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**Australian Motor Industry Federation (AMIF) / Motor Trades Association of Australia Limited (MTAA)
Supplementary Submission to the Motor Vehicle Standards Act (Cth)1989 Review**

Dear Mr Stephens and the Review Secretariat,

The Australian Motor Industry Federation (AMIF) and the Motor Trades Association of Australia Limited (MTAA)¹ thanks you for the opportunity to provide a further submission in relation to the Review of the Motor Vehicle Standards Act (Cth) 1989 (MVSA). This supplementary submission seeks to address specific issues contained in an announcement by the Assistant Minister for Infrastructure and Regional Development on 16 April 2015 and other matters, which may impact on the preparation of a Regulatory Impact Statement (RIS). It should be read in conjunction with previous submissions and materials provided to the Secretariat by AMIF/MTAA.

Summary:

AMIF / MTAA Limited:

1. Supports the retention of the Motor Vehicle Standards Act to achieve uniform standards for new and used vehicles and to regulate the supply to market of used imported vehicles.
2. Agrees with the harmonisation of Australian Design Rules with international recognised standards, provided such international standards provide no less protection or assurance to Australian consumers than those already in place, and do not place unnecessary compliance burdens by forcing US or Euro-centric standards on Australians which are irrelevant or superfluous to the Australian operating environment.
3. Supports and applauds Government programs and initiatives designed to reduce red / green tape and regulatory compliance costs, provided these do not increase community / consumer risk, give rise to consumer detriment, or inappropriately transfers risk accountability to the community or consumers.

¹ The Australian Motor Industry Federation (AMIF) is the national peak body of the nation's automotive retail, service, repair and recycling industry, and will be subsumed into the Motor Trades Association of Australia (MTAA) again in July 2015.

Summary (cont)

AMIF / MTAA Limited:

4. Welcomes the Government's 'disinclination' to relax current restrictions for the importation of used vehicles (grey imports), but asks that this 'disinclination' become a stated rejection.
5. Strongly opposes any risk management change, where the community and consumers are being asked to accept greater responsibility for risks that are beyond their control, knowledge, or ability to influence ('buyer beware') and where government has had a traditional role.
6. Strongly opposes any relaxation of current restrictions on parallel imports (taken to mean the personal importation of new vehicles) or 'grey' imports (taken to mean the importation of second hand vehicles) in the Australian automotive market.
7. Is disappointed that a review of an Act of Parliament designed to deliver the Government of the day's overarching public policy intent of community protection, consumer protection and competition (vehicle pricing and choice) in the specific area of regulating the supply of vehicles to the Australian market, has seemingly become a single issue about parallel importation by individuals.
8. Suggests that in the development of a Regulatory Impact Statement (RIS), focus return to the entire original Terms of Reference including whether the Act remains, and if so, whether its two main objectives to:
 - a. achieve uniform vehicle standards for new vehicles when they begin to be used in transport in Australia; and
 - b. regulate the first supply to the market of used imported vehicles;are still relevant in achieving the overarching public policy intent of community protection, consumer protection and competition (vehicle pricing and choice).
9. Is open and willing to work with the Department and other interested parties on how the Specialist and Enthusiast Vehicle Scheme (SEVS) and the Registered Automotive Workshop Scheme (RAWS) could be both enhanced in terms of coverage and capture, and improved in terms of streamlined compliance to achieve a regulatory and enforcement envelope to enable other vehicle imports.

Discussion

AMIF / MTAA Ltd suggest that after more than 12 months of consultation, no case has been made which:

- quantifies and qualifies how the world's most competitive new car market, in which Australian consumers enjoy unparalleled access to more brands and more models than any other, will be further improved through a relaxation of restrictions on individual parallel importation of new vehicles;
- explains how the cessation of domestic motor vehicle manufacturing and individual consumer purchasing of parallel imported new vehicles from other right hand drive markets, is linked or relevant to the review of the Motor Vehicle Standards Act;

- details the mitigations that will be provided to ensure community and consumer protection and reduce the risk of consumer detriment if restrictions are relaxed;
- details the quantum of savings to be achieved of the current \$281million compliance cost, when the costs of mitigating potential risks of individual parallel importation have not been considered.

AMIF/MTAA suggests that the Motor Vehicle Standards Act be retained with a greater emphasis on work already underway for greater harmonisation of Australian Design Rules with international United Nations sanctioned standards.

AMIF/MTAA further suggests that the Act's two core deliverables be retained but modernised to reflect the globalisation and technological advancement of the contemporary modern day motor vehicle and the ongoing harmonisation work.

