FCAI recommends that the Department of Infrastructure and Regional Development consider:

- What skills are needed for compliance and auditing activities?
- What training is in place to ensure auditors are appropriately trained in auditing and also with the knowledge necessary to review evidence supplied to demonstrate compliance with various ADR or UN Regulations.
- Use of suitably qualified 3rd party auditors and/or utilising other countries' (who are also signatories to the 1958 Agreement) certification systems and auditing programs.
- Responsibilities and authorities of each agency and state/territory governments in enforcement of the Motor Vehicle Standards Act.
- Establishing a process where the public (e.g. vehicle owner) can report instances of non-compliance of a RAWs workshop have the matter investigated and results made public.

⁸⁴ DIRD, Surface Transport Division (2013), National Compliance Strategy for the Motor Vehicle Standards Act 1989

The Options Discussion Paper asks:

Q7-11 What regulatory mechanisms should be in place to ensure that motor vehicles are effectively recalled when safety concerns arise?

Q 7-12 What costs and benefits do you see them providing a legislated role for the vehicle safety standards regulator in vehicle safety recalls?

The FCAI has a voluntary Code of Practice for the Conduct of Automotive Safety Recalls⁸⁵ (FCAI Recall Code) that outlines the procedures to be followed when an FCAI members is advised or becomes aware that one of their products may have a safety related issue. The FCAI Recall Code is aimed at ensuring members meet their obligations under the Australian Consumer Law (ACL) and to:

- undertake the recall as soon as possible;
- inform the relevant authorities;
- inform the customers and public; and
- prevent the distribution and sale of any vehicle that is subject to the safety recall until completion of the appropriate rectification action.

While FCAI member brands undertake effective recall action (using the guidelines in the FCAI Recall Code), the FCAI is concerned that other businesses that import vehicles in low volume and/or operate under one of the concessional schemes (e.g. via the SEVS) may not be equipped to undertake effective recall action. Our concerns over the ability of these types of businesses to undertake effective recall action was outlined in Section 2.2.

Case Study 3.2: Hilux Surf Global Recall

In 2005, Toyota issued a recall for Hilux Surf vehicles built between 1998 through to 2006, in countries where the vehicles were sold. The recall was to replace a steering relay rod as the existing steering relay rod may develop a fatigue crack, which could lead to a failure and loss of steering.

The importer of these vehicles, Crossover Car Conversions, was not able to notify all owners of the affected vehicles and many state governments had to take action to contact vehicle owners directly. For example the Queensland Government wrote to owners of Queensland registered vehicles and the Northern Territory issued Vehicle Inspectors Bulletin. Additionally, some Toyota dealers attempted to notify owners of affected vehicles via social media and website forums.

This recall highlights the current lack of a strong and rigorous system for recalls of grey imports and their inability to effectively contact vehicle owners. Instead, it fell to other related parties (i.e. state governments and dealers) to take action because of the significant consumer risk.

This concern extends to individuals who undertake the personal importation of a new (or near-new) vehicle. While the original owner would be aware of the risk, the vehicle would remain in use in Australia for up to 20 years and subsequent owners may not be aware that the vehicle was a parallel import and the vehicle brand will not be able to undertake any recall action.

Imported used vehicles should be checked for any outstanding recalls or service campaigns and any necessary work undertaken. The FCAI recommends that the “Procedures for Inspecting and Testing Used

⁸⁵ Federal Chamber of Automotive Industries, Code of Practice for the Conduct of an Automotive Safety Recall, January 2014

Imported Vehicles⁸⁶ be updated to include such a check and acknowledgement by the registered automotive workshop that all necessary rectification work has been undertaken.

The FCAI believes that any consideration of strengthening provisions around vehicle recalls must also include acknowledgment that FCAI members will not be able to undertake, nor should be liable for, recalls of personal imports of new vehicles (i.e. parallel imports) or importers of second hand vehicles (i.e. grey imports).

In the event that individuals are allowed to import a new motor vehicle themselves (i.e. parallel imports), the Department needs to consider who is responsible to undertake the recall and if they have the capability to undertake the recall. There is also considerable cost associated with tracking that motor vehicle to ensure any safety recalls are undertaken.

3.7 Option 5—Harmonisation of Australian vehicle standards with international standards

The Options Discussion Paper asks:

Q7-13 Are there any specific local requirements for light vehicles that would prevent full harmonisation with UN regulations for light vehicles?

The FCAI has long supported harmonisation of the ADRs with the UN Regulations for light vehicles (L-category, MA, MB, MC and NA category vehicles). However, this does not mean that Australia has to mandate compliance with all UN Regulations or the latest level of UN Regulations. It means that UN Regulations must be allowed as alternative standards for existing ADRs and that all future ADRs must be based on UN Regulations supported by a rigorous Regulatory Impact Statement to justify the implementation.

It should also be noted that standards are reflected at a point of time and are subject to continual revision. Timing issues may well still arise where there are difference to international standards.

While the ADRs are substantially harmonised with the UN Regulation (i.e. the UN Regulation is applied or accepted as alternative standard), the following local requirements for light vehicles would prevent full harmonization with UN Regulations:

- ADR 3/03—Seats and Seat Anchorages. ADR 3/03 is harmonised with UN Regulation 17 except for vehicles which have child restraint anchorages (CRA's) located more than 100 mm below the top of the seat. ADR 3/03 requires a seat with CRA's located more than 100 mm below the top of the seat to be subject to a load of 3.4 kN for each CRA applied simultaneously with a load of 20 times the seat mass. UN Regulation 17 does not have such a requirement.
- ADR 34/02—Child Restraint Anchorages. Particularly the need for 3 top tether anchorages. (UN regulations only require 2 top tether anchorages). The FCAI acknowledges that the Department has begun to address this issue through the international vehicle standards development process.
- ADR 69/00—Full Frontal Impact Occupant Protection. There is no UN Regulation for full frontal impact.
- The Department of Infrastructure and Regional Development policy that in effect prohibits "Passenger Airbag Disable via manual switch". The Department will only accept "Passenger Airbag deactivation **via manual switch**" if the manufacturer provides evidence that the vehicle still meets ADR 69/00 and ADR 73/00 with the Passenger Frontal Airbag deactivated. The Department's policy is intended to have the effect of not allowing "Passenger Airbag deactivation **via manual switch**" in Australia. (The approval authorities in Europe have a different policy regarding "Passenger Airbag deactivation **via manual switch**" and do not require the vehicle to meet the UN crash regulations when the Passenger Airbag is switched off).