The remainder of this supplementary submission will address the parallel import issue as this is now appears at the core of the MVSA review.

AMIF/MTAA implores Government to not rush into wholesale change, or be enticed by the economic theory of improved competition, or the attractiveness of shifting risk and compliance cost to consumers.

Instead Government should remain mindful of:

- the considerable achievements attained to date in terms of competition, community and consumer protection;
- the young age of the national motor vehicle fleet;
- the contribution of this modern young fleet to improving community and consumer safety, reduced road fatalities, associated costs of road trauma, lower automotive related crime and improved security; and
- the most competitive motor vehicle market in the world.

There is no competition issue. There is no lack of marques or models. There is no limitation on choice, there is insufficient evidence on price when like comparisons of models from other right hand drive markets, and issues such as taxation are considered.

In revisiting the terms of reference for the review in the context of the 16 April announcement, AMIF / MTAA have reached the same conclusions as follows:

- ***Whether the objects of the Act are being achieved, whether they continue to be appropriate and whether the current legislative framework is effective to achieve the objects of the Act.***

AMIF / MTAA response: Yes, the objects of the Act are being achieved. With modification and modernisation to reflect current and future changes in the automotive industry, further harmonisation of standards and exploration of enhanced SEVS and RAWS, the Act remains the appropriate mechanism in meeting Government's overarching Community and Consumer Protection and Competition (availability and Price) objectives.

- ***Whether there are opportunities to reduce the regulatory burden on business and enhance productivity without compromising achievement of the Act's objectives with respect to safety, environmental and security outcomes.***

AMIF / MTAA response: The achievements secured to date will be jeopardised with respect to safety, environmental and security outcomes if restrictions on parallel importation of new vehicles by individuals and the importation of grey vehicles are relaxed.

Compliance

Ongoing harmonisation of standards will assist with easing the compliance burden. Some compliance will be necessary to continue to provide the community and consumer protection required a highly complex product such as a modern motor vehicle.

A systemic and systematic examination of the SEVS and RAWs programs may provide further compliance enhancements. Objectives to enhance of these programs could include improved streamlining, increased self-regulation, increased capacity and coverage, whilst remaining while still within a modernised regulatory and enforcement framework.

Business and productivity enhancement

AMIF/MTAA does not believe there is any compelling evidence of increased business and productivity improvements resulting from any potential repeal of the Act, or relaxation restrictions on parallel imports.

It is unknown how many Australians may take up the opportunity to source a new car individually from overseas.

AMIF/MTAA agrees with suggestions that the total number of internationally privately sourced vehicle makes and models, that are true comparisons and 'like for like', and where real cost savings can be demonstrated, are likely to be very small in number, if they exist at all. It has been suggested to AMIF that as it will be 'such a small number of people and vehicles' then 'let's make the changes anyway', because 'not many will take it up' and 'the risk is borne by the consumer so what's the issue'.

AMIF/MTAA rejects these arguments and asserts that the potential 'small numbers' justification for change is equally enough reason to not make any change at all particularly when safety, security, environmental and a host of other considerations such as serviceability, warranties, insurance, finance, consumer recourse and other issues stated in previous submissions, are taken into account.

Impact on automotive sector businesses

There is no doubt there will be an impact on business productivity and profitability in sectors represented by AMIF and MTAA members.

New car franchised motor dealers

There are numerous potential negative impacts on new car franchised motor dealers from any relaxation of restrictions on parallel imports.

- Any relaxation of parallel import restriction will open up opportunities for domestic and international 'backyard' operations that will exploit the Australian situation and look for short-term personal gain, without considering longer-term consumer relationships and satisfaction.
- This sector is already undergoing consolidation and change brought about in many ways by merely being participants in the world's most competitive and volatile retail automotive market.