⁸⁶ Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002 – F2006B1430, www.comlaw.gov.au [accessed 17 November 2014]

- ADR 81/02—Fuel Consumption Label. While the test is a UN Regulation (R 101) Australia has a unique fuel consumption label requirement. The FCAI questions the continued benefit of this label as the same information is available on the Green Vehicle Website where new car buyers are able to compare the fuel consumption of the various vehicles (by make/model/variant) that they are considering. The FCAI estimates it costs around \$6 per vehicle to fit this label.
- Consumer Product Safety Standard for vehicle jacks. There are no UN Regulations for vehicle jacks.
- Owner Manual requirements to provide warnings and instructions prescribed by certain ADRs (e.g. ADR 34) and the Consumer Product Safety Standard for vehicle jacks.
- ADR 61/02—Identification (Compliance) Plate/Label. A unique Australian identification label is required to be fitted to the vehicle.

The FCAI acknowledges and welcomes the Government’s drive to reduce red-tape and the subsequent announcement to accelerate harmonisation of ADRs through ‘applying’ additional UN Regulations. The annual cost saving to the industry from applying a UN Regulation is in the order of \$1.2 million⁸⁷.

Additionally, there are a number of individual sections of ADRs that are inconsistent with overseas standards including:

- ADR 42/04, Clause 21 contains unique Australian standards and test methods for stability of 3-wheeled vehicles. This has resulted in a motor tricycle (Harley-Davidson Tri-Glide) that is available in other major markets (North America, Japan and Europe) not being able to be imported by the brand in full volume. However, a concession was provided to a low volume importer to include this model on the SEVS Register and import the vehicle (see Appendix 3 – SEVS Examples).
- ADR 42/04—Exhaust outlet requirements. Clause 10.2 contains outdated and unique Australian requirements for exhaust outlet locations. This results in modification of new small buses with current (Euro 5) emission standards.
- ADR 43/04, Clause 6.5 contains unique Australian overall width requirements for motorcycles. This results in brands needing to modify models of motorcycles (e.g. remove pillion passenger foot pegs) to be delivered to the market or to not make that model available to the market.
- ADR 44/0—LPG requirements. Clause 6 refers to an outdated version of AS 1425 and is unclear over its application and doesn’t recognise UN R 67.
- ADR 61/02—Vehicle markings. Clause 9.2 requires motorcycles to be fitted with registration label holder. Now that all state governments have eliminated the need for registration labels on light vehicles, this requirement is redundant.

Many of these minor ADR amendment issues have been previously identified with the Department of Infrastructure and Regional Development and the FCAI is working through the existing consultation processes to seek resolution.

The Options Discussion Paper asks:

Q 7-14 How much business compliance cost savings could be made through options to harmonise Australian standards with the UN Regulations and the acceptance of evidence of compliance with those standards?

Q 7-15 Would there be any increased cost to consumers for a vehicle that complies with UN Regulations not required for Australian conditions (such as cold start) as opposed to the current hybrid compliance arrangement?

⁸⁷ The cost saving estimated by the Department of Infrastructure and Regional Development’s Regulatory Burden Measurement (RBM) framework for applying a UN Regulation that is already accepted as an “Alternative Standard”.

Option 5 in the Discussion Paper outlines 3 potential methods to increase harmonisation:

1. Remove ADRs and replace them with a legislative reference to UN Regulations
2. Adopt UN Regulations as the primary motor vehicle standards, with additional capacity to permit variations to suit Australian conditions.
3. Apply the UN Regulations through the ADRs (as is current practice).

The FCAI supports method 3.

The FCAI does not support method 1 for two reasons:

- i. It would “permit entry of left hand drive vehicles without provision for conversion to right hand drive or any requirements for the conversion (such as using Original Equipment Manufacturer parts)”⁸⁸.
- ii. Method 1 is not viable as not all UN Regulations are relevant to Australia. Imposing these would impose additional cost burden to both industry and government without any commensurate community benefit.

Method 2 is not a practical option as more than 80 per cent of light vehicles sold in Australia are sourced from other than European markets and as such may not have UN Regulation type approval. Some brands use test reports demonstrating compliance to the UN Regulation rather than have ‘type approval’. Implementing all UN Regulations is likely to impose additional costs without any benefit.

As outlined in Section 2.1 the FCAI supports harmonisation of ADRs with UN Regulations where the case exists for a regulation, i.e. a rigorous process is undertaken to assess the need, costs and benefits of introducing an ADR. In this case, the Government should introduce the corresponding UN Regulation in a similar timeframe with a similar scope as the introduction of the same UN Regulation in Europe.

3.8 Option 6—Streamline new vehicle certification processes

The Options Discussion Paper asks:

Q7-16 Is there benefit in providing for the approval of modules of design/assembly of a vehicle? How could this be done to ensure the certification is valid for a range of later added componentry and bodies?

The FCAI agrees that there is scope for the certification process under the act to recognize the movement towards International Whole Vehicle Type Approval (IWVTA) and cater for the certification of vehicle platforms—with this certification extending to any vehicle model based on the same platform.