- New car dealer franchise agreements currently preclude dealers from importing outside the current franchisee / manufacturer system or exporting into other markets. Market discrimination will result if there is a relaxation of restrictions on parallel imports.
- Distributors and manufacturers control the process and dealers, who have little influence on the process, believe they will be put at a competitive disadvantage or penalised as a result of rule changes.
- Dealers play an important role as collectors and distributors of government revenue
- Dealers invest in facilities, tooling , equipment, people and training
- Dealer Investments are considerable in their local communities and can be determined by :
 - Manufacturers – size of facility, stock holding, showroom display size, specialised tooling, customer management programs.
 - Consumers – opportunity to see vehicles before purchasing, proximity for servicing, etc.
 - People – supporting consumers’ requirements in the Australian market.
- Dealers traditionally make no money when selling a vehicle – business profitability is largely derived from service, parts, accessories, and the opportunity to sell finance and insurance products.
- A number of manufacturers have stated publicly that they will not provide support to products sourced individually from overseas markets for Australian use, through parts, service, or repair. The dealer will be placed in a no win situation from a consumer seeking rectification or service on the vehicle they obtain from overseas - even in the event that they were aware of potential difficulties servicing, or repairing such a vehicle. Dealers should not be put in this position as a result of government intervention through regulatory change. The government’s role is to protect business not place it as risk.
- There are a range of other considerations which will directly impact new car retailing and where canvassed in previous submissions to this Review and to the Productivity Inquiry in Automotive Manufacturing.

An intervention by Government to ostensibly force alternate business models through regulatory change, during a period of structural adjustment, is unwarranted will have an immediate impact on some dealers operations which could manifest to staff losses and even business closure.

Independent mechanical service /motor body repair / farm machinery and motorcycles

- There must be proper consideration of consumer laws. Warranties and the necessary spare parts and technical information do not necessarily follow parallel imports around the world. It is self-evident, and should have been clearly stated in the Review discussion paper, that a car designed for another market and imported into Australia without any manufacturer or importer support quickly becomes a warranty orphan that few, if any, can properly service or repair.
- Industry and government have been dealing with the issue of appropriate access to service and repair information for the existing and previous products of the current Australian fleet. Even Dealers who as part of their franchising arrangements are required to provide service can sometimes struggle to obtain necessary information from manufacturers about existing product.

- The arrival of motor vehicles not originally destined for the Australian market will exacerbate this issue further. Independent service technicians and repairers chosen by the consumer to undertake work on a motor vehicle that was not originally destined for the Australian market and, was sourced internationally through a parallel import scheme, will have difficulty sourcing information, parts, service manuals and repair instructions potentially exposing the business to consumer complaint.
- Not all cars made for different international markets are made to the same specifications. Cars which manufacturers import to this country are prepared for the specific conditions of this market. Many Australian specifications are different.
- Despite claims to the contrary, new car warranties will not simply transfer across borders. We cannot expect Australian motor vehicle distributors to pick up warranty responsibilities for parallel imports. Many have stated they will not. This will lead to the consumer looking elsewhere to satisfy their requirements potentially exposing professional independent mechanical repairers who have not had access to the necessary information, training, tools and other requirements of a vehicle not originally designed for the Australian environment.
- AMIF /MTAA farm machinery and motorcycle dealers are already struggling with the complexities of non compliant parallel imported machinery and motorcycles and the associated problems this is creating for dealers and consumers alike. AMIF/MTAA is aware of an importer of such equipment getting potential buyers to sign an agreement that for the potential lower cost of particular farm machinery, that the buyer is aware and accepts full responsibility for its compliance with ADRs and other standards and requirements. "Buyer Beware" is not an acceptable Government Policy.

General observations

One description proposed of a new parallel imported car by an individual is that it will:

- be a marque that is already sold in Australia;
- be imported from an existing country /right hand drive market;
- have originated from a licensed dealer in that country;
- be 8 months old or less; and
- with 4,000 kms in total on the odometre.

If any of these descriptors are correct then they raise more questions than provide answers including:

- What does a licensed dealer look like in Japan, India South Africa or the UK?
- How do they compare with Australian licensed dealer requirements?
- Is there a competitive advantage to the international dealer through an inconsistency of Dealer licensing requirements? If so why?
- Why are the kilometres travelled and age different in terms of how new cars or demonstrators or used vehicles are described in the Australian context?
- If significant kilometres or age is determining factors for a new vehicle from overseas, what consumer protections will be in place to ensure the vehicle sourced is new and from a legitimate dealer?

And the list could go on.

An open door policy is likely to introduce new risks of theft, rebirthing and re-identification problems, originating from overseas markets where vehicle theft protections are less than here in Australia. Importing of stolen vehicles and parts into Australia has been known to occur and would become harder to detect.

AMIF and MTAA and Members have tackled this issue before. Prior to the introduction of the RAWs and SEVS arrangements, there were thousands of opportunistic players in the second hand import market. The result was that sub-standard imported vehicles were readily available and often sold on to unlucky consumers.

The most significant issue in relation to imports of parallel vehicles is the impact on consumers arising from original specifications which will introduce, a raft of problematic warranty and service issues.