The FCAI supports the Government’s participation in the development of the International Whole of Vehicle Type Approval (IWVTA) along with the Governments advised intention to introduce the IWVTA in 2016.

The FCAI considers that the introduction of the IWVTA and applying all ADRs that are currently accepted as “Alternative Standards” will result in significant streamlining of the vehicle certification process and deliver benefit to FCAI members through reduction of unnecessary administration while not compromising the Government’s community protection objective.

⁸⁸ DIRD (2014), Op. Cit., p. 37

3.9 Option 7—Reduce the barriers to personal importation of new vehicles and the importation of quality second-hand vehicles

The Options Discussion Paper asks:

Q7-17 What risks would a regulatory framework need to address if barriers were reduced on vehicle imports?

Firstly it must be noted that the Motor Vehicle Standards Act provides the legislative framework to control the supply to the market of all vehicles, i.e. it puts in place the checks and balances for supply of new and used vehicles.

Personal imports and importation of second-hand vehicles are part of concessional schemes where the requirements to import (i.e. the standards to be met and the burden of proof) are already lower than for new vehicles supplied in full-volume.

The Options Discussion Paper has not demonstrated that there is a market failure in terms of vehicle affordability or consumer choice that requires government intervention.

Throughout this paper the FCAI has outlined the competitive nature of the new car market, the shortcomings of the administration of the current concessional schemes and the potential for increasing consumer risk with allowing greater access to parallel imports and grey imports of new light vehicles. In addition to the regulated standards (i.e. ADRs) the FCAI member brands meet both internal corporate standards and industry voluntary standards. For example, the FCAI has a series of Codes of Practice that cover:

- Electromagnetic Compatibility (EMC) of Motor Vehicles.
- The Conduct of an Automotive Safety Recall.
- Fitting Head Protecting Side Airbags.
- Date of Manufacture of New Motor Vehicles.
- Underbody Temperature.
- Functional Requirements for Theft Deterrence.
- Cargo Barriers.
- Parts and Service Policies for Suppliers (includes provision for parts holding).

The FCAI does not support allowing greater access (i.e. further reducing the barriers) to personal importation of new vehicles or the importation of second-hand vehicles.

If the Government considers any further concessions to personal or parallel importation of either new or used vehicles it needs to recognise future potential source markets such as China and India. The government is in the final stages of signing a Free Trade Agreement (FTA) with China and is considering entering negotiations with India to also develop a FTA.

China is the largest and fastest growing vehicle market in our Region with sales almost quadrupling from 5.7 million in 2005 to almost 22 million in 2013. Unlike China, India is a right hand drive market that is also experiencing significant growth. Annual vehicle sales in India more than doubled from 1.4 million in 2005 to more than 3.2 million in 2013⁸⁹.

⁸⁹ Organisation Internationale des Constructeurs automobiles (OICA), Registration or Sales of New Vehicles – All Types, www.oica.net, [accessed 25 November 2014]

The Options Discussion Paper asks:

Q7-18 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?

Automotive brands engineer their motor vehicles for each market they are sold in. Accordingly, motor vehicles supplied to the Australian market by brands are engineered for our local conditions. These conditions vary considerably when compared to other geographic regions around the world.

Australia's climatic and environmental conditions are significantly different to other major right-hand drive markets, such as the United Kingdom and Japan, which are generally cooler and less prone to extreme high temperatures. These differences necessitate substantial engineering changes to motor vehicles imported into Australia to enable those motor vehicles to perform as intended.

Australian consumers can be assured that cars made for Australian conditions and safety specifications will cope with the Australian climate, lifestyle and roads. This includes having the appropriate engine and transmission cooling systems to cope with Australia's hot climate, towing requirements and fuel quality. It also includes having specifically calibrated convenience items such as sat-nav, air-conditioning and infotainment systems.

Fuel quality differs from country to country, which means engines and the Engine Control Units (ECU) that control them are required to be calibrated differently. Using the incorrect fuel in an engine not calibrated for that fuel increases the likelihood that the engine will suffer from degraded performance and increased emissions. It also increases the likelihood that the engine will not meet the expectations of the consumer, and may need replacing sooner than would ordinarily be the case for an equivalent Australian specified model.

The FCAI provided a detailed discussion, along with case-studies, in Section 2.2.

The Options Discussion Paper asks:

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

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

Q7-17 Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not?

Q7-22 What impact would an increase in second hand imports and personally imported new cars have on the insurance industry?

Q7-23 How could the Government facilitate vehicle safety recalls for vehicles not imported by manufacturers?

The FCAI's views on these questions have been comprehensively outlined in Section 2 of this response. Additionally, the Act needs to consider both current and future technologies. For example during the introduction of hybrid vehicles and electric vehicles, FCAI member brands worked with their dealer networks as well as government emergency services to ensure understanding of high voltage battery systems and the precaution required (risks) during service, repair and crash recovery.

3.10 Option 8 - Reduce/consolidate concessional Arrangements

The options Discussion Paper asks:

Q7-24 Do you agree that the concessional options could be grouped into risk categories to allow the possible consolidation of the scheme? If so, do you agree with the model proposed in this review?

The FCAI supports the proposal to group concessional schemes by risk category.

In Section 3.2 the FCAI outlined how a risk based approach could be developed.

Many FCAI member brands import vehicles as Test & Evaluation (T&E) Vehicles as part of their ongoing business. Recognising that other organisations may also import vehicles as T&E vehicles, the FCAI recommends that the Department of Infrastructure and Regional Development review this concessional scheme to determine if it still meets the current needs and is not open to rorting by organisations importing used vehicles or parallel imports.

See Appendix D for examples of where the SEVS scheme is not working as intended.

The Options Discussion Paper asks:

Q7-25 In the event that barriers to the importation of quality second-hand vehicles are reduced, would there still be a need for the SEVs register?

Q7-26 If the Register is still required, how could it be improved to increase standards and reduce regulatory burden?

Q7-27 Could the regulation of the RAWs and the New Low Volume Manufacturers be combined under a new legislative framework?

Q7-28 What are the advantages and disadvantages of such a consolidation approach?

The FCAI does not see any advantage in combining the current SEVS with allowing greater access to importation of used vehicles without firstly conducting a thorough review of the current SEVS register to correct the flaws in the current process.

The FCAI considers that if the Government wishes to continue to allow the importation of used 'Specialist and Enthusiasts Vehicles' the current SEVs criteria and Register needs to be substantially improved. In Appendix D the FCAI has provided a range of examples where the current SEVs process is being used either not for its intended purpose and/or vehicles are being introduced into Australia without the supplier meeting their full obligations.

The current SEVS criteria need to be reviewed with an aim to better focus on the intent of the scheme, i.e. providing access to specialist and enthusiasts' vehicles that are not currently available in the Australian market. Currently the SEVS requires two out of four criteria to gain eligibility relating to appearance, unusual design features, performance and publication in a specialist publication⁹⁰. The FCAI recommends that the criteria for SEVS should be reviewed to ensure vehicle suitability. At least, the 'specialist publication' criteria should be removed as publication in a specialist magazine is now redundant with the advent of online publications and the ability to easily create websites.

The FCAI is also concerned that the Department of Infrastructure and Regional Development has not kept the relevant documentation up to date. For example, the current guidelines, "Motor Vehicle Standards (Approval to Place Used Import Plates) Guidelines 2006 (No.1)" was last updated in 23 August 2008. Also the last update to Administrators Circular 0-4-1 "Procedures for the Certification of New Motor Vehicles Supplied in Low Volume" was last updated in August 2008. In the last six years there has been a number of significant new safety systems introduced through new/updated ADRs, e.g. ESC, and BAS.

⁹⁰ Regulation 24 of the Motor Vehicle Standards Regulations 1989

To assist with compliance and enforcement of SEVS/RAWS the FCAI recommends that the Department of Infrastructure and Regional Development implement a process where the public (e.g. vehicle owner) can report instances of non-compliance of a RAWS workshop have the matter investigated and results made public (as outlined in Section 3.6 above).

3.11 Costs and benefits

The Options Discussion Paper asks:

Q8-1 Do you have any comment on the compliance cost assumptions?

Q8-2 Are the costs of compliance reasonable when considered alongside the safety and environmental outcomes being delivered?

The FCAI does not agree that the cost of compliance outlined in Section 8 of the Options Discussion Paper provides a good estimate of the cost of compliance to FCAI members. The cost of compliance and cost of obtaining an Identification Plate Approval (IPA) needs to be considered independently.

The cost of compliance includes the cost of development and testing programs that need to be undertaken to produce the required certification submission documents. These costs are significant for FCAI member brands.

In addition to the substantial development cost, the cost of obtaining a type approval to a UN Regulation comprises:

- Test Service witness fee; ranges from €1,100 to €1,500/day, (\$1,500 to \$2,200).
- Test Service documentation fee (i.e. test report) + Approval Authority fee (i.e. approval certificate document); ranges from €500 to €1,500, (\$700 to \$2,200).
- Cost of test that is borne entirely by the OEM and includes test material cost (e.g. component, sub-system, whole vehicle, pre-production or prototype vehicle [which could cost in excess of \$750,000]), test equipment, personnel, and cost of preparing application documentation.

Note: For many type approval or certification tests (e.g. ADRs 3, 5, 34, 69, 72, 73) destructive testing of a full vehicle or major sub-system is required. In many cases, a prototype or pre-production vehicle that costs between \$750,000 and \$1 million would be required for the test.

The Options Discussion Paper shows that the cost per certification for a vehicle certified via the RAWS scheme is higher on a per vehicle basis than for a new full volume vehicle. In many cases the RAWS is relying on work previously undertaken by a full volume manufacturer by using the certification approval (e.g. E-mark) already granted.

Separate to the compliance cost is the approval cost, i.e. the cost of obtaining an Identification Plate Approval (IPA). This has two components;

- Identification Plate fee of (currently) \$6.00 per vehicle⁹¹ and
- Cost of manufacturing/printing and fitting the Identification Plate/Label, estimated at \$6.50 per vehicle⁹².

To calculate the approval cost for FCAI members:

- A top selling model @ 40,000 units per year, approval cost = \$500,000 per year.
- A mainstream selling model @20,000 units per year, approval cost = \$250,000 per year.

⁹¹ Identification Plate fee for passenger cars, SUVs and light commercial vehicles is currently \$6.00 per vehicle and \$3.00 per motorcycle.

⁹² Information supplied by FCAI members showed costs for manufacturing and fitting identification labels/plates ranged from \$2 to \$10.

As the model cycle for a passenger car or SUV is typically 5 to 7 years the total approval cost;

- A top selling model @ 40,000 units per year, compliance cost = \$2.5 to \$3.5 million per model life.
- A mainstream selling model @20,000 units per year, compliance cost = \$1.25 to \$1.75 million per model life.

For a light commercial vehicle that typically has a longer model cycle time of 8 to 10 years, the approval cost could range from:

- A top selling model @ 40,000 units per year, compliance cost = \$4 to \$5 million per model life.
- A mainstream selling model @20,000 units per year, compliance cost = \$2 to \$2.5 million per model life.

With an annual market of (approx.) 1.1 million new light vehicles⁹³ and 60,000 new road registered motorcycles considered, the annual cost of fitting Identification compliance to the industry is in the order of \$14.3 million⁹⁴.

Based on the assumption that the Identification Plate is to provide funding for Vehicle Safety Standards Branch to administer the certification system the FCAI considers that the full volume brands (i.e. FCAI member brands and TIC member brands) are actually providing funding for importers of used vehicles, parallel imports and other low volume schemes.