As proposed in previous submissions, AMIF/MTAA reports the following concerns in relation to parallel imports:

- A Toyota Corolla (or similar vehicle) built for delivery in the Australian market is different to the Corolla destined for the UK and every other market.
- 75 per cent of worldwide new car volume is left hand drive (LHD) and therefore very differently engineered. Only 25 per cent of vehicles are built right hand drive.
- The MVSA or the ADRs are not barriers to entry which increase prices of Australian cars
- When comparing prices of Australian vehicles to similar overseas models great care must be taken to compare apples with apples in specification. Many vehicles imported new to Australia are of a higher specification than that delivered in other RHD markets
- The specifications of Australian delivered vehicles take into consideration the different 'Duty Cycle' demands of Australian use of vehicles for example driving from Adelaide to Perth across the Nullarbor during the height of summer on a 43 degree day.
- The specification and quality of fuel used in Australia is different to overseas and therefore vehicle engine specifications and pieces of equipment on Australian delivered vehicles is also different. Engineering changes to motor vehicles imported into Australia to enable those motor vehicles to perform as intended can include differences such as:
 - Radiators;
 - Alternators;
 - Suspension;
 - Engines and Electronic Control Units (ECUs);
 - Safety systems;
 - On-board electrics;
 - Dust protection;
 - 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.

- The Australian Consumer Law is significant for any importer of vehicles. Importers of vehicles will be deemed to be manufacturers for the purposes of the Australian Consumer Law (ACL). If the importer is a small business or individual who is difficult to locate, then warranty support, parts and information are at risk.
- Manufacturer warranties do not necessarily extend across international boundaries
- Significant work is required to convert LHD to RHD and that work and cost of compliance will likely make LHD vehicles unattractive to Australian buyers.
- Safety recalls for vehicles personal or parallel imported from overseas will be impossible to manage. As these vehicles become orphaned from their original manufacturer overseas, accurate records kept for the purpose of effecting safety recalls will not be available.
- Such a situation as is currently underway with the global recall of over 53 million vehicles fitted with Takata airbags. There is no mechanism in place to track parallel imported vehicles to effect a compulsory safety recall. Australian based vehicle manufacturers and importers should not be required to process recalls for vehicles that they did not manufacture or import.

Other RIS considerations

Insurance

- Insurers have stated that they support the harmonisation of ADRs, but not at the cost of lowering road safety in Australia.
- Will they agree to underwrite these vehicles?
- What happens if no manufacturer or dealer presence exists?
- What are the cost implications?
- Will the information be available for repairing these vehicles?
- Will parts be available in a timely manner?

Finance

- Will finance be made available for consumers seeking to parallel import a new vehicle?
- Will there be special conditions / requirements to secure a vehicle where the identification is for another overseas market?
- Will valuations be affected because of the origin of the vehicle?
- Will this have a negative impact on valuations of similar models of the same marque built for, and sold in the Australian market?

Inter-relationship and operability with other regulation and legislation

- Although not part of the Terms of Reference, the RIS process must examine the interrelationship and interoperability of a revised MVSA with other legislation and regulation including the Australian Consumer Law.
- Broadly the Australian Consumer Law empowers consumer rights and recourse in the event of products not performing to specification, promise or purpose and providing avenues of rectification to the consumer. In the event of any relaxation of restrictions on parallel imports and the shift of risk to the consumer, what recourse will consumers then have? It is apparent to AMIF/MTAA that proposed changes to the MVSA could be at odds with the intent of the ACL and Government's overarching Policy accountabilities.

- ***Whether the regulatory powers and reporting responsibilities in the Act facilitate effective and proportionate compliance by industry and consumers bringing new and used road vehicles to the Australian market for the first time.***

AMIF / MTAA response:

AMIF / MTAA believes the regulatory powers and reporting responsibilities in the Act are contributing to the significant achievements recorded to date. AMIF / MTAA remains concerned that the suggested relaxation of restrictions on parallel imports will turn a reasonable and proportionate compliance regime into a disproportionate, consumer centric model that would disadvantage consumers.

Adequate arrangements currently exist for the personal importation of vehicles or importation under the SEVs and RAWs to allow Australians to access vehicles from overseas if they wish.

AMIF/MTAA believes there may be opportunity to broaden the scope and capability of these schemes. Increased self-regulation, but with greater consequences for breach or unlawful behavior would provide a compromise for a consumer to access a vehicle in the manner proposed by relaxing current restrictions. However, if this option was pursued then current stated concerns would still need to be satisfactorily addressed.