The FCAI considers that the approval cost needs to be substantially reviewed to more accurately reflect a user-pays system where the approval cost is directly related to the time taken to evaluate an IPA application. The current scheme results in the lowest risk vehicles having both the highest burden of demonstrating compliance (see Section 3.2 of this response) and also has the highest approval cost.

If the Government does not wish to move to a more equitable approval cost, the FCAI considers that the additional funds provided by FCAI members could be more effectively utilised through;

- employment of additional staff with VSSB to provide a better service FCAI members and/or
- additional resources for enforcement of the Motor Vehicle Standards Act, especially with in-service compliance of SEVS vehicles and aftermarket parts.

3.12 Implementation

The Discussion Paper asks:

Q9-1 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?

The FCAI does not support any expansion of concessional arrangements and therefore does not see the need for any transitional arrangements for expansion of concessional arrangements.

However, the FCAI considers that the Government needs further develop and accelerate the adoption of a risk based approach to compliance certification and approval. This needs to be complimented by an immediate expansion of enforcement activity that includes the aftermarket industry and in-service compliance.

⁹³ Vfacts National Report, New Vehicle Sales December 2013

⁹⁴ 1.1 million light vehicles at \$12.50 per vehicle and 66,000 motorcycles @\$9.00 per vehicle

3.13 FCAI Position

The FCAI's position on the various topics raised by the questions in the Discussion Paper can be summarised as:

3.13.1 Risk Based Approach

The FCAI supports a risk based approach to certification and approval that:

- Recognises the risk to the consumer and has the certification and approval procedures aligned to risk, i.e. lowest risk has lowest administrative burden.
- Cost of approval reflects cost to the Department of Infrastructure and Regional Development, i.e. time taken to evaluate each approval. Again lowest risk should take less time and should have lowest cost.
- Level of compliance activity should also be aligned with risk of non-compliance.

To complement a risk based approach additional enforcement activity of current standards need to be implemented. Enforcement activity needs to target both suppliers of vehicles (both full volume and concessional schemes) and suppliers of aftermarket parts and accessories.

At the moment there is a widely held misunderstanding amongst many aftermarket suppliers (and others) that the ADRs only apply to a vehicle up until the time of first registration. This misunderstanding will continue until such time as the state/territory governments enforce ongoing compliance with the ADRs. In the meantime, the safety of the vehicle could be compromised and the integrity of the MVAS and certification system is being seriously undermined.

3.13.2 Harmonisation with UN Regulations

The FCAI supports harmonisation of the ADRs with the UN Regulations for light vehicles (L-category, MA, MB, MC and NA category vehicles). However, this does not mean that Australia has to mandate compliance with all UN Regulations or the latest level of UN Regulations. It means that UN Regulations must be allowed as alternative standards for existing ADRs and that all future ADRs must be based on UN Regs supported by a rigorous Regulatory Impact Statement to justify the implementation.

The FCAI supports the Governments current actions to accelerate harmonisation through 'applying' additional UN Regulations and also the intention to implement the International Whole of Vehicle Type Approval (IWVTA) when this is finalised in early 2016.

3.13.3 Compliance/Approval Costs

The FCAI considers that the cost of compliance outlined in Section 8 of the Options Discussion Paper needs to consider the cost of compliance separately from the cost of obtaining an Identification Plate Approval (IPA). The Options Discussion Paper includes only the cost of demonstrating compliance, i.e. providing the test reports or UN type approval to the Department of Infrastructure and Regional Development.

The FCAI considers that the approval cost needs to be substantially reviewed to more accurately reflect a user-pays system where the approval cost is directly related to the time taken to evaluate an IPA application. For example, the cost of fitting an Identification Plate for a passenger car model would range from \$2million (mainstream selling model) up to \$5million (volume selling model). The FCAI estimates that the total cost to the industry of fitting Identification Plates is in the order of \$14.3 million per year.

If the Government does not wish to move to a more equitable approval cost model, the FCAI considers that the additional funds provided by FCAI members could be more effectively utilised through;

- Employment of additional staff with VSSB to provide a higher level of service to FCAI members and/or
- Additional resources for enforcement of the Motor Vehicle Standards Act, especially with in-service compliance of SEVS vehicles and aftermarket parts.

3.13.4 Personal Importation of New Vehicles or the Importation of Second-hand Vehicles

The FCAI does not support allowing greater access (i.e. further reducing the barriers) to personal importation of new vehicles or the importation of second-hand vehicles.

The FCAI recommends that the SEVS be reviewed to an aim to develop appropriate entry criteria to meet the intention of the SEVS, i.e. providing access to specialist and enthusiasts' vehicles that are not currently available in the Australian market. As a start, the criteria accepting publication in a 'specialist publication' should be removed.

4.0 CONCLUSION

The FCAI welcomes the opportunity to provide a response to the Australian Government's Consultation Paper on the 2014 Review of the Motor Standards Act.

The FCAI and member brands support the Government's three over-arching policy objectives:

- 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).

The FCAI and member brands consider that we have significantly contributed to these three policy objectives through the supply of new motor vehicles fitted with modern environmental, security and safety technologies and are engineered for the Australian operating environment.

Additionally, the FCAI recognises there is the opportunity to improve the Motor Vehicle Standards Act to better deliver on the government's policy objectives and of the options outlined in the paper the FCAI supports:

- The need to modernise and strengthen the legislation.
- Harmonise with international standards (i.e. UN Regulations) where the case exists for a regulation and streamline the certification process to automatically accept type approvals to UN Regulations.
- Consolidate concession scheme arrangements and apply a risk based approach where higher risk schemes would require a more intensive certification, compliance and auditing regime.

The FCAI and our member brands consider that the *Motor Vehicle Standards Act 1989* has a positive impact on the supply of motor vehicles onto the Australian market delivering improvements in safety and environmental outcomes, meeting buyer expectations and reduced theft, at the same time as contributing to a highly competitive market that delivers vehicles at internationally competitive prices. There is no compelling public policy case for increasing used or parallel imports into the Australian market. In fact, the FCAI would be concerned that such an arrangement would actually increase consumer risk and undermine the competitiveness of the new motor vehicle market, to the detriment of both consumers and brands.

The Motor Vehicle Standards Act provides the legislative framework to control the supply to the market of all vehicles, i.e. it puts in place the checks and balances for supply of new and used vehicles. Personal imports and importation of second-hand vehicles are part of concessional schemes where the requirements to import (i.e. the standards to be met and the burden of proof) are already lower than for new vehicles supplied in full-volume. The FCAI does not support allowing greater access (i.e. providing additional concessions) to personal importation of new vehicles or the importation of second-hand vehicles.

Any regulatory change that allows older vehicles to be introduced into the market would result in an increase in fleet age and would be detrimental to the Government's community protection (i.e. road safety and environment) objectives.

The FCAI is the peak industry organisation representing vehicle manufacturers and importers of passenger vehicles, light commercial vehicles and motorcycles in Australia.

The automotive industry is a major contributor to Australia's lifestyle, economy and community and is Australia's largest manufacturing industry. The industry is wide-ranging—it incorporates importers, manufacturers, component manufacture and distribution, retailers, servicing, logistics and transport, including activity through Australian ports and transport hubs.

The Australian automotive industry employs nearly 280,000 people directly and indirectly throughout Australia. Approximately 66,000 people are employed across more than 4,500 dealerships, and the industry generates around \$62 billion in revenue.⁹⁵

There are now around 67 brands in the Australian market, with just over 1.1 million new vehicle sales per year. That is a lot of brands to service a market of our size equating to only 16,597 new vehicles sold per brand. The following table provides a comparison of the competitiveness of global markets with double the number of new vehicles sold per brand in Canada, almost three times as many in the United Kingdom and more the 255,000 new vehicles sold per brand in the United States.

Table A.1 Competitiveness of Global Vehicle Markets⁹⁶

	Australia	Canada	UK	USA
No. of brands in market	67	49	53	51
Sales	1,112,032	1,620,221	2,249,483	13,040,632
Market size per brand	16,597	33,066	42,443	255,699

Australia is one of the most open and competitive light vehicle markets in the world with more than 60 brands, 350 models and 20 source countries. In 2012, only 13 percent of new vehicles sold were manufactured locally with the remaining 87 per cent of new vehicles imported from many countries and regions of the world including Asia (more than 60 per cent), Europe (14 percent), North and South America (3 per cent), and South Africa (3 percent) (see Table A.2).

Motor vehicles are more technologically advanced today than ever before. While the structural changes in the Australian market, in terms of lower tariffs and more brands, has resulted in significant consumer benefits with improved affordability and choice it has also greatly increased the knowledge base required of repairers. The repair industry has had to change to compete in this global market place and cannot slow the rate of adoption of these technologies, or limit consumer choice.

⁹⁵ <http://www.ibisworld.com.au/industry/default.aspx?indid=434>

⁹⁶ Australian Government, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, March 2013 Automotive Update.

Table A.2 Country/Region of Origin for New Vehicle Sales in 2013⁹⁷

Country/Region of Origin	% of New Vehicle Sales
Japan	32%
Thailand	20%
Europe	16%
Korea	12%
Australia	10%
Americas	4%
Other Asia (incl China and India)	2%
Other (incl South Africa)	3%

The expansion of new and global brands and models into the market has led to the introduction of advanced security, safety and environmental features in motor vehicles. The introduction of these features is in response to increasingly strict environmental regulations and growing demands from consumers for advanced security and safety features.

Vehicle brands face a range of de-facto regulations in the form of safety and environmental star ratings and buyer requirements. They face a range of competitive pressures to continually improve environmental performance and safety standards. For example, around 30–50 percent of vehicle sales are sold to governments and fleets that frequently require a 5 star ANCAP rating and/or 4 star GVG rating.

⁹⁷ FCAI, VFACTS National Report, New Vehicle Sales, December 2013.

APPENDIX B PRICE AND SPECIFICATION ANALYSIS

Note: Each market has unique specification differences. Brands have sought prices in each market to a similar or 'like-for-like' specification levels as much as practical. Prices are Manufacturer's List Price or RRP (UK) unless otherwise stated. These are not Drive-Away or On-the-road (OTR) prices.