The costs of freight, compliance and customs processing associated with the import of SEVs importation does not suggest that consumers would be advantaged by access to personally or parallel imported vehicles without the current import restrictions.

However, AMIF/MTAA Members have reported from past experiences that where a small gap appears in the import rules, there will be those who seek to exploit that gap. It is reasonable to predict that, as has occurred in the past, a chink of light becomes an open door and then an eight-lane freeway for opportunists and exploiters who take the boundaries of an import scheme and stretch it to meet their own business aspirations.

Insofar as this shifts risk to the consumer, this scenario is unsustainable and avoidable.

In the past, a personal import scheme was exploited by 'brokers' who would accumulate personal information of expatriates living in Australia and use that information to 'process' importation of vehicles said to have been owned by the expatriates back in their home country. The resulting vehicles landed here were imported using falsified documents. They were of dubious origin, unknown provenance and uncertain value. Such an arrangement should not be permitted to occur again.

Subsequent schemes involving substitution of VIN numbers onto vehicles sourced from overseas were used to circumvent and corrupt the import and registration rules.

These risks should be avoided. The current arrangements protect consumers against unscrupulous wholesaling of imported vehicles. If vehicles are to be imported under new arrangements, protections against abuse of the system must be rigorous and must be enforceable. AMIF/MTAA suggests that if one of the drivers for proposed relaxation is reduced compliance costs, then rigorous protection and enforcement will not form part of the plan, exposing consumers. We remain concerned that the intent and scope of relaxed rules for personal or parallel import of new cars is a flawed concept which creates too many risks.

Conclusion

If the overarching objective of Government is to –‘ensure consumers have the access to the lowest cost, safest and youngest car fleet possible’ (16 April 2015 Statement), AMIF/MTAA argue this objective is achieved.

New car affordability is at its best levels in more than 20 years. Over 23 million Australians can choose from more than 67 brands, and now almost 400 model variants of those brands. We have one of the youngest national fleets in the western world. Consumer protections relating to safety, standards, service, and repair have been decades in the making and provide real and demonstrable returns. The existing MVSA in partnership with other legislation and regulation is already providing the protections to the community and the consumer that contributes to the most competitive automotive market in the world.

AMIF / MTAA Ltd on behalf of State and Territory Automobile Chambers of Commerce and the Motor Trades Association members, remain opposed to any relaxation of restrictions on parallel imports (taken to mean the personal importation of new vehicles) or ‘grey’ imports (taken to mean the importation of second hand vehicles) in the Australian automotive market.

AMIF and MTAA Limited believe the premise that greater competition and lower prices will result from a decision to relax current parallel import restrictions for new cars is fundamentally flawed in light of the available information, historical trends and current market conditions.

AMIF / MTAA Limited and Members arguments against parallel imports are not founded on protectionism of the various sectors they represent, including new car retailing, used car retailing, service and repair sectors. Indeed some constituent businesses are heavily involved in vehicle modification and vehicle importation. These concerns are expressed on behalf of our members’ business constituents, all of whom hold a genuine interest in ensuring that consumers are not harmed by a system that leaves them unprotected and vulnerable.

It was originally proposed to allow unrestricted importation of second hand vehicles and/or unrestrained personal importation of vehicles. It would appear that Government has rejected this open ended proposal for second hand car imports. AMIF /MTAA welcome that decision.

The crux of this matter can be found on Page 17 of the Productivity Commission’s final report into Automotive Manufacturing where it states:

"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."

If it is government’s intention to relax the restrictions on parallel importation of motor vehicles, then AMIF/MTAA argues Government is potentially relinquishing its core accountabilities to the Australian community.

AMIF/MTAA suggests that any relaxation of restrictions on the parallel importation of motor vehicles will at best result a policy that suits a small undefined minority of Australians, seeking to acquire a small undefined number of models of motor vehicle, at an undefined, but allegedly lower and more competitive cost. At worst it will expose the majority of consumers to great risk.

This will be done in the context of no market failure, no lack of competition, and no cost imperative and nothing but positive indicators on vehicle safety, security and environmental compliance.

AMIF/MTAA and its members cannot support an approach that places the risks of product failure, defect or non-compliance of a motor vehicle will an individual consumer for the reasons provided.

AMIF / MTAA remain available at anytime to assist the Department, the Minister and Government in its investigations and deliberations on this important matter.

AMIF/MTAA National Secretariat
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