Vehicle	Price in Australia (MLP) ¹	Price in UK ² (of Australian-spec model ³)	Price in Japan ⁴ (of Australian-spec model ⁵)	Notes
Subaru XV 2.0	AUD\$28,490	AUD\$38,957	AUD\$26,863	
Subaru Forester 2.0i	AUD\$29,990	AUD\$41,534	AUD\$29,179	
Ford Focus Trend hatch	AUD\$22,290	AUD\$32,325	Model not available	
Ford Focus 5HB Sport 2.0L Auto	AUD\$28,190	Like-for-like comparison is not feasible	AUD\$32,267	
Mazda 3 Neo hatch	AUD\$23,792	AUD \$30,271	Model not available	
Mazda3 SP25 5HB I4 2.5L Petrol 138kW 6AT	AUD\$ 27,890	Model not available	AUD\$22,718	
Mazda6 Sport 4SDN I4 2.5L Petrol 138kW 6AT	AUD\$33,460	AUD\$43,059	AUD\$28,677	
Mazda CX-5 FWD Maxx Sport 5WGN I4 2.0L Petrol 114kW 6AT	AUD\$33,620	AUD\$42,739	AUD\$24,560	
Holden Cruze CDX/Chevrolet Cruze LTZ	AUD\$24,590	AUD\$36,218	Model not available	
Holden/Chevrolet Captiva LT	AUD\$36,490	AUD\$50,245	AUD\$43,223	
Holden/Chevrolet Trax LS	AUD\$23,990	AUD\$27,536	Model not available	
Toyota Corolla Ascent Sport hatch	AUD\$23,540	AUD\$24,250	Like-for-like comparison is not feasible	Sold as the Toyota Auris Icon in the UK.
Volkswagen Tiguan 132TSI	AUD\$36,990	AUD\$48,580	Like-for-like comparison is not feasible	Sold as the Tiguan Match in the UK
Chrysler 300C Luxury	AUD\$56,000	AUD\$53,654	Like-for-like comparison is not feasible	Sold as V6 Executive in the UK
Alfa Romeo Mito 875cc Progression 0.9litre 77KW	AUD\$22,500	AUD\$25,961	Like-for-like comparison is not feasible	Sold as the TwinAir Sprint 105hp in the UK
Audi A4 2.0 TFSI quattro S tronic Ambition	AUD\$59,900	AUD\$63,427	Like-for-like comparison is not feasible	

Audi A3 Sportback 1.4 TFSI S tronic (92kW)	AUD\$35,600	AUD\$37,641	AUD\$34,436	Designated 'SE' in UK and 'Attraction' in Australia.
Audi Q3 1.4 TFSI S tronic	AUD\$42,300	AUD\$44,560	AUD\$41,358	Designated 'SE' in UK
Audi Q5 2.0 TDI quattro S tronic (130kW)	AUD\$62,600	AUD\$63,645	Like-for-like comparison is not feasible	
Audi Q5 2.0 TFSI quattro S tronic	AUD\$63,204	Like-for-like comparison is not feasible	AUD\$61,480	
Audi A6 2.0 TDI multitronic	AUD \$78,548	\$66,152	Like-for-like comparison is not feasible	Designated 'SE' in UK. AU Price listed excludes a LCT payment of \$952 which brings the total MLP of the motor vehicle to \$79,500
Audi A6 2.0 TFSI multitronic	AUD\$77,317	Like-for-like comparison is not feasible	AUD\$66,536	AU Price listed excludes a LCT payment of \$583 which brings the total MLP of the motor vehicle to \$77,900
BMW 3 series – 328i	AUD\$69,400	AUD\$68,808	Like-for-like comparison is not feasible	
BMW 1 Series (116i)	AUD \$36,700	AUD \$42,854	Like-for-like comparison is not feasible	
BMW X1 (sdrive 18d)	AUD \$46,300	AUD \$51,938	Like-for-like comparison is not feasible	
BMW X3 (xdrive 20d)	AUD \$64,400	AUD \$67,533	Like-for-like comparison is not feasible	
BMW 5 Series (528i)	AUD \$92,702	AUD \$87,828	Like-for-like comparison is not feasible	AU Price listed excludes a LCT payment of \$5,198, which brings the total MLP of the motor vehicle to \$97,900
BMW X5 (xdrive 30d)	AUD \$94,625	AUD \$98,648	Like-for-like comparison is not feasible	AU Price listed excludes a LCT payment of \$5,775, which brings the total MLP of the motor vehicle to \$100,400

Mercedes-Benz C-class	AUD\$60,900	AUD\$56,659	Like-for-like comparison is not feasible	
Mercedes-Benz A180	AUD\$35,600	AUD\$42,417	Like-for-like comparison is not feasible	
Mercedes-Benz A45 AMG	AUD\$74,900	AUD\$87,156	Like-for-like comparison is not feasible	
Mercedes-Benz ML350 BlueTec Diesel	AUD\$92,303	AUD\$100,410	Like-for-like comparison is not feasible	AU Price listed excludes a LCT payment of \$9,933, which brings the total MLP of the motor vehicle to AUD\$102,236.
Land Rover Freelander 2 TD4 SE	AUD\$54,100	AUD\$55,832	Like-for-like comparison is not feasible	
Range Rover Evoque eD4 Pure	AUD\$49,995	AUD\$46,795	Like-for-like comparison is not feasible	
Range Rover Sport SDV6 HSE	AUD\$110,688	AUD\$103,486	Like-for-like comparison is not feasible	AU Price listed excludes a LCT payment of \$15,541, which brings the total MLP of the motor vehicle to AUD\$126,229.
Volvo V40 T5 R-Design	AUD\$49,990	AUD\$44,888	AUD\$55,700	
Volvo S60 T5 R-Design	AUD\$63,890	Like-for-like comparison is not feasible	AUD\$53,667	
Volvo XC 60 D5 Luxury	AUD\$69,990	AUD\$68,555	Model not available	

Notes:

1. Prices are Manufacturer's List Price and includes GST applicable to the base/standard specification model but does not include dealer delivery and various government charges (e.g. registration fees, stamp duty, CTP and the like) normally included in a 'drive-away' price. Any LCT applicable is shown in the notes column.
2. For conversion purposes we have used the average daily exchange rate during the 1st half of 2014 from the Reserve Bank of Australia, Exchange Rate Data [<http://www.rba.gov.au/statistics/hist-exchange-rates/index.html>—\$1 to £0.55 GBP.
3. Price in the UK if a model with the same level of specification as Australian variant was available. Where a model with this level of specification is not available, these prices are based on estimates from the brand.
4. For conversion purposes we have used the average daily exchange rate during the 1st half of 2014 from the Reserve Bank of Australia, Exchange Rate Data [<http://www.rba.gov.au/statistics/hist-exchange-rates/index.html>—AUD\$1 to ¥93.7
5. Price in Japan if a model with the same level of specification as Australian variant was available. Where a model with this level of specification is not available, these prices are based on estimates from the brand.

The current SEVS and RAWs schemes allow used and parallel new imports with the intention to make specialists and enthusiasts' motor vehicles available in Australia that would not otherwise be imported by the brand.

Unfortunately, there are a number of examples that demonstrate the existing system isn't working as it is intended where the importer and/or RAWs workshop has not meet their full obligations (in the FCAI's view) leading to the consumer carrying all the risk.

Example 1: NSW Office of Fair Trading

The NSW Office of Fair Trading continues to receive complaints from consumers relating to the accuracy of odometers in second hand vehicles imported from Japan. Consumers have detailed a range of defects, including major rust and engine faults that had become apparent shortly after purchase.

Fair Trading officers investigating these complaints have found the rust or engine faults are not commensurate with the recorded distance travelled on the vehicles odometer.

Example2: Kawasaki

Kawasaki has identified grey (both used and parallel) imports of motorcycle, jet skis and offroad vehicles from the US. Unfortunately, the true history of the vehicle is difficult to ascertain.

Advice from Kawasaki is:

"For our Jet Ski products we just had a call about 2 units in Queensland being sold as brand new, but both had previous owners in the USA. One was sold to a rental company in the USA with 3 months warranty then being sold as new unit with full warranty. We were contacted by one customer who had problems with her grey import Jet Skis she purchased, the after sales service was very poor and it cost her more than any savings she had in purchasing a grey import."

Example 3: Volkswagen

Volkswagen Group Australia (VGA) have identified issues with grey vehicles imported from the United Kingdom that highlights the difficulty of warranty issues associated with grey imports when outside 2 year global warranty period. Warranty will need to be addressed through a combination of Dealer, VGA and customer co-payments.

VGA Technical Department advises customers who have imported a grey import:

"If it is a different engine or car that we and the dealers have not been trained on we will not be able to support them."

Example 3: Subaru

Subaru have identified various registration difficulties for Japanese-sourced grey imports:

- Japanese domestic market vehicles do not have an ISO VIN. Instead they have a VIN with 3 letters then 9 to 10 digits – eg: BFZ 123456789.
- Australian registration authorities require a 17 digit ISO VIN.
- When a grey import Japanese domestic market car is registered in Australia it requires a new VIN to be created by the importer and the new VIN to be manually loaded into registration system (via NEVDIS).

- This causes problems for record keeping, tracking, service technology as well as providing opportunities for stolen cars to be registered legally.

Subaru have also identified that access to a vehicle diagnostic fault codes as problematic.

- Diagnostic equipment is registered for a specific market with the language of that country. A Japanese market Subaru will be programmed in Japanese.
- Subaru Australia can't access Japanese programs due to existing licensing arrangements.

Example 4: Nissan Elgrand

Vicroads⁹⁸ identified issues with used Nissan Elgrand's that are being imported as a motorhome or campervan. The Elgrand is eligible only if it is a motorhome or campervan and only if it has 2, 3 or 4 seats.

In 2009 the Commonwealth became aware that some Elgrand's imported under SEVs arrangements were being sold with up to 8 seats and/or not meeting motorhome/campervan requirements.

Example 5: Nissan Cube

The FCAI became aware of a Nissan Cube imported as a 'grey vehicle' for disabled transport. The vehicle is the sole means of transport for the owner. The importer, Motorvation Automotive, is located in Brisbane, while the vehicle owner is in Adelaide.

The owner contacted the FCAI to enquire about suitability to operate on ethanol blend fuel as information was not provided by the importer. The fuel available in their local area (from an independent) was E10 blend and the vehicle owner was very concerned over if an ethanol blend could be used and what (if any) negative impact it would have on the vehicle.

The vehicle was not provided with an owner's manual and the importer was not able to provide any advice (beyond a single page advising to use 95RON).

Example 6: Harley-Davidson

Harley-Davidson Australia is not able to obtain identification plate approval for their Harley-Davidson Tri-Glide model (motor tricycle sold in North America). The vehicle does not meet the unique Australian stability requirements for motor tricycles in ADR 42/04.

In February 2012 the FCAI (on behalf of Harley-Davidson) requested a review of the unique Australian stability requirements to align with the Canadian standards (as there are no UN Regulation standards or United States standards). The FCAI and Harley-Davidson Australia have provided additional information to the Federal Government and also South Australian Government since February 2012, however, the review of the unique Australian stability requirements has not been finalised.

In August 2012, a SEVS organisation was given approval to import Harley-Davidson Tri-Glide under the SEVS scheme on the basis that the vehicle is not available in Australia. An exemption was given to meeting the ADR 42/04 stability requirements.

⁹⁸ Vicroads VASS Bulletin No. 3, March 2010



FJ CRUISER Range

Call today
1300 BE TUFF

Optional Extras:



Brush Rolls



Side Steps



Spot Lights



UHF Radio



Light Bar



Winch



Protection

Unique



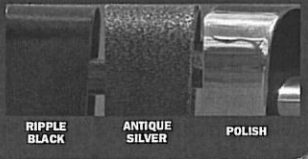
Key Features:

- Available in Aerostyle, Post Aero & Post style bars (2-5)
- Alloy only
- ADR Compliant
- Air Bag Compatible
- New Car Warranty Compatible*
- Winch compatible
- 2 x Aerial mounts
- 2 x Driving light mounts
- Available Australia Wide

Adventure



FINISHES:



RIPPLE BLACK

ANTIQUÉ SILVER

POLISH



FOLLOW US:



1300 23 8833

Find your nearest TUFFstore at www.tuffbullbars.com.au

The TUFF Bullbar is not factory approved by Toyota Motor Corporation or Toyota Motor Corporation Australia Ltd. Toyota's new car warranty may not apply if TUFF accessories are found to interfere with the working of a Toyota vehicle